

2012 No. 458

BANK LEVY

The Bank Levy (Double Taxation Relief) Regulations 2012

Made - - - - *21st February 2012*

Laid before the House of Commons *22nd February 2012*

Coming into force - - *14th March 2012*

The Treasury is satisfied that the reciprocity condition is met and accordingly make the following Regulations in exercise of the powers conferred by paragraph 67 of Schedule 19 to the Finance Act 2011(a).

Introduction

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Bank Levy (Double Taxation Relief) Regulations 2012 and come into force on 14th March 2012.

(2) These Regulations have effect in relation to periods of account ending on or after 1st January 2011.

Application of these Regulations

2. These Regulations apply where—

- (a) the bank levy is charged in relation to—
 - (i) the relevant group which is a foreign banking group or a relevant non-banking group,
or
 - (ii) the relevant entity which is a relevant foreign bank,
- (b) an equivalent foreign levy is imposed on that relevant group or relevant entity by the law of a foreign territory, and
- (c) the equivalent foreign levy is specified in regulation 3.

Specified equivalent foreign levy

3. The equivalent foreign levy in respect of which these Regulations are made is Art. 235 ter ZE du code général des impôts imposed by the law of France.

Double taxation relief

4.—(1) Where these Regulations apply, an amount of the equivalent foreign levy paid is allowed as a credit against the bank levy for a chargeable period (see regulation 5).

(2) Subject to the provisions of these Regulations, the amount of the bank levy for the chargeable period is reduced by the amount of the credit.

(3) But the amount of the bank levy shall not be reduced to below nil.

(4) The credit under paragraph (2) requires a claim.

Calculation of the credit

5. Take steps 1 to 4 to determine how much of the equivalent foreign levy is available as a credit against the bank levy.

Step 1

Determine the amount (“A”) of assets of the relevant group or the relevant entity as at the end of the chargeable period by reference to which the equivalent foreign levy is calculated.

Step 2

Determine the amount (“B”) of UK assets as at the end of the chargeable period by reference to which the equivalent foreign levy is calculated.

Step 3

Determine the amount of the equivalent foreign levy paid (“C”) in relation to the chargeable period.

If a proportion (Z%) of the period in relation to which the equivalent foreign levy is calculated falls in any other chargeable period, Z% of the equivalent foreign levy shall be attributable to that other period.

Step 4

The amount of the equivalent foreign levy available as a credit against the bank levy is $\frac{B}{A} \times C$.

Determining assets and UK assets

6.—(1) This regulation applies to determine the assets and the UK assets of the relevant group or relevant entity.

(2) In the case of the relevant group, the amount of the assets and the UK assets are determined by reference to—

- (a) the amounts recognised in the group’s consolidated financial statements for the chargeable period as prepared under international accounting standards or UK GAAP, or
- (b) if no such financial statements are prepared, the amounts which would have been so recognised had consolidated financial statements for the group been prepared for the chargeable period under international accounting standards.

(3) In the case of the relevant entity, assets and UK assets are determined by reference to—

- (a) the amounts recognised in the entity’s financial statements for the chargeable period as prepared under international accounting standards or UK GAAP, or
- (b) if no such financial statements are prepared, the amounts which would have been so recognised had such financial statements been prepared for the chargeable period under international accounting standards or under UK GAAP if that is what the entity prepares its financial statements under.

(4) For the purposes of these Regulations, “UK assets” means—

- (a) in relation to the relevant group—

- (i) the assets of any relevant UK sub-group which is a member of the relevant group,
 - (ii) the assets of any UK resident entity which is a member of the relevant group but is not a member of a relevant UK sub-group,
 - (iii) the assets of a non-UK resident entity which is a member of the relevant group and is a member of a UK sub-group but is not a member of a relevant UK sub-group, and
 - (iv) the assets of any permanent establishment through which any member of the relevant group carries on a trade in the UK; and
- (b) in relation to the relevant entity, the assets of any permanent establishment through which the entity carries on a trade in the UK.

(5) Paragraph 26 (including sub-paragraph (4)) of Schedule 19 to the Finance Act 2011 applies for the purposes of determining the assets of a permanent establishment.

