Bank Levies: An Innovation in Post-Crisis Bank Taxation

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Bank levies have been implemented broadly in Europe in differing ways. This paper offers an analysis of the UK bank levy, compares it to the levies in France and Germany, and outlines the US position. It particularly highlights the marked instability which has characterised the UK levy and the general inadequacy of the scale of the levies.

KEYWORDS: bank levies, bank taxation, financial crisis, bank resolution, single resolution mechanism, risk reduction, competitiveness

Bank levies are a targeted tax on the banking sector that have been introduced in various European countries as part of financial reform efforts in the aftermath of the financial crisis. They are broadly designed to extract extra revenue from the sector for a number of reasons:

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(i) to recoup the costs of the financial sector bailouts; (ii) to compensate the taxpayer for the implicit subsidy the sector enjoys; (iii) to encourage a move to more stable funding; (iv) to reflect the risk the sector poses to the economy; and (v) as a means of funding a crisis resolution regime. They are structured differently across different countries, in terms of the rate of the levy and the basis upon which it is applied, although the new European resolution regime under the Bank Reconstruction and Resolution Directive will lead to some harmonisation going forward. Although levies have been widely implemented, they have attracted surprisingly little analysis in the scholarly literature. This is in contrast to the proposal for a financial transactions tax which generated massive controversy.

This article addresses this major lacuna in the literature by providing a comparative analysis of the key features of the bank levies imposed in the UK, France and Germany, as well as the proposal in the USA. The article is in six sections. The first provides the background to the levies. The second provides an analysis of the bank levy in the UK. The third section looks at the French bank levy (*la taxe de risqué systemique*) and the fourth at the German bank levy (*Bankenabgabe*). The fifth section summarises the moves to implement a bank levy in the USA, while the sixth section concludes.

I. BACKGROUND TO THE BANK LEVIES

The enormous costs of the financial sector rescue programmes and resulting public anger led to a broad debate in Europe and North America on the taxation of the banking sector and financial system. In 2009, the IMF was asked by G20 leaders to prepare a report on "how the financial sector could make a 'fair and substantial' contribution to meeting the costs associated with government interventions to repair it."[1] The IMF noted that:

[1] S Claessens, M Keen & C Pazarbasioglu: *Financial Sector Taxation: The IMF's Report to the G20 and Background Material* (Washington DC: IMF, September 2010) p.iii.

> "The question how best to reconfigure the tax system to serve this purpose – while aligning it with a regulatory regime that itself is under significant reform – goes to the core of the difficulties faced in dealing with financial system failures. Surprisingly, previous academic work and policy debates provided very little guidance in this critical subject."[2]

In response, the IMF recommended two separate taxes each with a particular objective:

- A *Financial Stability Contribution* (FSC) that would be linked to a credible and effective resolution mechanism. The FSC would be a "levy to pay for the fiscal cost of any future government support to the sector. This could either accumulate in a fund to facilitate the resolution of weak institutions or be paid into general revenue."
- A *Financial Activities Tax* (FAT) that would be "levied on the sum of the profits and remuneration of financial institutions, and paid to general revenue." This FAT could be used to raise "any further contribution from the financial sector that is desired."[3]

The IMF's proposal was that the FSC "would be paid by all financial institutions, initially levied at a flat rate (varying though by type of financial institutions) but refined thereafter to reflect individual institutions' riskiness and contributions to systemic risk—such as those related to size, interconnectedness and substitutability—and variations in overall risk over time."

In response to these proposals, many Governments introduced a bank levy which combines these two taxes: on the one hand, serving as a contribution to the fiscal costs of support to the sector (past and future), and on the other serving as an extra levy on the sector,

[2] Ibid.

[3] *Financial Sector Taxation*, note 1 above, p.3.

beyond what is due under general taxes, and as a response to high levels of remuneration in the sector.

In 2011 and 2012, bank levies were introduced in Austria, Belgium, Cyprus, France, Germany, Hungary, Iceland, Korea, Latvia, the Netherlands, Portugal, Romania, Slovakia, Slovenia, and the UK.[4] Sweden had introduced a levy in December 2009.[5] There are notable inconsistencies in the design and rate of the levy across the different countries.

In June 2010, the UK, French and German Governments issued a joint statement announcing that they were introducing a bank levy in light of agreement in the G20 that the financial sector should make a "fair and substantial contribution" towards the costs of repairing itself:

> "All three levies will aim to ensure that banks make a fair contribution to reflect the risks they pose to the financial system and wider economy, and to encourage banks to adjust their balance sheets to reduce this risk. The specific design of each may differ to reflect our different domestic circumstances and tax systems, but the level of the levy will take into consideration the need to ensure a level playing field."[6]

The design, rate and chronology of the levy have differed markedly in the three countries, and each levy has been used for different purposes. The domestic policy environment has

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[4] *Bank Levies: Comparison of Certain Jurisdictions* (London, KPMG, June 2012); *Bank Levy Information* (Oxford University Centre for Business Taxation, October 2013), *http://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Docs/Publications/Working_Papers/Series_13/BankLevydata.pdf* [Accessed February 3, 2015].

[5] *Bank Levy Information*, ibid, pp.30–31.

[6] *Joint Statement by the French, UK and German Governments on Bank Levies* (HM Treasury, 22 June 2010), *http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/junebudget_joint_statement.pdf* [Accessed February 3, 2015].

proven to be far more significant in the levy's design than the emphasis on ensuring a level playing field. However, it is difficult to isolate the impact of the levy on banking competitiveness because its introduction has coincided with a range of significant changes in the policy and regulatory environment across the different countries.

II. THE BANK LEVY IN THE UK

The UK is so far the only country with a truly global financial centre to introduce a bank levy. It was introduced on the 1 January 2011 with the policy objective of moving the sector towards less risky, more longer-term funding, and to extract a fair and substantial contribution to the public purse which reflected the implicit subsidy the sector received and the risks that the banking sector posed to the wider economy. As a result, the levy was given a dual objective of a) encouraging a move to longer-term, less risky funding; and b) raising £2.5 billion per year for HM Treasury (the revenue target). It was established as a levy on liabilities above a £20 billion threshold, with a half rate charged on liabilities with one year or more to maturity at the assessment date. This provided a tax incentive for banks to move to longer term funding sources so as to reduce their liability for the levy.[7]

A. Labour's Bonus Levy

In the face of a huge public outcry over the abuses revealed by the financial crisis and the costs of public support programmes to the financial sector, the UK's then Labour Government announced in 2009 a "special one-off levy of 50 per cent on any individual discretionary bonus above £25,000."[8] The tax was to be paid by the bank, not the employee, and the Government anticipated that the tax would raise approximately £500 million. The then Chancellor, Mr Darling, stressed that the objective of the levy was to alter behaviour in

[7] See A Seely, *Taxation of Banking* (House of Commons Standard Note SN5251, 27 May 2014).

