The Role of Incentives and Advantages in Attracting Investment: A Study Based on Investment Promotion Law 16-09

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Abstract:

Countries compete to bring in foreign direct investment, removing domestic obstacles that challenge investment. They provide various incentives, highlighting the spatial advantages that they enjoy. That is, giving legal guarantees alone is not sufficient to attract foreign investors to invest in the country concerned. This is because the investor is also concerned with the size of the burdens which enjoy the aid and exemptions that he will receive from the host country, including the ease of procedures. Consequently, the host country often resort to granting extra encouragements that are not less important than the guarantees but complement them. Such encouragements are represented in various tax and financing incentives, in addition to administrative incentives. This is what the Algerian project worked on, either in the framework of the investment law and its complementary laws, or in the framework of international agreements in this field.

Key words*: investment, benefits, promotion, financial incentives.*

Introduction :

Investment is the essence of economic development. Paying attention to the great role it has played in mobilizing financial resources, most countries adopt it as a tool for developing their national economy, as it is one of the main components for providing jobs and producing goods and services that society needs for consumption or for export. It also has various effects on the national economy. Therefore, it was necessary for countries to develop a rational investment policy to manage investment activity, provide appropriate conditions for it, and remove obstacles. Countries seek to achieve economic stability by stimulating investment and motivating investors to increase their investments. However, the sources of investment are many and varied and require financing. This prompts countries to search for sources abroad to finance their investment programmes. Therefore, we find that the Algerian legislator, through the various legal texts that it enacted within the framework of regulating investment in Algeria, embodies the strong political will to promote and rehabilitate the investment climate within the framework of attracting national and foreign private investment, relying on the natural resources that Algeria enjoys, especially regarding the important geographical location, natural resources, and the expansion of the market size. Therefore, the investment laws in Algeria, for the most part, include many advantages and incentives in addition to the guarantees granted to investments, especially foreign ones, to attract capital and free investment activities from various obstacles and restrictions.

Since the issuance of Legislative Decree No. 93-12 of 1993, related to the promotion of investment, the Algerian project has been trying to encourage foreign investments and openness to them by emphasizing a set of privileges and legal guarantees that encourage foreign investors to invest in Algeria. This policy was further enshrined in the issuance of Ordinance No. 01-03 related to the development of investment. It expanded the legal guarantees and tax and customs benefits, which were further strengthened by the issuance of Ordinance No. 06-08 amending and supplementing the above order, and the issuance of Law No. 16-09 relating to the promotion of investment. Many international agreements, both bilateral and collective, have been concluded in the field of protection and encouragement of investment and avoidance of double taxation. Therefore, we pose the following problem: Did all the incentives and financial advantages granted by the legislator lead to the establishment of investment rules? From this we will divide in this study as follows:

First Topic: Tax and Customs Incentives:

The Algerian legislator made several incentives represented in aid and exemptions from the Algerian state to investors, in an effort to stimulate investors and attract foreign capital. A set of privileges of a tax and customs nature has been placed within the Investment Law (16-09) pending the completion of the regulatory texts and through the international agreements signed by Algeria in the field of investment to avoid double taxation, which was an obstacle to foreign investment.

Incentives can be defined as a set of procedures and arrangements with evaluable economic value granted by the government to investors, whether national or foreign, to achieve specific goals, such as enticing individuals or companies to undertake the investment process, or directing investment towards uninvested sectors, or achieving regional balance for investment through granting investment incentives towards undesirable areas. The types of incentives can be divided into two main categories according to their source:

- Incentives stipulated in the Investment Law and its complementary laws (internal tax incentives).
- Incentives stipulated in international agreements (international tax incentives).

