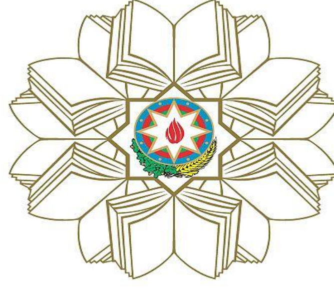

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Incompleteness of implementation: some challenges of international tax treaties promoting foreign investment in developing countries

Author: Mammadli Ismayil

Supervisor: PhDc. Shahin Mammadrzali

UNEC SABAH

Azerbaijan State University of Economics

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Introduction

For decades economies have been changed dramatically meaning that globalization has taken the world economy to the next level. In the period of globalization some factors specifically foreign investment activities and international tax treaties show themselves at the top of the main economic issues. Therefore, it is not an exemption that many countries particularly developing ones show a big preference for attracting foreign investment as it can reduce the unemployment rate by the creation of new jobs, so it promotes growth. Moreover, increase of domestic income is another benefit through spillover effects such as introducing new technological advancements and the upgrade of human capital (abilities). That is why developing countries often make tax treaties so as to promote foreign investment. By the way of this, therefore, a system of international tax treaties is of great value as well as replacement of past prohibitive and controlling policies by new ones in order to create facilitated environment for foreign investment have been an agenda.

Two of the most important attractions for foreign investors are investment and tax treaties, since this promotes effective production and creates noteworthy opportunities for sales. There are large numbers of developing countries that do not receive sufficient amount of foreign investment because of their markets are limited or because of lack of natural resources which have an adverse effect on investor's confidence. For this reason, developing countries or economies in transition such as Central Asia and the CIS, supposed to promote foreign investment on the premise of making mentioned treaties and participating regional integrations. However, there are some challenges in the course of the given matter. For this reason, firstly, we are going to put the investments issues in global tax cooperation out there, and slight analysis of bilateral and multilateral tax treaties in relation with FI fluxes as well as enforceable supervisory systems in this area, because after going

through the research it requires general analysis of the international treaty and investment environment. Saying this, it would be better to analyze the international standards in this field, and it is important to consider how international and main regional organizations' standards works, such as EU or OECD standards. By the way of this, consequently, the correspondence as well as conflicts or irreconcilabilities between those standards and national protectionist policies should be mentioned and considered. Of course, it seems from pre-analyzing that there is obvious lack in global governance and supervision, and this problem should be highlighted. Finally, building national policy or strategies about judicial framework and tax regulations in favor of investors' rights as well as establishing accordance between national and investors' interests is supposed to be given a place in this thesis. Coming to judicial framework for providing investors' investment, it is worth to talk about Investor-State Dispute Settlement in this volume.

Abstract

It is pretty obvious the importance of foreign investment, especially in the time of globalization, and in this volume tax issues are supposed to be one of the main problems or just considerations. For that reason, this diploma thesis is based on the agenda of challenges and difficulties of international tax treaty systems in the action of promoting foreign investment in developing countries. "Incompleteness of implementation" refers that all challenges are coming from this part, such as incompleteness of judicial framework or supervisory regulation.

That is why the thesis is going to be divided into three chapters with three subtitles. In first chapter I am going to state the general situation of investment issues in global tax cooperation and slight analyzing about bilateral and multilateral tax treaties in relation with FI fluxes as well as supervisory systems in this area. For next chapter, investors' concerns about international standards and lack of enforceable systems in functioning of tax treaties are supposed to be explained. The last but not the least, setting strategies for judicial framework, importance of tax treaties in an aspect of refining national investment strategies should also be perceived.

Finally, it is clear that the main point of the *thesis relationship between international tax treaties promoting FI in developing economies*, along with this analysis of challenges about regulations, national protectionist interests, and lack of supervision will be analyzed.

Foreign investment as subject to international tax cooperation

1.1. Investment issues in multilateral tax instruments of international organizations

1.1.1. *Investment and its relation with tax instruments*

It is worth describing that an investment in three concepts, firstly investment is an *asset* which is bought in order to increase income or in other word appreciate it in the future. Secondly, in an *economic* aspect, an investment is purchasing goods which are not available for consuming now yet are useful down the line for making wealth. Thirdly, in the area of *finance*, an investment is regarded as a monetary asset is bought with the aim which this will be available on a market with higher prices in order to gain profit or generate income for the future. Provided that we specifically mention what is foreign investment, it will be regarded as capital flows from one country to another. FI connotes that foreign investors are playing an active role in management as a part of their venture. A modern phenomenon of globalization enables multinational companies to invest in all over the world and plays a key role in the increase of FI.

FI has two types according to its classification; *direct and indirect.* Opening plants and buying machines, factories and other equipment, mergers and acquisitions, building new infrastructures, reinvesting benefits earned from cross border investment operations and credits inside of companies all make Foreign Direct Investment (FDI). [1]

Foreign Indirect Investment (FII), however, is based on trading of foreign stock exchange, starting with buying stakes or positions in overseas companies by private investors, corporations or financial institutions. Generally, this type of investment is less popular than FDI because domestic companies can sell lots of stocks and shares in a very short period of time

which leads to decrease in prices. Another name of FII is Foreign Portfolio Investment (FPI). Besides equity instruments, bonds are also relevant to FII. Furthermore, governments have a variety of tax instruments which would be used singly or in concert to back up their financial and non-financial activities. Value-added taxes, personal and corporate income taxes, property tax and just name a few are all regarded as those tax instruments, and it is not an exemption that one government can use many or all of these instruments simultaneously. There is an expected effect on country's power for attracting investment and fortifying economic activity is basically ranks profoundly amid the criteria utilized in making choices over these tax instruments.

It is clearly observed from international experience that high tax rates demote foreign investment, and that relationship shows oppositely itself in working style many governments meaning that their preference is reducing corporate tax rates so as to promote foreign investment. The impact of fluctuations in corporate income tax rates has been considered by empirical studies about the effect of taxation on foreign investment. In this work it is noticeably less to say about the impact of taxes along with corporate income taxes, although, from a theoretical viewpoint, any type of taxes has more or less impact to decrease foreign investment. [2] Taking high personal income tax rates as an example, wages before taxes are less affected by them, which in turn demote FI unless labor and capital are not complimentary. Not only higher income taxes, but also higher rate property taxes could decrease the FDI demand.

In developing countries, there is another tax instrument which is implied for promoting FI, and it is called tax incentives that are implemented through reductions in corporate income tax rates. These reductions are conducted by tax holidays for particular type of companies or investment. Moreover, another worth-mentioning instrument is tax allowances, defined as the amount of income that investors do not have to pay related tax.

1.1.2. *Multilateral tax instrument of international organizations: investment issues in those instruments*

For decades, multilateral tax instrument is one of the most important and least developed systems in international tax environment. The current system of bilateral tax treaties is extensive and difficult to regulate to circumstances. Simultaneously with that, low operative tax burdens on Multinational Companies (MNC) revenues make for daily paper headlines, and non-governmental organizations (NGO) are emphasizing the reality to facilitate the existing international tax regime works to the harm of developing countries. The way in which MNC profits are imposed taxes will be reformed by those concerns. The first step is Organization of Economic Cooperation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan project which is begun in 2013, and BEPS is the fundamental of multilateral instruments. The aim of Action 15 in this Action Plan to prepare and develop a multilateral tax instrument in order to provide an innovative method to international tax concerns. [3]

Preferences made by governments so as to cooperate in either bilateral or multilateral relations produces the perceptive of economic benefit these governments have which is the result of either course of action. Those perceptive encompass two kinds of dimensions: *size and uncertainty.* The *size* dimension refers as a government's perceptive of the gains which are made through cooperation with (an)other government(s); the more realized gain, the more the official discussions are going to concentrate on allocation of the gain between participant governments. The *uncertainty* dimension refers as the negotiation of government's deficiency of information about upcoming influence of substitute course of action on its own position. The more there is an uncertainty, the less *connected* the negotiations are going to be.

Including the new treaty updates proposed course of BEPS Action Plan into more than three thousand tax treaties in action, with no negotiation each of

those tax treaties is the main goal of multilateral tax instrument. To set this aim, provisions of current tax treaties are going to be modified which is different from BEPS Action Plan's output. Provided that two governments which before entered into a tax treaty also make a decision in order to accept the multilateral instrument, the provisions of the multilateral instrument are going to be applied.[4]

In the implementation of multilateral instruments states face some technical problems, coming from developing a multilateral instrument so as to change bilateral tax treaties. Some examples are listed below:

a. *The connection between network of the current tax treaties and general provisions of the multilateral instrument.*

b. *Being sure that there is no inconsistency about applying and interpreting.*

c. *Multiple authentic languages should be applied for bilateral treaties.*

Another worth-mentioning, multilateral instrument in order to renovate tax treaty network and other issues is OECD Multilateral Convention on Mutual Administrative Assistance (CoMAA) in Tax Matters, which was established over the years, through negotiating more than a hundred official bodies and jurisdictions involving OECD participant states, Great 20s (G20) and other developing and developed countries, under an authority of Finance Ministers of G20 and Governors of Central Bank (CB) during meeting of February 2015. In the area of all forms of tax cooperation CoMAA is the most detailed multilateral instrument for tackling tax avoidance and evasion. Priority target is all countries.

The multilateral tax instrument of international organizations is based on OECD BEPS Action Plan (Action 15), OECD MLC for implementation of tax treaty measures as well as OECD Multilateral Agreement in Investment. The great part of developing countries has signed lots of international tax and non-tax treaties. Even though, those treaties do not contain provisions of taxation,

great part of them encompasses provisions which indirectly or directly have an impact on tax concerns for alien investors. Investment flows as well as tax rates on wages or salaries (withholding tax rates) which are different from countries to countries have always been one of the major difficulties for multilateral tax treaty. The reason why this happens is lack of similarities between the models of United Nations (UN) and OECD, as those flows among developed countries are more mutual than between developing and developed ones. If we describe it more detailed, in UN Model there is no limit for rate of withholding taxes on interest and dividends. OECD Model, whereas, indicates 10% for interest and 15% for dividends or 5% for direct holdings by a company of 25%. [5] That means for developed countries tax treaties are beneficial, developing countries, while, it is not. However it is also accepted that tax treaties are promoting and attracting foreign investment, and it is a guarantee of tax stability for investors.

Another issue could be enforcement of Benefits Principle. Should it be enforced? The answer could be yes, unless there is tax competition. Tax competition is a kind of strategy applied by governments so as to mainly attract FDI and FII. [6] There are several arguments by economists that "small, open economy" supposed to ignore taxing inbound investment as it could result in leaving of investment or another possibility is investment could be shifted to parent country taxpayer, who is taxed directly. But, this is not totally true because it can be easier for the parent country to impose withholding tax even there is shifted burden. Coming to "investment will leave the host country", this is usually true.

To continue with, how about promoting and attracting investment and maintaining tax stability by function of tax treaties? Empirical studies, while, shows that tax treaties are beneficial for investment, and the same thing is able to achieve through Bilateral Investment Treaties (BIT). These treaties have a

positive side. The first one is they are technically multilateral because of encompassed Most Favored Nation (MFN) Clause.

