PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (UNITED ARAB EMIRATES) ORDER 2016

DRAFT DOUBLE TAXATION RELIEF (ISLE OF MAN) ORDER 2016

DRAFT DOUBLE TAXATION RELIEF (JERSEY) ORDER 2016

DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (URUGUAY) ORDER 2016

DRAFT DOUBLE TAXATION RELIEF (GUERNSEY) ORDER 2016

Wednesday 15 June 2016

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Sunday 19 June 2016

The Committee consisted of the following Members:

Chair: Mr David Hanson

† Adams, Nigel *(Selby and Ainsty)* (Con)
† Anderson, Mr David *(Blaydon)* (Lab)
† Burns, Conor *(Bournemouth West)* (Con)
† Burns, Sir Simon *(Chelmsford)* (Con)
† Chalk, Alex *(Cheltenham)* (Con)
Cooper, Julie *(Burnley)* (Lab)
† Costa, Alberto *(South Leicestershire)* (Con)
Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Fitzpatrick, Jim *(Poplar and Limehouse)* (Lab)
† Gauke, Mr David *(Financial Secretary to the Treasury)*
† Grant, Peter *(Glenrothes)* (SNP)
† Henderson, Gordon *(Sittingbourne and Sheppey)* (Con)
† Hepburn, Mr Stephen *(Jarrow)* (Lab)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Kirby, Simon *(Brighton, Kemptown)* (Con)
† Marris, Rob *(Wolverhampton South West)* (Lab)
Solloway, Amanda *(Derby North)* (Con)

John-Paul Flaherty, *Committee Clerk*

† attended the Committee

Sixth Delegated Legislation Committee

Wednesday 15 June 2016

[Mr David Hanson *in the Chair*]

Draft Double Taxation Relief and International Tax Enforcement (United Arab Emirates) Order 2016

2.30 pm

The Chair: First, I inform hon. Members that they can, if they wish, take off their jackets. [Hon. Members: "Hear, hear!"] I am here to help. Secondly, the orders can be debated together if that is the Committee's wish. It means that we would have an hour and a half as opposed to a longer debate. Is that the wish of the Committee?

Rob Marris (Wolverhampton South West) (Lab): I agree to that, Mr Hanson. It is a pleasure to be here with you as Chair. If you and the Minister agree to this, could we do it all in one debate but in two chunks? There are five orders. To my mind—the Government may disagree—three of them go together because they relate to Crown dependencies, and two of them, on Uruguay and the United Arab Emirates, go together because they follow a broadly OECD model.

The Chair: If the Committee agrees to debate the orders together, the debate will be an hour and a half long, and if the Minister agrees, they can be debated in two sections within the hour and a half.

The Financial Secretary to the Treasury (Mr David Gauke) *indicated assent.*

The Chair: If the Committee is happy with that, I call the Minister to move the motion.

Mr Gauke: I beg to move,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (United Arab Emirates) Order 2016.

The Chair: With this it will be convenient to consider the draft Double Taxation Relief (Isle of Man) Order 2016, the draft Double Taxation Relief (Jersey) Order 2016, the draft Double Taxation Relief and International Tax Enforcement (Uruguay) Order 2016 and the draft Double Taxation Relief (Guernsey) Order 2016.

Mr Gauke: It is a great pleasure to serve under your chairmanship again, Mr Hanson. When you moved on from the shadow Treasury team, I feared that we would never spend time together debating double taxation treaties as we had once done, so I am thrilled that we are reunited on this topic, as I can see you are.

Given the comments of the hon. Member for Wolverhampton South West, let me make some remarks about the identical protocols with Guernsey, the Isle of Man and Jersey, which I believe he wishes to discuss first, and then deal with the remaining orders in a second contribution. We have agreed three identical protocols with Guernsey, the Isle of Man and Jersey, amending the existing double taxation agreements to include modern OECD provisions allocating the primary taxing right over income, profits and gains from land to the jurisdiction in which that land is situated. These changes are connected with the offshore property developers measures announced in Budget 2016, to be legislated for in the Finance Bill—we look forward to that. They remove a potential loophole that may have allowed property development companies located in the Crown dependencies to argue that the DTAs prevent the UK from taxing them on the full amount of their profits from developing UK land. The Crown dependencies have agreed to the changes being effective from Budget day, 16 March 2016, which aids the effectiveness of targeted anti-avoidance rules that protect the new tax charge in the period between its announcement on 16 March 2016 and the introduction of the legislation. That demonstrates the continued co-operation between the UK and the Crown dependencies to tackle tax avoidance and evasion.

