

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT  
(GUERNSEY) ORDER 2015

DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT (JERSEY)  
ORDER 2015

DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT  
(CANADA) ORDER 2015

DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT (KOSOVO)  
ORDER 2015

*Thursday 26 November 2015*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON – THE STATIONERY OFFICE LIMITED

£3.00

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest 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**

**Monday 30 November 2015**

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY  
FACILITATE THE PROMPT PUBLICATION OF  
THE BOUND VOLUMES OF PROCEEDINGS  
IN GENERAL COMMITTEES

© Parliamentary Copyright House of Commons 2015

*This publication may be reproduced under the terms of the Open Parliament licence,  
which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

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

*Chair:* GERAINT DAVIES

- |   |  |
|---|--|
| † Burns, Conor ( <i>Bournemouth West</i> ) (Con)                  | † Mackinlay, Craig ( <i>South Thanet</i> ) (Con)                     |
| Creasy, Stella ( <i>Walthamstow</i> ) (Lab/Co-op)                 | † Marris, Rob ( <i>Wolverhampton South West</i> ) (Lab)              |
| † Gauke, Mr David ( <i>Financial Secretary to the Treasury</i> )  | † Merriman, Huw ( <i>Bexhill and Battle</i> ) (Con)                  |
| † Henderson, Gordon ( <i>Sittingbourne and Sheppey</i> ) (Con)    | † Miller, Mrs Maria ( <i>Basingstoke</i> ) (Con)                     |
| † Jayawardena, Mr Ranil ( <i>North East Hampshire</i> ) (Con)     | † Prisk, Mr Mark ( <i>Hertford and Stortford</i> ) (Con)             |
| † Jenkyns, Andrea ( <i>Morley and Outwood</i> ) (Con)             | † Reynolds, Emma ( <i>Wolverhampton North East</i> ) (Lab)           |
| Johnson, Alan ( <i>Kingston upon Hull West and Hessle</i> ) (Lab) | † Stride, Mel ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| † McDonald, Andy ( <i>Middlesbrough</i> ) (Lab)                   | Wilson, Sammy ( <i>East Antrim</i> ) (DUP)                           |
| McGinn, Conor ( <i>St Helens North</i> ) (Lab)                    | Sarah Thatcher, <i>Committee Clerk</i>                               |
|   | † <b>attended the Committee</b>                                      |

# Seventh Delegated Legislation Committee

Thursday 26 November 2015

[GERAINT DAVIES *in the Chair*]

## Draft Double Taxation Relief and International Tax Enforcement (Guernsey) Order 2015

11.30 am

**The Financial Secretary to the Treasury (Mr David Gauke):** I beg to move,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Guernsey) Order 2015.

**The Chair:** With this it will be convenient to discuss the draft Double Taxation Relief and International Tax Enforcement (Jersey) Order 2015, the draft Double Taxation Relief and International Tax Enforcement (Canada) Order 2015 and the draft Double Taxation Relief and International Tax Enforcement (Kosovo) Order 2015.

**Mr Gauke:** It is a pleasure to serve under your chairmanship for the first time, Mr Davies. This may be the first occasion on which I have delivered a speech in your presence where you will not make an intervention upon me.

**The Chair:** Let's hope not.

**Mr Gauke:** I am already tempted to say I give way, but let us see what progress I make, Mr Davies.

The four draft orders before the Committee deal with amendments to our double taxation arrangements with Guernsey and Jersey, the detailed arrangements for Canada and, for the first time, a double taxation agreement with Kosovo.

Let me begin with Guernsey and Jersey. We have agreed short protocols with Guernsey and Jersey, amending the territorial definition of the UK for the purposes of those DTAs. The protocols substitute a modern definition of the UK that includes the continental shelf. That means that the UK would not lose its right to tax activities such as oil and gas operations carried on in the North sea if those activities were transferred to a company resident in Guernsey or Jersey. We have made those changes to head off potential arrangements to get around changes that we made in the Finance Act 2014 that apply to such operations. At the same time, both Guernsey and Jersey wanted to amend their own territorial definitions, and those arrangements have also been accommodated in the protocols.

The Double Taxation Relief and International Tax Enforcement (Canada) Order 2014 was considered in Committee in 2014. The order related to a protocol that amended the UK-Canada double taxation agreement and introduced, in paragraphs 6 and 7 of article 23, provisions that allow disputes to be settled by arbitration. The arbitration provisions broadly follow the OECD model provisions. The exchange of notes that we are debating today sets out rules and procedures that apply

to the arbitration process. For example, the notes make it clear that the rules that apply to taxpayer confidentiality shall also bind those involved in the arbitration process. They also provide for a "final offer" method of arbitration, in which the panel is required to choose the position taken by one of the tax authorities.

