The Role of Tax Incentives in Attracting Foreign Investments in Selected Developing Countries and the Desirable Policy**

I. The Efficacy of Investment Incentives

A. INCENTIVES FOR INVESTMENTS

This article discusses typical tax incentives granted by developing countries as a part of overall incentive packages offered under their laws for the encouragement of capital investments. Assuming that a general incentive program is justified as a means of stimulating investment, the main policy questions concerning tax incentives to be explored are: First, whether tax concessions should be preferred over direct subsidies, and second, whether host countries should distinguish between local and foreign investments.

It should be noted at the outset that the competition among developing countries in offering investment incentives is quite intense and may create a loss of important budgetary resources to host countries because many of the concessions are not needed in order to influence the investors' initial decisions to invest abroad.

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*Author's Note: The details of such laws change frequently and therefore a word of warning as to the positive law is in order. The pertinent Israeli law is discussed in detail and is based on up-to-date primary sources. Other laws surveyed are those of Ireland, Greece, Taiwan, Egypt, Mexico, and Nigeria. While the information on these laws is largely drawn from secondary sources as referred to herein, those sources supply ample material for comparison and for reaching policy conclusions.
Only when a decision to invest abroad has already been made can it be observed that the choice of a country for investment is influenced by incentives, and thus investments are located in the jurisdiction with better incentives.\(^1\)

There are indications that the more complex the incentives and the more frequently incentives are altered, the less effective they become.\(^2\) Therefore, a multinational agreement to limit the offsetting effect of incentives would benefit host developing countries.\(^3\) At the same time heavy-handed bureaucracy and administrative procedures are major discouragements to investment, and consequently "efforts to adapt and streamline these may do more to facilitate such investment than moderate improvements in tax and other incentives."\(^4\) Korea is a good example of a country that has succeeded in creating "one stop" service centers for potential foreign investors to assist them in all administrative procedures and legal referrals.\(^5\) Another example is Taiwan with its development zones.\(^6\)

Tax incentives are by no means the invention of developing countries. Indeed, many developed countries use tax incentives to encourage certain economic activities. Tax concessions for many purposes are still used by most developed countries,\(^7\) including incentive for investments in developing countries.\(^8\)

An Israeli study conducted in 1973—based on an empirical study of companies and foreign investors in Israel—determined that the incentives that

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1. FOREIGN PRIVATE INVESTMENT IN DEVELOPING COUNTRIES 16-17 (International Monetary Fund Occasional Paper No. 33, 1985) [hereinafter IMF].
2. Id. at 17.
3. Id. Several such agreements on a regional basis have been concluded in several common markets, including the Andean Common Market and Caricon, Caribbean Community, but none were concluded on a larger scale.
4. Id. It has been reported by other studies as well. For an Israeli study, see infra notes 9-22 and accompanying text.
5. IMF, supra note 1, at 17.
6. Infra note 178 and accompanying text.
8. R. ANTOINE, TAX INCENTIVES FOR PRIVATE INVESTMENTS IN DEVELOPING COUNTRIES (1979) [hereinafter TAX INCENTIVES]. At one time or another the United States, West Germany, France and Japan had provisions to this effect. Regarding Japan, see TAX INCENTIVES, supra note 8, at 113; Jehle, Incentives of Industrialized Countries for Private Undertakings in Developing Countries, 36 BULL. INT'L FIS. Doc. 120 (1982). The United States tax relief for exports was well known: the famous DISC provision and its successor Foreign Sales Corporation (FSC). In fact there are built-in incentives to foreign investments in the Internal Revenue Code of 1954, such as the U.S. tax deferral of the earnings of foreign subsidiaries until they are remitted to the United States. This deferral has survived the 1986 U.S. Tax Reform. Another more specific incentive is the one with respect to Puerto Rico. See Brannon & Fuster, Tax Reform and the Puerto Rico Incentives, 29 TAX NOTES 972 (1985).
most influenced the initial decision by investors of whether to invest in Israel were grants, export incentives, and the right to withdraw profits.\textsuperscript{9}

The study found that tax incentives encouraged the distribution of dividends and not the reinvestment of profits, while reinvestment was attained by direct financial support.\textsuperscript{10} Even subsidized loans were found to create a misallocation of national resources.\textsuperscript{11} The study also found that industrial investments depended on a generally favorable economic and tax regime.\textsuperscript{12} Specific goals, such as increased exports or investments in development areas, could be reached by governmental incentives, and even then direct subsidies should be used.\textsuperscript{13}

Consequently, the study recommended direct financial support at the initial stage of the investment, guaranties for future repatriation of profits, and the elimination of tax concessions.\textsuperscript{14} Money saved by the taxes to be collected should be used for the support of industry in general.\textsuperscript{15} Additionally, no relationship between tax concessions and national development was found, and it was determined that tax incentives do not attract investors.\textsuperscript{16} Nevertheless, tax incentives could be used in later stages to encourage the reinvestment of profits.\textsuperscript{17}

Tax incentives were also found to be an ineffective means for developing development areas in Israel.\textsuperscript{18} The establishment of real industry in such areas is a continuous process, and exemption from taxes for a limited period of time is relatively ineffective, whereas the general development of such areas including all necessary infrastructure is most important.

The study did not recommend or encourage import substitutes except for general indiscriminate support for local manufacturing.\textsuperscript{19} The study justified incentives for limited, well-defined purposes, such as for exports, but even then suggested that a direct subsidy for the value added resulting from exports should be employed.\textsuperscript{20} Thus, the study recommended, special direct incentives to development areas, including the creation of infrastructure, the reduction of costs

\textsuperscript{9} Policy of Encouragement of Local and Foreign Capital Investments for the Development of Israeli Industry, in WORLD INSTITUTE (1974) [hereinafter WORLD INSTITUTE].

\textsuperscript{10} Id. at 10.

\textsuperscript{11} Id. at 12. For example, unjustified capital investments, from an economic viewpoint, would be made but for the subsidized loans. In fact, Israel in recent years has ceased to rely on such means.

\textsuperscript{12} Id. at 13-14. For similar findings by an Irish commission, see infra text accompanying note 30.

\textsuperscript{13} WORLD INSTITUTE, supra note 9, at 13.

\textsuperscript{14} Id. at 15.

\textsuperscript{15} Id.

\textsuperscript{16} Id.

\textsuperscript{17} Id.

\textsuperscript{18} WORLD INSTITUTE, supra note 9, at 16.

\textsuperscript{19} Id.

\textsuperscript{20} Id at 18. The problem is, in our opinion, that such subsidies might run afoul of Israel's obligations under international trade treaties, notably the free trade area agreements with the EEC and with the United States.

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of raw materials, reduction of the risks to investors by the creation of basic services, investment grants, the supply of subsidized manufacturing buildings, and reduction of employment taxes.\textsuperscript{21}

With respect to foreign investors, the study recommended the improvement of administrative procedures, the convertibility and withdrawal of the capital investment and annual profits,\textsuperscript{22} and other means that relate to general hospitality towards foreign investors.

In 1985 U.S. authorities conducted a more recent study of American corporate investors in Israel, including those that considered investing there.\textsuperscript{23} The study was based on an informal but quite detailed questionnaire on the Israeli investment climate. Two-thirds of the firms that received some form of governmental incentives indicated that the incentives were an important secondary factor in their decision to invest in Israel, but several firms, particularly the more established ones, indicated that incentives were actually counterproductive in the long run, and led to unproductive and unsustainable investments. The investors emphasized the need for a major general economic reform rather than any incentive program. Tax incentives were not regarded as being of any major importance for the investors, except for the need for protection against the taxation of inflationary profits.\textsuperscript{24}

B. PREFERENCE TO FOREIGN INVESTMENTS

In this author’s opinion, countries in general and developing countries in particular can justify for various economic and social reasons legislation that grants tax incentives to desired investments. The main policy question is how to choose the most effective incentives.

In many instances there is no need to grant foreign investors special incentives that are not available to local investors. Tax preferences available only to foreign investors badly hurt tax equity. If incentives are justified in order to encourage economic activities, such incentives should be granted to local and foreign investors alike. Foreign investors may need a solution to certain nontax problems, such as rights of repatriation and convertibility of profits and original investments, various insurance plans to reduce the political risks associated with direct foreign investments, and lesser dependence on governmental bureaucracy and better administrative procedures.\textsuperscript{25}

\begin{itemize}
\item \textsuperscript{21} Id. at 19.
\item \textsuperscript{22} Id. at 20. Indeed, Israeli law already provides for such rights.
\item \textsuperscript{23} Unpublished report, on file at the Israeli Ministry of Treasury.
\item \textsuperscript{24} First, since 1986 the inflation rate in Israel has gone down dramatically and second, since 1982 there is a law which generally assures that inflationary profits would not be subject to ordinary tax. Most foreign investors may also elect to conduct their books of account in foreign currency instead of the Israeli shekal. Tax Ordinance § 130A(c) and the regulations thereunder.
\item \textsuperscript{25} For an Israeli study, see WORLD INSTITUTE, supra note 9, and specifically, supra notes 14, 20, 22 and accompanying text. The IRISH COMMISSION ON TAXATION, DIRECT TAXATION—THE ROLE OF
\end{itemize}
however, foreign investors should not be entitled to special tax or even nontax incentives.

