

EXPLANATORY MEMORANDUM TO
THE BANK LEVY (DOUBLE TAXATION RELIEF) REGULATIONS 2012

2012 No. 458

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 provides a mechanism for relieving double taxation in respect of the bank levy imposed by Schedule 19 to the Finance Act 2011 (c.11) (“Schedule 19”) and an equivalent foreign levy imposed by the law of a foreign territory where the reciprocity condition in paragraph 67(7) of Schedule 19 has been met.

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

- 3.1 This statutory instrument will have effect in relation to periods of account ending on or after 1st January 2011. The authority to make provisions with retrospective effect is contained in paragraph 67(3) 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. Where an entity is subject to the bank levy and an equivalent foreign levy then under Part 7 of Schedule 19 the Treasury is empowered to make regulations in order to alleviate such double taxation.
- 4.3. If the United Kingdom negotiates a double tax convention with a foreign territory in respect of the bank levy and an equivalent foreign levy then regulations to give effect to the convention may be made under paragraph 66 of Schedule 19.
- 4.4. Where there is no double tax convention then regulations may be made under paragraph 67 of Schedule 19 to alleviate the double taxation arising from the bank levy and an equivalent foreign levy. The negative procedure is to be used where the Treasury is satisfied that the

foreign territory has made provision to relieve double taxation in respect of its levy and the bank levy and so meets the reciprocity condition in paragraph 67(7) of Schedule 19.

- 4.5. If the Treasury is not satisfied that this condition has been met then regulations may be made using the affirmative procedure.
- 4.6. The Treasury is satisfied that France has met the reciprocity condition and so these regulations are made under the negative procedure and specify the French bank levy as an equivalent foreign levy.

5. Territorial Extent and Application

- 5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1. 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 Bank levies were proposed in a paper by the International Monetary Fund to the G20 entitled “A Fair and Substantial Contribution by the Financial Sector” following the 2008 global banking crisis. A number of countries have introduced such levies, with the bank levy being introduced in the United Kingdom via Schedule 19.
- 7.2 As many banks operate in two or more countries they may be subject to two or more levies and suffer juridical double taxation.
- 7.3 As double taxation is often a hindrance to commerce the United Kingdom, where it is appropriate, enters into agreements with other territories to mitigate such double taxation. However the bank levy is not mentioned in the United Kingdom’s current double taxation conventions. This means that the legislation within Part 2 of the Taxation (International and Other Provisions) Act 2010 that gives effect to the existing conventions and provides for relief is not applicable to the bank levy.
- 7.4 Therefore Part 7 of Schedule 19 allows the Treasury to give effect to any agreements, including conventions or understandings, which the United Kingdom reaches with other territories in order to alleviate juridical double taxation in respect of bank levies.
- 7.5 If no agreement or understanding can be reached then if the Treasury considers it appropriate it can make regulations to allow relief unilaterally.

8. Consultation outcome

- 8.1 This instrument was published, in draft on HMRC's website on 1 July 2011. Banks that are affected by the introduction of the bank levy and their representative bodies were invited to comment. The initial consultation closed on 18 July 2011.
- 8.2 Double taxation relief formed an important part of the consultation in respect of the bank levy generally (held in the summer of 2010). The instrument provides the mechanism by which double taxation relief is given. As the instrument only affects a very small number of businesses all of whom were contacted individually for their comments the consultation was shorter than the normal 12 weeks.
- 8.3 The instrument has been well received. Several comments were received regarding the viability of one regulation. These comments were accepted and the instrument amended accordingly.

9. Guidance

- 9.1 A draft version of The Bank Levy Manual (published on HMRC internet site) contains a chapter outlining how the double taxation relief for the bank levy will operate. The draft will be updated to include comprehensive guidance around relief for the French levy named in this instrument.
- 9.2 The guidance will be published shortly after this instrument comes into force.

10. Impact

- 10.1 The bank levy applies to banks, building societies and banking or buildings society groups. Therefore its impact on wider 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 for 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 and relief given as intended.
- 12.2 The Government will review the design of the levy in 2013 to ensure that it is operating efficiently.

13. Contact

Andrew Parkes at HM Revenue and Customs can answer any queries regarding the instrument.

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