Double Tax Treaties and Tax Information Exchange Agreements:
What Advantages for Developing Countries?

1. Context

Since the visible outbreak of the actual crisis of the global financial system the issue of tax cooperation found its way back on the international agenda. Driven by the preoccupation for the integrity of financial markets old and new bodies of international governance coordination like the G7/8 and the G20 rediscovered the problem of “uncooperative and non-transparent jurisdictions” (G20 Washington Summit Declaration, 15-11-08) popularly known as “tax havens”.

Besides the Financial Action Task Force (dealing with money laundering) and the Financial Stability Forum (reshaped as Financial Stability Board and dealing with regulation) it is mainly the OECD which has been commissioned by the G20 to work on secrecy jurisdictions, focussing for its part on tax issues. The role of the OECD in this regard is seen as provider of “the international standard for exchange of tax information” (G20 London Summit Leaders’ Statement, 02-04-2009) and as custodian for the worldwide implementation of this standard. Just before the London Summit the OECD published a country assessment list which gained high attention because of the new public exposure of jurisdictions that showed remarkable deficits in implementing international tax standards. This list contained even OECD member states.

The standard referred to is laid down in the OECD Model Tax Convention on Income and Capital, a template modelled for bilateral treaties for preventing international double taxation. Article 26 of the Model Convention in its last version asks for exchange of “such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind …” (Art. 26, 1). Tax information exchange according to this Convention happens upon request and has to comply with certain conditions. Basically the same provisions are provided by the UN Model Tax Convention.

It is the declared aim of the G20 to have this tax transparency standard implemented at a global level. To this end the G20 announced “efficient counter measures” against non-cooperative jurisdictions (G20 London Summit Declaration on Strengthening the Financial System, 02-04-2009) and reached agreement with the OECD Global Forum on Taxation (renamed and reshaped as Global Forum on Transparency and Exchange of Information) to help promoting the implementation “through effective monitoring and a robust peer review mechanism” (Progress Report on the Actions of the London and Washington G20 Summits, 05-09-2009).

In this joint G20/OECD agenda the main instruments to reach this objective are Double Tax Treaties (DTTs) and Tax Information Exchange Agreements (TIEAs) containing provisions according to article 26 of the Model Tax Convention in its last version. Any jurisdiction with 12 or more such bilateral agreements is considered as cooperative and accordingly cleared from the OECD list of non-committing or non-implementing countries. While DTTs are more comprehensive than TIEAs they do not necessarily deal with tax information exchange, or doing so they may not reach the OECD standard. TIEAs on the other hand are limited to the aspect of information exchange but are treating this issue more in detail than DTTs do.

On its second summit in London the G20 also “committed to developing proposals, by end 2009, to make it easier for developing countries to secure the benefits of a new cooperative tax environment”.

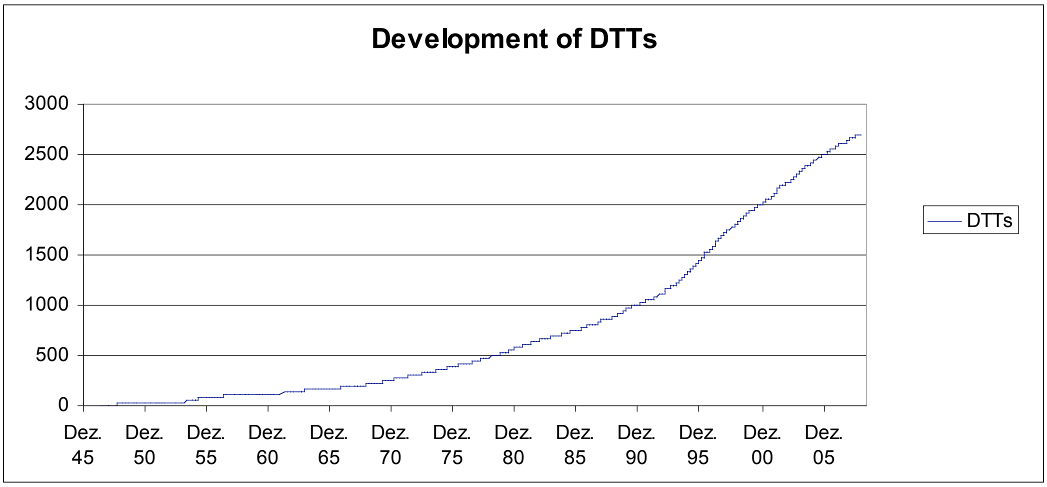
2. Developing Countries' Use of DTTs and TIEAs