In the tax area the removal of discriminatory provisions and attitudes is needed. For example, a foreign investor should be allowed to deduct all true business expenses of the local branch or subsidiary. The withholding tax, without a bilateral tax treaty, should conform to the common withholding tax rate of developed countries, the countries of the investors, and is therefore in the 25 percent range. Because the withholding tax is on the gross income, the tax agents should have authority to reduce it upon proper proof of the costs involved by the foreign investor, as is the Israeli law under section 170 of the Income Tax Ordinance.

Consequently, incentives such as investment grants and loans should be made available to local and foreign approved investors alike. Both of them answer the national, social, or economic need, while a distinction between the two groups might present an unjustified discrimination.

C. Justification of Incentives in General

In most cases desirable incentives should be used to reduce risk to investors. For this purpose, reasonable governmental financial assistance is most effective. As has already been noted, sometimes subsidies should be granted to a broader aspect of the local economy for the creation of the necessary infrastructure or the proper training of local manpower. Direct subsidies to enhance exports, including the waiver of customs, indirect taxes (VAT or other purchase, sale and turnover taxes) are efficient means if granted to export industries. Such incentives are particularly justified in developing countries. Various international trade agreements prohibit them, however, and do not always include exceptions for developing countries and particularly for pioneering industries.

The general incentive programs in many countries can be debated. Only when such a program is justified does the need arise to resolve the policy question of whether tax incentives, and particularly income tax incentives (including corporate tax incentives), should be used. Although general incentives are beyond the scope of this study, tax incentives are discussed in the following surveyed countries as a part of the general incentive program, and they deserve a few comments.

Some studies do not justify the entire incentive program. They recommend the removal of many obstacles to investments at the outset rather than the grant

INCENTIVES (1984) [hereinafter IRISH COMMISSION] makes similar findings; see infra notes 86-88 and accompanying text.

26. E.g., WORLD INSTITUTE, supra note 9, at 20.
27. Id. at 5.
of direct or tax incentives. The recommendations include granting equal
treatment to local and foreign investments in all areas29 or the freedom to return
the capital investment and profits in the currency of the investors, which is
assured today by many developing countries as surveyed below. The presence of
heavy-handed governmental bureaucratic and administrative procedures also
plays an important role in the decisions of foreign investors from countries with
more efficient bureaucracies.

Studies show that investments depend on a generally favorable economic and
tax regime. As the Irish Commission stated:

The level and pattern of economic activity is affected much more by the general
economic policy of the government than by any set of specific measures labelled
"incentives." Government decisions about public expenditure, the overall level of
taxation, money supply, interest rates, the pricing policies of state-sponsored bodies,
income policy and the exchange rate have more fundamental effects on economic
growth than any tax or other incentives which may be provided. If general economic
policies create a climate that is unfavorable to economic expansion, incentives to
compensate cannot provide a long-term solution. The double distortion created merely
delays efforts to solve the underlying problems.30

Therefore, most incentive programs have a limited role in promoting economic
growth compared to generally favorable economic programs.31 A stable and
more favorable economic regime, including a good tax system with overall
reasonable tax rates, is more attractive to investors than a hostile general
environment "mitigated by numerous incentives."32 Most important of all,
therefore, is a national socioeconomic and stable political regime that is
conducive to private business, a developed infrastructure, and general financial
and all investment-related
services.33

Incentives are justified only on the very limited grounds that the market clearly
fails to achieve a desirable allocation of resources, such as the case of pioneering
or infant industries,34 or a special export relief if and to the extent it is permitted
under international agreements.35 In this context incentives should not be
complex and, unless necessary due to changes in the general national socioeco-
nomic laws and policies, should be stable without frequent changes.

29. A few exceptions could be justified because of national security reasons or the protection of
local pioneering industries. A different policy question is the limitation of right to enter to do
business as joint ventures of local and foreign investors or the limitation of incentives to such joint
ventures.
30. See IRISH COMMISSION, supra note 25, at 17. For similar findings by the 1985 Israeli study, see
supra note 23 and accompanying text.
31. Id.
32. IRISH COMMISSION, supra note 25, at 18. The Israeli study comes to the same conclusions; see
WORLD INSTITUTE, supra note 9, at 13-14.
33. Taiwan is a good example of such a country. The Israeli study makes the same
recommendation. See supra note 21 and accompanying text.
34. IRISH COMMISSION, supra note 25, at 19.
35. See infra note 89 and accompanying text. In other policy areas, incentives may be required
to offset shortcomings of world exchange rates. IRISH COMMISSION, supra note 25, at 19.
On occasion incentives are undoubtedly required to match those offered by competing host countries in order to attract desirable mobile capital investment. Nevertheless, if an investment in a developing country would be made anyway, then most of such concessions are a mere national waste and should be avoided if a proper multinational agreement is signed and observed.

Direct governmental subsidies when justified should be administered not by governmental offices, but by a private governmental credit institution. Such institutions are more efficient for these purposes.

D. TAX INCENTIVES VIS-À-VIS DIRECT SUBSIDIES

Within the above limited scope of justified incentive programs for the stimulation of investment are tax incentives appropriate? The question of tax incentives has been debated for years. The first policy question is whether direct nontax support is a more measurable and efficient means to achieve government goals. The late Professor Surrey was a known supporter of the nontax means, i.e., direct governmental expenditures. Surrey suggested itemizing all tax incentives in the national budget so that national legislatures could compare them to nontax expenditures. This author is also of the opinion that ignorance of such proper comparison distorts efficiency and proper budgetary decisions.

In the international scene many studies have shown that tax concessions to foreign investors were not decisive factors in direct foreign investment decisions. Thus, tax incentives are inefficient, ineffective, and expensive. Although other studies have shown that tax incentives have a positive impact on foreign investors in some cases, there is no proof that the tax incentives are the most efficient means of attracting foreign investors. In many instances tax

36. See supra note 1 and accompanying text; Irish Commission, supra note 25, at 50, 51.
37. See supra note 3 and accompanying text.
38. Galeson, supra note 28, at 37. This is now Israeli practice with respect to investment loans.
40. For a survey of many studies, see Yelapa, The Efficacy of Tax Incentives within the Framework of the Neoclassical Theory of Foreign Direct Investment: A Legislative Policy Analysis, 19 Tex. Int'l L.J. 365, 401 (1984). For studies in particular countries that conform the general theoretical and empirical studies, see, for Israel, World Institute, supra note 9, and supra note 8-16 and accompanying text; see, for Ireland, Irish Commission, supra note 25, at 19 (no proof against tax incentives but direct aids were preferred; tax concessions cannot be measured); Galeson, supra note 28, at 38-39.
incentives have more of a psychological appeal to potential investors.\textsuperscript{43} Therefore, the effect of tax incentives on the initial decision to invest is secondary and very difficult to substantiate, but within their limitations they cannot be ignored.\textsuperscript{44} Thus only a limited justification for tax incentives exists even in the initial decision to invest.

A distinction should be made, however, between the initial decision to invest and later decisions of reinvestment on the reinvestment of profits already made. For the initial decision, tax incentives are less effective. One interesting method is to have tax incentives as an optional alternative route to investors, thus meeting the above limited support of tax incentives. A move along this line was recently introduced in Israel\textsuperscript{45} and has been offered in Greece.\textsuperscript{46}

Tax incentives are more acceptable in high-tax host countries. In such developing countries the reduction of tax rates for approved investments to the level existing in the home developed countries is more acceptable. If such reduction is done across the board as a part of comprehensive tax reform, it reduces the need for further reductions for more desirable investments.\textsuperscript{47}

Higher taxes of host countries might not be enforced or might instead present a strong inducement to international investors to employ various disguised methods in order to evade taxes of the host country. Such methods would typically be by means of manipulating the transfer prices in intercompany sales transactions, service transactions (i.e., charging too high management fees or share of overhead costs), intercompany rentals, loans, and the like. Though legislatures and tax enforcement agencies do not sit idle in light of such devices, it is hard enough to cope with them in developed countries, and almost impossible in developing countries.\textsuperscript{48}

Furthermore, tax concessions might result in a shift of revenues to the home country of the investor. The taxes that are forgone by host countries might be collected in certain cases by home countries, which might tax such foreign source income, usually upon distribution of dividends (or even prior to it in cases of foreign branches), up to their level of taxation with foreign tax credit for the foreign taxes paid. Such concessions would still be effective when double taxation treaties exist between the two relevant countries under which the home country allows tax credit against local taxes payable. It is even wise for host countries to tax foreign investors up to the tax credits available in the home country. Local taxes payable are not only those that were actually paid, but also

\textsuperscript{43} The Irish Commission thus observed: "The attraction of tax reliefs may be due partly to the attitudes of businessmen to state intervention. Grants or other direct aids suggest a degree of state intervention, whereas, tax reliefs do not." \textit{Irish Commission}, \textit{ supra} note 25, at 63.

\textsuperscript{44} \textit{Id.} at 19.

\textsuperscript{45} \textit{Infra} note 76 and accompanying text.

\textsuperscript{46} \textit{Infra} note 119 and accompanying text.

