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The influence of financial regulation on the tax treatment of retail investment in Belgium

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The research looks at the interplay of financial law and tax law for the differentiation and treatment of retail financial instruments. Do the tax rules lead to unintended consequences and how to solve these issues based on the normative ideals of financial regulation (which are often shared with taxation)?

Goals of (retail) financial regulation

Investor protection
Market integrity
Preventing financial crime
…

Goals of (retail investment) taxation

Raising revenue
Redistribution
Specific non-fiscal goals
….

Shared goals

Economic Efficiency
Financial independence of households (e.g. long-term saving)
Other (e.g. sustainability)

Multiple challenges

Highly fragmented tax landscape (significant differentiation and types of taxes/tax rules)

- Difficulty of comparison of financial instruments
- Existing differentiations are not always expressly intended

➔ Economic efficiency issues and risk of undermining (other goals of) financial regulation

Inadequate drafting, targeting or flexibility of tax rules

- Financial engineering and emergence of new types of investments (e.g. crypto-instruments)
- Inadequate targeting of (new) tax rules (under- or over-inclusion)

➔ Economic efficiency issues and risk of undermining (other goals of) financial regulation

Harmonisation (EU financial regulation) vs. fragmentation (primarily domestic tax laws)

- Different legislators – different goals or same goals pursued differently

➔ Domestic tax rules may undermine goals and/or useful effect of EU financial regulation

Example: complex high-risk financial instrument

Financial spectrum		Tax spectrum	Interplay
Investor protection *Disclosure rules* (e.g. PRIIPs, Belgian FSMA moratorium on complex retail financial instruments) *Product intervention* MifiR ban/restriction on distribution to retail investors (e.g. Belgian FSMA 2014 ban on CFDs, binary options, instruments linked to crypto-currencies; ESMA 2018 restrictions on CFDs and ban on binary options) ….	A	Non-differentiated tax treatment (compared to less complex lower risk products)	Investor protection rules can have full effect *A priori* no efficiency issues
	B	Beneficial tax treatment (compared to less complex lower risk products)	Investor protection may be undermined by beneficial tax treatment + Possible efficiency issues
	C	Complex tax treatment	Investor protection may be undermined by tax complexity + Possible efficiency issues