PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

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

DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (ISLE OF MAN) ORDER 2018

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

Tuesday 13 November 2018

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not later than

Saturday 17 November 2018

The Committee consisted of the following Members:

Chair: Steve McCabe

† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Crabb, Stephen *(Preseli Pembrokeshire)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Garnier, Mark *(Wyre Forest)* (Con)
† Hair, Kirstene *(Angus)* (Con)
† Jones, Mr Marcus *(Nuneaton)* (Con)
† Keegan, Gillian *(Chichester)* (Con)
† Morris, Anne Marie *(Newton Abbot)* (Con)
† Shah, Naz *(Bradford West)* (Lab)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Stride, Mel *(Financial Secretary to the Treasury)*
† Twist, Liz *(Blaydon)* (Lab)
Walker, Thelma *(Colne Valley)* (Lab)
† Watling, Giles *(Clacton)* (Con)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*
† Williamson, Chris *(Derby North)* (Lab)

Nina Foster, *Committee Clerk*

† attended the Committee

Seventh Delegated Legislation Committee

Tuesday 13 November 2018

[Steve McCabe *in the Chair*]

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

2.30 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 (Guernsey) Order 2018.

The Chair: With this it will be convenient to consider the draft Double Taxation Relief and International Tax Enforcement (Isle of Man) Order 2018 and the draft Double Taxation Relief and International Tax Enforcement (Jersey) Order 2018.

Mel Stride: It is a pleasure to serve under your chairmanship, Mr McCabe, as always. As you have suggested, I will speak to all the orders.

The orders before the Committee give effect to replacement double taxation agreements with each Crown dependency. 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 business and the economies of the jurisdictions concerned.

I will briefly say a few words about the agreements, which are identical in all material respects. Our current DTAs with the Crown dependencies date back to the 1950s. Although they have been updated on occasion, there was a need for a comprehensive update. The new DTAs extensively modernise the existing texts to reflect updates to the OECD model tax convention and changes to the tax laws and treaty preferences of all jurisdictions.

Like the UK, the Crown dependencies are signatories to the BEPS—base erosion and profit shifting—multilateral instrument, or MLI. However, we could not use the MLI to make changes to our existing DTAs with the Crown dependencies because they are not international law agreements. Instead, the new DTAs include all the provisions that would have been implemented by the MLI.

Instead, we have implemented the treaty-related minimum standards mandated by the BEPS project through the agreements. That means that we have included the new preamble, which clarifies that the purpose of an agreement is not to create opportunities for avoidance and sets out the principal purpose test, which is the mechanism by which benefits can be denied where the main purpose of a transaction or arrangement is to avoid tax.

In line with the OECD model, the new agreements are comprehensive in scope and cover all income and gains, including articles on interest and royalties for the first time. However, benefits in respect of interest and royalties are limited to persons who can demonstrate a close connection to Crown dependencies, which ensures that residents of third countries will not be able to exploit the provisions. The new agreements also provide for mandatory binding arbitration, which ensures that disputes are resolved and double taxation avoided.

The current agreements have been updated twice in the recent past to ensure that they could not be used to frustrate the intention of UK legislation on offshore property developers and leasing in the oil and gas sector. The amendments are incorporated in the new agreements, and this comprehensive update will avoid the need to make such changes in future. Finally, the new agreements also provide for mutual assistance in the collection of tax debts, which will enable the UK to ask the Crown dependencies to recover UK tax from their residents on our behalf.

In summary, these are agreements that the UK and the Crown dependencies can be happy with. They protect UK revenue and provide a stable framework in which trade and investment between the UK and the Crown dependencies can continue to flourish. I therefore commend the three orders to the Committee.

2.33 pm

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve on this Committee with you in the Chair, Mr McCabe. I am grateful to the Minister for his explanatory comments, but I am afraid that the Opposition cannot support the treaties in their current form.

Let me say at the outset that the Opposition's concern about the treaties is in no way a reflection of our overall view of the Channel Islands, with whom we are determined to maintain a cordial and respectful relationship, building on our important historical and contemporary ties. Nor would the Opposition view the previous double taxation agreements as fit for purpose. They were not, although there appears to have been confusion in that regard on the Government side. I will return to that later.