\textsuperscript{47} \textit{See} \textit{Irish Commission}, \textit{ supra} note 25, at 62.

\textsuperscript{48} \textit{E.g.}, \textsc{I.R.C.} § 482 (1954) and the Regulations thereunder.
those that would have been payable but for the exemption or reduction of taxes, granted under local investment laws.\footnote{49}

Tax concessions have a greater influence on decisions to reinvest the profits, particularly when the distribution of profits to shareholders would result in a loss of incentives. Thus, it is no surprise that there is more support among scholars that tax rate differentials affect the repatriation of subsidiary profits to parent corporations.\footnote{50} "Earning flows are responsive to tax incentives."\footnote{51} For example, if taxes waived to local subsidiaries by the host country were paid to the home country when dividends are paid to the home country, such dividends would be avoided.

Accelerated depreciation or write-offs of investments in assets tend to increase such reinvestments and therefore are more justified for certain desirable sectors of the local economy. Obviously, the same questions of efficacy of such incentives vis-à-vis direct subsidies remain in this context too.

In addition it should be admitted, from a more pragmatic point of view, that it is easier for host countries with large budgetary deficits to sacrifice potential future tax revenues to present out-of-pocket expenditures, even if such an attitude is economically wrong (if it is less efficient and too costly compared to more direct methods). Moreover, in instances of business failures no governmental money is lost if tax incentives are used instead of direct grants.\footnote{52}

Differential tax rates therefore do not appear to play a significant role in the initial movement of international capital in direct foreign investment by multinational enterprises.\footnote{53} Tax incentives increase the after-tax rate of return of an investment. If the investment is made anyway, and particularly if it is made due to rich direct subsidies, when the investment becomes profitable it can afford to pay taxes on the taxable income.

\footnote{49} Such provisions in tax treaties are commonly known as "tax sparing" provisions. E.g., Convention Between the Government of the U.K. of Great Britain and Northern Ireland and the Government of Israel for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 13 Kitvey Amana 551, amended by 22 Kitvey Amana 125, art. 18.

The United States is a long time opponent to tax sparing clauses in tax treaties; consequently, she has failed to enter into tax treaties with most developing countries. In a recent treaty with China, the United States assures China that she would add such clause if she later grants it to any other country. See Kelly, A Comparative Analysis of the United States—People's Republic of China Tax Treaty: United States Tax Treaty Policy Concerning Developing Countries, 13 SYRACUSE J. INT'L & COM. 83, 121 (1986).


\footnote{51} Mutto, supra note 50, at 247. This is in accordance with the World Institute Study on Israel, supra note 9, at 15.

\footnote{52} See also IRISH COMMISSION, supra note 25, at 62.

\footnote{53} Yelpaala, supra note 40, at 413.
II. Investment Incentives in Selected Developing Countries

This article describes the existing investment incentives in seven countries located in different continents as a reference guide. The analysis of Israeli law is made in light of the above policy discussion. The other countries surveyed are: Ireland, Greece, Taiwan, Mexico, Egypt and Nigeria.

A. ISRAEL

1. Investment Incentives Not Related to Income Tax

Israel has enacted several statutes to encourage desired investments. Most important is the Israeli Law for the Encouragement of Capital Investments of 1959 (as amended) (the Law). The Law is intended to attract capital to Israel, to encourage free enterprise, and to encourage foreign and local capital for three purposes:

   (1) To develop the production capacity of the country, the efficient use of its resources, and of existing plants;
   (2) To improve the balance of payments of the country; and
   (3) To absorb immigrants into the work force, better spread the population in the country, and create new jobs.

The Law created the Investment Center, which awards “Approved Enterprise” status to investment projects entitled to the maximum benefits.

Approved Enterprises receive grants and loans to finance a major portion of the costs of the projects (and are entitled to various tax incentives to be discussed below). Approved Enterprise status is awarded to projects that are economically viable, according to economic review by the Industrial Development Bank and by experts of the Ministry of Industry and Trade, and that are expected to contribute to Israel’s balance of payments, to employment, and to the development of the area of investment.

Various incentives are afforded to exporters, including the refund of custom duties paid on their inputs, subsidized loans, exchange rate insurance, and insurance of foreign political trade risks. Outside such incentives one should bear in mind the unique agreements for a free trade area between Israel and both the European Economic Community (EEC) and the United States under which Israeli-sourced products will be exported fully or partially tax-free. Thus, for

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54. Sefar Hahukkim, Book of Statutes 234 (1959, as amended through 1989) [hereinafter The Law].

55. The Law § 1. There is also a special new law for Development Settlements, which is not yet operative. It should be noted that the whole investment incentive program is under study by the Government, and new incentives are expected to be enacted in the near future. Among the various proposals under current study are: new tax incentives to multinational enterprises with headquarters or permanent establishment in Israel; incentives to the establishment of big foreign funds for investment in the Israeli economy; Israeli mutual funds for foreign investments in Israel; and the creation of special enterprise zones.

56. There are several other types of approvals which grant fewer benefits.
example, a U.S. corporation may export its semifinished goods to Israel tax-free for the purpose of further processing in Israel by its Israeli subsidiary and then reexport the final products tax-free to the EEC countries.

Approved Enterprise status is also extended to "Agriculture Enterprises." Such enterprises are entitled to incentives under the Law for the Encouragement of Capital Investments in Agriculture.

All exports are subject to a zero tax rate for Value Added Tax (VAT) purposes. As a result, there is no VAT and all VAT previously imposed on the inputs is being refunded. For VAT no distinction is made between foreign and domestically owned enterprises.

2. Investment Grants

Investment grants are intended primarily to encourage investments in development areas such as the Galilee in the North, the Negev in the South, and to investments in advanced industries in Jerusalem. The Minister of the Treasury is now prepared to expand it to other areas.

The grants finance the investment in fixed assets according to territorial location. The grants are based on the costs of the assets including industrial buildings,\(^5\) costs of land development for plants,\(^5\)\(^8\) the cost for building improvements,\(^5\)\(^9\) or the costs of leased equipment.\(^6\)\(^0\) The grants cover up to almost 40 percent of new investments in Development Zone A and up to over 20 percent in Development Zone B.\(^6\)\(^1\) Grants can also be accorded to special corporations that lease equipment to industrial enterprises and to industrial buildings, as defined by law.\(^6\)\(^2\) The tourism industry is also entitled to investment grants under the Law.\(^6\)\(^3\)

Recipients of grants must supply proper guarantees in case they are asked to return them,\(^6\)\(^4\) which will occur if the investor does not meet the conditions of the law and of the authorized investment plan.\(^6\)\(^5\) There is also a requirement for a minimal paid up capital share for the approved enterprises.\(^6\)\(^6\)

3. Investment Loans

Approved Enterprises are entitled to loans equal to 30 percent of the investments eligible for grants. The loans are given through industrial banks at

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57. The Law, supra note 54, § 40C(a)(1)(a).
58. The Law, supra note 54, § 40C(a)(1)(b).
59. The Law, supra note 54, § 40C(a)(1)(c), (d).
60. The Law, supra note 54, § 40C(a)(1)(e).
61. For Investment Grants, see The Law, supra note 54, § 1. The remainder consist of budgetary grants, which have replaced the subsidized loans that were available before. In case of expansion of existing enterprises, the grant in Zone A is little over 35 percent, and in Zone B is 20.5 percent. Until recently, small grants were offered in Zone C as well.
62. The Law, supra note 54, § 40A.
63. The Law, supra note 54, § 2 (supp.).
64. The Law, supra note 54, § 40G.
65. The Law, supra note 54, § 75B.
66. The Law, supra note 54, § 40C(a)(2); see also §§ 40C(a) & 75B(a).
their own risk and upon economic terms as agreed upon between the bank and the investor.

4. Tax Incentives

Since 1987 the standard corporate tax rate has been 45 percent. Distributions to shareholders are subject to up to a 25 percent tax on the distributed amounts. Due to various statutory provisions the combined tax rate of a corporation and its shareholders can be up to 55 percent.\(^6^7\) By comparison, Approved Enterprises are subject only to a 25 percent corporate tax rate instead of the normal 45 percent rate.\(^6^8\) Dividends are subject to a 15 percent tax instead of up to a 25 percent tax.\(^6^9\) Thus the combined corporate and shareholders’ rate is 36.25 percent.

Tax incentives to Approved Enterprises are for a seven-year period (period of eligibility), starting from the first year of taxable income, provided that fourteen years from the approval of the investment plan or twelve years from the beginning of production or of the functioning of the plant have not elapsed.\(^7^0\) The period of eligibility can be extended for pioneering enterprises.\(^7^1\) Additional periods of tax reductions can be granted when additional investments are approved after the above initial period of tax concessions expires. Such additional concessions are in respect of income derived from the additional investment.

