Tax Incentives in the Investment Law : A Critical Reading of the Legal Framework and its Impact on Attracting Investment

الامتيازات الجبائية في قانون الاستثمار: قراءة نقدية في الإطار القانوني وأثره على جذب الاستثمار

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Abstract:

This article examines the effectiveness of the tax incentive system designed to support investment in Algeria. It analyzes the legal framework for tax exemptions, the mechanisms for benefiting from them, and assesses their economic returns. The research reveals that the current incentive system, despite the legislative developments enshrined in the new Investment, still faces challenges related to the clarity of the texts, the effectiveness of the procedures, and the overlapping jurisdictions among different bodies.

Added to this, difficulties related to industrial real estate and the digital gap in processing applications and monitoring the implementation of incentives persist. Finally, the research proposes a set of recommendations aimed at strengthening the effectiveness of tax incentives in attracting investments.

Keywords: Tax exemptions, implementation phase, operational phase, digital platform, Law 22-18.

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Introduction

Tax exemptions and incentives have become one of the most important mechanisms adopted by modern states to stimulate investment and achieve economic growth, especially in light of increasing global competition to attract capital and create a more stable and attractive business environment.

The Algerian legislator has enshrined a wide range of tax exemptions within its finance and investment laws. Investment Law No. 22-18 [1] and its implementing decrees represent a pivotal milestone in the reform of the Algerian economic system, given its new vision aimed at improving the business climate and enhancing the attractiveness of both domestic and foreign investment. This law reorganized tax and customs incentives according to a more transparent and effective logic.

However, benefiting from these incentives is not automatic ; rather, it is linked to specific procedures and precise conditions imposed by the legislator to regulate the process, ensure transparency, and prevent abuses.

The importance of this study lies in its attempt to uncover the strengths and weaknesses that affect the effectiveness of the tax incentive system in light of the challenges facing the national economy. This makes evaluating incentive tools and their control mechanisms essential for formulating more effective investment policies.

The following question can be raised : Do the tax privileges stipulated in Law 22-18 allow for the achievement of real economic efficiency, or are they still governed by restrictions and limitations that reduce their intended goal ?

This study aims to :

1- Analyze the legal and regulatory framework for tax incentives as outlined in Law 22-18 and its implementing decrees.

2- Identify the practical and applied challenges hindering the effective implementation of tax incentives.

3- Evaluate the impact of tax incentives on attracting investment.

4- Propose practical recommendations to enhance the effectiveness of the incentive-based tax system and improve the investment climate.

To achieve these objectives and address the research question, descriptive and analytical approacheswere adopted, describing and analyzing the relevant legal and regulatory texts related to investment. This was achieved through the following chapters :

Firstly : Content of tax exemptions within the Investment Law

Investment Law 22-18 includes three (3) systems for granting tax advantages and incentives, unlike previous investment laws. Ordinance 01-03 on investment

development included two incentive systems : the general system and the exceptional system. Law 16-09 on investment promotion included three types of advantages : common exemptions, additional exemptions, and exceptional exemptions. These advantages differ from the three systems included in Law 22-18, which relate to the sectoral system, the regional system, and finally, the structured investment system. This section will detail the exemptions granted to investments made under these systems, as follows :

1.Exemptions granted for investments completed in priority sectors

The Investment Law includes advantages and incentives directed towards investors in specific sectors called priority sectors. Therefore, before discussing these advantages and privileges, it is necessary to identify these priority sectors in order to then discuss the privileges granted in the completion stage and then the exploitation stage.

1.1 Identifying priority sectors

Article 26 From the aforementioned law identifies priority sectors, limiting them to mining and quarrying, aquaculture and fishing, industry, food processing, pharmaceuticals and petrochemicals, new and renewable energies, tourism services, and the knowledge economy and information and communication technologie. [2]

It is noteworthy that the legislator intended these sectors to be those that enjoy a privileged position with the state and on which the government focuses due to their economic, financial, and social importance, as they specifically aim to achieve sustainable development in the country

The legislator's designation of these sectors confirms that they align with the desired directions and objectives of the country's public policy. For example, the legislator included investment in renewable energy among the priority sectors, recognizing its potential to generate revenue for the state and achieve comprehensive and sustainable development. It is of paramount importance in preserving traditional natural resources, not to mention its role in supporting and strengthening energy security[3]. Priority sectors are those that contribute to economic balance and revitalize non-hydrocarbon exports[4].

