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**Call for Evidence: Review of the UK's AML/CFT regulatory and supervisory regime**

**Response by the Chartered Institute of Taxation**

## 1 Introduction

1.1 We provide our comments on the HM Treasury Call for evidence: Review of the UK's AML/CFT regulatory and supervisory regime.

1.2 The Chartered Institute of Taxation (CIOT) strongly supports the UK's drive to combat money laundering and terrorist financing and recognises the need to make some time sensitive changes to the Money Laundering Regulations (MLRs) to ensure the UK continues to meet International Standards.

1.3 We are also responding separately to the Consultation: Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022.

1.4 The CIOT is an Anti Money Laundering (AML) supervisor and our response needs to be considered in this context and in the context of the market in which tax advisers operate.

1.5 This response does not cover each question of the call for evidence in detail. In some areas we have felt that general comments are appropriate to cover the whole section.

## 2 Executive Summary

2.1 The MLRs should be clear and avoid complexity or ambiguity. Measures of effectiveness in all areas need to be set out clearly.

2.2 A focus on having the correct paperwork in place means that firms often focus on this rather than more meaningful actions to manage and mitigate money laundering risk.

2.3 We see the provision of granular, real time information by law enforcement authorities as key in the fight against money laundering and economic crime. This enables us to act promptly as supervisors and equips firms to take swift action in areas of emerging threat.

2.4 As supervisors we are not in a position to assess which activities required by the MLR have the highest impact on reducing money laundering. Law enforcement are better placed to assess this. However based on what our members tell us we consider client due diligence and suspicious activity reporting are high impact activities.

2.5 Low impact activities include the requirement to obtain criminality checks for the beneficial owners, officers, and managers (BOOMs) in all supervised firms (we have never found any Schedule 3 offences as part of this exercise). There are also a number of mandatory requirements which increase the compliance burdens on small businesses without any evidence they are reducing money laundering (for example the requirement for sole practitioners with no employees to have written AML policies and procedures).

2.6 The current MLRs focus on requirements where clients are dealt with by advisers but where individuals deal with matters outside the regulated sector reports are not required. For example an individual deliberately under declaring income should be reported by their tax adviser (ignoring any privilege reporting exemption) but an individual dealing with their own tax affairs does not come within scope of any reports being made.

2.7 We consider in most cases guidance and education is the most effective way of ensuring our supervised population rectify the administrative failures we come across.

2.8 The lack of high profile court cases (or case studies illustrating out of court action) can give a false impression about the levels of money laundering in the economy.

2.9 In some areas the MLR are very prescriptive whilst in others firms are left to take their own view on how to apply the risk based approach. This makes it hard to determine what actions they should take and as a result many firms appear to be doing more than is required under a risk based approach (for example firms prefer to obtain the same minimum amount of Client Due Diligence (CDD) from clients rather than adopting simplified CDD in appropriate cases).

2.10 In our experience firms do not use reliance when undertaking CDD. It would assist compliance and enable firms to focus more on 'added value' checks on clients if basic ID requirements could be met by referring to centrally held registers with Companies House for example. It would also be helpful if electronic ID providers could be vetted and an approved list of products provided centrally by government.

2.11 We consider it would be useful to be able to view Suspicious Activity Reports (SARs) when undertaking AML visits but consider supervisors should have discretion, using a risk based approach, as to whether to look at the SARs of a particular firm. A number of safeguards would need to be put in place. We consider that improvement to the SARs reporting system itself and feedback from law enforcement to supervisors and firms would be more appropriate to improve SAR quality.

2.12 Sector specific guidance is very useful for firms. However, clearer MLRs would reduce the need for guidance to interpret the legislation. Additionally the process for approving updated guidance currently takes too long.

2.13 We see the value in having professional body AML supervisors who have the knowledge to deal with their sector. We do not have information on the potential effectiveness and efficiency of an alternative structure.

2.14 We can see the value in being accountable to a supervisory body (Office for Professional Body Anti-Money Laundering Supervision (OPBAS)) but would welcome clearer information on how the effectiveness of supervisors is measured and more granular guidance on how effectiveness of professional bodies can be improved. In turn this assists measurement of the effectiveness of OPBAS.

2.15 We welcome the information sharing facilitated by OPBAS to date but would welcome more granular sharing of information by law enforcement.

