
STATUTORY INSTRUMENTS

2015 No. 335

BANK LEVY

The Double Taxation Relief (Bank
Levy) (Netherlands) Order 2015

<i>Made</i>	- - - -	<i>23rd February 2015</i>
<i>Laid before the House of Commons</i>	- - - -	<i>24th February 2015</i>
<i>Coming into force</i>	- -	<i>17th March 2015</i>

The Treasury make the following Order in exercise of the powers conferred by paragraphs 66(1) and 67A of Schedule 19 to the Finance Act 2011⁽¹⁾.

Citation, commencement and effect

1. This Order may be cited as the Double Taxation Relief (Bank Levy) (Netherlands) Order 2015 and comes into force on 17th March 2015.

Double taxation arrangements to have effect

2. It is declared that—

- (a) the arrangements specified in the Convention set out in Part 1 of the Schedule to this Order and the Protocol set out in Part 2 of that Schedule have been made with the Kingdom of the Netherlands;
- (b) the arrangements have been made with a view to affording relief from double taxation in relation to the bank levy and an equivalent foreign levy imposed by the laws of the Netherlands;
- (c) the international tax enforcement arrangements specified in Article 7 of the Convention have been made in association with those arrangements; and
- (d) it is expedient that those arrangements and the international tax enforcement arrangements should have effect.

(1) 2011 c. 11, paragraph 67A was inserted by paragraph 11(2) of Schedule 34 to the Finance Act 2012 (c. 14).

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23rd February 2015

Alun Cairns
Gavin Barwell
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE

Article 2

PART 1

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO BANK TAXES

The Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Kingdom of the Netherlands,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to bank taxes,

Have agreed as follows:

ARTICLE 1

Entities covered

This Convention shall apply to entities which are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. This Convention shall apply to bank taxes imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. The existing bank taxes to which the Convention shall apply are in particular:
 - a) in the Netherlands:

the bank tax set out in the Law on bank tax (Wet bankenbelasting)

(hereinafter referred to as “Netherlands bank tax”);
 - b) in the United Kingdom:

the bank levy set out in Schedule 19 of the Finance Act 2011

(hereinafter referred to as “United Kingdom bank tax”).
3. This Convention shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing bank taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their laws relating to bank taxes.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

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- a) the terms “a Contracting State” and “the other Contracting State” mean the Kingdom of the Netherlands (Netherlands) or the United Kingdom of Great Britain and Northern Ireland (United Kingdom), as the context requires;
- b) the term “Netherlands” means the European part of the Netherlands, including its territorial sea and any area beyond and adjacent to its territorial sea within which the Kingdom of the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
- c) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea-bed and subsoil and their natural resources may be exercised;
- d) the term “entity” means:
 - i. in the case of the Netherlands, a company as mentioned in Articles 3, 4 and 5 of the Law on bank tax;
 - ii. in the case of the United Kingdom, an entity as defined in paragraph 70 of Schedule 19 of the Finance Act 2011 which is a member of a “relevant group” under paragraph 4 or is a “relevant entity” under paragraph 5 of Schedule 19 of the Finance Act 2011;
- e) the term “permanent establishment” means:
 - i) in the case of the Netherlands, a branch within the meaning of the Law on bank tax through which the business of an entity of a Contracting State is wholly or partly carried on and a banking license has been granted for that purpose;
 - ii) in the case of the United Kingdom, a permanent establishment in accordance with Chapter 2 of Part 24 of the Corporation Tax Act 2010 through which the business of an entity of a Contracting State is wholly or partly carried on;
- f) the term “competent authority” means:
 - i) in the case of the Netherlands, the Minister of Finance or his authorised representative;
 - ii) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative.

2. As regards the application of the Convention at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting State for the purposes of the bank taxes to which the Convention applies, any meaning under the applicable laws of that State relating to bank taxes prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Residence

The residence of an entity will be determined by the domestic laws of the Contracting States. Where an entity is a resident of both Contracting States, then the entity shall for the purposes of this Convention be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