1.2 Exemptions granted during the completion phase

Investments undertaken within the priority sectors system benefit, in addition to the tax incentives stipulated in the general rules, from exemptions guaranteed by the Investment Law during the implementation and operational phases. The benefits granted during the implementation phase include[5] :

- Exemption from customs duties on imported goods directly used in the investment.

- Exemption from property transfer fees and real estate registration fees.
- Company formation contracts are exempt from any associated registration fees.
- Built and unbuilt real estate intended for the investment is exempt from concessionary fees.
- Exemption from real estate tax on properties included in the investment for a period of 10 years from the date of acquisition.

It is noted that the benefits granted during the implementation phase within the sectoral system do not include new provisions compared to the benefits granted under Law 16-09, especially what was included in Article 12 of it, as we note that the legislator granted the same benefits but under the name of common benefits with only their rearrangement[6].

1.3 Exemptions granted during the exploitation phase

Investments completed within priority sectors, upon completion of the implementation phase, benefit from new exemptions tailored to the operational phase. These exemptions include[7] :

- Exemption from corporate income tax.
- Exemption from professional activity tax.

These exemptions, granted during the operational phase, are valid for a period ranging from three (3) to five (5) years, starting from the date of the beginning of operations.

The operational phase is defined as the point at which the investment begins producing goods and services intended for sale, as specified during the investment registration process with the National Investment Promotion Agency[8].

2.Exemptions granted for investments completed in areas to which the state attaches special importance

The second incentive system adopted by Investment Law relates to areas of special importance to the state, also known as the zones system. The areas covered by this incentive system were defined by Executive Decree 22-301[9], which includes a list of sites of special importance to the state in the field of investment. These relate in particular to certain sites located in the High Plateaus, as well as the southern and far southern regions, in addition to sites rich in valuable natural resources, and areas whose development requires support from the state[10].

The lists of designated areas may be updated as needed, based on proposals from the relevant ministers[11]. The privileges and incentives granted under this system vary according to the stage of investment, as follows :

1.2 Exemptions during the completion phase

The advantages that the investor obtains during the completion phase of the investment project in the areas that the state gives special importance to are the same as those included in the completion phase within the sector system, as confirmed by Article 29 of the Investment Law, which referred to Article 27 of the same law.

2.2 Exemptions during the exploitation phase

The legislator extended the period for benefiting from the advantages granted during the operational phase of completed investment projects within areas designated as special zones by the state, to a period ranging from five to ten years, starting from the date of the starting of operations[12]. This extension is while maintaining the existing regulations regarding exemptions, primarily those related to exemption from professional activity tax and corporate income tax.

3.Exemptions granted to investments within the framework of the structured investment system

Structured investments is a term unknown in previous investment laws. It was called investments of special importance to the national economy that benefit from exceptional advantages for that matter, within Law 16-09, which requires us to define the concept of structured investments according to the new investment law, then the exemptions stipulated for these investments.

3.1 The concept of structured investments

Structured investments have been defined by the text of Article 30 of the new Investment Law, along with Article 15 of Executive Decree 22-302[13].

These investments are defined as those with a high capacity for job creation and wealth generation, acting as a driving force for economic activity and enhancing the region's attractiveness to achieve sustainable development across various social, economic, and even regional sectors. They contribute significantly to export diversification, import reduction, technology acquisition, and integration into global and regional value chains.

Article 16 of the aforementioned decree has set criteria for qualifying investments within the structured investment system by emphasizing that the number of direct jobs must equal or exceed (500) jobs, and that the investment amount must be equal to or exceed (10) billion Algerian dinars[14].

3.2 Privileges granted during the completion and exploitation phase

Article 31 of the Investment Law again refers, with regard to the privileges and incentives granted during the implementation phase related to structured investments, to the text of Article 27 of the Investment Law, that is, they are the same incentives granted during the implementation phase related to the sectoral system.

As for the exemptions granted during the exploitation phase, they relate to exemption from the professional activity tax in addition to that from corporate profits tax, for a period ranging from five to ten years[15].

It should be noted that structured investments benefit, in addition to the previous advantages, from an important advantage that the investor can obtain through an application submitted by the investor to the National Investment Promotion Agency. These advantages relate to the state's support for these investments, and this support falls under the equipment expenses that the state undertakes by partially or fully undertaking the necessary development works and basic facilities for the realization of the investment project, such as opening roads to the perimeter of the project and connecting it to various networks[16].

