

# Investment Treaty Arbitration in Tax Matters

Some observations on Bilateral Investment Treaties (BITs)

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# Introductory remarks on BITs and comparison with DTCs

- **Purpose of BITs** (Example preamble to 1994 India-UK BIT, now terminated: *“Desiring to create conditions favourable for fostering greater investment by investors of one State in the territory of the Other State; Recognising that the encouragement and reciprocal protection under international agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States”*)
- **Access to BITs** (definition of investor)
- **Improper use of BITs** (existence of denial of benefits clauses; abuse of process ?)

# Introductory remarks on BITs and comparison with DTCs

- **Interpretation of BITs** under the Vienna Convention on the Law of Treaties
- Future evolution of investment treaty policy

# Standards of protection under BITs

- **Fair and equitable treatment (FET)**
- National treatment (NT)
- Most-favored-nation treatment (MFN)
- Expropriation clauses

# Fair and equitable treatment standard (FET)

- Example: Art. 3(2) 1994 India-UK BIT, now terminated: *"Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory I of the other Contracting Party"*
- Relation of FET with customary international law (international minimum standard) ?
- Relation of FET with domestic (constitutional law) ?

# Fair and equitable treatment standard (FET)

## ➤ Content of FET

- Protection of **legitimate expectations**
- **Transparency**
- Protection against **arbitrary and discriminatory actions**
- **Denial of justice or due process**
- **Good faith**

# Fair and equitable treatment standard (FET)

- How should FET be applied to tax measures
- Disputes rooted in **domestic tax measures** ?
- Disputes rooted in **tax treaty law** ?

# Conclusions

- When should an investment arbitration be considered?
- What will be the future evolution of investment treaty policy and its impact on investor state disputes?