2.16 We see no need to increase OPBAS powers but consider it would be useful if they also supervised the statutory supervisors in order to ensure consistency throughout the regulated sector.

**Recent improvements to the regulatory and supervisory regimes**

**3 Q1. What do you agree and disagree with in our approach to assessing effectiveness?**

3.1 We agree that in order to be effective the MLRs need to:

- Be well designed and drafted (requirements should be clear with minimal interpretation required);
- Be well understood and applied by the regulated sector;
- Permit non-compliance to be effectively, proportionately and dissuasively addressed by supervisors;
- Result in compliance activity which is focussed towards the most significant threats to the UK system whilst reducing administrative burdens as far as possible.

3.2 Effectiveness in the regulatory and supervisory regimes needs to be assessed but measures of effectiveness in all areas need to be set out.

3.3 We note the primary objective in the Call for Evidence document: 'the regulated sector act to identify, prevent and report suspicious transactions'. Tax advisers are able to identify and report suspicious transactions but they are not responsible for preventing them from occurring.

**4 Q2. What particular areas, either in industry or supervision, should be focused on for this section?**

4.1 The overall focus should be to ensure the MLRs are clear and that complexity is reduced particularly for smaller entities. There is a cost to firms in meeting the requirements of the MLRs and this should be proportionate to the associated risk for the firm.

4.2 Clear regulation also makes it easier for supervisors to enforce requirements and take appropriate disciplinary action for failure to meet the requirements.

4.3 The MLRs should focus on the main threats and the actions which are having an impact on reducing economic crime. A focus on administrative requirements results in an undue emphasis being placed on paperwork rather than crime reduction.

4.4 The MLRs should also align with other economic crime legislation to ensure consistency.

**5 Q3. Are the objectives set out above the correct ones for the MLRs?**

5.1

| **Our comments in relation to each objective are as follows:** | |
|---|---|
| **Objectives** | **Comments** |
| The regulated sector act to identify, prevent and report suspicious transactions | See our answer to question 1 above. Tax advisers are not responsible for preventing suspicious transactions. |
| Supervisors take a risk-based approach to monitoring compliance, and make proportionate and dissuasive use of their powers and enforcement tools | This appears appropriate |
| Accurate and up-to-date Beneficial Ownership information is collected, maintained and made available to competent authorities so as to prevent the exploitation of UK corporate vehicles and other forms of legal personality | This appears appropriate but alongside this there should be consideration of how easy and cheap it is at present for companies to be set up without any regulated adviser being involved. More checks and requirements in relation to company set up would potentially identify the exploitation of UK corporate vehicles. |
| The regulated sector work in partnership with supervisors and the government to improve collective understanding of the ML/TF threat, which in turn ensures compliance activity is focussed on the highest risks and the regulated sector provides valuable information to law enforcement. | Working in partnership is appropriate but this is not simply about the regulated sector providing valuable information to law enforcement. It is essential there is a two way exchange of information.<br><br>Supervisors need up to date information from law enforcement on where money laundering is occurring and what actions our members should be taking to manage and mitigate these specific risks. |

## 6 Q4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?

6.1 It is difficult to assess the effectiveness of the current MLR without data from law enforcement.

6.2 The current MLRs do not recognise the fact that different sectors operate in different ways. Where Tax Advisers do identify proceeds of crime it will typically be long after the event when they come to prepare accounts or tax returns. Most of our discussions with members in relation to suspicious activity reporting relate to tax underpayments or errors where clients are reluctant or refuse to correct matters.

6.3 The MLRs do not recognise or address the fact that some transactions happen without anyone in the regulated sector having sight of them. For example an individual completing their own tax return and deliberately under declaring income would not be subject to the MLR but if an individual were being dealt with by a tax adviser they would have responsibility to report.

**High Impact Activity**

**7 Q5. What activity required by the MLRs should be considered high impact?**

7.1 The definition of 'high impact' is unclear from the call for evidence document but we have taken the meaning to be those activities which contribute most to mitigating the threats and risks of money laundering.

7.2 On this basis the activities which we consider high impact are:

- Client due diligence requirements (and associated risk assessment of clients)
- Suspicious activity reporting

7.3 Whether these are in fact high impact is difficult to assess without feedback from law enforcement. Firms regularly report that they have received no response to their SAR submissions.

