



Treasury Chambers, Parliament Street, SW1P 3AG

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 House of Commons
 LONDON SW1

21 November 1983

DA
 22/11/83

Dear David,

WITHDRAWAL OF FALKLAND ISLANDS DRAFT ORDER IN COUNCIL

The Lord Privy Seal may conceivably be asked, at Prime Minister's Questions Time tomorrow, why the draft Order on a new double taxation Arrangement with the Falkland Islands was laid last Wednesday and has now been withdrawn.

The background is this. The text of a new double taxation Arrangement with the Falkland Islands was originally agreed at official level in 1981 with the authorities there and the Foreign Office. The new provisions replace, and are more generous (to the Falklands) than, the existing arrangements which date mainly from 1949.

Progress towards bringing the new provisions into force was delayed by the invasion, but further discussions took place this Summer and after some remaining issues had been resolved, the Revenue made arrangements for the draft Order to be prepared and it was laid last Wednesday. We had hoped that it would be debated next Wednesday in the Standing Committee on Statutory Instruments along with three other similar draft Orders (relating to Trinidad and Tobago, Tunisia, and the Netherlands).

However, I am afraid that it was only last Thursday that the Foreign Office realised the implications of the definition of the "Falkland Islands" in the Order and decided it had to be withdrawn. The short point is that the draft Order contains a definition of the Falkland Islands including a reference to the Falkland Islands Dependencies. The latter are of course a separate Colony with their own laws.

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The definition of the countries with which the Revenue concludes double taxation agreements is of course a matter for the Foreign Office; and the invasion had changed things very considerably since the definition of the Falkland Islands in the new Arrangements was agreed in 1981. Moreover, this was not one of the subjects dealt with during the discussions in the Summer. I understand, however, that sometime last year, No 10 asked the Foreign Office to ensure that in future Government pronouncements left no doubt about the existence of two separate colonies. We and the Revenue have never seen that advice, and so saw no reason to enquire further as to whether the new Arrangement correctly reflected the strict constitutional position in the Falklands.

I am copying this and the briefing to Andrew Turnbull at No 10, Murdo Maclean in the Chief Whip's Office, to Lady Young's Office at FCO, and to Sir Robert Armstrong.

Yours ever,

Andrew

A P HUDSON

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BRIEF FOR PRIME MINISTER'S QUESTIONS

WITHDRAWAL OF FALKLAND ISLANDS ORDER IN COUNCIL

FACTS

1. The draft Order providing for a new Arrangement between the UK and Falkland Islands dealing with double taxation relief was laid in the House on 16 November. It was expected to be debated in the Standing Committee on Statutory Instruments on 23 November but had to be withdrawn.
2. It was withdrawn because a drafting defect was unfortunately discovered in the definition of the Falkland Islands. The text wrongly suggested that there is only one Colony rather than two, ie the Falkland Islands themselves and the separate Colony of the Falkland Islands Dependencies.
3. The difficulty arises because -
 - (a) the Arrangement is declared in the Order to be with "the Government of the Falkland Islands"; and
 - (b) the "Falkland Islands" are defined as " the islands of the Falkland Islands, including the islands of the Falkland Islands Dependencies".
4. A copy of the draft Order is attached. (*Top copy only.*)
5. It is Government policy, in view of the Argentine claim, to make it clear that there are two quite separate Colonies, but the Foreign Office only realised the significance of the text (originally agreed with them in 1981 before the invasion) after it had been laid and they decided it had to be withdrawn.
6. A background note by the FCO is attached.
7. Other matter. Attached is a copy of a recent reply to a Question by Mr McQuarrie about a double taxation arrangement with Gibraltar. He may have heard of the proposed Falkland Islands Arrangement and wondered whether similar provisions were being considered for Gibraltar whose territory is also claimed by a foreign power.

LINE TO TAKE

1. The draft Order was withdrawn because of a drafting defect.

If pressed for further explanation

2. The draft Order referred to Arrangements made with the "Government of the Falkland Islands" about double taxation relief. Unfortunately these Arrangements contain a definition of the Falkland Islands which includes a reference to the Falkland Islands Dependencies. The latter are of course a separate Colony with its own laws; and Arrangements in respect of it cannot be included in Arrangements made only with the Government of the Falkland Islands.

What now?

3. We shall be having fresh discussions with the appropriate authorities and a new Order will be laid.

Are the existing (1949) Arrangements not broadly the same as those withdrawn?

4. Yes, and although this has not given rise to any problems in practice, it is important to get matters right in new Order.

Will delay penalise the Islands' economy?

5. No, the new provisions and the relief they provide will operate with effect from 1982.

Will there be Arrangements with Gibraltar?

6. I have nothing to add to the reply given on 15 November 1983 to my hon Friend the Member for Banff and Buchan (Mr A McQuarrie).

Background Note by FCO

When the Haig proposals were being considered by HMG in April last year the Prime Minister raised the fundamental point whether the proposed text would include the Falkland Islands Dependencies, since if it did this would have caused us great difficulties both immediately and later. Once South Georgia had been repossessed we could not accept that any short term arrangements for administering the Falkland Islands which involved Argentine or other outside participation should include the Dependencies. Furthermore in case there were ever to be a resumption of negotiations with Argentina over the future of the Falkland Islands, it would be essential that the legally distinct status of the Dependencies be maintained and emphasised.

The Government has been at pains to do this ever since. The amendment to the British Nationality Act to confer British citizenship on the Falkland Islanders does not apply to the Dependencies. All agreements, Bills or statutory instruments which are intended to apply to both the Islands and the Dependencies list them separately rather than using the previous formula of "Falkland Islands and its Dependencies".

In a report by officials which was considered and approved by last Wednesday's meeting of OD (chaired by the Prime Minister) it was stated that the new constitution for the Islands will make no provision for the Dependencies for which a quite separate constitution will be promulgated.

Parliamentary Debates 15 November 1983
(Daily Reports)

Vol 48 No.49 Col 404

Gibraltar (Double Taxation Relief)

Mr. McQuarrie: asked the Chancellor of the Exchequer whether there exists a double taxation relief arrangement relating to taxes on income between the United Kingdom and Gibraltar; and if he will make a statement.

Mr. Moore: There is no arrangement of this kind. However, the domestic tax laws of both the United Kingdom and Gibraltar contain provisions for unilateral relief in respect of tax paid in the other country on income arising there and flowing to their residents.

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