

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

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

Thursday 17 November 2016

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Monday 21 November 2016

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The Committee consisted of the following Members:

Chair: MRS CHERYL GILLAN

† Barclay, Stephen (<i>Lord Commissioner of Her Majesty's Treasury</i>)	Mactaggart, Fiona (<i>Slough</i>) (Lab)
† Brazier, Mr Julian (<i>Canterbury</i>) (Con)	† Pursglove, Tom (<i>Corby</i>) (Con)
† Chishti, Rehman (<i>Gillingham and Rainham</i>) (Con)	† Scully, Paul (<i>Sutton and Cheam</i>) (Con)
Dowd, Peter (<i>Bootle</i>) (Lab)	† Smith, Nick (<i>Blaenau Gwent</i>) (Lab)
† Ellison, Jane (<i>Financial Secretary to the Treasury</i>)	† Stewart, Bob (<i>Beckenham</i>) (Con)
† Ffello, Robert (<i>Stoke-on-Trent South</i>) (Lab)	† Swire, Sir Hugo (<i>East Devon</i>) (Con)
† Hayes, Helen (<i>Dulwich and West Norwood</i>) (Lab)	† Williams, Craig (<i>Cardiff North</i>) (Con)
† Herbert, Nick (<i>Arundel and South Downs</i>) (Con)	John-Paul Flaherty, <i>Committee Clerk</i>
† Kerevan, George (<i>East Lothian</i>) (SNP)	† attended the Committee
Leslie, Chris (<i>Nottingham East</i>) (Lab/Co-op)	

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

Reynolds, Jonathan (*Stalybridge and Hyde*)
(Lab/Co-op)

First Delegated Legislation Committee

Thursday 17 November 2016

[MRS CHERYL GILLAN *in the Chair*]

Draft Double Taxation Relief and International Tax Enforcement (Turkmenistan) Order 2016

11.30 am

The Financial Secretary to the Treasury (Jane Ellison): I beg to move,

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

Good morning, Mrs Gillan, and colleagues. The draft order deals with a first-time double taxation agreement with Turkmenistan. Currently, Turkmenistan is honouring the treaty between the UK and the Soviet Union. Following an approach from Turkmenistan, we agreed to enter into negotiations for a replacement treaty.

Turkmenistan recognises that a modern treaty would benefit its growing economy, which also offers important opportunities for UK business. We recognise that ex-Soviet states will want to renegotiate treaties to reflect their own circumstances and opening economies. The Turkmen approach followed the OECD model approach in most respects. This, together with a fairly conventional tax system, enabled us to reach an agreement in two short rounds in 2011 and 2012. We have ended up with an agreement that we can be pleased with. It contains none of the provisions favoured by some capital-importing countries such as source state taxation of services and gains on shares, which do not form part of our preferred approach. We have agreed our anti-treaty-shopping measures and confirmation of the availability of benefits for UK pension schemes and charities. The treaty also contains the latest OECD exchange of information article.

Withholding rates are higher than our preference and show an increase over the rates provided for in the Soviet Union treaty. However, they do provide for a reduction on the domestic rates levied by Turkmenistan and reflect a reasonable compromise for a treaty with a developing nation. Turkmenistan has already completed its ratification procedures, and approval of the order today would permit the provisions of the agreement to take effect from 1 January next year. I hope my explanation has been helpful and I commend the order to the Committee. I am happy to try to answer any questions that hon. and right hon. Members might have on its provisions.

11.32 am

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): I want to start by thanking the hard-working staff of Her Majesty's Revenue and Customs who have put so much work into drawing up the treaty we are discussing. My understanding is that the double taxation treaty is part of an ongoing process of negotiating taxation treaties with the post-Soviet countries. Until now, arrangements have followed treaties signed with the USSR, so I am

glad that we have the opportunity now to scrutinise the new proposals, which ought to reflect the modern relationship between our two countries. I will put a few questions to the Government in that regard.

