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The tax system as a mechanism for establishing legal security: an analysis in light of Investment Law 22-18*

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Summary :

The tax regime is one of the fundamental pillars on which the Algerian legislature has relied under Investment Law No. 22-18 to strengthen legal certainty and enhance the attractiveness of the investment environment. By providing tax and customs incentives whose scope and duration are clearly specified in advance, the legislature has sought to establish a stable legal framework enabling investors—particularly foreign investors—to form legitimate expectations regarding costs, rights, and obligations. Such clarity provides crucial reassurance in an environment often characterized by shifts in economic and fiscal policies.

To this end, the law establishes an incentive framework differentiated by sector and geographical area, allowing incentives to be tailored to the nature of the activity and the location of the investment. Priority sectors, targeted geographical areas, and the stages of project implementation serve as reference points for allocating incentives in support of economic transformation. The tax regime thus performs a dual function: economically, it reduces investment costs; legally, it strengthens legal certainty through stable and transparent rules governing the relationship between the State and foreign investors.

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Key words: Tax system, legal security, legitimate expectations, foreign investors, the host country.

Le régime fiscal comme mécanisme de consolidation de la sécurité juridique : lecture à la lumière de la loi sur l'investissement 18-22

Résumé :

L'application du régime fiscal prévu par la loi n°22-18 en ce qui concerne l'investissement est un élément crucial pour consolider la sécurité juridique. C'est un fait établi par le législateur que la nature des exonérations fiscales et douanières a été précisée, ainsi que les modalités pour y participer, leur durée et les critères d'admissibilité.

En établissant une détermination préalable, l'investisseur peut avoir un haut niveau de prévisibilité et minimiser les risques liés aux changements de règles ou aux divergences d'interprétation administrative, de cette manière, on renforce le principe des attentes légitimes et on établit un environnement décisionnel stable.

Mots clés:

Régime fiscal, la sécurité juridique, les attentes légitimes 'investisseur étranger, l'état hôte.

النظام الجبائي كآلية لترسيخ الأمن القانوني: قراءة في ضوء قانون الاستثمار 18-22

الملخص:

يُعدّ النظام الجبائي أحد الركائز الأساسية التي اعتمد عليها المشرّع الجزائري في قانون الاستثمار 22-18 لترسيخ مبدأ الأمن القانوني وضمان جاذبية البيئة الاستثمارية. فبمنحه امتيازات ضريبية وجمركية محددة مسبقاً وواضحة في مضمونها ومدتها، سعى المشرّع إلى وضع إطار قانوني مستقر يسمح للمستثمر—وخاصة الأجنبي—بالتوقع المشروع بشأن التكاليف والحقوق والالتزامات. ويشكل هذا الوضوح عامل طمأنة حاسم في بيئة تتسم عادة بتقلب السياسات الاقتصادية والمالية.

ولتحقيق ذلك، اعتمد القانون نظاماً تحفيزياً يقوم على تقسيم قطاعي ومجالي، يضمن تكييف الامتيازات وفق طبيعة النشاط ومكان الاستثمار. فالقطاعات ذات الأولوية، والمناطق الجغرافية المستهدفة، وكذا مراحل إنجاز المشروع، كلها أطر اعتمدها المشرّع لتوجيه الامتيازات بما يخدم

أهداف التحوّل الاقتصادي. وبذلك، أصبح النظام الجبائي أداة مزدوجة الوظيفة: أداة اقتصادية لتخفيض كلفة الاستثمار، وأداة قانونية لترسيخ الأمن القانوني عبر قواعد ثابتة وشفافة تحكم العلاقة بين الدولة والمستثمر الأجنبي.

الكلمات المفتاحية: النظام الجبائي، الأمن القانوني، التوقع المشروع، المستثمر الأجنبي، الدولة المضيفة.

Introduction:

The legal framework for investment in Algeria underwent a profound reform with the enactment of Law 22-18, which adopted a new vision based on creating a more attractive environment for foreign investors, characterized by transparency, clarity, and predictability.

In this context, the tax system stands out as one of the most important practical mechanisms relied upon by legislators to make the Algerian business market more attractive to foreign investors, not only by predetermining the financial burdens they will bear, but also by ensuring that the rules are clear and stable over time. The tax system is no longer just a collection mechanism, but has become a central element in building trust between the state and foreign investors, making it a fundamental pillar in establishing legal certainty.

