

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT DOUBLE TAXATION RELIEF (MAURITIUS)
ORDER 2018

DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT (CYPRUS)
ORDER 2018

Monday 18 June 2018

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The Committee consisted of the following Members:

Chair: MR LAURENCE ROBERTSON

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| † Aldous, Peter (<i>Waveney</i>) (Con) | † Metcalfe, Stephen (<i>South Basildon and East Thurrock</i>) (Con) |
| Coffey, Ann (<i>Stockport</i>) (Lab) | † Percy, Andrew (<i>Brigg and Goole</i>) (Con) |
| † Dodds, Anneliese (<i>Oxford East</i>) (Lab/Co-op) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Ford, Vicky (<i>Chelmsford</i>) (Con) | † Stride, Mel (<i>Financial Secretary to the Treasury</i>) |
| † Fysh, Mr Marcus (<i>Yeovil</i>) (Con) | Umunna, Chuka (<i>Streatham</i>) (Lab) |
| † Grant, Peter (<i>Glenrothes</i>) (SNP) | † Walker, Thelma (<i>Colne Valley</i>) (Lab) |
| Lammy, Mr David (<i>Tottenham</i>) (Lab) | † Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) | Kenneth Fox, <i>Committee Clerk</i> |
| † McKinnell, Catherine (<i>Newcastle upon Tyne North</i>) (Lab) | † attended the Committee |
| † Mann, Scott (<i>North Cornwall</i>) (Con) | |

The following also attended (Standing Order No. 118(2)):

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| Francois, Mr Mark (<i>Rayleigh and Wickford</i>) (Con) | Stewart, Bob (<i>Beckenham</i>) (Con) |
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First Delegated Legislation Committee

Monday 18 June 2018

[MR LAURENCE ROBERTSON *in the Chair*]

Draft Double Taxation Relief (Mauritius) Order 2018

4.30 pm

The Financial Secretary to the Treasury (Mel Stride): I beg to move,

That the Committee has considered the draft Double Taxation Relief (Mauritius) Order 2018.

The Chair: With this it will be convenient to consider the draft Double Taxation Relief and International Tax Enforcement (Cyprus) Order 2018.

Mel Stride: It is a particular pleasure to serve under your chairmanship, Mr Robertson. The orders before the Committee give effect to a new replacement double taxation agreement, or DTA, with Cyprus and a protocol amending our existing agreement with Mauritius. DTAs remove barriers to international trade and investment and provide a clear and fair framework for taxing businesses that trade across borders. By doing that, they benefit both business and the economies of the countries signed up to them.

I will say a few words about each agreement. Our current DTA with Cyprus was signed in 1974 and last amended in 1980. This new treaty therefore provides a comprehensive update that reflects the current OECD standards, including the BEPS—base erosion and profit shifting—minimum standards on treaty abuse and improving dispute resolution. The new treaty protects the UK's taxing rights over gains from the disposal of land and buildings in the United Kingdom. That is particularly important, because it prevents non-residents from developing and disposing of UK land without paying tax in the United Kingdom.

Bob Stewart (Beckenham) (Con): I am only here today to represent the concerns of servicemen, civil servants, policemen and firemen who have retired to Cyprus. They went there on the understanding that the tax rate would be 5%. That way, they eke out their pension pretty well. This change will hit them extremely hard. I very much want the House to realise that suddenly they will go from paying 5% up to paying at least 20%, and that is a big jump.

Mel Stride: I thank my hon. Friend for his intervention. The fact that he has chosen to attend this Committee, despite having not been selected to serve on it, is testimony to how strongly he feels about the issue. What I would say to him is this. First, the actual impact of the changes—the move from 5% up to 20%, as he termed it—on individual public service pension recipients will depend largely on their own personal tax affairs. As my hon. Friend may well know, there is a different personal allowance level in operation in the United Kingdom

from that pertaining to Cyprus, so there is an interplay between those two reliefs as well. It is therefore not immediately obvious that all of those affected by this measure, or indeed the majority, will be adversely affected. The other point to make is the importance of a level playing field. In the case of all the other countries where we have a similar situation and with which we have agreements in place—countries such as Germany and Belgium—it is the UK tax authorities that actually levy the tax on those who are in receipt of UK public service pensions, albeit that they reside in those territories.

