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Dear Sirs

Comments of the Revenue Law Committee on the Draft Legislation for Finance Bill 2011 in relation to the Bank Levy

The City of London Law Society ("CLLS") represents approximately 14,000 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 in respect of the draft legislation dealing with the Bank Levy has been prepared by the CLLS Revenue Law Committee.

We are grateful for the opportunity to comment on the draft Bank Levy legislation. We are pleased that the outcome of the extensive consultation has seen many of the issues raised followed through into the draft legislation.

We recognise that in order to minimise the compliance burden for banks it has been necessary to draw together taxation, accounting and regulatory concepts so that banks can so far as possible determine their liability from information which is already collected for reporting purposes. Blending these regimes involves a risk that experience of the practical aspects of the legislation will throw up areas of uncertainty.

Against this background we are disappointed that the legislation has been drafted in a somewhat mechanistic approach which means that the purpose and narrative of the legislation is quickly lost in the detail of the provisions. Experience has shown that to ensure a pragmatic interpretation of complex legislation the purpose of the legislation is clearly stated.

We feel that in some areas the drafting could have been designed to help maintain the legislative narrative. The approach to cross referencing for example hinders the reading of the legislation. By way of example sub-paragraphs 18(8) to (15) provide for netting of assets and liabilities in the context of a foreign banking group. The provisions apply where an entity M whose equity and liabilities are taken into account in calculating the levy has liabilities with a party N outside the relevant foreign banking group, N has corresponding liabilities to M and there is an enforceable agreement between N and M for the net settlement of those assets and liabilities on an insolvency event. Sub-paragraph 9(b) identifies which parties these rules may apply to and refers to any member within sub-paragraph 2(b) or (c), but those paragraphs in turn refer to an entity within sub-paragraphs 17(10) and 17(11). It would have helped the reader if 17(10) and 17(11) had identified the relevant entities as say a Type B Entity or a Type C entity and sub-paragraph 18(8) had simply referred to a Type B Entity (see sub-paragraph 17(10)) or a Type C entity (see sub-paragraph 17(11)).

It is also unhelpful that there is substantial repetition. For example paragraphs 20(8) to (15) substantially repeat the requirements for netting set out in sub-paragraphs (8) to (15) in the context of relevant non-banking groups and the provisions are again repeated in the context of UK banks and foreign banks which are not members of a group in sub-paragraphs 22 and 25. Although the application is not identical in as much as the class of entities which can apply netting is slightly different the tests and consequences of applying netting are substantially the same and could have been set out once. A similar criticism can be made in relation to other provisions such as those dealing with collateralised liabilities.

We also find the language used in the anti-avoidance provision in paragraph 45 odd. Broadly paragraph 45 provides that where tax motivated arrangements have the effect of reducing the liability to Bank Levy the liability is to be calculated as if the arrangements did not have that effect. However the anti-avoidance provision does not apply to arrangements which change the liabilities of the relevant entity on an ongoing basis. This is clearly consistent with the policy objective of using the Bank Levy to encourage banks to finance themselves on a long term basis.

The drafting provides that the effect of tax motivated arrangements is to be ignored, but then goes on the say that if the arrangement has an ongoing effect then the arrangement is not to be ignored with the result presumably that its effect is not ignored.

We find this confusing. It would have been clearer to say that paragraph 45(4) shall not apply to the extent the arrangements fell within sub-paragraphs (7) to (12).

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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