

Transferring of tax related information via T2S –changing T2S standard 4 – tax info

1. Background

In the context of the discussions on the compliance by the Italian market with T2S Standard 4 – tax info, in the context of portfolio transfers, the HSG and the AMI-SeCo agreed to review the standard in order not to prohibit the passing of tax-related information in T2S messages if (and only if) both parties to the transaction (either in a bilateral or a multilateral context) agree to this. One of the original motivations that led to the adoption of this standard by the T2S Community (at the time the T2S harmonisation agenda was set up) was that passing of tax information should not hinder or affect the use and operation of T2S in any way. In view of this, the AMI-SeCo in its last meeting (June 2021) also agreed to consult with T2S governance whether there would be any operational impact on T2S should such practice not be prohibited anymore. The aim of this note is to recall how T2S standard 4 would change and to present the outcome of the consultation with the relevant T2S governance bodies, namely the T2S Operations Managers Group (OMG) and the T2S Change Review Group (CRG).

2. Proposal to amend T2S Standard 4

Based on the outcome of the relevant discussions, the AMI-SeCo agreed on the principles for the review of T2S standard (4):

- a) The reviewed T2S standard 4 (and the future market practice / handbook on portfolio transfers) cannot be such that it would require any T2S actors – which are either not willing or not allowed to do it – to transmit tax information via T2S messages.
- b) Any proposal for a market practice or handbook for portfolio transfers drafted – inter alia – on the basis of a reviewed standard should be robust to potential future use of message fields in T2S according to the existing messaging standards.
- c) The changing of the standard for the purpose of portfolio transfers should be such that it does not imply change requests to T2S.

Originally, a fourth principle¹ established that the change of the standard should be linked to the adoption of a handbook or market practice on portfolio transfers, to limit the risk of creating dangerous precedents

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- a) ¹ Principle d) “To limit the risk of creating a dangerous precedent of revising a T2S standard in order to adapt it to existing legacy practices changing the standard should be done in parallel with / at the same time as with the adoption of a handbook or market practice on portfolio transfers in T2S markets.”

of ad-hoc T2S standards revisions. The HSG and the AMI-SeCo then chose not to wait any longer for the completion and adoption of the handbook/market practice.

The HSG worked on a revised proposal for the reformulation of T2S standard (4) that was endorsed by the AMI-SeCo:

New formulation of T2S Standard 4

Current text of T2S standard 4 (Annex 1):

Tax-related information for domestic and cross-CSD transactions is not passed via T2S messages.

HSG proposal for the revision presented to AMI-SeCo (Annex 2):

Following a bilateral or a multilateral agreement, T2S actors may choose on a voluntary basis to include tax-related information in a T2S message; (in such a case, the content and/or format of such information may be subject to specific national legal requirements). T2S actors should not impose any mandatory obligation on their participants or on their counterparties to include tax-related information in T2S messages for settlement in T2S.

The proposed reformulation would allow the transmission of tax-related information without endangering the objective of harmonisation and without having an effect on any other parties in T2S.

As noted above, in most T2S markets in practice, and in compliance with the current wording of the standard, tax information is not passed via T2S messages. However, in specific scenarios (such as the case for portfolio transfers in Italy and possibly also across borders) using T2S messages for this purpose based on a voluntary agreement by all parties to the transaction could be an efficient processing option. The AMI-SeCo took the view that the standard, while retaining the general (default) approach of not using T2S messages for this purpose, could be more accommodating to such special needs without endangering the spirit of the harmonisation.

With a view to the original T-FAX analysis which, at the time, also cited concerns related to a potential operational burden on T2S if such practice was allowed, the HSG consulted the relevant T2S governing bodies (i.e. the T2S OMG and the T2S CRG) to exclude any potential negative impact of the change of the wording of T2S standard 4 on the operation of T2S.

3. Operational implications for T2S messages

T2S does not have messages or message data fields devoted specifically to tax-related information and, according to the principles for changing T2S Standard 4 agreed by all AMI-SeCo stakeholders, no change requests in T2S should be triggered by the change of T2S Standard 4.

To better understand the potential operational execution of an exchange of tax information via existing T2S messages, the example of the Italian market practice for portfolio transfers can be used:

The Italian market practice for portfolio transfers, along with other guidance on the usage / population of certain message fields for domestic portfolio transfer transactions (see the relevant excerpt of the market practice in Annex 3), uses the

<RcvrgSttlmPties>

<Pty4>

<id><NmAndAdr> <Nm>

data element of the Settlement Instruction (sese.023) message to transfer fiscal (tax-related) information (e.g. Tax rate for capital gains purposes; Tax rate for “imposta sostitutiva”; Y/N indicator to identify if “zainetto fiscale” has to be passed through); As per T2S messaging rules the information included is also transposed to the Allegement Message (sese.028), the Status Advice (sese.024) and Confirmation Message (sese.025)

A relaxation of T2S standard 4 allowing such practice, based on the exchange of existing T2S messages and on the voluntary agreement by the involved parties, will not represent any operational burden to T2S or T2S participants: both the Operation Managers Group and the Change Review Group have not identified risks of impact on T2S due to the change nor operational or functional obstacles to its implementation. It is recalled that no change requests to T2S are raised now or expected to be raised in the future due to the proposed change in this T2S harmonisation standard.

Based on the above, the AMI-SeCo is invited to endorse the proposed revision of T2S Standard 4, to allow the use of existing T2S messages to convey tax-related information subject to a voluntary agreement by all parties.

