HM Revenue
& Customs

Bank levy review

Who is likely to be affected?

UK banks, banking groups and building societies; foreign banking groups operating in the UK through permanent establishments or subsidiaries, and UK banks and banking sub-groups in non-banking groups.

General description of the measure

As part of its approach to improving the tax policy making process, the Government announced when it introduced the levy, that it would review its design in 2013 to ensure it is operating efficiently.

Policy objective

The purpose of the bank levy is to ensure that the banking sector makes a fair contribution, reflecting the risks the banks pose to the financial system and the wider economy. It is also designed to encourage banks to move away from risky funding models that may threaten the stability of the financial sector. From the outset the Government has stated that it expects the levy to raise at least £2½ billion each year.

The Government believes that the levy's objectives remain appropriate. The underlying policy objectives were therefore outside the scope of the review. Instead the review tested the design of the levy to ensure it is working efficiently. Broadly the review looked at the following areas:

- simplification and reduction of compliance costs;
- fair application of the legislation to the bank levy population, which contains banks that have numerous differences in activities, location, structure and systems;
- better alignment of the levy with its policy objectives;
- ensuring alignment with the current and future regulatory regimes; and
- improving understanding of revenues, reflecting factors that drive balance sheets.

Background to the measure

The Government announced when it introduced the bank levy that it would review the design of the levy in 2013.

A consultation document was published on 4 July 2013 setting out various areas where the Government sought views. A wide range of stakeholders responded, including banks, industry bodies and advisers. The consultation included two open days, three working groups and bilateral meetings; 17 formal written responses were received.

A consultation response document and initial draft legislation was published on 10 December 2013 on the GOV.UK website.

Detailed proposal

Operative date

In the main, the changes will have effect in relation to periods of account ending on or after 1 January 2015.

However, changes to the definition of Tier 1 capital and the exclusion of liabilities relating to client clearing will have effect in relation to periods of account ending on or after 1 January 2014 in order align the bank levy with regulatory developments.

Current law

The bank levy is contained within Schedule 19 Finance Act 2011.

The bank levy applies to the global consolidated balance sheet of UK banking groups and building societies (paragraph 15); the aggregated UK balance sheets of members of foreign banking groups (paragraph 17); the balance sheets of UK banks and banking sub-groups in non-banking groups (paragraph 19) and the balance sheets of UK banks that are not members of groups (paragraph 21).

The levy is based upon the total chargeable equity and liabilities as reported in the relevant balance sheets at the end of a chargeable period.

Certain equity and liabilities are excluded from charge to the levy on the basis that they represent stable funding or that they do not relate to funding at all. Excluded equity and liabilities are listed in paragraphs 29 to 39 and they include: deposits covered by depositor protection schemes (paragraph 29) and Tier 1 capital (paragraph 30).

It is also permitted in specified circumstances to reduce certain liabilities by netting off certain assets (see paragraphs 16, 18, 20, 22 and 25).

Remaining liabilities may then be reduced by offsetting assets on the relevant balance sheets that would qualify for the Prudential Regulation Authority's (PRA) liquid assets buffer (see paragraphs 15, 17, 19, 21 and 27). This reduction applies first to long term liabilities with any balance applying to short-term liabilities.

Remaining short term liabilities and long term equity and liabilities are charged to the full and half levy rates respectively, subject to a £20 billion allowance.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend Schedule 19 Finance Act 2011 to give effect to the following changes that arise from the bank levy review.

i) *Protected deposits (paragraph 29)*

   Paragraph 29 contains provisions that allow certain deposits that are covered by deposit protection schemes or explicit Government guarantees to be excluded from the bank levy charge. This amendment will remove the existing provisions that allow, in the case of deposit protection schemes, the amount of protected deposits to be calculated by reference to the amount of the deposit, or other amount, on which the scheme premium or fee is charged.

   Following the change, for deposit protection schemes, the amount of protected deposits that may be excluded will be limited to the amount of deposits that are covered by the deposit protection scheme.

