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Observations

The results of the analysis of the legal and administrative mechanisms identified in the 2006 Assessment indicate that in the case of almost all countries examined there are:

- mechanisms in place for the exchange of information under certain circumstances;
- limitations to the manner and circumstances under which countries are able to provide tax information;
- limitations to the types of information which are available.

There is no evidence in the 2006 Assessment to indicate that countries within the OECD have overall better legal and administrative frameworks for exchange of tax information than countries outside the OECD. Nor is there any evidence in the Assessment to indicate that the small and developing countries, identified by the OECD in 2000 as ‘tax havens’, have legal and administrative frameworks of inferior quality to those within the OECD or to those within the group of non-OECD financial centres which were not targeted as tax havens. This observation is consistent with a recent IMF Assessment Report, which, after comparing so-called OFCs with 55 ‘onshore’ jurisdictions, indicated that the regulatory and administrative framework in ‘OFCs’ are actually ‘more favourable’.

Compliance levels for OFCs are, on average, more favorable than those for other jurisdictions assessed by the Fund in its financial sector work.¹¹⁹

A relatively clear pattern emerged from the review of counterparties to the two most common forms of bilateral international agreements providing for exchange of information, DTCs and TIEAs (see Figure 1 and Appendix III). The data suggest a distinction in the application of these two forms of agreement, depending on whether or not a small or developing country was involved. The use of DTCs is typically found between OECD countries, and between OECD countries and countries with large dynamic economies, geopolitical influence or scarce natural resources. It therefore appears that geopolitically powerful countries tend to make decisions on entering into DTCs on an economic or geopolitical basis, rather than on consideration of issues such as equity between nations or the development aspirations of small and developing countries. An exception to the pattern of granting DTCs may exist in relation to the historical treatment by certain geopolitically powerful countries of former colonies.

Stand-alone TIEAs, on the other hand, are a recent development and appear to remain the domain to which small and developing countries are relegated. As would be expected, countries included in the DTC treaty networks have more tax treaties with tax information provisions than countries which are excluded from the treaty network.

Figure 1. Average Number of DTCs and Distribution of Counterparties

