



# 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

# European Convention on Human Rights

- ▶ 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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