The Law contains further tax concessions such as accelerated depreciation allowances;\(^7^2\) limited to 25 percent on income from Approved Investments,\(^7^3\) 25 percent maximum tax on the income of Approved Exports,\(^7^4\) and special tax rates for Approved Assets, which are rented premises under the conditions of the Law.\(^7^5\)

As of April 1, 1986, an alternative scheme for owners of Approved Enterprises has been available. First, Approved Enterprises that elect to waive the receipt of the Investment Grant, are entitled to the following tax concessions: **Complete tax exemption** for ten years in Development Zone A; six years in

\(^{67}\) Income Tax Ordinance §§ 125B-127 (1944-1947; new version, Israeli Laws No. 6, 1962). In 1989 a bill was submitted that proposes to lower the corporate tax rate to 40 percent gradually until 1992. The combined corporation and shareholder rate would be changed too if the bill becomes law. Proposed Income Tax Ordinance No. 80 of 1989.

\(^{68}\) The Law, supra note 54, § 47(a) (for enterprises approved after July 30, 1978).

\(^{69}\) The Law, supra note 54, § 47(b)(2).

\(^{70}\) The Law, supra note 54, § 45.

\(^{71}\) Id.

\(^{72}\) The Law, supra note 54, §§ 42, 43.

\(^{73}\) The Law, supra note 54, § 46.

\(^{74}\) The Law, supra note 54, § 50.

\(^{75}\) The Law, supra 54, §§ 53A-53D (those are certain rented properties). In general, tax concessions to non-zone A or B enterprises are conditioned on exporting at least 25 percent of their turnover. Recently, however, the legality of such condition is doubtful due to Israel’s international obligations.
Development Zone B with standard tax incentives for the seventh year; and two years in other areas with five additional years of standard tax incentives.\textsuperscript{76} Second, dividends, if distributed from tax free income, are subject to a surtax in addition to the 15 percent tax on dividends of Approved Enterprises.\textsuperscript{77} Such an alternative course of incentives gives an investor the option to choose the more suitable incentive for its investment, and is designed to encourage investors to retain earnings in the firm. This course is attractive for enterprises that anticipate a quick return of earnings on their investments, where the amounts invested are relatively low, and the enterprise plans to reinvest the profits.

5. Additional Tax Incentives for Foreign Investors

Approved Israeli Enterprises, fully or partially owned by foreign investors, are entitled to the following additional concessions, added recently to the Law, depending on the "foreign contents" of the investments:\textsuperscript{78}

\begin{center}
\begin{tabular}{|c|c|}
\hline
Percentage of Foreign Capital in the & Corporate Tax Rate \\
Approved Enterprise & \\
\hline
49 - 73 & 20\% \\
74 - 89 & 15\% \\
90 - 100 & 10\% \\
\hline
\end{tabular}
\end{center}

Consequently, foreign investors in Approved Israeli Enterprises are subject to as low as a 10 percent corporate tax, with an additional low tax rate of 15 percent on dividends from any Approved Enterprise, when and if such dividends are distributed. Approved Investments, with at least 25 percent foreign capital, may be granted an additional five year eligibility period for tax concessions.\textsuperscript{79} Foreign recipients of dividends from Approved Enterprises are exempted from any Israeli tax other than the 15 percent withholding tax on dividends.\textsuperscript{80} Furthermore, most foreign recipients are exempted from filing annual Israeli tax returns.\textsuperscript{81}

6. Law for Encouragement of Industrial Research and Development

In 1984 Israel enacted a special law to encourage industrial research and development (R&D) for: (i) development of science based industries; (ii) improvement of Israel's balance of payments by virtue of export products

\textsuperscript{76} The Law, supra note 54, § 51 (as amended 1987), Sefer Hahukkim No. 1214, at 116.
\textsuperscript{77} The Law, supra note 54, § 51(c). The surtax is at the rate of 25 percent tax of approved enterprises, or the reduced 10-20 percent. The Law, supra note 54, § 47(A1); see also infra note 78 and accompanying text.
\textsuperscript{78} The Law, supra note 54, § 47(A1) (as amended by the Tax Ordinance).
\textsuperscript{79} The Law, supra note 54, § 45(a)(3).
\textsuperscript{80} The Law, supra note 54, § 48.
\textsuperscript{81} Income Tax Regulations, Exemption from Filing a Tax Return, § 5.
manufactured as a result of R&D or of local products substituting for imports; and (iii) creation of new jobs for scientists and technological manpower.82

The law gives generous grants and loans of at least 50 percent of their costs to approved R&D plants.83 Generally, the law does not grant additional tax concessions to firms conducting approved R&D except for the reduction of the marginal tax rates for scientists who derive income from an approved R&D plan. The reduction is up to 35 percent84 instead of the normal rate of up to 48 percent.85 The firm itself may qualify first as an Approved Enterprise under the Law for Encouragement of Capital Investments, as was explained above, and later for R&D grants under the new law. In general, the R&D encouragement law makes no distinction between local and foreign investors.

B. IRELAND

Ireland, an English-speaking country with a stable regime, has the advantage of being a member of the EEC in close vicinity to the United Kingdom and the Continent. Yet Ireland offers plenty of concessions and subsidies to investors in general, and to foreign investors in particular, and thus has created a special atmosphere favorable to the attraction of foreign investments.

1. Tax Concessions

Companies that manufacture goods within Ireland are subject to a 10 percent corporate tax rate86 instead of the much higher regular rate87 by virtue of the Manufacturing Companies Relief. This manufacturing relief is available to both export and local sales and replaces the prior export relief of the Finance Act of 1956.88 That export relief proved to be a very efficient and attractive tax

83. Id. § 28. Recently grants were increased to 60 percent under the conditions of the regulations, 1989 Regulations No. 5220 of Sept. 21, 1989.
84. R&D Law, supra note 82, § 34.
87. The rate was increased in 1982 to 50 percent. Finance Act, sched. 2 (Ir. 1982). G. SAUNDERS & E. HARVEY, TOLLEY'S TAXATION IN THE REPUBLIC OF IRELAND 1986-87, at 66 (1986). Section 41(2) reads in part, "Where a company which carries on a trade which consists of or includes the manufacture of goods . . . the income from the sale of those goods shall be reduced by [four fifths] . . . ." The Taxes Acts (Stationary Office, Dublin). The Minister of Finance announced in his 1988 budget speech that the standard corporate rate would be phased down 50 percent to 43 percent, and a tax free repatriation of foreign dividends by Irish companies allowed. 22 Tax News Serv. (Int'l Bur. Fis. Doc.) 50 (1988).
88. For the prior law see Fanning, supra note 86, at 605; Irish Commission, supra note 25, app. 5, at 181-183. The exemption is available until December 31, 1990.
incentive and was abolished only due to the EEC prohibition on state aid to
exports, unless it is equally applied to local markets as well.\textsuperscript{89} The Finance Bill
of 1987 extended the 10 percent tax to a qualified shipping trade and to the
so-called "trading houses," which actually are wholesalers for the export of
locally manufactured goods.\textsuperscript{90} This action is connected to the plan to make
Dublin a center for international financial services, which will also enjoy tax
relief.\textsuperscript{91} Already in 1986, the relief was extended to R&D companies.\textsuperscript{92}

Under prior law additional tax concessions were available to investors in the large
industrial area of Shannon. The Finance Bill of 1980 extended the 10 percent
corporate tax to certain service activities in this area.\textsuperscript{93} The Shannon relief was
enacted to promote the use of the Shannon Airport as an industrial and service center
with increased air traffic through the port.\textsuperscript{94} The relief was offered to companies that
started operations before January 1, 1981, and will be phasing out by April 5, 1990.\textsuperscript{95}

The reduced tax on manufacturing profits is due to expire at the end of the year
2000.\textsuperscript{96} The Irish Commission recommended against renewing it and would
rather subject manufacturing income to the normal rate of taxation.\textsuperscript{97} Nonresi-
dents may repatriate dividends and other income from their investment\textsuperscript{98} and
there is no withholding tax on dividends.\textsuperscript{99}

2. Other Incentives

Irish law includes special lending and lease financing provisions in addition to
special grants to investors.\textsuperscript{100} The lease financing through financial institutions is
most favored by foreign investors because it reduces their costs.\textsuperscript{101}

Ireland offers various grants to eligible industrial enterprises such as capital
grants of 45 to 60 percent of the cost of the fixed assets of the investment
(depending mainly on the area of the investment), which includes leased

\textsuperscript{89} IRISH COMMISSION, supra note 25, app. 5, at 181-83. Interestingly, that was an observation of
the commission, which generally opposed tax incentives.

\textsuperscript{90} World Tax Report, Fin. Times, June 1987, at 5.

\textsuperscript{91} 21 Tax News Serv. (Int'l Bur. Fis. Doc.) 102 (May 1987); MacGowan, Ireland—Funds


\textsuperscript{93} Fanning, supra note 86, at 602-05.

\textsuperscript{94} IRISH COMMISSION, supra note 25, at 71-72.

\textsuperscript{95} Id. After 1990 it is expected to be replaced by 10 percent tax. 22 Tax News Serv. (Int'l Bur.

\textsuperscript{96} Id. at 74.

\textsuperscript{97} Id.

\textsuperscript{98} For necessary procedures, see Fanning, supra note 86, at 619.

\textsuperscript{99} Id. at 595; Crowley & McGowan, supra note 86, at 638. However, prior to April 6, 1986, the
benefit of the 10 percent corporate tax was not passed to the individual shareholder, and it was only the
Finance Act of 1986 which introduced an exclusion of 50 percent of the dividends in the hands of the

\textsuperscript{100} Fanning, supra note 86, at 624 (despite some changes introduced by the 1984 Finance Act).

