

EXPLANATORY MEMORANDUM TO
THE BANK LEVY (DOUBLE TAXATION ARRANGEMENTS)
(NETHERLANDS) REGULATIONS 2015

2015 No. 344

1. This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This statutory instrument provides a mechanism for relieving double taxation in respect of the bank levy imposed by Schedule 19 to the Finance Act 2011 (c.11) (“Schedule 19”) and an equivalent foreign levy imposed by the law of the Kingdom of the Netherlands pursuant to a convention and protocol made between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands which enters into force on the day of the exchange of the instruments of ratification and has effect from 1st January 2011 (“the Convention”).

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 This statutory instrument will have effect in relation to periods of account ending on or after 1st January 2011. The authority to make provisions with retrospective effect is contained in paragraph 66 (9A) of Schedule 19. Paragraph 66(5) permits arrangements for relief from double taxation in relation to the bank levy and any equivalent foreign levy to have retrospective effect, paragraph 66(9A) permits regulations made and coming into force on the same day as an order giving effect to such arrangements to have effect for the same period. An order giving effect to the Convention is made on the same day and will come into force on the same day as this instrument. This instrument makes provision in relation to the relief provided by the Convention which enters into force on the day of the exchange of the instruments of ratification and has effect from 1st January 2011.

4. **Legislative Context**

- 4.1 Schedule 19 introduced a new tax, the bank levy. This new tax applies for periods of account of UK banking groups, stand-alone banks and building societies, foreign banking groups and relevant non-banking groups (“the banks”) which end on or after 1st January 2011.

- 4.2 Where an entity is subject to the bank levy and an equivalent foreign levy then under Part 7 of Schedule 19 the Treasury is empowered to make regulations in order to alleviate such double taxation.
- 4.3 If the Government of the United Kingdom negotiates a double tax convention with a foreign territory in respect of the bank levy and an equivalent foreign levy then regulations to provide the mechanism for relief provided by the convention may be made under paragraph 66 of Schedule 19.
- 4.4 A convention and protocol made between the Government of the United Kingdom and the Government of the Kingdom of the Netherlands was signed on 12 June 2013 and a Treasury Order giving effect to this is being made alongside this instrument.
- 4.5 This instrument is therefore made under paragraph 66 of Schedule 19.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Bank levies were proposed in a paper by the International Monetary Fund to the G20 entitled “A Fair and Substantial Contribution by the Financial Sector” following the 2008 global banking crisis. A number of countries have introduced such levies, with the bank levy being introduced in the United Kingdom via Schedule 19, Finance Act 2011.
- 7.2 As many banks operate in two or more countries they may be subject to two or more levies and suffer juridical double taxation.
- 7.3 As double taxation is often a hindrance to commerce the United Kingdom, where it is appropriate, enters into agreements with other territories to mitigate such double taxation. However the bank levy is not mentioned in the United Kingdom’s current double taxation conventions. This means that the legislation within Part 2 of the Taxation (International and Other Provisions) Act 2010 that gives effect to the existing conventions and provides for relief is not applicable to the bank levy.
- 7.4 Therefore Part 7 of Schedule 19 allows the Treasury to give effect to any agreements, including conventions or understandings, which the

United Kingdom reaches with other territories in order to alleviate juridical double taxation in respect of bank levies.

- 7.5 If no agreement or understanding is reached with another territory then if the Treasury considers it appropriate it can make regulations to allow relief unilaterally.

8. Consultation outcome

- 8.1 Double taxation relief formed an important part of the consultation in respect of the bank levy generally (held in the summer of 2010). This instrument was published, in draft on HMRC's website on 23 December 2014. Banks that are affected by the introduction of the bank levy and their representative bodies were invited to comment. The initial consultation closed on 20 January 2015.
- 8.2 The instrument provides the mechanism by which double taxation relief is given. As the instrument only affects a very small number of businesses all of whom were contacted individually for their comments the consultation was shorter than the normal 12 weeks.
- 8.3 The instrument was well received. There were no substantive comments.

9. Guidance

- 9.1 The Bank Levy Manual (published on HMRC internet site) contains a chapter outlining how the double taxation relief for the bank levy operates.
- 9.2 Draft guidance in respect of relief for the Dutch levy will be published shortly and will be subject to consultation. It will be updated when the consultation closes and will be re-published shortly thereafter.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is nil.
- 10.2 The impact on the public sector is expected to be nil.
- 10.3 A Tax Information and Impact Note covering this instrument was published on 23 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.

11. Regulating small business

11.1 This legislation does not apply to small businesses.

12. Monitoring & review

12.1 HMRC will monitor and review the legislation to ensure that the bank levy is operating efficiently and tax is being paid and relief given as intended.

13. Contact

Andrew Parkes at HM Revenue and Customs can answer any queries regarding the instrument.

Tel: 03000 586 073 or

Email: andrew.parkes@hmrc.gsi.gov.uk