

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT INTERNATIONAL TAX ENFORCEMENT  
(BERMUDA) ORDER 2017

DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT  
(KYRGYZSTAN) ORDER 2017

*Tuesday 6 March 2018*

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**Saturday 10 March 2018**

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**The Committee consisted of the following Members:**

*Chair:* STEWART HOSIE

† Afriyie, Adam (*Windsor*) (Con)  
 Coffey, Ann (*Stockport*) (Lab)  
 † Debonnaire, Thangam (*Bristol West*) (Lab)  
 † Grant, Peter (*Glenrothes*) (SNP)  
 † Hair, Kirstene (*Angus*) (Con)  
 † Johnson, Dr Caroline (*Sleaford and North  
 Hykeham*) (Con)  
 Lammy, Mr David (*Tottenham*) (Lab)  
 † Lewis, Clive (*Norwich South*) (Lab)  
 † McCabe, Steve (*Birmingham, Selly Oak*) (Lab)  
 † Morris, David (*Morecambe and Lunesdale*) (Con)

† Powell, Lucy (*Manchester Central*) (Lab/Co-op)  
 † Prisk, Mr Mark (*Hertford and Stortford*) (Con)  
 † Rutley, David (*Lord Commissioner of Her Majesty's  
 Treasury*)  
 † Stewart, Iain (*Milton Keynes South*) (Con)  
 † Stride, Mel (*Financial Secretary to the Treasury*)  
 † Walker, Thelma (*Colne Valley*) (Lab)  
 † Watling, Giles (*Clacton*) (Con)

Nehal Bradley-Depani, *Committee Clerk*

† **attended the Committee**

# First Delegated Legislation Committee

Tuesday 6 March 2018

[STEWART HOSIE *in the Chair*]

## Draft International Tax Enforcement (Bermuda) Order 2017

8.55 am

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

That the Committee has considered the draft International Tax Enforcement (Bermuda) Order 2017.

**The Chair:** With this it will be convenient to consider the draft Double Taxation Relief and International Tax Enforcement (Kyrgyzstan) Order 2017.

**Mel Stride:** May I say, Mr Hosie, what a pleasure it is to serve under your chairmanship? The draft orders deal with a replacement tax information exchange agreement with Bermuda and our first double taxation agreement with Kyrgyzstan. Both statutory instruments bolster the United Kingdom's long-standing network of international tax agreements.

The UK has had a tax information exchange agreement with Bermuda since 2007. That arrangement has allowed for the exchange of information on request between Her Majesty's Revenue and Customs and the Bermudan tax authorities. Under a further agreement, signed in 2013, certain financial account data are received automatically by HMRC directly from Bermudan financial institutions. The draft order will supersede that further agreement and replace the tax information exchange arrangement from 2007.

The new instrument allows for automatic exchange of bulk financial data. This important change ensures that the UK continues to align with current international tax transparency standards. Bermuda will provide HMRC with an increased amount of information on UK taxpayers. Bermuda has the status of a UK overseas territory, but it is a separate jurisdiction, with its own elected Government, and is responsible for its own domestic fiscal policy. Thanks to UK leadership, Bermuda is committed to global tax transparency standards. This instrument is an important part of Bermuda's commitment to those standards and will enhance HMRC's ability to check the compliance of UK taxpayers who have financial affairs in Bermuda.

There are no other substantial changes between the old instruments and the one proposed. It, too, reflects the model developed by the OECD. This Government are committed to maintaining an extensive network of tax information exchange partners and agreements, which are an essential aspect of securing UK tax revenues.

The fluid exchange of information between jurisdictions is a key tool in the arsenal of international tax co-operation. Since 2010, HMRC has secured more than £2.8 billion from those trying to hide money abroad to avoid paying what they owe. The arrangement under consideration will assist HMRC in maintaining its strong track record of countering tax avoidance and evasion.

