

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (GIBRALTAR) ORDER 2020

Tuesday 25 February 2020

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Saturday 29 February 2020

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The Committee consisted of the following Members:

Chair: SIOBHAIN McDONAGH

† Coutinho, Claire (*East Surrey*) (Con)
 † Eastwood, Mark (*Dewsbury*) (Con)
 † Fletcher, Mark (*Bolsover*) (Con)
 † Flynn, Stephen (*Aberdeen South*) (SNP)
 † Fuller, Richard (*North East Bedfordshire*) (Con)
 † Glen, John (*Economic Secretary to the Treasury*)
 † Green, Chris (*Bolton West*) (Con)
 † Grundy, James (*Leigh*) (Con)
 † Harper, Mr Mark (*Forest of Dean*) (Con)
 † Hart, Sally-Ann (*Hastings and Rye*) (Con)
 † Jones, Mr Marcus (*Vice-Chamberlain of Her Majesty's Household*)

Perkins, Mr Toby (*Chesterfield*) (Lab)
 † Reynolds, Jonathan (*Stalybridge and Hyde*) (Lab/Co-op)
 † Smith, Jeff (*Manchester, Withington*) (Lab)
 Thomas, Gareth (*Harrow West*) (Lab/Co-op)
 † Timms, Stephen (*East Ham*) (Lab)
 † Twigg, Derek (*Halton*) (Lab)

Sarah Rees, *Committee Clerk*

† **attended the Committee**

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Tuesday 25 February 2020

[SIOBHAIN McDONAGH *in the Chair*]

Draft Double Taxation Relief and International Tax Enforcement (Gibraltar) Order 2020

2.30 pm

The Economic Secretary to the Treasury (John Glen): I beg to move,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Gibraltar) Order 2020.

May I say what a pleasure it is to serve under your chairmanship, Ms McDonagh? The order before the Committee gives effect to a new double taxation agreement, or DTA, with Gibraltar. 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 businesses and the economies of the countries signed up to them.

I shall say a few words about this agreement. We have agreed a comprehensive DTA with Gibraltar that is based on the OECD's model tax convention and the domestic tax laws and the treaty preferences of both jurisdictions. This is a first-time DTA with Gibraltar and will introduce a number of improvements for businesses, individuals and Her Majesty's Revenue and Customs. It will strengthen our relationship with Gibraltar, promote trade and investment and help to tackle tax avoidance.

I shall outline the agreement's key features. First, it complies with the minimum standards laid down in the base erosion and profit shifting, or BEPS, project, which is the OECD's framework for combating tax avoidance by multinationals. That means that our DTA includes a statement in the preamble that the DTA is not intended by the parties to facilitate avoidance or evasion, as well as including the principal purpose test—a provision denying benefits under the DTA where the main purpose of the transactions or arrangements is to avoid tax.

Mr Mark Harper (Forest of Dean) (Con): Does my hon. Friend find it an interesting coincidence, as I do, that at the moment when, in the main Chamber, the Opposition are trying to persuade the House that this Government have done nothing about combating tax avoidance and evasion, the Minister is putting before the Committee a clear example of where the Government are leading our international colleagues in putting in place mechanisms to ensure that we facilitate international trade and business while ensuring that people pay the tax that is rightly due to the British taxpayer?

John Glen: I thank my right hon. Friend for that intervention. I am always very interested in what he has to say. I confess that on this occasion I have not been able to attend the Chamber yet. I look forward to hearing the arguments deployed and will reserve judgment, but what I can do is commend to him the logic and

value of this intervention by the Government, and I will go on to explain further why this DTA is a positive step forward.

The DTA is comprehensive in scope, and as such covers all income and gains, including dividends, interest and royalties. However, we have ensured that we will retain the right to apply a withholding tax of 15% on distributions from real estate investment trusts. Also, benefits in respect of interest and royalties are limited to persons who can demonstrate a close connection to Gibraltar. That provides an additional layer of protection against residents of third countries exploiting the provisions.

The new agreement also provides for mandatory binding arbitration, which ensures that disputes are resolved and that double taxation is therefore avoided. Finally, the new DTA provides for mutual assistance in the collection of tax debts. That will mean that, for the first time, the UK can ask Gibraltar to collect tax debts on our behalf.