Our opposition to the treaties is motivated instead by a deep concern about the lack of appropriate engagement by the Government in advancing the cause of tax transparency, which at rhetorical level they are committed to, but which time and again they seem sadly to have resiled from in practical terms. During debates on the Sanctions and Anti-Money Laundering Act 2018, the Opposition prepared an amendment requiring Crown dependencies to introduce public registers of beneficial ownership, but we were persuaded by Ministers that they were working with Crown dependencies to achieve transparency through other means. The amendment was therefore withdrawn.

What has happened in the intervening six months since the beginning of May? It looks as if even the Government's responsibility to require overseas territories to introduce public registers of beneficial ownership has floundered. The Government are obliged to do that now by the will of this House, given that the amendment to that intent passed. I understand that there has been one conference call with the overseas territories, and that appears to have been in relation to what the Government are committed by this House to achieving regarding promoting beneficial ownership registers in the overseas territories.

When it comes to the Crown dependencies, the Government appear to be shutting the door on transparency with these treaties, which is unacceptable. From what I can see, the previous tax treaties with the Channel Islands covered only income tax and corporation tax, not information exchange. There was a separate agreement on the latter, signed in 2013 as an exchange of letters, although that does not seem to have been enacted. As an aside, it would be quite interesting to hear from the Minister why that is the case.

Information exchange is now included within the tax treaties, as one might expect given the OECD's focus on this area and the fact that, as the Minister indicated, the treaties are modelled on the OECD's multilateral instrument for amending tax treaties. Given that information exchange was a subject for negotiation as part of the treaty process, and given previous assurances, one would have expected our Government to seek to include an increase in transparency for beneficial ownership registers within the negotiations. However, article 26 in the Jersey agreement, replicated in those with Guernsey and the Isle of Man, states:

"Any information received under paragraph 1",

which contains the provisions on information exchange,

"by a Territory shall be treated as secret".

That, coupled with the fact that there is no mention elsewhere in the treaty text of public registers of beneficial ownership, appears to close the door on transparency, rather than open it in the manner that the Government committed to doing.

Alex Cunningham (Stockton North) (Lab): The pensions industry is probably one of the most secretive as far as costs and transparency are concerned, although the Department for Work and Pensions and the Pensions Minister have done tremendous work to try to increase transparency. There is a lesson there for the Minister.

Anneliese Dodds: I am grateful to my hon. Friend. He makes the serious point that we have seen transparency moving forward in many areas, yet with these treaties we appear to be moving backwards.

The Government may say that they began negotiations on the treaties in April 2016, as reported by the then Minister responsible, Jane Ellison, but the fact remains that they were not signed until 2 July this year—after the Government had given an assurance that they would work with the Crown dependencies towards public registers of beneficial ownership. We often hear the Government say that they cannot force either the overseas territories or Crown dependencies to do anything at all. I resolutely state that we must do all that we can to support our friends in the overseas territories and Crown dependencies.

I have frequently met with politicians from both groups of jurisdictions, and I respect their efforts in the field of promoting clean financial services and in many other areas. Many people in both groups of jurisdictions now recognise that the writing is on the wall when it comes to excessive secrecy in the financial sector. More transparency is coming, and it is only a matter of time before it will become the international standard. The British Government must play their part in that.

The treaties were the perfect opportunity for our Government to seek to work with the Crown dependencies to promote public registers after previous commitments to do so, yet that opportunity seems not to have been taken up. It would have been perfectly possible for our Government not to have concluded the treaties until public registers were agreed to, but they chose to ignore that pressing need. Similarly, the Government failed to use the opportunity of the Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 as a means to require change. Instead, the current relationship between the UK and the Crown dependencies is maintained in those regulations without any conditions attached whatsoever.

