

ABSTRACT FOR 2015 ATTA CONFERENCE

Indirect Expropriation through Taxation: Look at the Tax Policy from International Investment Perspective

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Keywords (five): Taxation, Indirect Expropriation, Cross-Border Investment, BITS, Tax Policy

This paper looks at the tax policy from international investment perspective. It aims to examine in which circumstances the Host State's tax Policy might be a remedy under international investment law of the protection against indirect expropriation. It is done by examining the rationale of expropriation, both direct and indirect, under international investment law including customary international law, state practice, current development of investment treaties and international case law to see the development of international investment law regarding this issue.

Cross-border investment has been acknowledged that it benefits foreign investor and host-state. On the one side, foreign investors who hold the expertise and initial capital would get the profits in return to their home country. On the other side, cross-border investment would provide sustainable development and continued economic growth of the Host State by unlock their natural resources and labour. To achieve that win-win situation, in my view, the Host States' Governments are supposed to collect proper taxes on foreign investment. On the other side, foreign investors are supposed to obtain proper protection regarding their investments and investment proceeds. The eight core investment protections are typically provided under customary international law and investment treaties. One of those is the protection against unlawful expropriation.

The protection against unlawful expropriation is one of oldest traditional protection. It is originated from international customary law and state practices. This principle has been developed overtime through investment treaties and case law, and from 'direct' to 'indirect' expropriation. Recently, some Governments have been claimed that their tax policies constitute indirect expropriation, and requested for compensation by foreign investors. Although, the concept of indirect expropriation is still vague and most investment treaties do not provide precise definition, some international Tribunals have confirmed that in international investment law 'taxation can amount to indirect expropriation'. Although the current development of international case law is non-binding precedent, it provides a guideline to State regarding their tax policy and investment treaties negotiation. This paper hopes that the outcome of the study would assist the Host States' policy makers regarding tax policy on foreign investment in the future.

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No

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(Yes, but it is not directly related. My Thesis focuses on Investment Arbitration. One of my case studies is related to taxation policy and indirect expropriation. However, I am also interested in taxation, and would like to join the workshop to improve my thesis.)

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