Arbitration is an extension of the mutual agreement process, which allows the two tax authorities to consult each other to resolve disputes between themselves. When an issue cannot be resolved through discussions, the taxpayer can require that the matter goes to arbitration and the tax authorities are then bound by the decision. Users of UK double taxation agreements, especially companies, welcome arbitration as providing a solution in difficult cases. The possibility of arbitration also encourages tax authorities to reach a solution themselves within the two-year period after which the case is eligible for arbitration. The process can thereby eliminate the double taxation that can arise if cases are unresolved. Fortunately, such cases are not common, and in the case of Canada are rare. Inclusion in the double taxation convention sends a positive message and aids similar inclusion in other conventions.

Turning to Kosovo, this is the first time there has been a comprehensive agreement with Kosovo, replacing the 1981 agreement with the former Republic of Yugoslavia, which Kosovo and the UK had agreed would continue to apply. Kosovo approached us in 2011 with its proposed draft and we have been able to agree a text in two rounds which reflects changes to both countries' domestic law and which largely follows the OECD model tax convention. The agreement provides for zero withholding taxes on dividends, interest and royalties, with a measure protecting our taxing right over distributions from real estate investment trusts. That represents a significant reduction to withholding rates in the current treaty and will provide improved incentives for UK investors and businesses operating in Kosovo, to the benefit of both economies.

The agreement also updates the provisions of business profits and exchange of information to the latest OECD standards, as well as introducing an assistance in collection article. Finally, we secured agreement to a measure on arbitration to augment the mutual agreement process and our anti-treaty shopping measures, which allow both countries to ensure that the treaty's provisions cannot be exploited. This is the first time since Kosovo's independence in 2008 that it has signed a tax treaty with a country outside of eastern Europe and the Balkans. For the UK, it represents a further update to our treaty network in the region—Members may recall that we debated and approved new treaties with Croatia and Bulgaria last month.

I hope that those explanations are helpful, but I will be happy to answer any questions that hon. Members may have. I commend the orders to the Committee.

11.35 am

**Rob Marris (Wolverhampton South West) (Lab):** It is a great pleasure to serve with you as the Chair, Mr Davies. I hope this is the first such occasion of many. For the purpose of this Committee, perhaps we might call the Opposition side of the room the Wolverhampton side, as my hon. Friend the Member for Wolverhampton North East is here, as well as my hon. Friend the Member for Middlesbrough.

Will the Minister say a little more about the continental shelf with regard to Jersey and Guernsey, which he mentioned in his remarks? The definition of the United Kingdom of Great Britain and Northern Ireland in both statutory instruments is updated from, I suppose, the 1952 agreement. He referred to an example of an oil and gas company operating in the North sea that, for tax purposes, might be resident in Guernsey or Jersey. Will he talk the Committee through that a little more? I had thought—it appears wrongly—that the updating was to do with the territorial waters around Jersey and Guernsey or around the UK.

As for Canada, I do not need to declare an interest, although some members of the Committee will know that I was a resident of Canada for tax purposes for many years. I note from paragraph 10.3 of the explanatory memorandum—we have a memorandum to the Canadian agreement rather than explanatory notes, because it is essentially a diplomatic exchange of letters incorporated into a statutory instrument—that:

“An Impact Assessment has not been prepared for this instrument as it gives effect to a previously announced policy to enact a double taxation convention.”

That wording is also used in the explanatory memorandum to the Kosovo order. I hope the Minister will explain that a little further, because, on the face of it, it appears to be a body swerve around providing an impact assessment, with Her Majesty’s Government simply saying, “Oh, we announced this policy before, so we don’t have to do an impact assessment now.” It is quite possible that I have misunderstood that, but it does seem somewhat strange, so I would be grateful for his elucidation.

Will the Minister explain why paragraph 14 of the schedule to the Canadian agreement provides for what in Canada is called pendulum arbitration? Although those exact words are not used, for Members who do not know, in pendulum arbitration the mediator or arbitrator decides in favour of one submission or the other. There is therefore no meeting in the middle or compromise: it is all or nothing.

The Minister is expert in many things, so I stand to be corrected by him, but as far as I can tell the dispute settlement provisions in chapter 33 of the comprehensive economic and trade agreement between the European Union and Canada, which was unveiled in September 2014 but has not yet been signed, and to which the UK would, through the EU, be a party—for hon. Members who do not know, this is the Canadian-EU equivalent of the Transatlantic Trade and Investment Partnership between the United States and the European Union—provide for an arbitration panel that does not use pendulum arbitration. I appreciate that CETA is a trade agreement and the orders before us today relate to double taxation relief agreements, but the trade agreement has the mediation procedure, the arbitration panel and so on. Can the Minister explain the thinking of Her Majesty’s Government on the difference between the two? It could of course be that the European Union, which is party to CETA, simply chooses a different route that the Government are not so keen on.

