

Tax Incentives and Territorial Attractiveness for Investment

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Abstract

Fiscal policy, in the sense of economic and social action by means of compulsory levies (taxes, levies and social contributions), constitutes a major instrument in the hands of the public authorities to promote investment and thus achieve the Sustainable Development Goals (SDGs) defined by the UN. Such a policy often takes the form of tax incentives initiated by the legislator (government and parliament) to make its territory attractive to investors and this by means of “tax expenditures” (tax credits, exemptions, reductions and credits taxes).

However, this state fiscal interventionism, which has the merit of deeply reforming the political, economic and social structures of a country, can be held back by an administrative state (financial and fiscal administration) which considers it necessary to maintain or even increase taxation. to cover general interest expenditure (financing of physical infrastructure such as public works and equipment, communication and / or intangible routes such as education and research, public health, environmental protection and sustainable development. ..).

The Covid 19 pandemic and its serious economic consequences are forcing States to reduce or even postpone the date of compulsory levies, thus lowering the tax burden on businesses and households. In times of crisis, taxation seems to be an instrument to be used with caution to maintain a certain level of investment necessary for the revival of economic activity. In addition, an effective public and/or private investment producing wealth and therefore social redistribution requires prior regulation and public governance subject to the principles of the rule of law.

These principles are notably dominated by the requirement of transparency and responsibility in the management of public affairs and are contained in the generic concept of accountability. In addition to a stable political framework,

predictable and transparent legislation, particularly in financial and fiscal matters, often influences public and / or private investment decisions. The interest in tax incentives is that this is an instrument favored by certain emerging and developing countries to attract foreign capital on the model of FDI in the face of insufficient human and material resources, mining and/or national savings.

Furthermore, it seems easier for some countries to use targeted tax incentives leading to reduce or even eliminate any tax burden than to pay public subsidies directly. In addition, these tax incentives are often taken by multiple political authorities (ministries of trade, industry, economy, investment ...) and formalized by various texts (law on investments, laws finance, law on economic regulation ...). The mobilization of public and / or private investment calls for a simplification and transparency of public governance in order to make accessible fiscal incentive measures and their effective implementation by interested investors. Our communication will specify, firstly, the importance but also the limits of tax incentives to make a territory attractive for national and international investors and, secondly, stress the need for a legal framework favorable to good governance public finance and tax to make productive and efficient any investment to achieve the SDGs.

Keywords: legal framework, tax incentives, territory attractive for national and international investors, governance public finance and tax.

Introduction

Tax incentives for investment, particularly in low-income countries⁽¹⁾ are any legislative and / or regulatory measure aimed at acting on the tax standard in order to make the territory of a State attractive to national and international investors. The interest in tax incentives is that it is an instrument favored by certain emerging and developing countries to attract foreign capital on the model of foreign direct investment (FDI) given the insufficiency of their human, material, mining and / or national savings resources.

Furthermore, it seems easier for some countries to use targeted tax incentives leading to reduce or even eliminate any tax burden than to pay public subsidies directly.

Thus, since 2006, the Organization for Economic Cooperation and Development (OECD)⁽²⁾ has established an action framework for investment aimed at its member states but also more broadly at any state wishing to promote investment in its territory to promote economic growth and the well-being of its population.

An investment policy takes place over time and space and benefits current and future generations: it must therefore meet the sustainable development objectives (SDGs) defined in 2015 by the United Nations Organization (UN). The Covid 19 pandemic and its serious economic consequences are forcing States to reduce or even postpone the date of compulsory levies, thus lowering the tax burden on businesses and households. In times of crisis, taxation seems to be an instrument to be used with caution to maintain a certain level of investment necessary for the revival of economic activity.

The seventeen SDGs set by the UN⁽³⁾ aim to guide development policies by 2030. Their implementation by the States requires going beyond the famous gross domestic product (GDP) and reviewing their public governance, particularly fiscal, to make it effective their methods of financing the SDGs. Their implementation by the states requires going beyond the famous gross domestic product (GDP) and reviewing their public governance, particularly

(1) IMF, OECD, United Nations and World Bank report to the G20 Development Working Group, *Options for Effective and Efficient Use of Tax Incentives for Investment in Low-Income Countries*, October 2015, p. 50.

(2) OECD, *Framework for Action on Investment*, OECD Publishing, Paris, 2015, p. 156, or website: <http://dx.doi.org/10.1787/9789264235441-fr>.

(3) The 2030 Agenda establishes the 17 SDGs covering the challenges of sustainable development in any country: climate, biodiversity, energy, water, poverty, gender equality, economic prosperity, peace, agriculture, education, health ...

fiscal governance, to make their methods of financing the SDGs effective.

This new approach prompted by the SDGs reveals the limits of GDP to be able to measure well-being and prosperity in the longer term. The SDGs are more broadly part of the global context of slowing economic growth and also the increase in inequalities often associated with the crises predicted due to “global warming” and even since 2020 the “health crisis”⁽⁴⁾ than the current one. GDP is an indicator that cannot be understood given its theoretical construction⁽⁵⁾. The exceeding of GDP appears through the human development index (HDI) which, in addition to quantitative and material well-being (consumption of market goods and services), includes qualitative well-being both individual (education, health) and collective (good public governance and level of social inequalities). These indicators can be refined in particular in the current global context of health crisis⁽⁶⁾: in terms of public health, life expectancy in good health (qualitative aspect) complements and also nuances the scope of simple life expectancy (quantitative aspect). For example, if France is the first country in the European Union in terms of life expectancy at birth of women, this country ranks in tenth place in terms of life expectancy in healthy.

This illustration has the merit of recalling the need to maintain a close link between these two dimensions of human life, quantitative well-being and qualitative well-being, dimensions which must be included in any public development policy, particularly in terms of investment which constitutes the essential lever for achieving the economic, social and environmental well-being of people around the world. Fiscal policy, in the sense of economic and social action by means of compulsory levies (taxes, levies and social contributions), constitutes a major instrument in the hands of the public authorities to promote investment and thus achieve the SDGs set by the UN .

