

# **The *Vodafone* investment arbitration – a plea for tax treaty arbitration**



**Hans Mooij**

**Chair, Tribute Foundation**

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## 1. *Vodafone* should never have happened

- Why wasn't the indirect transfer loophole plugged long before?
- Retroactive taxation must always be ruled out - period
- The BVI entity was a tax avoidance scheme, and the Netherlands/India BIT jurisdiction shopping
- The arbitrators should have been tax experts, and their decision published in full



## 2. Tax issues should be covered by tax treaties

- Can India afford, economically, to denounce investment arbitration on tax issues?
- Tax treaties not providing for mandatory binding arbitration are ‘primitive’
- Tax treaties should be expanded to provide the full spectrum of taxpayer rights, including fair and equitable treatment



### 3. MAP alone cannot resolve all tax disputes

- In 2019, India resolved 86% of MAP cases on transfer pricing and 16% on other issues, at an average duration per case of over 5 years (*OECD 2019 MAP Statistics*)
- Tax treaty arbitration is there to prevent not only ‘no resolution’, but also any ‘slow resolution’
- India is becoming ‘last of the Mohicans’ to resist



## 4. 'The Shape of Things to Come' (*H.G Wells*)

- OECD/G20 Pillar One Blueprint, Amount A, proposal for 'determination panels': binding decisions, on the basis of 'last best offer', and by members which may include independent experts
- Dispute prevention is nothing else but dispute identification and resolution at early stage
- What's in a name?



# End & Thanks