Another issue is relationship between tax planning and investment. Investment choices of MNCs are under the influence of opportunities of tax planning which alter after-tax revenues on investment. In order to reduce contortions caused by corporate taxes tax planning is the key. The reason for that is decrease of tax rates on investment, particularly in developed countries is under the responsibility of tax planning, and it results in reduction in the deviation between before-tax and after-tax revenues of investment, moreover it also affects cross-border variations among tax rates on investment. The more decreases in tax variations, the more likely to be lesser deviations on corporate taxes on investment decisions of companies.

The last but not the least, a multilateral tax treaties are beneficial for improvement of legal stability and certainty for alien investors through the offer of uniformity in understanding of different legislations on taxation. Coming to multilateral tax treaties, they are beneficial for improvement of legal stability and certainty for alien investors through the offer of uniformity in understanding of different legislations on taxation. The best examples that concern investment issues are the EAC ITT, the CARICOM ITT 1994, the SAARC ITT & MAT 2005 and just namely few.

1.2. Double Tax Treaties (DTT) and Bilateral Investment Treaties (BIT) and their relationship with FI

1.2.1. *DTT and BIT generally*

Firstly and generally, double taxation has two forms; this is the process of taxing one source of income twice; another form (*main point of the paragraph*) appears in international trade and refers income taxation of same income source in two different countries. For the first form, it appears

simultaneously with income is taxed at both personal and corporate level. It is a general issue for international businesses which double taxation is generally negative consequence of tax system, and this is basically an avoided element of tax legislation meaning that their income is taxing where it is earned and then again it is taxing where it is deported. This situation makes total rate of income taxes relatively higher and too costly pursuit of international business.

For the avoidance of this issue, many countries all over the world are in a lot of treaties in order to avoid double taxation. These treaty models are generally based on and issued by OECD. By the way of this, therefore, lots of nations are signing DTT with each other. In this case, these treaties make new requirements which encompass taxes must be paid in home country and be exempt from foreign one and vice versa. This process is conducted by deductions in withholding tax and foreign tax credits (FTC) are received. FTC is the reflection of the reality that taxes have already been taxed. For that reason, a taxpayer should be declared as non-resident in foreign country. Another point of the treaty is information sharing process between two tax authorities so as to analyze those declarations and discover any other negative points about tax evasion. [7] In case of residence situation, natural persons can get just one residence, however legal persons can maintain more than one residence right simultaneously in more than two countries through their subsidiaries. Regulation of corporate tax avoidance is going to be more challenging, and additional investigations supposed to be needed for intellectual property rights, methodology or rules for pricing between partners (transfer pricing), transfer of goods.

Coming to BITs, BITs are the most common sort of International Investment Agreements (IIAs). 25th of November in 1959, the first BIT was signed by Germany and Pakistan. They are treaties which signed for establishment of rules and conditions for FI by MNCs or other companies of one country to another one, and this kind of investment is named FDI.

Establishment of BITs is based on trade pacts. Trade pacts are kind of trade agreements includes trade and tariff treaties which generally consist mainly of investment warranties. The first stage of BITs is based on *friendship, commerce, and navigation treaties* (FCN) in XIX century. [8]

Last thirty years, FDI encouraged by globalization and worldwide liberalization of the FDI framework for regulation, and combination with advancements of Information and Communication Technologies (ICTs) and competition among companies. (**Figure 1**) That is why most countries are trying to find new instruments in order to attract and promote FDI, and they are seeking new strategies or methods to applying those instruments. One of the most common strategies is IIAs, mainly BITs and DTTs. Main points of BTT and DTT are, in sequence, to make sure that legal protection of investments through International Investment Law (IIL) and alleviate DT of foreign companies, overall to promote FDI inflows.

Looking at the history a bit detailed, from 1980s to 1990s, countries' interest considerably rose. Consequently, those countries went into number of new IIAs simultaneously, particularly BITs and DTTs. (**Figure 2**)

1.2.2. *Relationship between BIT and FI.*

According to the major purpose of BIT, investment should be protected and therefore FI and FI flows should be encouraged, and in fact, these treaties positively affect those flows. Based on some scholars' studies, the positive impact of BITs on FI, particularly FDI is greater when developing countries sign these treaties with more powerful countries. Moreover turning to effect of BIT with OECD member countries on average FDI influxes to hundred developing countries, when developing states signs BIT with OECD members, FDI influxes are relatively to raise.

It is argued in many studies that the power of the effect of BITs on FDI influxes rides on many economic, controlling, and party-political determinants,

globally and in the target country as well. According the scholars, furthermore, T. Buthe and H. Milner, raise in general FDI influxes is the main result of political promises by BITs from developing countries to liberal economic policies, and this is what alien direct investors mainly are looking for. Because of not only signaling promises and compliance of governments as well but also making disruption such official promises more pricy by BITs, those promises are considered by investors more trustworthy. However, it is difficult to found strictly the impact of BITs on FDI fluxes. Instinctively, those treaties, through offering a kind of good housekeeping stamp of approval, contain positive influence on FDI fluxes. Because, they are kind of signal that country has an interest in promoting FI and this offers particular guarantees based on international tax and investment law so as to provide a protection. Not only does it send this signal to a single treaty partner, global investment community entirely. Additionally, the growth in global arbitral issues shows alien investors demand their rights when they are or feel unjustly treated.

Number of other studies have also described that great number of BITs have a direct impact to FDI influxes. Taking a study by E. Neumayer and L. Spess as an example, countries which have increasing number of BITs they get further FDI influxes.

There are some criticisms about BITs, and they are mainly come from NGOs meaning that these treaties are mainly established for protecting alien investors and do not contain standards of environmental protection, natural resources and labor rights. Furthermore, those agreements are legally incomplete and difficult to predict. [9] Moreover, in some cases, it is clearly observed that BITs are not important way to attract FDI. There are some notable example countries that have got higher FDI influxes without having lots of BITs. For example, Japan, has signed only four BITs, and the second greatest source of FDI. Another example is Brazil which has the largest rate of FDI without any signed BITs. By the way of this, there are many countries

which have signed number of BITs, but have got just moderate influxes such as Middle Africa region and Cuba. Approximately sixty percent of countries have BIT with Cuba, yet in reality they have no any FI in Cuba.

1.2.3. *Relationship between DTT and FI*

For many years, DTTs have observed as a useful instrument by lots of countries as it increases level of certainty in business transactions for natural persons, corporations and countries. The main aim of DTTs is to eradicate DT meaning that it avoids taxation of foreign investors or companies in two jurisdictions, according to OECD(*2010*). There some advantages of DTTs: *It helps to avoid worldwide juridical DT; it makes the environment difficult to evade fiscally; it promotes economic relations among countries.*

Lack of studies about the effect of DTT on FDI influxes makes it controversial to talk concretely. We have mentioned that one of the major purposes of BIT is to increase FDI fluxes and it is politically more effective as it directly affect the regulatory environment of countries. DTT, however, is supposed to be necessary for location choices of entities because they can influence amount of profit or loses that business makes or simply *bottom line* of companies. In addition it is highly effective on the direction of investment fluxes. Although, there are fewer studies about relationship between FDI and DTT, some studies bring valuable results for this volume. According to A. Kumas and D Millimet found that timing of the impact of treaties is necessary meaning that allowance of preventive and slowly developed influences of treaty development specifies a more significant impact on FDI. Developing countries which have made more DTTs along with main capital transferring developed ones are, indeed, relatively have got more FDI influxes according to Neumayer. From his findings, whereas, it can be seen that DTTs are only sensitive in medium-income developing countries, not for low ones.

Another research was conducted by R.Davies and R.Blonigen. The study was about influence of BITs on FDI in OECD between the years of 1982 and 1992. In this regard, they discovered that DTTs are related with more FDI fluxes. Whereas, when former DTTs was finished years before the cycle of their research is different from latter DTTs which are in the new time cycle, they observed that newer DTTs had no encouraging impact on FDI influxes or activity. R.Davies and R.Blonigen, in consequent research, explored USA FDI fluxes between the years of 1980 and 1999 and discovered that DTTs in this period in USA had no considerable impact on FDI fluxes. [10] Indeed, they found that DTTs are disadvantageous for OECD outbound FDI fluxes, and they concluded that the reason would be the eradication of tax avoidance occasions in DTTs. We can find other probable particular explanations that why DTTs could not result in higher FDI fluxes. Countries which have signed DTTs mayn't offer a considerably various tax rules than countries that have not signed those treaties. Generally, DTTs are mainly addressed the issue of DT which eradicates tax evasion by alien investors. This situation is even kind of disadvantage for FDI.

In conclusion, the main advantage of DTT is avoidance of DT in order to raise FDI fluxes. Least Developed Countries (LDCs) are not only looking for FDI yet, as importers of FDI, but also forced to noticeable expense from tax concessions which are made by signing DTT. Finally, according to some statistics, we can see DTTs have almost no impact on FDI. (**Figure 3, 4**)

1.3. Enforceable supervisory system for realizing tax agreements

1.3.1. *Main International supervisory systems*

As we mentioned above, tax treaties are the agreements between countries in order to address the problem of DT or other problematic situations. What about any supervisory system for realizing them? Well those agreements

can be controlled either internationally or regionally, and it is the responsibility of international and relevant regional organizations. These supervisory bodies provide legislative framework so as to maintain non-abusive treaty environment.

The most common international supervisory body is OECD. For this purpose, in July 2013, OECD established BEPS Action Plan for completing inaccuracies in global tax system by an offer of G20 countries. This Action Plan includes also tax agreement issues meaning that Action 6 of BEPS is based on preventing treaty abuse and certain treaty exchange which is very necessary bases of BEPS. This Action consists of agreement anti-abuse frameworks and some standard rules which contains protection in contradiction of abuse of agreement requirements and provide particular level of elasticity concerning how to do so. This flexibility is supposed to be in accordance with and adapted to the situation of the cooperation of bilateral conventions and each country's specificities. In addition, Action 6 contains reforms to the OECD Model Tax Convention (MTC) intended to make sure that agreements do not unintentionally avoid the application of those national anti-abuse framework.

Another worth mentioning international supervisory body is United Nations (UN), and this supervision is based on the UN Model Convention (MC). More specifically, the UN Model DT Convention among developing and developed countries which is in the effort of eradicating DT. League of Nations (LN) started those attempts and in regional forums and in OECD it is followed. Those models, specifically OECD MTC on Income and Capital and UN MC have had significant effect on global treaty practice, and there are profoundly common necessities. Those common provisions between two Models make known the significance of achieving harmony where they are potential. The UN MC generally supports thought of superior so called "source country" taxing privileges under a tax agreement with respect to those of the

investor's "home country". This has been considered as a concern of exceptional importance to developing countries, even though it is position which several developed countries look for in their BTs too. The interest in encouraging greater influxes of alien investment to developing countries in circumstances that are not only politically acceptable but also economically and socially advantageous has been regularly confirmed in resolutions of the UN (CTDGA) Conference on Trade and Development General Assembly and the (ESC) Economic and Social Council of the UN. In 2008 Declaration of Doha on (FD) Financing for Development [11] and in 2002 Monterrey Consensus on FD [12] accept taking advantage of mobilization of domestic source, plus fighting tax evasion and the particular significance of global tax cooperation in promoting investment for development.

