

Draft Regulations laid before the House of Commons under paragraph 67(6)(b) of Schedule 19 to the Finance Act 2011, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2016 No.

BANK LEVY

The Bank Levy (Double Taxation Relief) (Single Resolution Fund Levy) Regulations 2016

*Made - - - - - ***
Coming into force in accordance with regulation 1(1)*

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 67 of Schedule 19 to the Finance Act 2011(1).

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with paragraph 67(6)(b) of Schedule 19 to the Finance Act 2011.

Introduction

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Bank Levy (Double Taxation Relief) (Single Resolution Fund Levy) Regulations 2016 and come into force on the day after the day on which they are made.

(2) These Regulations have effect in relation to periods of account ending on or after 1 January 2016.

Specified equivalent foreign levy

2.—(1) The equivalent foreign levy in respect of which these Regulations are made is the SRF levy.

(2) In these Regulations, “SRF levy” means the individual contributions within Article 69 or 70 of the SRM Regulation raised from entities by a national resolution authority and transferred to the single resolution fund (established by the SRM Regulation) in accordance with the Agreement.

(3) In this regulation—

“Agreement” has the same meaning as in Article 3(1)(36) of the SRM Regulation;

“entities” means entities within Article 2 of the SRM Regulation;

“national resolution authority” has the same meaning as in Article 3(1)(3) of the SRM Regulation;

“the SRM Regulation” mean Regulation (EU) No 806/2014 of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010(2)

Application of these Regulations

3.—(1) These Regulations apply where condition 1 or 2 is met.

(2) Condition 1 is that—

- (a) the bank levy is charged in relation to a UK banking group, a UK sub-group or a UK banking sub-group, and
- (b) the SRF levy is charged in relation to that UK banking group, UK sub-group or UK banking sub-group.

(3) Condition 2 is that—

- (a) the bank levy is charged in relation to the relevant entity which is a relevant foreign bank, and
- (b) the SRF levy is charged in relation to that relevant entity.

(4) These Regulations apply separately in relation to the imposition of the SRF levy by the law of different foreign territories.

Double taxation relief by way of credit

Double taxation relief

4.—(1) Subject to the provisions of these Regulations, an amount of the SRF levy paid in relation to a chargeable period in respect of which the SRF levy is calculated is allowed as a credit to reduce the amount of the bank levy arising in that period.

(2) The credit under this regulation requires a claim in accordance with regulations 9 and 10.

(3) The amount of the credit allowed against the bank levy arising in a chargeable period must not exceed the lower of—

- (a) the amount of the bank levy for that period, and
- (b) the amount determined under—
 - (i) regulation 5 in cases where condition 1 in regulation 3 is met, and
 - (ii) regulation 6 in cases where condition 2 in regulation 3 is met.

Calculation of the maximum credit: UK banking group, UK sub-group or UK banking sub-group

5.—(1) The amount of the credit must not exceed the amount of bank levy that would be payable by the entity (“the specified entity”) subject to the SRF levy were the specified entity a UK resident bank in relation to which the bank levy would be charged as provided for by paragraph 5 of Schedule 19 to FA 2011 (bank levy to be charged in relation to certain entities which are not members of groups) in the period in relation to which the SRF levy is calculated.

(2) OJ L 225,30.7.2014, p.1.

(2) For the purposes of paragraph (1), in determining the amount of bank levy that would be payable, the amount of £20,000,000,000 in Step 5 of paragraph 6 of Schedule 19 to FA 2011 is reduced (in both places) to an amount equal to Y% of £20,000,000,000.

(3) For the purposes of paragraph (2), Y% is the proportion of the chargeable equity and liabilities of the UK banking group, UK sub-group or UK banking sub-group which is chargeable equity and liabilities of the specified entity.

(4) In a case where—

- (a) the specified entity is subject to the SRF levy and another equivalent foreign levy, and
- (b) relief is available under arrangements affording double taxation relief under the law of the territory imposing the other equivalent foreign levy,

the credit is limited to an amount equal to the amount of the credit calculated under paragraph (1) less the amount of relief available in relation to the equivalent foreign levy.

Calculation of the maximum credit: relevant foreign bank

6. The amount of the credit must not exceed the amount determined by steps 1 to 4.

Step 1

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

Step 3

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

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

Step 4

The amount of the SRF levy available as a credit against the bank levy must not exceed—

$$\frac{B}{A} \times C$$

Determining assets and UK assets

7.—(1) This regulation applies for the purposes of regulation 6 to determine the assets and the UK assets of the relevant entity.

(2) In the case of a relevant entity which is part of a 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 a relevant entity which is not part of a relevant group, the 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.

(4) For the purposes of these Regulations, “UK assets” means the assets of any permanent establishment through which the relevant entity carries on a trade in the United Kingdom.

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

Exchange rates

8. Where the SRF levy is imposed in a currency other than sterling, for the purposes of regulations 5 and 6 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

9.—(1) A claim for credit under regulation 4 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⁽³⁾ under paragraph 50 of Schedule 19 to FA 2011 or the relevant entity under paragraph 51 of that Schedule, or
- (b) if later, one year after the end of the accounting period in which the SRF 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) is the latest of those periods.