Secondly: **Procedures for benefiting from the tax exemptions guaranteed by the Investment Law**

The procedures for benefiting from tax incentives constitute a fundamental step guaranteed by the Investment Law and its implementing regulations. However generous and diverse the tax advantages may be, their effectiveness remains contingent upon the investor's adherence to the procedures. Therefore, addressing the steps for benefiting from tax incentives is a practical necessity for understanding the extent to which legal texts align with the requirements of effectiveness, transparency, and administrative efficiency. Furthermore, the procedures for benefiting from tax exemptions vary depending on the stage of the investment in question, as will be explained below :

1. Investment Project Registration

Investment registration is a formal procedure required by law to obtain the privileges stipulated in the Investment Law[17]. Article 25 of the Investment Law emphasizes that the investment process must be registered before its completion. Executive Decree 22-299 details the registration process and the procedures for transferring ownership[18].

1.1 The authorities responsible for registration

Registering the investment project is an optional procedure, but it is considered a mandatory procedure if the investor expresses his desire to benefit

from the advantages approved by the legislator in the Investment Law, through the specialized single windows established at the National Agency for Promotion and Investment.

A- Registration via decentralized single windows

The Algerian legislator entrusted the National Investment Promotion Agency with the authority to register investments[19]. This is done through decentralized one-stop shops distributed across the provinces to facilitate procedures at the local level. It is worth noting that previous investment laws, particularly Law 01-03, relied on an investment declaration procedure, which differs from the registration procedure. The declaration procedure differs from the registration procedure in several ways. The declaration is linked to another procedure, namely, the application for benefits. It does not automatically entitle one to tax benefits, unlike the registration procedure, which, by law, automatically grants access to the aforementioned benefits during the implementation phase. This means that the declaration procedure is merely a notification of the establishment of a new project[20].

Thus, it can be said that only investors whose investments are registered have the right to benefit from the advantages specified in the Investment Law, and registration is done by resorting to the relevant authorities, which we will explain accordingly.

B- Registration through the single window for major projects and foreign investments

According to Article 4 of the Investment Law, major projects are defined as investments equal to or exceeding 2 billion Algerian dinars. Foreign investments are defined as those wholly or partially owned by foreign individuals or legal entities[21].

The central single window, which has national jurisdiction, is exclusively responsible for registering these investment projects. Other projects, those with an amount less than 2 billion Algerian dinars and those undertaken by Algerian investors, are registered at decentralized single windows.

C- Registration via the investor's digital platform

This platform is one of the innovations of Law 22-18, which, in Article 23, mandated the creation of a digital investor platform under the management and operation of the National Investment Promotion Agency. The platform was established to simplify and streamline procedures, particularly for foreign investors, by eliminating the physical nature of all procedures for accessing

incentives and implementing them more easily and quickly via the internet, where they are interconnected with the information systems of the agencies and departments responsible for the investment process[22].

1.2 Registration Certificate

The registration process culminates in the immediate issuance of a registration certificate, accompanied by a list of goods and services eligible for benefits. This certificate authorizes the investor to claim the associated benefits from the relevant authorities and departments. The certificate conforms to the format specified in Annex IV of Executive Decree 22-299. It may be amended upon the investor's request whenever changes occur to the investment. Benefits are not automatically granted upon registration; rather, they are contingent upon the investor completing the registration process in the Commercial Register and obtaining a tax identification number[23].

It should be noted that the single window specializing in investment can refuse registration, provided that such refusal is justified and explicit[24]. The investor concerned can appeal the refusal decision before the National High Commission for Investment Appeals, and can also appeal the decision to refuse registration and benefit from the advantages before the administrative courts. However, before doing so, they must submit a prior administrative grievance to the General Director of the Algerian Investment Promotion Agency[25].

2. Preparing the record of entry into exploitation

Unlike the registration process, which allows investors to benefit from incentive schemes during the project implementation phase, the situation differs during the operational phase[26]. The legislator mandates the issuance of a report of the starting of operations, prepared by the relevant professional bodies, which serves as official confirmation of the actual commencement of operations. Executive Decree 22-302 specifies the criteria for qualifying investments and how to benefit from operational advantages. This report serves as proof of the investor's fulfillment of their contractual obligations in exchange for these advantages, thus granting them the opportunity to register new investments to expand production capacity or rehabilitate existing investments that have previously benefited from these incentives[27].

The report concerning the beginning of operations is prepared within three months of the completion date and the expiry of any extensions. It should be noted that for investments related to regulated activities, the operational inspection report is only issued after approval by the relevant authorities[28].