The UK has not had a double taxation agreement with Kyrgyzstan since it gained independence from the former Soviet Union in 1991. It was Kyrgyzstan that suggested we rectify that situation. It first requested talks in 2008 and repeated that request to us in 2013, citing a desire to open up its economy to promote economic development. For our part, we were keen to close a gap in our DTA coverage in the region and ensure that UK businesses could compete on an equal footing with businesses in comparable countries that had already concluded DTAs.

The agreement reached will improve the business conditions for UK companies and individuals operating and investing in Kyrgyzstan, while reflecting that nation's status as a developing country. The rates of withholding tax are reduced to 5% for interest, royalties and dividend payments to direct investors; the rate under domestic law in Kyrgyzstan is 10%. In addition, the agreement permits the taxation of services where they are performed in a country over an extended period—a feature of the UN model tax treaty. However, there are no unwelcome provisions permitting the taxation of leasing payments on a gross basis that either impede commercial activity or increase costs for consumers. The resulting treaty is therefore a good compromise that will encourage investment in Kyrgyzstan by UK businesses, to the benefit of both economies.

I trust that the explanations I have given are helpful. The orders strengthen the UK's taxing framework on many fronts, and I commend them to the Committee.

8.59 am

**Clive Lewis (Norwich South) (Lab):** It is a pleasure to serve under your chairmanship, Mr Hosie. I welcome the opportunity to participate in scrutinising these two tax enforcement orders. Work that has contributed to ensuring that the UK overseas territories have adopted the common reporting standard a year earlier than other parts of the world is to be commended. It is vital that tax that is rightly due is paid and any avoidance promptly investigated and, where appropriate, prosecuted. However, we should be cautious in assuming that tax treaties between wealthy and low-income nations are without problems.

We know that low-income countries rely more heavily on tax revenues than their rich counterparts, and the revenues can be assumed to be more urgently needed to provide public services such as health and education. Treaties have historically been one of the elements of the global tax system that have stood in the way of low-income countries collecting the tax revenue that is fair and just—undermining the ability of local companies to compete on a level playing field. It is therefore vital that we get this right.

With regard to the Double Taxation Relief and International Tax Enforcement (Kyrgyzstan) Order, I ask the Minister why the treaty does not include the provisions against tax treaty abuse that were agreed as minimum commitments by the UK and all states participating in the G20/OECD project on base erosion and profit shifting, also known as BEPS. Those anti-abuse provisions are included in the multilateral instrument on BEPS, and would be imported into a treaty if both parties to that treaty list it as a covered agreement. The proposed agreement with Kyrgyzstan was not listed as a

covered agreement by the UK when it signed the MLI in June 2017, although the one with Lesotho, tabled a few weeks ago, was. Are the Government content to proceed with the treaty without ensuring that it contains the anti-abuse provisions accepted as a minimum commitment under the BEPS project?

In addition, why does the treaty not include a provision for the arbitration of disputes in article 24, while the recently considered treaty with Lesotho did include such a provision, despite the fact that developing countries have, through the UN committee of tax experts, opposed inclusion of such arbitration provisions in tax treaties? If the UK is willing to sign a treaty with a country such as Kyrgyzstan without an arbitration provision, why was it included in the Lesotho treaty? Why has there been a delay in bringing the treaty to the House? It appears that the treaty was signed in Bishkek in June last year. Why was it not considered here earlier? Is that a result of the greater than average scrutiny to which the Lesotho treaty was subject?

With regard to the International Tax Enforcement (Bermuda) Order, will the Minister tell us whether the Government have arrangements in place for the automatic exchange of tax information? I think the Minister did mention that, but if he could clarify it once more, that would be really helpful. Finally, the explanatory note to the order states:

“The 2017 Arrangement replaces the 2007 Arrangement and makes provision for automatic exchange of tax information, which was not provided for in the 2007 Arrangement.”

Paragraph 6 of the 2017 arrangement provides for automatic exchange. It states that that will be done under procedures to be determined “by mutual agreement.” The UK-Bermuda agreement of 2014 to improve tax compliance stated that

“the Parties are committed to promoting a new single global standard in the automatic exchange of tax information and will look to align this agreement to that new global standard in due course”.