First: Internal tax incentives:

It means the systems in place for granting investment benefits in accordance with the new amendment to the law. Algeria, like the rest of the world, is working hard to encourage investment in Algeria, offering many incentives and privileges and improving its economic, political and social conditions that would attract a sufficient amount of projects and resettle them through economic recovery programs and support growth.[1] Therefore, it is noticeable that all countries of the world, whether developed or developing, are competing in order to provide an attractive investment climate for investors, especially foreigners, and it has become possible to say that there is an international consensus on the positive effects of investment, especially foreign, on the economies of the host countries.[2]

From this point, the Algerian legislator did not deviate from this rule as it considered investment as one of the most important supporting and institutional activities for a diversified real economy, especially as Algeria is going through a crisis at the economic level, and this really requires the establishment of real economic rules based on development strategies that are in line with local requirements and contribute to the diversification of the national economy. Hence, the mission was to lay the foundations for strengthening the Algerian economic activity, and perhaps one of the most important of these activities is the investment sector because of the positive results it achieves on economic development and diversification in the national economy, considering that investment is the actual and real tool in the hands of each country to achieve its goals. However, all of this does not come out of a vacuum, but rather a set of rules and studies must be developed to ensure that the investor is invited to invest in Algeria. [3]The most important of these foundations and rules is the development of a set of incentives and advantages, which is considered an economic advantage that can be estimated with a monetary value provided by the government for all or some of the investments and is determined according to an objective or geographical criterion. Referring to the provisions of Law 16-09 related to the promotion of investment, we find that the Algerian legislator established a set of financial incentives and advantages and amended the systems for granting them compared to Law 01-03, as the systems for granting these advantages have become based on several criteria and technical foundations, most of which are governed by the (temporal and spatial) nature.

Most of the advantages and incentives are considered tax, semi-tax or customs reductions and exemptions, because the fiscal incentives aim to reduce the total cost resulting from the expenses that contribute to the realization and start of the project, as these incentives contribute to reducing the costs of establishing projects indirectly. Thus, the possibility of achieving a high rate of return. The Algerian legislator, before defining the systems for benefiting from the incentives and advantages individually, made general provisions for the incentives and considered them as facilities, which have a temporary nature and subject to objective evaluation. Among these facilities, the investor can:

Exempting the investor when entering foreign goods and merchandise from all international trade procedures, especially in terms of customs and trading, and it is considered as normal trade.

- Exempting the investor from conducting bank domiciliation, and facilitating documentary credit in the process of financing foreign trade within the relevant investment[4].

Granting a license to the investor, especially the foreign investor, to bring in "used and old" goods, tools and equipment.[5]

This is conditioned by that it is proven that it is directly at the heart of the investment and there is no alternative to it, and that it is in a good condition to serve its purpose. These procedures are at the heart of the facilities that every investor needs in order to carry out investment work in Algeria with ease. The Algerian legislator has put in place practical systems in order to implement the incentives and benefits system in accordance with well-studied technical objective criteria. To obtain it, the investor begins with the registration procedure, which is carried out in the competent authorities, which immediately grants a certificate to the investor, enabling him to obtain the benefits that he is entitled to with all the concerned departments and authorities. In this context, Article 09 of Law 16-09 states: “The actual consumption of the benefits of achievement related to the registered investment is subject to the following: - Registration in the Commercial Register, - Possession of a tax identification number, - Subjection to the real tax system.” The regulations of advantages are as follows:

The system of common advantages for all investments that can be benefited:

This type of incentives and advantages is a comprehensive system directed to all investments in their different sectors, and for the actual and practical implementation of this system, the Algerian legislator identified the ways to implement it on the ground in three main forms:

1. Ordinary investments: This type of investment is ordinary, that is, it is not governed by any exceptions or restrictions and specific conditions exclusively. Rather, it is sufficient for the investor to benefit from the common benefits system according to this form that his investment is registered and meets all legal conditions and, in any sector, (except for activities of special importance to the national economy), and the advantages granted to this type are in two phases.

a. Completion stage: Article 12 F02 of Law 16-09 defines the advantages of this stage by saying: “...of the following advantages: - Exemption from customs rights with regard to imported goods that directly enter into the realization of the investment, - Exemption from value-added fees in respect of imported or locally acquired goods and services that directly enter into the realization of the investment, - Exemption from paying the right to transfer ownership in return and the fees on real estate advertising for all real estate holdings made within the framework of the investment in question - Exemption from registration rights and fees on real estate advertising and the amounts of national properties that include the lien on built and unbuilt real estate destined for the completion of investment projects and these advantages apply for the minimum period of the granted concession, - 90% reduction of the amount of the annual rental royalty set by the state property interests during the investment completion period, - Exemption from registration rights in respect of companies’ memorandum contracts and capital increases."

b. Investment stage: The advantages of this stage are also defined in accordance with Article 03 of Article 12: “After inspecting the project in the investment stage at the request of the investor for a period of 03 years, the following advantages are provided: - Exemption from the strike on corporate profits, - Exemption from fees on professional activity, - A 50% reduction in the amount of the annual rental royalty determined by the state property authorities.