Another international supervisory system would be World Customs Organization (WCO). The "Guidelines for information interchange and firming cooperation among Customs and Tax executive bodies at the domestic degree" have been framed through the backing of WCO Affiliates and development participants, particularly OECD and (ICC) International Chamber of Commerce. The Guidelines intended to offer reference direction to Customs and Tax executive bodies which are going to take their cooperation to the next level and improve working models that allow agencies to work all together to their reciprocal profit.

1.3.2. *Main Regional Supervisory Bodies*

In a regional level there are several supervisory bodies such as European Union (EU), Association of Southeast Asian Nations (ASEAN), African Union (AU), Caribbean Community (CARICOM) and just name a few. As international organizations, EU is also supervises treaty agreements through conventions. In this volume the most relevant convention is European Commission DT Conventions. According to the common approach for

addressing the cross-border tax issues which individuals and corporations are facing in the interior of the (IM) Internal Market, potential conflicts amid the bilateral DTTs and EC Treaty are cogitating by the EC through the conventions which Member States have signed with each other and other countries. The EC made a presentation of a common legal scrutiny of issues regarding tax agreements in an operational document, specifically the results of particular official decisions of the (ECJ) Court of Justice in this field in June of 2005. Along with these, potential solutions like the formation of an EU style of the OECD MC on which EU multilateral tax treaty or Member Countries' BTT are founded. In 2005 in Brussels, these matters were debated with Member Countries through a workshop, and number of experts in this volume participated.

DTTs of Member Countries will remain continuous to be topic to revise by the ECJ. Especially, the issues as a consequence of the existing dearth of coordination in this field, remarkably in trilateral conditions and concerning third parties, will rise even more. Provided that the Community does not act, there would be significantly severe economic and political consequences for Member Countries' strategies in this field. Hence, the Commission wishes that its tactic of planned and regular coordination of agreement policies will finally achieve help and encounter with a useful behavior from Member Countries.

AU, CARICOM and ASEAN, while, their regulations are based on domestic legislation and surely OECD Model and UN Model Conventions. This supervision is not only about tax agreements among member countries but also about agreements with other non-member states. Furthermore, each organization has DTT Conventions so as to combating DT and tax evasion which negatively affects foreign investment.

Conflicting national interests and investor’s concerns in applying international tax policy and standards

2.1. EU tax policy and standards responding to current investment trends

2.1.1. *EU tax standards in general*

The EU tax policy is divided into two parts: firstly, indirect taxation, that influences independent mobility of goods and the independence to offer facilities throughout the single market, and secondly, direct taxation, that means the lone accountability of the EU countries. For indirect taxation, EU standardizes ruling on VAT and excise taxes. It makes sure that rivalry for inner market is not contorted by systems offering companies for a country a discriminated benefit over other countries and deviations in indirect taxation percentages. For direct taxation, EU has nonetheless made certain synchronized standards for corporate and individual taxation, and EU Member States have used common procedures to avoid DT and tax avoidance.

Generally, The European Union (EU) does not play a key role in increasing taxes or determining tax rates. These kinds of procedures are conducted by governments, not by EU. Instead of this, the EU supervises domestic tax legislations, and to make sure that they are in harmony with particular EU standards and policies, and some of them are below:

- encouraging economic development and increasing employment
- making sure the open flux of goods, facilities and money from place to place in the EU
- making sure taxes don't classify against customers, workforce or industries from other EU members.

Additionally, unanimous agreement by all partner countries is supposed to be required by EU choices on tax issues. This makes sure that the benefits of each EU member are considered.

Tax standards are determined through tax policies. The tax policy is a very important point for all EU countries. The change in the tax policy observed in any EU member country will not only affects that country but also other countries belonging to the EU. Therefore, EU member countries cannot expect to behave differently when they formulate tax policies. Tax standards among EU members are highly depended on specific types of taxes which are levied. Particular taxes, like Value Added Tax (VAT), in another word alcohol, tobacco, and gasoline taxes (excise taxes), all 28 states are willing to extend the rules and minimal tariffs to prevent distortion of competition within the EU borders. Corporate and income taxes, however, the major EU's standards and role are to make sure that some principles of independent movement and unfair treatment within single market are obeyed. Gradually, a coordinated EU tactic is required amongst all member states to obey this, moreover avoid usual problems like tax evasion.

The EU has never said the way of Member States use tax revenues. Whereas, because of the ever-increasing ties of EU economies, by borrowing and overspending countries will endanger the development of their neighbors and weaken the constancy of the Eurozone. To minimalize this threat, EU Member States are willing to organize their economic standards carefully, partially according to the EC recommendations. Part of these endorsements makes sense of domestic tax standards, in the aim of making them more development-friendly, unbiased and more productive. Providing we talk taxation in single market, we should go standards or general provisions on trade barriers. Individual and corporate taxes are primarily under the accountability of the EU countries separately. Nonetheless, in EU guidelines, obstacles to movement throughout the Europe shouldn't be established. Persons who pass to a new EU state, or corporations which invest through boundaries, could meet DT or see difficulties about complex administrative issues. There are agreements between lots of EU states intended to eradicate

DT yet they would not include entire levies or entire cross-border conditions, and wouldn't be used efficiently in reality, not in theory. The EC works in numerous techniques to handle these difficulties. This differs from suggesting coordinated resolutions to supervisions to (when essential) doing some lawful actions if unfair judgment occurs or breaking of the EU rule.

Free trade of goods and services throughout the borders all over the EU is allowed by the single market. Making this less difficult for companies, and prevent competitive falsifications among them; EU Member States have decided to arrange their guidelines for the taxation of goods and services.

In addition, minutest tariff rates are in correct position for excise taxes and VAT, simultaneously with provisions on the way of these duties have to be applied. States are independent to impose their domestic rates more than the EU's limits. The EC is now trying to improve the VAT regime of EU, to convert it transparent, much more effectual in the incomes it brings to domestic supervisions.

For tax legislation of one member country is not recommended to permit notion to cancel taxation in a new country. If there is cross-border environment within tax prevention and evasion, actions which are applied to whole EU supposed to be important. In last decade, considerable growth has observed. Now, EU has got numerous priorities when reasonable or under progress, and an action plan – like rubrics on info-exchange among EU Member States and a rapid response mechanism to fight evasion of VAT. For unbiased corporate taxation, precise care is also given by the EU. Weaknesses among different states' tax legislation let some corporations to involve in "aggressive taxation", to minimize their tax invoices. Strong coordination and info-exchange among tax governors intent to avoid this situation. EU supervisions are recommended to make sure their company tax systems are fair, and not planned in a manner that could unlawfully lure companies away from other EU Member States, or then erosion of the tax base is expected. By the way of this, therefore, they

have signed to a code of conduct legal promising not to try base erosion and luring companies away from neighbor EU countries.

2.1.2. *How do EU tax policy and standards affect existing investment trends?*

In spite of the gradual recovery EU economy, investment needs to see progress more intensely to establish a continuous rising trend. In second part of 2016, it is observed that growth of investment saw slight strength yet for the years of 2017 and 2018 it is not estimated to increase noticeably because deleveraging and weak certainty stresses remain to burden on venture decisions, even though there are well established financing environments. [13] Fragile FI not only remains lesser development; however it also reduces productivity progress and involves deprived employment and development prospects within the long run. Increasing foreign venture, therefore, is one of the EC's major political initiatives.

Lots of factors impact corporations' venture decisions. One of necessary component of a well-working business atmosphere which helps investments is taxation. Especially, establishing a taxation system which doesn't demote lucrative investments from happening is essential. Quicker decrease schemes or letting for the equity financing prices deductibility reduces real minimal taxation, although financed through setting off variation in tax percentage levels rather than attaining through remaining the actual minimal tax rate little. Its definition is not remaining tax rates are required to be decreased. Legal transparency, constancy, predictableness of tax system is important for investment. Deviations within the tax system would influence entree for financing and demoting equity investments.

The EU countries' tax standards and policies relatively to affect choices on investment, analyzing the indicators of debt bias, ETR (effective tax rates) in company taxation. The ETR for a company is the weighted average percentage at which its revenues before taxation are taxed. [14] Company

taxation is the main factor which affects investment locations and trends. Corporate taxation is the other field which Member States choose on their individual tax legislation. We can find particular fields in corporate taxation, whereas, need an EU method so as to eliminate hindrances in an interior market, to make sure rational tax rivalry and to address shared problems, like company tax avoidance. The major target of corporate taxation is to eradicate DT in order to promote and attract foreign investment. There are different examples below:

- Withholding duties on cross border interests and royalties fees among supplementary corporations which have residence rights in two Member States are eradicated by interests and royalty directives.
- Home and second directive avoids DT of home corporation on the revenues of its subordinate situated in other Member States.
- Taxation of actions intended at rearranging firms located in 2 or more Member States is made simpler by merger directive.
- A process for resolving arguments wherever DT arises among firms of various member countries is created through the European Union Arbitration Convention.

Correspondingly necessary emphasis of EU corporate taxation is constricting tax legislation of EU and Member States' law in order to control tax planning, BEPS issues and misuse of rules, and this encompasses, for instance, reforming cross border tax rubrics transparency. Not only it does make transparent environment in boundaries and avoidance of DT, attract and promote investment and have great influence on destination of investment.

The EMTR (effective marginal tax rate) affects the decision to invest more or less. For example, taxation of last Euro which is invested in some venture is just neither profit nor loss. The EMTR, while, influences the total rate of investment, this is called the EATR (effective average tax rate) which affects companies' location choices. A varied sort of aspects running back of

the constitutional company taxes, for example components of tax base, financing basis, or the material (in other word the asset) that investment is based on is taken by the EMTR. The lower the EMTR the favorable to investments the taxation systems.

We can find variety of methods in order to reduce the EMTR and make a taxation system in favor of supporting investment, such as providing quicker amortization timelines, designing equity expenses as deductible. Because of not only do company taxes influence the rate of investment, business destination, BEPS issues, and the company structure decision. That is why economists have been serious about existing structure of company income tax systems. Targeting the inducing debt-bias by taxes and Research & Development (RD) tax motivation or incentive is able to lower the EMTR for equity and RD investments in sequence. Taking the decrease in the effective marginal tax rates for Cyprus, Italy and Belgium as an example, is conducted through the presentation on an allowance for company equity in those states. [15]

Along with company taxation and its tools, in EU standards another popular tax instrument for regulating investment trends is mining tax. The most important aim of mining tax system of each government's is to make sure the utmost potential advantage to public whilst simultaneously boosting FI. The crucial point of this is maintaining the right balance among firms and governments. For firms, the general rate of tax, containing royalties, affects incentives to discover and develop. High level taxation is relatively to fall privileges to invest or in marginal circumstances, moreover to save mines for operational purposes. The schedule for tax duties affects venture patterns too. Increasing tax rates will raise government revenues in a short run, yet providing an escalation is great it will demote developing and exploring, therefore decreasing the tax incomes over the longer run through mining sector.