The legislator has enshrined this vision in Investment Law 22-18 by grouping tax privileges and customs privileges in a single chapter entitled “Incentive Schemes and Conditions for Eligibility for Benefits.” This chapter defines the various incentive schemes according to two basic criteria: the nature of the sector and the stage of project implementation. The law distinguishes between the privileges granted to each sector and differentiates between those applicable during the completion phase and those applicable during the exploitation phase. This division reflects the legislator's desire to control the scope of concessions through a clear classification that defines the general legal framework for each system, while leaving the technical and procedural aspects to regulatory texts that detail the conditions and methods of use.

We therefore pose the following question: to what extent do the incentive systems provided for in Law 22-18 contribute to attracting foreign investors and creating a secure legal environment for them?

To answer this question, we will highlight the incentive systems Investment Law 22-18, which established an incentive system for priority sectors (first axis), an incentive system for regions to which the state attaches particular importance (second axis), and an incentive system for structured sector (third axis).

Importance of the topic:

The importance of our study of the tax system applied to foreign investors in Algeria lies in the fact that this is one of the most important issues that raises practical problems on the ground, especially when it comes to disputes relating to foreign investment in Algeria. On the one hand, this is a negative factor that hinders the state's efforts to attract foreign investment under previous economic systems.

Research question: structured sectors

In order to determine the effectiveness of the tax system applicable to foreign investment under Investment Law 22-18, we pose the following question:

Does the tax system provided for in Investment Law 22-18 actually encourage foreign investment in Algeria?

Research methodology:

To answer the above question, we have adopted a methodological approach based on analysis, in order to analyze the legal texts relevant to the study, and a descriptive approach to define the important terms used in this article.

Study divisions:

To answer the question posed above, we used the following methodological division:

First axis: Tax privileges granted to foreign investors in priority sectors.

Second axis: Tax privileges granted to foreign investors in the “regional system.”

Third axis: Tax privileges granted to foreign investors in the “structured sectors system.”

First axis: The incentive system in priority sectors.

Referring to Article 24 of Law 22-18 on investment, we find that the Algerian legislator has adopted for the first time a sectoral division of incentive concessions, starting with priority sectors given their strategic nature and role in achieving the desired economic transformation. Understanding this legislative

approach requires knowing what is meant by priority sectors (first), highlighting the areas that fall within them (second), and clarifying their specific tax incentives (third).

First: Definition of priority sectors

Priority sectors are defined as:

1. "Those sectors that are of major importance to the state, which are given priority in directing investment, over other areas, due to the specific nature and sensitivity of these sectors in directing the overall national economy."[1]
2. Or "those strategic economic sectors on which the state relies to achieve comprehensive economic development."

Second: Areas covered by priority sectors

Priority sectors include the following areas:

1- Agriculture, aquaculture, and fishing: The Algerian government's recent economic shift toward opening up foreign investment in agriculture, aquaculture, and fishing following considerable study, given Algeria's abundant natural resources in this sector in this sector, which makes it a future leader in this economic field.

2- Tourism services: Opening up foreign investment in the tourism sector is one of the country's economic priorities, as tourism is one of the most important sectors that can have an economic impact on a country. The main objective of opening up this sector to foreign investment is to benefit from foreign expertise in managing this field on the one hand, and to market Algerian tourism abroad on the other.

3- Mines and quarries: Opening the national market to foreign investment in the mining and quarrying sector is one of the positive steps taken by the Algerian state in the latest investment law, as this sector is of great importance to the national economy. With the state's recent focus on this area, it was necessary to open this domain to foreign investors. This is in order to benefit from foreign expertise in this sector on the one hand, and to diversify the national and international market in this sector on the other. Foreign investors also contribute directly to the development of this sector, which benefits the national economy.

4- The industrial sector: The economic diversification that Algeria is seeking to achieve aims to break away from oil dependency by diversifying the national economy outside the hydrocarbon sector. Despite the negative results achieved

by this sector in recent periods,[2] Algerian lawmakers have attempted to attract foreign investment to these sectors (food industry, pharmaceuticals, and petrochemicals) through Investment Law 22-18, which provides facilities for foreign investors.

5- New and renewable energies: The renewable and alternative energy sector is one of the most important sectors to which the Algerian state attaches great importance in order to drive economic development and break away from traditional economic dependence. Among the areas in which foreign investors can invest in Algeria are solar, hydro, wind, and thermal energy. [3]

6- Knowledge economy and information and communication technology: Information and communication technology is now the main driver of economic growth and job creation in many fields.[4] For this reason, the Algerian government has given it special attention in the latest investment law by opening this sector to foreign investment in order to develop it, as it is considered the cornerstone of opening the national market to the global market.

