



# Finance Act 2014

## 2014 CHAPTER 26

### PART 6

#### OTHER PROVISIONS

##### *Code of Practice on Taxation for Banks*

#### **285 The Code of Practice on Taxation for Banks: HMRC to publish reports**

- (1) No later than the end of the calendar year in which a reporting period ends, the Commissioners for Her Majesty's Revenue and Customs must publish a report on the operation during the period of the Code of Practice on Taxation for Banks as published by the Commissioners on 31 May 2013 ("the Code").
- (2) If the Commissioners determine that a group or entity which was a participating group or entity (see section 286) during some or all of a reporting period breached the Code at a time during the period, the Commissioners may name the group or entity in a report under this section.

This subsection is subject to section 287.

- (3) If—
  - (a) the Commissioners determine that there has been a breach of the Code, but
  - (b) it was not reasonably practicable for information relating to the breach to be included in the report for the reporting period in which the breach occurred,the information may be included in the first subsequent report in which it is reasonably practicable for the information to be included.
- (4) The report for a reporting period must list—
  - (a) the groups or entities which were participating groups or entities during some or all of the reporting period,
  - (b) the groups or entities appearing to the Commissioners—
    - (i) not to be covered by paragraph (a), and

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- (ii) to be groups or entities in relation to which the bank levy is charged in a case where the chargeable period ends in the reporting period (or would be charged in such a case if it is assumed that any period of account beginning before or in, but ending after, the reporting period ends at the end of the reporting period instead), and
- (c) the entities appearing to the Commissioners—
  - (i) not to be covered by paragraph (a) or (b), and
  - (ii) to be entities which fell within subsection (2)(b) or (c) of section 991 of ITA 2007 (subject to subsection (3) of that section) during some or all of the reporting period.
- (5) In a case where the bank levy is (or would be) charged in relation to a relevant non-banking group (as defined in paragraph 11 of Schedule 19 to FA 2011), any list prepared under subsection (4)(b) is to refer to the group only so far as it consists (or would consist) of—
  - (a) relevant UK banking sub-groups (as defined in paragraph 19(5) of that Schedule), and
  - (b) so far as not covered by paragraph (a)—
    - (i) UK resident banks (as defined in paragraph 80 of that Schedule), and
    - (ii) relevant foreign banks (as defined in paragraph 78 of that Schedule).
- (6) For the purposes of subsection (4)(b)(ii) it does not matter if the amount of the bank levy is (or would be) nil in the case of a group or entity.
- (7) The first “reporting period” is the period beginning with 5 December 2013 and ending with 31 March 2015.
- (8) After that, each year beginning with 1 April is a “reporting period”.
- (9) The report for the first reporting period must list the groups or entities which were participating groups or entities on 5 December 2013.
- (10) Subsection (9) does not require the inclusion in the report of any information which has previously been published by the Commissioners, so long as the report makes reference to the previous publication.
- (11) If, on or after 31 May 2013, the Commissioners publish a document which states that only Part 1 of the Code is to apply in the case of a group or entity of a specified description, in the case of such a group or entity references to the Code are to be read as references to Part 1 of the Code.

## **286 The Code of Practice on Taxation for Banks: “participating” groups or entities**

- (1) This section applies for the purposes of section 285.
- (2) A group or entity becomes a “participating” group or entity if, on or after 31 May 2013, it notifies the Commissioners in writing that it is unconditionally committed to complying with the Code.
- (3) A group or entity ceases to be a “participating” group or entity if it notifies the Commissioners in writing that it is no longer unconditionally committed to complying with the Code.

- (4) A group or entity which ceases to be a “participating” group or entity in accordance with subsection (3) becomes a “participating” group or entity again if it gives a further written notice of the kind mentioned in subsection (2) (subject to what follows).
- (5) Subsections (6) and (7) apply if a group or entity is named in a report under section 285 under subsection (2) of that section.
- (6) If the group or entity is a “participating” group or entity immediately before the publication of the report, it ceases to be so on the publication of the report.
- (7) In any case, the group or entity cannot be a “participating” group or entity after the publication of the report unless and until—
  - (a) it gives the Commissioners a further written notice of the kind mentioned in subsection (2), and
  - (b) the Commissioners are satisfied that it is unconditionally committed to complying with the Code.

## **287 The Code of Practice on Taxation for Banks: operation & breaches of the Code**

- (1) The Commissioners must—
  - (a) publish a protocol, to be called “the Governance Protocol”, setting out how the Commissioners are going to operate the Code and section 285(2), and
  - (b) follow the Governance Protocol when operating the Code and section 285(2).
- (2) The Governance Protocol must require the Commissioners, before determining for the purposes of section 285(2) whether a group or entity has breached the Code at a time during a reporting period, to commission a person (an “independent reviewer”) who is independent of the Commissioners and the group or entity to report on—
  - (a) whether the group or entity has breached the Code, and
  - (b) whether the group or entity should be named in a report under section 285 were the Commissioners to determine that the group or entity has breached the Code.
- (3) The independent reviewer—
  - (a) must give the group or entity a reasonable opportunity to make representations about the matters being considered by the independent reviewer,
  - (b) subject to subsection (8), must have regard to the group or entity’s representations and may have regard to any other matter which the independent reviewer considers to be relevant,
  - (c) must give the group or entity a copy of the independent reviewer’s report, and
  - (d) must otherwise follow the Governance Protocol but only so far as it is relevant to the independent reviewer’s functions.
- (4) The Governance Protocol may provide that, in the case of any conduct of a group or entity to which subsection (5) applies, the independent reviewer is to assume that the conduct constitutes a breach of the Code and, accordingly, is to report only on the matter mentioned in subsection (2)(b).
- (5) This subsection applies to any conduct—
  - (a) in relation to which there has been given—
    - (i) an opinion notice under paragraph 11(3)(b) of Schedule 43 to FA 2013 (GAAR advisory panel: opinion that conduct unreasonable) stating