The term «fiscal policy» is often understood in various senses: it can mean the tax system as a whole based on a political and // philosophical conception specific to each State by distinguishing its personal scope (natural or legal person), its material field of application (income, heritage or expenditure) or its territorial field of application (national, European or international) and also

(4) Recent crisis due to the coronavirus which reduces the GDP of any State and forced to fiscal stimulus plans.

(5) Thus, the GDP can increase during an environmental damage with regard to the financial cost necessary to repair the ecological damage caused.

(6) The World Health Organization (WHO) described the spread of Covid-19 disease on March 11, 2020 as a «pandemic» (from the Greek pan «all» and demos «people») in the sense of «global spread of a new disease». This pandemic, which seems to result from a zoonosis, also reminds us of the close link between human and animal well-being.

its technical characteristics (progressive rates which would be fairer taking into account the personal and family situation of each or proportional rates which would be more unfair because they would not take into account the contributory capacity of each).

Today, «fiscal policy» is understood more as a lever for economic and social action using the fiscal standard to promote public or private investment. To this end, the tax standard generally aims at three extra-legal objectives: the classic return objective (providing the State with resources to cover its expenses) to which are added two new objectives, an economic objective (acting on the behavior of economic agents, individuals as companies to encourage them to consume, save and / or invest) and also a social objective (redistribution of wealth through the search for fiscal justice, i.e. social justice by means of 'tax).

Thus, the State can, through a reduction in employers' social security contributions and/or corporate tax exemptions, promote growth and employment or even encourage the establishment of businesses in certain areas, to promote their economic development in certain areas.

The merit of taxation is that it applies to any annual net enrichment of a person, physical (individuals) or legal (companies), whether this enrichment comes from income from salaried or self-employed work, a profit made, an assignment of tangible (tangible) or intangible (intangible) goods or services or even a capital gain on investment or heritage securities. Thus, with any economic policy are often associated fiscal measures in order to facilitate and make effective its implementation. The public authorities have through the fiscal tool (taxes and charges) and / or social tool (social contributions) a most extensive and effective instrument to promote public and/or private investment.

This fiscal interventionism appears strongly during times of crisis like the one the world has been going through since 2020. The mobilization of public and / or private investment calls for a simplification and transparency of public governance in order to make incentives available, and their efficient implementation by interested investors. Such measures are often taken by multiple political authorities (Ministries of Commerce, Industry, Economy, Investment ...) and formalized by various texts (law on investments, finance laws, law on economic regulation ...)⁽⁷⁾.

(7) Laws often codified: Investment Code, Tax Code, Customs Code, Commercial Code ...

Are these tax incentives an effective instrument to make a territory attractive to investors? Does the legal and / or institutional framework determine such territorial attractiveness? Does good public financial and fiscal governance (transparency and accountability) condition investment and therefore the achievement of the SDGs? In an attempt to answer these questions, we will rely on the economic and legal theories of tax often developed in the reports of national taxpayer citizen⁽⁸⁾ control and information organizations¹ and also of international study organizations. and / or investment aid (World Bank, IMF, WTO, OECD, etc.).

This theoretical approach seems to show that tax incentives are certainly useful for promoting investment, but that the establishment of the rule of law symbol of good public governance is necessary for better management of the investing State to achieve the SDGs.

To show this, we will first specify the importance but also the limits of tax incentives to make a territory attractive to national and international investors **(I)** and, secondly, we will emphasize the need for a legal framework favorable to good public financial and fiscal governance in order to make productive and effective any investment to achieve the SDGs **(II)**.

I. Tax incentives as leverage for investment

In a competitive international economic environment, tax incentives become an essential instrument for regulating investment, it is therefore useful to recall their nature and scope.

1. Various tax incentives

Various methods of tax incentives for investment exist in all countries⁽⁹⁾. In practice, this involves acting by means of the derogatory standard (tax expenditure) or simply by means of the standard of ordinary law (statutory tax rate) in order to lower the tax pressure measured by the famous tax rate. compulsory deductions (TPO). Investors are indeed often interested in the TPO of a country as for their decision or not to invest, to anticipate or even to delay their choice of investment and especially to measure the competitiveness of their company.

(8) Thus in France, Tax Council, *Derogatory taxation. For a review of tax expenditures*, September 2003, 21st report to the President of the Republic, 24 p; in 2005, it became the Council for Compulsory Levies or CPO.

(9) F. Walter, "Note on various methods of tax incentive for investment", *Revue économique*, 1956, Vol. 7, n° 4, pp. 552-567, where the author cites traditional, accelerated and increased depreciation; partial or total exemption from the personal income of investors and finally outright non-taxation.

This is why, it is useful to recall what the TPO covers before detailing the measures taken by a State (in the form of derogatory standards and / or common law standards) to reduce this TPO in order to encourage investment in various areas on its territory⁽¹⁰⁾.

The «fiscal pressure» of a country is measured by the rate of compulsory levies or TPO which is the total of compulsory levies compared to gross domestic product (PO / GDP). The term «compulsory levies» or PO within the meaning of the OECD means all monetary flows paid without consideration by economic agents to public administrations since these payments are not linked to a voluntary decision on their part.

A double economic criterion emerges: on the one hand, the lack of choice of the amount and the conditions of payment by the agents, and, on the other hand, the absence in principle of an immediate or direct individualized counterpart. Two major levies then emerge from such a definition, fiscal levies (taxes and charges) and non-fiscal social levies (social contributions), both of which finance the activity of public administrations, namely the State, local authorities and the social security or even in the French case by including the European Union whose budget is covered by the budgetary contributions of the member states to the number of 27 since Brexit. Within the POs, the share of taxes and levies thus rises in France to almost 60%, that of social contributions to 40%.

A government anxious to make its territory attractive in the eyes of investors use the fiscal tool (fiscal levies) and / or the social tool (non-fiscal social levies), levies which strike individual and corporate taxpayers (taxes, levies and salaried and self-employed social contributions). The TPO, which allows a comparison between States, measures more the degree of coverage by the community of certain benefits or redistribution function (health, pensions, education, employment, social housing ...); it reveals the social and fiscal systems of a state and therefore more reflects a choice of society (solidarism and / or individualism).