I hope that that explanation is helpful to the Committee. I look forward to returning to the double taxation agreements with the United Arab Emirates and Uruguay. I will cease my comments now and allow hon. Members to ask any questions that they have in respect of the protocols that I have described.

The Chair: Order. Although I appreciate why the Minister has spoken to the Jersey order, the motion before the Committee is that it has considered the draft Double Taxation Relief and International Tax Enforcement (United Arab Emirates) Order 2016. I will call Mr Marris to speak, and he can obviously at that stage refer to the Jersey order as part of the discussion.

Rob Marris: I am sorry if I got the Minister off on the wrong foot; I take responsibility for that. Just to clarify, would it be in order to reverse matters? I believe that we are to have a decision at the end of the hour and a half or sooner. I could talk about Jersey, Guernsey and the Isle of Man because the Minister has talked about them, and then, if you agree, Mr Hanson, we could deal separately, as it were, but within the one debate with the orders on the United Arab Emirates and Uruguay.

The Chair: Certainly.

2.34 pm

Rob Marris: Thank you, Mr Hanson; I appreciate your indulgence. I will be brief on Jersey, Guernsey and the Isle of Man. As would be expected, I have some questions for the Minister, although not many. The Jersey agreement goes back to 1952 and has been amended three times since then. The Guernsey agreement goes back to 1952 and has been amended three times since then. The Isle of Man agreement goes back to 1955 and has been amended four times since then. In terms, the three statutory instruments that will be decided on today are the same. They all refer to closing the potential loophole to which the Minister referred. That loophole relates to immovable property, which is defined in each of them—I will not read out the definition, but in

essence, it refers to land, agriculture and forestry. In the 1950s in the Isle of Man, Jersey and Guernsey, there was land, agriculture and perhaps some forestry. I am slightly surprised—clearly, this is not just about this Government, given that there were 13 years of Labour Government—that after these have been around for 50 years, somebody seems to have noticed a loophole about land. I am slightly bemused by that, so I wonder whether the Minister could fill us in a little.

Secondly, will the Minister say a little more about the apparent retrospectivity? These measures all go back to 16 March 2016—that is, they would take effect, as per the wording of the statutory instruments, as I understand it, some three months ago. To me, that seems slightly unusual, but perhaps the Minister could talk us through it.

My third question is more on procedure. It bemuses me, and again, I hope the Minister can help the Committee with this, that in the explanatory notes to the statutory instruments—as opposed to the separate notes we get—it says, for example, in the final paragraph of page 5 of the Jersey order:

"A Tax Information and Impact Note has not been produced for the Order as it gives effect to a previously announced policy to enact a double taxation agreement."

That bemuses me because it seems to say, "The Government have decided to do this, so we are not going to have a tax information and impact note." I would have thought that if the Government decide on a course of action that needs, as these measures do, the approval of Parliament, it would be helpful to have a tax information and impact note—even a brief one—rather than simply saying, "We have decided to do it so you are not going to get such a note." Perhaps the Minister could talk us through that.

2.37 pm

Mr Gauke: I thank the hon. Member for Wolverhampton South West for his questions. To answer his first question about why these treaties have not been amended before, we have taken action in this Budget to prevent a form of avoidance that HMRC became aware of relatively recently. This ensures that a loophole that would have prevented the implementation of measures to protect the UK tax base can be addressed. The challenge was first, a recognition that profits relating to land in the UK were being booked in these Crown dependencies—the view being that these profits properly belong in the United Kingdom—and therefore, we announced the Budget measure. The concern was that the measures that we took in the Budget could not be implemented without these changes.

Perhaps if I can address the second point—

Rob Marris: On that point—

Mr Gauke: If I can just address the second point, I think it may be helpful to the hon. Gentleman. The new legislation announced in the Budget will include targeted anti-avoidance rules that will stop property developers structuring around the new charging provisions during the period from the announcement on Budget day, which is the date that the new legislation comes into force. Making the protocol changes effective from Budget day aids the effectiveness of these targeted anti-avoidance rules. This is not backdating all retrospection, as such. The double taxation agreements are changed only from the date that the protocols were signed. The targeted anti-avoidance rules will apply prospectively only from Budget day. I hope that provides a bit of clarification to the hon. Gentleman.