   The rules concerning explicit Government guarantees remain unchanged.

ii) *High Quality Liquid Assets (HQLA)*

HQLA will no longer be deducted from long term liabilities first with any balance applying to short-term liabilities. Instead a rule will be introduced to effectively restrict the benefit of the entire HQLA deduction to the half rate only. This will be achieved by allowing any HQLA set against long term liabilities to be deducted in full, however where HQLA are set against short term liabilities the amount of HQLA that can be deducted is to be restricted by half, so that the relief given is broadly equivalent to that which would be received on these HQLA at the long term rate.

iii) Netting

Currently, any un-netted derivatives are taxed at either the short or long term rate, depending on their contractual maturity. The legislation will be amended so that all derivative contract liabilities are treated as short-term for the purposes of the bank levy.

iv) Tier 1 capital

The levy currently excludes Tier 1 capital from charge in order not to discourage capital accumulation. Whilst our policy remains unchanged in this area legislative changes are required to reflect the new regulatory definition of Tier 1 capital under CRD IV. This change will have effect in relation to periods of account ending on or after 1 January 2014.

v) Power to make consequential amendments (paragraph 81)

The power at paragraph 81 permits HM Treasury to make amendments, which may have retrospective effect, as a consequence of changes to FSMA 2000, the PRA Handbook, IAS, UK GAAP or US GAAP. Legislation will be introduced to widen the scope of the power so that it can be used to make secondary regulations where new regulatory requirements are introduced by any EU or other legislation.

vi) Client clearing liabilities

As part of the regulatory reform agenda, there is a drive to introduce central clearing of derivatives via regulated central counterparties (CCPs) as central clearing enhances asset protection, mitigates counterparty risk and improves market transparency.

The Government wants to ensure that there is no disincentive for banks to facilitate their clients' clearing transactions and so a new rule will be introduced excluding liabilities that arise on banks' balance sheets in respect of collateral that banks have passed on to a central counterparty, authorised or recognised under European Markets Infrastructure Regulations.

This change will have effect in relation to periods of account ending on or after 1 January 2014.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	-	+35	+260	+275	+275	+275
	These figures are set out in Table 2.1 of the Autumn Statement and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Statement.					
Economic impact	The bank levy complements wider regulatory reforms aimed at improving financial stability, including higher capital and liquidity standards. The measure will encourage banks to adjust their activities in favour of less risky funding models.					

Impact on individuals and households	There is no direct impact on individuals and households. The bank levy is a tax on the balance sheets of banks, banking groups, and building societies.
Equalities impacts	The measure is not expected to have a direct or disproportionate impact on any of the protected equality groups.
Impact on business including civil society organisations	The bank levy currently affects in the region of 30 banking groups and building societies. The impact on these businesses as a result of this change is expected to be negligible in terms of additional administrative and compliance costs. The bank levy has no direct impact on businesses and organisations beyond those taxpayers.
Operational impact (£m) (HMRC or other)	The operational costs to HM Revenue & Customs of implementing these changes are expected to be negligible.
Other impacts	Competition assessment: the scope of the bank levy has been specifically designed to ensure a level playing field for all those affected by it in the UK. Small and micro business assessment: the banks, building societies and banking groups affected by the bank levy are not considered to be small firms, as only institutions with over £20 billion of chargeable liabilities are liable to pay the bank levy. Other impacts have been considered and none have been identified.

Monitoring and evaluation

Receipts from the bank levy are being monitored on an ongoing basis.

Further advice

If you have any questions about this change, please contact Anthony Fawcett on 03000 585911 (email anthony.c.fawcett@hmrc.gsi.gov.uk).

1 The bank levy

Schedule 1 contains provision about the bank levy.