The exploitation inspection report is prepared according to the model stipulated in Annex I of Executive Decree 22-302, as this report allows for the determination of the percentage of exemptions granted to the investor during the exploitation phase.

Third: Evaluating the legal system of exemptions and the conditions for benefiting from them

The tax exemption system represents one of the main axes in the policy of encouraging investment, as the state relies on it to attract capital. However, the effectiveness of this system is surrounded by a number of challenges that require evaluation and review.

1.The ambiguity of the criteria used for renewing priority sectors and the difficulties associated with industrial real estate

This highlights the need for an objective assessment of these issues to clarify their impact on investment attractiveness.

1.1 Ambiguity of the adopted criterion for determining primary sectors

The legislator, through Article 26, identified some economic activities that fall under priority sectors and benefit from the incentive system. It is noted that the legislator reduced the priority activities compared to the activities excluded from the incentive system, as defined by Article 3 of Executive Decree 22-300[29]. Referring to Appendix No. 2 of this decree, it can be said that the legislator expanded the excluded activities, as it concerns 13 activities related to the production of goods and services, and 6 activities related to goods. This raises the question of the adopted criterion for excluding these activities. This expansion of these exceptions may not be consistent with the state's strategy to support priority sectors, through which the state aims to revive the national economy outside the hydrocarbon sector[30].

1.2 Difficulties related to industrial real estate

Organizing economic real estate is among the priorities of measures that encourage and support investment. However, providing this type of real estate has become one of the most significant problems hindering investors, especially the incompatibility of the nature of the allocated land with the investment activity, in addition to the long response time of the bodies responsible for allocating industrial real estate, as the same files are submitted to the agency, the real estate allocation body, and the real estate managers, in addition to the legislative instability in industrial real estate[31].

Even if an investor obtains a real estate asset, he often faces poor preparation and a lack of infrastructure, which imposes additional financial burdens on the investor that may exceed the value of tax incentives. Therefore, industrial real estate is a major obstacle to attracting productive investment.

2.The digitalization gap and the multiplicity of institutional frameworks for granting incentives

Weak digitalization and the multiplicity of bodies involved in granting privileges are among the most prominent imbalances that hinder the effectiveness of tax privileges, which we will explain below.

2.1 The digitalization gap in practical application

There is no doubt that the legislator's move to establish a digital platform for investors is a commendable endeavor that will eliminate bureaucracy, ensure transparent management of investment files, and facilitate registration and file tracking. Registration on the digital platform has witnessed continuous growth; just one year after its launch, statistics show that the number of registered projects reached 4,651 in November 2023. Regarding foreign projects, 124 investment applications were submitted by large and even multinational corporations[32].

However, practical application reveals a gap in this area, which is mainly related to the lack and imbalance in the use of digitization and modern technologies within the system for processing investment files and monitoring privileges compared to what is required.

The investor's digital platform does not integrate with the tax information system, the customs information system, the commercial register, and state property, which may lead to duplication in the field of information and data flow, as there is no complete digital tracking of the privilege path and the continuity of traditional processing such as paper certificates and direct signatures, especially with the difference in digitization between states, which leads to inequality among investors according to the difference in regions.

2.2 The problem of the multiplicity of institutional frameworks for granting tax incentives

Practical experience reveals that investors can benefit from multiple incentives, particularly those related to priority sectors, offered by various entities. In addition to the incentives specified in the investment law, there are support systems overseen by the National Agency for Entrepreneurship Support and others managed by the National Agency for Microcredit Management, etc.

In fact, the multiplicity of entities providing incentives poses a real challenge, especially for foreign investors, and raises issues related to overlapping In fact, the multiplicity of entities providing incentives poses a real challenge, especially for foreign investors, and raises issues related to overlapping powers. [33]

The overlapping powers of these various bodies can confuse investors, leaving them unsure of where to begin and end, and can also lengthen administrative procedures. In fact, the multiplicity of entities providing incentives poses a real challenge, especially for foreign investors, and raises issues related to overlapping jurisdictions. The overlapping powers of these various bodies can confuse investors, leaving them unsure of where to begin and end, and can also lengthen administrative procedures. In fact, the multiplicity of entities providing incentives poses a real challenge, especially for foreign investors, and raises issues related to overlapping jurisdictions. The overlapping powers of these various bodies can confuse investors, leaving them unsure of where to begin and end, and can also lengthen administrative procedures.. The overlapping powers of these various bodies can confuse investors, leaving them unsure of where to begin and end, and can also lengthen administrative procedures. Therefore, the multiplicity of the institutional framework and the overlapping of powers are among the most significant reasons for the inability to benefit from tax incentives.

