

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

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

Monday 21 January 2019

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The Committee consisted of the following Members:

Chair: MRS ANNE MAIN

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| † Aldous, Peter (<i>Waveney</i>) (Con) | † Sheerman, Mr Barry (<i>Huddersfield</i>) (Lab/Co-op) |
| † Bebb, Guto (<i>Aberconwy</i>) (Con) | † Smith, Henry (<i>Crawley</i>) (Con) |
| Berger, Luciana (<i>Liverpool, Wavertree</i>) (Lab/Co-op) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Dodds, Anneliese (<i>Oxford East</i>) (Lab/Co-op) | † Stride, Mel (<i>Financial Secretary to the Treasury</i>) |
| † Fellows, Marion (<i>Motherwell and Wishaw</i>) (SNP) | † Walker, Thelma (<i>Colne Valley</i>) (Lab) |
| † Ford, Vicky (<i>Chelmsford</i>) (Con) | † Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Green, Kate (<i>Stretford and Urmston</i>) (Lab) | |
| † Gyimah, Mr Sam (<i>East Surrey</i>) (Con) | Leoni Kurt, <i>Committee Clerk</i> |
| † Merriman, Huw (<i>Bexhill and Battle</i>) (Con) | |
| Nandy, Lisa (<i>Wigan</i>) (Lab) | |
| † Pawsey, Mark (<i>Rugby</i>) (Con) | † attended the Committee |

Third Delegated Legislation Committee

Monday 21 January 2019

[MRS ANNE MAIN *in the Chair*]

Draft Double Taxation Relief and International Tax Enforcement (Austria) Order 2018

6 pm

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

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Austria) Order 2018.

May I say what a pleasure it is to serve under your chairmanship, Mrs Main? The order gives effect to a replacement double taxation agreement with Austria. DTAs remove barriers to international trade and investment, and provide a clear and fair framework for taxing businesses that trade across borders. By doing so, they benefit both businesses and the economies of the countries signed up to them.

Our current DTA with Austria dates from 1969 and is therefore in need of a comprehensive update to reflect changes to the OECD's model tax convention and the domestic tax laws and treaty preferences of both states. The new DTA also introduces a number of improvements for businesses, individuals and Her Majesty's Revenue and Customs. The new agreement will first create certainty for businesses, boosting vital trade between our two countries. Cross-border dividends between group companies in the European Union are currently exempted from source state taxation under the EU's parent-subsidiary directive. The new agreement ensures that UK businesses with subsidiaries in Austria will not be affected by the UK's exit from the European Union.

Our current DTA permits Austria to tax dividends paid to UK residents at a rate of 5% for amounts paid in respect of direct investment, and 15% on portfolio holdings. The new DTA reduces the rate on direct holdings to zero, and that on portfolio holdings to 10%. At the same time, our right to tax distributions from UK real estate investment trusts at a rate of 15% is preserved. In addition, dividends received by UK pension schemes will be exempt from taxation in Austria. These reductions will ease the flow of cross-border investment between our two countries, to the benefit of both.

The new DTA also brings the mutual agreement procedure up to the minimum standard on improving dispute resolution agreed under the OECD-G20 base erosion and profit shifting—BEPS—project. In addition, the new agreement provides for mandatory binding arbitration, which will ensure that disputes are always resolved and that double taxation is avoided. Our current DTA with Austria was not listed as one that either state wished to be covered by the BEPS multilateral instrument—MLI—because this new agreement contains all of the provisions that would have been introduced by the MLI, taking into account the respective reservations made by the UK and Austria.

These provisions include the statement in the preamble that a purpose of a DTA is not to create opportunities for tax evasion and avoidance, and a principal purpose test that denies treaty benefits in cases of abuse. Together, these provisions ensure that the agreement complies with the BEPS minimum standard on preventing treaty abuse and supports this Government's agenda of fair and transparent international tax standards. Other anti-avoidance rules in the new treaty include a tiebreaker provision for determining corporate residence, based on competent authority agreement.

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): The Minister is gabbling through this at a rate of knots. I have had to come here at 6 o'clock on a Monday evening, when I should be somewhere else along the corridor. The impact assessment states that there will be no significant impact on businesses, charities or voluntary bodies. What the hell is this all for if there is no impact on anyone?

Mel Stride: Well, I am not sure that I would use quite the terminology that the hon. Gentleman has just introduced to the Committee. The purpose of any DTA is clearly to ensure that those entities that are trading across international boundaries do not suffer double taxation—so they are not taxed in both jurisdictions—and to ensure that trade is facilitated.

Mr Sheerman: Can the Minister explain to me why this relates only to Austria? I know of countries around the world where there are real concerns about double taxation, about people dodging tax and all those other things, but one country that would never enter my imagination when thinking about that is Austria.