Rob Marris: I am grateful to the Minister for that explanation. Is it then the case that the, and I mean this positively, wonderfully innovative accountancy industry in the United Kingdom did not realise that they could advise their clients, quite legitimately, to offshore land profits—this is my shortening of the situation—to the Crown dependencies? They did not realise for 50 years, and then they suddenly realised and it started to happen. The Government then said, "That was never anybody's intention, so the measures announced in the Budget"—in the statutory instruments today—"will stop that." Or is it something else?

Mr Gauke: I understand the hon. Gentleman's point. I want to be perhaps a little a cautious, if not tentative, about the wording. That is not to say that nobody was making use of these provisions—I think that people were making use of them. However, it was relatively recently that Her Majesty's Revenue and Customs became aware that this loophole—I think it would be fair to describe it as that—was being used. That was not really the intention of Parliament. One could make an argument—if Parliament addressed its mind to this matter—that it would certainly not be the way that we want the system to work. In recent months, in the run-up to the March Budget, it was concluded that action needed to be taken. These changes to the protocols are all part of ensuring that this is effective.

If I can deal with the third question, I will then make my comments about the double taxation agreements. I was asked why there is no TIIN—tax information and impact note. We have not produced impact assessments because double taxation agreements are not of a regulatory nature. They impose no obligations on taxpayers. Rather, they give UK residents relief from foreign tax in prescribed circumstances. They also provide relief from UK tax for non-residents in a comparable situation. Given that the hon. Gentleman has raised that specific point, perhaps we will look again at the wording of the explanatory memorandum to see whether we can provide a clearer explanation next time. He has made a constructive point.

If I may, Mr Hanson, I will turn to the two other orders, on the United Arab Emirates and Uruguay. This first-time double taxation agreement with the UAE completes our DTAs with the Gulf states and follows the same principles that we have adopted with the other countries in the region. Although the UAE does not currently impose tax on individuals or companies, it has the potential to do so. Legislation was in place, but the UAE chooses for the moment not to apply it. Concluding the DTA now ensures that should the UAE start to apply its tax laws, UK companies will have greater certainty over the liabilities, as the taxing rights are constrained by the treaty.

The DTA generally follows the OECD model. Dividends are exempt from withholding tax, other than where the payer is a real estate investment trust, in which case 15% tax may be charged. Interest and royalties are also exempt, but with a provision to ensure that the benefits of the interest article can flow only to UAE residents

[Mr Gauke]

and companies owned by UAE residents. The exchange of information article is the latest OECD version, which permits information to be used for non-tax purposes with the permission of the other state.

The Government signed a first-time DTA with Uruguay earlier this year. This is an important treaty for the UK as it expands our treaty network in an increasingly important region. The treaty gives valuable benefits to UK businesses and individuals with interests in Uruguay and will strengthen the economic ties between the two countries.

Withholding taxes can hamper cross-border investment, as they represent an extra and often excessive layer of taxation. I am therefore pleased that withholding tax on dividends is restricted to 5% on direct investment and interest is taxable at source at a maximum of 10%, with some important exemptions—for example, for certain bank loans. As we sometimes do with a country whose economy is in transition, we have agreed a provision that allows the taxation of services in the country where they are performed where they last for more than 183 days. The treaty also contains anti-treaty shopping provisions based on the BEPS—base erosion and profit shifting, as you know, Mr Hanson—recommendations on treaty abuse, the latest OECD exchange of information article and an arbitration provision to assist the mutual agreement procedure, which will be welcome to UK companies investing in Uruguay.

I hope those explanations are helpful. I commend the orders to the Committee and I am happy to answer any remaining questions that hon. Members may have.

2.45 pm

Rob Marris: I shall try to be brief for the benefit of Minister. It may be that, on certain things, he would kindly offer to write to me. He will know whether he can make that offer when he has heard what I have to say.