Exchange rates

7. Where the equivalent foreign levy is imposed in a currency other than sterling, for the purposes of regulation 5 the amount of equivalent foreign currency is to be translated into its sterling equivalent by reference to the spot rate of exchange for the last day of the chargeable period in relation to which the credit is claimed.

Claim for double taxation relief

General time limit for making a claim

- 8.—(1) A claim for credit under regulation 4(1) must be made not more than—
- (a) four years after the end of the accounting period in relation to which the bank levy is treated as an amount of corporation tax chargeable on the responsible member (see paragraph 50 of Schedule 19 to the Finance Act 2011) or the relevant entity (see paragraph 51 of that Schedule), or
 - (b) if later, one year after the end of the accounting period in which the equivalent foreign levy is paid.

(2) If the chargeable period in relation to which the bank levy is charged falls in more than one accounting period, the accounting period referred to in paragraph (1)(a) shall be the latest of those periods.

Relevant groups: responsible member to make claim

9. Where the bank levy is charged as provided for by paragraph 4 of Schedule 19 to the Finance Act 2011 (bank levy to be charged in relation to certain groups of entities) any claim for credit under regulation 4(1) must be made by the responsible member.

Limits on credit

Restriction of credit

10.—(1) Where the bank levy is charged in relation to the relevant group, if the parent entity is not resident in the foreign territory (“territory A”) the law of which imposes the equivalent foreign levy, the credit under regulation 4(1) is only available to reduce the amount of the bank levy charged in relation to relevant chargeable equity and liabilities of the relevant group.

(2) In paragraph (1), “relevant chargeable equity and liabilities” means chargeable equity and liabilities that would be recognised in relevant accounts for the chargeable period had such accounts been prepared for the member or members of the group (“the relevant member or members”) resident in territory A.

(3) In paragraph (2), “relevant accounts” mean a consolidated financial statement or financial statement—

- (a) prepared under international accounting standards or under UK GAAP if that is what the relevant member or members prepare financial statements under, and
- (b) in which the UK assets subject to the equivalent foreign levy in respect of which the credit is given would be recognised.

Reduction in credit: payment by reference to equivalent foreign levy

11.—(1) Paragraph (2) applies if—

- (a) credit for an equivalent foreign levy is to be allowed to an entity under these Regulations, and
- (b) a payment is made by a tax authority to that entity, or to any other person, by reference to the equivalent foreign levy.

(2) The amount of the credit must be recalculated by repeating steps 3 and 4 in regulation 5, reducing the amount of the equivalent foreign levy by reference to the payment referred to in paragraph (1)(b).

Priority of credits

12.—(1) Where credits are allowed in relation to equivalent foreign levies imposed by the law of two or more foreign territories under these Regulations or under these Regulations and any Regulations made under paragraph 66 (arrangements affording double taxation relief) or paragraph 67 (power to provide for double taxation relief) of Schedule 19 to the Finance Act 2011, the credits apply to reduce the bank levy in the order specified in paragraph (2), subject to paragraphs (3) and (4).

(2) The order is—

First, any credit allowed in relation to the equivalent foreign levy imposed by the law of the foreign territory in which the parent entity is resident.

Second, any credit allowed in relation to the equivalent foreign levy imposed by the law of the foreign territory in which a direct subsidiary (“the first subsidiary”) is resident or a permanent establishment of the parent entity is located.

Third, any credit allowed in relation to an equivalent foreign levy imposed by the law of the foreign territory in which a direct subsidiary (“the second subsidiary”) is resident or a permanent establishment of the first subsidiary is located.

Fourth, any credit allowed in relation to an equivalent foreign levy imposed by the law of the foreign territory in which a direct subsidiary of the second subsidiary is resident or a permanent establishment of the second subsidiary is located, and so on in relation to any fourth and further subsidiaries.

(3) If an entity has direct subsidiaries (“the elected subsidiaries”) in more than one foreign territory which imposes an equivalent foreign levy, the responsible member shall elect as to the order (“the elected order”) in which the credits allowed in relation to the equivalent foreign levies shall be applied.

(4) If any of the elected subsidiaries themselves have direct subsidiaries in more than one foreign territory which imposes an equivalent foreign levy, paragraphs (2) and (3) shall apply to those direct subsidiaries in the elected order and paragraph (2) shall apply as if each elected subsidiary were a parent entity.