A high rate of public expenditure and therefore a high rate of compulsory contributions thus often reflects the high degree of economic and social development attained by a State. It is the “price to pay” for a quality of life

(10) These areas are indeed very diverse, ranging from the creation of communications infrastructure, water management, environmental protection, research and development, culture and media, in the sense, See Council of Europe, *tax incentive systems and their impact on film and audiovisual production in Europe*, Report by Jonathan Olsberg and Andrew Barnes Olsberg, SPI Published by the European Audiovisual Observatory, December 2014, p. 146.

and an individual and collective “social well-being” illustrated by the high level of rate of public expenditure (TDP) and therefore of the TPO that the Scandinavian countries know with regard in particular of their level of taxation.

Public security, defense, diplomacy, education, health and social protection, poverty alleviation, housing assistance, etc. services in France are mainly funded by the public sector (hence a TPO amounting to almost 44% unlike other states where the funding of certain services is provided by individuals and / or the private sector (case of the United States for social protection, or Japan for education, this is why these states have a TPO close to 30% of GDP); other states (Denmark, Sweden, Belgium), on the contrary, have a higher OPT (more than 45%). Caution is required in any comparison of the TPO between States: it is necessary beforehand to define the content and the scope of the compulsory deductions considered and in particular their consolidated nature or not (taking into account or not financial transfers between the State and the others local government and / or social security). The fact remains that action by the overriding standard that is tax expenditure seems to be aimed at a downward trend in the TPO to attract national and / or foreign investors.

More generally, all public policy is accompanied by tax incentives, some of which are qualified as “tax expenditures”, and this in most States since the end of the 1960s as in the United States (tax shelters). «Tax expenditure» is opposed to «tax revenue»: it in fact constitutes a loss of resources for the State (nearly € 100 billion each year in France!), A budgetary cost expressed by the concept of «tax expenditure».

The latter can be defined as any legislative or regulatory measure whose implementation leads to a loss of resources for the State and therefore a gain for the taxpayer (individuals and / or companies) in the form of reduction or even removal of the burden tax compared to what would have resulted from the application of the standard, that is to say the general principles of tax law. Tax expenditure is a privileged tool because it has the merit of targeting certain territories (free urban and / or rural areas, competitiveness cluster, etc.) and / or of addressing investors intervening in certain economic sectors (material infrastructures such road, rail, air, sea, telecommunication network, public facilities or intangible infrastructure such as higher education and research, health, leisure ...).

We know that reliable and sustainable infrastructure is at the heart of the mobility of people, capital, services and goods, mobility itself necessary for

the dynamism of a national economy subject to international competitiveness in a competitive framework, particularly on the tax plan. Using the derogatory tax standard that is tax expenditure consists of acting through legislative and/or regulatory measures derogating from ordinary law such as tax arrangements for tax abatements, permanent or temporary exemptions, tax rebates taxes, reductions and tax credits in order to make certain areas attractive for public or private investment, areas often marked by a low rate of economic growth due sometimes to a high rate of unemployment or to a situation of precariousness or “monetary poverty” of fragile resident populations.

The beneficiaries of these derogatory tax measures are often companies, subject to taxes and state taxes (income tax or IR, corporation tax or corporation tax, value added tax or VAT), and / or taxes and local taxes (property taxes on built and undeveloped properties, namely TFPB and TFPNB respectively, territorial economic contribution or CET with its two components, the business property tax or CFE and the contribution to business value added or CVAE) and finally social security taxes (general social contribution or CSG, contribution to the reimbursement of social debt or CRDS).

The State, which often has a monopoly on fiscal power, uses local taxation and/or social taxation as an instrument of economic action in the context of its sustainable development and land-use planning policies for households (taxes reduced on households) and / or businesses (economic taxes reduced or even eliminated for businesses that meet the objectives of general interest set by the public authorities).

These legal exemptions are numerous in France and are part of the economic functions of tax (Art. 44 sexies, 44 septies, 44 octies and 44 octies A, 44 quindecies, 44 duodecies and 44 sexies-OA of the General Code of taxes or CGI) and relate to companies that set up in priority areas of economic development and spatial planning: urban free zones (ZFU), sensitive urban zones (ZUS), rural revitalization zones (ZRR), zones in Corsica or in the overseas departments and overseas regions (DOM-ROM).

These exemptions are justified by the implementation of employment policy, of economic development of certain zones or territories: they are linked to the fiscal policy of the State that is to say the tax, here the IS is an instrument of economic and social action (tax expenditure). The latter benefit large companies more than SMEs, notably through recent tax credits such as the CICE (tax credit for competitiveness and employment) introduced in 2013 codified in Art. 244 quater C I of the CGI financed by a drop in public

spending and an increase in VAT (normal rate of 20% since 2014) and increase in ecological taxation. The CICE will be abolished in 2019 and replaced by a reduction in long-term social charges. These tax and social measures aim to invite companies to hire, train their employees, invest and innovate! Will they be followed by a concrete effect?

Among these systems, we can cite the research tax credit (CIR) to encourage research and development (R & D) activity of companies or the innovation tax credit (CII) to encourage companies to promote innovation to better stimulate their activity and thus improve their competitiveness. The research tax credit (CIR) instituted in 2008 and codified in Art. 244 quater B I of the CGI supplemented in 2013 by the tax credit in favor of innovation (CII), that is to say innovation spending by SMEs (Art. 244 quater B II K of the CGI). These three tax credits (CICE, CIR and CII) constitute nearly € 23.16 billion in tax loss for the State in 2015 (respectively € 17 billion, € 6 billion and € 160 million).

We note that the investment tax credit and the accelerated depreciation of the assets of a company's fixed assets bring in more investments per dollar spent than the traditional tax exemptions and tax reductions⁽¹¹⁾.

In addition, the tax advantages in the form of tax expenditure allocated to the sectors of domestic economic activity and activity of extraction of natural resources (gas, oil, mines, quarries, precious metals ...) have a low impact in terms contribution on investment than business sectors geared towards the export of goods and services or even mobile capital (wealth management and investment securities⁽¹²⁾).

We can illustrate this desire of States to promote international business investment by the "commercial prospecting" tax credit⁽¹³⁾ or export tax credit, or the advantageous tax regime for expatriate employees (employees outside France) wishing to return to the country, thus becoming "impatriate" employees (employees in France)⁽¹⁴⁾ to attract the best skills that companies need to develop and invest abroad.

