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The Bank Levy Team
Room 2/E1
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

BY POST AND BY EMAIL (banklevy@hmtreasury.gsi.gov.uk)

5th October 2010

Dear Sir

Re: Bank Levy Consultation

We are grateful for the opportunity to comment on the proposals relating to the introduction of the Bank Levy as set out in the discussion document of July 2010.

By way of background, the City of London Law Society ("CLLS") represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response has been prepared by the CLLS Revenue Law Committee.

Our comments on the consultation document are as follows.

GENERAL

It is disappointing in the light of the principles outlined in "Tax Policy Making- a new approach" that consultation has only taken place at the latter part of stage 2 of the policy making process once the policy option had been identified. It would have been preferable for there to have been consultation at an earlier stage to consider the wide range of options in this area. We have a concern that unilateral imposition by the UK of a levy of this kind will have a harmful effect on the competitiveness of the UK as a financial centre and it is therefore particularly important to mitigate any resulting damage that the levy is seen to be correlated with its policy aims, fair as between different institutions and certain and predictable in its application.

You have included in that document at Section 5 a summary of the questions for consultation, and our comments address those questions in turn to the extent that we have comments. Terms used follow the discussion document.

DEFINITION OF BANK AND BANKING GROUP

We understand the intention to be that UK Banking Groups will be charged to the levy by reference to the liabilities in their consolidated balance sheets while other UK banks in non- Banking Groups will be charged only on the liabilities of the bank's solo balance sheet. This raises the possibility of considerable competitive distortion and in the light of the policy intention to influence bank funding arrangements it would have been better to identify liabilities directly related to bank funding as the tax base. Pension liabilities, tax liabilities and liabilities related to non banking activities are not correlated to the policy objective of the levy.

The definition of Banking Group will have a critical impact on a group's overall liability. The definition used in the payroll tax provisions will tend to draw groups into the definition of Banking Group This is because the exempt activities exclusion is set at a de minimis threshold (90% of income being derived from exempt activities) and because a company will be within a Banking Group if applying accounting definitions it has a UK Bank as a subsidiary. In the context of payroll tax this was of less concern because the charging provision had an inherent limit on the scope of the tax because it operated only on earnings of banking employees. There is no similar inherent limitation in the design of Bank Levy. This could result in groups with a relatively modest banking activity falling within the tax and being charged on their entire liabilities. The use of accounting concepts will not resolve this difficulty. If the preferred approach set out above is not adopted then at least a higher threshold should be adopted within the definition of Banking Group.

TAX BASE

Retail Deposits

Limiting the exclusion of retail deposits to those which are insured by some form of state guarantee will leave a large range of retail deposits within the Bank Levy. It is likely that many of these deposits would represent stable funding. Retail deposits can be defined (as for example in the FSA Handbook BIPRU12.5.20) as deposits received from consumers. BIPRU also offers a classification system for retail deposits between Type A and Type B. We note however that there is a higher level of subjective analysis involved in this classification than would be usual in tax legislation. These definitions are also directed at a stress test once a liquidity crisis has hit a bank whereas the policy objective of the Bank Levy appears directed at encouraging banks to have a funding structure which would avert such a crisis. The simplest and most objective approach would be to simply exclude consumer deposits and consumer held bonds.

It is not apparent why long term retail deposits (to the extent not already excluded) should not benefit from the reduced rate afforded to long term wholesale deposits.

Netting Derivatives

We would support the Basle II approach to netting requirement which is based on the legal analysis of the Bank's exposure in a case of default as this would seem to correlate most closely to the policy objectives of the Bank Levy. We would also suggest that where the Basle II requirements are met netting should extend to other assets and liabilities.

This can in particular assist in facilitating the operation of group treasury arrangements. The critical issue should be to measure the Bank's exposure and if that is legally limited to the net position, it is the net position which should be measured.

Other

Double taxation in respect of levies imposed in more than one jurisdiction is an important area to be addressed. We do not believe this can be answered through the operation of double taxation treaties and must therefore be addressed by unilateral relief. We consider this particularly important because of the likely cascade effect of the tax. By cascade effect we mean that (as Banks will be likely to pass the cost of the Bank Levy on to their customers) a funding Bank may pass on its Bank Levy cost to a Bank it funds and that Bank will in turn pass on that cost together with its own Bank Levy cost to its borrower and so on. This is likely to amplify distortions inherent in the system and the effect should not be supplemented by double taxation.

We are concerned that the anti-avoidance provisions may prove a source of uncertainty. In particular a boundary treatment between loans of one year and more than one year will mean that modest changes in commercial terms will affect the incidence of the Bank Levy. We do not believe such changes should engage an anti-avoidance provision but it will need to be drafted with care to ensure that is clear. As noted in our introductory remarks in a competitive internationalised business a lack of clarity and certainty in the operation of the levy may have harmful competitive effects. Any anti avoidance provision should be carefully targeted and we have concerns that the form of anti-avoidance proposal suggested in 4.21 of the consultation document would lack the degree of certainty required.

Yours faithfully,



Bradley Phillips

Chair

City of London Law Society Revenue Law Committee

**THE CITY OF LONDON LAW SOCIETY
REVENUE LAW COMMITTEE**

Individuals and firms represented on this committee are as follows.

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