2. Investments linked to specific places: This type of investment is normal in nature, except that it was established in the areas to be promoted with a special contribution by the government, located in the south, the high plateaus, or any other area specified by regulation. And since the investor chose these areas to complete his investment, the advantages are as specified under Article 13, and this type of investment is divided into the completion stage and the investment stage.

a. Completion stage: In accordance with Article 13 F02, the advantages of this stage are defined as follows: “In addition to the advantages mentioned in the first paragraph, clauses a. b. c. d. w. z. of Article 12 above, the following points are highlighted: - The government shall fully or partially undertake the expenses of works related to the basic facilities necessary for the realization of the investment, after being evaluated by the agency, - Reducing the amount of the annual rental royalty set by the state property interests under the title of granting land by way of concession for the implementation of investment projects..."

b. Investment stage: From the advantages stipulated in Paragraph 02, items “A” and “B” of Article 12 above benefit for a period of 10 years, starting from the date of initiating the investment stage, which is specified in the inspection report prepared by the tax authorities upon the investor’s request. [6]

3. Investments linked to large sums of money: The granting of benefits is subject to the benefit of investments whose amount equals or exceeds five billion dinars (5,000,000,000,000 JOD), by regulation and by the National Investment Council and not by the agency, because of the importance and cost of this investment.

- The system of additional benefits for privileged and/or job-creating activities: The state, in its desire to bring in the largest number of investments as well as to achieve various development programs, the Algerian legislator created a system of privileges for each foreign or local investment activity that creates employment positions and is defined by Article 15 of Law 16-09 by saying: “The period of investment advantages granted for the benefit of investments made outside the areas mentioned in Article 13 above shall be increased from three 03 years to five 05 years when more than one hundred 100 permanent jobs are created during the period from the date of investment registration until the end of the first year of the exploitation phase at most".

This type of advantage is linked to a statistical issue, which is the extent to which the project is able to employ the workforce according to a number of conditions:

- That this project be implemented outside the areas to be upgraded, with a special contribution from the government.
- That this project should occupy more than 100 permanent jobs.
- That these positions be directed to the national workforce.
- That the operation be within a period starting from the date of registration of the investment until the end of the first year of the investment stage.

Exceptional benefits system for investments of special importance to the national economy

This type of benefits is of a special nature as it is linked to activities and sectors of particular importance to the national economy. The government determines a list of these activities and sectors through the organization and according to its strategic and development plans, as it is the one that is aware of everything that contributes to advancing the development and its general needs. This type of investment is accomplished, and benefits are granted to it after signing an agreement between the investor and the National Investment Development Agency after the approval of the National Investment Council. Moreover, the methods of granting this type of benefits are specified in Article 18 of Law 16-09.

Second: International Tax Incentives: The Algerian legislator focused his efforts on the issue of international tax incentives to encourage and attract foreign capital. Moreover, the Jordanian legislator was not satisfied with the set of tax advantages stipulated in the Investment Law and its complementary laws, but as a complement to that, it resorted to granting tax incentives of an international format through international agreements in the tax field with the aim of encouraging mutual international investment. Special emphasis was placed on the need to combat the most important tax problem that stands in the way of this encouragement, which is the issue of international double taxation.

To achieve this goal, Algeria has signed many bilateral or multiple international agreements that aim to avoid this problem.

So, what is meant by double taxation, and what are the most important agreements signed by Algeria in this field with the aim of encouraging foreign investment?