Assuming the treaty is passed into law, if a company based in Turkmenistan pays dividends to a resident of the UK, either 5% or 15% of the gross amount of the dividend will be taxed. I say either 5% or 15% because it depends on the nature of the relationship between the recipient and the company. Similarly, interest or royalties arising may be taxed up to a maximum of 10% in the country where the company is based. There are similar provisions for capital gains tax, employment income and so on.

The explanatory memorandum refers to the fact that the UK's double taxation treaties largely follow the approach recommended by the OECD's model tax convention. It would be useful to know whether any aspects of this treaty deviate from the OECD's model tax convention and, if so, which they are. Furthermore, in what aspects does this treaty differ from the United Nations model double taxation convention?

Article 21 of the statutory instrument lays out the allowance of a deduction from a Turkmen resident's tax bill equal to the amount due in tax in the UK. The provisions for the equivalent deduction for UK taxpayers appear to be rather more complicated. Will the Minister briefly explain the reason for that?

Moving on to the overall effects of the treaty, it will be useful to have some clarity from the Minister on what effects she envisages arising from its implementation. The explanatory memorandum for this order states that the provisions of the arrangements have no impact on the public sector. The same document states that those provisions do not introduce new tax burdens; rather, they provide relief from tax and thus are of benefit to businesses "both large and small". How much relief will be provided and how much will be lost to the public as a result? Is the net tax impact on the UK likely to be positive or negative?

I understand that precise calculations are difficult, but does the Treasury have any estimates of the broad effects for the Exchequer? How are such estimates reached? The explanatory memorandum states that the arrangements will benefit businesses both large and small. The Opposition's role in scrutinising such arrangements, even though they may not technically be deemed of a regulatory nature, is certainly made more difficult by the absence of an impact assessment. Hon. Members may remember that in a debate in the summer on a number of double taxation treaties, Labour raised the fact that the Government had not prepared a tax information and impact note. For this order, the Government have again stated that an impact assessment has not been prepared, because double taxation agreements are not regulatory in nature. I put it to the Minister that that response does not seem in keeping with the general principle of impact assessments. Surely the precise legal framework is less important than giving transparency to the proposals so that taxpayers can have a better idea of what the treaty will mean.

According to the Government's explanatory memorandum, the provisions of the order will

"serve an Exchequer protection role by including provisions to combat tax avoidance and evasion—partly by measures providing for the exchange of information between revenue authorities...

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

Will the Minister briefly elaborate on that? More generally, will she give assurances that the treaty will not create or increase any opportunities for tax evasion or aggressive tax avoidance? How does a treaty such as this one fit into the Government’s plans for tackling tax avoidance in a broader sense, and in particular on any plans they have to follow up on their commitment to confirming the UK’s leading role in addressing tax evasion and avoidance?

Hon. Members will be aware that my right hon. Friend the Member for Don Valley (Caroline Flint), supported by Labour Front-Bench Members, has already provided an opportunity to show such leadership via the principle of public country-by-country reporting. It would be good to hear of any progress that the Government are making in that regard.

I expect the Minister is well aware of the work of ActionAid to expose how some companies have used tax treaties to avoid paying their fair share of tax anywhere, to reduce their tax bills massively or to move money from poor to rich countries, exacerbating global inequality. Will she tell us how this treaty will be judged against each of those criteria?

The priorities for Opposition Front-Bench Members are to ensure that the new arrangements benefit this country and Turkmenistan, as well as strengthening the principles of fairness and transparency that ought to be at the heart of our tax system. The purpose of these treaties ought to be to create certainty about tax treatment, which would benefit businesses and their staff in both countries, as well as to combat tax evasion and aggressive tax avoidance. I hope that this treaty will deliver that and that I can get some answers to my questions today, but otherwise I will be more than happy for the Minister to write to me at a later date.