This treaty provides for exemptions for source state taxation, including eliminating withholding taxes on dividends, interest and royalties arising in Cyprus, but we have ensured that we retain the right to apply a withholding tax of 15% on distributions from real estate investment trusts, or REITs. The agreement also contains the most up-to-date provisions to guard against treaty abuse, the latest OECD exchange of information article, and a provision for mutual assistance in the collection of tax debts. Those features strengthen both countries' defences against tax avoidance and evasion.

The protocol with Mauritius amends our existing 1981 DTA to update the dividend article in order to close a loophole in the original agreement. That was being abused to avoid tax on dividends from REITs. Dividends from UK REITs are usually subject to a withholding tax when paid to investors, because the profits themselves are not taxed in the hands of the REIT. However, the Mauritius DTA predates the creation of REITs and prevents application of that withholding tax. We recently became aware that third-country investors had established a company in Mauritius to use that feature of the DTA to avoid UK tax on dividends from a REIT.

We approached the Mauritian Government proposing a change to the dividend article to prevent the avoidance, and they were happy to co-operate. The amended article allows the UK to withhold tax at 15% on dividends from REITs to residents of Mauritius, bringing it into line with many of the UK's other DTAs. The changes made by the protocol will, once it is ratified, be effective from the date of signature—28 February 2018—so there will be no delay in shutting down the avoidance and protecting the UK Exchequer with immediate effect.

The UK, and Cyprus and Mauritius, can be happy with the agreements. They protect UK revenue and provide a stable framework in which trade and investment between the UK and Cyprus and Mauritius can continue to flourish. I therefore commend the orders to the Committee.

4.36 pm

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve with you in the Chair, Mr Robertson, and to hear again from the Minister, with his explanation of the two double taxation agreements. It is of course not so long ago that we were talking about other agreements, particularly those covering Belarus and Ukraine. I am grateful to the Minister for writing to me on 13 June, after that exchange, to cover some issues that are relevant to these treaties as well. With your permission, Mr Robertson, I might delve into some of those briefly.

I am pleased to hear that Her Majesty's Revenue and Customs is considering the case for further reviews of the treaty network. That would be very helpful because

we, as parliamentarians, currently do not have a clear idea of which treaties are being negotiated with which countries, when, with which actors and according to which principles. It would be enormously useful to have that timetable in front of us. Surely it is also necessary to conduct a review, given that we recently debated and agreed in this place that the UK will follow the OECD's multilateral instrument for the reform of double taxation agreements. It seems to be a useful time to review the agreements.

I was grateful to the Minister for stating in his letter that it would be helpful to know what kinds of additional information it would be useful for Committee members to have before debating such treaties. The first kind—this was revealed a bit in the exchange that we just had—is a clear indication of why new treaties or agreements might shift away from previous ones. Currently, the way that we parliamentarians normally notice that is through the explanatory note that comes with the agreement, which sometimes flags up particular issues. For example, it usefully flagged up the treatment of property investment vehicles for Cyprus. However, explanatory notes do not go through systematically and say, “Here's every difference compared with the existing agreement.” We have to do that ourselves and look at them in parallel to work out what the differences are. Of course, some of them might not be important, but we cannot really judge that, so it is quite time consuming.