[8] HC Deb 9 December 2009 c367.

the sector – to tackle the bonus culture and excessive risk taking which had led to the crisis – rather than revenue raising:

> "All we are saying to banks … is we think you should not be paying bonuses at this stage, you should be keeping that money in the bank, but if you do then there will be a levy on that payroll payable by banks. … The reason we have introduced this measure – and it is not a great revenue raiser; it does not bring in that much – is to send a clear signal that we need to change behaviour."[9]

In the event, the tax raised £3.45 billion for the Treasury in 2010,[10] but, Mr Darling said later in 2010 that:

> "I think it [the bonus tax] will be a one-off thing because, frankly, the very people you are after here are very good at getting out of these things and … will find all sorts of imaginative ways of avoiding it in the future."[11]

B. The Coalition's Bank Levy

In June 2010, the new Coalition Government decided not to continue this bonus tax and instead introduced a bank levy which would come into effect in January 2011. In announcing it, the Chancellor stated:

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[9] Mr Darling, oral evidence before the Treasury Select Committee hearing on the Pre-Budget Report 2009, Wednesday 16 December 2009, Q243, *http://www.parliament.the-stationery-office.co.uk/pa/cm200910/cmselect/cmtreasy/180/9121602.htm* [Accessed February 4, 2015].

[10] Office of Budget Responsibility, *Economic and Fiscal Outlook March 2011* (London: The Stationary Office, 2011), p.103, Table 4.7.

[11] 'Supertax on bankers failed, says Darling', *Financial Times*, 2 September 2010.

> "The failures of the banks imposed a huge cost on the rest of society, so I believe that it is fair and right that in future banks should make a more appropriate contribution reflecting the many risks that they generate."[12]

Further:

> "From January 2011, we will introduce a bank levy. It will apply to the balance sheets of UK banks and building societies, and to the UK operations of banks from abroad. There will be deductions for tier 1 capital and insured retail deposits, and a lower rate for longer maturity funding. Smaller banks with liabilities below a certain level will not be liable for the levy. Once fully in place, we expect the levy to generate over £2 billion of annual revenue."[13]

Following a consultation with the banking industry,[14] the final details of the levy were announced in December 2010.[15] The levy would apply to:

- The global consolidated balance sheets of UK banking groups and building societies;
- The aggregated UK subsidiary and branch balance sheets of foreign banks and banking groups operating in the UK; and
- The balance sheets of UK banks in non-banking groups.

The first £20 billion in liabilities were excluded, as well as the following:

- Tier 1 capital;

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[12] HC Deb 22 June 2010 cc175.

[13] Ibid.

[14] *Bank Levy – A Consultation* (London: HM Treasury, July 2010).

[15] *Bank Levy* (HM Revenue & Customs: Tax Information and Impact Note (TIIN) 1065, December 9, 2010) *http://webarchive.nationalarchives.gov.uk/20130605075729/http://www.hmrc.gov.uk/budget-updates/autumn-tax/tiin1065.pdf* [Accessed 30 January 2015].

- Insured retail deposits;
- Repos secured on sovereign debt; and
- Policyholder liabilities of retail insurance businesses within banking groups.

The rate was initially set at 0.05%, with a half rate of 0.025% for longer term liabilities, i.e. those with more than one year to maturity at the assessment date. This was stated to rise to 0.075%, with a half rate of 0.0375% from 1 January 2012. Estimates of compliance costs from the banking sector ranged from £500,000 to £700,000 initially, with ongoing annual costs of roughly £500,000.[16]

The policy objective of the levy was:

> "to ensure that the banking sector makes a fair contribution, reflecting the risks they pose to the financial system and the wider economy. The Levy is also intended to encourage banks to move away from risky funding models that threaten the stability of the financial sector and the wider economy."[17]

In explaining the Government's approach to the tax the Exchequer Secretary, David Gauke, stated:

> "The levy is a surgical approach, intended to encourage banks to move to less risky funding profiles, and a contribution reflective of economic risk. A tax based simply on profits, such as corporation tax, is not related to risk and will not create the behavioural effect that we believe the banking levy will achieve."[18]

In evidence before the Treasury Select Committee, the Chancellor explained that:

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[16] Ibid, p.4.

[17] *Bank Levy*, note 15 above, p.1.

[18] HC Deb 12 July 2010 c735.

> "When it is fully operational the bank levy is going to raise £2.5 billion and we made it clear that we are targeting a revenue sum rather than a particular rate because we think that is an appropriate contribution that balances fairness with the competitiveness of the UK banking sector."[19]

Because of this feature, the levy has been described as "an unusual tax, because they [the Government] set the amount of revenue to be raised and the methodology revolved around that."[20] Certainly, this is an uncommon approach to formulating tax policy and is a unique feature of the bank levy.

The levy has been problematic from the outset because of the inherent tension between its dual objectives, and it has been described as "a policy with a fault line at its heart."[21] As banks moved to longer-term funding or as balance sheets shrank after the crisis, actual and predicted receipts from the levy fell far short of the revenue target. The Government responded by announcing increases in the rate of the levy in order to hit its revenue target. Consequently, the rate of the levy has been raised nine times between its introduction in 2011 and 2015. It has also been characterised by overlapping announcements where a rise in the levy rate announced in the May Budget, to take effect the following January, has been superseded by a further rise announced in the Autumn Statement (generally in November), to take effect in the January. Moreover, in the summer 2015 budget after the general election, the Government announced that it would now reduce the tax by over 50 per cent between January 2016 and January 2021, and that it would supplement it with a new 8 per cent tax surcharge on the profits of the banking sector, and that by 2021 the base of the

[19] HC 350 2010/11 Qs270, 272 (Ev39-40).

[20] Chris Leslie, MP, speaking in the House of Commons during the debate on the Finance Bill, HC Deb 1 April 2014 c762.

[21] R Milnes, 'Lessons From the Bank Levy', *Tax Journal*, 14 March 2014, p.8.

levy would be narrowed to only UK balance sheet liabilities.[22] As a result, the chronology of the bank levy in the UK has been highly unusual relative to other taxes and it has been deeply unstable and unpredictable. It raises fundamental questions around the stability of the UK tax system, and contradicts the Government's own stated objectives of increasing the "predictability, stability and simplicity" of the UK tax system.[23]

1. A chronology of the UK bank levy

Shortly after the bank levy's introduction, it became apparent that the revenue target may not be met, and on the 8 February 2011 – just one month after the levy had come into effect – the Chancellor announced that:

> "The government initially announced that a reduced rate of 0.05 per cent would apply in 2011, recognising the uncertain market conditions prevailing at the time. The government no longer considers this necessary. Therefore, from 1 March the rate of the levy will be 0.1 per cent for two months, to offset the lower rate of 0.05 per cent charged in January and February, before moving to 0.075 per cent."[24]

This was the first of many announcements and changes to the levy as the Government has sought to hit its revenue target.

A chronology of the rate of the levy since 2011 is as follows:

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[22] *Summer Budget 2015* (HM Treasury: HC 264, July 2015), pp.46–47.

[23] David Gauke MP, Exchequer Secretary to the Treasury: *The New Approach to Tax Policy Making: A Response to the Consultation* (HM Treasury & HM Revenue & Customs: December 2010), p.3.

[24] *Bank levy to be increased raising £800m more in 2011* (HM Treasury: Press Release, 8 February 2011), *https://www.gov.uk/government/news/bank-levy-rates-to-be-increased-raising-800m-more-in-2011* [Accessed January 30, 2015].