Annex 1: T2S Activity no.4 Interaction with T2S (tax info requirements)

Activity description

The objective of this activity is to establish a T2S standard for the management of transaction-related tax information across borders, in order to avoid inefficiencies generated by heterogeneous local tax requirements (transaction-related tax rules and tax information flow). Non-compliance would impose back-office costs on instructing counterparties and might discourage cross-CSD activity in T2S. The target date for T2S markets to fully comply with this standard is their migration date to T2S.

T2S STANDARD

Tax-related information for domestic and cross-CSD transactions is not passed via T2S messages.

Note: Tax-related information includes, but is not limited to, the tax status of the transaction, tax status or tax ID of the end investor, tax exemption identification number, alien registration number, passport number, corporate identification number, driving license number, foreign investment identity number, BIC, proprietary ID and name and address of the investor. ISO messages provide fields that can be used to pass information about a particular transaction tax type (withholding tax, payment levy tax, local tax, stock exchange tax, transfer tax, value-added tax, consumption tax), as well as the amount, debit/credit indicator, currency and other details. To fully comply with this standard, T2S markets/CSDs should not use these fields to pass on any kind of tax-related information.

Annex 2: Proposal for revision of T2S STANDARD 4)

Activity description

The objective of this activity is to establish a T2S standard for the management of transaction-related tax information across borders, in order to avoid inefficiencies generated by heterogeneous local tax requirements (transaction-related tax rules and tax information flow). Non-compliance would impose back-office costs on instructing counterparties and might discourage cross-CSD activity in T2S. The target date for T2S markets to fully comply with this standard is their migration date to T2S.

PROPOSED NEW TEXT OF STANDARD 4

~~Tax-related information for domestic and cross-CSD transactions is not passed via T2S messages.~~

Following a bilateral or a multilateral agreement, T2S actors may choose on a voluntary basis to include tax-related information in a T2S message; (in such a case, the content and/or format of such information may be subject to specific national legal requirements). T2S actors should not impose any mandatory obligation on their participants or on their counterparties to include tax-related information in T2S messages for settlement in T2S.

Note: Tax-related information includes, but is not limited to, the tax status of the transaction, tax status or tax ID of the end investor, tax exemption identification number, alien registration number, passport number, corporate identification number, driving license number, foreign investment identity number, BIC, proprietary ID and name and address of the investor. ISO messages provide fields that can be used to pass information about a particular transaction tax type (withholding tax, payment levy tax, local tax, stock exchange tax, transfer tax, value added tax, consumption tax), as well as the amount, debit/credit indicator, currency and other details. ~~To fully comply with this standard, T2S markets/CSDs should not use these fields to pass on any kind of tax-related information.~~

Annex 3 – Italian market practice on portfolio transfers (excerpt on message format instructions)

“...6. Format instruction in T2S (Sese 023)

Since the transposition from the Settlement Instruction (sese.023) to the Allegement Message (sese.028), the Status Advice (sese.024) and Confirmation Message (sese.025) is not complete in T2S, it is necessary to use non-formatted fields in a structured format in the Portfolio Transfer Delivery in T2S (sese 023), as detailed below:

Transaction Type

The Specific sese.023's field `<SctiesTxTp><Cd>` must be used with the already admitted value PORT.

Change of Beneficial Ownership

Where in sese.023 the specific field (`<BnfclOwnrsh>`) is filled in, this is not transposed in sese.028, sese.024 and sese.025. Therefore, we agreed to use:

`<TradDtIs>`

`<TradId>`

where the above mentioned codeword rules NCBO and YCBO must apply.

Deal Price

The Clear Purchase Price could be put in the `<DealPrice>7` block, which has two different subfields: `<Val><Rate>` and `<Val><Amt><Ccy>`. For ISINs denominated in UNIT and related to ICITS, the NAV indicator has to be transmitted and, due to the absence of a specific field, the narrative field `<NmAndAdr>` in the party 4 sequence might be used.

Final Beneficiaries

The field Party 3 in Receiving Settlement Parties is used to identify the Final Beneficiaries; CSD's BIC

`<RcvgSttlmPties>`

`<Dpstry>`

`<AnyBIC>`

BIC of the CSD Participant (PARTY 1):

`<RcvgSttlmPties>`

`<Pty1>`

`<AnyBIC>`

BIC of the client of CSD Participant (PARTY 2):

`<RcvgSttlmPties>`

`<Pty2>`

`<AnyBIC>`

Bank where the final beneficiaries hold an account and information concerning the Final Beneficiaries (i.e. account number):

< RcvgSttlmPties>

<Pty3 ->

<id><NmAndAdr> <Nm>

Additional fiscal details

< RcvgSttlmPties>

<Pty -4 ->

SESE.023	:		TRANPOSED TO			
FIELD DESCRIPTION	MAIN NAME	FIELD	FIELD NAME	SESE.028	SESE.025	SESE.024
Iso Transaction code				X	X	X
Change of beneficial owner indicator	<TradDtIs>		<TradDtIs> <TradId>	X	X	Not present
Average value date	<TradDtIs>		<TradDtIs> <TradId>	X	X	Not present
Regime type indicator	<TradDtIs>		<TradDtIs> <TradId>	X	X	Not present
Beneficiary Data (Family name and given name)	<RcvgSttlmPties>		<RcvgSttlmPties> <Pty3> <id><NmAndAdr> <Nm>	X	X	X
Beneficiary Data (Fiscal element)	<RcvgSttlmPties>		<RcvgSttlmPties> <Pty4> <id><NmAndAdr> <Nm>	X	X	X
Clear purchase price (bonds)	<TradDtIs>		<TradDtIs> <DealPric> <Val><Rate>	X	X	Not present
Clear purchase price (shares)	<TradDtIs>		<TradDtIs> <DealPric> <Val><Amt><Ccy>	X	X	Not present