\textsuperscript{101} Id. at 613. Such techniques were somewhat restricted in 1984.
equipment. Also available are rent subsidies, training grants, research and development grants, subsidized loans, loan guarantees, grants to service industries assisting manufacturers, and grants to international service firms.

C. The Republic of Greece

The Greek Government believes in allowing foreign investors to conduct trade freely and profitably, while offering proper incentives as a means to further economic development. The influx of foreign capital is encouraged as a counterbalance to the traditional outflow that has hampered Greek economic development in the past and a stimulant to advanced technology, management, and marketing skills. As a further incentive to economic development Greece has been a full member of the EEC since January 1, 1981, having been an associate member since 1962.

1. Investment Incentives to Productive Investments

A 1982 law provides for incentives to any project that meets the criteria for "productive investment." Productive investments are those that promote national production or contribute to the economic development of Greece, in specified categories. Enterprises eligible for investment incentives are referred to as Eligible Enterprises and include concerns in the sectors of manufacturing and construction, farming and fishing, shipbuilding and repairs, and hotels, mining, forestry, or energy saving.

102. Id. at 576-77.
103. Id. at 579.
104. Id. at 580.
105. Id. at 582.
106. Id.
107. Id. at 583.
108. Id. at 583-84 (e.g., engineering firms).
109. Id. at 585.
111. Id.
115. Touche Ross, supra note 112, at 3; Tax Portfolio, supra note 112, at A.45.
The 1982 law divides the country into four zones according to their developments, and the size of tax incentives varies accordingly. The investment incentives include grants and interest subsidized loans on one hand and tax incentives consisting of tax-free reserves and accelerated depreciation on the other. The exact size of the grant varies depending on various socioeconomic factors, including export- or import-substitution prospects or employment promotion.

2. Tax Incentives to Productive Investments

a. Tax-Free Reserves

Such reserves are an alternative to grants or subsidized loans. Enterprises in several zones are allowed to create tax-free reserves, which are tax-deductible, provided that they make the new productive investments prior to the end of 1992. Tax-free reserves are a proportionate share of a firm's investment costs and undistributed income after transfers to allowed reserves. They are up to 25 percent, or up to 35 percent in a high technology industry.

b. Accelerated Depreciation

Enterprises in manufacturing, craft, mining, or hotel sectors that make new productive investments until the end of 1992 are allowed accelerated depreciation on fixed assets depending on their location and the number of shifts operated.

3. Other Incentives and Guarantees

Four types of investment incentives remained in effect after the 1982 Law was passed.

a. Law 2687/1953

This law provided for guaranteed approved foreign productive investments that save foreign currency, the terms of their original approval, including guarantees against expropriation of assets owned by the foreign investor, repatriation...
rights and convertibility of capital, dividends, interests, and rents, full or partial exemption of custom duties and tax concessions for such enterprises as exporting and mining. These include assurances against an increase in tax rates for ten years, against retroactive taxation, and to retain local taxes concessions.\textsuperscript{125}

b. Offshore Companies

Foreign trading, engineering, and shipping companies unconnected with the Greek domestic market are entitled to ask for additional favorable treatment from the Ministry of Coordination.\textsuperscript{126} Approved Enterprises are exempted from paying import taxes and duties for machinery and equipment and from paying income taxes on income earned abroad. All these advantages are given to firms employing Greek nationals as 80 percent of their total work force and 60 percent of any particular category.\textsuperscript{127} The enterprises are fully exempted from income taxes for a period of ten years after the first year of operation.

c. Large Investments

Any new investment exceeding 150 million drachmas, or any expansion of an existing investment of over 50 million drachmas, is eligible for tax incentives and other concessions if it is considered stimulating to national production, employment, or export. Investments thus approved are exempt from all taxes, duties, and fees on machinery, accessories, instruments for research, and building equipment.\textsuperscript{128} Tax rates on undistributed income may be frozen for up to ten years until all long-term debts have been paid, and municipal taxes may be frozen for the same period.\textsuperscript{129} Large investments in harbor facilities may be freely used without charge until full depreciation of the amount paid for the construction has been amortized.\textsuperscript{130} They also may be granted the free use of coastal front land for up to fifteen years.\textsuperscript{131} Whenever an investment exceeds 500 million drachmas the investor may enter into a special contractual agreement with the government.\textsuperscript{132}

d. Repatriation of Capital

Importation of investment capital is unrestricted by Greek law,\textsuperscript{133} but its repatriation is limited by the Ministry of Coordination.\textsuperscript{134} This is known as the

\textsuperscript{125} L.D. 2687/1953, art. 8, secs. 1 & 5; Touche Ross, \textit{supra} note 112, at 8; Tax Portfolio, \textit{supra} note 112, at A-51.
\textsuperscript{129} Law 4171/1961, \textit{as amended}.
\textsuperscript{130} Id. art. 3.
\textsuperscript{131} Id.
\textsuperscript{132} Id.; Dempsey, \textit{supra} note 114, at 586.
\textsuperscript{133} L.D. 2687/1953; Dempsey, \textit{supra} note 114, at 586.
\textsuperscript{134} L.D. 2687/1953; Dempsey, \textit{supra} note 114, at 586.
law "on investment protection of capital." Investment capital can be remitted abroad at a rate of 10 percent per annum while profits may be repatriated abroad at 12 percent per annum. Reinvested earnings may be treated as additionally protected capital. The 1953 law was amended by a 1978 law, which allows companies approved under the prior law pursuant a joint ministerial decision to reexport up to 15 percent per year of the capital imported and up to 20 percent of annual earnings per year, subject to a foreign exchange ceiling.

D. TAIWAN

Taiwan offers an excellent investment regime with a strong policy of attracting foreign investments in a country with local political stability, economic prosperity, low wages and infrastructure costs, low inflation, little burdensome bureaucracy, and an educated, easily trained work force.

1. Investment Laws

Taiwan has enacted two main laws relating to investment: the Statute for Investment by Foreign Nationals of 1954 (SIFN), and the Statute for Encouragement of Investment of 1960 (SEI). Both foreign and domestic investors may take advantage of the SEI incentives provided their projects conform to the SEI's requirements. This flexibility has enabled the Government of Taiwan to direct investments for the benefit of national development. The government encourages foreign investors and promotes new technology by regarding technical expertise and patent rights as protected capital. The SIFN, the SEI, the Statute for Technical Operation, the Law of Custom Duty, and the Company Law together with other laws and regulations form the legal framework for foreign investments in Taiwan.

136. L.D. 2867/1953, art. 5; Dempsey, supra note 114, at 586; Tax Portfolio, supra note 112, at A-59.
140. Statute for Investment by Foreign Nationals (Taiwan 1954) (amended 1979) [hereinafter SIFN].
141. Statute for Encouragement of Investment arts. 1, 2 (Taiwan 1960) (amended 1979) [hereinafter SEI]. This law is scheduled to be replaced in 1990 with a new incentives package.
a. Foreign Investments Covered

Article 5 of the SIFN permits only the following types of investments:

1. investment in productive or manufacturing enterprises that are required domestically;
2. investments in enterprises that have an export market;
3. investments conducive to important industrial, mining or communications enterprises;
4. investments in enterprises engaging in scientific and technical research and development; and
5. investments in other enterprises aiding in the economic and social development of Taiwan.

Thus foreign investment has been channeled towards fixed national economic goals. National security interests are protected through laws concerning percentage of ownership. Governmental criteria are usually satisfied when the investment is of newly produced essential goods, imports substitutes, and introduces new technology.

b. Foreign Investment Regulation

An investment Screening Committee established within the Ministry of Economic Affairs reviews investments by foreign nationals under the SIFN—foreign investors are subject to the same principles as those applied to local nationals.

2. Incentives Not Related to Taxes

The Taiwan Government guarantees not to expropriate foreign-owned enterprises within their first twenty years of existence if a 45 percent ownership interest is maintained. Foreign investors have special rights to repatriate net profits, interest, earnings, and invested capital. Two years after operations have begun 15 percent of the total capital may be repatriated annually, subject to the availability of foreign currency, and foreign investors selling a part of their assets to local nationals may repatriate these proceeds. Certain high technology enterprises in the Science-based Industrial Park are entitled to reduced land

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144 SIFN, supra note 140, art. 5.
145 Wan, supra note 142, at 253. It has been reported that certain industries are closed to foreign investors, such as those contrary to public safety and security, which pollute the environment, or have a monopoly. Hsu & Wang, Business Operations in the Republic of China (Taiwan), Tax Mgmt. (BNA) No. 328-2d, at C&A-1 (1989) [hereinafter Taiwan Tax Portfolio].
146 CHIANG, supra note 139, at 6.
147 Landau, Direct Foreign Investments in Developing Countries?, 4 J.L. & Econ. Dev. 182 (1970).
148 SIFN, supra note 140, art. 16; Wan, supra note 142, at 254.
149 Id.; CHIANG, supra note 139, at 10.
rental or even a full waiver for five years, to low interest rates on loans, low taxes and special concessions on dividend remittance.  