While developing countries at the beginning of 2010 are still waiting for these proposals it might be interesting to have a look on the extent to which these countries already take advantage of DTTs and TIEAs. Tax transparency as such has become of increasing importance for developing countries as international tax evasion and avoidance are major obstacles in securing sustainable domestic finance for development. Although exact numbers are difficult to obtain (due to the secrecy of "secrecy jurisdictions") recent research suggests that tax losses largely outweigh development aid inflows to developing countries.

Speaking of "developing countries" needs further clarification. While major emerging economies which are still classified as "developing countries" already have a greater say in international fora such as the G20 and the OECD Global Forum Low Income Countries have virtually no representation in the bodies of global governance (with the exception of the United Nations).[1] Therefore the distinction between Middle Income Countries (MICs) and Low Income Countries (LICs) will be maintained throughout the following considerations.

The following lines are limited to a quick glimpse on quantity aspects of the use developing countries can make from DTTs and TIEAs. The quality dimension (i.e. questions like: what a price have developing countries to pay e.g. in the form of concessional low tax rates to obtain tax information exchange by their counterparties?) would be even more important but requires much more in-depth research. The data are drawn from the OECD internet database for TIEAs[2] and from the UNCTAD internet database for DTTs.[3] Data are from 18 December (TIEAs) and 1 June 2009 (DTTs).

Double Tax Treaties are older than TIEAs and show a relatively steady increase. By 1 June 2009 they numbered 2827 according to UNCTAD data.



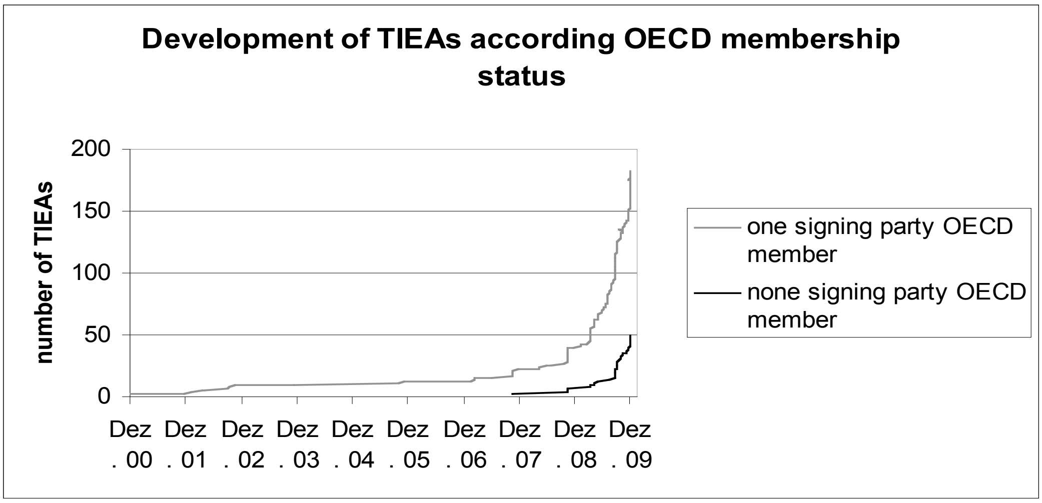
Tax Information Exchange Agreements on the other hand show sharp growth right after the publication of the OECD jurisdiction list on 2 April 2009 independently from OECD

[1] There are 9 MICs in the **G20** (Argentina, Brazil, China, India, Indonesia, Mexico, Russian Federation, South Africa and Turkey) but no LIC. There are two MICs as members in the **OECD** so far (with the imminent accession of Chile there will be a third one) but no LIC. The **OECD Global Forum** recently revised its membership and contains now all OECD member countries, all G20 member countries and all other jurisdictions covered by its 2009 tax co-operation assessment (published in "Towards a Level Playing Field 2009"). Among the 87 jurisdictions covered there were 27 MICs but no LIC.