I thank Treasury officials, particularly Mr Tom Matthews, for meeting me beforehand to go through these. Any accuracies are theirs, any inaccuracies are mine and any policy pronouncements are mine also. They gave me a talk through of a technical-only nature. As I understood it, the Uruguay agreement was negotiated after the United Arab Emirates agreement. When I go through them there are some differences in wording. There are always going to be some because it takes two to tango and make an agreement, and a country might agree to go with the OECD model but with certain tweaks, just as somebody buying a car gets certain bells and whistles and somebody else does not.

However, I gather that the agreements are, in a sense, generationally different, because when the model for the UAE agreement was used and negotiated successfully, as we see in the statutory instrument, the principal purpose test—which is in the Uruguay agreement—did not exist in the OECD model. The Uruguay agreement uses a later OECD model. That might explain quite a lot of why, when I compare the two, there is much common wording, but also some that appears to me to be different. That may not simply be different because of the different models, but it may be that it is.

I wonder whether, to save the Committee time—others on the Committee may not agree to this—the Minister might write to me, not necessarily in exhaustive detail, to set out some comparisons between the Uruguay agreement and the UAE agreement. No one would thank me if I went through the orders, article by article, and said what is in one and not in another and asked the Minister why. I am not sure that that would be a productive way to proceed. If the Minister felt able to write to me on that, it would be helpful.

I note with some amusement—again, for those who have been on these Committees before; the Minister has—that the UAE agreement refers to "entertainers and sportsmen" under article 16, whereas article 16 of the Uruguay agreement refers to "artistes and sportsmen". "Entertainers" have become "artistes". I do not think that has anything to do with the OECD update; the Minister may tell me. These things seem to vary from country to country.

One thing I say with a little more seriousness to the Minister is that, although I appreciate these things have to be negotiated with other countries, and I know a little bit—not a massive amount—about legal drafting because, like the Minister, I have a legal background, if we could find a better word than "sportsmen", it would be a little bit more "with it", as it were. I appreciate that the pronoun "he" rather than "she" is used because it can get awfully cumbersome in legislation to do otherwise, but can we not think of something different from "sportsmen"?

2.49 pm

Peter Grant (Glenrothes) (SNP): It is a pleasure to serve under your chairmanship, Mr Hanson. Had I known that you were a member of the jackets-off brigade I might well have nominated you for Speaker last year.

The Chair: There is time.

Rob Marris: It will come again.

Peter Grant: If you continue to curry favour in that way with Members, who knows where you could be in a few years' time.

I am happy to support the draft orders but I have a few questions that I hope the Minister will answer. Clearly, the UK has a very different relationship with places like Uruguay and the UAE compared with the Crown dependencies. It is noticeable, however, that the Uruguay and UAE agreements also include new provisions on information sharing on potential tax liabilities. Do we already have adequate information sharing with the Channel Islands and the Isle of Man? If not, is that something we need to return to?

Secondly, with regard to the Uruguay and UAE information sharing, does the confidentiality requirement prevent us from sharing that information further? If, for example, an inquiry is being carried out by the tax authorities elsewhere in Europe or the United States, are the UK authorities prevented from sharing information that we have got under this agreement that might help to uncover large-scale tax avoidance and evasion in Uruguay or the UAE?

There is a second point with regard to the definitions. In some ways it might appear to be very nitpicking to look at the definitions, but if we get them wrong or do not understand their meaning—with no disrespect to

hon. Members present—the lawyers will have a field day and the taxpayer is likely to lose out. The definition of immovable property in all the draft orders is, in essence, not surprisingly, whatever the law in the individual country or state says. Is the Minister aware of any significant differences in definition of immovable property in the different places? Are there any instances of where a different definition of immovable property would mean that what we get is something different from what we think? To me, as a lawyer, it is obvious what kinds of property can and cannot be moved, but I know that slight differences in definition might give us problems.

I hope that we will get answers to my questions today, but I am happy for the Minister to write to me at a later date if not. The principle, however, is one that we can all enthusiastically support: it is not fair for someone to be taxed more than once on the one economic activity; and it is extremely unfair for someone not to be taxed at all on any large-scale economic activity.

Related to that, it is becoming more widely accepted that the principle should always be that the tax liability arises in the place where the economic activity takes place. We are all keen for that principle to be extended, particularly in the developing world, so that if international corporations make profits from the hard work and resources of some of the poorest countries in the world, the tax liability will go back to the Governments of those countries, to ensure that not only the workers, but the public services and tax income of the least developed countries get a proper benefit for the efforts of their citizens and, sometimes, the use of their natural resources.

