

2015 No. 344

BANK LEVY

**The Bank Levy (Double Taxation Arrangements) (Netherlands)
Regulations 2015**

Made - - - - *23rd February 2015*

Laid before the House of Commons *24th February 2015*

Coming into force - - *17th March 2015*

The Treasury make the following Regulations in exercise of the powers conferred by paragraphs 66(8) to (9A) 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 Arrangements) (Netherlands) Regulations 2015 and come into force on 17th March 2015.

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

Interpretation

2. In these Regulations—

“double taxation arrangements” means 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 signed on 12th June 2013 in London(b) and the Protocol attached to the Convention;

“Netherlands bank tax” means the equivalent foreign levy imposed by the Kingdom of the Netherlands.

Application of these Regulations

3. These Regulations apply in relation to the provision of relief from the bank levy provided by the double taxation arrangements where the bank levy and the Netherlands bank tax are charged in relation to—

(a) a relevant group which is a foreign banking group or a relevant non-banking group, or

(a) 2011 c. 11; paragraph 66(9A) was inserted by paragraph 11(2) of Schedule 34 to the Finance Act 2012 (c. 14).

(b) The Convention (referred to in these footnotes as “the Convention”) and the Protocol to the Convention are set out in the Schedule to S.I. 2015/335.

- (b) a relevant entity which is a relevant foreign bank

Double taxation relief by way of credit

Double taxation relief

4.—(1) Where these Regulations apply, an amount of the Netherlands bank tax imposed on a relevant group or relevant entity in relation to a period or part of a period which falls within a chargeable period is allowed as a credit against the bank levy for that chargeable period.

(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.—(1) Take steps 1 to 4 to determine how much of the Netherlands bank tax is available as a credit against the bank levy.

Step 1

Determine the amount (“A”) of the taxable base of the relevant group or the relevant entity as at the end of the chargeable period shown in the group’s or entity’s Netherlands bank tax return, before deduction of the efficiency exemption in Article 9 of the Wet bankenbelasting(a), by reference to which the Netherlands bank tax is calculated.

Step 2

Determine the amount (“B”) of the UK taxable base as at the end of the chargeable period by reference to which the Netherlands bank tax is calculated.

Step 3

Determine the amount of the Netherlands bank tax paid (“C”) in relation to the chargeable period. If a proportion (Z%) of the period in relation to which the Netherlands bank tax is calculated falls in any other chargeable period, Z% of the Netherlands bank tax shall be attributable to that other period.

Step 4

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

(2) If the period in relation to which the Netherlands bank tax is calculated (“the Netherlands period”) and the chargeable period end on different dates, the amount of the credit is determined as follows—

- (a) take of steps 1 to 4 in relation to each Netherlands period which falls wholly or partly within the chargeable period,
- (b) the references to the chargeable period in steps 1 to 3 are to be read as references to the Netherlands period,
- (c) for the purposes of step 2, to determine the UK taxable base at the end of the Netherlands period, regulation 6 applies as though references to the chargeable period in paragraphs (2) and (3) of that regulation were references to the Netherlands period,
- (d) the amount of the credit determined at step 4 in relation to each Netherlands period must be apportioned on a time basis to each of the chargeable periods wholly or partly within the Netherlands period.

(a) The Wet bankenbelasting is the Law on bank tax in the Netherlands referred to in Article 2(2) of the Convention.

Determining the UK taxable base

6.—(1) The amount of the UK taxable base of the relevant group or relevant entity is—

$$EL - (T + PD + I)$$

where—

EL is the amount of equity and liabilities of the specified members of the relevant group or the relevant entity,

T is the amount of tier one capital equity and liabilities and tier two capital liabilities of the specified members of the relevant group or the relevant entity,

PD is the amount of liabilities representing protected deposits of the specified members of the relevant group or relevant entity, and

I is the amount of relevant insurance liabilities of the specified members of the relevant group or the relevant entity.

