

International

Tax Suitability as a New Regulatory Requirement

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1. Markets in Financial Instruments Directive II

1.1. Foreword

The European Securities and Markets Authority (ESMA) has clarified that withholding tax and income tax impacts form an integral part of the new Markets in Financial Instruments Directive (MiFID) II^[1] accompanying regulation.^[2] Tax suitability (i.e. ensuring that the tax impacts for the investor are considered in the computation of the risk and expected return of an investment) is highly relevant for investor protection, as its impact will affect the effective performance of the portfolio, especially in a low-interest-rate environment. The ESMA is now establishing firm guidelines and requirements to ensure that the wealth management industry commits the necessary investments for tackling the challenge of tax impacts, also for cross-border clients. The new regulatory requirement of tax suitability – especially from an income tax perspective – can be relatively easily integrated in the daily asset management activity, as the private sector has developed advanced digitized solutions that allow the instant classification of the tax suitability of a product at ISIN^[3] level per country of residence.

Passported EEA firms and Swiss financial institutions actively serving European clients on a cross-border basis will have to adapt to this new framework, as one will soon no longer speak of wealth management services in the field of taxation, but of services *tout court*.

The full article is available on [IBFD's website](#).

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1. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L173/349 (June 2014) (recast).
2. Regulation (EU) 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) 236/2012, OJ L257/1.
3. International security identification number.

