

SCHEDULES

SCHEDULE 19

THE BANK LEVY

PART 5

SUPPLEMENTARY PROVISION

Netting agreements

- 40 (1) The Treasury may by order add to, repeal or otherwise amend any of paragraphs 16, 18(8) to (17), 20(8) to (17), 22 and 25.
- (2) An order under this paragraph may make consequential amendments of this Schedule.
- (3) An order under this paragraph may have retrospective effect in relation to—
- (a) any chargeable period in which the order is made, or
 - (b) in the case of an order made on or before 31 December 2011, any chargeable period ending on or after 1 January 2011.
- (4) Orders under this paragraph are to be made by statutory instrument.
- (5) A statutory instrument containing an order under this paragraph may not be made unless a draft has been laid before, and approved by a resolution of, the House of Commons.

Chargeable periods: entities which do not prepare financial statements

- 41 (1) This paragraph applies where an entity does not prepare financial statements (consolidated or otherwise) for a period (“the relevant period”).
- (2) If the relevant period is 12 months or less, this Schedule (apart from this paragraph) applies as if that period were a period of account of the entity.
- (3) If the relevant period is more than 12 months, this Schedule (apart from this paragraph) applies as if each period to which sub-paragraph (4) applies were a period of account of the entity.
- (4) This sub-paragraph applies to a period if—
- (a) it is the first period of 12 months falling within the relevant period, or
 - (b) it begins immediately after the end of the period mentioned in paragraph (a) and ends at the end of the relevant period.
- (5) Sub-paragraph (6) applies if, at the end of a period of 36 months beginning with a relevant date, an entity has not prepared financial statements for a period which begins with that date.

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- (6) The entity is to be treated for the purposes of this paragraph as not having prepared financial statements for that period or, if that period exceeds 24 months, for the first 24 months of that period.
- (7) “Relevant date” means—
- (a) 1 January 2011,
 - (b) the first day after a period, ending on or after that date, for which the entity has prepared financial statements, or
 - (c) the first day after a period for which the company is treated under sub-paragraph (6) as not having prepared financial statements.

Financial statements etc

- 42 (1) This paragraph applies for the purposes of this Schedule.
- (2) References to consolidated financial statements for a period include references to a consolidated balance sheet (or consolidated statement of financial position) as at the last day of the period.
- (3) References to financial statements for a period include references to a balance sheet (or statement of financial position) as at the last day of the period.
- (4) References to amounts recognised in consolidated financial statements or financial statements include references to an amount comprised in an amount so recognised.
- (5) Sub-paragraph (6) applies if an amount for the chargeable period, or as at the last day of the chargeable period, is so recognised in a currency other than sterling.
- (6) The amount is to be translated into its sterling equivalent by reference to the spot rate of exchange for the last day of the chargeable period.
- (7) If consolidated financial statements or financial statements for the chargeable period are not prepared in a way which complies with the relevant accounting framework under which the statements are prepared, the statements are to be adjusted as necessary to ensure that they comply.
- (8) In sub-paragraph (7) “relevant accounting framework” means—
- (a) international accounting standards,
 - (b) US GAAP, or
 - (c) UK GAAP.
- (9) In relation to the preparation of consolidated financial statements or financial statements under UK GAAP, Financial Reporting Standard 23 and Financial Reporting Standard 26 are to be treated as if they were mandatory for all entities.
- (10) Accordingly, if any statements are prepared under UK GAAP without one or both of those Standards being applied, the statements are to be treated as not complying with UK GAAP and adjusted under sub-paragraph (7) accordingly.

