
Developments in AFRICA

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17th International Taxation Conference – 2011

Foundation for International Taxation – F.I.T.

December 1-3, 2011, ITC Maratha Hotel, Mumbai

OUTLINE

- **Statistical analysis**
- **Developments in domestic taxation**
- **Africa tax treaty practice**
- **Recommendations**

I- Statistical analysis

African vs EU countries

Africa: 53 countries

628 TT signed

vs

EU: 27 countries

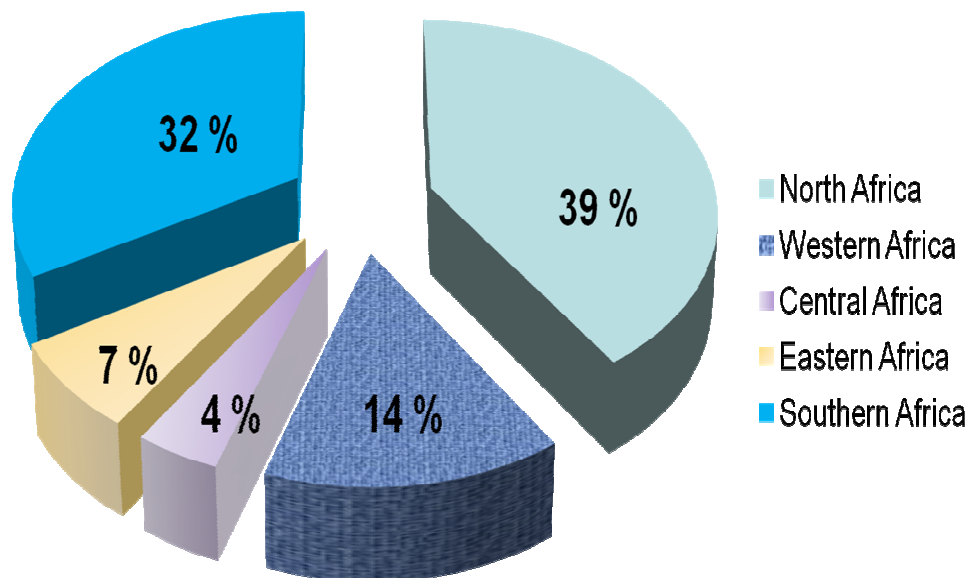
2 045 TT signed

- **Top 5 African countries: 45% of total TT signed.**
- **Top 5 EU countries: 26% of total TT signed**