That is all in the context of the Government acting to defend the interests of UK-linked territories—or what is portrayed as their interests; I would argue that in the long run they are not—when it comes to the secrecy of financial activities. I have previously used freedom of information requests to try to get to the bottom of the lobbying that our Government have undertaken on behalf of overseas territories and Crown dependencies concerning the EU's tax haven blacklist. Eventually that hit a brick wall, when those matters were classified as "diplomatic" and therefore not open to FOIs. The *Süddeutsche Zeitung* newspaper was rather more forthcoming, however, when it reported in March that the UK Government had intervened in the blacklisting process, in that case to try and stop the British Virgin Islands being blacklisted.

The British Government cannot have it both ways. They cannot on the one hand argue that they are powerless in relation to our overseas territories and Crown dependencies, and on the other promote a particular view of those territories' interests—which, as I have said, I do not think are their long-term interests—to other actors such as the EU. Those positions are just not compatible. It would be helpful to hear the Minister's view on why these treaties do not conform with previous commitments made by the Government with respect to public registers of beneficial ownership for our Crown dependencies.

The Minister will be aware of the eurobond exemption, which has been estimated to lose the Exchequer around half a billion pounds a year in tax revenue. The Channel Islands stock exchange is a recognised stock exchange under section 841 of the Income and Corporation Taxes Act 1988. Securities listed on that exchange enjoy exemptions from withholding tax even though they may be held by opaque companies. A UK company, for example, would make interest payments gross, without any withholding tax, while in many cases the recipient would arrange their tax affairs in such a way that they could escape tax altogether. I understand that, back in 2012, HMRC itself suggested that that could be restricted, so that the connected parties could no longer benefit from the exemption. My party also adopted that position at the time. The Government's argument against it was that issuers, paying agents and clearing systems for eurobonds might not be aware of who noteholders are or whether they are in the same group as the issuer. Essentially, they would be unable to work out if they were connected parties. It would be good to hear from the Minister whether that matter even came up during discussions about these treaties and, if so, what the treaties do to prevent that kind of distortive activity.

It would be helpful to have a clear indication of how the Government view the process for concluding new double tax agreements. I noted when we ratified the OECD's multilateral instrument that it did not result in

[Anneliese Dodds]

a commitment to alter our treaties with Jersey, the Isle of Man or Guernsey. On that occasion the Minister replied to me:

"The hon. Lady asked why we do not include all the DTAs. She is absolutely right that the UK has a large number—from memory, I think it is around 130—and about 121 will be potentially covered by this measure. The answer is that, in some cases, the DTAs largely conform to the changes that would be introduced were they to be subject to the MLI. In some cases, it is not necessary, as our treaty contains substantial provisions. Our first-time DTA with Colombia would be one example."—[*Official Report, Third Delegated Legislation Committee,* 9 May 2018; c. 8.]

That seems to be out of kilter with what has occurred with these treaties, which did not cover many of the measures covered by the MLI, such as royalties or capital gains tax—the treaties and the MLI have very different formats. Now that we see a different approach from what was initially suggested for the Channel Islands DTAs, I would be interested to learn what will to happen with the remaining DTAs, which cover Austria, the Falkland Islands, the Faroe Islands, Switzerland and the United Arab Emirates. Interestingly, the protocol to the Swiss DTA was concluded in 2017, but is still not in force, and it is not clear when it will be brought to the House. It would be interesting to hear from the Minister about progress in that regard.

To conclude, sadly we do not feel that we can accept these treaties. They appear to go against commitments made to the Opposition that the Government would continue to work extensively with our Crown dependencies towards having public registers of beneficial ownership. For that reason, we will be voting against the orders today.

2.44 pm

Kirsty Blackman (Aberdeen North) (SNP): It is a pleasure to be here, Mr McCabe. This is a nice warm-up for all the time that we look forward to spending together in a room like this considering the Finance Bill.

I align myself with most of the comments made by my colleague, the hon. Member for Oxford East, particularly about beneficial ownership. She always asks difficult questions of the Minister, who is left scribbling and trying to come up with the answers. Hopefully, he will have them and we will all leave here happy as a result, but I am not sure that that will happen. In relation the UK's ability to tackle tax avoidance and evasion, some changes have not been made despite the fact that they have been called for in this place. I would like to highlight a 2017 European Parliament report that said that

"most of the offshore structures revealed in the Panama Papers were set up from Luxembourg, the United Kingdom and Cyprus".