- Bank levy first announced in June 2010, to come into effect on 01 January 2011, at a rate of 0.05 per cent for 2011 and 0.075 per cent from 2012 (longer-term liabilities subject to a half-rate);
- 01 January 2011 – 28 February 2011: 0.05 per cent for short-term liabilities and 0.025 per cent for long-term liabilities;
- On 08 February 2011, Chancellor announced that the rate of the levy would be increased from 01 March 2011 to 0.1 per cent for 2 months to offset the lower rate of 0.5 per cent that had initially been introduced, and then would move to 0.075 per cent. So:
- 01 March 2011 – 30 April 2011: 0.1 per cent for short-term chargeable liabilities and 0.05 per cent for long-term chargeable equity and liabilities;
- 01 May 2011 – 31 December 2011: 0.075 per cent for short-term and 0.0375 per cent for long-term;
- In the Budget on the 23 March 2011, the Chancellor announced the levy would rise from the stated 0.075 per cent (which had only been announced on the 8 Feb), to 0.078 per cent from 01 January 2012, with a half-rate of 0.039 per cent;[25]

[25] *Bank Levy* (HM Revenue & Customs: Tax Information and Impact Note (TIIN) 6123, 23 March 2011), *http://webarchive.nationalarchives.gov.uk/20130605075729/http://www.hmrc.gov.uk/budget2011/tiin6123.pdf* [Accessed January 30, 2015].

- Before this rise had come into effect, in his autumn statement on 29 November 2011, the Chancellor announced that the levy rate would rise to 0.088 per cent and 0.044 per cent from 01 January 2012;[26]
- On 21 March 2012, the Chancellor announced that the levy would increase to 0.105 per cent, with the half-rate increasing to 0.0525 per cent from 01 January 2013;[27]
- Again before this latest rise came into effect, in December 2012 it was announced that the levy would in fact be increased to 0.130 per cent with a half rate of 0.065 per cent from 01 January 2013;[28]
- In the March 2013 Budget, the Chancellor announced that from 01 January 2014, the levy would be raised to 0.142 per cent with a half rate of 0.071 per cent;[29]

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[26] *Bank Levy: Rate Change* (HM Revenue & Customs: Tax Information and Impact Note 637, 6 December 2011), *http://webarchive.nationalarchives.gov.uk/20130605075729/http://www.hmrc.gov.uk/tiin/tiin637.pdf* [Accessed February 2, 2015].

[27] *Bank Levy: 2013 Rate Change* (HM Revenue & Customs: Tax Information and Impact Note 899, 21 March 2012, *http://webarchive.nationalarchives.gov.uk/20130605075729/http://www.hmrc.gov.uk/budget2012/tiin-0899.pdf* [Accessed February 2, 2015].

[28] *Bank Levy: 2013 Rate Change* (HM Revenue & Customs: Tax Information and Impact Note 1002, 11 December 2012), *http://webarchive.nationalarchives.gov.uk/20130605075729/http://www.hmrc.gov.uk/tiin/2012/tiin1002.pdf* [Accessed February 2, 2015].

[29] *Bank Levy 2014 Rate Change* (HM Revenue & Customs: Tax Information and Impact Note 4004, 20 March 2013), *http://webarchive.nationalarchives.gov.uk/20130605075729/http://www.hmrc.gov.uk/budget2013/tiin-4004.pdf* [Accessed February 2, 2015].

- In his autumn statement on 5 December 2013, again before the most recent rise had been implemented, the Chancellor announced that from 1 January 2014, the levy would instead increase to 0.156 per cent and the half rate to 0.078 per cent.[30]
- In the March 2015 Budget, the Chancellor announced that from the 1 April 2015 – just two weeks later – the levy would rise to 0.21 per cent, with a rise in the half rate to 0.105 per cent.[31]

The levy rate has increased from 0.05 per cent when first introduced in 2011, to 0.21 per cent in 2015, a fourfold rise in just four years. Going forward, the Government's announced trajectory of the levy will be:

- From 01 January 2016, the levy will be reduced to 0.18 per cent;
- From 01 January 2017, 0.17 per cent;
- From 01 January 2018, 0.16 per cent;
- From 01 January 2019, 0.15 per cent;
- From 01 January 2020, 0.14 per cent;
- And from 01 January 2021, 0.10 per cent.

In addition, from 01 January 2016, bank profits will be subject to a new, supplemental tax of 8 per cent, in addition to their usual liability to corporation tax. The base of the levy will,

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[30] *Bank Levy 2014 Rate Change* (HM Revenue & Customs: Tax Information and Impact Note [not numbered], 10 December 2013), *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264604/2._Bank_levy_rates.pdf* [Accessed February 2, 2015].

[31] *Bank Levy: Rate Change* (HM Revenue & Customs: Tax Information and Impact Note [not numbered], 18 March 2015), *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413934/TIIN_2068_BL_rate_change_.pdf* [Accessed April 13, 2015].

however, be reduced so that from 01 January 2021, UK headquartered banks will only pay the bank levy on their UK balance sheet liabilities, rather than their global balance sheets.[32]

This rather staggering instability and unpredictability is highly unusual in tax making policy, and it is certainly unusual for a tax increase to be announced to take effect only two weeks later, over-riding previously announced policy. It also clearly contradicts the Government's own policy of restoring the UK tax system's reputation for predictability, stability and simplicity, which is stated to be an important part of promoting the competitiveness of the UK economy. In the Government's own words: "the Government's aim is to reduce the volume and frequency of changes to the tax code and provide greater predictability and transparency in our plans for tax reform."[33]

In late 2010, the new Coalition Government sought to send "out the signal loud and clear that Britain is open for business."[34] As the Government then recognised: "Competitiveness is not a simple matter of tax rates, although they have a bearing, but of the stability of the system as a whole."[35] The Government also committed to "making fewer piecemeal changes to the tax code and slowing down the rate of change. When the Government does introduce changes, it will do so in a more considered way."

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[32] *Summer Budget 2015*, note 22 above; see also *Finance Bill 2015-16* (UK Parliament: Bill 79 2015–16), Part 3, Art. 16 & Schedule 2.

[33] *The New Approach to Tax Policy Making*, note 23 above, p.6.

[34] *Corporate Tax Reform: Delivering a More Competitive System* (HM Treasury & HM Revenue & Customs: November 2010), p.7.

[35] *Principles of Tax Policy* (House of Commons Treasury Committee: Eighth Report of Session 2010–11, Volume I, Report, together with formal minutes, oral and written evidence, 9 March 2011), p.14, *http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/753/753.pdf* [Accessed March 12, 2015].

Nonetheless, given the costs and challenges of moving a major bank's headquarters, the UK headquartered banks have largely had to live with the Government's approach, despite the difficulties the instability must have engendered for planning and anticipating tax liabilities. The two UK headquartered banks with large overseas operations, HSBC and Standard Chartered, have openly discussed moving their headquarters because of the impact of the levy. Whether this was a serious threat or not, the Government does now seem to have recognised that it was undesirable to have constant levy rises, and to have rethought its strategy of how to raise revenue from the banking sector. It is notable that there has by and large been little public discussion of this trajectory of levy rate rises, even in the financial press, because it has tended to be lost in the detail of budget statements. The Government has therefore been able to contravene its own principles of good tax making policy with little public comment or challenge. Yet it is difficult to imagine this approach being taken with more visible taxes such as income tax, corporation tax or VAT.

2. A bank levy banding approach

The 2014 budget and Autumn Statement were the first not to increase the levy rate. Instead, in March 2014 the Government launched a consultation on the feasibility of introducing a banding approach with the objective of increasing "yield predictability and sustainability."[36] Under the proposals, banks would be allocated into different bands according to their size and charged the amount set for that band, with the overall level of revenue raised from the sector unchanged. The biggest banks would then be paying a higher rate than smaller banks, as under the German bank levy.[37] In the consultation, the Government clarified that:

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[36] *A Bank Levy Banding Approach:* Consultation (HM Treasury: March 2014), *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298679/bank_levy_banding_approach_consultation_270314.pdf* [Accessed March 10, 2015].