The concept of double taxation: International double taxation happens when taxes of the same type are imposed by two or more countries on the same taxpayer and the same money, and in the same period. This means that the person bears two tax burdens as a result of the different bases on which each country depends in determining its tax system, knowing that the person here has no right to refuse to pay the tax as long as its imposition is a right related to the sovereignty that each country enjoys over its territory in the face of its citizens and foreigners who reside and carry out their activities within it. This represents a major obstacle to the flow of foreign capital. Therefore, avoiding it has become the focus of international conventions, as well as the interest of the national legislator, whether in the capital-issuing or attracting country[7]

Furthermore, international double taxation happens in the field of investment when the country exporting foreign capital imposes the tax again on investment returns, even though it was previously imposed by the host country. This constitutes an obstacle to attracting foreign capital to the host countries, because the investor's subjection to the same taxes on the same income in his country of residence, as well as the country in which he practices his investment activity, will inevitably lead to the transfer of the tax burden that he bears, which is reflected in the volume of profits that he expected to obtain. This leads to his reluctance to invest. In fact, the effects of international double taxation can be avoided if the state includes in its legislation a text that stipulates that the tax should not be imposed on the same investment on which the same tax was previously imposed by another state. However, the most effective and important way for the polarized countries to attract foreign investors is to conclude international agreements with their countries, and this is what Algeria has done.

- The most important international agreements to avoid double taxation ratified by Algeria: To avoid international double taxation and remove the fears of the foreign investor and encourage him to invest in Algeria, many agreements have been signed in this field, some of which are:

1. Regarding collective agreements: The most important international agreements in this regard are the agreement concluded between the countries of the Arab Maghreb Union, signed in Algeria on July 23, 1990, to avoid double taxation and to establish the rules of mutual cooperation in the field of income taxation between the countries of the union.[8] The agreement was based on the decision of the rest of the international agreements to avoid double taxation by defining the categories of persons concerned with it, namely: those residing in one or all of the Maghreb countries. As for the measures to avoid duplication, Chapter 23 of the agreement[1] stipulates it, which means that the income of any investor from the countries of the Union that has been refused tax in one of these countries can not, in any case, be taxed again. Rather, the related tax amount that has already been paid is deducted, and this stimulates the transfer of capital and encourages foreign investment between these countries.

2. Bilateral Agreement:

a. The agreement concluded between Algeria and France for the purpose of avoiding double taxation, tax evasion and fraud, and setting rules for mutual assistance in the field of tax on income, wealth and companies signed in Algeria on October 17, 1999[9]This agreement, like other agreements, has identified the concerned persons and taxes. The most important provisions of this agreement are those stipulated in Article 24 under the title “Avoidance of Double Taxation,” which states: With regard to Algeria, double taxation is avoided in the following way: When a resident of Algeria obtains income or owns wealth that is taxable in France, in accordance with the provisions of the Agreement, Algeria deducts from the tax collected from the wealth of this resident an amount equal to the tax on wealth paid in France...". These agreements were also distinguished by their reference to the avoidance of double taxation on companies

b. The agreement between the Republic of Algeria and the United Arab Emirates regarding the avoidance of double taxation on income and capital and the prevention of tax evasion, signed in Algeria on April 24, 2003[10]Article 25, paragraph 1, of this agreement[2] stipulates that: “Double taxation shall be avoided” in the following manner: When a resident of a State obtains income in accordance with the provisions of this Agreement that is taxed in the other State, the first State shall grant the taxes collected from the resident's income a deduction equal to the amount of tax paid by the other State...”.

Among the clauses mentioned in the text of Article 07[11] “The profits of an enterprise of a Contracting State are taxable only in that State unless the Corporation conducts an activity in the other Contracting State through a floating establishment therein. But only to the extent that it is attributable to that permanent establishment....” Article 10, on the other hand, refers to dividends. In general, all of these articles are the essence of avoiding the imposition of tax on parts of the money that have been taxed by another country, and thus giving the foreign investor the opportunity to invest his money outside his country without incurring additional burdens.

Finally, about tax incentives, it can be said, in general, that these incentives have an effective role in directing foreign investments, because the foreign investor, before

[1]- The text of Chapter 23 of the Convention, ibid.

[2]Article 25 of Decree No. 16-09.

he invests in a particular country, balances the potential returns and the risks and burdens that he may bear. Hence, it encourages him to invest, but the state should strive as much as possible to achieve the objectives expected of the investor, without making sacrifices on its part that are not commensurate with the expected return on investment and its role in achieving economic development. This requires that he grant tax benefits on the basis of the study The reality of the relationship between the cost and benefit of tax incentives on the one hand, and the stages of economic development and its requirements on the other hand in addition to other complementary factors that make the investor accept to invest in Algeria without hesitation and contribute to economic projects. And these incentives must be stable to work with. Therefore, we find that most countries, such as Algeria, have worked to remove the fears of the foreign investor by including in their internal law governing investment the principle of "the stability of the applicable law", which we find plays an important role in attracting investors and encouraging them to embody their investment projects in the host country, and this is considered one of the most important investment-attracting guarantees, especially in countries that need investment.