In conclusion, target of EU tax policies and standards for the mining sector as well as other investment purposes and generally corporative environment is attaining a suitable portion of revenue as well as to raise development, firms, whilst, desire an acceptable yield on investment. Consequently, it enters interests of companies and governments to simplify projects which are successful for full power lifecycles.

2.2. International tax treaties lacking binding power and enforceable protection

As we mentioned in the third sub-title of the first chapter there are numerous supervisory powers in order to regulate international tax treaties as well as investment treaties. Even though there several enforceable bodies in this field, their regulations and power should be questioned meaning that they give recommendations as well as toolkits for managing international tax and investment environment which have almost not any mandatory power to adjust and manage. Now we are going to talk about this weakness. In a general volume we may call it international or global tax governance. This concerns establishment and progress of institutes (refined as official and informal procedures, normative, codes and rules) which structure personal and cooperative behavior. According to chapter one some of enforceable protection and supervisory system are based mainly on EU, OECD.

TFEU (Treaty on the Functioning of the EU) describes the interior market as a territory with no interior boundaries in where the unrestricted mobility of investment, individuals, services and goods is made sure. [16] Within the real interior market environment, harmonization of tax treaty system appears to be obligatory. It is particularly correct for income taxation as worldwide DT as well as universal tax arbitrage mutually falsify trends of investment and trade. Law of Europe, however, just offers a directive about indirect tax harmonization, particularly the VAT. Income taxes, 115th Article

of TFEU offer the European Council using a command to supply orders containing the estimation of rules influencing the normal running of the interior market. European Council will perform unanimously. Provided obligation of unanimity, income taxation is basically an issue for the separate EU countries. Member States' tax legislation is supposed to obey to EU law, in spite of the EU countries far getting tax independence. The EU countries plan their tax legislations in the limitations have been set by European main law. Primary European law is not only multinational but also stays beyond domestic law. Related necessities are the important economic independences: free mobility for payments, investment, individuals and goods, independence of foundation, independence for providing services. For company taxation, the independence for foundation and the independent mobility of investment are of utmost importance. The ECJ case law, the ECJ who gives deduction of European law, has an increasing effect on tax system in the EU.

Interpretation of European law is of course based on the ECJ in order to make sure reliable application of European Union law. But, the individual domestic laws are interpreted by national courts rather than the ECJ. The most lawful act is started on a preliminary ruling procedure within the area of income taxation. Preliminary ruling procedure is the conclusion of the ECJ on the clarification of EU law. Providing it protects the view which the ECJ reigning on an aspect of EU Community law is essential for temporary judgment, through this ruling procedure, domestic courts are going to mention a case to ECJ. As long as a tax law is appeared not to follow the EU law, it cannot further apply to EU residents or EU corporations. The ECJ verdicts are binding standards for each domestic court and tax administrations included in the real case. In addition, an ECJ judging is binding on the other community countries and courts of those countries and tax executive bodies too. Based on the case law, cases which discussed in a four stage structure are evaluated by the ECJ and they are below.

1) ECJ begins whether one of essential independences is related to the matter which is likely to happen soon or not, and if so, which of them.
2) ECJ begins to investigate that the related independence is constrained or not.
3) Providing the autonomy is appeared to be constrained, the ECJ is supposed to develop an angle on probable an acceptable reason.
4) Finally, as long as an acceptable reason is recognized, it is supposed to be well-balanced to the resolution served.

Well, in this case as it can be seen that ECJ cannot manage the situation, it investigates, finds out and then just gives proposes. Then, whether considering those proposes or not rides totally on national courts meaning that they are bearing in mind only national interests, and if those interests meets ECJ's proposes then they apply, if not they do not consider. This is where it shows the lack of binding power in international taxation. Furthermore, another problematic issue is treaty abuse through tax competition meaning that countries sign tax treaties with each other in order to encourage FDI influxes, when they find more attractive treaty offer they cancel current one. In that case there is no any supervisory system so as to penalize. Abused country complains this matter to for example OECD, UN, EU etc. as a result these organization are trying to solve this problem through negotiations which makes sense of lack of supervision.

Moreover, currently it is clearly observed that international tax system is not efficient. Existing codes and rubrics of allocating tax base among countries are not functioning appropriately as they are disposed to taxpayer's manipulation. The consequence is simple, an imbalanced global system of taxation. Tax competition amongst countries and base erosion across various authorities weaken profit-raising capability and cause an unfair difference of tax burdens amongst taxpayers. While, the existing strategies and policies

developed by OECD and G20 are definitely making sense of growth, but they are not sufficiently tackle these issues.

Within External Strategy of EC, the fresh EU method for helping national public finance in developing economies was reminded by the EC. The approach of "Collect More-Spent Better" [17] summaries the way of EU aims to give assistance for developing countries for down the line in constructing just and proficient tax systems, including through solving company tax avoidance. As we discussed in chapter one these treaties are commonly intended to prevent DT, apportioning taxing right and encouraging FDI, by the aim of promoting political as well as economic connection among countries. Lately, tax agreements have taken a progressively significant part in tackling tax evasion, endorsing transparency and letting information sharing in tax problems. Mentioned functions may be incorrectly balanced when the parties engaged contemporary various economic characteristics, for example imbalanced rate of economic power. Organizations like International Monetary Fund (IMF) and UN are gradually asking and examining whether DTTs among developed and developing economies in their existing method support maintainable progress, in economic asymmetry amongst the parties engaged. Tax agreements amongst developed and industrialized countries, however, are generally balanced, by same amount of cross border movement in each route; bilateral fluxes amid developing and industrialized countries are relatively being imbalanced, in another word asymmetric. It generally includes a greater flux of investment in the direction of the developing economy and a greater flux of investment revenues to the industrialized country.

Mentioned asymmetries would be resulted in substantial negative spillover effects. Usually, spillover effect means to the influence which tax rules of jurisdiction of countries could have on the others. There are two kind of spillovers are possible to detect: (i) base spillovers, influence straightly to the tax base under that one country impose a tax , (ii) rate spillovers, arise

when the tax rate levied. In developing economies, spillovers have a more noticeable negative effect on particular components of their tax agreements system, like the right to impose income taxes. Components that above are dangerous for national revenue movement.

Constructing capability for developing economies will support them to deal with spillover effect, yet it is insufficient on itself and not able to be regarded as the one key for this problem. The presence of asymmetric BTT that resulting in base erosion and missing revenue (i.e. by treaty abuse) is specifically harmful for developing economies. In addition, re-equalizing tax agreements with developing economies has to be highlighted in the pledges which EU countries and the EU have started in given purpose and the wider perspective of Sustainable Development Goals. These actions are not able to be taken separately, yet go simultaneously with the latest worldwide method for promoting national public finance and FDI in developing economies. Well, this is the case that they are just recommendations and directives, nothing more. However international tax treaty asymmetries should be considered in more serious level rather than giving up almost the whole responsibilities. There is supposed to be a regulatory system for considering those imbalances.

Developing economies are not independent from source based taxation in comparison with countries with advanced economies. Consequently withholding taxation on out-bound expenditures is a vital element of tax revenue, and is commonly much easier for managing and gathering. Whereas, tax agreements are able to decrease the capability of developing economies for imposing withholding taxes.

Real consequences on great part of these problems have already attained by the application of the OECD BEPS Action Plan. Whereas, believing OECD job lonely could be insufficient, in a significant part developing economies aren’t part of still, i.e. Inclusive Framework for BEPS nor participant in Multilateral Instrument that is major instrument to apply BEPS quickly as well

as efficiently. The Multilateral Instrument is, effectively, incomplete toward so-called covered agreement and may be subject to both choices and reservations. Along with that, the Multilateral Instrument just slightly influences income taxes that should be considered as one of dangerous features to developing countries. As a conclusion, another issue is national interests versus foreign investment, and I am going to explain it in following part.

2.3. Limiting foreign investment for free national economic development

It is clearly observed that as a result of globalization countries are prone to attract foreign investors and make the investment environment more liberal. This condition has shown itself as reductions in corporate and personal income taxes for foreign investor as well as limiting environment for another sectors so as to creating more friendly environment for MNCs. In reality, lots of countries have enthusiastically wanted to promote FDI, creating venture promotion campaigns for doing this and, usage of variety of privileges to attract MNCs in the direction of their territory. Those domestic strategies have enhanced through investment treaties or IIAs that especially, preserve the security of investment in globally binding agreements and, in many situations, obligate regimes to opening access as well as functioning environment for alien investors too. Consequence is a worldwide investment system that compared to second part of last century, saying, thirty years before, is fairly fine emerged, this happens in the nonexistence of multilateral investment agreements. Furthermore, this is required, by a state-investor disagreement expenditure mechanism which is progressively applied by companies which look for enforcing what they feel about their rights.

This trend has been become a phenomenon of last almost thirty years and still continuing. Some national policies, however, have been an obstacle against this phenomenon. But “how” and “why”?

UNCTAD has observed variations in the domestic norms for FDI from the year of 1992, accounting for 94% of total supervisory variations throughout the scale between 1992 and 2002 were in route of creating friendlier environment for investment, for example only six percent of the those changes were negative to MNCs. [18] Those negative changes increased twice to 12% of total from 2003 to 2004, then same trend was again observed which rose by 9% for next 3 years. Taking South America as an example, in 2007 almost three-fifth of supervisory changes was against to alien investment and investors. [19] Given information is about changes in legislations, yet we do not have any data about laws which remained stable. As an overview, two-fifth of global FDI fluxes from 2006 to 2007 countries applied minimum one supervisory modification which gave limited and less friendly environment, an extraordinary number which proves fairly persuasively that there is something happening (**Figure 5**). Policies based on liberalization and promoting had been noticeably decreasing from 2000 to 2016 and from 94% to 79% respectively, which is the obvious sign of negative trend as a result of protectionist policies. Protectionist policies, however, was just 6% in 2000, and then next 16 years it gradually increased and reached to 21%. Logically if restrictive policies increase, promotion and liberalization are supposed to be decreased more or less. Even though there is noticeably less restrictive policy indicatives, as we can see from the line graph they have negative correlation between each other meaning that if one of them increase, the other decrease and vice versa. According to this report, in 2016, there were 124 regulatory policies on FI, 84 of them were based on liberalization, while, 22 of them based on restrictive policies. Based on the latest statistics policies being favor of liberalization slightly dropped by 8% and became 71% in the February of 2018. [20, p. 2] Restrictive policies, while, from 2016 had been rising by 8% till February of 2018, which is worth to concern. [20, p. 2] The restrictive measure ratio in 2018 is the highest one in last 8 years. As stated by UNCTAD, Investment

Policy Monitor, based on geographical positions, developing economies throughout the Asia were predominant in implementing investment policy procedures accounting for 48 policy measures.