Elimination of Double Taxation

1. In the case of the Netherlands, double charging of bank tax shall be dealt with as follows:
 - a) the United Kingdom bank tax on an entity resident in the Netherlands that is a subsidiary of a United Kingdom resident member of a group shall, unless the head of the group is an entity resident in the Netherlands, be allowed as a credit against the Netherlands bank tax;
 - b) where the United Kingdom bank tax has applied to an entity resident in the United Kingdom, with respect to a permanent establishment situated in the Netherlands, either directly or through consolidation, the United Kingdom bank tax attributable to the permanent establishment shall, unless that entity is a member of a group of which the head is an entity resident in the Netherlands, be allowed as a credit against the Netherlands bank tax;
 - c) the credit in sub-paragraphs a) and b) will be based on the equity and liabilities that have been taken into account in determining the United Kingdom bank tax and shall not exceed the Netherlands bank tax which is due on the taxable base of an entity or permanent establishment as referred to in sub-paragraphs a) and b);
 - d) for the determination of the United Kingdom bank tax to be allowed as a credit, any exemption or rebate from the United Kingdom bank tax shall be attributed to a subsidiary or permanent establishment in the same proportion as the attribution of the equity and liabilities to such subsidiary or permanent establishment for the purposes of bank taxes.
2. In the case of the United Kingdom, double charging of bank tax shall, subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against the United Kingdom bank tax of a bank tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof), be dealt with as follows:
 - a) the Netherlands bank tax on an entity resident in the United Kingdom that is a subsidiary of a Netherlands resident member of a group shall, unless the parent of the group is resident in the United Kingdom, be allowed as a credit against the United Kingdom bank tax;
 - b) where the Netherlands bank tax has applied, either directly or through consolidation, to a permanent establishment situated in the United Kingdom, the credit shall, unless the parent of the group is resident in the United Kingdom, take into account the Netherlands bank tax attributable to the permanent establishment.

ARTICLE 6

Mutual Agreement Procedure

1. Where an entity considers that the actions of one or both of the Contracting States result or will result for it in taxation not in accordance with the provisions of this Convention, it may, irrespective of the remedies provided by the domestic law of those States, present its case to either competent authority. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention, or, if later, within six years from the end of the year or the chargeable period in respect of which that taxation is imposed or proposed.

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2. The competent authority to whom the case has been presented shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, except such limitations as apply for the purposes of giving effect to such an agreement.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any double charging of bank taxes in cases not provided for in the Convention as well as any difficulties or doubts arising as to the interpretation or application of the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. Where,
 - a) under paragraph 1 or 3, a case has been presented to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have either resulted for that entity in taxation not in accordance with the provisions of this Convention, or in double charging of bank taxes in cases not provided for in this Convention, and
 - b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 or 3 within two years from the presentation of the case to the competent authority of the other Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if an entity directly affected by the case so requests. Unless an entity directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

ARTICLE 7

Exchange of Information

1. Subject to the provisions of the domestic law of the Contracting States, the competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning bank taxes, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to entities or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the bank taxes or the oversight of the above. Such authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own bank tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a bank.

ARTICLE 8

Entry into Force

Each of the Contracting States shall notify to the other, through diplomatic channels, the completion of the procedures required by its law for bringing into force this Convention. This Convention shall enter into force on the last day of the month following the month in which the later of these notifications has been received and shall have effect from 1 January 2011. Notice of completion shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.

ARTICLE 9

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect from 1 January of the calendar year next following that in which the notice is given. Notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

Done at London on the 12th day of June 2013, in duplicate, in the English language.

**For the Government of the United Kingdom
of Great Britain and Northern Ireland:**

David Gauke

**For the Government of the Kingdom of the
Netherlands:**

Frans Weekers

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PART 2

PROTOCOL TO THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO BANK TAXES

At the moment of signing the Convention for the avoidance of double taxation with respect to bank taxes, this day concluded between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. With reference to Article 1 (Entities covered):

It is understood that this Convention also applies to the charging of bank taxes when a bank tax is applied to the equity and liabilities of a subsidiary or a permanent establishment and that equity and those liabilities are consolidated within a group whose parent is a resident of a Contracting State.

II. With reference to Article 5 (Elimination of double taxation):

It is understood that each Contracting State will apply the principles of the 2010 OECD report entitled "Attribution of Profits to Permanent Establishments" when attributing equity and liabilities to a permanent establishment.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

Done at London on the 12th day of June 2013, in duplicate, in the English language.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

For the Government of the Kingdom of the Netherlands:

David Gauke

Frans Weekers

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a convention and a protocol ("the arrangements") made between the United Kingdom of Great Britain and the Kingdom of the Netherlands for the avoidance of

double taxation and international tax enforcement in relation to the bank levy and the equivalent Netherlands bank tax. This Order brings the arrangements into effect.

The arrangements aim to eliminate double taxation where a bank is chargeable to the bank levy and the equivalent levy in the Netherlands. This is done by allocating the taxing rights that each country has under its domestic law over the same bank or by providing relief from double taxation by way of credit for the other country's levy.

Article 1 provides for citation and commencement.

Article 2 makes a declaration as to the effect and content of the double taxation and international tax enforcement arrangements.

The arrangements will enter into force on the day of the exchange of the instruments of ratification. They will take effect from 1st January 2011.

The date of entry into force of the arrangements will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

In line with government commitments, a Tax Information and Impact Note has not been prepared for this Order as it gives effect to a previously announced policy to enact a double taxation agreement.