SCHEDULE 1

Section 1

THE BANK LEVY

Introduction

1 Schedule 19 to FA 2011 (the bank levy) is amended in accordance with this Schedule.

High quality liquid assets etc

2 In paragraph 15 (chargeable equity and liabilities of a UK banking group or a building society group)—

(a) in sub-paragraph (2)(c), for "finally," substitute "finally (subject to sub-paragraph (6))", and

(b) for sub-paragraph (6) substitute—

"(6) Where any amount ("A") within sub-paragraph (2)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

3 In paragraph 17 (chargeable equity and liabilities of foreign banking groups)—

(a) in sub-paragraph (6)(c), for "finally," substitute "finally (subject to sub-paragraph (16))",

(b) in sub-paragraph (12)(c), for "finally," substitute "finally (subject to sub-paragraph (16))", and

(c) for sub-paragraph (16) substitute—

"(16) Where any amount ("A") within sub-paragraph (6)(c) or (12)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

4 In paragraph 19 (chargeable equity and liabilities of a non-banking group)—

(a) in sub-paragraph (6)(c), for "finally," substitute "finally (subject to sub-paragraph (16))",

(b) in sub-paragraph (12)(c), for "finally," substitute "finally (subject to sub-paragraph (16))", and

(c) for sub-paragraph (16) substitute—

"(16) Where an amount ("A") within sub-paragraph (6)(c) or (12)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

5 In paragraph 21 (chargeable equity and liabilities of a UK banking group or a building society group)—

(a) in sub-paragraph (2)(c), for "finally," substitute "finally (subject to sub-paragraph (6))", and

(b) for sub-paragraph (6) substitute—

"(6) Where an amount ("A") within sub-paragraph (2)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

6 In paragraph 27 (chargeable equity and liabilities of a UK banking group or a building society group)—

(a) in sub-paragraph (2)(c), for "finally," substitute "finally (subject to sub-paragraph (6))", and

(b) for sub-paragraph (6) substitute—

"(6) Where an amount ("A") within sub-paragraph (2)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

7 The amendments made by paragraphs 2 to 6 have effect in relation to chargeable periods ending on or after 1 January 2015.

Protected deposits

8 (1) Paragraph 29 ("excluded" equity and liabilities: protected deposits) is amended as follows.

(2) Omit sub-paragraphs (4) to (6).

(3) In sub-paragraph (8) omit ", and sub-paragraphs (4), (5) and (6) so far as relating to a scheme within sub-paragraph (2),".

(4) In sub-paragraph (9) omit ", and sub-paragraphs (4), (5) and (6) so far as relating to a scheme within sub-paragraph (3),".

(5) The amendments made by this paragraph have effect for chargeable periods ending on or after 1 January 2015.

Tier one capital equity and liabilities

9 (1) Paragraph 30 ("excluded" equity and liabilities: tier one capital equity and liabilities) is amended as follows.

(2) For sub-paragraph (2) substitute—

"(2) "Tier one capital equity and liabilities" means, in relation to an entity or group of entities, so much of the entity or group's equity and liabilities as is tier one capital within the meaning of Article 25 of the Capital Requirements Regulation (taking account of the transitional provisions in Part Ten of that Regulation).

(3) For the purposes of sub-paragraph (2), 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 1 January 2014.

(4) "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."

(3) The amendment made by this paragraph has effect in relation to chargeable periods ending on or after 1 January 2014.

Liabilities representing QCP margin in relation to trades executed under clearing agreements

10 (1) After paragraph 38 insert—

"38A(1) Liabilities are excluded if they represent cash collateral provided as QCP margin in relation to a trade executed or to be executed under a client clearing agreement.

(2) Cash collateral is provided as "QCP margin" if, and to the extent that—

(a) it exceeds the fair value of the instrument to which the trade relates, and

(b) it corresponds to either—

(i) an asset held in respect of the qualifying central counterparty which represents cash collateral provided to that qualifying central counterparty, or

(ii) cash collateral provided to the qualifying central counterparty which has the effect of reducing a liability of the clearing member to the qualifying central counterparty.

(3) In this paragraph—

"clearing member", in relation to a recognised central counterparty, has the meaning given by Article 2(14) of the EMIR Regulation,

"client" has the meaning given by Article 2(15) of the EMIR Regulation,

"client clearing agreement" means a contract between a clearing member of a qualifying central counterparty and a client, relating to the clearing of transactions with the qualifying central counterparty,

"the EMIR Regulation" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories,

"qualifying central counterparty" means a central counterparty that has been either authorised or recognised under the EMIR Regulation,

"trade" means a transaction relating to the sale and purchase of a financial instrument."