Mel Stride: The hon. Gentleman might not be aware that we have double taxation agreements with a whole variety of countries. In fact, he has missed some of the best debates ever held in the House of Commons, because in this very Committee Room we have recently discussed DTAs with countries such as Lesotho—that was a fairly feisty debate between myself and the hon. Member for Oxford East. It is not a treaty in isolation, but one of many that we have entered into with other jurisdictions.

The provision in the capital gains article preserves UK taxing rights on gains from shares that derive their value from property in the United Kingdom. Finally, the new DTA provides for mutual assistance in the collection of tax debts. Together, those features strengthen both countries' defences against tax avoidance and evasion.

In summary, the agreement protects UK revenue and provides a stable framework in which trade and investment between the UK and Austria can continue to flourish. I therefore commend the order to the Committee.

6.5 pm

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve with you in the Chair, Mrs Main. As the Minister mentioned, the treaty is one of a number that we have discussed in Committee, and has been introduced following the UK's ratification of the OECD's multilateral instrument for double tax treaties.

My hon. Friend the Member for Huddersfield asked a pertinent question—why Austria? We have asked a number of times for an indication of the schedule that the Government are following, having passed the MLI, when negotiating such treaties. That indication would be helpful for us to understand which treaties are still to come before a Committee.

As I just mentioned, the treaty follows on from the ratification of the multilateral instrument. In fact, the explanatory memorandum to the order states that, by broadly adopting the MLI model, the Government have been able to

“encourage and maintain international consensus on the appropriate tax treatment of cross-border economic activity and thus promote international trade and investment.”

There are, however, a number of differences between the treaty and OECD model, and we have not been provided with an explanation of why that is the case. From my reading, it looks like there are about 16 differences between the treaty and what is set out in the MLI. I will not go through exactly which articles those differences crop up in.

Some of those deviations from the OECD model may well be valid, but if that is the case, the rationales are not explained in the notes supplied with the double tax order. I would surmise, for example, that the treaty contains no provisions on withholding taxes applied to interest, because the UK and Austria do not routinely impose such taxes on each other and there is therefore no locus for discussing that within the agreement.

Other alterations could be more problematic. A worrying difference between the double tax agreement and the OECD model is in article 22—the non-discrimination section. The provision in the OECD model relating to stateless persons is not included in the treaty. As with other double tax treaties that we have discussed in Committee, it is not clear whether that was at the request of the UK, because it has adopted a different approach to the OECD in that area, or whether, alternatively, it was at the request of Austria. It would be helpful to know that.

A large number of people now face statelessness, and that number is likely to increase because of violence and conflict in the world. As I am sure the Committee is aware, Austria has become home to quite a large number of people fleeing violence in other parts of the world, so it is quite important those people are not discriminated against in the tax system. The OECD’s model in the article on non-discrimination sets out that people who are stateless should not be subject to additional unfair

taxes, but that provision is not in this double tax agreement. It would be helpful if we had an explanation of why that is the case.

Just to be completely clear: quite often when the word “stateless” is used in these discussions, it refers to stateless income. I am not talking about that but about stateless people. It may not be possible for the Minister to respond to that question in detail now, but I hope that, if not, he can do so by letter, please. It would be enormously useful when discussing these kinds of treaties if the Committee had an indication of why some provisions in the OECD model may have been adopted or otherwise, and why certain choices that are available in the OECD model may have been determined one way or the other.

6.10 pm

Mel Stride: I thank the hon. Lady as usual for her thorough set of questions, and I will endeavour to do my best to answer them. She asked which other treaty negotiations we are currently engaged in. I can inform her that DTA discussions are under way with Greece, Luxembourg and Romania. On her general point that it would be useful for her and others to have sight of the programme of discussions—she did not use that terminology—that we might have, I would be happy to provide that to the best of my knowledge at this point. Perhaps I could do that outside this Committee.

The hon. Lady raised the differences between the double taxation agreement and the OECD model and asked about the reason for some of the choices that may have been made around those differences. First, clearly, a negotiation between two parties will typically lead to some divergence from the model—that is a standard situation, so there is nothing unusual in this case. Secondly, if the hon. Lady will write to me to highlight the particular differences from the model and where there were choices within the model, I will be happy to provide answers. I also point out that, as she may know, a review of our policy on DTAs is being conducted. It will report back soon and, as the relevant Minister, I will look at its conclusions in some detail.

The hon. Lady raised a specific point about the lack of a reference to stateless persons in the agreement. I took particular note of the various issues that she understandably raised about that. She asked whether I would write to her with further information on that point, and I will be glad to do so.

Question put and agreed to.

6.13 pm

Committee rose.