Topic Two: Financing incentives for local and foreign investment:

By financial incentives, in this context, we mean the various means and financial aid that are granted to the foreign investor to support the achievement and realization of his investment, especially the expenses of the disqualification structure necessary for the completion of the investment. This includes real estate and land needed to complete projects. Despite the weakness of the financing aspect in the Algerian law and the failure to give it great importance in attracting foreign investors, we will address the most important incentives of a financing nature encouraging investment in Algeria, whether those provided by the Algerian investment law and its complementary laws or what has been agreed upon with other countries Any external funding provided by international institutions and bodies.

First: Internal financial incentives: As a first observation, it can be concluded that the issue of financing incentives in the field of investment was not given much importance by the Algerian legislator compared to fiscal incentives. Referring to the text of Law 16-09 related to investment promotion, we find that the legislator did not address this type of incentives except in the context of what was stipulated in the text of Article 13/1, which relates to the exceptional advantages of investments made in areas whose development requires a special contribution from the state, including those belonging to the south and the high plateaus. And this article stipulates: “The state shall fully or partially undertake the expenses of works related to the basic facilities for the establishment of the investment.”

And the Algerian legislator has set a condition to take advantage of this incentive regarding the necessity of evaluating these expenses by the agency first, or that the modalities of applying these provisions should be determined through regulation. We note that the text of Article 13/1 relates to reducing the amount of the annual rental royalty set by the state property interests for the investor who benefits from a concession on a plot of land belonging to the state for the purpose of completing an investment project. This period is set at 10 years for the resistance investment projects in the areas belonging to the high plateaus, and a period of 15 years for the resistance areas in the greater south[12].

With reference to the provisions of Ordinance 06-08, which defines the conditions and modalities for preventing concessions on lands belonging to the state’s private properties directed to the implementation of investment projects, we find that a foreign investor can benefit from a concession on a plot of state land for a period of up to 99 years, in accordance with the conditions specified in the text of Executive Decree No. 09-152 of May 02, 2009. This grants the concession in the context of a public auction or by mutual consent in return for the payment of an annual rental royalty. These facilities are included within the framework of seeking to solve the real estate problem allocated to the completion of investment projects, that is, which remained a major barrier to investors in Algeria. According to Articles 18 and 19 of Executive Decree No. 09-152 mentioned above, upon completion of the buildings prescribed in the investment project, their ownership is obligatory by the investor granted the concession on his own initiative with a notarized contract. It is also possible to waive the ownership of these buildings or the real estate right resulting from the concession for the remaining period, and this constitutes a motivating factor for the foreign investor who is now able to own the real estate on which his projects have been established.

The investment support fund, which was established in accordance with Article 28 of Law No. 16-09 to finance the guarantee of the state's contribution to the cost of the benefits granted to investments, is responsible for this contribution. As for the areas that benefit from this contribution, they are determined by the National Investment Council.[13] We also note that the Algerian legislator did not explicitly provide for the grant, similar to the neighboring countries that granted direct government support in the form of a percentage of the project's expenditures or the so-called "investment grant".[14] In Tunisia, for example, the government provides an investment grant and benefits from the investments made by companies in the areas of regional development, agriculture and environmental protection, according to the percentages set by Chapter 24 of Tunisian Law 120-93 (Investment Code)[15].

Second: International financing incentives: In addition to the internal financing incentives, which we have previously seen as weak and did not meet the required level that the foreign investor aspires to, there are also financing incentives of an international formula that would contribute to the development of foreign investment, whether those established under international agreements between Algeria and other countries, or those carried out by international institutions whose mission is to finance investment, we mention among them:

1. Agreement for the establishment of the Maghreb Bank for Investment and Foreign Trade between the countries of the Arab Maghreb Union:[16] It was signed in the Socialist People's Libyan Arab Jamahiriya in Ras La Nouf on March 09 and 10, 1991. It is an agreement regulating the work of the Maghreb Bank specialized in encouraging mutual foreign investments between the countries of the Arab Maghreb by financing projects of paramount importance to obtain joint development in these countries. The establishment of this bank is a qualitative step by the countries of the Arab Maghreb Union, as it is a specialized bank created specifically for international investment and foreign trade between member states. The main objective of its establishment is to encourage mutual foreign investment between the countries of the Union by contributing to the financing of projects of vital importance. To achieve these purposes, Article 04 of the agreement sets out how the bank can contribute to financing investments. The bank also enjoys a set of guarantees mentioned in Article 15 of the agreement. Whatever is sufficient, such a bank must be established to contribute to encouraging investments.