(11) IMF, OECD, United Nations and World Bank Report to the G20 Development Working Group, *op. cit.*, p. 3.

(12) *Ibid.*

(13) This tax credit for commercial prospecting expenses is aimed at SMEs fulfilling certain legal conditions, it allows them to deduct these expenses from their taxable profit and thus reduce their IS.

(14) These employees may, if their tax domicile was not in France during the five years preceding their taking up employment in the country, benefit under certain conditions from tax exemption of up to 50% of the additional income received to work abroad for his employer but also capital gains when selling goods or shares abroad (Art. 155 B of the CGI).

The general trend observed due to tax competition between States is a reduction in taxes, in particular on corporate profits, by acting on the statutory tax rate on corporate income tax. This action on the standard of common law completes the derogatory tax measures, the latter are subject to a limitation or even a cancellation due to the growing prevalence of international taxation.

The action by the common law fiscal norm consists in lowering the rate of taxes in order to make the territory of the State attractive for business investment: this is why the reform will target the striking economic tax cuts companies wishing to invest, such as IS, VAT or even the CET, to cite only the French case.

Since the French finance law of 2017, we have seen the normal CIT rate drop from 33% to 25% in 2022 without forgetting the reduced rate of 15% applicable to small and medium-sized enterprises (SMEs) fulfilling certain legal conditions in particular those linked to annual turnover excluding tax. In addition to action on the statutory tax rate, temporary and limited exemption measures have been developed for a very long time.

By all these measures, legal exemptions and lowering of corporate tax rates, it is a question of adapting to the mobility of companies and of capital and people and to the challenge of international tax competition, notably European (corporate tax in Ireland at rate of 12.5%!). The objective is to attract businesses and encourage them to set up on French territory. In the absence of harmonization, each State develops a form of «fiscal dumping».

The EU is rightly seeking to harmonize the CIT base (Common Consolidated CIT Base or ACCIS) in order to develop fair and non-unfair competition between Member States by giving them the freedom to act on their rate in order to preserve the fiscal sovereignty of each state.

As for VAT, the first fiscal resource of the State, its regime is defined by European Union law which establishes a minimum normal rate and a minimum reduced rate from which States freely set their rate which they apply to a base of goods and services determined by Union law alone. European directives thus define the VAT regime (rates and base), directives often transposed into national laws and codified in the tax codes of each Member State of the Union.

This necessary European tax harmonization of VAT is justified because the turnover taxes, of which VAT is a part, may hinder the free movement of traded goods and services and therefore free competition between companies in the Member States. Thus any will expressed by a State of the Union to

modify the rate and / or base of the VAT must obtain the prior agreement of the European Commission (thus of the VAT applicable since 2009 to the services of services of meal and restoration in France).

In addition, the CET, a local tax on businesses and financing the budgets of local authorities, has a first component (the CFE), the rate of which is voted by the municipal and inter-municipal assemblies who are the sole beneficiaries of the CFE, and a second component (the CVAE), the rate of which is fixed by the central State, although the CVAE's tax revenue benefits the three levels of communities (communal and inter-communal block, departments and regions).

It should be noted that all tax measures in favor of businesses follow the adoption of regulations, directives and decisions as well as the case law of the Court of Justice of the European Union or CJEU (composed of the Court of Justice, the General Court and the Civil Service Tribunal). This prevalence of EU law in matters of corporate tax can be illustrated by the proposal for a directive of March 16, 2011, reviving the idea of a common consolidated corporate tax base or ACCIS: acts of a set of common rules to establish the base while leaving to the States freedom to fix the rates thus preserving their fiscal sovereignty (like VAT for example!).

As we can see, in addition to the indirect tax that is VAT, the regime for which is essentially governed by EU law, we observe that the direct tax that is the CIT will ultimately be subject to tax rules European by the will of the States which wish to make their territory attractive while limiting European tax competition; States also aim to increase their resources in a context of tax evasion or even tax fraud on an international scale (Panama Papers case which became Paradise Papers in 2018)⁽¹⁵⁾.

The diversity of the tax systems between States makes any comparison delicate as for the effectiveness of the tax incentives to the investment in particular as regards taxation on the profit of the companies (French IS)⁽¹⁶⁾. One can however, as established by the European Commission in 2001, seek to "calculate the average effective taxation that would bear an investment whose profitability would be 20%: thus the effective average tax rate for a typical investment (well and composite financing), which reports before tax

(15) European Parliament, *The capacity of the Member States to combat tax offenses. Ex post impact assessment*, July 2017, p.77.

(16) In this sense, A. Gubian, F. Guillaumat-Tailliet, J. Le Cacheux, *Corporate taxation and investment decision Elements of international comparison France, FRG, United States*, Economic Observations and Diagnostics No. 16 / July 1986, OFCE, 1986, pp. 181-182.

20%, was 34.7% in France and 34.9% in Germany in 2001⁽¹⁷⁾.

The fact remains that the taxes on businesses (VAT, IR for sole proprietorships and partnerships, IS for capital companies, payroll taxes for those who are not subject to VAT,...) go to final be passed on to customers (act on prices) and / or employees (act on salaries) and / or shareholders (act on dividends).

In addition, beyond the will of any government to reduce tax and / or social charges on individual entrepreneurs and businesses (partnerships and capital companies) to revive economic activity and therefore employment (runoff theory or “first of all” will only be demonstrated if companies establish the fact that they favor societal logic (interest of employees) over shareholder logic (interest of shareholders). The importance of analyzing the scope of tax incentives for investment is emphasized.

2. Tax incentives of limited scope

To take an interest in the scope of tax incentives for investment is to recall the national, international and European legal framework which comes to limit the tax incentives taken by States in the exercise of their sovereign competence in matters of charges of all kinds (taxes and duties) within the meaning of national constitutions.

First of all, we note the paradox between an economic globalization which encourages free movement and free competition and the maintenance of state fiscal borders. Faced with this paradox, the States join forces to create common economic and / or monetary spaces in order to harmonize their fiscal policy thus making their regional territory attractive (European Union or EU, African Union or AU, Organization of American States or OAS , Association of Southeast Asian Nations or ASEAN) and / or national in favor of investment (tax interventionism at the level of each member state in accordance with the treaties concluded within the framework of the EU, AU , OAS, ASEAN ...).