Secondly, we do not have an indication of why certain choices have been made. The potential impact of the new regime on British servicemen and women, and others who might be living in Cyprus, was a useful example. It would be helpful to know whether there had been consultation with people who might be affected by the new agreement. Above all, it would be useful to know why both the UK Government and the Governments of the countries with which we are negotiating treaties have taken certain decisions to move away from an existing regime. The OECD's approach—I know the Minister is very much on top of the detail of this—gives us many choices about how we can contract with other countries through such agreements. It does not often specify an exact way forward. In fact, one particularly contentious matter, which I think we have debated in this room before, is the use of different forms of arbitration. Countries might have very different views on that, and very different interests.

Finally, the other area where it would be helpful for us, as parliamentarians, to have information about such treaties, when we are talking about developing countries or countries in the global south—a category that Mauritius would probably fall into—is whether any formal assessment, or even informal discussion, had been undertaken by the Government about whether the agreements cohere with the principle of policy coherence for development.

We would all support the tightening-up of the regime, which the Minister mentioned, although it is not something that will particularly benefit Mauritius financially. Such schemes do not tend to have much of a trickle-down impact—quite the opposite—and often create problems for the countries in which they are based, so when we are talking about developing countries, it would be helpful to have a systematic analysis of whether policy coherence for development has been considered in decision making.

4.40 pm

Peter Grant (Glenrothes) (SNP): I am grateful for the opportunity to make a brief contribution to the debate. I have spoken previously in similar Delegated Legislation Committees to assert my view that the purpose of all these agreements should be to ensure that people pay tax where they should pay tax, morally and on principle, so I support any agreement that provides an incentive for people to do the decent thing and that closes down as fast as possible any loophole or incentive that encourages people to create an imaginary existence somewhere simply to get a preferential rate of tax.

Therefore, what assurances can the Minister give that nothing in the legislation will unintentionally create incentives or opportunities for further tax dodges that HMRC will then have to legislate to try to close down? Can he give concrete examples of the kinds of practices he mentioned in his opening remarks that have developed against the interests of UK taxpayers? Can he give us an indication of how much money is involved in them? Are they a major problem, or is he simply trying to prevent the problem getting any bigger?

I was concerned by the comments of the hon. Member for Beckenham about the potential impact on people who have given a lot of years of valued and dedicated service to the United Kingdom—military or other service—and who may now feel that their retirement plans are being adversely affected because of decisions taken back home in the UK. Can the Minister give us an indication of how big the effect is likely to be on individuals? How many UK citizens are likely to be directly affected, and how badly? Who will be affected? Will it be people who can just about get by on the pension they have accumulated, or people who could buy and sell most hon. Members here and who some of us may not be too sympathetic towards if they were asked to pay a fair share of taxes?

If the Committee and the House approve this legislation, how will the tax status of those UK citizens living abroad compare with the tax affairs of their colleagues who have chosen to stay and live in the United Kingdom in their retirement? I understand that if someone has organised their entire retirement on one set of assumptions and those assumptions change, it is frustrating and upsetting, but I would not want the Government accidentally to create a position in which people who are retiring are given an incentive to go and live, and spend their retirement money, in somebody else's economy rather than here. We should be looking for people who receive a pension that is funded by the UK taxpayer to pay the same tax on that, regardless of where they choose to live. We would certainly not want to give people an incentive to move overseas and spend their pension promoting somebody else's economy. I hope the Minister will give us some assurance about that.

The explanatory memorandum for the order relating to Mauritius said that, in general, the draft legislation complies with the OECD framework. I am interested in why it says “in general”. Does that mean that it does not comply in some specific details, or was the person who wrote it just being careful and reluctant to give a 100% guarantee of compliance to anything? Is there anything in either instrument that does not comply with the recommended frameworks from organisations such as the OECD?

4.44 pm

Mr Mark Francois (Rayleigh and Wickford) (Con): May I, too, say what a pleasure it is to serve under your chairmanship this afternoon, Mr Robertson?

Like my hon. Friend the Member for Beckenham, I am making a special guest appearance here today in order to raise the issue of service veterans. I managed to give at least brief private notice to the Financial Secretary of my intention to do so.