Third: Tax incentives for priority sectors

Foreign investors in Algeria can benefit from tax and customs privileges issued by Algerian law in the Investment Law 22-18,[5] after registering with the single window authorized in Article 18 of the aforementioned Investment Law.[6]

These privileges vary according to the stage of investment, with some privileges applicable during the completion phase and others during the exploitation phase.

1- Tax privileges during the completion phase:

♣ **Exemption from customs duties on imported goods directly used in the completion of the investment:**[7] This tax exemption for foreign investors encourages them to acquire the best mechanisms to ensure the success of their investment, which improves the quality of the investment on the one hand and benefits the national economy on the other, while maintaining the reputation of foreign investors.

♣ **Exemption from value added tax on imported or locally purchased goods and services directly involved in the completion of the investment:** Since value added tax is a tax calculated on the turnover of foreign investment when it comes to services, supplies, and VAT applies to turnover generated by foreign investment activities, encompassing services, supplies, and cross-border

commercial transactions ...[8] All of this is within the framework of foreign investment in Algeria. The Algerian legislator has exempted investors from this tax in order to assist foreign investors in enabling sectoral investment projects.

♣ **Exemption from the payment of transfer fees and real estate registration fees** for all real estate acquisitions made within the framework of the investment in question.

♣ **Exemption from registration fees and real estate registration fees and national property fees**, including concession fees on built and unbuilt real estate intended for investment projects.

♣ **Exemption from real estate fees on real estate properties** that fall within the scope of the investment for a period of 10 years, starting from the date of acquisition.[9]

This analysis reveals the privileges granted by the Algerian legislator to foreign investors during the investment project implementation phase are unprecedented in procedural terms, as they aim to attract foreign investment and reinforce investor confidence .

2- Tax privileges during the exploitation phase:

♣ **Exemption from corporate income tax:** Corporate income tax is a tax levied on legal entities subject to the real tax assessment regime, and is calculated on the profit earned by the company during the fiscal year.[10] The legislator has exempted foreign investors from this type of tax for two reasons:

- To help foreign investors continue and develop their investments.
- To attract foreign investment in this domain.

♣ **Exemption from professional activity tax:**[11] The professional activity tax is levied on the turnover achieved during the year. The revenue generated from this tax is allocated to local administrations for the financing of public services. The Algerian legislator has exempted foreign investments from this tax as an incentive measure aimed at encouraging foreign investment in the sector.

Second Axis: the incentive system for areas of special importance to the state “The regional system”.

Under Investment Law 22-18, the Algerian legislature adopted a system based on geographical division that grants special privileges to projects carried out in certain areas in view of their economic and social specificity. These regions are those located in the high plateaus, the south, the far south, and areas

whose development requires special support from the state, as well as areas with vast natural resources.[12]

The Algerian legislator has therefore adopted this classification to attract foreign investors, with the aim of achieving balanced development (one of the objectives of Investment Law 22-18, as set out in Article 2, is to achieve sustainable regional development), with foreign investors benefiting from the following privileges:

1- During the completion phase: Foreign investors benefit from the tax privileges stipulated in Article 27 of the Investment Law, mentioned above.

2- During the exploitation phase:

Foreign investors may benefit from the tax privileges stipulated in Article 29 of Law 22-18 on investment when they make an investment under the regional system during the exploitation phase. These tax privileges are as follows:

A. Exemption from corporate income tax.

B. Exemption from professional activity tax. [13]

This benefit is valid for a period ranging from 5 to 10 years and is not renewable. This poses a problem when foreign investors wish to extend the duration of their investment in these zones.

Third: Tax privileges granted to foreign investors under the "Structured Sectors System."

Structured Sectors are those characterized by a high capacity for wealth creation and employment generation with a high capacity to create wealth and generate jobs, which raise the economic value of the region and are an important economic driver, structured sectors as these structured sectors increase the value of exports and imports in the national economy.[14]

Foreign investors benefit from very important tax privileges in this structured sector, as stipulated in Investment Law 22-18, which are as follows:

1- During the completion phase: Foreign investors benefit from the privileges stipulated in Article 27 of Investment Law 22-18, provided that these privileges extend to all parties involved in the investment in cases involving multiple parties participating in the investment project.[15]

The main objective of extending tax benefits to all parties in the case of multiple foreign investment parties is to ensure the success of the investment in

terms of its economic benefits and to encourage foreign investors to continue their initiatives.