The UK is one of the three countries specifically mentioned, which shows that there is still a long way to go before it can be recognised as somewhere that does not incentivise these kinds of things and does not allow them to happen.

The Scottish National party has a strong track record in relation to our work on Scottish limited partnerships, and we are still waiting for change in relation to our support for the Magnitsky changes and the work that we have done on that. Finally, to pick up on a point made by the Opposition spokesperson, there is not much point having an international agreement if we do not use it. Some of the agreements that have been made and signed have not come into force. If the double taxation treaties that are discussed in the explanatory notes come into force, particularly on transparency-related issues, it is important that the Government come back to us with information about how regularly the information sharing was used. If there are problems and tax avoidance is going on, but the Government do not use the measures in the Bill that has been introduced to obtain the information that they need to tackle tax avoidance, that would be a major concern. If the orders are introduced—the Government currently have a working majority, so that is possible—it is important that the Government commit to return to the House and report on the application of the arrangements, particularly in relation to the new information-sharing provisions. It is important that we do not just do the right thing but are seen to be doing the right thing. It would give Opposition parties some comfort if we had a commitment from the Government.

2.47 pm

Mel Stride: I thank the hon. Members for Oxford East and for Aberdeen North for their contributions to this important debate. I always expect a rattle gun of deep and technical questions from the hon. Member for Oxford East, and I was not disappointed. I will endeavour to answer as many questions as I can, and on those I cannot answer, I am happy to write to her in due course.

The hon. Member for Oxford East raised a lack of engagement, as she termed it, with the treaties that we are scrutinising. I took that to refer both to matters of transparency, on which she elaborated at some length, and also the scrutiny of the treaty, which is an issue that she has raised in relation to other DTAs that we have debated in Committee. I hope that she therefore welcomes the fact that we have made improvements, for example to the information memorandum, which now points out the differences and changes between the 1950s and the later iterations of the treaties and, indeed, the treaty to which we have been asked to give our consent.

I shall make the general points that I usually make on scrutiny. International treaties are complicated negotiations and do not necessarily lend themselves, nor would it be appropriate for them to do so, to discussion and rumination, as the hon. Lady may be seeking. The treaty was published in July this year, so there has been plenty of time to review it. Of course, these international agreements go through the process that we are going through at the moment, giving this treaty scrutiny.

I appreciate that the transparency debate is a hook on which one could add the whole issue of the public registers of beneficial ownership, about which we have had various parliamentary debates. The hon. Lady knows the Government's position in that respect. It is important to stress that we have a common reporting standard between Her Majesty's Revenue and Customs and the tax authorities of the three other jurisdictions in question, so we do have an exchange of information relevant to tax affairs between our two authorities, which is an important tool in clamping down on avoidance, evasion and non-compliance.

The hon. Lady asked specifically why we did not insist on the treaties containing a provision that public registers be set up. I think the answer to that is that these matters are outside the general context of these treaties. In addition, the treaties are entered into by bilateral agreement, and I think if we had insisted on that—indeed,

had it been our desire to insist on that at this moment—it is unlikely that we would have had the improved version of the treaties that we are discussing today.

Anneliese Dodds: I am grateful to the Minister for giving way, but surely these treaties contain provisions that make it less likely that such a public register, which the Government committed to, will be set up, because they include the commitment to keeping information secret. It is just that these treaties do not include reference to public registers, which one would have expected if the Government were working on this, as they committed to do, to the Opposition; it is also the fact that they include a commitment to keeping information secret, which goes against what the Government said in this House that they would do.

Mel Stride: I do not think that these treaties require further secrecy than the appropriate confidentiality, as some might term it, of information that is, after all, highly sensitive; it involves the tax affairs of individuals and businesses between our various jurisdictions. It would only be right that confidentiality is respected in those circumstances.

Anneliese Dodds: I am grateful to the Minister for that clarification. However, we were just talking about having a register that is similar to the UK register, which is public, and surely any concerns about confidentiality have already been dealt with in our own jurisdiction.

