HM Revenue & Customs

The Bank Levy (Loss Absorbing Instruments) Regulations 2020

Who is likely to be affected

Banks within the charge to Bank Levy which have overseas subsidiaries that have issued loss absorbing instruments.

General description of the measure

These regulations provide detailed specifications for the Bank Levy tax treatment of loss absorbing instruments (such as shares and certain convertible debt) issued by overseas subsidiaries of UK resident entities. If these instruments meet certain specified conditions set out in these regulations, then they can be deducted from equity and liabilities otherwise chargeable to the Bank Levy.

Policy objective

These regulations ensure the new Bank Levy tax rules that take effect from 1 January 2021 work as intended for loss absorbing instruments where UK entities hold such instruments issued by overseas subsidiaries and where the UK entity has itself issued equity and liabilities.

Background to the measure

The Bank Levy is a tax on the balance sheet equity and liabilities of banks which was introduced in 2011 with the purpose of encouraging banks to move away from risky funding models and of ensuring banks make a fair tax contribution. The scope of the charge currently includes the equity and liabilities of non-UK subsidiaries of UK headquartered banking groups and of UK sub-groups of foreign headquartered banks.

At Summer Budget 2015 the government announced that, in line with the evolving regulatory landscape and as part of wider bank tax changes, the Bank Levy would be re-scoped from 1 January 2021 and would be levied solely on the UK balance sheet equity and liabilities of banking groups.

New Bank Levy tax rules were enacted in Schedule 9 to Finance Act 2018 (FA 18) giving effect to the reduction of the scope of Bank Levy. FA 18 provided for deductions for loss absorbing instruments where certain conditions were satisfied. When FA 18 was enacted in March 2018, the Bank of England’s regulatory approach for loss absorbing instruments had not yet been published. Therefore, provision was made for regulations to be made once the Bank of England’s approach was decided, to specify the detailed conditions for loss absorbing instruments to come within scope of the deduction.

These regulatory requirements have now been finalised and regulations drafted. The purpose of these tax regulations is to provide the specific conditions for loss absorbing instruments so that there is certainty about the scope of the deduction introduced by FA 18 with effect from 1 January 2021.

A tax information and impact note was published on 13 September 2017 and gives further information on the background to changes to Bank Levy.

These regulations will be the subject of a short consultation in the summer of 2020.

Detailed proposal

Operative date

The measure will have effect for chargeable periods ending on or after 1 January 2021.

Current law

The current law is in Schedule 19 to the Finance Act 2011 (FA 11).

Proposed revisions

Schedule 9 to FA 18 introduced new rules amending Schedule 19 to FA 11. These new rules reduce the scope of the Bank Levy for chargeable periods ending on or after 1 January 2021 so that it is only chargeable on UK balance sheet equity and liabilities.

The new rules included Step 3 of paragraph 15N(1) of Schedule 19 which provides for a deduction from chargeable equity and liabilities for loss absorbing instruments issued by overseas subsidiaries if paragraph 15X of Schedule 19 applies.

Paragraph 15X provides for assets of a UK group entity representing loss absorbing instruments issued by overseas subsidiaries to be deducted from UK issued loss absorbing liabilities. A corresponding adjustment will be made against UK liabilities comprising either tier one capital (such as ordinary shares and reserves) or against other loss absorbing instruments, depending on which of those two categories the non-UK issued loss absorbing equity and liabilities fall within.

'Loss absorbing instruments' were defined in paragraph 15V of Schedule 19 as:

a) tier one capital equity and liabilities; and
b) other instruments.

In both cases these must satisfy loss absorbing capacity or recapitalisation (LACR) requirements imposed by a regulator, with paragraph 15V(4)(b) providing regulation-making powers to specify the meaning of LACR requirements.

These powers have been used to make regulations specifying that a LACR requirement will be defined as one which meets a "relevant requirement", which will in turn be defined as requirements imposed by the Bank of England by a direction under section 3A(4) of the Banking Act 2009 and in compliance with the Bank Recovery and Resolution (No. 2) Order 2014, and non-UK requirements that are comparable to the Bank of England's requirements.

Paragraph 15W of Schedule 19 sets out conditions regarding which assets can be deducted from which liabilities. Powers were included to specify the conditions loss absorbing instruments must meet to qualify.

These regulations use these powers to specify that loss absorbing instruments issued by an overseas subsidiary must be held by a UK entity for the purpose of satisfying a LACR requirement.

These regulations also use these powers to introduce a requirement concerning the UK entity's liabilities from which loss absorbing instrument assets can be deducted. The regulations require that such liabilities have been issued for the purpose of satisfying LACR requirements of a relevant regulator.

Summary of impacts

Exchequer impact (£m)

2020 to 2021	2021 to 2022	2022 to 2023	2023 to 2024	2024 to 2025	2025 to 2026
nil	nil	Nil	nil	nil	nil

This measure is not expected to have an Exchequer impact.

Economic impact

This measure is not expected to have any significant economic impact.

Impact on individuals, households and families

This measure has no impact on individuals as it only affects banks. There is no impact on family formation, stability or breakdown.

Equalities impacts

It is not anticipated that there will be impacts for those in groups sharing protected characteristics.

Impact on business including civil society organisations

This measure is expected to have a negligible impact on around 30 banks. One-off costs for these businesses will include familiarisation with the new rules. There are not expected to be any continuing costs. Customer experience is expected to remain broadly the same as the change simply clarifies the conditions of the tax rules. This measure is not expected to impact on civil society organisations.

Operational impact (£m) (HMRC or other)

There are no financial consequences for HMRC.

Other impacts

Other impacts have been considered and none has been identified.

Monitoring and evaluation

The measure will be monitored through information collected on tax returns and through communications with affected taxpayer groups.