RECONCILING INTERNATIONAL INVESTMENT AGREEMENTS WITH DOMESTIC TAX LAWS THROUGH RESTRUCTURING TAXATION CLAUSES IN INTERNATIONAL INVESTMENT AGREEMENTS

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ABSTRACT

International Investment Treaties (hereinafter IIAs) are treaties that aim to protect investors by promoting foreign investment. While IIA contracting parties provide for investment protection, they might be unwilling to provide full protection in relation to certain matters, including taxation. Among the IIAs signed by different countries, there are taxation clauses included which carve out taxation measures from the IIAs' coverage or operate to treat them differently. However, as investors start to pay more attention to taxation as an investment barrier to ensure that taxation clauses are not a loophole for investor protection, taxation clauses are expected to play a more crucial role in reconciling IIAs and domestic tax laws.

After analyzing and categorizing certain tax-related cases under international investment arbitration, this article comments on the potential conflicts between standard protections in IIAs and domestic tax laws and how to tackle the problems in current taxation clauses. By looking at the values shared by both international law and fundamental taxation principles, it is possible to provide more useful advice to policymakers, and to improve current taxation clauses to balance interests under international investment law and domestic tax law.

KEYWORDS: *taxation clause, taxation measure, tax matter, right to regulate, carve-out clause*

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