(2) The amendment made by this paragraph has effect in relation to chargeable periods ending on or after 1 January 2014.

Certain liabilities deemed short term liabilities

11 (1) After paragraph 76 insert—

"76A(1) Liabilities under derivative contracts are never "long term" (and are therefore always short term).

(2) In this paragraph "derivative contract" has the meaning given by international accounting standards."

(2) In paragraph 75 (liabilities not required to be repaid within 12 months etc are long term liabilities), after sub-paragraph (2) insert—

"(3) This paragraph is subject to paragraph 76A."

(3) In paragraph 77 (which relates to the calculation of "UK allocated equity and liabilities"), for "76" substitute "76A".

(4) The amendments made by this paragraph have effect for chargeable periods ending on or after 1 January 2015.

Amendments consequential on regulatory changes

12 In paragraph 81 (power to make consequential amendments), in sub-paragraph (1), omit the "or" at the end of paragraph (b), and after paragraph (c) insert ", or

(d) any regulatory requirement, or change to any regulatory requirement, imposed by EU legislation, or by or under any Act (whenever adopted, enacted or made)."

Transitional provision

13 (1) This paragraph applies where—

(a) an amount of the bank levy is treated as if it were an amount of corporation tax chargeable on an entity ("E") for an accounting period of E,

(b) the chargeable period in respect of which the amount of the bank levy is charged falls (or partly falls) on or after 1 January 2014, and

(c) under the Instalment Payment Regulations, one or more instalment payments, in respect of the total liability of E for the accounting period, were treated as becoming due and payable before the commencement date ("pre-commencement instalment payments").

(2) Paragraphs 9 and 10 of this Schedule are to be ignored for the purpose of determining the amount of any pre-commencement instalment payment.

(3) If there is at least one instalment payment, in respect of the total liability of E for the accounting period, which under the Instalment Payment Regulations is treated as becoming due and payable on or after the commencement date ("post-commencement instalment payments"), the

amount of that instalment payment, or the first of them, is to be increased by the adjustment amount.

(4) If there are no post-commencement instalment payments, a further instalment payment, in respect of the total liability of E for the accounting period, of an amount equal to the adjustment amount is to be treated as becoming due and payable at the end of the period of 30 days beginning with the commencement date.

(5) "The adjustment amount" is the difference between—

(a) the aggregate amount of the pre-commencement instalments determined in accordance with sub-paragraph (2), and

(b) the aggregate amount of those instalment payments determined ignoring sub-paragraph (2) (and so taking account of paragraphs 9 and 10).

(6) In the Instalment Payment Regulations—

(a) in regulations 6(1)(a), 7(2), 8(1)(a) and (2)(a), 9(5), 10(1), 11(1) and 13, references to regulation 4A, 4B, 4C, 4D, 5, 5A or 5B of those Regulations are to be read as including a reference to sub-paragraphs (1) to (5) above (and in regulation 7(2) "the regulation in question", and in regulation 8(2) "that regulation", are to be read accordingly), and

(b) in regulation 9(3), the reference to those Regulations is to be read as including a reference to sub-paragraphs (1) to (5) above.

(7) In section 59D of TMA 1970 (general rule as to when corporation tax is due and payable), in subsection (5), the reference to section 59E is to be read as including a reference to sub-paragraphs (1) to (6) above.

(8) In this paragraph—

"the chargeable period" is to be construed in accordance with paragraph 4 or (as the case may be) 5 of Schedule 19 to FA 2011;

"the commencement date" means the day on which this Act is passed;

"the Instalment Payment Regulations" means the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175);

and references to the total liability of E for an accounting period are to be construed in accordance with regulation 2(3) of the Instalment Payment Regulations.