Joint ventures

- 43 (1) This paragraph applies if—
- (a) the relevant group is a foreign banking group or a relevant non-banking group,

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- (b) a member of the relevant group has an interest (“the relevant interest”) in a joint venture for the purposes of those provisions of the applicable accounting standards which relate to joint ventures,
 - (c) the amounts recognised in the relevant consolidated financial statements include amounts representing the liabilities (“the JV liabilities”) of the joint venture so far as determined by the relevant interest,
 - (d) the joint venture is a UK resident entity or, if the relevant group is a relevant non-banking group, a UK resident bank, and
 - (e) none of the liabilities of a relevant UK sub-group, a relevant UK banking sub-group or any entity for the purposes of (as the case may be) paragraph 17(6)(a) or (12)(a), 19(6)(a) or (12)(a) or 27(2)(a) include the JV liabilities.
- (2) For the purpose of determining the chargeable equity and liabilities of the relevant group the joint venture is to be treated as if it were (as the case may be) a UK resident entity covered by paragraph 17(10) or a UK resident bank covered by paragraph 19(10)—
- (a) the liabilities of which consist of the JV liabilities, and
 - (b) the assets of which consist of the assets of the joint venture so far as determined by the relevant interest.
- (3) In this paragraph references to the amounts recognised in the relevant consolidated financial statements are to—
- (a) the amounts recognised in the relevant group’s consolidated financial statements for the chargeable period as prepared under the applicable accounting standards, or
 - (b) if no such financial statements are prepared, the amounts which would have been so recognised had consolidated financial statements for the relevant group been prepared for the chargeable period under international accounting standards.
- (4) “The applicable accounting standards” means—
- (a) international accounting standards, or
 - (b) US GAAP if the members of the relevant group are determined under paragraph 4(7).
- 44 (1) This paragraph applies for the purpose of determining the chargeable equity and liabilities of the relevant group or the relevant entity if, as at the end of the chargeable period—
- (a) the parent entity or the relevant entity is a joint venture for the purposes of a JV standard, and
 - (b) the liabilities of the parent entity or the relevant entity include liabilities (“the JV liabilities”) which are subject to a double charge.
- (2) The JV liabilities are to be left out for the purpose of determining the chargeable equity and liabilities.
- (3) In sub-paragraph (1)(b) the reference to the liabilities of the parent entity includes any liabilities which, in the absence of this paragraph, would form part of the chargeable equity and liabilities of the relevant group.
- (4) The JV liabilities are subject to a double charge if conditions A and B are met.
- (5) Condition A is that an entity (“V”) which has an interest in the joint venture for the purposes of the JV standard—

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- (a) is an entity in relation to which paragraph 4(1) or 5(1) applies as at the end of the chargeable period (or in relation to which paragraph 4(1) or 5(1) would apply if V had a period of account ending at the same time as the chargeable period), or
 - (b) falls within sub-paragraph (6).
- (6) V falls within this sub-paragraph if—
- (a) there is another entity (“A”) in relation to which paragraph 4(1) applies as at the end of the chargeable period (or in relation to which paragraph 4(1) would apply if A had a period of account ending at the same time as the chargeable period), and
 - (b) V is (or would be) a member of the relevant group of which A is (or would be) the parent entity.
- (7) Condition B is that—
- (a) in the circumstances mentioned in sub-paragraph (5)(a) or sub-paragraph (5)(b) (when read with sub-paragraph (6)), the bank levy is charged (or would be charged), and
 - (b) in determining the amount of the bank levy, the JV liabilities are (or would be) liabilities for the purposes of paragraph 15(2)(a), 17(6)(a) or (12)(a), 19(6)(a) or (12)(a), 21(2)(a) or 27(2)(a) by virtue of V having an interest in the joint venture.
- (8) “JV standard” means those provisions of international accounting standards or UK GAAP which relate to joint ventures.

Residence

- 45 For the purposes of this Schedule—
- (a) the territory in which a company is resident is to be determined as for corporation tax purposes, and
 - (b) the territory in which a partnership is resident is the territory in which the control and management of the partnership’s trade and investment activities take place.

Bank levy to be ignored for other tax purposes

- 46 In calculating profits or losses for the purposes of income tax or corporation tax—
- (a) no deduction is allowed in respect of the bank levy, and
 - (b) no account is to be taken of any amount which is paid by a member of the relevant group to another member of the group for the purposes of meeting or reimbursing the cost of the bank levy charged in relation to the group.