[37] See below, section IV.

> "The Government believes that these overarching policy objectives remain appropriate and does not intend to change either the target level of revenue raised through the bank levy or the design of the underlying tax base …
>
> Instead, this consultation considers a revenue neutral change to the mechanism by which banks are charged under the levy, which would move away from the existing system of headline rate and towards a banding approach."[38]

Feedback on the consultation raised concerns over significant 'cliff-edge effects' at the margins of the different bands, and the proposal was dropped because it was felt that it would create uncertainty over banks' charges and arbitrary differences between banks' effective tax rates.[39]

3. Tax transparency and the revenue target

As outlined above, the main reason for the marked instability in the rate of the levy has been the Government's attempt to hit its revenue target of £2.5 billion. The amount raised each year has been published in consolidated figures by HM Revenue & Customs. This shows that the total tax only met the revenue target in the latest financial year (2014/15).

[38] *A Bank Levy Banding Approach: Consultation* (HM Treasury: March 2014), p.3.

[39] Written Ministerial Statement by Andrea Landsom, MP, Economic Secretary to the Treasury, 26 June 2014.

Table 1: Corporation Tax, Bonus Tax and Bank Levy Net Receipts

For the Banking Sector (£ billions)

Year	Corporation Tax	Bonus Tax	Bank Levy	Total
2005-06	7.0			7.0
2006-07	7.3			7.3
2007-08	6.6			6.6
2008-09	3.9			3.9
2009-10	2.1			2.1
2010-11	3.5	3.4		6.9
2011-12	1.3		1.6	2.9
2012-13	2.3		1.6	3.9
2013-14	1.6		2.2	3.8
2014-15			2.7	

Data from HM Revenue and Customs[40]

[40] *Pay-as-You-Earn and Corporate Tax Receipts from the Banking Sector* (HM Revenue & Customs: Statistical Release, 29 August 2014), *www.gov.uk/government/uploads/system/uploads/attachment_data/file/348227/PAYE_and_corporate_tax_receipts_from_the_banking_sector_2014.pdf* [Accessed March 13, 2015]; *HMRC Tax & NIC Receipts: Monthly and Annual Historical Record* (HM Revenue & Customs: 23 April 2015), p.6.

In its 2015 budget, the Government increased its forecast for bank levy receipts for the 2017/18 financial year to £3.7 billion.[41] The new changes to the levy are forecast to gradually reduce this to £2.2 billion in 2020–21, but the Government has announced that it expects the overall tax take from the sector to be around £2 billion higher over the 2016–2021 period because of the additional 8 per cent tax on banking sector profits.[42] It does, however, look like the Government has now abandoned its revenue target as the base of the levy, as it stated it is aiming to align bank taxation more closely to profits and capital accumulation, and to "introduce stability into the banking tax regime" by incorporating its plan for the levy up to 2021 in the Finance Bill 2015−16.[43]

The previous revenue target has been described as a "magic figure"[44] and the Government provided no policy documents or evidence detailing how it was arrived at and why this was the appropriate sum given the aims of the levy. In its April 2015 budget, the Government stated that: "with banks now strengthening their balance sheets and returning to profitability, the government believes that the sector should be expected to absorb a greater burden of remaining deficit reduction."[45] Yet the revenue raised to date by the levy is little more than a rounding error in terms of the public sector deficits that the UK Government has run since 2008 and the net borrowing requirement of £80–£100 billion per year since 2008/9,

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[41] *Budget 2015* (HM Treasury: Doc. No. HC 1093, March 2015), Table C.3, at p.110.

[42] *Summer Budget 2015*, note 22 above, p.108, Table C.3: Current Receipts: OBR Forecast, and p.46.

[43] Ibid, p.47.

[44] 'Roundtable Discussion: The Bank Levy', *Tax Journal*, 9 February 2011, *www.taxjournal.com/tj/articles/roundtable-discussion-bank-levy* [Accessed February 5, 2015).

[45] *Budget 2015*, note 41 above, p.61.

compared to approximately £40 billion before the crisis.[46] Equally, it is difficult to see how it materially related to any assessment of the risks which the UK banking sector posed to the broader economy. Such risk is a highly complex and dynamic quantity to assess, and it would have been helpful if the Government had provided some detail on what assessment this figure was based on as this would have given the revenue target transparency and legitimacy. Moreover, the size of the implicit subsidy which the UK banking sector enjoys as a result of Government intervention to prevent failure is estimated to range from £6 billion to £100 billion according to one study.[47] IMF analysis estimated the subsidy's value to the UK's systemically important banks at US$20 to US$110 billion, or roughly 60–90 basis points, so it is particularly difficult to relate a revenue target of £2.5 billion (or even £3.7 billion) to this benefit.[48]

In 2013, the Government conducted a consultation with industry into how the levy was working, and industry respondents pointed to:

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[46] Office for National Statistics, *Statistical Bulletin: Public Sector Finances, December 2014* (UK Parliament: January 2015), p.14, Figure 2 'Public sector net borrowing, 1993/94 to 2013/14', *http://www.ons.gov.uk/ons/dcp171778_392559.pdf* [Accessed February 6, 2015).

[47] J Noss & R Sowerbutts, *The Implicit Subsidy of Banks* (Bank of England: Financial Stability Paper No. 15, May 2012). The authors comment that: "an *implicit* subsidy has neither transparent terms nor an observable price", at p.4.

[48] *Global Financial Stability Report: Moving From Liquidity- to Growth-Driven Markets* (IMF: April 2014), p.104.

> "an apparent tension between the bank levy's revenue target and its aim to incentivise safer balance sheets. They noted that multiple increases to the rate of the levy negatively impact on the certainty of the UK tax system."[49]

Certainly it must have been difficult from a business planning perspective if a rate rise announced in May to take effect on 1 January is superseded less than a month before implementation by a further rise. The Government appears to have now tacitly accepted this, as the reason given for incorporating the forecast levy changes until 2021 in the Finance Bill 2015 is so that "banks can incorporate tax into their business plans with greater certainty"[50] and it now looks like they have dropped their revenue target.

The Government did say that the £2.5 billion target was:

> "an appropriate contribution in light of the possible costs related to systemic risk that balances fairness with the competitiveness of the UK banking sector. Rate increases announced since the levy was first introduced have been designed to ensure that the value of the contribution remains in line with previous expectations … They also recognise the extent of the support given to banks during the financial crisis."[51]

Given that the Government's own figures suggest that direct support to the banking system during the crisis was over £1 trillion, including cash outlays of £133 billion and guarantees of

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[49] *Bank Levy Review 2013: Summary of Responses* (HM Revenue & Customs: 10 December 2013), para.2.5, *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264718/Bank_Levy_Review_Summary_of_Responses_FINAL.PDF* [Accessed February 25, 2015].

[50] *Summer Budget 2015*, note 22 above, p.47.

[51] *Bank Levy Review 2013: Summary of Responses*, above note 49, para.2.7.

£1,029 billion,[52] it is difficult to relate the annual revenue target of £2.5 billion to such substantial costs to the taxpayer and UK economy. More openness from the Government on how it arrived at this revenue target would have been helpful given that it has been the policy hinge for the levy and its manifest instability over the last four years.