11.37 am

George Kerevan (East Lothian) (SNP): I echo the sentiments expressed by the hon. Member for Stalybridge and Hyde. There is growing concern among non-governmental organisations in the development field that some double taxation treaties have been inimical to the developing countries concerned and have made it less easy for them to take a fair share of tax from multinational companies that operate in their jurisdiction. That is a reasonable proposition; all I am suggesting is that Ministers should consider it as one aspect of how the treaties are put together. We are therefore a little unhappy not to get the impact assessment, which would at least put the issues out in the open for us all to see. I plead with the Government to give us such impact statements, in this instance and in future instances.

My hon. Friend the Member for Kirkcaldy and Cowdenbeath (Roger Mullin) is pursuing a private Member’s Bill that would place a statutory duty on Ministers to take into account the impact on international development of future double taxation treaties, so this is a live issue in the House. Will the Minister tell us whether there were any discussions about development issues in the negotiations over this treaty? Were there any discussions with NGOs and agencies in Turkmenistan in the run-up to the finalisation of the draft order?

11.39 am

Robert Flello (Stoke-on-Trent South) (Lab): I will not delay the Committee too long, but I wish to clarify a couple of points and build on some of the questions asked by my hon. Friend the Member for Stalybridge and Hyde.

It would be very helpful to have some information on the scale of UK involvement in Turkmenistan. My hon. Friend asked about the potential loss or gain to the Exchequer. As the Minister said in her comments, Turkmenistan wishes to expand its own economy. It would be helpful to understand what that means in terms of how many British businesses and individuals are in Turkmenistan and, conversely, how many members of the Turkmenistan population in the UK are active in business or commerce more generally. How many of their companies are here? That would give us the scale of the issue. It would also be helpful to understand the trend. Has that number remained static for a few years or has there been an increase?

How confident is the Minister that the Turkmenistan tax authorities are as rigorous as we generally hope and expect Her Majesty’s Revenue and Customs to be? The statutory instrument deals with enforcement around compliance. Are we confident that the Turkmenistan tax authorities will be strict in ensuring that businesses and individuals will be compliant with their requirements?

A point already discussed at some length, but which bears repeating, is that of the words that we use every day. It seems very strange that the last line of the explanatory memorandum on a piece of legislation that is by its very nature regulatory would state:

“An Impact Assessment has not been prepared for this instrument because double taxation agreements are not regulatory in nature.”

It is regulatory—that is its nature—and therefore an impact assessment would have been a very good thing to have, if only because it would provide a little bit more of that bright sunshine that disinfects things and shows them up. I look forward to the Minister’s answers on those issues.

11.42 am

Jane Ellison: I will try to answer as many questions as I can; there was quite an array. We are straying into more general concerns on the relationship between the UK and developing countries and double taxation agreements. I am familiar with the private Member’s Bill that is being proposed. Let me say a few general words; I will try to cover some of the specifics, but I may have to take up the shadow Minister’s invitation to write to him if I cannot cover all the questions.

The UK enters into double taxation agreements because they are mutual agreements. Countries are not pressured to sign them; they are signed because they are in the interests of both countries and are increasingly recognised to be so. I understand there is NGO concern and we will no doubt come to debate that a bit further in due course, but I do take the issue seriously. I have signed a couple of double taxation agreements myself in the past few months and I take the opportunity to talk to the people I am signing them with about what they see as the advantages for their country.

Although I welcome the scrutiny of NGOs, I sometimes think that their concerns are perhaps a little misplaced. These are mutually negotiated agreements entered into

[Jane Ellison]

freely by both countries and the negotiating capacity of many of the countries we are dealing with, even developing ones, is very considerable. Occasionally, I worry that that is a little understated or underestimated by those with such concerns. I reassure the hon. Member for East Lothian that we take the issue very seriously.

The Government are engaging with Turkmenistan to promote and protect British interests and values. It is a Foreign and Commonwealth Office human rights priority country and it is a key objective to encourage the Turkmen Government towards democratic reforms and to implement their international human rights commitments and obligations, as well as to improve the investment climate for UK businesses. Those things go very much hand in hand. A country that respects human rights, the rule of law and all those things is a good place in which to do business. Doing business in a country often drives development and drives the opportunities to advance British values—those two things are very closely linked. We are supporting and encouraging Turkmenistan's contribution to regional prosperity, stability and security, including in respect of UK objectives in Afghanistan and the wider region.