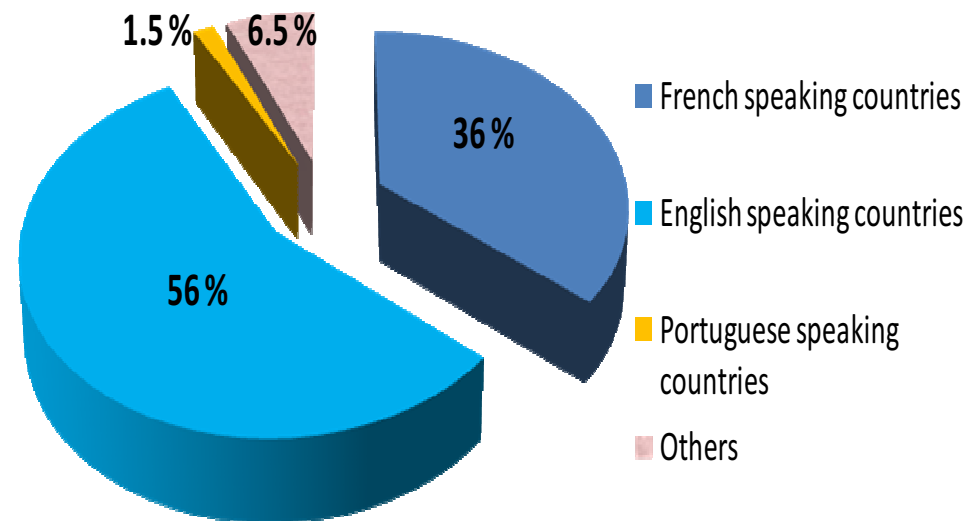
I- Statistical analysis

Comparison among African countries

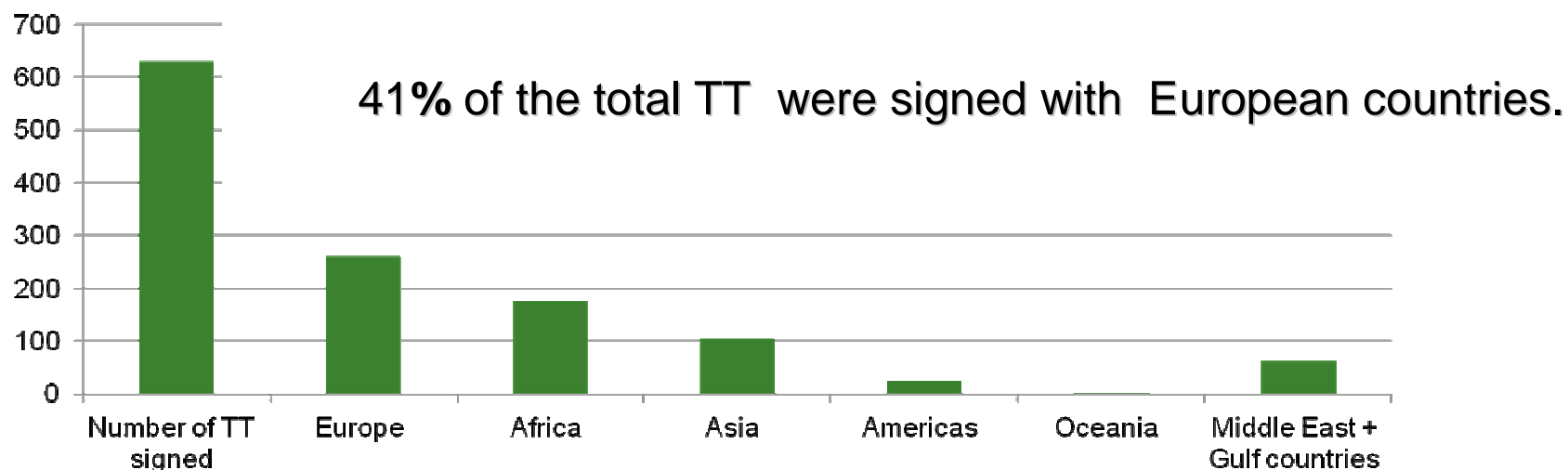
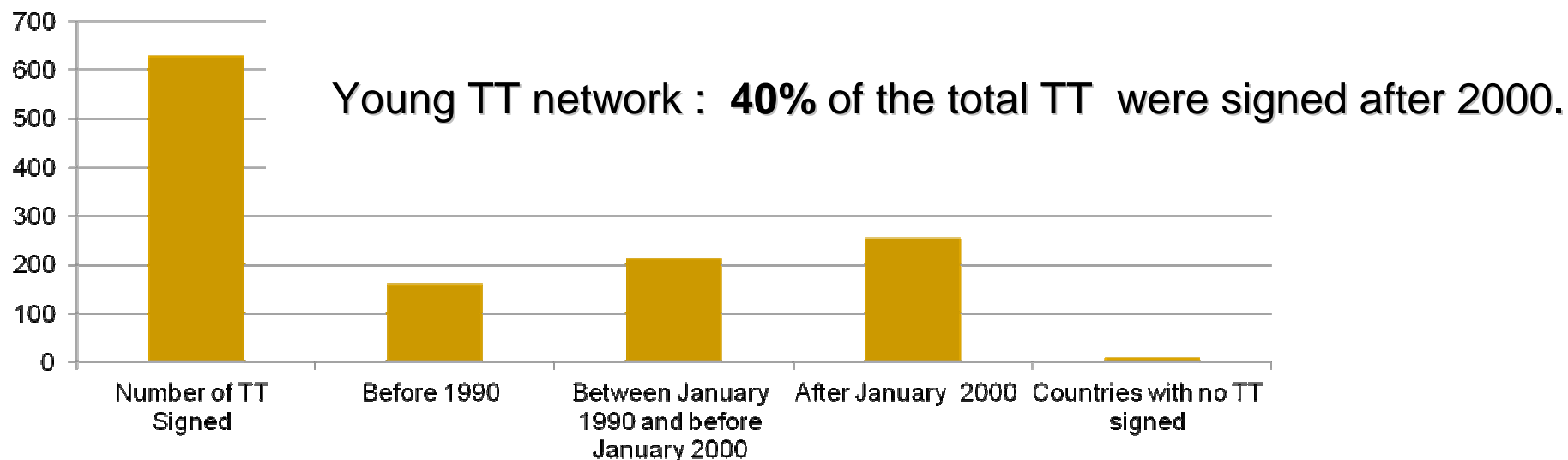
Percentage of TT signed by region