It is a fact that many veterans and, indeed, other former public sector workers living in Cyprus have been taxed for many years at a rate of 5%. It is important to bear in mind that these people have served their country, and many of them subsequently married local girls and settled down in Cyprus, in some cases to raise a family. Not unreasonably, they have made their financial plans on the basis that they would continue to pay the local tax rate of 5%, to which they have become fully accustomed. For those people suddenly to have to adjust to a tax rate of 20% or perhaps in some cases a marginal rate at 40%—so, eight times higher—will be quite a considerable adjustment.

Bob Stewart: You will forgive me, Mr Robertson, for intervening on my right hon. Friend, but the fact of the matter is that I have an interest and I declare it. A very good friend of mine was at the Joint Service Defence College with me. He was a Royal Navy officer and he has contacted me to say that because of this change, he has no option but to return to my constituency. I welcome him back, but the fact is that that is a very big change in his life as a consequence of this change in the tax regime, if it comes about.

Mr Francois: I am sure that my hon. Friend is always trying to look after his constituents, both old and new. Nevertheless, that is a valuable example of the change that this measure could mean. If someone has been living in Cyprus for some period of time and has to return to the United Kingdom for tax reasons because of this change, that shows that it is not a merely immaterial alteration.

We should bear in mind the very practical point that recent movements in the exchange rate between the pound and the euro have only compounded the challenge for people who are paid their pensions originally at the sterling rate and have to convert that into euros.

I will ask the Minister some specific questions and then ask for a favour. My first specific question is, assuming that the tax treaty comes into force fairly shortly, in what tax year would the new arrangements arise? In other words, would these veterans be charged at the new rate of 20% or more in the current tax year—2018-19—or would it only cut in, as it were, in a full tax year, in 2019-20? For anybody who is looking to plan, that is an important piece of information that, understandably, they want to know.

Secondly, given the scale of this change, has the Department considered any transitional arrangements, perhaps phasing it in, in some way, over several years to give people time to adjust? As I am sure the Minister can appreciate, what some of these veterans would like is for the Government to reconsider this whole decision, and I can well understand why they would make that case. I can make that plea on their behalf but, knowing a bit about how government works, I suspect that the

Minister is not going to give them great joy on that point. What I am seeking to do, therefore, as I am sure the Minister, who is a reasonable man, can understand, is to say that if the Government are determined to go ahead with this change, which I suspect they are, could they at least try to ameliorate it in some way, to give people who have planned for a number of years on one basis—perfectly reasonably—a little more time to adjust to having to plan for themselves and their families on an alternative basis?

Bearing in mind that these are people who have served their country loyally, will the Government in return, as my hon. Friend the Member for Beckenham and I very much wish—as, I suspect, do other members of the Committee—give a little bit of acknowledgment of the good service of those people in the past? I look forward enthusiastically to the Minister coming up with at least something out of his back pocket.

4.51 pm

Mel Stride: I thank everybody who has participated in this debate. To pick up on some of the questions that the hon. Member for Oxford East raised, we are constantly reviewing existing treaties. HMRC is considering the best way to approach looking at the different treaties and perhaps bring forward rationales for why we might approach them in a particular way. The hon. Lady will know that the OECD model is the starting point for our negotiations in this respect; it is available in the public domain and we can all view it. She asked what information could be provided in advance to Committees, particularly about shifts away from previous positions in existing agreements where they are being renegotiated. I would be happy to have a further discussion with her outside the Committee about the detail of that.

The hon. Lady also asked why certain choices were made. We have an explanatory memorandum and it is the case with most treaties that there is some time between the treaty being signed and it coming before this House. For example, the signed DTA that we are looking at was published on the Government website, and a ministerial statement was made to that effect, on 27 March 2018. MPs and their constituents have been able to make representations to me since then. The Government do not consult more generally on the contents of DTAs because they are the product of bilateral negotiations with other states, which deal with a vast range of complex issues that are not suitable for open negotiation.