(2) In the case of a relevant group, the amounts referred to in paragraph (1) 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
- (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, the amounts referred to in paragraph (1) 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) The specified members are—

- (a) in relation to a relevant group, any member of the group which has type A, type B, type C or type D equity and liabilities within paragraph 17 or 19 of Schedule 19 to FA 2011; and
- (b) in relation to a relevant entity, any permanent establishment through which the entity carries on a trade in the UK.

(5) In relation to a permanent establishment, the amounts in paragraph (1) are X% (as determined at step 2 of paragraph 24(1) of Schedule 19 to FA 2011 in relation to the relevant foreign bank) of each of the amounts of EL, T, PD and I of the relevant foreign bank carrying on trade through the permanent establishment.

(6) For the purposes of this regulation—

“relevant insurance liabilities” has the same meaning as in paragraph 33 of Schedule 19 to FA 2011(a);

“tier one capital equity and liabilities”, in relation to a relevant group or relevant entity, has the same meaning as in paragraph 30 of Schedule 19 to FA 2011(b);

“tier two capital liabilities”, in relation to a relevant group or relevant entity—

- (a) in relation to chargeable periods ending before 1st January 2014, has the same meaning as “tier one capital equity and liabilities” in paragraph 30 of Schedule 19 to FA 2011 but the

(a) Paragraph 33 was amended by S.I. 2013/636.

(b) Paragraph 30 was amended by S.I. 2013/636.

references to “tier one” are to be read as references to “tier two” and the reference to equity is to be ignored, and

- (b) in relation to chargeable periods ending on or after 1st January 2014, means so much of the group’s or entity’s liabilities as is Tier 2 capital within the meaning of Article 71 of the Capital Requirements Regulation (taking account of the transitional provisions in Part Ten of that Regulation).

(7) For the purposes of sub-paragraph (b) of the definition of tier two capital liabilities, the Capital Requirements Regulation is to be treated as applying, in relation to all entities and groups of entities, as if—

- (a) to the extent it would not otherwise be the case, the Prudential Regulation Authority were the competent authority in relation to those entities and groups,
- (b) the only determinations made, and discretions exercised, by the Prudential Regulation Authority for the purposes of the Capital Requirement Regulation were those published by it in accordance with that Regulation, and
- (c) those entities and groups (to the extent that it would not otherwise be the case) were subject to the provisions of the PRA Handbook immediately before 1st January 2014.

(8) “The Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms^(a).

(9) The amount of liabilities representing protected deposits is determined in accordance with paragraph 29(2) to (10) of Schedule 19 to FA 2011^(b).

Exchange rates

7. For the purposes of regulation 4, the amount of Netherlands bank tax 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 or the relevant entity^(c), or
- (b) if later, one year after the end of the accounting period in which the Netherlands bank tax 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 FA 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.

(a) OJ L 176/1, 27.6.13.

(b) Paragraph 20 was amended by paragraph 8 of Schedule 26 to the Finance Act 2014 (c. 26)

(c) Paragraphs 50 and 51 of Schedule 19 to FA 2011 make provision for the payment of the bank levy.

Restriction of credit

10.—(1) Where the bank levy is charged in relation to a relevant group, if the parent entity is not resident in the Netherlands, 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 the Netherlands.

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

- (a) prepared under international accounting standards if that is what the relevant member or members prepare financial statements under, and
- (b) in which the UK taxable base subject to the Netherlands bank tax in respect of which the credit is given would be recognised.

Reduction in credit: payment by reference to Netherlands bank tax

11.—(1) Paragraph (2) applies if—

- (a) credit for the Netherlands bank tax 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 Netherlands bank tax.

(2) The amount of the credit must be recalculated under regulation 4 reducing the amount of the Netherlands bank tax by reference to the payment referred to in paragraph (1)(b).