[2] See http://www.oecd.org/document/7/0,3343,en_2649_33767_38312839_1_1_1_1,00.html. This database regrettably doesn't provide complete information. It only contains "recent bilateral agreements" starting with 6 December 2000. No explanation for the selective data provision is given.

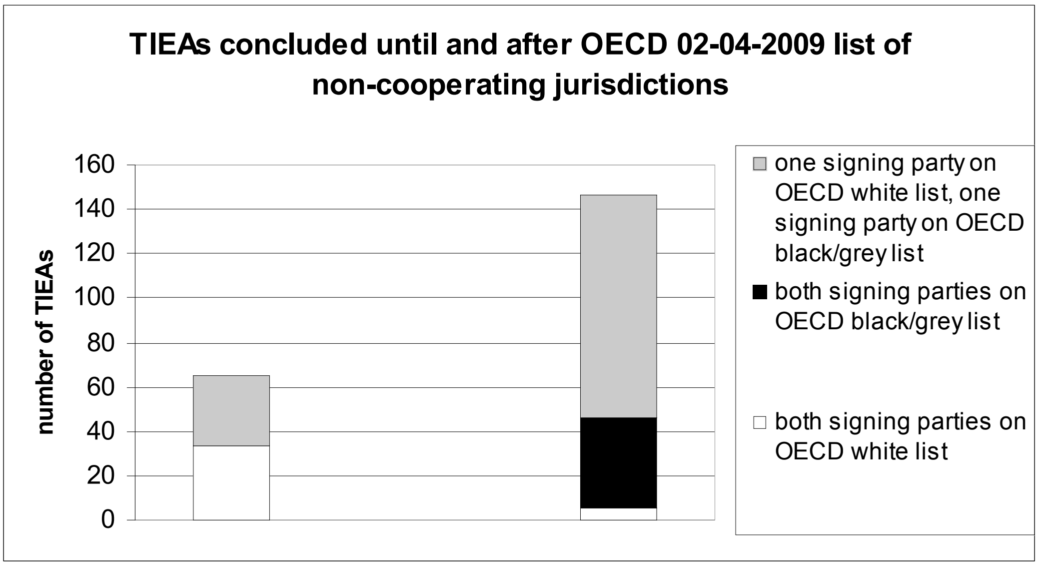
[3] See http://www.unctad.org/Templates/Page.asp?intItemID=4505&lang=1.

membership status. By 18 December 2009 their total number documented on the OECD website was 229.



(There are no TIEAs exclusively signed among OECD member states.)

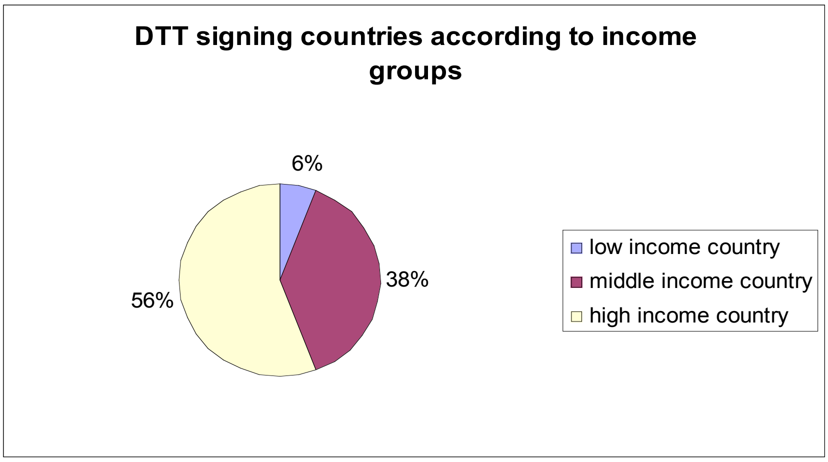
This peak can be attributed to the wish of many jurisdictions to reach the number of 12 agreements signed. This number was (and still is) the quite arbitrary threshold chosen by the OECD Global Forum for jurisdictions to become cleared from the "grey" list of jurisdictions that "have not yet substantially implemented" the "internationally agreed tax standard" (i.e. Art. 26 of the OECD Model Tax Convention). For this purpose more than one quarter of TIEAs after 2 April 2009 were concluded between secrecy jurisdictions.