As such, international tax conventions are often concluded between states, conventions often having three objects (avoiding double taxation, combating tax fraud and tax evasion and guaranteeing the rights of individual taxpayers as businesses).

Avoiding double taxation is historically at the origin of these tax treaties: the generalization in all States of the charges established on the contributory capacity of taxpayers (income or profit tax, on movable and immovable

(17) Information report by Mr. Joseph Kergeris *on the determinants of investment*, made on behalf of the Senate delegation for planning n ° 35 (2002-2003) – France, October 29, 2002, p. 239.

property, tax on disposal securities and / or securities such as stocks and bonds ...) raises the question of the location of the base and therefore of the taxpayer with this income or having made this profit and / or having incurred an expense of consumption. The agreements are concluded in order to regulate the fiscal conflicts arising from the fact that the same taxpayer whose income (natural person) or profit (legal person) is hit by the same tax but is subject to the tax law of at least two States (Source State and / or State of Residence). Thus in terms of geographic location of the profit made by a company, the concept of permanent establishment «is the fundamental concept taken up by these double taxation conventions in order to determine the State beneficiary of the corporate tax imposed on industrial entities and national and / or international commercial⁽¹⁸⁾.

These conventions, often of a bilateral nature, take the OECD model (fiscal relations between developed countries) or the UN model as their drafting model (at least one developing country is a party to the convention).

These models, updated regularly, are also the basis for drafting conventions aimed at combating tax fraud and tax evasion, an old question if ever there was one⁽¹⁹⁾; but the priority displayed in this area by States, especially since the crisis financial of 2008 and still recently following the health crisis since 2020, led the G20 then the OECD to establish a list of non-cooperative States and Territories (ETNC) by sanctioning any State and therefore any company wishing to invest, which would maintain fiscal links with privileged tax territories (“tax havens”)⁽²⁰⁾.

(18) The Government of the French Republic and the Government of the State of Kuwait, Desiring to conclude an agreement for the avoidance of double taxation in matters income, wealth and inheritance tax signed in Kuwait on February 7, 1982, successively modified by: the Addendum signed in Paris on September 27, 1989, approved by law n° 90-578 of July 2, 1990 (OJ of July 10, 1990), entered into force on July 1, 1991 and published by decree n° 91-976 September 23, 1991 (OJ of September 26, 1991) and the Amendment signed in Paris on January 27, 1994, approved by law n° 94-880 of October 14, 1994 (OJ of October 15, 1994), entered into force March 1, 1995 and published by decree n° 95-265 of March 3, 1995 (OJ of March 10, 1995).

(19) Information report n° 1802, by Jean-Pierre BRARD tabled in application of article 145 of the Regulation by the finance committee *on the fight against tax fraud and tax evasion*, National Assembly, September 8, 1999, p. 381.

(20) These “tax havens” are defined by 4 criteria: income or profit subject to zero or negligible taxation; no exchange of information on the tax systems in force; lack of transparency of these tax regimes; facilitated installation of entities under foreign control without physical presence or favorable economic impact on the territory with privileged taxation but one tends to distinguish between “cooperative tax havens” and “non-cooperative tax havens” which shows the sensitivity of the question; OECD Better policies for better lives, Secretary general report to the G20 leaders, St Petersburg-Russia- September 2013, p. 80.

Finally, the purpose of these international tax treaties is to guarantee the rights of taxpayers and in particular by combating any form of tax discrimination between national and foreign companies in the area of investment.

These standards resulting from international tax conventions are imposed on national standards according to the classic principle of subsidiarity (the national judge analyzes the fiscal situation of the company wishing to invest first with regard to the national standard in the absence of a solution, it builds on and promotes the international tax standard)⁽²¹⁾.

The States also integrate international organizations competent in the commercial (WTO), monetary and / or financial field (IMF, World Bank, European Central Bank or ECB, European Investment Bank or EIB ..), institutions which enact measures having strong implications for corporate investment decisions. The fact remains that a State sees its policy of tax incentives for investment more or less framed according to its legal commitments to these regional and / or international organizations, especially as “supranational” standards tend to impose themselves on national standards in particular within the European Union which is characterized by the principle of integration (generalization of standards adopted according to the majority rule) in addition to the classic principle of cooperation (standards adopted according to the unanimity rule).

However, even within the framework of the European Union, a model if any of an intergovernmental integration organization, the field of taxation is subject to the rule of unanimity, thus granting each State a right of veto, leading to the difficulty or even the impossibility of instituting a tax system common to all the member States of an international and / or regional economic organization.

These states, through their legal union formalized by treaties, are content to harmonize their rules of tax incentives for investment in order to fight against unfair competition which is harmful to all. Let us add that the states which want to constitute an optimal monetary zone like the “euro zone” which includes to date 19 member states, the fiscal harmonization is more significant since the single monetary policy calls for a single market which leads to fight against the borders tax because they are likely to hinder free movement and free competition.

We understand the need for European tax harmonization in the area of indirect taxation that is most likely to hamper trade and commercial transactions

(21) In this sense, CE 9 ° and 10 ° chambers united January 22, 2020 *State of Kuwait*, n ° 421913, (IS and social contribution on the IS due by the KIA fund for the bare rental of real estate located in Paris-La Défense).

(turnover taxes, including the famous VAT), supplemented by sustained coordination of national fiscal policies, by the European Commission in matters of direct taxation, which is less subject to undermining European economic freedoms (such as corporate income tax or property wealth tax or IFI). But international tax competition seems to force states more to lower their tax burden rate than a decision made by their regional economic organization to which they belong (EU, AU, etc.).

Let us add that other restrictions on these tax incentives exist: the European state tax aid regime and also the Code of Conduct applied by the EU without forgetting the measures taken by the OECD on delegation from the G20. While other regimes further extend the international action of companies in the area of investment (group taxation).

Within the framework of the European Union, the Commission ensures the application of the state aid rules to measures relating to direct business taxation⁽²²⁾. European treaties lay down the principle of prohibition of State aid; art. 107 §1 of the TFEU stipulates that «except for derogations provided for by this treaty, the aid granted by the States or by means of State resources are incompatible with the common market, insofar as they carry out trade with the Member States in any form whatsoever which distort or threaten to distort competition by favoring certain undertakings or certain productions».

