Settling tax disputes in non-tax fora

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Tax Carve-Out Clauses in Investment Treaties

- Policy: allow technical disputes to be settled by technical bodies
- Law: various types of tax carve-out clauses
  - Disputes on matters of taxation
  - Any measures regarding taxation, including enforcement
  - As long as measures are not arbitrary
  - Partial effects (FET, non-discrimination, NT/MFN, expropriation)
- Structural critical issue: settling cross-border tax disputes between States does not necessarily offer an effective legal remedy to non-State actors of international law
- Law: ubi ius, ibi remedium – is there an international remedy?
- Future options:
  - Settle cross-border tax disputes through tax instruments
  - Allow investors to obtain a full protection of their rights, incl. tax
Two main avenues for securing protection under ECHR

- Right to fair trial – accessible when either channel is open:
  - Civil rights and obligations – very hard
  - Criminal charges – Engel criteria and strong impact on sanctions
    - Ne bis in idem – administrative and criminal sanctions
    - Audita altera parte – also in administrative procedures?
    - Habeas data – still subject to many limitations
    - Access to justice - often effectively protected

- Right to property
  - Tax carve-out: scope and rationale
  - Expropriation and confiscation are generally prohibited
  - Critical issues in cases of international double taxation

- EU Charter mostly reflects ECHR, giving EU law protection
Muchas gracias
Many thanks

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