I certainly applaud the direction of travel represented by the draft orders—we are creating a worldwide tax system, which is fairer not only because it prevents people from paying more than they should, but because it ensures that those who have got away with not paying for far too long will gradually find that more and more loopholes get closed. As a result, public services in our country and in many other parts of the world will be properly financed by the people who should be financing them. With those words, I am happy to support the draft orders.

2.53 pm

Mr Gauke: I thank the hon. Members for Wolverhampton South West and for Glenrothes for their questions and, indeed, their support. Let me try to address as concisely, but as thoroughly as I can the points made.

First, on the differences between the two double taxation agreements, I am certainly happy to write to the hon. Member for Wolverhampton South West and to set out some details. The two main points that I would bring out, without going into a clause-by-clause analysis—tempting though that is—is that the hon. Gentleman is absolutely right to say that there is a difference of timing in when the draft orders were agreed, so the principal purpose test contained in the Uruguay agreement reflects the fact that that is a new direction for the UK. It comes out of the "Action 15" work of BEPS, and will appear in the next edition of the OECD model. That is the explanation for that, and we expect to see it more often in future. Another distinction worth pointing out is that we have no capital tax, but Uruguay has a wealth tax, so an article in the double taxation agreement properly reflects that.

The hon. Gentleman drew a distinction between artistes and entertainers. That perhaps should be best left to the letter. I will not dwell on that here or draw any general conclusions about the UAE or Uruguay and which is most appropriate, but he raises a fair point on "sportsman". I am pleased to say that it has been changed to "sportsperson" in the latest OECD model. I fear that we are not going to be able to give him credit for that change in double taxation agreements, but he has certainly spotted something that needs rectifying, and I am pleased to say that it is being rectified.

Turning to the questions raised by the hon. Member for Glenrothes, let me reassure him that we have a tax information exchange agreement with all the Crown dependencies. It is not included here because these are specific protocols dealing with a specific issue, but we have well established treaties with those Crown dependencies. It is worth stressing that they meet the international standards in this area. We were early signatories to what became the common reporting standard.

I am entirely in agreement with the hon. Gentleman on the importance of tax authorities having an ability to share information much more widely than they have in the past and on its not being possible for the information to be held secret, as was once the case. Much progress has been made on the move to automatic exchange of information, which has long been an aspiration of all parties, and that is coming into effect. We have moved a long way in recent years on exchanging information with law enforcement authorities and so on, and on co-operation between tax authorities across the board.

I am not aware of any particular issues or controversy with differing definitions between one jurisdiction and another of the operation of immovable property, but if I may, I will write to the hon. Gentleman to confirm the position and to what extent it has proved difficult, whether in the jurisdictions we are talking about today or more widely. I add my support to his comment that we should have a tax system in which tax is properly aligned to economic activity. That is very much the direction of the OECD's work on BEPS, and it is very much the direction that the UK has argued for. We believe that the international tax system has to properly reflect that alignment. It is the only sustainable way in which an international tax system can properly work, and we continue to make that argument.

I hope that those points of clarification are helpful to the Committee. With that, I hope that the orders before us will have the support of the whole Committee.

Question put and agreed to.

The Chair: With the leave of the Committee, I will put the remaining motions in a single question.

DRAFT DOUBLE TAXATION RELIEF (ISLE OF MAN) ORDER 2016

Resolved,

That the Committee has considered the draft Double Taxation Relief (Isle of Man) Order 2016.—*(Mr Gauke.)*

DRAFT DOUBLE TAXATION RELIEF (JERSEY) ORDER 2016

Resolved,

That the Committee has considered the draft Double Taxation Relief (Jersey) Order 2016.—*(Mr Gauke.)*

DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (URUGUAY) ORDER 2016

Resolved,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Uruguay) Order 2016.—*(Mr Gauke.)*

DRAFT DOUBLE TAXATION RELIEF (GUERNSEY) ORDER 2016

Resolved,

That the Committee has considered the draft Double Taxation Relief (Guernsey) Order 2016.—*(Mr Gauke.)*

2.59 pm

Committee rose.