Why it is happening in foreign investment legislative and supervisory frameworks? Firstly, there are increasing worries for domestic security, in the other word, countries' individual interests. Security and interests nationally are usually undefined, for example those perceptions are okay to clarification. Especially after 11 September terror act, not only in USA but also in lots of countries are have been making more strict rules for foreign investors in order to protect sectors. For Europe, however, those worries are concentrated mostly on politic and economic matter, in wider manner, increasing more secure environment for national champs.

It has not been finished yet, there are other factors that influence this phenomenon. Specifically, companies in emerging markets have been entering the global foreign investment market in strength and are growing into difficult competitors. Surely, there've at all times been MNCs grounded in emerging markets. It is new that this trend has been reaching to very big volume meaning that more than twenty thousand MNCs situated in countries with emerging markets which resulted in 300 billion USA Dollars in foreign direct investment influxes. This statistics is 6 times more than the world FDI influxes between the years of 1980-1985.

As other developed economy competitors, MNCs in emerging markets progressively go in second countries by acquisitions as well as mergers. For instance, the acquisition of ArcelorMittal (this news was considered very well by people as this CEO of company is from that country, even though company is not from India), many times appeared to be rude meaning that its racist speeches. That boldness turn out to be more severe at time of emerging market venture capitalists are controlled by state bodies and from tactical counterparts such as Russia Federation and Republic of China, or countries political

loyalties could be seen in doubt, because it is deduced their mergers and acquisitions would be popped not by commercial purposes, would be driven by political ones. Foregoing problem could come to be more significant because old-style MNCs are not more in place to invest in a foreign country on period of the economic crisis and downturn, whilst autonomous investors could not be more permanently damaged, possibly, eagerly buy properties at fire sale bills. The same situation happened in 1990s financial recession in Asia.

Clear sign of that could be outward FDI of Republic of China which sovereign FDI makes approximately more than four-fifth of total [21, p. 15], then increased twice from 2007 to 2008 (by 26 billion USA dollars) and it again saw a progress in the middle of 2009. [22] The last but not the least, when the cargos increase was in top level, lots of natural reserve producer economies stated the issue of the profits allocations related in foreign direct investment in renewable reserves in their territory, therefore, wanted to raise their "yield."

The problem is not just regulatory framework, portion of the altering behavior to particular kinds of FDI is *screening system* for FDI are becoming resuscitated or fortified. Such screening systems were absolutely usual while the year 1970, involving in some developed economies. Throughout the following liberty time, a great part of them were unrestrained or reoriented in the direction of being investment promoting assistances. In the fresh environment for FDI, nevertheless, they would be facing a new interest. In that field, there is noticeable organization which is called the CFIUS (Committee on FI in US). It could function in USA framework in the aspect which this would in fact concentrate transaction which is straightly related to national security. CFIUS, however, got the capability for being a model for others, and screening systems of them could be used in a wider range of purposes (particularly for national interests), the benefits of various parts of state body cannot poise them. It would be surprising, if governments across the world

would not argue that, providing the USA, the most powerful economy in the globe, felt essential to safeguard itself from special types of foreign investment, they will not be obliged to do the equivalent – their own dominant purposes, for sure. The way which countries realize foreign investment at the national aspect and reaction to this, moreover, is guaranteed to affect what they work internationally, and this is showed itself in the IIAs that they concluded. More than 2600 bilateral treaties have concluded, plus more than two hundred free trade treaties which have very important chapters about investment. These treaties are going to increase, along with irresistible importance of securing FDI and of course liberalization, but there is a dilemma. Countries are always in the wonder of getting more tax revenue (even though they sign lots of BITs) and multinational companies and alien investors always to pay less tax expense, if the environment has aggressive taxation, they try to do tax avoidance or just living the boundaries.

Within the new environment, direction of worldwide investment treaties is very likely modify then, indeed, is going to do the same. Once more, the USA is prominent in this way, as compared to the years of 1994-2004 type BITs demonstrates. [23, p. 283-316] Amongst lots of modifications which restrain somehow the alien investor's rights and raise the privileges of the country where the whole business runs, it is especially remarkable that numerous protections for alien investors were climbed down in the model of 2004, particularly about indirect confiscation and just and impartial behavior. The more necessary is the USA maintain self-judgment vital security section in IIAs, for example a section, provided that the USA or USA's agreement companion announce that they consider their important security attention being included, lets them individually to run the conditions of the treaty apart, apparently just given that a certain circumstance persists. Later USA IIAs refers this perception. Countries apart from USA are likely to maintain this method as well. Given that this is supposed to appear on broader volume,

world investment legislation and policy command which has built could be in danger.

To put it in a nutshell, whether being in the progress of globalization or not there will be both restrictive and liberty policy measures. Apart from rules and regulations which are related investment, further policy changes influenced alien investors; some of them have worries about a rise in restrictions in investment policy procedures which are highly expected.

3.1. Need to refine investment environment through tax regulations

For the purpose of refining investment environment by tax regulations contains some main components meaning that based on our previous research we are going to sum up them. In this regard, reveal from DT and avoidance of discrimination in taxation has as their major purpose the elimination or lessening of tax difficulties to cross border investment. Although empirical studies suggested that DTT have no huge impact on FI, its psychological aspect on investors should be considered, and it more or less affects their decisions. Developing economies will regularly be under the compression by alien investors to lessen DT on their cross border dealings. Tax agreements pursue to eradicate or just cut DT in various methods. One of them is *source-residence* DT is focused beneath tax agreements through the distribution of high-class taxation privileges over revenue or funds to one of the agreement companion countries, or else, wherever taxation is allowable in both countries in the agreement, through demanding the country of residence to make available relieve for tax levied via the source companion. Escaping source-residence DT was observed as a fundamental instrument of tax agreement. Even though great part of countries nowadays will offer DT relieve, in the way of tax credits of foreign revenue or funds situated in foreign country under national legislation, rare countries will just make available this relieve under agreements. Other issue is *residence-residence* DT may appear wherever an individual is taxed on international profit in two or more jurisdiction which this individual is treated as a resident for tax resolutions in each of these economies. Such as, a person could be treated by a jurisdiction as a resident as this person generally exists in that country, and is treated by the other country as a resident as that person has been there more than one hundred and eighty three days. It makes sure at least amid the two agreement companion countries,

the individual is levied taxes just on a origin of source in a country using relieve from DT providing by another partner country. Next one is *source-source* DT which could occur wherever two or more countries regard the similar profit as based on a source in their area under national legislation. For instance, a country could regard profit from particular services as basis a source in their land, providing the activities are done in this country, however, the other country could behave the similar profit as a basis the source in their land, providing the services paying for through a citizen of this country. For particular classifications of profit, like interest or payments of dividends, a tax agreement is going to offer obvious rules for identifying the source of the profit for agreement drives. For other kinds of income, like corporate incomes there will supposed to be clear regulations involved in the agreement.

Another refinement is reduction of extreme source taxation. Tax agreements are able to refine cross border investment by decreasing taxation of source which could if perform as a constraining for that investment. It could appear, i.e., wherever country of source levies a last withholding tax according to its national legislation on a payment to a non-citizen, regardless of any expenditures which could have incurred in relation with the origin of this profit. On this occasion, the ETR on the revenue would be exceptionally high. Processes by taxpayers' residence country to relief DT would not be operational in eradicating extreme rate of taxes, e.g., wherever no relieve is provided for source taxing which surpasses the tax accountability on that revenue in home country. Taking many developing economies as example, in those countries revenue from particular services made available by non-citizens is levied by taxes on a gross base. Through restraining source taxation toward "incomes" from corporate activities, or through putting a limit on the source taxation level which could be enforced on gross revenue, tax agreements are able to support to make sure that extreme tax rates in source country do not offer a hindrance to cross border investment.

Prevention of tax discrimination is supposed to be next refinement for investment environment. Biased tax rubrics may be an important restraining to FI. For instance, this could be problematic for an alien company who runs a business in one country to get in a competition with a resident company providing the tax rate and tax-associated necessities levied on the alien company are really higher or really burdensome than which levied on a comparable domestic company runs the similar business. Likewise, taxation rules could show a hindrance to cross border credits or transfers of IT providing deductibility of payment of interest which is paid by a citizen to a non-citizen is restrained in conditions wherever there could be no that restrictions wherever a same payment is made to citizen. In this regard Commentary on 24th Art. in OECD MC contains such issues. Broadly, agreement rules forbid discriminatory tax environment in particular limited circumstances, like:

- *Ethnic group or nationality*: Countries are not able to focus on a national of agreement companion to more onerous taxing than their own nation who are in the similar situation, have the similar residential position for tax drives;
- *Disbursements*: Disbursements from resident company to a resident of an agreement companion country is obliged to be deductible in the similar circumstances as though it had paid to a local company;
- *Nationless individuals*: Same rules implement to stateless individuals, who supposed to be offered parity of action to residents of country;
- *Permanent establishments*: Perpetual establishments of a agreement companion company should not subjected to extra onerous taxation in comparison with a domestic company running the similar business;
- *Alien ownership*: A company which is foreign owned should not levied burdensome taxation in comparison with locally owned companies.

According to UN MC Article 26, provisions with no discrimination must be applied for all kinds of taxes, not only for income and capital ones which are roofed by an agreement.

The other major method is building transparency and predictability in taxation system in order to promote and encourage FI, and this refinement makes sense of clear tax environment and high level of promptness. In this regard, treaties can contribute for reaching this purpose through establishing highly recognized and broadly adopted rubrics for the distribution of taxation rights throughout various kinds of incomes and the willpower of revenues is likely to have been caused by perpetual establishment or in transactions amongst associated companies. These rubrics are able to support to make a reduction in complication for taxpayers through cross border actions, especially wherever the agreement offers for taxing just in the boundaries of one country.

Furthermore, holding or reaching benefits of national tax reductions is supposed to be good method for refining investment environment. The benefits which would be obtainable to developing economies beneath a tax agreement which is recognized as “tax sparing”. This appears whenever other partner countries give foreign tax credits for the purpose of tax which has decreased or gone without in harmony with tax inducements offered in the country of source. Nowadays, lots of developing economies are trying to encourage FI through tax inducements, like concessions or credits for alien investors. Nevertheless, the benefits for a taxpayer of tax inducements would be in a loss when the income is under taxation in the payer’s country of origin. Wherever, for instance, the revenue is burdened in full and a tax credit is given in resident country for alien tax paid, concessions in source taxing will be simply resulted in raised income for the resident country, with no general tax profit to the investor. For that reason, the tax inducements efficiently cause the relocation of income from the country of source to the investor’s resident country. Being

in agreements with countries which implement the tax credit technique, or which make exception of alien income provisional on a particular taxing level in a country of source, attachment of “tax sparing” requirements in a tax agreement is able to make sure that the tax inducements profit of a country of source is sustained. In those requirements, the agreement (treaty) companion country could force to recognize all or some of the tax given up as though this had paid, meaning that or as though there had been no inducements in country of source.

