STATUTORY INSTRUMENTS

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(**1**).

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(**2**) and the Protocol attached to the Convention;

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

(**1**) 2011 c. 11; paragraph 66(9A) was inserted by paragraph 11(2) of Schedule 34 to the Finance Act 2012 (c. 14).
(**2**) 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.

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

(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(**3**), 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

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

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(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—

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

(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.

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(**4**);

"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(**5**);

"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 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(**6**).

(9) The amount of liabilities representing protected deposits is determined in accordance with paragraph 29(2) to (10) of Schedule 19 to FA 2011(**7**).

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—

(**4**) Paragraph 33 was amended by S.I. 2013/636.
(**5**) Paragraph 30 was amended by S.I. 2013/636.
(**6**) OJ L 176/1, 27.6.13.
(**7**) Paragraph 20 was amended by paragraph 8 of Schedule 26 to the Finance Act 2014 (c. 26)

(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(**8**), 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.

Limits on credit

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

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