4. The bank levy and corporation tax

In response to the recession, there has been a gradual reduction in UK corporation tax from 28 per cent in 2010 to 20 per cent in 2015. One of the main purposes of the bank levy from the outset was to offset the reduction in corporation tax for the banking sector, so that the Government would not be perceived as giving banks a tax cut in response to the crisis. The Exchequer Secretary told the House of Commons that: "the bank levy yield far outweighs the benefits of the corporation tax [cut] for banks"[53] and the Budget Report noted that it would: "result in a rebalancing of the burden of taxation between banking and other sectors."[54]

However, the contribution of the banking sector to corporation tax has fallen sharply since the crisis. As the figures from HM Revenue & Customs above highlight, corporation tax receipts from the banking sector have fallen from £7.3bn in 2006–07, to just £1.6bn in

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[52] National Audit Office, *Taxpayer Support for UK Banks: FAQs*, 'How much support did the Government provide to UK banks?', *http://www.nao.org.uk/highlights/taxpayer-support-for-uk-banks-faqs/#* [Accessed February 25, 2015].

[53] HC Deb 12 July 2010 c734, and see debate in the House of Commons on this issue, HC Deb 12 July 2010 c729-735.

[54] *Budget 2010* (HM Treasury: HC 61, June 2010), p.26, para 1.63, *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/248096/0061.pdf* [Accessed February 25, 2015].

2013–14.[55] Although bank profits have fallen since the crisis, one could question whether the £2.5 billion revenue target is enough to offset the benefit of an eight percentage point decline in corporation tax, and question how the Government calculated the rate of the levy over time relative to the decline in corporation tax revenues.[56]

In 2011, a Freedom of Information Request was submitted to HM Treasury requesting disclosure of all records regarding the Chancellor's statement that the rise in the bank levy rate in the 2011 budget would offset the gains to the banks from the fall in corporation tax, as well as all correspondence between HM Treasury ministers, officials and advisors relating to the rise in the bank levy. The Information Commissioners Office acknowledged that:

> "The financial support provided in recent years to the banking sector and the levels of tax being paid by the banks is clearly an issue that has aroused a lot of public debate … [and] …there is a significant public interest in the public understanding how the Government has formulated its policy in this area."[57]

Nonetheless, the Information Commissioner upheld HM Treasury's decision not to release the information on the basis that: "it was seeking to protect the policy space needed for the effective consideration of Budget tax policy options."[58]

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[55] *Pay-as-You-Earn and Corporate Tax Receipts from the Banking Sector*, note 40 above, 6; see also *Total Tax Contribution of UK Financial Services, Seventh Edition* (City of London Corporation: December 2014).

[56] These are aggregate figures; as the levy falls more heavily on UK financial institutions who cannot shift operations overseas to avoid the levy, it may be that their particular payments under the levy will offset the benefit from the decline in corporation tax.

[57] Freedom of Information Act 2000 Decision Notice (Information Commissioners Office: 30 April 2012, ref. FS50424236), paras.13 & 14.

[58] Ibid., para.19.

One reason for the decline in the corporation tax burden on the banks since the crisis has been the use of carried forward losses to offset their liability. This has become a new area of interest for the Government in bank taxation. In the Autumn Statement of December 2014, the Government announced a bank loss-relief restriction to be introduced on 1 April 2015 to "restrict the proportion of bank's annual taxable profit that can be offset by carried-forward losses to 50 per cent."[59] This includes trading losses, non-trading loan relationship deficits, and management expenses. The measure was explained on the following grounds:

> "Significant losses have been accumulated in the banking sector, a consequence of banks' performance during the financial crisis and the costs associated with subsequent misconduct and misselling scandals. The Government considers it inequitable that these losses can now be used to eliminate tax on recovering profits. It will therefore restrict the rate at which these loses can be offset against taxable profit, increasing bank's corporation tax payments during this period of fiscal consolidation."[60]

In the 2015 Budget, this was followed up by an announcement that the Government will make compensation payments non-deductible for corporation tax purposes. UK banks have paid out billions of pounds of compensation for mis-selling scandals such as payment protection insurance and face further payments of tens of billions for interest rate swaps mis-selling. The Government noted that it "believes that it is unacceptable that banks' corporation

[59] *Corporation Tax: Bank Loss-Relief Restriction* (HM Revenue & Customs: Tax Impact and Information Note 6182, 3 December 2014), p.1, *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/382332/TIIN_6182_ct_bank_loss_relief.pdf* [Accessed February 10, 2015].

[60] Ibid.

tax receipts continue to be depressed by compensation associated with widespread misconduct in the sector."[61]

A rationale for increasing the bank levy rate in April 2015 was the fact that "banks are now strengthening their balance sheets, improving their capital ratios and returning to profitability".[62] Through raising the levy rate and restricting the use of carried forward losses and deductibility of compensation payments, the Government seemed resolved to ensure that banks are tapped to address the fiscal deficit. The Government has now announced that corporation tax will fall to 19 per cent in 2017 and 18 per cent in 2020, but the banking sector will have to pay an extra 8 per cent tax on their profits. By 2020 then, the UK banking sector will be paying 26 per cent tax on profits, which is the lowest in the G7 countries, plus a 0.1 per cent levy on UK balance sheet liabilities.[63]

5. Impact on competitiveness & the city of London

As the levy is still a reasonably new tax that comes at a time of many changes to regulatory rules, it is very difficult to isolate impacts that can be attributed directly to the bank levy, either on the City of London as a destination for financial business, or on the competitiveness of UK headquartered banks in international markets.[64] Intuitively, the levy impacts the cost of business for UK headquartered banks and may be putting them at a fractional disadvantage against other international banks in competing for international banking business, particularly US banks that are not subject to a levy. This has been tacitly recognised by the Government, as the announcement that the bank levy will only be applied to the UK operations of UK

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[61] *Budget 2015*, note 41 above, p.61.

[62] *Bank Levy: Rate Change*, note 31 above.

[63] *Summer Budget 2015*, note 22 above, pp.47 & 54.

[64] 'Bank levy is ripe for reform as lenders cannot be vilified forever', *Financial Times*, 11 May 2015.

headquartered banks by 2020 aims to "reduce the impact of tax on the competitiveness of UK banks' overseas operations".[65] As it is a tax on assets rather than profits, the levy may possibly at the margins be making less profitable business units unviable, though it remains to be seen whether banks will withdraw from particular business lines because of it.

It is clear however, that the burden of the levy is currently falling disproportionately on the big four banks: Barclays, HSBC, Lloyds Banking Group and RBS. In the four years of the bank levy's existence, Barclays has paid £1.636 billion;[66] HSBC £1.94 billion;[67] RBS £925 million;[68] and Lloyds Banking Group £860 million.[69] Between them they paid two thirds of bank levy receipts between 2011 and 2014.[70] It is ultimately a public policy choice whether competitiveness of the big banks is prioritised over other considerations. Given that the largest banks arguably pose the most substantial risks to the UK economy and benefit from the largest implicit subsidy, this is consistent with the Government's policy objective of

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[65] *Summer Budget 2015*, note 22 above, p.47.

[66] Barclays paid £462 million in 2014; £504 million in 2013; £345 million in 2012 and £325 million in 2011. See Barclays plc: *Annual Report 2014*, p.225; *Annual Report 2013*, p.238; *Annual Report 2012*, p.203 & 224.

[67] The annual levy payments were: US$1.1 billion in 2014; US$904 million in 2013; US$472 million in 2012 and US$570 million in 2011 (HSBC Holdings plc reports results in US$). In 2014, 58% of the levy due related to HSBC's non-UK banking activity. See HSBS Holdings plc: *Annual Report and Accounts 2014*, p.5; *Annual Report and Accounts 2013*, p.3; *Annual Report and Accounts 2012*, p.32.