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- the joint opinion of all the members of a sub-panel arranged under paragraph 10 of that Schedule, or
- (ii) one or more such notices stating the opinions of at least two members of such a sub-panel, and
- (b) in relation to which there has been given a notice under paragraph 12 of that Schedule (HMRC final decision on tax advantage) stating that a tax advantage is to be counteracted.
- (6) The Governance Protocol must make provision—
- (a) for the Commissioners, in determining whether a group or entity has breached the Code or should be named in a report under section 285—
- (i) to have regard to the independent reviewer’s report, and
- (ii) to give the group or entity a reasonable opportunity to make representations about the matters being considered by the Commissioners,
- (b) for the Commissioners to notify the group or entity in writing of their determination,
- (c) if the Commissioners’ determination is different from the independent reviewer’s determination, for the Commissioners to include in the notification of their determination to the group or entity their reasons for making a different determination, and
- (d) if the Commissioners determine that the group or entity should be named in a report under section 285, for the Commissioners to hold off including in a report under that section any information relating to the breach of the Code—
- (i) until the notification of the determination is given to the group or entity, and
- (ii) for at least 90 days after the day on which that notification is given.
- (7) The Governance Protocol must make provision for the independent reviewer and the Commissioners, in determining whether a group or entity should be named in a report under section 285, to have regard to—
- (a) any action taken by the group or entity to remedy the breach of the Code or otherwise to mitigate its effect, and
- (b) any exceptional circumstances which might justify not naming the group or entity.
- (8) In determining whether a group or entity has breached the Code or should be named in a report under section 285, the independent reviewer and the Commissioners—
- (a) may have regard to any conduct of the group or entity occurring on or after 5 December 2013, but
- (b) must not have regard to any conduct of the group or entity occurring before that date or at a time when the group or entity is not a participating group or entity.
- (9) Subsection (10) applies if the independent reviewer determines—
- (a) that a group or entity has not breached the Code, or
- (b) that a group or entity should not be named in a report under section 285.
- (10) The Commissioners may make a determination which is different from the independent reviewer’s determination only if—
- (a) the independent reviewer’s determination is flawed when considered in the light of the principles applicable in proceedings for judicial review, or

- (b) there are other compelling reasons for making a different determination.
- (11) If the Commissioners make a different determination in a case where subsection (10) applies—
- (a) their reasons notified under subsection (6)(c) must set out (in particular) why the independent reviewer’s determination is flawed or (as the case may be) the other compelling reasons,
  - (b) in any proceedings in which an issue arises as to whether it was lawful for them to make the different determination it is for them to show that it was lawful for them to make the different determination, and
  - (c) subsection (12) applies in relation to any proceedings for judicial review of the different determination instituted by a member of the group or by the entity.
- (12) If the proceedings are instituted no later than the end of the 90 day period mentioned in subsection (6)(d)(ii)—
- (a) they are to be treated as having been instituted within any applicable time limit (if that would not otherwise be the case),
  - (b) the court must give permission or leave for the proceedings to proceed (if the court’s permission or leave is required), unless that would lead to multiple proceedings dealing with the same issues, and
  - (c) any hearing (including any hearing on appeal) must be held in private, unless (having regard to the risk that holding the hearing in public might undermine to any extent the purpose of the instituting of the proceedings) the court is satisfied that there are exceptional circumstances requiring the hearing to be held in public.
- (13) If a determination of the Commissioners is different from the independent reviewer’s determination, they must mention that fact—
- (a) in the report under section 285 for the reporting period in question, or
  - (b) if it was not reasonably practicable for that fact to be mentioned in that report, in the first subsequent report under section 285 in which it is reasonably practicable for that fact to be mentioned.
- (14) In determining for the purposes of section 285(3) or subsection (13)(b) of this section when it is reasonably practicable for any information to be included in a report under section 285, regard must be had (in particular) to the requirements of subsections (1) to (12) of this section.
- (15) The Commissioners must disclose to an independent reviewer such information held by them as they consider appropriate to enable the independent reviewer to carry out the independent reviewer’s functions.
- (16) If the Commissioners disclose information to an independent reviewer under subsection (15), section 18 of CRCA 2005 (confidentiality) applies in relation to the independent reviewer’s holding and use of the information as if the independent reviewer were an officer of Revenue and Customs and the independent reviewer’s functions were functions of the independent reviewer as such an officer.

## **288 The Code of Practice on Taxation for Banks: documents relating to the Code**

- (1) The Commissioners may publish a relevant document, or revoke or modify a relevant document previously published by them, only after—
- (a) consultation with such persons as they consider appropriate, and

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- (b) consideration of any representations made to them in the course of the consultation.
- (2) When publishing a relevant document or a modified relevant document or when revoking a relevant document, the Commissioners must also publish—
- (a) an account of the representations mentioned in subsection (1)(b), and
  - (b) their responses to those representations.
- (3) In this section “relevant document” means—
- (a) the Governance Protocol, or
  - (b) any document of the kind mentioned in section 285(11).
- (4) This section does not apply in relation to the first publication of the Governance Protocol.
- (5) This section does not affect any document of the kind mentioned in section 285(11) published before the passing of this Act except where it is to be revoked or modified after the passing of this Act.