Anti-avoidance

- 47 (1) This paragraph applies if—
- (a) arrangements are entered into by one or more entities, and
 - (b) the main purpose, or one of the main purposes, of the entity, or any of the entities, in entering into the arrangements or any part of them is to avoid or reduce a charge or assessment to the bank levy.
- (2) In this paragraph “the relevant arrangements”—

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- (a) means the arrangements or the part of them referred to in sub-paragraph (1) (b), and
 - (b) includes any part of those arrangements or of that part.
- (3) Sub-paragraph (4) applies if an effect of the relevant arrangements is that the bank levy is not charged or assessed as it would have been in the absence of the relevant arrangements.
- (4) The bank levy is charged or assessed as it would have been ignoring that effect.
- (5) The cases covered by sub-paragraph (3) include (in particular) cases in which the bank levy is charged or assessed but an effect of the relevant arrangements is that the amount of the bank levy charged or assessed—
 - (a) is nil, or
 - (b) is otherwise less than it would have been in the absence of the relevant arrangements.
- (6) In sub-paragraphs (3) and (5) references to the relevant arrangements do not include those arrangements to the extent to which any of the following sub-paragraphs applies to them.
- (7) This sub-paragraph applies to the relevant arrangements so far as their effect is to increase, on an ongoing basis, the excluded equity and liabilities of the relevant group or the relevant entity.
- (8) This sub-paragraph applies to the relevant arrangements so far as their effect is to increase, on an ongoing basis, the long term equity and liabilities of the relevant group or the relevant entity.
- (9) This sub-paragraph applies to the relevant arrangements so far as—
 - (a) their effect is to reduce, on an ongoing basis, the short term liabilities of the relevant group or the relevant entity, and
 - (b) there is no corresponding increase, on an ongoing basis or otherwise, in the amount of the funding, or the size of the financial obligations, of the relevant group or the relevant entity which is not, or are not, excluded equity and liabilities or long term equity and liabilities (it being immaterial for this purpose whether or not any such funding or obligation is recognised in the financial statements of the group or entity).
- (10) This sub-paragraph applies to the relevant arrangements so far as—
 - (a) their effect is to reduce, on an ongoing basis, the long term equity and liabilities of the relevant group or the relevant entity, and
 - (b) there is no corresponding increase, on an ongoing basis or otherwise, in the amount of the funding, or the size of the financial obligations, of the relevant group or the relevant entity which is not, or are not, excluded equity and liabilities (it being immaterial for this purpose whether or not any such funding or obligation is recognised in the financial statements of the group or entity).
- (11) This sub-paragraph applies to the relevant arrangements so far as they are an agreement within paragraph 16(1)(c) and (d), 18(8)(c) and (d), 20(8)(c) and (d), 22(1) (c) and (d) or 25(1)(c) and (d).

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- (12) This sub-paragraph applies to the relevant arrangements so far as their effect is to increase, on an ongoing basis, the amount of the high quality liquid assets of the relevant group or the relevant entity.
- (13) If the relevant group is a foreign banking group or a relevant non-banking group, in the sub-paragraphs above references to the relevant group are to be read as references to the members of the group, collectively, which are relevant members.
- (14) In sub-paragraph (13) “relevant member”—
- (a) has the same meaning as in paragraph 18 or 20 (as the case may be), and
 - (b) includes a relevant foreign bank covered by paragraph 17(17) or 19(17) (as the case may be).
- 48 (1) Section 1139 of CTA 2010 (definition of “tax advantage”) is amended as follows.
- (2) In subsection (2)—
- (a) omit the “or” after paragraph (c), and
 - (b) after paragraph (d) insert “, or
 - (e) the avoidance or reduction of a charge or assessment to the bank levy under Schedule 19 to FA 2011 (the bank levy).”
- (3) After subsection (3) insert—
- “(3A) The avoidance or reduction of a charge or assessment to the bank levy as a result of arrangements to which paragraph 47 of Schedule 19 to FA 2011 (bank levy: anti-avoidance) applies is to be ignored for the purposes of subsection (2)(e) to the extent that it results from arrangements, or part of arrangements, to which any of paragraph 47(7) to (12) of that Schedule applies.”