EXPLANATORY NOTE

THE BANK LEVY

SUMMARY

1. This Schedule introduces changes to the bank levy arising from a review of the operational efficiency of the levy.

DETAILS OF THE SCHEDULE

2. Paragraphs 2 -7 remove the existing rules in paragraphs 15, 17, 19, 21 and 27, Schedule 19 Finance Act 2011 that require items that qualify as High Quality Liquid Assets to be deducted firstly from long term liabilities. This rule is replaced by a new rule, which restricts the reduction in respect of items that qualify as High Quality Liquid Assets to half, where they are set against short term liabilities.

3. Paragraph 8 amends the rule for calculating protected deposits. It removes the provisions in paragraph 29(4) – (6), Schedule 19, Finance Act 2011 which allow protected deposits to be calculated by reference to the amount of deposit, or other amount, on which the deposit protection fee or premium is calculated.

4. Paragraph 9(2) replaces the existing definition of Tier 1 capital at paragraph 30(2), Schedule 19, Finance Act 2011 with a new definition of Tier 1 capital based upon Article 25 of the Capital Resources Directive ("CRR") including the transitional provisions in Part 10. This ensures that the bank levy definition of equity and liabilities that are excluded as Tier 1 capital remains aligned with the regulatory definition. Paragraph 9(2) also introduces new paragraph 30(3).

5. New paragraph 30(3)(a) ensures that when calculating Tier 1 capital equity and liabilities, that for the purposes of the CRR the Prudential Regulation Authority ("PRA") is the competent authority in all cases.

6. New paragraph 30(3)(b) ensures that when calculating Tier 1 capital equity and liabilities, the only determinations and discretions that can be taken into account are those that have been published in accordance with the requirements in the CRR. Any determination and discretions that are not published cannot be taken into account when calculating Tier 1 capital equity and liabilities.

7. New paragraph 30(3)(c) provides that the CRR will apply as if all entities and groups were subject to the PRA handbook before 1 January 2014, ensuring that the transitional rules within the CRR that apply to the "old" PRA Handbook rules can be applied fully.

8. As part of the regulatory reform agenda, there is a drive to introduce central clearing of derivatives and securities via regulated central counterparties. Paragraph 10 introduces new paragraph 38A which excludes liabilities that arise on banks' balance sheets in respect of collateral provided as Qualifying Central Counterparty ("QCP") margin that banks have passed on to a central counterparty, authorised or recognised under European Markets Infrastructure Regulations.

9. New paragraph 38A(2) determines the amount that can be excluded as QCP margin. It provides that QCP margin is the cash collateral that exceeds the fair value of the underlying traded instrument, and relates to an asset (or reduced liability) arising from collateral passed on to the QCP.

10. Paragraph 11 prevents derivative contract liabilities from being long term for bank levy purposes. As a result any un-netted derivative contract liabilities will be deemed to be short term.

11. Paragraph 12 widens the scope of the power at paragraph 81, Schedule 19, Finance Act 2011, so that it can be used to make secondary regulations where new regulatory requirements are introduced by any EU or other domestic legislation.

12. Paragraph 13 provides transitional provisions for collecting additional amounts of bank levy that may arise from the bank levy review changes that have effect from 1 January 2014 (Tier 1 regulatory capital definition and client clearing exclusion). Where an instalment payment in respect of a chargeable period ending on or after 1 January 2014 is due before the date of Royal Assent to Finance Bill 2014, the first instalment for the same chargeable period due after Royal Assent is increased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-Royal Assent instalment and what would have been due if the post Royal Assent rates had been applied. If there is no instalment for the same chargeable period due after Royal Assent then a further instalment, equal to the adjustment amount, becomes due 30 days after Royal Assent.

BACKGROUND NOTE

13. The Government announced when it introduced the bank levy that it would review the design of the levy in 2013. A consultation document was published on 4 July 2013 setting out various areas where the Government sought views. The consultation closed on 26 September 2013. A consultation response document was published on 10 December 2013 and is available on the GOV.UK website.

14. The changes above arise as a result of this consultation and will be introduced in Finance Bill 2014.

15. If you have any questions about this change, or comments on the legislation, please contact Anthony Fawcett on 03000 585911 (email: anthony.c.fawcett@hmrc.gsi.gov.uk).