3. Incentives Related to Taxes

An income tax holiday of five years or an accelerated depreciation of fixed assets may be chosen by a new Productive Enterprise. Service life of assets for depreciation can be cut in half with buildings and equipment for transportation and communication by one third only. Companies limited by shares sold publicly are entitled to a 15 percent income tax reduction for three years from their being listed on the stock market. Furthermore there is a 50 percent reduction on the Deed Tax, the House Tax, the Business Tax and Stamp Tax in certain instances.

The income tax holiday, or accelerated depreciation, may be deferred an additional four years for existing Productive Enterprises, which retain undistributed profits up to 100 percent of their capital if they are a capital or technology intensive industry. The expansion programs of such existing Productive Enterprises are also granted income tax holidays, accelerated depreciation, and a special income tax ceiling rate (25 percent instead of 30 percent in general). In the case of basic metal production, heavy machinery, petrochemical industries, and other important Productive Enterprises, the ceiling tax rate is only 20 percent, even when the tax holiday is over.

To further domestic technical development, a Productive Enterprise is allowed to deduct the cost of R&D programs from taxable income of the current year, and in the event the service life of the equipment exceeds two years, accelerated depreciation is permitted.

Royalties paid to foreign corporations for licensing patents and trademarks are exempted from the normal 20 percent withholding tax if the rights are used for new technology or products to improve product quality or to reduce production costs, and the relevant contract has been approved by the government. A like

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152. SEI, supra note 141, art. 6, 21. See generally SOONG, supra note 139, at 10-13.
153. SEI, supra note 141, art. 24. For recent changes in capital gains tax, see Taiwan Tax Portfolio, supra note 145, at C&A-1.
154. SEI, supra note 141, art. 48; Statute for House Tax art. 15 (Taiwan 1943) (amended 1974).
155. SEI, supra note 141, art. 11.
156. Id. art. 7, 8; see also SOONG, supra note 139, at 10.
157. SEI, supra note 141, art. 41.
158. CHIANG, supra note 139, at 6; see also Wan, supra note 142, at 257.
159. SEI, supra note 141, art. 15.
160. Id. arts. 34, 46.
161. See CHIANG, supra note 139, at 7.
exemption may be granted to technical services fees for the construction of a factory for an important Productive Enterprise in Taiwan.\textsuperscript{162} Additionally, a Productive Enterprise may set up a special tax deductible reserve for foreign exchange losses that might arise on outstanding foreign currency loans incurred in the acquisition of machinery.\textsuperscript{163}

The executive Yuan may decide to grant Productive Enterprises an investment tax credit at 5 percent to 20 percent of the annual amount invested in production equipment, up to 50 percent of the income tax due by the enterprise.\textsuperscript{164} There are also carryforward provisions for up to five years.\textsuperscript{165} Furthermore, individuals who invest in qualified Productive Enterprises are entitled to income tax credit on their investment in stocks and bonds issued by approved industries.\textsuperscript{166}

In January 1987 SEI was amended as follows:\textsuperscript{167} (i) a local branch of a foreign company in the manufacturing industry of a Productive Enterprise is entitled to the same tax incentives available to subsidiaries of foreign corporations;\textsuperscript{168} (ii) the corporate tax rate for the manufacturing Productive Enterprises was reduced from 22 percent to 20 percent and for large enterprises was reduced from 25 percent to 20 percent; (iii) qualified local enterprises that invest outside Taiwan are also entitled to a five-year income tax exemption or accelerated depreciation; and (iv) individuals who invest in high technology enterprises are entitled a 20 percent to 30 percent tax credit.\textsuperscript{169}

4. Additional Incentives

Export business is exempt from the business tax and enjoys a reduced Stamp Tax\textsuperscript{170} as well as exemption or deferral of the import duty and harbor dues for equipment and machinery.\textsuperscript{171} Under the Custom Duty Law raw materials used in export enterprises are exempt from import duties and other taxes which are refunded at the time of export.\textsuperscript{172} Productive Enterprises not eligible for exemption of import duties may ask for six to thirty monthly installment starting one year from the beginning of operations and may even be allowed further extensions up to five years subject to satisfactory guarantees.\textsuperscript{173}

Export and Research and Development enterprises located in certain areas of Taiwan enjoy additional special incentives. According to the statute for the

\textsuperscript{162} Id.
\textsuperscript{163} See Soong, supra note 139, at 11.
\textsuperscript{164} Id. at 12.
\textsuperscript{165} Id.
\textsuperscript{166} Id.
\textsuperscript{168} Id. However, there is a 20 percent withholding tax on remittances to the head office.
\textsuperscript{169} Id. There is a ceiling of 50 percent of the annual taxable income, with carry forward provision for the unused credits. In addition, the House Tax was cut in half for international hotels.
\textsuperscript{170} SEI, supra note 141, art. 32.
\textsuperscript{171} Id. art 14; Wan, supra note 142, at 258.
\textsuperscript{172} The Custom Duty Law (Taiwan 1967) (amended 1978).
\textsuperscript{173} Wan, supra note 142, at 258.
Establishment and the Management of the Export Processing Zone\textsuperscript{174} three such areas or zones have been established in Taiwan. Manufacturers in those zones can import machinery, equipment, and raw materials free of import duties, commodity taxes, and business taxes.\textsuperscript{175}

Administrative procedures are being considerably expedited to facilitate operations as well as remittance of foreign currency and procedures concerning exports and imports.\textsuperscript{176} Manufacturers may also apply to the government for loans repayable in installments over ten years.

In addition to the exemption of import duties on machinery equipment as well as tax holidays, the regulations governing the Hsinchu Science Industrial Park also provide an income tax holiday for any successive five years and a reduction or exemption of land rentals for up to five years for desirable industries.\textsuperscript{177}

Simplified procedures and bureaucracy are important advantages for investments in the export processing zones. The Export Processing Zone Administration is authorized by law to govern all matters relevant to the management of the zones.\textsuperscript{178} All supporting agencies are under one roof, including registration procedures, issuance of import and export licenses, and regulation of foreign exchange.\textsuperscript{179}

E. MEXICO

1. Mexico as a Host Country for Foreign Investments—the Right of Entry

In February 1984 the National Foreign Investment Commission of Mexico announced that it would apply the Foreign Investment Law of 1973 (FIL) with flexibility, and would permit foreign capital of up to 100 percent in a considerable number of activities.\textsuperscript{180} During the previous decade Mexico had limited foreign participation to 49 percent of the investment.\textsuperscript{181} Yet there were

\textsuperscript{174} Statute for the Establishment and the Management of the Export Processing Zone (Taiwan 1965) (amended 1979).

\textsuperscript{175} SEI, supra note 141, art. 38, 39.

\textsuperscript{176} See Wan, supra note 142, at 261.

\textsuperscript{177} See Soong, supra note 139, at 113. The full tax exemption is provided to technology-intensive industries in the Park, while a 22 percent maximum tax is levied on other enterprises. In addition, the National Science Council may directly participate in venture capital of qualified enterprises in the Park. Incidentally, the Park is conveniently located forty-five miles outside of Taipei.

\textsuperscript{178} Id. at 13.

\textsuperscript{179} Id. at 14. Even more simplified procedures exist the Hsinchu Park. For further concessions enacted on Dec. 5, 1988, which allow inter alia, to sell locally a certain percentage of the products produced in such zones, see Taiwan Tax Portfolio, supra note 145, at C&A-2.


\textsuperscript{181} Maviglia, Mexico's Guidelines for Foreign Investment: The Selective Promotion of Necessary Industries, 80 AM. J. INT'L L. 281 (1986).
various incentives for investments with 51 percent Mexican participation.\textsuperscript{182}

Although the FIL gave the Foreign Investment Commission (FIC) discretion to increase foreign participation above the 49 percent limit when the development and economic independence of the country were at stake,\textsuperscript{183} the FIC announcement in February 1984 to allow 100 percent foreign participation in certain cases was indeed rather unexpected.\textsuperscript{184}

The 1984 Guidelines for Foreign Investment considered selective promotion in certain cases important for the growth of the economy of Mexico and improvement of its balance of payments.\textsuperscript{185} The Guidelines list activities that may get 100 percent foreign investment, including various industrial enterprises and the hotel industries, and may be widened by the Ministry of Commerce and Industrial Promotion.\textsuperscript{186} Preference may be given to coexistence, however, and smaller firms may receive preferential treatment as their investments carry lesser risk of dependence. Provisions are also made for expansion of existing foreign companies in priority areas to provide for modernization of the plants, greater exports and an increase in the national production process.\textsuperscript{187}

On August 30, 1984, the FIC published five new resolutions to update the FIC's general resolutions in accordance with national economic priorities and the Guidelines and to expedite applications for major foreign investments.\textsuperscript{188} In 1989 the law further permitted the purchase of shares of Mexican companies or the establishment of new ones even when they are wholly foreign owned, with some exceptions.\textsuperscript{189} Such investments must satisfy several conditions, which are stated in the regulations, including very large required investments, location of the plants, and maintenance of minimal foreign exchange. Export companies are exempted, however, from the restrictions. Government permits are still required in areas such as agriculture, newspapers, water plants, oil or water drilling, and financial services.\textsuperscript{190}

In addition to the advantages of cheap labor and their proximity to the United States, most Mexican states offer investment incentives in addition to the federal incentives.\textsuperscript{191}