Has that been done, and can the Minister provide details?

9.3 am

**Peter Grant** (Glenrothes) (SNP): It is a great pleasure to serve under your chairmanship, Mr Hosie. I will not repeat what the hon. Member for Norwich South said in relation to the inadequacies or incompleteness of the legislation. We all welcome any move that makes it harder for people to hide their gains—ill-gotten or well-gotten—from the rightful tax authorities. I believe that it is a fundamental principle, particularly for people who are making money out of developing countries, that any tax that is due on those profits should be retained within the country where the money has been raised, so that it can be invested to help it to develop its economy.

Although the exchange of information is a big help in that, such information can be used only to demonstrate whether somebody is acting within the existing legislation. If that legislation allows a country to be used as a tax haven, exchanging information so that HMRC knows that somebody is using it as a tax haven does not get us an awful lot further forward. Although I welcome the intention of the legislation, I am puzzled, like the hon. Member for Norwich South, as to why it has taken so long. If it is such a good piece of legislation, why

have Bermuda and Kyrgyzstan not had the benefit of it much sooner? Why have we not had the benefit of it much sooner?

As well as enforcing the legislation that we have, I hope the Government will do a lot more to ensure that we use every means at our disposal to tighten up tax loopholes. That is not so that people can be taxed beyond what is reasonable, but so that tax revenues from the labours of developing countries are reinvested in their schools, hospitals, housing and communities. They cannot afford to subsidise the City of London—let us be brutal about it—but their resources, the skills of their people and the efforts of their local populations very often work on behalf of UK-owned companies. I welcome the legislation and I hope we will see much more being done in future.

9.5 am

**Mel Stride:** Perhaps I can respond to the speakers in reverse order and start with the hon. Member for Glenrothes, whom I thank for his comments. I am pleased that he welcomed appropriately the greater transparency and provision of information to HMRC that will flow from the order in the case of Bermuda. He raised the issue of tax transparency, but Bermuda is a sovereign country with a democratically elected Parliament that makes its own decisions in those contexts.

However, we have worked closely with Bermuda, particularly in respect of the work carried out by the European Union, to ensure that we further that transparency process. Most recently, the EU confirmed that sufficient progress is being made in that regard. Bermuda has embraced common reporting standards, which both Members on sides of the Committee welcome, to ensure that information is provided to other tax jurisdictions.

The hon. Member for Norwich South made a number of points. I was pleased that he welcomed common reporting standards and its early adoption across the overseas territories, as we do. He raised the general issue of low-income countries and the benefits or otherwise of entering into such agreements when they are negotiated with a high-income country.

I would point out that Kyrgyzstan requested the arrangement after all, and was under no compulsion to enter into any agreement as negotiated. The big benefits to a country such as Kyrgyzstan are in the medium to longer term. Various studies, such as one conducted by Vienna University, have looked at the economic impact of withdrawing withholding taxes, of lowering taxes, and of providing the kind of certainty that businesses require when they consider where to invest internationally. That is an important medium to longer-term consequence for those countries of this kind of arrangement.

The hon. Gentleman also talked about the anti-abuse provisions in the order and made specific reference to the BEPS project. The treaty was concluded before the BEPS arrangements came into effect, but there are anti-treaty shopping elements in the order to ensure that those anti-abuse provisions are robust.

The hon. Gentleman is right that there are no mandatory arbitration provisions in the treaty, because constitutionally Kyrgyzstan is not permitted to enter that kind of arrangement. We have respected that. He is right to say that there have been some delays. It has taken time to go through the stages of the negotiation, partly because

[Mel Stride]

the Kyrgyzstan Government requested various technical changes along the way. There were also some issues about language and translation because the agreement had to be very, very precisely translated into three languages.

On that basis, I hope the Committee will agree to these orders.

*Question put and agreed to.*

**DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT  
(KYRGYZSTAN) ORDER 2017**

*Resolved,*

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Kyrgyzstan) Order 2017.—(*Mel Stride.*)

9.10 am

*Committee rose.*