The last but not the least, the era of cyber world is supposed to affect the field of taxation as well as investment, that is to say, e-investment and e-commerce as well as e-taxation are the most common examples for this phenomenon. According to some international organizations, especially the OECD recommends to establish and prefer giving special tax incentives for e-investment. Although it is not that famous in the international tax and investment environment, for future perspectives it will be off the charts and should be considered from now.

3.2. Setting common means of judicial framework securing investor’s capital

IIAs mostly involve provisions for the security of FIs in the country where the business runs and offer for disagreement settlement systems to impose those foreign investors’ rights. Conventionally, IAs have used the subsequent tools for tackling disagreements with investors: alien investor enter to national courts; state-2-state disagreement or dispute settlement through diplomatic security; and investor state disagreement or dispute settlement through worldwide arbitral actions which are taken in a law court. IIAs were discussed by EU countries up to the Lisbon Treaty. After the entry into force of the Lisbon Treaty, FDI was involved in scale of the general commercial policy. The EU instigated to discuss IIAs too. IAs which are negotiated by the EU, or

venture security provisions in the EU trade treaties, will substitute the current BITs signed by EU countries with a third parity. Substitution suggests that if provisions of the EU on investment put into action, EU countries' bilateral treaties current with that similar third parity country will ended. Moreover, alien investors could see themselves in disagreement or dispute with host countries in that they conduct at what time certain actions from the host country undesirably impact their ventures. As long as the investor wants to refuse a host state's action because of unfairness, two directions basically occur:

- Firstly, the national court direction that in many cases straightly use in national legislative framework on property,
- Secondly, the he worldwide law direction encompasses:

  - A non-straight challenge through state-2-state disagreement settlement, by the diplomatic security direction

  - A straight challenge through (ISDS) investor state disagreement settlement

Under the mechanism of ISDS, investors get straight admission to security beneath international legislation, opposition to the diplomatic security process in that the alien investor is officially presented by investor's home country in law court actions counter to the host country. [24] Both investor-state (IS) and state-2-state systems will ordinarily encompass two technical stages: a consultation and a stage of disagreement resolution. Many treaties will firstly necessitate consultative discussion for parties to decide on clearance of disagreement with no attaining the confrontational official court actions of the dispute stage. The consultation phase is normally confidential and, accordingly, the least transparent part of the whole proceeding. Provided that the parties cannot to attain a settlement in stage of consultation, the proceedings go into the stage of disagreement. In the stage of dispute is able to take place in the presence of various fora, riding on the treaty under that the

parties have commenced legal actions. Moreover, arbitration is the disagreement resolving tactic from which the parties to a dispute agree to give in to their disagreement to a 3rd party based on agreed standards and processes, and to conduct that 3rd party's choice. Even though arbitration was initially applied by countries for resolving conflicts with a peace, today this offers a too general strategy to settle IS commercial disagreements amongst private parties. Some part of the benefits usually related with IS arbitration legal actions, as in comparison to steady court legal actions or proceedings, are depoliticization, a view of rapidity, and lesser expenditures. It has caused the expansion of a difficult system of a worldwide commercial arbitration, involving the founding of different institutes and legal rules.

Worldwide arbitration is presently the highly used disagreement or dispute settlement outline for IS disputes in worldwide investment agreements over the globe. Saying that, this is the major system now applied in the EU countries (**Figure 6**) and is the system now applied in BITs among Canada and 7 EU countries. One of the major purposes of these proceedings are basically designed to securing investor's right and their capital. In this regard, for example, EU is able to use instructions from in what way the arbitration mechanism has functioned up to now involving from the current one thousand and four hundred investment protection treaties of the EU countries so as to make modifications for the structure of investment security. Through its universal economic weight, European Union is in a trusted place to persuade its trade companions of the necessity for purer and improved standards. The prime vehicle to this is going to be with bilateral discussions with 3rd country. We got the likelihood to affect the multilateral perspective to, i.e., with the UNCITRAL where we have shaped new rubrics for transparent environment which will implement beyond IA of the EU. Along with ISDS IIAs provide foreign investors 4 primary guaranties and they are below:

- Protecting foreign investors from discrimination (national treatment and MFN)
- Protecting from confiscation that is not for public policy drive and not justly balanced
- Protecting from unjust and unequal treatment –such as denying basic routine justice
- Protecting possible transmission of capital

ISDS regarded as a primary component in effectually imposing the protection offered. ISDS scheme permits an investor to straightly raise a statement counter to the executive bodies in a host country in the presence of an international court. Nonetheless, an investor is able to only bring a case wherever it is able to accuse that one provision of the treaty (such as mentioned 4 principles) has been broken. It refers that an investor who raises a case as her or his returns have been decreased subsequent a supervisory modification by a state (such as regulatory modifications on harmful food additives) is not able to get balanced on this regard lonely. The "venture capitalist" could be in the need of demonstrating that the venture provisions have been broken. In addition to this, the key purpose for getting an investment-state system is as in lots of countries IAs are not straightly enforceable in national tribunals or courts. By the way of this, therefore, the investor who catches herself or himself unjustly discriminated counter to or whose venture is confiscated not able to raise investment security rubrics earlier than the national tribunal to get compensation. ISDS lets investors to trust directly the rubrics which were precisely intended to safeguard their capital. Data about ISDS in investment laws has been demonstrated in **Figure 7**.

Lastly in this part, objectives of UNCTAD laws on investment by category, investment protection stand out in third place by 43 laws. [25, p. 106] The most part of the investment legislative provisions encompasses 3 major security rights. They are right of cross border investment transfers, security in

circumstance of taking investors' property for public use and the promise of domestic treatment. In different degrees, the investment rules comprise other security requirements too. Indeed an investment legislation doesn't comprise a particular right doesn't refer that the country doesn't fund this. For instance, in many circumstances the Constitution of a country could comprise the nondiscriminatory right or secure property privileges, containing security in situation of confiscating them for public use. The data about investment protection is demonstrated in **Figure 8.**

3.3. Increasing national tax revenues in Global Economic Order

Global Economic Order or NIEO (New International Economic Order) groups of suggestions which some developing states with the help of the UNCTD to encourage their interests through refining their conditions of trading, strengthening development guidance, tariff discounts in developed economy, and just namely few stated in the period of the 70s. This was referred being a review of the worldwide economic system supportive of 3rd World economies, substituting the system established in Bretton Woods Conference that had profited the prominent countries which had established this – particularly the USA. The main tenets of NIEO were:

- Worldwide trade is supposed to be centered on the need of making sure incentive, unbiased, and stable prices for resources, comprehensive nondiscriminatory and non-mutual tariff favorites, also gadgets transmission to developing economies; and supposed to deliver economic and technical support with no letters or words especially computer programs attached.
- They have to be independent or unrestricted to confiscate for public usage or nationalize alien property on terms favorable to them.
- They have to be independent to establish organizations of main merchandises producers same as OPEC

- Developing economies must be officially permitted to control and govern the actions of MNCs operating in their land.

Coming to national tax interests from FDI or just FI in Global Economic Order, the main issue is tax competition meaning that increase or decrease of tax rates of countries for FI is highly dependent on this competition. Tax competition for FDI has grown progressively from approximately 80s and currently refers that MNCs hope to get rid of any tax on their cross border income. Assuming that some MNC is resident of country A, produces its products in country B, while makes money by selling those goods in C. C is able to tax the MNC as long as it has a perpetual establishment (PE) (or permanent establishment how you call it) there, so during the era of e-commerce, this could be conceivable to evade. B, while, normally doesn't levy taxes the MNC as it is PTH (production tax haven) and this is the type of country which stops itself from imposing taxes on production actions from MNCs while imposing a common company tax on local entities. A , and finally, basically supposed not to tax resident MNC on a existing basis as there is a worry of MNC head office will leave for establishing in other geographies and new MNC is going to incorporated somewhere else. Consequently, a MNC like Intel stopped disbursing whole taxes on its alien-source revenue. According to economic figures, this sort tax competition occurs, even though it inclines to influence more company tax incomes in developing economies in comparison with developed ones. Reason of this is OECD states have reduced the PE limit and it becomes for many MNC it is difficult to cancel to have a permanent establishment in fact in the era of electron commerce. But, in given situation also the OECD has worked difficult to fight the tax competition event through lying burden on not only OECD countries, but also non-OECD to eliminate tax haven production, and to restrain tax sparing rubrics in agreements which foster double nontaxation. Moreover, the World Trade Organization has pressured developing states to leave PTH which amount for

exporting reductions, and many South American nations have indeed leaved their PTH rules during Doha Round. Lastly, nations have moved forward to protect taxation that based on residence of their MNCs through making more effective CFC rubrics and fighting reversal dealings.

The major part is not this hard work has been successful or not, even though as a minimum for OECD countries they observed that have abolished the company tax base erosion which was obvious in the 90s. Key part is that by accepting such procedures, in OECD countries there is no belief in non-DT or double nontaxation of active revenue and are giving an effort for protecting the taxing of this kind of income at source. It is estimated that this tendency is going to endure till effective taxation which is based on residence by OECD countries avoid developing states from participating in damaging tax competition, and therefore national tax revenues are going to increase.

During the leading globalization dissertation, liberalization of investment is a key for not only global economic development but also national economic development. Countries want to benefit from worldwide economic development and go into competition so as to encourage limited and movable resources. According to OECD, some country's ability of competitiveness is 'the level to that it is able to do, within independent and just market terms, producing services and merchandises that defray the exam of global markets, whereas concurrently continuing and growing the actual revenues of its people in the long run'. Owens (2011) someway detaches taxation from competitive environment, relying on the claim which a country having important competitive environment to attract FI supposed that can tax this properly and additional reinvesting tax incomes for strengthening those essentials. Saying this claim, lesser taxes are not supposed to be related with raised competitiveness, while indeed the taxation system is generally known to have a competitive character of an economy, as the WEF demonstrated in the GCR which is publicized in a year by WEF. The competitive country is described by

what it is able to attain from the standpoint of its residents' actual income too, considering the features of its "rivals", involving their taxation system. This description demonstrates the pressure on national policy-designing as a result of the taxing policies of other competitor countries. If policy-designers equate their taxation regime another more favorable taxation regimes, this founds the stress to modify their regime for being not less or more favorable than their "rivals".

Though, within the aspect of competitiveness, countries promote FI by resident companies by favorable taxing behaviors, such as through freeing alien income which is from the company's tax basis. Reason of this issue is kind of inconsistent. Whereas countries normally treat like although competition were a win-win game, policy-designers' promotion of occupant companies to capitalize abroad proposes they cogitate two of countries can make revenue from this venture. Even though tax percentages are typically the core characteristic considered further features, like freeing alien income from taxing, could be affected by competition amongst countries too. This kind of strategy is appropriate for the dialog of competitiveness, as it apparently upsurges the national companies' competitiveness abroad. This competition, consequently, influences not only source but also residence base rubrics of company taxing systems. Taking a study in AP as an example, the taxing regime competitiveness is processed through the profits it provides to the commercial world. The highlighted code of the conference was a sustainable taxation regime is important for a national commercial community's competitiveness, which as a result is vital to domestic economic development. Increasing tax rates is not the way of increasing tax revenues, it may be direct way but in the long term this would slip through the cracks meaning that this kind of policies demotes FI. Instead of increasing tax rates, governments need to create more investment friendly environment and can increase tax revenues indirectly.