2. Financing foreign investment within the framework of the Euro-Mediterranean Partnership Agreement: It was established under the Rome Agreement in 1958 and is the financial body of the European Union and works to finance projects that came within the framework of the partnership with the Mediterranean countries (the Euro-Mediterranean Company). Including the agreement that concluded a partnership agreement with the Euro-Mediterranean group in 2002, and thus became among the countries that receive the attention of the European Investment Bank, which is a major player in economic development in the Mediterranean region.

Within the framework of the objectives of economic and financial cooperation stipulated in the partnership agreement with Algeria, the Bank works to support investment by submitting proposals for large capital investment projects that serve the interests of the European Union inside and outside Europe. Although it also lends to the public sector, it mostly tends to provide direct financing to private sector companies, especially those that are headquartered, for the benefit of investment projects.

Finally, it can be said that the European Investment Bank is one of the largest financing agencies for private investment in the Mediterranean countries. The Union has singled out the countries of the Middle East and North Africa region for obtaining loans allocated to non-member countries of the Union, and this reflects the growing interest in facilitating private investments in the region.

3. The International Finance Corporation and its role in financing foreign investment: It is an international financial institution affiliated with the International Bank for Reconstruction and Development established in 1956. The Corporation works to finance investment projects in the private sector in the developing country through loans and to contribute to the capital of private projects in these developing countries such as Algeria, and help it to strengthen its economies and create job opportunities as it plays a catalytic role for other investors by showing that investments in emerging markets can be successful and profitable[17, 18].

As the financial institution is affiliated with the World Bank Group, of which Algeria is a member[18], it works to support investment by financing private investment projects, whether by granting loans or contributing to shares. That is why the institution is considered an encouraging factor for investment in Algeria, as it is one of the most important developing countries that receive the attention and support of the World Bank Group, and primarily the International Finance Corporation. Investors who want to obtain the support of this institution only have to submit a request to it to obtain loans or contribute to the project.

Conclusion:

It can be said that the Algerian legislator sought to provide sufficient legal and economic coverage for investment in Algeria by dedicating it to a set of tax and customs incentives represented in aid and exemptions from the Algerian state to investors, which in turn are divided into internal tax incentives, which are stipulated in the investment law and its complementary laws, and international tax incentives stipulated in international agreements in addition to legal guarantees and the agreement within an effective legal system and exerting great efforts in creating an appropriate investment environment to attract foreign investments in view of its great importance and in pursuit of keeping pace with the economic development in the world. The legislator has devoted a set of legal principles regulating investment in Algeria through the principle of freedom of investment and the transfer of capital and profits achieved from it, and the principle of equal treatment and legislative stability.

The Algerian legislator also tried to protect foreign investments by setting up multilateral and bilateral agreements. However, the legal guarantees and the legally established agreement are not sufficient on their own to encourage foreign investment in Algeria unless they are accompanied by other guarantees that embody procedural protection for investment at the level of administrative authorities. The Algerian state has tried hard to remove bureaucratic complications and established bodies and agencies to frame the investment process by placing judicial guarantees as means to resolve investment disputes, and because of the foreign investor's negative view of the national judiciary, international commercial arbitration was resorted to.

Thus, we present the most important recommendations and suggestions:

- The Algerian legislator was successful in making the new amendment concerning establishing effective incentive systems, but it must unify these texts in one unified law to avoid the large number of laws.
- The Algerian state should set up a code to introduce the legal rules in the field of investment to introduce them to what encourages attracting foreign investment.
- The Algerian legislator should review the partnership rule 51-49 and make it limited to strategic sectors.

- There is a need for an actual and simplified application of the registration procedure to authorize direct investment and grant benefits.

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