Together, these features strengthen both countries' defences against tax avoidance and evasion. In summary, the agreement is one that both the UK and Gibraltar can be happy with. It protects UK revenue and provides a stable framework in which trade and investment between the UK and Gibraltar can continue to flourish. I therefore commend the order to the Committee.

2.34 pm

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): May I, too, say that it is always a pleasure to serve under you in the Chair, Ms McDonagh? I thank the Minister for his opening remarks and his explanation of the order that we are dealing with today. It is vital that the interests and affairs of Gibraltar, and its relationship to the rest of the UK, are carefully considered as we depart from the European Union. All hon. Members will want to make sure that Gibraltar's interests are properly protected, particularly as I understand that Spain has made its own tax treaty arrangements with Gibraltar.

Overall, the Opposition are pleased that the Government have chosen to follow the OECD model convention as the template for the order, so there is no reason for us to oppose it. I have a few minor questions to ask the Minister, however, about the exact implementation of the model.

In the explanatory notes and the Minister's speech, it was mentioned that the double tax arrangement meets the minimum standard recommended by the OECD/G20 base erosion and profit shifting project, which aims to stop abuse of DTAs by individuals and companies trying to reduce their tax liability. Gibraltar as a jurisdiction has made progress in recent years in strengthening its anti-BEPS provisions. About 11 months ago, in a similar delegated legislation Committee on the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019, my hon. Friend the Member for Oxford East (Anneliese Dodds) addressed some of those points and noted that Gibraltar had been removed from the tax haven list by the OECD after concluding some of its DTAs.

With that in mind, I wonder whether the Government gave any regard to using this process as an opportunity to develop a measure that not only meets the minimum standards but enhances them and provides a leading example of how we can enhance the provisions. All

aspects of BEPS must be dealt with, and that is especially important if the UK is to have flexibility in how it sets cross-border taxation policy in future.

Elements of the OECD model convention allow for considerable leeway. Is it the Government's intention to take advantage of any of that flexibility? For example, there is a quite expansive definition of "permanent establishment" in the text of the model convention. Will that be adopted in future DTAs?

I am interested to hear further detail about how consultation is taking place with the Government of Gibraltar on the arrangements, and how Parliament will be kept informed of that process, to ensure transparency and accountability.

My final question raises a broader point about the UK's interaction on tax affairs in the light of our departure from the European Union. Is it the UK's intention to seek observer status in the code of conduct group—a sub-committee of ECOFIN—given that the Cayman Islands, a British overseas territory, is being blacklisted by the EU? There will clearly need to be a shift in our approach for the UK and Gibraltar, as we will no longer be able to participate in that committee by right as a member of the European Union. I would appreciate any clarity that the Minister can provide on those points.

2.37 pm

John Glen: I am grateful for the constructive observations of the hon. Member for Stalybridge and Hyde. With respect to the BEPS standards and the principle of stopping the abuse of DTAs, and the wider issue of how the Government might use those standards to inform

future DTAs, I acknowledge what he says about the leeway in the OECD standards. I cannot give him a specific commentary, however, because DTAs are done country by country. It is probably appropriate for me to write to him to give him more specific detail, as far as I can, about how we are applying the standards across different DTAs.

The hon. Gentleman asked about transparency and how the arrangement can be scrutinised. The signed agreement was published on the Government website and a ministerial statement was made to that effect on 17 October 2019, which gives MPs the opportunity to make representations. The Government do not consult generally on the content of DTAs, because they are the product of bilateral negotiations that deal with a vast range of complex issues. They are not really suitable for open negotiation, but we have been as transparent as we would expect to be, and as everyone would expect us to be, on that matter.

The hon. Gentleman's third point was about the UK's observer status at ECOFIN. I do not have any further information on that; that will be a supplement to the first point in the letter that I write to him. I am aware of the Cayman Islands blacklisting last Monday or Tuesday and the Financial Action Task Force rulings, which we take seriously. I will write to him to give him clarity on that matter, rather than waffle on any further. I hope that that gives him some satisfaction, and that the Committee will approve the order.

Question put and agreed to.

2.40 pm

Committee rose.