From this stipulation, four elements emerge to qualify State aid, in particular tax aid which would therefore be prohibited except for derogations provided for by the treaty: it must constitute an economic advantage for its beneficiary, this aid having to be of public origin (State and other public authorities); this aid must distort or threatens to distort free competition and finally this aid must have an impact on intra-EU trade, that is to say between EU Member States.

The latter enacted in 1997 a Code of Conduct in the field of corporate taxation in order to combat harmful tax competition between member states. Adopted in the form of a resolution, this Code covers any fiscal measure of a legislative or regulatory nature «establishing a significantly lower effective tax level, including zero taxation, compared to those which normally apply in the Member State concerned»⁽²³⁾.

(22) Report of February 9, 2004 on the implementation of the Communication from the European Commission on *the application of state aid rules to measures relating to direct business taxation*, C (2004), p. 434.

(23) Code commented by B. Castagnède, *Precis of international taxation*, PUF, Paris, 3rd updated edition, 2010, p. 53.

French tax legislation has therefore had to put an end to certain favorable regimes since they nourish harmful tax competition (provision regimes for the reconstitution of hydrocarbon deposits, industrial and commercial invention patents, etc.).

More generally, the OECD⁽²⁴⁾ also aims to combat unfair tax competition and, on the delegation of the G20, also to combat “tax havens”⁽²⁵⁾, all situations which disrupt the normal functioning of the national and international economy and above all constitute a loss of resources for the States.

The OECD, following a decision in 2012 by the G20, implemented the BEPS (Base Erosion and Profit Shifting) project, which allows profit to be taxed at the precise place where it is generated and thus combats tax evasion; this project aims more broadly to harmonize international rules with a view to greater transparency for businesses. National and international business investment strategy (tax planning) must indeed integrate these constraints, a sort of soft law stemming from codes of conduct, recommendations and opinions from regional (EU, OECD) and international organizations (G20, IMF, WTO...). Tax planning also includes the advantage derived from group taxation, in particular under the CIT.

Group taxation tends to derogate from the principle of territoriality characterizing the SI: the current context of mobility of capital, companies and people as well as the tax competition between States invites to adapt the SI to the globalization of the economy. These derogations allow taxation more favorable to groups of companies.

We are talking about vertical fiscal integration (Art. 223 A et seq. Of the CGI). They can present a “consolidated profit”, that is to say integrating the group profits (large company and its subsidiaries in France or abroad as soon as the parent company holds at least 95% of the capital of the integrated subsidiaries and that all, mother and daughters are subject to the SI); in this case, only the parent company or “group head company” will be taxed on the CIT instead of all the integrated companies: here the CIT base is made up of the sum of the loss results and beneficiaries of the various group companies.

Vertical tax integration (bringing the losses of the subsidiaries up to the profit of the parent company, under certain conditions in particular the parent company must hold at least 95% of the capital of the integrated companies and that all, «mothers and daughters» are subject to the IS), has been reviewed and

(24) OECD Report, *Harmful Tax Competition: A Global Problem*, OECD, 1998.

(25) OECD Report, *Towards Comprehensive Tax Cooperation*, OECD, 2000.

adjusted following a judgment of the CJEU 2^o room, June 12, 2014 Sca Group Holding BV, also allowing horizontal fiscal integration within the meaning of the amending finance law (LFR) for 2014 codified to Art. 223 A and s. of the CGI (taxation of French companies subsidiaries of a parent company established in the European Union (EU) or in the European Economic Area (EEA) under agreement in order to comply with the principle of freedom of establishment provided for in Art. 49 TFEU).

It should also be noted that in terms of the distribution of dividends earned by subsidiaries, the parent company and subsidiary scheme or RSMF scheme may apply: the idea is to avoid double taxation of dividends earned by subsidiaries established abroad then collected by the French parent company under certain conditions in particular (Art. 154 of the CGI). These tax regimes, fiscal integration and RSMF, lead to a reduction in the tax burden of companies, especially those that develop internationally, tax law also encourages such international development by making the State the cost (fiscal shortfall of more than € 50bn in 2011 through fiscal integration and this so-called RSMF scheme).

We also note that the conditions for resorting to fiscal integration and the so-called RSMF regime are relaxed in the context of the draft European directive of October 26, 2016 (the consolidated profit would be based on the holding of more than 50% of voting rights and more than 75% ownership of capital). These tax incentives, formalized by national standards under international and / or European constraints, all aim to establish good governance in the fiscal field which itself calls for good public governance in general.

II. Good public governance as a prerequisite for investment

The choice of a company to invest or not depends on multiple factors that go beyond the attractiveness of tax advantages (political stability, dense banking network, quality public service, sustainable infrastructure, excellence in skills and staff training). More generally, tax incentives for investment must, in order to be effective, be part of a transparent institutional and normative framework: it seems necessary to maintain the link between public authority and responsibility, which calls for institutional clarification by public authorities in charge of economic and financial policy and a simplification of tax standards.

1. An institutional clarification of the competent tax authorities

The very broad field in terms of investment often calls for the intervention

of several public authorities attached to the competent ministry (Economy and finance, Trade and industry, Higher education and research, Ecology and transport, ...). A clarification is needed: certain States (United States and Japan) have set up a ministry dedicated to investment (MITI)⁽²⁶⁾, other States (France, Germany ..) will be inspired by making the Ministry of 'Economy and finance the major authority in the definition and conduct of any investment policy implemented at national and / or international level.

This institutional choice is linked to the political and economic history of the State. We will limit ourselves to the European example, particularly the French example, by briefly retracing the emergence of this major law which is tax law.

In most European states, tax has historically preceded tax law: the royal sovereign power to levy tax, an often arbitrary power, will only know its legitimacy once formalized by rules of constitutional value and / or legislative measures adopted by parliament, the body representing citizens-taxpayers.