[68] RBS paid £250 million in 2014; £200 million in 2013; £175 million in 2012 and £300 million in 2011. See RBS Group plc: *Annual Report and Accounts 2014*, p.87; *Annual Report and Accounts 2013*, p.32; *Annual Report and Accounts 2012*, p.45 and *Annual Report and Accounts 2011*, p.41.

[69] Lloyds paid £254 million in 2014; £238 million in 2013; £179 million in 2012 and £189 million in 2011. See Lloyds Banking Group plc: *Annual Report and Accounts 2014*, p.36; *Annual Report and Accounts 2013*, p.46; *Annual Report and Accounts 2012*, p.46 and *Annual Report and Accounts 2011*, p.47.

[70] Authors' own calculations based on data from HMRC and the banks' declaration of their bank levy payments in their annual reports 2011–2014.

extracting a fair contribution based on the risk they pose to society. It is also consistent with the proportionate design of the German bank levy.

An outstanding element of uncertainty regarding the UK bank levy is the UK's carve out from the EU Single Resolution Mechanism. Under the EU Bank Recovery and Resolution Directive,[71] a Single Resolution Fund (SRF) is being established as part of the banking union to provide funds to resolve a failing institution. National bank levies will be used to fund the SRF, and national contributions will begin to be mutualised over a phase-in period between 2016 and 2024.

Rather than participating in the SRF, the UK bank levy will continue to be paid into general Government funds, and will not be used to build up a national resolution fund.[72] The Government has stated that it could seek ex post contributions from the banking sector to compensate the taxpayer should a UK bank need to be resolved in the future. The details of such an arrangement are under consideration, but this creates uncertainty as to the future tax burden on British banks.[73]

III. THE BANK LEVY IN FRANCE

France introduced a bank levy – the aptly named *la taxe de risque systemique* (TRS) – on the 1 January 2011, under the guidance of Christine Lagarde during her tenure as French Finance Minister.[74] The stated aim of the levy was to discourage excessive risk taking and to

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[71] Directive 2014/59/EU of the European Parliament and the Council, 15 May 2014.

[72] *Transposition of the Bank Recovery and Resolution Directive* (HM Treasury, July 2014), p.51–53.

[73] *Transposition of the Bank Recovery and Resolution Directive: Response to the Consultation* (HM Treasury: March 2015), p.15.

[74] *TFP – Taxe de risqué systemique des banques* (Bulletin Officiel des Finances Publiques – Impots: April 2014), *http://bofip.impots.gouv.fr/bofip/6632-PGP#* [Accessed February 10, 2015].

compensate the State for the costs of any future resolution of banking crises.[75] There was some discussion as to whether the revenue should be used to fund a targeted resolution fund in France or be paid into general Government funds. The latter option was adopted on the recommendation of the Lepetit Report on systemic risk, authored by the former president of the French financial markets regulator (*Commission des Operations de Bourse*). This was thought to avoid the moral hazard that would flow from institutionalising a dedicated resolution fund.[76]

The French bank levy is potentially wider in scope than the British levy. It encompasses those entities which are regulated by the French prudential supervisory authority, the '*Autorite de Controle Prudentiel*', including: banks, credit institutions, investment companies other than portfolio management, e.g. brokers, market makers and members of Euronext, members of clearing houses and payment institutions and bank holding companies. It includes French subsidiaries of EU headquartered banks but not branches.

It was set at a flat rate of 0.25 per cent on risk weighted assets, as this was felt to be the most targeted way of discouraging excessive risk taking. There is an exemption for those entities whose risk weighted assets are below €500 million, which means that only 16

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[75] 'un double objectif de dissuasion de la prise de risques excessifs et de compensation du cout eventuel de la resolution des crises bancaires'. French Senate, *Projet de loi de finances pour 2011: Articles de la premiere partie* (Parliament of France: Rapport Senat No. 111, 2010–2011), *http://www.senat.fr/commission/fin/pjlf2011/articles/16/164.html* [Accessed February 10, 2015].

[76] J-F Lepetit, *Rapport sur le risque systemique* (French Ministry of Economy, Industry & Employment: April 2010), p.5: "Le rapport privilégie l'affectation du produit de cette taxe au budget général des États plutôt qu'à un fonds de résolution car cette solution apparaît mieux à même de limiter l'aléa moral." Available at: *http://www.ladocumentationfrancaise.fr/rapports-publics/104000185/.*

companies are subject to the levy.[77] The tax take from the TRS is substantially smaller than that from the UK bank levy. It raised €504 million in 2011 and €550 million in 2012, when the French Government decided to double the rate to 0.50 per cent from 1 January 2013.[78] This was specifically because of the shortfall in comparison to the British bank levy.[79] As a result the levy raised €866 million in 2013[80] and €880 million in 2014.[81]

On the 1 January 2014 the tax was raised to 0.539 per cent.[82] The additional 0.039 per cent is to raise €50 million a year towards an assistance fund for local governments, municipalities and hospitals in France that are struggling to meet repayments on toxic structured debt products bought from banks, including the nationalised Franco-Belgian bank Dexia.[83] Many of the loans had embedded interest rate swaps linked to foreign currencies

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77 French Senate, *Projet de loi de finances rectificative pour 2012: rapport* (Parliament of France) *http://www.senat.fr/rap/l11-689-1/l11-689-128.html* [Accessed February 10, 2015].

78 Ibid.

79 Ibid. As the Senate report commented: "le rendement actuel de la taxe de risque systemique est faible en comparaison des taxes equivalents de nos partenaires europeens, notamment de la *bank levy* britannique qui doit rapporter environ 2,6 milliards de livres en 2012. La contribution exceptionnelle, qui double le produit de la taxe de risqué systemique, vise donc a rapprocher le rendement de cetter derniere de ceux des taxes europeennes comparables."

80 Figures from *La taxation du secteur bancaire a un impact sur le financement de l'economie* (Federation Bancaire Francaise: Fiche Repere, 4 March 2014), *www.fbf.fr/fr/files/9DZCFZ/Fiche-taxation-banques-04032014.pdf* [Accessed February 10, 2015].

81 Assemblee Nationale 14eme Leigslature: Question no. 63864 & Response, *Journal Officiel*, 23 December 2014, p.10738.

82 Art. 35 of Finance Law no. 2013-1278 of 29 December 2013.

83 Assemble Nationale, *Projet de loi de finances pour 2014*, Arts.23 & 60, 25 September 2013. The proposed rise to 0.529% was subsequently raised to 0.539% in the enacted Finance Law 2014, see Art.35 of Law no. 2013-1278 of 29 December 2014.

such as the euro-Swiss franc (CHF) exchange rate, which caused interest rate repayments to rise substantially after the crisis, plunging many local government bodies into financial distress. The addition to the TRS aims to make the banking sector contribute directly to the cost of resolving this crisis and to reduce the costs to the State, which guaranteed Dexia's loan book and transferred some toxic debts to a Government-sponsored entity, *la Societe de Financement Locale* (SFIL).[84]

With the introduction of the EU Recovery and Resolution Directive, France is required to begin contributing to a Single Resolution Fund in 2016. Although negotiations are ongoing, it is estimated that the French contribution will be around €15 billion or 20 percent of the fund, which will be funded by a new, additional levy on the banks, the details of which remain to be finalised.[85] Because there is an overlap in terms of the objective of the two levies (funding the costs of systemic risk to society and its resolution), the TRS will be phased out by 2019 on the following sliding scale:

- 0.329 per cent for 2015
- 0.275 per cent for 2016
- 0.222 per cent for 2017

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[84] 'French towns launch debt strike over "toxic" Dexia loans', *Reuters*, 12 October 2012; 'Emprunts toxiques: la taxe systemique payee par les banques relevee', *Weka*, 26 September 2013, *http://www.weka.fr/actualite/finances-locales/article/emprunts-toxiques-la-taxe-systemique-payee-par-les-banques-relevee/* [Accessed February 10, 2015]; 'Emprunts toxiques: une taxe sur les banques pour secourir les hopitaux', *Sudouest*, 24 February 2015, *http://www.sudouest.fr/2015/02/24/emprunts-toxiques-une-taxe-sur-les-banques-pour-secourir-les-hopitaux-1840088-710.php* [Accessed February 10, 2015]; 'Emprunts toxiques: allongement du dispositive d'aide aux collectivites territoriales', *Le Monde*, 15 November 2013. For information on the SFIL see http://sfil.fr/en/ [Accessed April 13, 2015].