Percentage of TT signed by (working) language



I- Statistical analysis - Africa TT network



I- Statistical analysis - Scope of the study

- Taxation of companies.
- IBFD database as of July 2011.
- 20 countries covered:
 - **North Africa:** Egypt, Morocco, Tunisia and Algeria
 - **West Africa :** Senegal, Ghana, Togo, Benin and Nigeria
 - **Central Africa:** Cameroun, Central A. Rep. and Dem. Rep. of Congo
 - **East Africa:** Ethiopia, Kenya, Tanzania and Madagascar
 - **South Africa:** Angola, Botswana, South Africa and Mozambique

II- Developments in domestic taxation

Resident companies- definition

- **Incorporation:** Algeria/Benin/Togo/Tunisia/Senegal/
Congo(Dem Rep) and Central African Republic.
- **Legal seat :** Morocco
- **Operated in the country :** Cameroon
- **POEM + incorporation :** South Africa

II- Developments in domestic taxation

The PE concept

- Majority: no definition in domestic tax law but a reference under domestic law.
- In few cases : defined in the Tax Code
- **Agency PE?**

II- Developments in domestic taxation

The PE concept

- Force-of-attraction principle : No written rule in the tax code but different in practice.
- Branch profit tax : Half of the countries covered
→ applicable only on repatriated profits.
- Effective rate of the branch tax is around **10%** for the countries covered.
- Senegal: levied even in the absence of corporate tax.

II- Developments in domestic taxation

Unilateral relief

- General rule : worldwide taxation for companies.

However, some countries:

active income → territorial principle

passive income → worldwide basis

(Morocco, Tunisia, Senegal, Madagascar, Central A Rep, Benin and Algeria)

- Generally **no** unilateral double taxation relief.

II- Developments in domestic taxation

Management or technical services fee

- Almost all countries: withholding tax
- Rates are between 10% and 20%.

III- Africa tax treaty practice

- The aim of this part is to assess Africa's tax treaty practice.
- It is based on an extensive research project in where almost 400 international tax treaties were analyzed.

Countries	Number of TT signed
South Africa	74
Egypt	63
Morocco	54
Tunisia	52
Algeria	36
Senegal	16
Nigeria	15
Ethiopia	13
Kenya	13
Botswana	12
Tanzania	10
Ghana	9
Mozambique	7
Cameroon	4
Dem. Rep. of Congo	3
Benin	3
Togo	3
Central Africa	2
Madagascar	2
Angola	0
Total :	20
	391

III- Africa tax treaty practice

Tie breaker rule

- Most of the treaties → POEM although the concept is not defined under their domestic law.