These rules, based on the historical principle of consent to tax (no taxation without representation), will constitute tax law which is the sovereign right to establish the tax system, namely the establishment of its base, its rate and its methods of recovery. This constitutional right, based on the principle of legality of tax and equality before tax, emerges with the establishment of a democratic political system where the citizen-taxpayers, represented by their elected representatives in the Parliament, will authorize no not only the levy of the tax, that is to say the revenue, but also the use of the tax, that is, the expense.

Tax law will evolve with the role of the State: the latter as a public investor will adapt this right to the needs of economic and social development of its population. Tax law within the meaning of all the legal rules relating to tax is then distinguished from taxation which is the implementation of this law. The content and the evolving scope of these legal rules can only be understood by grasping their extra-legal objectives, namely objectives of general interest of an economic and social nature. The term «taxation» then covers all public action by means of the tax more commonly called «fiscal policy»⁽²⁷⁾.

Modern tax is not limited to the classic objective of financial return (increasing public resources), it also aims at an economic objective (modifying the

(26) Ministry of International Trade and Industry created in Japan in 1949 and became in 2001 Ministry of Economy, Trade and Industry (METI).

(27) B. Castagnède, *Tax policy*, Coll. «Que sais-je?», N ° 3797, PUF, 2008, p. 105.

behavior of taxpayers to encourage them to invest, consume and / or save) and also a social objective (redistribution of income from work and / or capital)⁽²⁸⁾.

This task of making tax an instrument of action is vested in the national parliament (political body representing citizens-taxpayers) and the Ministry of Economy and Finance (administrative body subject to the government which is responsible to the parliament as required by a democratic political system).

We observe in times of crisis as at present that the Ministry of Finance sees its financial and fiscal powers increase in the implementation of health emergency laws adopted since 2020 by the French parliament in particular (aid to businesses and households, deferral of payment of taxes and social security contributions). Any crisis strengthens the state through a finance ministry which fully regains its economic powers to boost investment and therefore growth.

This institutional priority granted to the Ministry of Economy and Finance⁽²⁹⁾ is explained by the cost induced by any tax policy and in particular the cost of tax management⁽³⁰⁾ with its multiple tax incentive measures that they take the form of overriding standard or common law standard. The tax administration is at the heart of this process, which is now centralized thanks to the IT tool. It should be noted that most States have experienced since the 2008 crisis a deepening and modernization of their tax administration to meet the challenges of taxation in the era of the digital economy open to international investment.

The French tax administration is in charge of state taxation but also local taxation. The social taxation system often has another organization, notably through social security organizations endowed, on delegation from the State, with the fiscal power to calculate and collect certain social taxes (CSG, CRDS, etc.). But by 2025, the project is to bring together in a single window fiscal and social management based on the principle that «the best conceived fiscal system is only worth by the administration that implements it»⁽³¹⁾ that is - to say that the yield and the acceptance of the tax depend on the administration which manages it. Recall that historically, the first administration to emerge is

(28) These characteristics of modern tax are found in the first French written constitution of 1791 where the tax, principle of equality obliges, is directed towards a cardinal goal of fiscal justice and thus social (financing by the taxpayer of public services whose first beneficiaries are vulnerable populations: health, education, aid for the elderly, widows, orphans, etc.).

(29) Some states add to the portfolio of this ministry, in addition to taxation, the fields of foreign trade, industry, labor and employment.

(30) K. Koleva, *In search of optimal tax administration: the cost-efficiency approach*, HAL, 10 December 2007, p. 33.

(31) G. Ardant, *History of Tax*, Book I and II, Fayard, Paris.

often the tax administration, thus showing the very close link between tax and state (no state without tax).

The tax administration has been deeply reformed in France since the establishment since 2008 of the Directorate General of Public Finances or DGFIP. The Director General of the DGFIP also has authority over the Directorate of Tax Legislation or DLF. DLF is the production body for the tax standard and reports to the Director General of the DGFIP and represents the Ministry of Finance in international tax negotiations; DLF is at the heart of the development of tax legislation, that is to say in the drafting of legislative texts (ordinary tax laws and finance laws) and regulatory texts (decree, decree) of a fiscal nature.

These texts, once drawn up, are tabled by the government before Parliament where they are discussed and voted on. It is thus necessary to distinguish the development in law (government and Parliament) and the development in fact (the DLF) from the tax legislation. We have also seen the importance of fiscal doctrine, that is to say, instructions, circulars, memos, ministerial responses and rescripts issued by this powerful DLF. Since 2009, this “fiscal doctrine”⁽³²⁾ has been published on the Prime Minister’s website⁽³³⁾.

Created in 2008, the DGFIP is the result of the merger of the former Directorate General of Taxes or DGI (responsible for the assessment and settlement of taxes) and the former Directorate General of Public Accounting or DGCP (responsible for collection), since there is only one direction, the DGFIP which performs these two operations.

The DGFIP implements tax legislation (base, liquidation and recovery). Its director general is assisted by three assistants in charge of taxation (tax management, legal service and fiscal control), an assistant in charge of public management (service of local authorities and accounting department of the State) and finally an assistant in charge of steering network and resources (HR department, budget and performance department and information systems department).

In order to improve relations with individuals and businesses, certain services have been set up, “unified tax offices”: a Department for large businesses or DGE for large businesses (more than 400M in turnover), a Service corporate taxes or SIE for SMEs and a Personal Tax Service or SIP for citizen-taxpayers.

(32) M. Collet, P. Collin, *Tax procedures. Control, litigation and tax collection*, Thémis Droit, PUF, Paris.

(33) On the internet link www.circulaires.gouv.fr.

The Ministry of Economy and Finance, by the link it maintains between economy and finance and therefore taxation, is better able to set up this one-stop shop (Tax4Business service, single point of contact within the DGFIP for all tax matters relating to FDI)⁽³⁴⁾ which all international or national investors need to initiate and facilitate their administrative and institutional procedures in order to inform their investment decisions in the territory of a State.

2. Simplification of tax incentive standards

The constitutional and legislative framework is important in any investment project that uses tax incentives to make its territory attractive to investors. The latter require predictability of tax rules, political stability, transparency of acts and responsibility of public officials: tax law through its derogatory measures that are “tax expenditures” or non-derogatory (common law tax standards) seem to be a privileged field of study of the necessary good public governance to promote investment and attract investors.