[85] See *Le Mécanisme européen de stabilité*, *www.economie.gouv.fr/mecanisme-europeen-stabilite* for details [Accessed February 10, 2015].

- 0.141 per cent for 2018

The part of the levy that was to fund the local Government assistance fund is now established as a separate annual levy of 0.026 per cent.[86]

In the interim the banks will be required to pay both levies plus the levy for the assistance fund, with the one not being deductible from the other. This has caused consternation among the French banks, who have argued that it will constrain their ability to finance economic growth, and that it is contrary to the general principles of French tax law that taxes should not be paid on taxes.[87] The head of the French central Bank, Christian Noyer, has also expressed concerns that the levies will constrain the banks' ability to lend and to support economic growth.[88]

IV. THE GERMAN BANK LEVY

Germany introduced a bank levy on the 1 January 2011 - the *Bankenabgabe*. In contrast to the UK and France, the revenue raised was earmarked for a dedicated restructuring fund – the *Restrukturierungsfonds* – that was set up at the same time.[89] The agency responsible for administering the fund – the *Bundesanstalt Fur Finanzmarktstabilisierung* (FMSA) – has stated: "the bank levy may be understood as the price for the implied public-sector guarantee of a stable financing system. At the same time, it helps curb banks' excessive risk appetite."[90]

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[86] Projet de Loi de Finances Rectificative pour 2014, adopted 9 December 2014, Art.14.

[87] *Projet de loi de finances rectificative: Les banque francaises demandent au gouvernement de renoncer a une nouvelle augmentation des impots* (Federation Bancaire Francaise: Communiques, 12 November 2014).

[88] 'French central bank chief warns bank levies could hurt recovery', *Reuters*, 7 November 2014.

[89] *Restructuring Fund* (FSMA), *http://www.fmsa.de/en/fmsa/restructuring-fund* [Accessed February 10, 2015].

[90] *Bank Levy* (FSMA), *http://www.fmsa.de/en/fmsa/restructuring-fund/bank-levy/index.html* [Accessed February 10, 2015].

The Germany levy is the only one that has been stable from the outset: the rate of the levy has remained unchanged since inception. The levy applies to any institution that carries out regulated banking activity in Germany such as deposit taking and lending, and it includes public sector banks such as the *Landesbanken* and mutual banks such as the *volksbanken.* Non-bank financial institutions such as asset managers are not subject to the levy. It is levied on German domiciled banks, but only on the parts of the business subject to a banking license, i.e. it does not cover non-bank subsidiaries. Subsidiaries of foreign banks operating in Germany are subject to the levy, but branches are not.

In contrast to the French and UK levies, the German levy is structured to be proportionate to bank size – i.e. larger banks pay a higher rate. The levy was designed to reflect the perceived costs that an instutition posed to society from systemic risk. It is therefore similar to the UK's abandoned proposal to introduce a banding approach. The levy is structured in two parts and charged at the following rates:

- Balance sheet liabilities, excluding retail deposits, equity capital and a few other exclusions are charged at:
    - Up to €10 billion 0.02 per cent
    - €10 - €100 billion 0.03 per cent
    - €100 – €200 billion 0.04 per cent
    - €200 - €300 billion 0.05 per cent
    - €300 billion+ 0.06 per cent
- Nominal face value of derivatives, both on- and off-balance sheet: 0.0003 per cent.[91]

[91] *Revenue Statistics 2013* (OECD), p.48; see also *Jahresbeitrag – Ubersicht* (FMSA), *http://www.fmsa.de/export/sites/standard/downloads/Schaubild_Berechnung_Jahresbeitrag.pdf* [Accessed February 10, 2015].

There is a minimum threshold whereby an entity will be exempted from paying if its relevent balance sheet liabilities are less than €300m. This avoids capturing smaller banks with stable, retail deposit-financed funding sources that provide a substantial share of lending to small businesses. As a result, only around 25 per cent of banks are captured by the levy, with the largest commercial banks paying a large share of the levy.[92] The structure of the German levy therefore shifts the burden primarily onto those banks using market funding for their activities, over smaller, more conservatively funded banks. This feature echos the UK half rate for longer-term funding.

The German levy is also distinct from the French/UK levies in that it has an upper limit on banks‘ annual contributions: any annual payment is capped at a maximum of 20 per cent of the bank's annual profits. If the levy payment due is above 20 per cent, the extra is deferred and added to the following year's payment, so long as the combined sum does not itself exceed 20 per cent of that year's earnings. This provides stability and predictabilty for the German banks.

The revenue raised by the German bank levy has been small in comparison to the UK, having raised just over €2billion (roughly £1.4 bilion) over four years. It has been reasonably stable, but appears to be on a declining trend: €590 million in 2011; €580 million in 2012; €520 million in 2013; and €516 million in 2014.[93] The target size of the German restructuring fund that the levy is used for is €70 billion, so at its current rate the levy appears

[92] C Buch, B Hilberg & L Tonzer, *Taxing Banks: An Evaluation of the German Bank Levy* (Deutsche Bundesbank, Discussion Paper No. 38/2014, March 2014), p.13.

[93] *Jahresabschluss 2011 Restrukturierungsfonds und FMSA* (FMSA, Press Release, 14 May 2012); *Jahresabschluss 2012 Finanzmarktstabilisierungsfonds (SoFFin)* (FMSA, Press Release, 13 May 2013); *Bankenabgabe 2013 belauft sich auf 520 Mio. Euro* (FMSA, Press Release, 22 November 2013); *Bankenabgabe 2014 belauft sich auf 516 Mio. Euro* (FMSA, Press Release, 6 November 2014).

to be inadequate to underpin such a resolution fund. The FMSA is empowered to impose extra contributions on banks if it is required to undertake restructuring action, the costs of which cannot be met from this fund.

As from the 1 January 2016, Germany's national resolution fund will begin operating as a national compartment of the EU's Single Resolution Fund, and it will gradually be merged with other national contributions to the Fund over the eight year transition period (2016–2024). The current bank levy will therefore become the German banks' contribution to this new fund, which has a target size of 1 per cent of covered EU deposits, or roughly €55 billion by 2024. Germany has negotiated a compromise with the EU such that smaller banks will only pay a flat rate fee of €1,000 per year. The largest French and German banks will therefore contribute the majority of funding for this mechamism; it is estimated that the German and French banking sectors will contribute roughly €15 billion each.[94] The levy will be based on bank size and perceived contribution to systemic risk, though details are not yet available of the levies that individual German banks will be paying.