In developing economies, taxation policy desires to be addressed income requirements and simple revenue distribution issues that necessitate reallocation of monetary resources so as to decrease poverty and grow social consistency. Furthermore, great parts of many prolific assets in the countries' economy are owned by non-resident companies, whereas many resident companies' capital is kept overseas. Consequently company income taxing is not able to be unnoticed as the main growth policy matter. The conventional perception of company income taxing in developing countries with open economies is which taxes based on residence decrease the post-tax yield on national investments through driving a block amid the degree of yield on global markets and the post-tax rate of yield obtained by residents, are taxes on the rights of investments. Contrary, taxes which are based on source increase the needed rate of yield on national savings more than the degree of return worldwide add up to taxes on a place of investment.

To conclude this part, the conventional writings propose, a country with small open economy is not supposed to impose any kind of source basis corporate income taxes whatsoever, considering just residence basis schemes. [26] But, providing residence basis taxation is not able to be collected effectually, (attributable to managerial capability or worldwide cooperation) corporate income taxation in total would become unwanted. Overall, the traditional consequence as of ideal taxation writings suggests; smaller open economies is supposed to consider no source basis taxation and corporate income taxation is supposed to be eradicated totally when countries is unable to apply resident basis taxation. [27] By the way of this, therefore, it is more appropriate in developing economies that they should increase tax revenues by imposing higher taxes on residence-based income than source-based one.

Conclusion and Recommendations

To put all data and analysis above in a nutshell, in the aeon of global economy we have understood the importance of FI and tax treaties as an inseparable part of this. In this regard we touched the issues of international tax cooperation for attracting FI, national interests and foreign investors' concerns about their venture, enforceable supervisory systems in this field, implementation of international standards, and finally improvement of national investment strategies through tax treaties. Therefore, we have lighted some important points:

- International tax cooperation for the purpose of promoting FI, not only do developed countries sign BIT and DTT, developing countries participate in this kind of agreements. But, according to some empirical studies which were mentioned in chapter one, DTTs have almost no impact on attracting FI. In general DTTs are addressed to eliminate not only DT but also tax avoidance which is kind of disadvantage for FDI influxes. According to OECD and United Nations Conference on Trade and Development (UNCTAD) statistics, it is clearly observed that there is no any strong relationship between them even DTT sometimes negatively affect FDI influxes.
- There is lack of supervision in this area meaning that in case of breaching treaty rules by a partner country related international organizations just give recommendations and calls not to abusing treaty rubrics rather than efficiently interfering this issue and taking some measures. Briefly they draw a blank.
- National interests and investors' interest always result in a dilemma meaning that countries always tend to make more revenue from taxes, but investors are always in favor of as possible as lower tax rates.

- There is an obvious need for refining investment environment through tax regulations such as relief source-source, source-residence DTs. Along with this establishing powerful judicial framework is supposed to be needed, such as ISDS.

As recommendations, we are going make them directly to the topic. Countries should prefer IIAs rather than DTT and BIT. Especially in globalized world, DT is going to be disappear as countries are going to appear to create more tax friendly environment which means there would be even no DT situation. IIAs, however, provide legal framework for foreign investors so as to protect their rights and investment in both national and international courts as well as protection of transfer of capital, avoiding discrimination and unfair treatment and namely few are all included in IIAs. Furthermore, international organizations such as OECD, UN, and WTO are supposed to establish an enforceable system for tax treaty abuse matters as well as binding power should be strengthened. Along with these, increasing national tax revenues in this matter, we have concluded that governments should use higher tax rates for residence-base rather than source-base, because promotion of FI is of greater value than domestic investment meaning that in globalization one of the most significant point of economic growth is FI.

Figures

Figure 1 – *Source:* UNCTAD – FDI and Kekic and Sauvant, op. cit.

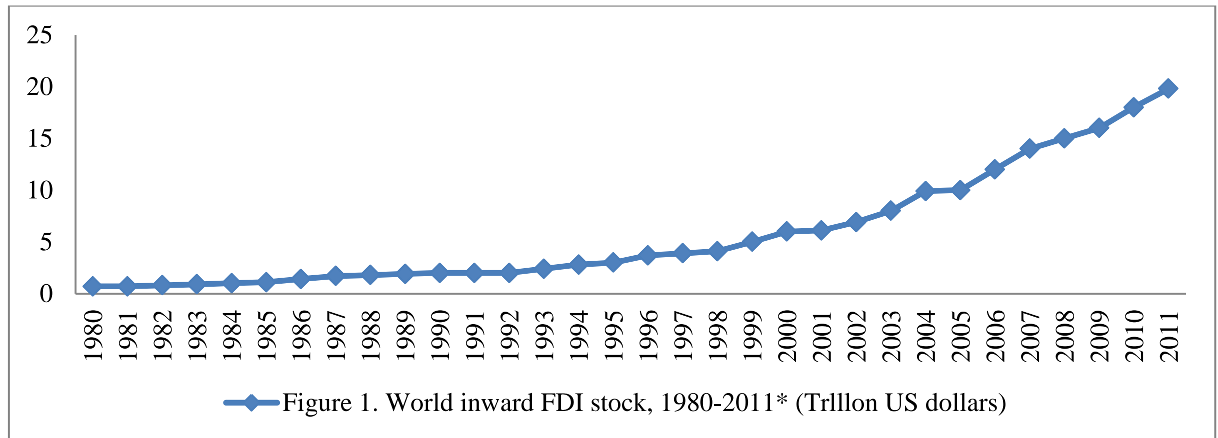


Figure 2 - *Source*: UNCTAD – IIA

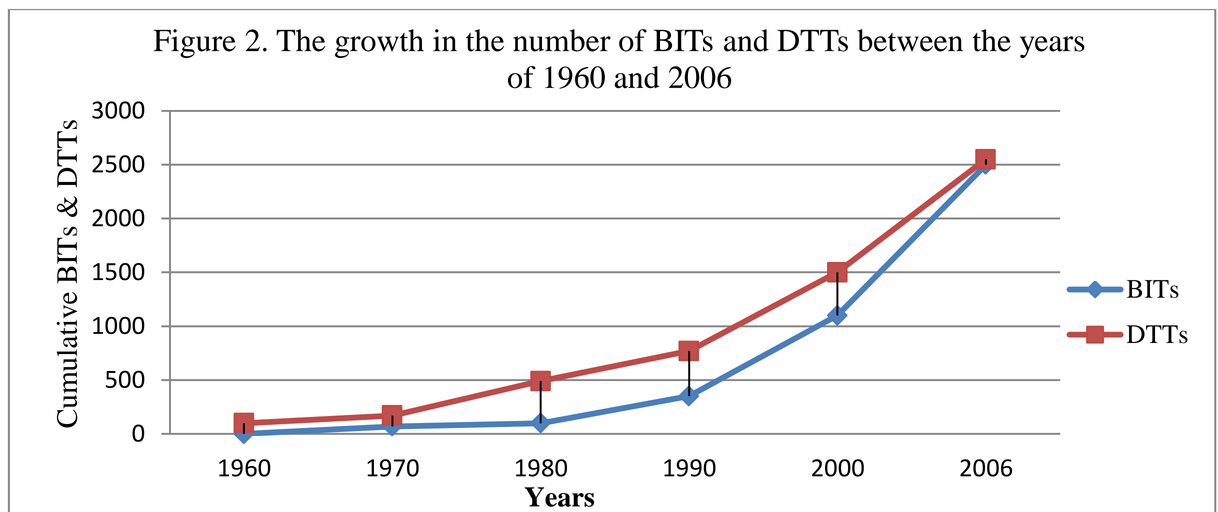


Figure 3 - Source: UNCTAD – WIR (2004, … 2011)