Incorporating with a majority of Mexican capital has some advantages because 49 percent or less foreign equity activity can be registered with the Foreign

\begin{itemize}
\item \textsuperscript{182} Id. at 282. See generally Jova \& Crigler, Private Investment in Latin America: Renegotiating the Bargain, 19 Tex. Int'l L.J. 3 (1984).
\item \textsuperscript{184} Maviglia, supra note 181, at 294.
\item \textsuperscript{185} NATIONAL FOREIGN INVESTMENT COMMISSION OF MEXICO, GUIDELINES FOR FOREIGN INVESTMENT AND OBJECTIVES FOR ITS PROMOTION (1984) [hereinafter GUIDELINES].
\item \textsuperscript{186} Maviglia, supra note 181, at 296.
\item \textsuperscript{187} Id. at 297.
\item \textsuperscript{188} General Resolution of the FIC, ¶ 2 (1984).
\item \textsuperscript{189} Tax News Serv. (Int'l Bur. Fis. Doc.) 151 (June 1984).
\item \textsuperscript{190} Id.
\item \textsuperscript{191} Maviglia, supra note 181, at 301.
\end{itemize}
Investment Registry immediately and qualifies for tax and other investment incentives under the 1972 Law of New and Essential Industries. Furthermore, incorporating with a majority of Mexican capital provides easier access to administrative agencies and those licenses needed for imports. Nevertheless, definite benefits can be obtained by an investment of 100 percent foreign capital. There are also bookkeeping and reporting advantages, and after 51 percent is later sold to Mexican investors the company will be eligible for tax incentives. Finally, banks are more willing to extend credit to a fully owned subsidiary of a well-known firm.

2. Tax Incentives

The general attitude towards foreign investment has been very cautious. Under the 1972 law for the Promotion of New and Necessary Industries, tax concessions were dependent on Mexicanization. Tax concessions were given to manufacturers located in border areas and to companies that exported Mexican manufactured products. The law gave partial or complete tax exemption to qualifying industries for a period of ten years for basic industries, seven years for semibasic industries, and five years for secondary industries. Only joint ventures with at least 51 percent Mexican ownership were eligible for such exemptions.

Basic industries were those manufacturing raw materials, machinery, equipment, or vehicles vital to the industrial or agricultural development of Mexico and supplying at least 20 percent of the local market. Semibasic industries were those that produced vital consumer goods, tools, scientific equipment, or secondary industrial equipment, and supplied at least 15 percent of the local market. Other manufacturing industries were considered as secondary. Still easier entry rules and more favorable administrative licenses are available to at least 51 percent locally owned investments, with automatic qualification for tax and other incentives.

As of 1979, tax credits against federal taxes were given. Such tax credits are issued as Tax Incentives Certificates, for 15 percent to 25 percent (plus an

192. Id.
193. Id. at 302.
194. The picture is rather complicated, however, with the Mexican's Government's 1984-1988 National Program for the Promotion of Industry and Trade, which emphasizes regulations, monitoring, and selectivity concerning foreign investments. See B. Stillman, Investing in Mexico (U.S. Dept. of Commerce No. 85-19, 1985).
196. Id. at 289.
198. Gordon, supra note 183, at 198.
199. Id.
200. Id.
201. Maviglia, supra note 181, at 293.
additional 5 percent) of capital expenditures according to the product and area (Zone) of the enterprise. Another 20 percent tax credit is granted on the basis of the minimum wage for the relevant area multiplied by the new jobs added. The credits are granted only to at least 51 percent Mexican owned firms.

There are also accelerated depreciation provisions as alternatives to other incentives under a 1983 special program, referred to as FICORCA, for hedging to protect Mexican companies against future foreign exchange losses. The depreciation is 50 percent in the highest priority zone and 25 percent in the case of second priority zone. As of 1985, investors in the construction of apartment buildings can also take advantage of accelerated rates.

As of the beginning of 1987, business enterprises are subject to a new tax system. The new system increases the tax base and is designed to increase revenue amid reduction of the maximum corporate rate to 35 percent. The new system was to be phased in over a period of four years and to become fully effective in 1991, but was accelerated and became effective on January 1, 1989. Besides an adjustment to inflation, the new system provides interesting provisions for depreciation. Under the new system annual depreciation on a straight line method is adjusted to inflation on the entire allowable depreciation in the first year an asset is placed in service, as prescribed by the law, and reflects a percentage of the present value of the depreciation allowances allowed over the life of the asset under the straight line method.

F. Egypt

Egypt has adopted a policy of encouraging foreign investments in an existing setting of a large market, cheap labor, and a proximity to the Arabian peninsula and the African continent. The investment desired is in industry, mining, energy, transportation tourism, and the like.

202. Business Operations in Mexico, supra note 180, at A-5. The credit is given as part of a regional industrial program.
203. Id.
204. Id.
205. Id. at A-2.
206. Id. at A-5.
207. Id. at A-15.
208. Id. at A-27.
209. Id.
210. Id. at A-28-29.
212. Salacuse & Parnall, supra note 211, at 761.
1. **The 1974 Law**\(^{213}\)

Revised Law No. 43 of 1974 created the systems of privileges: one of "inland projects" and a second one for projects in the free zones in Cairo, Alexandria, Suez and Port Said that are export-oriented. The latter get even further assistance and do not require an Egyptian partner.\(^{214}\)

2. **Tax Concessions**

Inland projects get an exemption from taxes for a period of five to eight years from the start of production.\(^{215}\) Until Revised Law No. 43, the personal tax rates of up to 95 percent created a major obstacle for foreign staff recruiting, forcing companies to find ways to supplement their foreign employees' salaries.\(^{216}\) Under the new law, however, the salaries of foreigners are free of income tax.\(^{217}\)

Dividends are exempted from tax on income arising from movable capital, as is the tax on commercial and industrial profits, and the general income tax for five to eight years, with some lifetime exemptions.\(^{218}\) Reconstruction projects, the establishment of new cities, and land reclamation are tax exempt for ten years, with an additional five years on the basis of the recommendation of the General Authority and the approval of the President; dividends paid out of such profits are also tax exempt.\(^{219}\) Interest on foreign currency loans is also tax exempt.\(^{220}\)

Projects operating in the Free Zones are fully exempt from all direct taxation and estate taxes and instead are subject to a nominal annual duty of up to 1 percent on the value entering or leaving the Free Zones. In the absence of such movements, the Free Zone Authority will fix an annual duty of up to 3 percent of the annual value added by the project.\(^{221}\) Tax incentives also apply to other sectors of the economy, such as travel enterprises and hotels.\(^{222}\)

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\(^{213}\) After this article went to press it was reported that Egypt passed a new investment law replacing Law No. 43 of 1974. Generally, the new law grants a five-year tax exemption, with possible additional three-year exemptions. The law permits wholly owned foreign investments. 23 Tax News Service (Int'l Bur. Fis. Doc.) 232 (Sept. 1989).


\(^{215}\) Salacuse & Parnall, *supra* note 211, at 765.

\(^{216}\) *Id.* at 766-67.

\(^{217}\) Nazer, *supra* note 214, at 618.

\(^{218}\) *Id.*

\(^{219}\) *Id.*; Touche Ross Int'l, 1 *Business Investment and Taxation Handbook—Africa/Middle East, Profile—Egypt* 5 (Probus 1987) [hereinafter Touche Ross Profile—Egypt].

\(^{220}\) Law No. 43, art. 18, of 1974.

\(^{221}\) Investment in the Middle East, *supra* note 214, ¶ 3.1.5, at 25.

\(^{222}\) *Id.* ¶ 3.1.6, at 25.

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3. Other Concessions and Assurances

After 1976 foreign exchange, until then unobtainable, became available at a premium. The Revised Law of 1974, article 22(2) permits a project to obtain foreign exchange while eliminating the requirement for an import substitution project and permits repatriation of profits made in the local market.\textsuperscript{223} The highest exchange rate has been fixed for the transfer of profits or the repatriation of capital.\textsuperscript{224} Thus, after 1977 an investor may repatriate the full amount of a sale or a liquidation, subject to notification of the General Authority.\textsuperscript{225}

Article 20 of the Revised Law exempts from general tax on income all wages and salaries to foreign employees of an approved project, thus granting them the same tax treatment as to those in the free zones.\textsuperscript{226} Revised Article 37 offers an additional fiscal incentive to manufacturing projects in the free zones, by reducing custom duties to 50 percent on their products when imported into Egypt,\textsuperscript{227} or full exemption for imported equipment and machinery necessary for the operation of the project.\textsuperscript{228}

Revised Article 23 reduces several fees and stamp duties. Contracts dealing with the establishment of the projects are exempt from stamp duties, registration, and publication fees for one year following the start of operation.\textsuperscript{229}

Under the Revised Law of 1974 very important machinery for the settlement of investment disputes was provided, as agreed upon, with the investor or its country, or within the framework of the Convention of the Settlement of Investment Disputes Between the States and the Nationals of Other States, or such dispute would be submitted to arbitration.\textsuperscript{230}