V. THE FINANCIAL CRISIS RESPONSIBILITY FEE IN THE USA:

In January 2010, President Obama announced plans for a 'Financial Crisis Responsibility Fee' in the USA which would take effect in June 2010 and apply to financial firms with

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[94] 'German Wins Small-Bank Resolution-Levy Cap in EU Rules', *Bloomberg*, 21 October 2014; Federal Ministry of Finance, *German Government Moves Forward with Package of Measures for European Banking Union* (German Government, Federal Ministry of Finance, Press Release, 9 July 2014); *Compromise Reached over Resolution Fund* (Bundesbank, Press Release, 22 December 2014); B Geier, '2014 Bank Capital Report: Germany', *International Financial Law Review*, 17 November 2014, *http://www.iflr.com/Article/3401095/Search/Results/2014-Bank-capital-report-Germany.html?PageId=201716&Keywords=Germany+bank+capital+report&OrderType=1&PageMove=1* [Accessed February 10, 2015].

assets above US$50 billion.[95] The levy would be charged at 0.15 per cent per year on assets above the US$50 billion threshold at a broad range of financial institutions including: insured depository institutions, bank holding companies, thrift holding companies, insurers or other companies that owned insured depository institutions, and broker-dealers. The fee would be charged on the global consolidated balance sheets of US headquartered institutions, and the US operations of foreign headquartered firms. Tier 1 capital, insured deposits and insurance policy reserves would be exempted. The fee would remain in place for at least 10 years in order to "recover every single dime the American people are owed."[96] The objective of the fee was to recoup all the costs of the Troubled Asset Relief Programme (TARP), which at that point were estimated at US$117 billion.[97] Obama announced that he was proposing that the Financial Crisis Responsibility Fee be imposed on major financial firms "until the American people are fully compensated for the extraordinary assistance they provided to Wall Street"[98] and he urged Wall Street executives:

> "Instead of sending a phalanx of lobbyists to fight this proposal, or employing an army of lawyers and accountants to help evade the fee, I suggest you might want to consider simply meeting your responsibilities. And I'd urge you not to cover the

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[95] White House, *President Obama Proposes Financial Crisis Responsibility Fee to Recoup Every Last Penny for American Taxpayers* (United States Government, White House, press release, 14 January 2010), *http://www.whitehouse.gov/the-press-office/president-obama-proposes-financial-crisis-responsibility-fee-recoup-every-last-penn* [Accessed February 3, 2015]; White House, *Financial Crisis Responsibility Fee Factsheet* (United States Government, January 2010), *http://www.whitehouse.gov/sites/default/files/financial_responsibility_fee_fact_sheet.pdf* [Accessed February 3, 2015).

[96] *President Obama Proposes Financial Crisis Responsibility Fee*, note 95 above.

[97] *Financial Crisis Responsibility Fee Factsheet*, note 95 above.

[98] *President Obama Proposes Financial Crisis Responsibility Fee*, note 95 above.

costs of the rescue by sticking it to your shareholders or your customers or fellow citizens with the bill, but by rolling back bonuses for top earners and executives. And more broadly, I am continuing to call on these firms to … embrace – rather than fight – serious financial reform."[99]

The Financial Crisis Responsibility Fee failed to be enacted into law, but the President has included calls for such a fee each succeeding year in his budget proposals.[100]

In the President's proposed budget for 2016, a fee on financial institutions is again put forward but its objective has slightly changed. In contrast to the Financial Crisis Responsibility Fee, which was specifically aimed at recouping the cost of TARP, the new

[99] White House, *Remarks by The President on the Financial Crisis Responsibility Fee* (United States Government, White House, Press Release, 14 January 2010), *http://www.whitehouse.gov/the-press-office/remarks-president-financial-crisis-responsibility-fee* [Accessed February 3, 2015].

[100] Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2012* (United States Government, February 2011), p.23, *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf* [Accessed February 4, 2015]; Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2013* (United States Government, February 2012), p.26, *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/budget.pdf* [Accessed February 4, 2015); Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2014* (United States Government, April 2013), pp.18–19, *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/budget.pdf* [Accessed February 4, 2015); Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2015* (United States Government, March 2014), Table S-9, p.190, *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/budget.pdf* [Accessed February 4, 2015).

proposal is for a fee of 0.07 per cent on large highly-leveraged financial institutions, designated as the roughly 100 financial firms with assets over US$50 billion. The policy objective of this is: "alongside capital requirements and other tools that help rein in excessive leverage, a financial fee would improve economic stability by attaching a direct cost to leverage for large firms."[101] With both the Congress and Senate now controlled by the Republican party, it seems unlikely that this fee will become law. The Republican in charge of banking policy in the Senate has described the proposal as "dead on arrival."[102]

VI. CONCLUSION

In the aftermath of the financial crisis, there was broad international political agreement on the need for a tool to recover some of the extraordinary financial support provided from the public purse to the banking sector. Following a 2009 IMF report recommending supplemental taxes on the sector, bank levies were widely adopted as a means of doing this. Although a key concern from the outset was to ensure that national bank levies did not undermine the level playing field, in practice, as our analysis has demonstrated, national political priorities have tended to dominate the levy's trajectory in different countries. In the case of the UK and France, the dire post-crisis budget situation has arguably led to a focus on the revenue raised by the levy, which is paid directly into Government funds, over other macroprudential concerns. Certainly it is difficult to explain the marked instabilty in the rate

[101] Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2016* (United States Government, February 2015), p.55, *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/budget.pdf* [Accessed February 4, 2015).

[102] 'Senate's Shelby Says White House Bank Tax is Dead on Arrival', *Bloomberg Business*, 20 January 2015, *http://www.bloomberg.com/news/articles/2015-01-20/senate-s-shelby-says-obama-bank-tax-proposal-is-dead-on-arrival* [Accessed February 4, 2015).

of the UK bank levy in the last four years in any other way. As this analysis has shown, the trajectory of the UK bank levy has been truly extraordinary in tax policy, and even as an experiment in taxing the banks. In the USA, the levy has never been enacted, despite Obama's repeated calls for such a tax to recoup some of the costs of TARP.

In terms of national levys' impact on competitiveness, it is difficult to isolate their effects given that they have coincided with a wide range of other changes to the post-crisis regulatory environment. However, the fact that a levy has not been introduced in the USA must raise a concern that major European-headquartered international banks will be at a fractional disadvantage in competing for business. Whether this should override a concern with macroprudential stability and the capacity to resolve failing institutions in future without using public funds, is fundamentally a political/public policy choice.

Overall, the levy was meant to be a policy tool for internalising some of the costs of systemic risk and it falls heaviest on the major banking groups in the UK, France and Germany. However, it has been set at such a low level that the returns are miniscule relative to the costs of the crisis or the value of the implicit public subsidy bestowed every year upon the banking sector. Although in Europe the levy will from next year be used to build up a targeted resolution fund under the Bank Reconstruction and Resolution Directive, the target size of the fund is €55 billion, which pales in comparison to the actual costs of resolving Europan financial instutions during the latest crisis or the likely costs in any future crisis. There remains significant uncertainty therefore, going forward, as to the path of the levy, and whether its rate will be raised to further strengthen the resolution fund in the event of future market turmoil. This uncertainty is particularly acute for the UK banking sector given both the striking instability that has characterised the levy so far, and the fact that the UK Government will continue to pay the receipts directly into public coffers, and will have to raise funds for the resolution of a failing entity as and when they are required. It seems clear, however, that bank levies are now a reasonably permanent feature of the European banking landscape.