The hon. Lady asked whether there were formal assessments of whether these arrangements are coherent with our development goals and approaches in developing countries. I assure her, as we have discussed in previous Committees, that the Department for International Development is well aware of and comfortable with our approach. Where it has concerns that it wishes to raise, my colleagues and I at the Treasury will be very happy to hear them. As with any agreement of this nature, it is only by mutual agreement between ourselves and those whom we negotiate with that we come to an agreement at all. Nobody is forcing any particular country into an agreement with us.

The hon. Member for Glenrothes asked me for an assurance that the instruments would not provide further opportunities for tax avoidance. I give him that assurance; I have no crystal ball, but I believe they are intended

solely to make the tax system internationally fairer and operate better. As we have discussed in the case of the REITs and Mauritius, they tighten up the tax treatment there to make sure that we are able to levy appropriate tax on those particular structures.

The hon. Gentleman asked me how much money was involved in this kind of clampdown; in the specific case of Mauritius, there was one particular case of treaty shopping where a company was set up in Mauritius with a REIT in the UK, but the transaction was really coming back to another country. I believe the amount involved in that particular case was about half a million pounds. They are not sums up in the hundreds of millions, but they are significant sums none the less. There is an important principle at stake as well.

The hon. Gentleman also raised the issue of our personnel based in Cyprus who are in receipt of public service pensions. He asked how many people might be affected. There are about 65,000 UK residents residing in Cyprus, of whom something in the low thousands—I do not have a precise figure—might be on Government service pensions. A subset of that group would be on armed forces pensions—I shall come on to the contribution of my right hon. Friend the Member for Rayleigh and Wickford in a moment. The hon. Member for Glenrothes sought an assurance that under the new arrangements, those individuals would not be disadvantaged in any way relative to those receiving UK pensions who reside within the United Kingdom. The answer to that is they would not be; they are all basically on the same basis.

The hon. Gentleman also made an interesting point about the language in the explanatory memorandum, asking about the statement that the draft instrument complies generally with the OECD model. He is right. Almost invariably in such treaties, there are variations from that model, and one in the case of Mauritius is the principal purpose test, which does not feature in this particular agreement. That is an important tax avoidance measure, but we have assurances from Mauritius that that is something that will be included in the multilateral instrument. When the Mauritian Government ratify that, they will not have it as a reserved matter.

Coming to the very important points made by my right hon. Friend the Member for Rayleigh and Wickford, and indeed my hon. Friend the Member for Beckenham,

as I said earlier, the critical thing in the Cyprus order is that we seek to place the arrangements that pertain to the UK public service pensions of those who happen to be resident in Cyprus on the same basic footing as those that we have with just about every other country with which we have such arrangements. The impact will be determined by a complicated interaction of different allowances—of course the personal allowance in the UK is different from that in Cyprus—and the 5% lower rate tax is a lower rate tax, but an individual who is being taxed in Cyprus can elect to pay the higher rate tax, so it is tricky to work out the exact impact in individual circumstances. We believe, however, that for the less well-off in particular, the likelihood—on average, on balance—is that the impact will be lower rather than greater.

My right hon. Friend asked in which tax year the measures would kick in, and the answer is in 2019-20 at the earliest.¹ I may not meet his invitation to impress him and come up with something out of my pocket, or a rabbit out of a hat perhaps, but I shall go as far as to say that I will, of course, be pleased to meet him to discuss this matter or, indeed, any other tax measure that he may wish to raise with me. However, if we were to look at any form of transitional arrangements, that would require an agreement with Cyprus, and the likelihood of that—or of us pursuing that path, I have to say, as he rather suggested in his contribution—is very low.

On that note, I hope that we can agree the draft orders before the Committee.

Question put and agreed to.

DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (CYPRUS) ORDER 2018

Resolved,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Cyprus) Order 2018.—
(Mel Stride.)

4.59 pm

Committee rose.