Although the 1974 Law assures investors that their property will not be expropriated or nationalized without due process of law,\textsuperscript{231} many obstacles still remain for a successful investment program. These obstacles include, for example, an underdeveloped infrastructure, a large balance of payments deficit, horrendous bureaucracy, and the general political environment of the area despite the peace treaty with Israel.\textsuperscript{232}

\begin{itemize}
\item \textsuperscript{223} Salacuse & Parnall, \textit{supra} note 211, at 767.
\item \textsuperscript{224} \textit{Id.} at 772.
\item \textsuperscript{225} \textit{Id.} at 773.
\item \textsuperscript{226} \textit{Id.} at 774-75.
\item \textsuperscript{227} \textit{Id.} at 775.
\item \textsuperscript{228} Law No. 43 of 1974, art. 36; Nazer, \textit{supra} note 214, at 620.
\item \textsuperscript{229} Salacuse & Parnall, \textit{supra} note 211, at 775.
\item \textsuperscript{230} Nazer, \textit{supra} note 214, at 619; Dempsey, \textit{supra} note 114, at 589. In fact the Egyptian Constitution already guarantees it, arts. 34-36.
\item \textsuperscript{231} Nazer, \textit{supra} note 214, at 619. It should also be noted that Law No. 43 exempts enterprises from the general requirement of at least 49 percent local Egyptian shareholding in joint-stock companies under general Law No. 159 of 1981. Touche Ross Profile—Egypt, \textit{supra} note 219, at 11.
\item \textsuperscript{232} Salacuse & Parnall, \textit{supra} note 211, at 777.
\end{itemize}
G. Nigeria

Nigeria has made great efforts to attract foreign investments in the setting of a big oil exporting country with a huge working force. In recent years, however, Nigeria has experienced a major economic crisis and political unrest, both of which have deterred foreign investors. In order to attract foreign investors, the 1989 budget allowed for wholly owned foreign investments in manufacturing industries and certain other enterprises, instead of the previous 40 percent limitation on foreign ownership. The 40 percent limitation remains only in the banking, insurance, petroleum, and mining industries.

In 1962, shortly after achieving independence, Nigeria approved a U.N. General Assembly Resolution that contained the provision that expropriation should be based on reasons of public utility, security, national interest, or overriding individual or private interests, and that owners were to be paid appropriate compensation. Nigeria also ratified the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. Therefore, the Republican Constitution of 1963 states that no property shall be nationalized in any part of Nigeria except with adequate compensation, and that an investor shall have the right to apply to the high court for the determination of its interest in the property and the amount of compensation.

After a period of military rule, in 1979 Nigeria adopted a framework for a free economy embodied in the new Constitution, which provides that direct foreign investments are subject to a series of national five-year development plans.

1. Approved Investment and Pioneer Status Tax and Nontax Incentives

Incentives in Nigeria are laid down in two decrees: (1) the "Indigenization" Decree of 1972; and (2) the Nigerian Enterprises Promotion Decree of 1972.

233. Thus, for example, all Nigerian taxpayers were required to pay additional tax to the national economic recovery fund of 5-10 percent of the after-tax profits. Quoted in the Daily Times, Jan. 17, 1986, on file U.K. Inland Revenue Service, Foreign Intelligence Section. For the national economic and debt crisis, see, e.g., Fin. Times, Nigeria Survey, Feb. 24, 1986.


238. Megwa, supra note 237, at 492 (quoting CONST. FED. REP. NIG. ch. 2, § 16).

239. Id.

Additionally, the Nigerian Companies Law, reenacted by the Companies Decree of 1968, provides a framework for giving incentives to foreign investors.\textsuperscript{242} The first step for a prospective foreign investor planning to establish a new business or to expand an existing one is to apply for "approved status."\textsuperscript{243} The approved status allows a limited prompt repatriation or remission of dividends, royalties, fees, capital, and loan principal and interest.\textsuperscript{244}

In contrast to Nigerian companies, nonresident companies are taxed only on their profits derived or received in Nigeria.\textsuperscript{245} Industries that the government wants to strengthen are called "pioneer industries" and are given major incentives under the Industrial Development (Income Tax Relief) Decree of 1971,\textsuperscript{246} which provides a tax exemption for the first three years of profitable operation to Nigerian public companies spending at least $228,000 on fixed assets before starting production. A company has to convince the government that relief is needed for its profitable existence. This approach is known as an "approved user scheme." Three-year relief can also be obtained by proving that the duty on the imported finished article is less than the duties on the individual materials necessary to manufacture the same article in Nigeria. Dividends are in many instances tax free in the hands of shareholders.\textsuperscript{247} This tax exemption is extendable for two more years with approval of the Federal Executive Council.\textsuperscript{248}

2. Other Incentives and Provisions

Imported materials used in the manufacture of goods later exported get a full rebate on any duties paid under the amended Customs (Draw Back) Regulation of 1959.\textsuperscript{249} The Industrial Development (Import Duties Relief) Act of 1957\textsuperscript{250}...

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{241} Nigerian Enterprises Promotion Decree 1977 (No. 3 of 1977), \textit{reprinted in Commercial Business and Trade Laws: Nigeria} § 10 (T. Aguda ed. 1982).
  \item \textsuperscript{242} \textit{The Commercial Laws of the World—Nigeria} (Foreign Tax Law Ass'n Inc., 1986).
  \item \textsuperscript{243} Nigeria, Int'l Bur. Fis. Doc. ¶ 2-3 (Supp. 5, 1985) [hereinafter Int'l Bur.].
  \item \textsuperscript{244} Donovan, \textit{supra} note 237, at 609; Megwa, \textit{supra} note 237, at 506.
  \item \textsuperscript{246} Decree No. 22, \textit{supra} note 245. Such industries require minimal capital expenditure and are included in a list of Pioneer Industries published by the Federal Executive Council. Int'l Bur., \textit{supra} note 243, ¶ 2.4.
  \item \textsuperscript{247} \textit{Id.:} Int'l Bur., \textit{supra} note 243, ¶ 2.5. As of 1987, most dividends of local companies are tax free in the hands of 10 percent (and more) shareholders for a period of three years. World Tax Rep., Fin. Times, Feb. 1987, at 13.
  \item \textsuperscript{248} Donovan, \textit{supra} note 237, at 610.
  \item \textsuperscript{250} \textit{Laws of the Federation of Nigeria and Lagos}, 1968, ch. 86; Donovan, \textit{supra} note 237, at 610.
\end{itemize}
\end{footnotesize}
allows the rebate of import duties paid on materials used in domestic manufac-
ture. Oil exploration enterprises are also entitled to special incentives. Corporate income is tax exempt up to $9,000 and above that sum there is a basic rate of 45 percent, which has been reduced to 40 percent since 1987.

Nigerian tax law allows accelerated initial and annual capital allowances for new plants and equipment. There is an unlimited carryforward of unused capital allowances and a four year carryforward of other business losses. R&D expenses are also deductible. The Finance Act of 1979 provides for additional investment allowances of 10 percent of the expenditures on plant or agricultural production. Direct foreign investment is restricted to limited sectors of the economy and often encounters inadequate infrastructure, burdensome bureaucracy, and corruption.

Yet the 1986 budget included additional tax incentives to exporters, particularly in export zones, and a 25 percent retention of foreign exchange earnings by nonoil exporters.

III. Conclusion

Almost all developing countries are using tax incentives in order to attract foreign capital investments, including all the countries surveyed herein: Ireland and Greece of Europe; Israel and Taiwan of Asia; Mexico of Central America; and Egypt and Nigeria of Africa. According to all the laws that were analyzed, most of these countries offer greater tax preferences to foreign investors than to local ones. The exceptions are Ireland and Greece as a result of EEC rules. In this author’s opinion, such preferences are unjustified in that they badly hurt tax equity and usually are not effective. Tax incentives should not discriminate between local and foreign investors. At the same time, foreign investors may need a solution to certain nontax problems, such as rights of repatriation and convertibility of profits and original investments, insurance programs in order to reduce political risks, and less dependence on governmental bureaucracy and better administrative procedures.

257. Id.
258. Megwa, supra note 237, at 511.
In the world today, some forms of incentives are necessary in order to match those offered by competing host countries in attracting capital investments. In the tax area, such incentives should reduce the level of taxation in the host country to its average level in the home countries of the investors, and preferably across the board as a part of a comprehensive tax reform plan available to all taxpayers. In general, when an incentive program is justified, direct governmental subsidies are to be preferred to tax concessions. Particularly, for the initial decision to invest, tax incentives are less effective, while they are more acceptable at the second stage, for the encouragement of retained earnings within the firm.

Studies prove that investments depend more on a generally favorable economic and tax regime, including governmental economic policies that affect economic growth, rather than on particular incentives to compensate for the lack of a long-term solution. Even incentives to development areas should be aimed at creating an infrastructure and skilled manpower, for example, rather than the granting of a tax holiday to investors.

In the far future national tax policies on the world scene should try to preserve tax neutrality, thus ensuring investment decisions based largely on nontax economic reasons. States should limit the competition among each other on the greatest tax concessions. Such national concessions offset one another and result, in effect, in a giveaway by host countries, usually the less developed countries. One can even envisage a multilateral agreement, perhaps as part of a Code of Conduct of multinational enterprises that would include provisions to this effect.