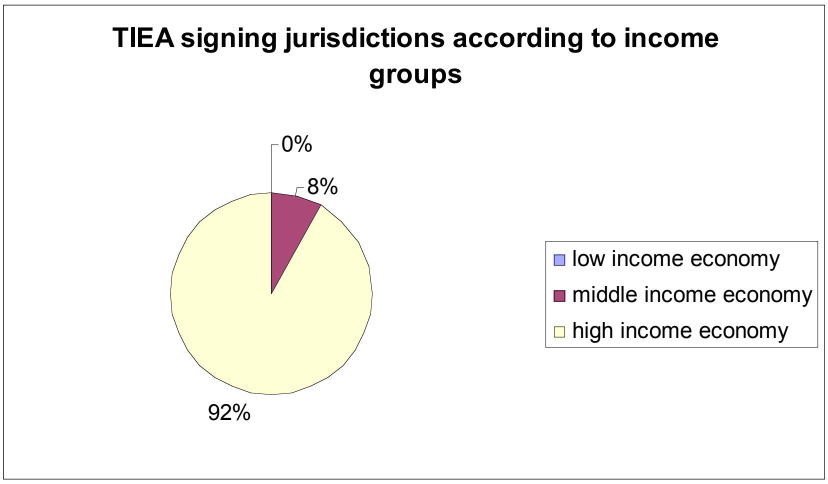


left column: TIEAs concluded until April 2nd, 2009
right column: TIEAs concluded since April 2nd, 2009

(the "black" list refers to countries that have not even committed to the tax standard; "white" list countries are all those with 12 and more DTTs or TIEAs with provisions in line with Art. 26)

When it comes to **income groups** the numbers are telling: Only 6 percent of DTTs show a signature of a Low Income Country (with an even smaller participation of 3 percent for Least Developed Countries). The situation with TIEAs is even worse: There is no single LIC (leaving aside LDC) as signing party of any TIEA documented on the OECD website.





3. Conclusion

While G20 and OECD are promoting DTTs and TIEAs as centrepieces of a global standard on transparency and cooperation in tax matters statistics show that poor developing countries are simply left out in this picture. How these countries should get access to "the benefits of a new cooperative tax environment" (G20 London Summit) according to the recipes of the G20 and the OECD remains an open question.[4]

Evidence shows that industrialized countries are just not interested in concluding Tax Information Exchange Agreements with Low Income Countries because they don't expect much profit from such agreements for themselves. Tax information coming from financial centres and TNC headquarters in the North would be important for LICs – but not so much vice versa. Industrialized countries therefore prefer to conclude DTTs where tax information can be negotiated against other benefits. Here begins the field of the quality dimension of DTTs which needs urgently to be looked at if there is a real interest in (poor) developing countries having better possibilities to secure their domestic tax base for sustainable public finance.

[4] The recipes themselves are also questionable as criticism from civil society groups like the Tax Justice Network shows. Tax information "upon request" as enshrined in the OECD Model Tax Convention poses serious difficulties for effective information exchange. And the very bilateral basis of DTTs and TIEAs promoted so far aggravates the difficult negotiating position for poor developing countries.