EXPLANATORY MEMORANDUM TO

THE BANK LEVY (DOUBLE TAXATION ARRANGEMENTS) (FEDERAL REPUBLIC OF GERMANY) REGULATIONS 2012

2012 No. 459

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 Federal Republic of Germany pursuant to a convention and protocol made between the United Kingdom and the Federal Republic of Germany.

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(5) and (8) of Schedule 19. 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. The statutory instrument makes provision in relation to such relief provided by the Convention between the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland for the avoidance of double charging of bank levies 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, standalone 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 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 United Kingdom and the Federal Republic of Germany was signed on 7 December 2011 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 This instrument was published, in draft on HMRC's website on 9 December 2011. Banks that are affected by the introduction of the bank levy and their representative bodies were invited to comment. The initial consultation closed on 10 January 2012.

8.2 Double taxation relief formed an important part of the consultation in respect of the bank levy generally (held in the summer of 2010). 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 has been generally well received. As a result of the consultation regulation 3 was amended to clarify the date from which relief is due.

9. Guidance

9.1 A draft version of the Bank Levy Manual (published on HMRC internet site) contains a chapter outlining how the double taxation relief for the bank levy will operate. The draft will be updated to include comprehensive guidance around relief for the German levy.

9.2 The guidance will be published shortly after this instrument comes into force.

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 minimal.

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.

12.2 The Government will review the design of the levy in 2013 to ensure that it is operating efficiently.

13. Contact

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

Tel: 020 7147 3427 or
Email: andrew.parkes@hmrc.gsi.gov.uk