(5) For the purposes of this regulation, where an equivalent foreign levy is not imposed by the law of the foreign territory in which an entity (“E”) is resident, any direct subsidiary of E shall be treated as the direct subsidiary of the entity which is the parent entity of E.

Action after adjustment of amount payable by way of bank levy or equivalent foreign levy

Consequences of adjustment of the bank levy or equivalent foreign levy

13.—(1) Paragraph (2) applies to a claim or assessment if—

- (a) the amount of credit given under regulation 4(1) is reduced under regulation 11, or becomes excessive or insufficient by reason of any adjustment of the amount of any bank levy or equivalent foreign levy,
- (b) the reduction or adjustment gives rise to the claim or assessment, and
- (c) the claim or assessment is made not later than 6 years from the date on which all material determinations have been made, whether in the UK or elsewhere.

(2) Nothing in the Tax Acts limiting the time for the making of assessments, or limiting the time for the making of claims for relief, applies to the assessment or claim.

(3) In paragraph (1)(c) “material determination” means an assessment, reduction, adjustment or other determination that is material in determining whether any, and (if so) what, credit is to be given.

Duty to give notice that adjustment has rendered credit excessive

14.—(1) This regulation applies if—

- (a) any credit has been allowed under regulation 4(1), and
- (b) later, the amount of that credit is reduced under regulation 11, or becomes excessive as a result of an adjustment of the amount of the equivalent foreign levy.

(2) The relevant entity or, in the case of the relevant group, the responsible member must give notice that a reduction has been made or that the amount of the credit has become excessive as a result of the making of an adjustment.

(3) Notice under paragraph (2) is to be given—

- (a) to an officer of Revenue and Customs, and
- (b) within one year from when the reduction or adjustment is made.

*Angela Watkinson
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21st February 2012

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for relief from double taxation in relation to the bank levy and any tax imposed by a foreign territory which corresponds to the bank levy (“equivalent foreign levy”).

Regulation 1 provides for citation, commencement and effect. Authority for retrospective effect is provided by paragraph 67(3)(a) of Schedule 19 to the Finance Act 2011.

Regulation 2 provides that the Regulations apply where the bank levy and an equivalent foreign levy are charged in relation to the relevant group which is a foreign banking group or a relevant non-banking group, or the relevant entity which is a relevant foreign bank.

Regulation 3 specifies the equivalent foreign levy as Art. 235 ter ZE du code général des impôts imposed by the law of France.

Regulation 4 provides that an amount of the equivalent foreign levy in relation to a chargeable period is allowed as a credit to reduce the amount of the bank levy (but not to below nil) for that period.

Regulation 5 sets out how to calculate the amount of equivalent foreign levy allowable as a credit against the bank levy. This calculation is based on the amount of assets and UK assets of the relevant group or relevant entity.

Regulation 6 sets out how to determine the assets and UK assets of the relevant group or relevant entity.

Regulation 7 provides for the exchange rate to translate the amount of the equivalent foreign levy into its sterling equivalent.

Regulation 8 provides for the time limits for making a claim for a credit under regulation 4.

Regulation 9 provides that where the bank levy is charged in relation to the relevant group a claim for credit must be made by the responsible member.

Regulation 10 makes provision to restrict the credit in the case of groups where the parent entity is not resident in the territory the law of which imposes the equivalent foreign levy. The credit is only available to reduce the amount of the bank levy charged in respect of chargeable equity and liabilities of members of the group held by a resident in the territory which imposes the equivalent foreign levy.

Regulation 11 provides for a reduction in the credit if a payment is made in respect of a credit for the equivalent foreign levy.

Regulation 12 makes provision for priority of credits where credits are allowed in relation to equivalent foreign levies imposed by the law of two or more foreign territories under these Regulations or under these Regulations and any Regulations made under paragraph 66 or 67 of Schedule 19 to the Finance Act 2011.

Regulation 13 makes provision in relation to a claim or assessment made in consequence of an adjustment of the bank levy or the equivalent foreign levy.

Regulation 14 makes provision for a notice to be given where in consequence of an adjustment of the bank levy or the equivalent foreign levy the credit given under regulation 4 has become excessive.

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>.