Relevant groups: responsible member to make claim

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

Limits on credit

Limits on credit in cases where regulation 6 applies

11. Regulations 12 to 15 apply where the maximum credit against the bank levy is calculated under regulation 6 (cases where the bank levy is charged in relation to a relevant entity which is a relevant foreign bank).

(3) “The responsible member” is defined in paragraph 54 of Schedule 19 to the Finance Act 2011.

Restriction of credit

12.—(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 SRF 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 SRF levy in respect of which the credit is given would be recognised.

13.—(1) Where—

- (a) there is double taxation in relation to the bank levy and the SRF levy only in relation to a permanent establishment through which a trade is carried on in the United Kingdom by a relevant foreign bank, and
- (b) that relevant foreign bank is a relevant entity,

the credit under regulation 4(1) is only available to reduce the amount of the bank levy so far as it is attributable to the chargeable equity and liabilities of the permanent establishment.

(2) Subject to paragraph (3), the amount of the bank levy attributable to the chargeable equity and liabilities of the permanent establishment is calculated as follows.

Step 1

Determine the amount (“A”) of the chargeable equity and liabilities of the permanent establishment which is long term equity and liabilities and the amount (“B”) which is short term liabilities.

Step 2

Determine the amount (“C”) of the chargeable equity and liabilities of the relevant group which is long term equity and liabilities and the amount (“D”) which is short term liabilities.

Step 3

Determine the weighted average amount (“E”) of chargeable equity and liabilities of the permanent establishment as follows—

$$A + 2B$$

Step 4

Determine the proportion (“F%”) of the weighted average of chargeable equity and liabilities of the relevant group that relates to the weighted average of chargeable equity and liabilities of the permanent establishment (determined at step 3 as E) as follows—

$$\frac{E}{C + 2D}$$

Step 5

F% of the amount of the bank levy is the amount of the bank levy attributable to the chargeable equity and liabilities of the permanent establishment.

(3) If the basis of attribution in paragraph (2) would work unjustly or unreasonably, the attribution is to be made on another basis that is just and reasonable.

Reduction in credit: payment by reference to SRF levy

14.—(1) Paragraph (2) applies if—

- (a) credit against the bank levy is 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 SRF levy.

(2) The amount of the credit must be recalculated by repeating steps 3 and 4 in regulation 6, reducing the amount of the SRF levy by reference to the payment referred to in paragraph (1)(b).

Priority of credits

15.—(1) Where credits are allowed in relation to the SRF levy 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 67 (power to provide for double taxation relief) of Schedule 19 to FA 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 must elect as to the order (“the elected order”) in which the credits allowed in relation to the equivalent foreign levies are to 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) apply to those direct subsidiaries in the elected order and paragraph (2) applies 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 is 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 SRF levy

Consequences of adjustment of the bank levy or SRF levy

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

- (a) the amount of credit given under regulation 4(1) is reduced under regulation 14, or becomes excessive or insufficient by reason of any adjustment of the amount of any bank levy or SRF 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 determinations” means such assessments, reductions, adjustments or other determinations that are material in determining whether any, and (if so) what, credit is to be given.

Notice that adjustment has rendered credit excessive

- 17.**—(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 14, or becomes excessive as a result of an adjustment of the amount of the SRF 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.

Date

Name
Name
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 individual contributions within Articles 69 or 70 of Regulation (EU) No 806/2014 of the European Parliament and of the Council establishing a uniform resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (“the SRF levy”).

Authority for the retrospective effect is provided by paragraph 67(3)(a) of Schedule 19 to the Finance Act 2011.

Regulation 2 specifies the SRF levy as an equivalent foreign levy.

Regulation 3 provides that the Regulations apply where the bank levy and the SRF levy are charged in relation to a UK banking group, a UK sub-group or a UK banking sub-group, or the relevant entity which is a relevant foreign bank.

Regulation 4 provides that an amount of the SRF 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.

Regulations 5 and 6 set out how to calculate the maximum amount allowable as a credit against the bank levy.

Regulation 7 sets out how to determine the assets and UK assets of the relevant entity for the purposes of calculating the maximum under regulation 6.

Regulation 8 provides for the exchange rate to translate the amount of the SRF levy into its sterling equivalent.

Regulation 9 provides for the time limits for making a claim for a credit under regulation 4.

Regulation 10 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.

Regulations 11 to 15 make provisions to restrict the credit in cases where the bank levy is charged in relation to a relevant entity which is a relevant foreign bank.

Regulation 12 restricts 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 13 provides for the credit to be recalculated where a payment is made by a tax authority by reference to the SRF levy.

Regulation 14 provides for a reduction in the credit if a payment is made in respect of a credit for the SRF levy.

Regulation 15 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 16 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 17 makes provision for a notice to be given where in consequence of an adjustment of the bank levy or the equivalent foreign levy will the credit given under regulation 4 has become excessive.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.