EXPLANATORY MEMORANDUM TO

THE BANK LEVY: INTERNATIONAL TAX ENFORCEMENT ARRANGEMENTS (FEDERAL REPUBLIC OF GERMANY) ORDER 2012

2012 No. 2933

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

2. Purpose of the instrument

2.1 The order brings into effect international tax enforcement arrangements in respect of the exchange of information foreseeably relevant to the administration or enforcement of the bank levy and the equivalent German Levy. The arrangements are contained in a Convention and Protocol made between the United Kingdom and the Federal Republic of Germany for the Avoidance of Double Charging of Bank Levies ("the Convention").

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

3.1 None.

4. Legislative context

4.1 The Order is being made to give effect in the UK to the international tax enforcement arrangements contained in the Convention. The arrangements affording relief from double taxation in relation to the bank levy and an equivalent German levy in the Convention were given effect in the UK by the Double Taxation Relief (Bank Levy) (Federal Republic of Germany) Order 2012 (S.I. 2012/432). The Convention is set out in the Schedule to that Order.

4.2 This Order does not implement EU legislation.

5. Territorial extent and application

5.1 This Order 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

- ***What is being done and why***

7.1 The Convention serves an Exchequer protection role by including provisions to combat tax avoidance and evasion by measures providing for the exchange of information between revenue authorities.

7.2 It also encourages and maintains international consensus on the appropriate tax treatment of cross-border economic activity and thus promotes international trade and investment. All of the UK's recent double taxation agreements largely follow the approach adopted in the Organisation for Economic Cooperation and Development's ("OECD") *Model Tax Convention on Income and on Capital*. The Agreement continues that approach.

8. Consultation outcome

8.1 The Order was not subject to a consultation but HMRC regularly consults with external interested parties, including business representatives, about the effectiveness of existing agreements for the avoidance of double taxation and fiscal evasion as well as new needs. The annual treaty negotiating programme is agreed with Ministers and published on the HMRC web site.

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 guidance around the exchange of information with Germany regarding the bank levy and the equivalent 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 negligible. The provisions of the Convention do not introduce new tax burdens; rather, they provide relief from tax and thus are of benefit to business. Taxpayers may have to make a claim to HMRC or the other state's fiscal authority in order to benefit from the Convention.

10.2 There is no impact on the UK public sector.

10.3 A Tax Information and Impact Note has not been prepared for this Order as it gives effect to a previously announced policy to enact a double taxation agreement.

11 Regulating small business

11.1 The Convention only applies to banks and therefore has no effect on small businesses.

12. Monitoring & review

12.1 Both Governments will keep the Convention under review to ensure that it meets the policy objectives set out above in section 7.

13. Contact

Andrew Parkes at HM Revenue & Customs can answer any queries regarding the Order.

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