I have already asked why there was no impact assessment in relation to Kosovo, and I hope the Minister can explain that. On article 29 and the agreement with Kosovo, as I understand it either party can terminate the agreement with six months’ notice, but only after five years. It is like a five-year lease where thereafter either party can break the lease with six months’ notice.

Will the Minister say whether five years is common in these sorts of agreements? From previous debates on statutory instruments with this very helpful Minister, I believe that the Kosovo agreement is broadly similar to the OECD model. It may be that a five-year period is common in the OECD model, or it may be that it is common for the Government to fill in the blank in the OECD model by having five years if the other contracting state agrees.

11.41 am

**Mr Gauke:** I thank the hon. Member for Wolverhampton South West for his questions. First, he asked whether I could say a little more about the definitions for Guernsey and Jersey. As with all tax treaties, the DTAs with Guernsey and Jersey provide that the UK can tax an enterprise resident in the other territory only if it is operating in the UK through a permanent establishment. The DTAs with Guernsey and Jersey did not include the continental shelf within the definition of the UK. That means that, under the terms of the DTA, the UK currently has no taxing rights over Guernsey and Jersey enterprises operating on the UK continental shelf, whether they have a permanent establishment there or not. The changes made by these orders ensure that companies cannot exploit that feature of the treaties to circumvent the effects of the bareboat chartering rules introduced in the Finance Act 2014. That was an attempt to deal with a particular area of the tax system that was being exploited. The orders are an attempt to be consistent with those rules and to avoid any loophole being exploited.

On the issue of the impact assessment, let me make this point. DTAs remove barriers to cross-border trade and investment, so the effects of a specific agreement will depend on the extent to which activities change as a result. Concluding a DTA is therefore not a zero-sum game—I have made that point before, and the hon. Gentleman accepts it—because possible negative short-term revenue effects are offset in the longer term by increased activity. Given the long timescales, complex and shifting interactions with domestic law, large and unpredictable behavioural effects and the lack of a sensible comparator, it is not possible to produce meaningful estimates of the revenue effects of double taxation agreements, and successive Governments have never attempted it.

I hope there remains a consensus in the House that trade is a good thing. We wish to remove trade barriers and to encourage trade between countries, as that is a source of wealth creation that benefits all participants. DTAs help to remove a potential barrier to trade, which is the risk of double taxation. That is why successive Governments have been supportive of steps, such as those we are taking today, that ensure a large DTA network.

The hon. Gentleman mentioned pendulum arbitration, which is sometimes called “final offer” arbitration or baseball arbitration, particularly in the US, where it is used for setting players’ salaries in cases of dispute. This method or arbitration involves a panel having to choose the position taken by one of the tax authorities. The alternative is a reasoned decision, by which the panel can come up with its own preferred solution. The UK has traditionally followed the latter method—reasoned decisions—as set out by the OECD, but “final offer” arbitration, which Canada favours, has several attractions. Not only is it likely to be quicker, simpler and cheaper than reasoned decision arbitration, but it encourages

[Mr Gauke]

the two sides to take reasonable positions in their discussions, which decreases the likelihood that arbitration will be required. There is no particular significance in one trade agreement taking one approach and a different agreement taking another. These are matters for negotiation and a case can be made for either approach when arbitration is undertaken.

**Rob Marris:** Let me put this to the Minister on a pendulum arbitration basis: will he say which he thinks is preferable? All or nothing—give me a reasoned answer.

**Mr Gauke:** I think probably the best answer is that it depends. It would be fair to say that I am unsure whether it is possible to split the difference between the two, so one either has to use pendulum arbitration or a reasoned decision. That is the default option, but some of our treaties do have “final offer” arbitration and we are prepared to consider it.

As for the five-year provision on termination, a five-year minimum life for a tax treaty given by the termination clause is a provision common to most of our treaties. It ensures that the products of often complex and lengthy negotiations can stand for a minimum period of time. Those who have served in these Committees before will be aware that we often replace very old treaties. These are not things that can be knocked out in a fortnight, so some kind of minimum period of time is helpful.

I hope that those comments and clarification are helpful and that the Committee will support the orders before us.

*Question put and agreed to.*

**DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT  
(JERSEY) ORDER 2015**

*Resolved,*

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Jersey) Order 2015.—  
(Mr Gauke.)

**DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT  
(CANADA) ORDER 2015**

*Resolved,*

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Canada) Order 2015.—  
(Mr Gauke.)

**DRAFT DOUBLE TAXATION RELIEF AND  
INTERNATIONAL TAX ENFORCEMENT  
(KOSOVO) ORDER 2015**

*Resolved,*

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Kosovo) Order 2015.—  
(Mr Gauke.)

11.50 am

*Committee rose.*