Conclusion

In conclusion, this study reveals that the tax system enshrined in the investment law represents a step towards attracting domestic and foreign investment. However, it requires further refinement and implementation to ensure that exemptions are not merely theoretical but become a tangible reality for economic development. The study concludes with a set of findings and recommendations, summarized below.

Results :

- The new investment law established a more organized and clear legal framework compared to previous laws, particularly through the inclusion of several implementing decrees that clarify its application.

- The investment law achieved a balance between stimulating investment and protecting state resources, especially by identifying priority sectors, structured projects, and areas of special importance to the state.

- The legislature provided significant facilitations for registering investment projects, particularly by promoting the use of the digital platform for investors.

Recommendations :

- Establishing clear criteria for identifying priority sectors.

- Linking tax incentives directly to project profitability to prevent exemptions from becoming a burden on the treasury without tangible economic impact.

- Enhancing digitalization not only through a digital platform but also by integrating information systems with various departments involved in granting and tracking incentives, and by improving internet bandwidth to enable investors to effectively utilize the platform's services.

- Creating coordination among the entities involved in granting incentives and establish a public oversight body to prevent overlapping jurisdictions.

Margins:

[1] Law No. 22-18 of July 24, 2022 relating to investment, Official Gazette of the People's Democratic Republic of Algeria, No. 50, published July 24, 2022

[2] See Article 26 of Law 22-18 relating to investment.

[3] Chakhab Hamza, Alwan Ramzi, Stimulating Investment in Renewable Energies from the Perspective of Law No. 22-18 Relating to Investment in Algeria, Journal of Development Studies and Entrepreneurship, Vol. 1, n° 02, 2023, p. 21.

[4] Bouchlif Noureddine, The incentive system as a mechanism to encourage investment in priority sectors : Limits of effectiveness, Journal of Legal and Political Research, Vol. 10, n°1, 2025, p. 396.

[5] See paragraph 1 of Article 27 of Law 22-18 relating to the promotion of investment.

[6] Fellah Kheira,The newly introduced incentive systems in Investment Law No. 22-18, Academic Journal of Legal and Political Research, Vol. 8, n° 1, 2024, p. 04.

[7]See paragraph 2 of Article 27 of Law 22-18 relating to investment promotion.

[8] See Article 4, Paragraph 2 of Executive Decree 22-302 dated September 8, 2022, which sets out the criteria for qualifying structured investments and the ways to benefit from the advantages of exploitation and evaluation networks, Official Journal n° 60 of September 15, 2022.

[9] Article 2 of Executive Decree 22-301 dated September 8, 2022, which defines the list of sites belonging to areas to which the State attaches special importance in the field of investment.

[10]Annex I, II and III of the aforementioned Executive Decree 22-301.

[11] Article 3 of the aforementioned Executive Decree 22-301.

[12]Article 29, paragraph 2 of Law 22-18 relating to investment promotion.

[13] Executive Decree 22-302 of September 8, 2022, sets out the criteria for qualifying structured investments and the ways to benefit from the advantages of exploitation and evaluation networks, Official Journaln° 60.
[14] See Article 16 of Executive Decree 22-302.
[15] See Article 31 of Law 22-18 relating to investment promotion.
[16] See Articles 18-19 of Executive Decree 22-302.
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[19] See Article 18 of Law 22-18 relating to the promotion of investment mentioned above.
[20]Oubaya Malika, Administrative Treatment of Investment in Financial Activities According to Algerian Law, Doctoral Thesis, Law Specialization, Mouloud Mammeri University, Tizi Ouzou, 2016, p. 291.
[21]See Article 4 of Executive Decree n° 22-299.
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[24]See Article 9 of Executive Decree 22-299.
[25]For more details on the dates and deadlines for submitting these appeals, see: Articles 2, 6, 7 of Executive Decree 22-296, and Article 11 of Law 22-18.
[26]Fellah Kheira, The newly introduced incentive systems in Investment Law No. 22-18, Op.cit., p.13
[27]See Article 4 and Article 14 of Executive Decree 22-302.
[28] See Articles 5 and 9 of Executive Decree 22-302.
[29] Executive Decree 22-300 of September 8, 2022, sets out the lists of activities, goods and services that are not eligible for benefits, as well as the minimum financing limits to benefit from the transfer guarantee, Official Journal, n° 6 of September 18, 2022.
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