

# FINANCE ACT 2014

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Sections 285 - 288: the Code of Practice on Taxation for Banks*

##### Summary

1. These sections require HMRC from 2015 to publish an annual report on the operation of the Code of Practice on Taxation of Banks (the Code).

##### Details of the Sections

#### *Section 285: HMRC to Publish Reports*

2. Subsections (1), (2) and (3) provides that HMRC must publish a report on the operation of the Code and if the Commissioners conclude that a group or entity has breached the Code during a reporting period they may name the group or entity. Subsection (3) deals with the circumstance where the Commissioners determine that there has been a breach of the Code and it is impractical to name the group or entity in the report for the period.
3. Subsections (4), (5) and (6) sets out those groups and entities that will be listed in the annual report. These are those groups and entities that are chargeable to bank levy, would be chargeable if it were not for the £200 million de minimis exemption, or those groups and entities which meet the definition of a bank in section 991 of Income Taxes Act 2007 other than where the entity is a building or friendly society. In the case of a group or entity in which either there is a UK or foreign bank(s) but where the wider group is a non-banking group, subsection (5) ensures that the annual report will only list the UK or foreign banks or UK banking sub-groups and not the wider group.

#### *Section 286: “participating” groups or entities*

4. Subsections (1) and (2) define ‘participating groups or entities’ for the purposes of section 285.
5. Subsections (3) and (4) set out what participating groups or entities must do if they no longer want to be participating groups or entities, or if they wish to be so again.
6. Subsections (5), (6) and (7) set what happens where a participating group or entity is named in an annual report and what it must do subsequently to become a participating group or entity in a later report.

#### *Section 287: Operation & Breaches of the Code*

7. Subsections (1), (2), and (3) provide that the Commissioners will publish and follow a governance protocol in relation to the Code, and that before they reach a decision to name a bank they must appoint an independent reviewer. The independent reviewer must take into account any representations by the group or entity and provide a copy of the report to the group or entity concerned. The identity of the independent reviewer

*These notes refer to the Finance Act 2014 (c.26)  
which received Royal Assent on 17 July 2014*

has yet to be decided but will be a person of suitable stature who is independent of both HMRC and the group or entity such as for example a retired high court judge.

8. Subsections (4) and (5) provide that where the group or entity has received a GAAR advisory panel opinion notice(s) the independent reviewer will only be required to report upon whether the group or entity should be named in a report.
9. Subsections (6), (7) and (8) set out the procedure for and matters that the Commissioners must take into account when deciding to name a group or entity in an annual report.
10. Subsections (9), (10) and (11) set out the two limited grounds on which the Commissioners may reach a different determination than that of the independent reviewer. That is where they decide that the independent reviewer's determination was unreasonable or where exceptionally there are compelling reasons for reaching a different determination. It also sets out that where the group or entity decides to judicially review the Commissioners determination, the onus will be the Commissioners to show that they acted reasonably in reaching their determination.
11. Subsection (12) sets out the time limit for making a claim to judicial review and provides that unless the Court is satisfied that there are exceptional circumstances which would warrant a public hearing, the judicial review in subsection (11) will be held in private.
12. Subsection (13), (14), (15) and (16) set out what the Commissioners must include in an annual report where they have reached a different determination than the independent reviewer and the timing of that report. Subsections (15) and (16) set out the information that the Commissioners must disclose to the independent reviewer and the basis on which the independent reviewer can use that information.

***Section 288: Documents Relating to the Code***

13. This section sets out that changes to any document published by HMRC in relation to the Code must be consulted upon and HMRC must take account of any consultation responses. This does not apply to the first publication of the governance protocol on 5 December 2014 or any documents published before Royal Assent of Finance Act 2014 (17 July 2014).

**Background Note**

14. The Code was introduced in 2009. The names of the top 15 banks that had adopted the Code were published in November 2010. The Code is one element of the Government's anti-avoidance strategy and is designed to change the attitudes and behaviour of banks towards avoidance given their unique position as potential users, promoters and funders of tax avoidance.
15. The Code describes the approach expected of banks with regard to governance, tax planning and engagement with HMRC. It aims to encourage banks, building societies and organisations providing banking services operating in the UK to adopt best practice in relation to their tax affairs.