2- During the exploitation phase: Foreign investors can benefit from:

- Corporate income tax.
- Exemption from professional activity tax

All of this is during the exploitation phase of the investment activity, for a period ranging from 5 to 10 years only, which cannot be extended.

Foreign investors can also benefit from state support in developing the infrastructure and facilities necessary to implement the investment, through an agreement between the investor and the National Investment Agency.[16]

Conclusion:

The foregoing analysis establishes that the legislator relies on a clear system of tax incentives in Investment Law 22-18. represents a practical step towards establishing legal certainty in the field of investment and encouraging investors, especially foreign ones. Tax and customs privileges are not merely a mechanism for reducing the cost of investment, but rather represent a legal framework that allows investors to make legitimate predictions about the cost and profitability of their projects.

This study demonstrates that, through these provisions, the Algerian legislator has strengthened investors' legitimate expectations by clearly defining in advance the investment privileges, such as customs and tax exemptions and real estate and financial fees.

However, the tax strategy adopted in Investment Law 22-18 as a mechanism to support and attract foreign investment in Algeria remains limited, especially in light of the approved classification of the nature of investments. The nature and tax incentives applied in Investment Law 22-18 have been adopted in almost the same form and with the same privileges applied to most investments. This will constitute a major obstacle for the state in attracting foreign investment, as it is not appropriate for the same tax privileges to be applied to all investment sectors. If this is the case, what is the point of the approved sectoral and geographical classification?

Results:

- The tax system applied in priority sectors is a strategic tax system that can attract foreign investment to Algeria, especially in light of the opening up of investment in many diverse sectors, which are investment priorities in the current market.
- The tax privileges granted to foreign investors in the investment zones system are very relative, especially when the duration of the tax privilege is set at 5 to 10 years, without the right to benefit from this privilege if the foreign investor wishes to extend the investment.
- The tax system applied to foreign investors in structured sectors is one of the positive aspects of the Investment Law, especially when the state has granted privileges to accompany this type of investment.

Proposals:

In order to activate the tax privileges stipulated in Investment Law 22-18, with the aim of attracting foreign investment to Algeria:

- The regulatory framework complementing the Investment Law should be amended expeditiously, so that foreign investors have a clear picture of the legal system governing the nature of investment.
- The nature of the tax incentives applicable under Investment Law 22-18 to certain investments should be reviewed, particularly with regard to investment in the regional system.
- Continuously strive to make the tax system governing foreign investment in Algeria clearer and more stable, as clarity and stability serve to enhance legal certainty in the field of investment.

Footnotes:

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[3] For further details on renewable energy, see: Makhlfi, Amina, Oil, Renewable and Non-Renewable Alternative Energies, Al-Bahith Magazine, Issue 9, 2019, pp. 221-234.

[4] For additional details on this topic, see: Sana Bouchouk, "The Role of Information and Communication Technology in the Transition to a Knowledge Economy," Journal of Studies in Economics, Trade, and Finance, Traditional Industries Laboratory, University of Algiers 3, Vol. 09, Issue 01, 2020, p. 793.

[5] Article 24 of Law 22-18 on investment, mentioned above, p. 08.

[6] Article 18 of Law 22-18 on investment mentioned above. p. 07.

[7] Article 27 of Law 22-18, p.09.

[8] Article 02 of the Law of Fees on Business Law, amended and supplemented by Article 19 of the Finance Law of 2023.

[9] Article 27 of the aforementioned Law 22-18 on Investment.

[10] See the website of the General Directorate of Taxes. Date of access: 08/03/2024, time: 15:13.

[11] See the last paragraph in Article 27 of Law 22-18 regarding Investment mentioned above.

[12] Boufateh Mohamed Belkacem: New Investment Mechanisms under Law No. 22/18, Journal of Legal and Social Sciences, Faculty of Law, University of Djelfa, Algeria, Volume 08, Issue 1, March 2023, p. 295.

[13] See Article 29 of Law 22-18, regarding investment, Ibid.

[14] Sarah Ben Saleh, Analytical Reading of the Updates to Law 22-18 on Investment, African Journal of Legal and Political Studies, Ahmed Draia University, Adrar – Algeria, Volume 07, Issue 01, June 2023, p. 200.

[15] See Article 31 of Law 22-18 of Investment, Ibid.

[16] See Article 30 above, last paragraph of Law 22-18.