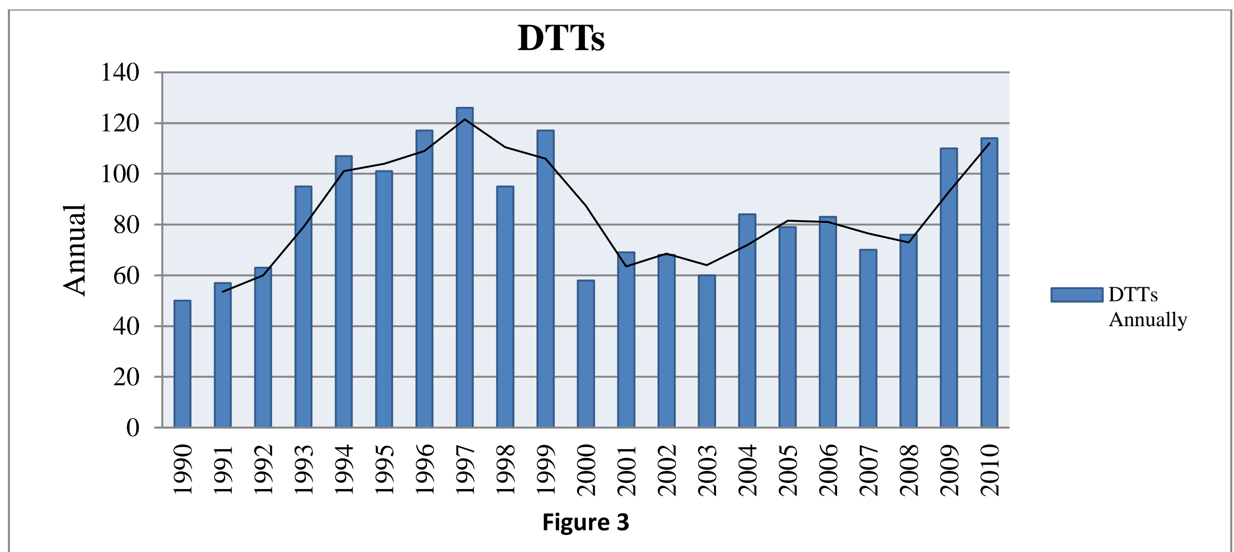


Figure 4 – Source: UNCTAD

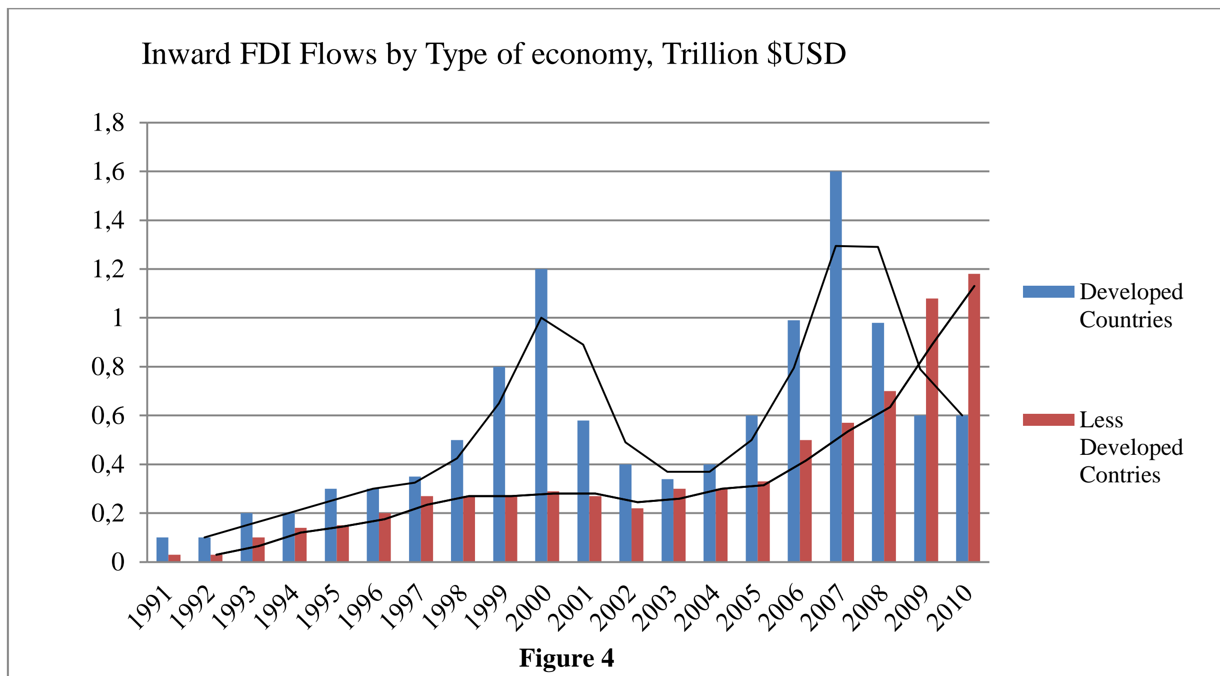


Figure 4

Figure 5 – *Source: "World Investment Report 2017" (Page 99)*

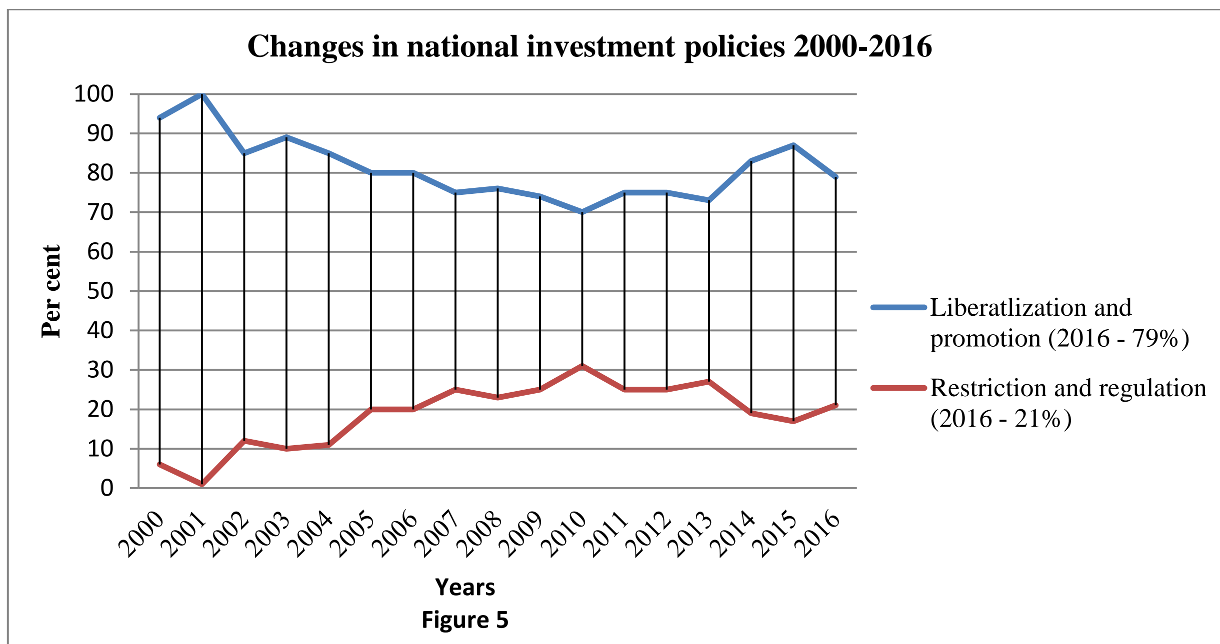


Figure 5

Figure 6 - *Source: UNCTAD (2017, 2nd of May).*

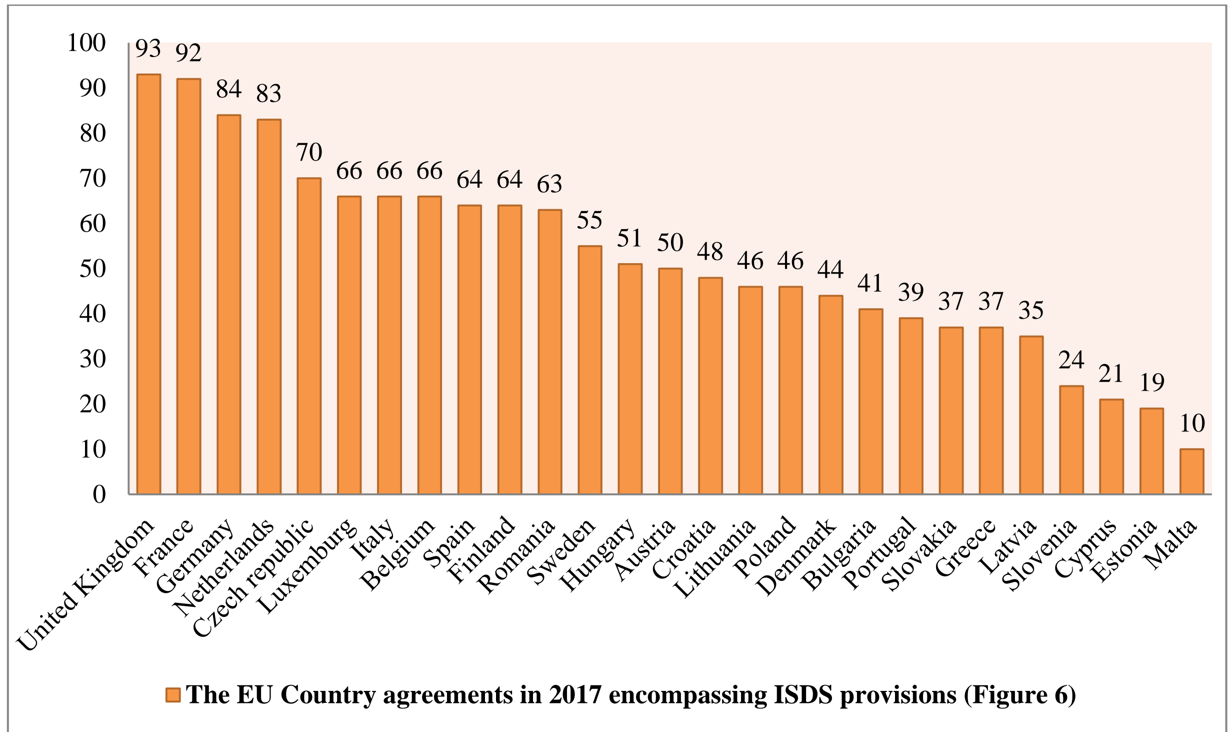


Figure 7 - *Source*: *UNCTAD* – World Investment Report

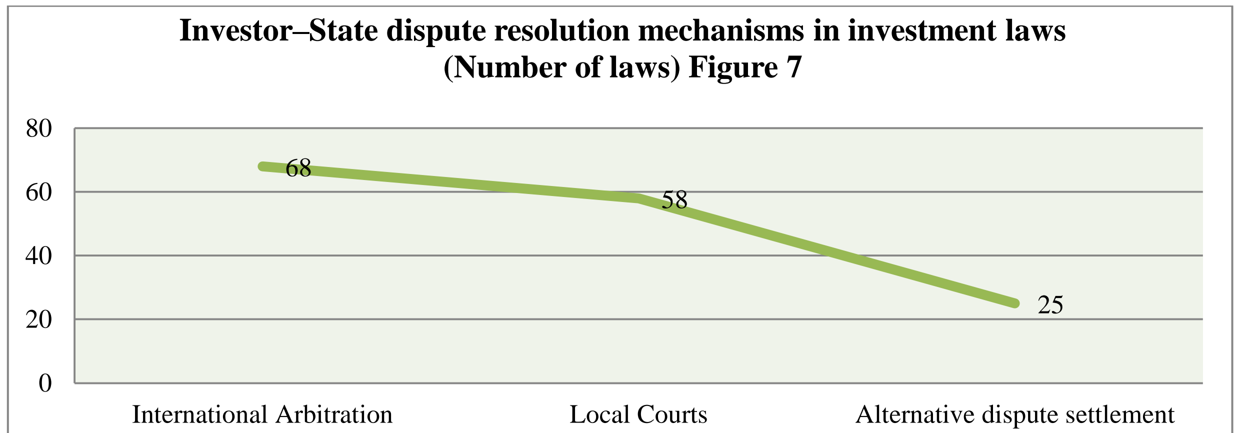
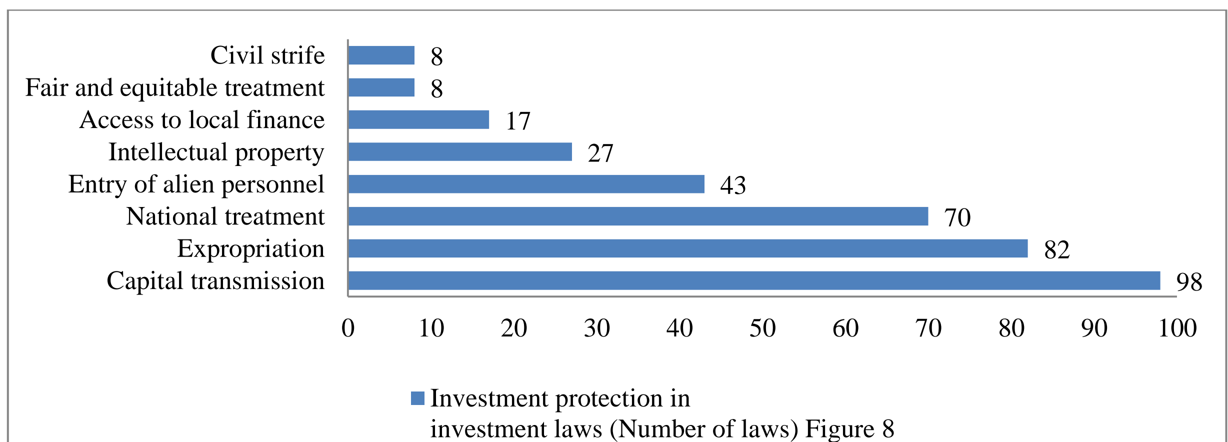


Figure 8 - *Source*: *UNCTAD* – World Investment Report 2017



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