Mel Stride: I had understood the hon. Lady in her earlier intervention to be suggesting that the treaties would make a move to public registers of beneficial ownership less likely. To the extent that I do not think they impose any additional confidentiality on the exchange of information over and above what was there before, I do not think that argument holds water, with respect to her.

On the information exchange issue that the hon. Lady raised, the agreement contains a new "assistance of collection of debt" provision, compared with the agreements that it supersedes. I hope that she would welcome the information requirements around that, and the fact that we can now actively seek the assistance of those jurisdictions to collect tax debt, for example.

On the general issue of anti-avoidance, as all Committee members will know—because they follow these affairs in intricate detail, as they have done during this debate—we have very much been in the vanguard of BEPS programme in the OECD. Members may see the footprints of that in these treaties through the main purpose test, to ensure that we do not have companies or individuals exploiting the tax advantages around these treaties for no other reason than to avoid or reduce their tax liability. Of course, in respect at least of the interest on royalty payments, as distinct from dividend payments, there are different categories of entity, and various tests accordingly that will be required to trigger the reliefs in that respect.

The hon. Lady mentioned the blacklisting process that is going on at the moment and the UK Government's involvement. We have been actively involved in discussions with our overseas territories to ensure that we encourage them not to be blacklisted—to ensure that they comply with the EU code group's provisions.

Alex Cunningham: Having anticipated what the Minister said, I should be interested to learn what new areas the Minister is working on to encourage greater transparency within the territories.

Mel Stride: One of the principal areas is that of economic substance when it comes to the activities of those businesses that purport to be operating from those low or no-tax jurisdictions, which is the main thrust of the EU's move here—that we have genuine businesses involved in those jurisdictions, rather than their just being used as a conduit for the purposes of avoiding or paying extremely low levels of tax.

The hon. Member for Oxford East mentioned eurobond exemptions and restricted connected parties. These treaties do not impinge on that matter, which is dealt with in UK domestic tax law, so it is quite distinct from what we are debating today. The hon. Member for Aberdeen North asked if we could come back with a report on information sharing and how effective it had been. I do not think that, in this instance, there is a need for a specific report. The tools for scrutinising that, whether by way of debates or parliamentary questions, are here in this Parliament. On that note, I shall conclude my remarks.

Question put.

The Committee divided: Ayes 9, Noes 7.

Division No. 1]

AYES

Crabb, rh Stephen	Morris, Anne Marie
Garnier, Mark	Stride, rh Mel
Hair, Kirstene	Watling, Giles
Jones, Mr Marcus	Whittaker, Craig
Keegan, Gillian	

NOES

Blackman, Kirsty	Smith, Jeff
Cunningham, Alex	Twist, Liz
Dodds, Anneliese	Williamson, Chris
Shah, Naz	

Question accordingly agreed to.

Resolved,

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

DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (ISLE OF MAN) ORDER 2018

Motion made, and Question put,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Isle of Man) Order 2018.—*(Mel Stride.)*

The Committee divided: Ayes 9, Noes 7.

Division No. 2]

AYES

Crabb, rh Stephen	Morris, Anne Marie
Garnier, Mark	Stride, rh Mel
Hair, Kirstene	Watling, Giles
Jones, Mr Marcus	Whittaker, Craig
Keegan, Gillian	

NOES

Blackman, Kirsty
Cunningham, Alex
Dodds, Anneliese
Shah, Naz
Smith, Jeff
Twist, Liz
Williamson, Chris

Question accordingly agreed to.

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

Motion made, and Question put,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Jersey) Order 2018.—*(Mel Stride.)*

The Committee divided: Ayes 9, Noes 7.

Division No. 3]

AYES

Crabb, rh Stephen
Garnier, Mark
Hair, Kirstene
Jones, Mr Marcus
Keegan, Gillian
Morris, Anne Marie
Stride, rh Mel
Watling, Giles
Whittaker, Craig

NOES

Blackman, Kirsty
Cunningham, Alex
Dodds, Anneliese
Shah, Naz
Smith, Jeff
Twist, Liz
Williamson, Chris

Question accordingly agreed to.

3.1 pm

Committee rose.