This simplification of standards is all the more necessary since we often observe in particular in France that if the normal CIT rate is 33.33%, the implicit rate, i.e. the real rate after measurements tax exemption is less (use of tax reductions and credits through the legal tax optimization process): the implicit rate is 18%; we note that this implicit rate is all the lower the larger the company: thus if it is 30% for companies with 10 employees, this implicit rate is 8% for the forty large companies listed at the Paris Stock Exchange (CAC 40) according to the Council of compulsory levies in its 2009 report!

Tax rules are often criticized for their instability, complexity and even lack of consistency: companies need visibility of their investment over at least five years. The simplification of general law and tax law seems to be the key word to attract investors operating in an environment characterized by tax competition and the quest for business competitiveness⁽³⁵⁾. In other words, companies are ready to invest if the host country offers a simple transparent stable legal framework worthy of the rule of law even if it means having to undergo a level of taxation on profits (IS) or transactions more important than elsewhere. Security and predictability of tax standards are more sought after by investors, individuals and businesses.

(34) The DGFIP has developed its international assistance: international legal and economic expertise mission (MEJEI, dedicated to the elimination of double taxation), Tax4Business service (single point of contact for all tax questions of foreign investors).

(35) This is the subject of the French law known as «Essoc» (law n° 2018-727 of August 10, 2018 for a State serving a trusted company, JORF n° 0184 of August 11, 2018).

It is that the complexity and the normative instability generate a cost of management for the companies and penalize the investment and therefore the sustainable growth and the well being of the populations of the States. An effective public and / or private investment producing wealth and therefore social redistribution requires prior regulation and public governance subject to the principles of the rule of law.

These principles are notably dominated by the requirement of transparency and responsibility in the management of public affairs and are contained in the generic concept of accountability. Indeed, in addition to a stable political framework, predictable and transparent legislation, particularly in economic, monetary and financial matters (price and exchange rate stability) and also tax (stability of tax legislation) often influences public decisions and/or private investment. Investors, based on the inflation rate, the exchange rate and the legal tax rate in force within a country, can decide whether to invest or even to anticipate or postpone their choice of investment.

These indicators determine the profitability or not of the planned investment. Taxation has a great influence on the investment behavior of public and private companies⁽³⁶⁾.

However, this state fiscal interventionism, which has the merit of deeply reforming the political, economic and social structures of a country, can be held back by an administrative state (financial and fiscal administration) which considers it necessary to maintain or even increase taxation. to cover general interest expenditure (financing of physical infrastructure such as public works and equipment, communication and / or intangible routes such as education and research, public health, environmental protection and sustainable development. ..).

In this perspective, most States have enacted an Investment Code grouping together all the tax incentive standards, Code updated by laws to cover strategic economic sectors and considered as priority. Tax incentives relate to generally temporary exemptions, more rarely definitive, in respect of economic taxes imposed on businesses, such as tax holidays, VAT, customs duties, property and professional taxes, and also temporary or permanent reductions. employee and / or employer payroll taxes.

The trend, however, due to international (WTO) and European (EU) legal constraints, is to favor the common law tax standard (establishment of a single

(36) Senate Information Report No. 35, by J. Kergueris, Senator, made on behalf of the Senate delegation for planning on *the determinants of investment*, Ordinary session 2002-2003, Paris, p. 51.

and reduced rate of taxation or even a flat tax in certain States) in place and place of a derogatory standard (tax expenditure in the form of exemptions). In addition, a comparative look shows that this attractive tax system based on a drop in statutory tax rates associated with political stability and above all a competent and efficient tax administration contribute more and more effectively to the development of a country and therefore to well-being of its population. This can be illustrated by the example of two island states, the Union of the Comoros and Mauritius⁽³⁷⁾.

Accompanying this Code or even sometimes included in it, measures guaranteeing non-discriminatory treatment between foreign and national investors, a favorable regime for the transfer of capital as well as a mechanism for the amicable settlement of disputes that may arise, measures which require clarification, simplification and publication of standards in force to reassure potential investors. This requirement for transparency formalized by codified standards⁽³⁸⁾ and therefore published limits the risk of bad governance fueled in particular by favoritism, corruption, distortions of competition in the economy and even fraudulent and tax evasion behavior.

Since 2014 in France, professionals have been subject to the obligation to declare and pay electronically for their economic taxes such as VAT, IS, CET (teleprocedures such as remote declarations, teleactes, remote payment ...). For individuals, their tax procedures are carried out through single tax receipts (made available to IT equipment if necessary).

Finally in 2005, the Taxpayer Charter aims to strengthen the taxpayer-tax administration link (charter of 34 measures grouped by themes: simplicity through a single tax account accessible by internet, respect through amicable reminders and equity here response from the administration at the request of the taxpayer within a reasonable time).

Improving relations between the tax administration and taxpayers is a pledge of confidence and the effectiveness of the rule of law. The latter constitutes a necessary framework for the design and implementation of the SDGs, the approach of which is centered on meeting the needs of the population.

(37) Foreign Investment Advisory Service Joint service of the International Finance Corporation (IFC) and the World Bank (IBRD), *Union of the Comoros. Before - Draft Investment Code Comments* May 2006, p. 4.

(38) These codes must in turn be rationalized in their content and clarified as to their scope with regard to companies: inflation legislation often leads to increasing the number of pages of these codes sometimes becoming illegible for investors.

Conclusion

It will be understood that the SDGs, being subject to the principles of performance and evaluation, give rise to a new public governance, in particular financial and fiscal, combining both political logic (transparency and accountability) and economic logic (effectiveness, efficiency and quality).

Thus, tax incentives to genuinely benefit the population of a state and their general well-being require the establishment of a rule of law which has the merit of reconciling authority and responsibility at the national, local and international level.

The serious economic crisis caused by the Covid-19 pandemic teaches the fragility of our economic system turned to the only growth measured by the wealth indicator that is the GDP. This crisis questions our global way of life and invites to favor investments concerned with sustainable development where economic health and human and environmental health are intimately linked (protection of fauna, flora, water, air).

Taxation in favor of such an investment can contribute to this ambitious human project. We can say that tax incentives are certainly useful to promote investment but that the establishment of a rule of law symbol of good public governance is necessary for a better management of the investor state to achieve the SDGs.

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