EXPLANATORY MEMORANDUM TO

THE CORPORATION TAX (INSTALMENT PAYMENTS) (AMENDMENT) REGULATIONS 2011

2011 No. 1785

1. This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This statutory instrument amends the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) ("the principal Regulations") to reflect the introduction of a new tax, the bank levy, by Schedule 19 to the Finance Act 2011 (c.11) ("Schedule 19") so as to provide for the collection of the bank levy through the payment on account system set out in the principal Regulations.

2.2 This instrument also amends statutory references in the principal Regulations to reflect the re-writing of the Income and Corporation Taxes Act 1988 (c. 1) by the Corporation Tax Act 2010 (c. 4) and to reflect the Commissioners of Revenue and Customs Act 2005 (c.11).

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 This statutory instrument will have effect in relation to accounting periods ending on or after 1st January 2011. The power to make provisions with retrospective effect is contained in section 59E(8) of the Taxes Management Act 1970 (c. 9) ("TMA 1970"), as amended by paragraph 58 of Schedule 19, and in paragraph 65 of Schedule 19.

4. Legislative Context

4.1. Schedule 19 introduced a new tax, the bank levy. This new tax applies for periods of account of UK banking groups, standalone banks and building societies, foreign banking groups and relevant non-banking groups ("the banks") which end on or after 1st January 2011.

4.2. Under Part 6 of Schedule 19 (which Part deals with payment and collection of the bank levy) for the purposes of payment the bank levy is treated as though it were corporation tax.

4.3. Under section 59D TMA 1970 corporation tax is due and payable nine months after the expiry of an accounting period. However, by virtue of the principal Regulations companies which are defined as large companies (see regulation 3 of those Regulations) are required to make instalment payments on account of their corporation liability before that date.

4.4. The principal Regulations provide the framework under which instalments are paid. They provide rules for determining the quantum of the payments, the dates on which the instalment payments are to be made, interest provisions and penalty provisions where payments are not made appropriately, as well as other administrative provisions.

4.5. Amendments are required to the principal Regulations to ensure that they fully accommodate payments that include bank levy.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Schedule 19 introduced a new tax, the bank levy.

7.2 The policy aim is to make the assessment, collection and reporting of the bank levy as simple and efficient as possible both for the affected banks and HMRC. To achieve this, Schedule 19 provides that the bank levy is to be treated as if it were an amount of corporation tax. This means that the existing Corporation Tax Self Assessment ("CTSA") system will be used to assess the bank levy liability and to collect payment of the tax. Using the existing system means that banks are familiar with the process and avoids the need for HMRC to construct a new system.

7.3 The principal Regulations are an important part of the CTSA system. They require companies that meet the definition of large companies (see regulation 3 of the principal Regulations) to pay amounts on account of their corporation tax and provide the framework under which such payments are made. Without amendment, the principal Regulations will not fully accommodate the bank levy and so the following changes are being made.

- The definition of "large company" is extended to include the companies that are responsible under Schedule 19 for payment of the bank levy.

- The interest and penalty provisions are extended to apply fully to instalments that include bank levy,

- Upon making an instalment payment which includes an amount of bank levy, the company making the payment is required to give a written notice to HMRC, on or before the date of payment, quantifying the amount of bank levy which is included in the instalment payment.

- Transitional rules make provision for the payment of the bank levy in relation to accounting periods which end before or which straddle 19th July 2011 (the date on which the Finance Act 2011 obtained Royal Assent). Where the accounting period ended on or before 19th July 2011 the bank levy for the period is to be paid either on the next instalment payment date for that period or, if there is no instalment payment date falling on or after 11th August, by 18th August 2011. Where the accounting period ends after 19th July 2011 the amount to be paid for the next instalment is increased by an amount that represents the amount of the bank levy that would have been paid before 19th July if the Finance Act 2011 had been in force. The purpose of the transitional rules is to collect as soon as practicable after 19th July 2011 those earlier amounts.

8. Consultation outcome

8.1 This instrument was published, along with draft guidance, in draft on HMRC's website on 31st March 2011. Banks that will be affected by the introduction of the bank levy and their representative bodies were invited to comment. The consultation closed on 10th June 2011.

8.2 The instrument has been well received. Only one comment was received regarding the interaction of the transitional provisions and the interest provisions. This comment was accepted and the instrument amended accordingly.

9. Guidance

9.1 The Bank Levy Manual (published on HMRC internet site) contains a chapter outlining how the collection and management of the bank levy will operate. This includes comprehensive guidance around the collection and payment of the bank levy through the CTSA system.

9.2 A draft of the guidance was published on 31st March 2011 alongside the draft legislation in Schedule 19. This guidance will be updated following the closing of the consultation and will be re-published shortly after this instrument comes into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is expected to be minimal.

10.3 A Tax Information and Impact Note covering this instrument was published on 23 March 2011 alongside draft legislation on the bank levy and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 This legislation does not apply to small businesses.

12. Monitoring & review

12.1 HMRC will monitor and review the legislation to ensure that the bank levy is operating efficiently and tax is being paid as intended.

13. Contact

Malcolm White at HM Revenue and Customs can answer any queries regarding the instrument.

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