Priority of credits

12.—(1) Where credits are allowed in relation to the Netherlands bank tax under these Regulations and any other equivalent foreign levy under 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 (1) 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 Netherlands bank tax

Consequences of adjustment of the bank levy or Netherlands bank tax

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

- (a) the amount of credit given under regulation 4 is reduced under regulation 11, or becomes excessive or insufficient by reason of any adjustment of the amount of any bank levy or Netherlands bank tax,
- (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 time when 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, 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 Netherlands bank tax.

(2) The relevant entity or, in the case of a 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.

Cases about being taxed otherwise than in accordance with the Convention

Giving effect to solutions to cases and mutual agreements resolving cases

15.—(1) Paragraphs (2) and (4) apply if under, and for the purposes of, the double taxation arrangements—

- (a) an entity presents, to the Commissioners for Her Majesty’s Revenue and Customs or to a competent authority in the Netherlands, a case concerning the entity being taxed (whether in the United Kingdom or the Netherlands) otherwise than in accordance with the double taxation arrangements, and
- (b) the Commissioners arrive at a solution to the case or make a mutual agreement with a competent authority in the Netherlands for the resolution of the case.

(2) The Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(3) An adjustment under paragraph (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(4) A claim for relief under any provision of the Tax Acts or the enactments relating to capital gains tax may be made in pursuance of the solution or mutual agreement at any time before the end of the period of 12 months following the notification of the solution or mutual agreement to the entity affected, even if that involves making the claim after a deadline imposed by another enactment.

(5) In this regulation “competent authority in the Netherlands” means the Minister of Finance in the Netherlands or his authorised representative.

Effect of, and deadline for, presenting a case

16.—(1) This regulation applies to the presentation of a case concerning an entity’s being taxed (whether in the United Kingdom or the Netherlands) otherwise than in accordance with the double taxation arrangements.

(2) The presentation of any such case under and in accordance with the double taxation arrangements—

- (a) does not constitute a claim for relief under the Tax Acts or the enactments relating to capital gains tax, and
- (b) is accordingly not subject to section 42 of the Taxes Management Act 1970^(a) or any other enactment relating to the making of such claims.

(3) Any such claim must be presented before the end of the later of—

- (a) the period of 3 years following the first notification of the action resulting in the entity being charged otherwise than in accordance with the double taxation arrangements, and
- (b) the period of 6 years following the end of the chargeable period to which the case relates.

*Alun Cairns
Gavin Barwell*

23rd February 2015

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to relief from double taxation in relation to the bank levy and any tax imposed by the Kingdom of the Netherlands which corresponds to the bank levy (“the Netherlands bank tax”).

Regulation 1 provides for citation, commencement and effect. Authority for the retrospective effect of the Regulations is provided by paragraphs 66(5), (8) and (9A) of Schedule 19 to the Finance Act 2011. Section 66(5) permits arrangements for relief from double taxation in relation to the bank levy and any equivalent foreign levy to have retrospective effect. These Regulations make provision in relation to such relief provided by the Convention between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland for the avoidance of double charging of bank levies (“the Convention”) which enters into force on the day of exchange of instruments of ratification and has 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*.

Regulation 2 defines terms used in the Regulations.

(a) 1970 c. 9.

Regulation 3 provides that the Regulations apply where the bank levy and the Netherlands bank tax 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 4 provides that an amount of the Netherlands bank tax 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 Netherlands bank tax allowable as a credit against the bank levy. This calculation is based on the taxable base and the UK taxable base of the relevant group or relevant entity.

Regulation 6 sets out how to determine the UK taxable base of the relevant group or relevant entity.

Regulation 7 provides for the exchange rate to translate the amount of the Netherlands bank tax 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 Netherlands. 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 Netherlands.

Regulation 11 provides for a reduction in the credit if a payment is made in respect of a credit for the Netherlands bank tax.

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 Netherlands bank tax.

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

Regulations 15 and 16 make provision about cases taxed otherwise than under the Convention.

A Tax Information and Impact Note covering this instrument was published on 23rd 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>. It remains an accurate summary of the impacts that apply to this instrument.

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