A number of questions touched on the scope for further commercial engagement. There is plenty of scope for further UK commercial engagement in Turkmenistan, particularly in the oil and gas sector, and this agreement will help our efforts to promote those increased commercial opportunities in a more transparent investment climate. Transparency of investment climates is often at the heart of the benefits of such agreements.

On the economic and revenue effects, my right hon. Friend the Chief Secretary has previously informed the House that it is difficult to provide sensible estimates of the revenue effects of DTAs. It might be that in a particular case there is a short-term revenue gain or loss, but even then it would be hard to quantify. Such agreements are essentially strategic and are not meant to achieve a particular short-term outcome, so concluding one is not a zero-sum game.

It is possible that short-term revenue effects will be augmented or balanced by longer-term increases in activity as companies and others respond to a more favourable business climate and the greater certainty that a DTA can provide but, because of such movement over time, the effects are hard to quantify. The complex and shifting interaction of the laws in our country and the laws of the country in question also makes it difficult to give meaningful estimates. Successive Governments have not tried to give such estimates, so we are not unique in not trying to estimate the impact other than to say that by signing the agreement both countries believe it is in their mutual long-term interest—we would not be doing it otherwise.

That brings us to impact assessments. We have not produced an impact assessment because DTAs impose no obligations on taxpayers, rather they give UK residents relief from foreign tax in prescribed circumstances and provide relief from UK tax for non-residents in comparable situations. That is not new. There was a written ministerial statement in March 2011, after impact assessments

were introduced, in which my predecessor gave details on exceptions from the requirement to publish an impact assessment, and secondary legislation enacting double taxation treaties was listed among those exceptions. We have taken a consistent position because of the nature of where the impact is felt.

By governing the taxation of cross-border income flows and eliminating double taxation, tax treaties promote international trade and investment. That long-term picture leads to sustainable tax revenues. One reason such treaties are important in financing development is the certainty they give.

NGOs often bring up the difference between the OECD and the UN models, and we cleave more closely to the latter. This treaty follows the OECD model, not the UN model, however the models are similar in nature. The treaty does not include an arbitration article, as Turkmenistan does not include such articles in its treaties—that is one variation.

I have mentioned the opportunities that the treaty offers for businesses operating overseas. I can give the assurance that the treaty with Turkmenistan prevents UK businesses from being disadvantaged in comparison with competitors from countries that have treaties in place. Of course, we are not the only country with which Turkmenistan, and indeed other countries, is looking to update its agreements, particularly given the different circumstances in which it finds itself today compared with its time as part of the USSR.

A question was asked about the Double Taxation Treaties (Developing Countries) Bill, which is due to have its Second Reading on 16 December. I look forward to debating that private Member's Bill further, and I hope to give further assurances because I am aware of the interest of ActionAid. In the case of one country on which that NGO is particularly focusing, I have had useful discussions with the chairman of the all-party group for the country in question and I am further investigating to try to assure myself that the concerns are misplaced.

I think I have dealt with many of the questions, but we will go back to see whether I have missed any specific ones. A question was asked about our capacity to collect tax. The UK is a leading nation in supporting capacity building in other tax systems. I am proud of the work we do in supporting capacity building in tax administration. We have the wherewithal to offer good support, where that is needed. HMRC undertakes a major piece of work as part of the Department for International Development's wider programme of capacity building in partner countries.

I think I will leave it there. I know that a question was asked about the number of people from the UK and the number of businesses in Turkmenistan. I do not have that detail to hand, but I am very happy to write with as much as we know about that. Clearly part of the DTA's purpose is to encourage that very exchange from business to business. I will write to Members whom I have not been able to satisfy with my answers.

Question put and agreed to.

11.51 am

Committee rose.