- Very few → registration/incorporation or legal seat

e.g. Madagascar-France (1983); Nigeria-Canada (1992); Morocco-France (1970)

- Some → nationality and then POEM
or POEM then mutual agreement
or directly → mutual agreement

e.g. Tanzania-Canada (1995); Morocco-Canada (1975); S. Africa-Canada (1995)

III- Africa tax treaty practice - PE

The building or construction site

- **6 months: most of TT + multilateral TT** (except AMU → 3 months)
- 12 months : very few TT (South Africa with OECD countries)
- 0, 3 or 9 months: few TT (Senegal, Nigeria or Ghana respectively)

III- Africa tax treaty practice - PE

The furnishing of services

- Minimum Period: 6 months/183 days → majority of TT
 - 3 months → Algeria - Bosnia&Herzegovina /Canada /Indonesia/ Lebanon/ Russia and Morocco – SA
 - 2 months → Morocco-Indonesia, Morocco-Malta
 - 75 days → Morocco-Belgium
 - 0 days → AMU

III- Africa tax treaty practice - PE

Agency PE

- All TT analyzed include an agency PE provision although the taxing right does not exist under domestic law for the majority of the countries covered.
 - **Agency PE extended under the UN MC (paragraph 5(b) of Art. 5):**
a person without the authority to conclude contracts in the name of the enterprise may nonetheless be considered a dependent agent and constitute a PE in case that person maintains a stock of goods or merchandise to deliver on behalf of the enterprise.
- Senegal, Kenya, Nigeria, Cameroon, Togo, Madagascar, Tunisia, Morocco and Central Africa follow the UN provision in the majority of their TT.

III- Africa tax treaty practice - PE

Force-of-attraction principle

- Some countries include this provision in a limited number of their TT.

eg. SA-Indonesia (1997)/ Ethiopia (2004)

Egypt-Indonesia (1995)

Morocco-India (1998)/ Indonesia (2008) / Senegal (2002)

Algeria-Indonesia (1995)

Kenya-Canada (1982)/ India (1985) / Thailand (2006)

Nigeria-Belgium (1989)/ Canada (1992)

WAEMU (2008)

III- Africa tax treaty practice - PE

Branch profit tax

- **Very few countries** (Morocco, Tunisia, Cameroon and Senegal)

have a branch profit tax in some of their TT although more than half the countries covered have it under their domestic law.

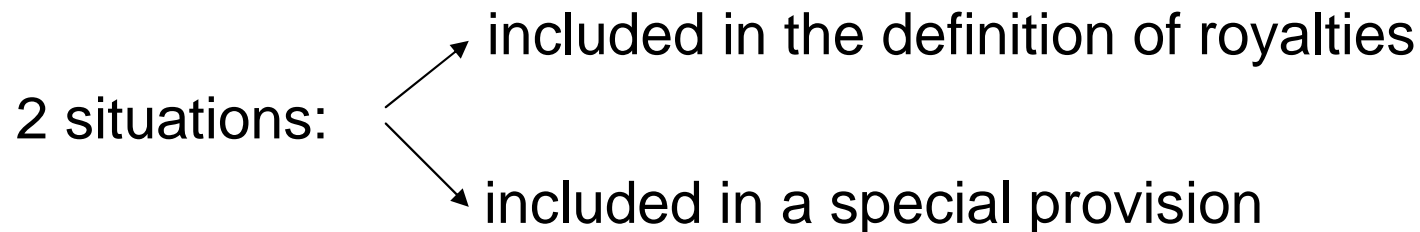
Rates (%):

Morocco → 5; 6; 6.5; 7; 7.5; 8 and 10 ; Senegal → 5, 10 and 16

Tunisia → 12 and 15 ; Cameroon → 15 and 20

III- Africa tax treaty practice

Management or technical fees



- Very few countries (Tanzania, Botswana, Morocco (recently signed TT) and Ghana) have this taxing rights under their TT although almost all of the countries covered have it under their domestic law.

III- Africa tax treaty practice

Tax sparing

- OECD and developed countries are nowadays reluctant to grant tax sparing during treaties negotiation → taxpayer abuse.
- **Few TT include such a clause:**
Egypt, Morocco, Ethiopia, Mozambique, Botswana, Kenya, Nigeria, and Tanzania.
- **Different possibilities:**
 - covering income tax,
 - limited to dividends,
 - covering dividends, interest and royalties, or
 - limited in time.

IV- RECOMMENDATIONS

- Review their domestic law: fill in the gaps especially when taxing rights are granted under the TT
- Training in international taxation
- Developed countries should help developing countries to preserve their taxing rights
- South/South cooperation

THANK YOU
