STATUTORY INSTRUMENTS

2016 No. 1212

BANK LEVY

The Bank Levy (Double Taxation Relief) (Single Resolution Fund Levy) Regulations 2016

Made - - - - 13th December 2016

Coming into force in accordance with regulation 1(1)

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 67 of Schedule 19 to the Finance Act 2011(**1**).

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with paragraph 67(6)(b) of Schedule 19 to the Finance Act 2011.

Introduction

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Bank Levy (Double Taxation Relief) (Single Resolution Fund Levy) Regulations 2016 and come into force on the day after the day on which they are made.

(2) These Regulations have effect in relation to periods of account ending on or after 1 January 2016.

Specified equivalent foreign levy

2.—(1) The equivalent foreign levy in respect of which these Regulations are made is the SRF levy.

(2) In these Regulations, "SRF levy" means the individual contributions within Article 69 or 70 of the SRM Regulation raised from entities by a national resolution authority and transferred to the single resolution fund (established by the SRM Regulation) in accordance with the Agreement.

(3) In this regulation—

"Agreement" has the same meaning as in Article 3(1)(36) of the SRM Regulation;

"entities" means entities within Article 2 of the SRM Regulation;

(**1**) 2011 c. 11.

"national resolution authority" has the same meaning as in Article 3(1)(3) of the SRM Regulation;

"the SRM Regulation" mean Regulation (EU) No 806/2014 of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010(**2**)

Application of these Regulations

3.—(1) These Regulations apply where condition 1 or 2 is met.

(2) Condition 1 is that—

(a) the bank levy is charged in relation to a UK banking group, a UK sub-group or a UK banking sub-group, and

(b) the SRF levy is charged in relation to that UK banking group, UK sub-group or UK banking sub-group.

(3) Condition 2 is that—

(a) the bank levy is charged in relation to the relevant entity which is a relevant foreign bank, and

(b) the SRF levy is charged in relation to that relevant entity.

(4) These Regulations apply separately in relation to the imposition of the SRF levy by the law of different foreign territories.

Double taxation relief by way of credit

Double taxation relief

4.—(1) Subject to the provisions of these Regulations, an amount of the SRF levy paid in relation to a chargeable period in respect of which the SRF levy is calculated is allowed as a credit to reduce the amount of the bank levy arising in that period.

(2) The credit under this regulation requires a claim in accordance with regulations 9 and 10.

(3) The amount of the credit allowed against the bank levy arising in a chargeable period must not exceed the lower of—

(a) the amount of the bank levy for that period, and

(b) the amount determined under—

(i) regulation 5 in cases where condition 1 in regulation 3 is met, and

(ii) regulation 6 in cases where condition 2 in regulation 3 is met.

Calculation of the maximum credit: UK banking group, UK sub-group or UK banking sub-group

5.—(1) The amount of the credit must not exceed the amount of bank levy that would be payable by the entity ("the specified entity") subject to the SRF levy were the specified entity a UK resident bank in relation to which the bank levy would be charged as provided for by paragraph 5 of Schedule 19 to FA 2011 (bank levy to be charged in relation to certain entities which are not members of groups) in the period in relation to which the SRF levy is calculated.

(**2**) OJ L 225,30.7.2014, p.1.

(2) For the purposes of paragraph (1), in determining the amount of bank levy that would be payable, the amount of £20,000,000,000 in Step 5 of paragraph 6 of Schedule 19 to FA 2011 is reduced (in both places) to an amount equal to Y% of £20,000,000,000.

(3) For the purposes of paragraph (2), Y% is the proportion of the chargeable equity and liabilities of the UK banking group, UK sub-group or UK banking sub-group which is chargeable equity and liabilities of the specified entity.

(4) In a case where—

(a) the specified entity is subject to the SRF levy and another equivalent foreign levy, and

(b) relief is available under arrangements affording double taxation relief under the law of the territory imposing the other equivalent foreign levy,

the credit is limited to an amount equal to the amount of the credit calculated under paragraph (1) less the amount of relief available in relation to the equivalent foreign levy.

Calculation of the maximum credit: relevant foreign bank

6. The amount of the credit must not exceed the amount determined by steps 1 to 4.

Step 1

Determine the amount ("A") of assets of the relevant entity as at the end of the chargeable period by reference to which the SRF levy is calculated.

Step 2

Determine the amount ("B") of UK assets as at the end of the chargeable period by reference to which the SRF levy is calculated.

Step 3

Determine the amount ("C") of the SRF levy paid in relation to the chargeable period.

If a proportion (Z%) of the period in relation to which the SRF levy is calculated falls in any other chargeable period, Z% of the SRF levy is attributable to that other period.

Step 4

The amount of the SRF levy available as a credit against the bank levy must not exceed—

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$$\frac{B}{A} \times C$$

Determining assets and UK assets

7.—(1) This regulation applies for the purposes of regulation 6 to determine the assets and the UK assets of the relevant entity.

(2) In the case of a relevant entity which is part of a relevant group, the amount of the assets and the UK assets 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 UK GAAP, 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 which is not part of a relevant group, the assets and UK assets 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.

(4) For the purposes of these Regulations, "UK assets" means the assets of any permanent establishment through which the relevant entity carries on a trade in the United Kingdom.

(5) Paragraph 26 (including sub-paragraph (4)) of Schedule 19 to FA 2011 applies for the purposes of determining the assets of a permanent establishment.

Exchange rates

8. Where the SRF levy is imposed in a currency other than sterling, for the purposes of regulations 5 and 6 the amount of equivalent foreign currency 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

9.—(1) A claim for credit under regulation 4 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(**3**) under paragraph 50 of Schedule 19 to FA 2011 or the relevant entity under paragraph 51 of that Schedule, or

(b) if later, one year after the end of the accounting period in which the SRF levy 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) is the latest of those periods.

Relevant groups: responsible member to make claim

10. 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 must be made by the responsible member.

Limits on credit

Limits on credit in cases where regulation 6 applies

11. Regulations 12 to 15 apply where the maximum credit against the bank levy is calculated under regulation 6 (cases where the bank levy is charged in relation to a relevant entity which is a relevant foreign bank).

(**3**) "The responsible member" is defined in paragraph 54 of Schedule 19 to the Finance Act 2011.