7.4 It should be noted that member feedback indicates that the compliance requirements of the MLR do have a high impact on businesses themselves in terms of resources spent in meeting the requirements.

**8 Q6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?**

8.1 Law enforcement would be best placed to provide examples. We are aware of our supervised firms turning clients away as part of their due diligence procedures but as the client's requirements may then be serviced by other firms or dealt with by the clients themselves we are not able to confirm that actions taken have mitigated the threats and risks of money laundering.

**9 Q7. Are there any high impact activities not currently required by the MLRs that should be?**

9.1 The MLRs do not currently set out explicit requirements for firms and sole practitioners to register for AML supervision. Regulation 7 (b) sets out that 'each of the professional bodies listed in Schedule 1 is the supervisory authority for relevant persons who are members of it, or regulated or supervised by it'. This places the responsibility on the supervisor to supervise but there is no clear obligation on the 'relevant person' to seek supervision. Such a provision would assist professional body supervisors with supervisory activity and disciplinary action.

**10 Q8. What activity required by the MLRs should be considered low impact and why?**

10.1 The requirements to submit criminality certificates to supervisors has not resulted in us identifying any Schedule 3 offences amongst the BOOMs of our supervised firms. This obligation has imposed a significant burden on both supervisors and firms and we would question whether this activity has had any impact on preventing money laundering.

10.2 The requirement for written policies and procedures and a written practice risk assessment for all firms is not proportionate for small sole practitioner firms. These firms often have very low fees and provide services to longstanding clients whom they know very well. Supervisors have to enforce compliance because the requirement is mandatory but the existence of these documents has a low impact on the prevention of

money laundering. It diverts time and resources away from other activities by firms and supervisors which would have a greater impact.

10.3 Client due diligence requirements can in some cases be low impact where there is too much focus on 'tick box' exercises in obtaining copies of passports, utility bills etc and a lack of consideration of where enhanced due diligence should be undertaken. In many cases firms collect a considerable amount of paperwork with limited impact. It has also been noted that in many cases it is not the client of the tax adviser who is involved in money laundering but their customer or supplier and no checks are undertaken on those underlying clients.

10.4 The term Trust or Company Service Provider (TCSP) is not easily understood by firms and we see numerous instances where they consider they should opt out of the register. For example, tax advisers who do not prepare any tax returns for trusts see the word 'trust' in the definition and answer no. As a result, we safeguard the position of our members by uploading details of all supervised firms to the TCSP register. We are not aware of any law enforcement use of the register and it therefore appears to be low impact.

**National Strategic Priorities**

**11 Q9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?**

**Q10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?**

**Q11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?**

11.1 Answer to questions 9 to 11. As a supervisor we look to law enforcement for intelligence which we can use in our supervisory activities and so we can pass on information about risks and mitigation strategies as soon as possible. The only benefit we see here is if National Strategic priority information was 'live' information. We do not consider another report is required in order to provide this detail.

11.2 Any new initiatives in this area should involve a multi-agency approach to ensure there is joined up information across government agencies.

**Extent of the regulated sector**

**12 Q12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?**

**Q13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?**

**Q14. What are the key factors that should be considered when amending the scope of the regulated sector?**

12.1 We have limited comments on this section of the call for evidence but would respond on the following points:

- It appears appropriate to include antiquities which do not fall under the current art market provisions but pose similar risks.

- Payroll businesses do not currently need to register in some cases but given the risks in relation to payroll we consider all businesses providing payroll services should be within scope of the MLRs.
- The sale and purchase of film rights is a potential area where money could be 'washed through' the system and are currently not AML supervised.
- Consideration should be given to the regulation of other areas of the property sector (for example construction).

12.2 The extension of the regulated sector should be led by law enforcement intelligence on the areas where money laundering could be mitigated by the extension of regulation.

**Enforcement**

**13 Q15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?**

13.1 Yes we consider current enforcement powers are sufficient.

**14 Q16. Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?**

**Q17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?**

14.1 We consider that we apply enforcement powers in a proportionate way to the breaches they are used against.

14.2 However, supervisors are expected to be fairly 'heavy handed' when dealing with firms even where the failings identified are administrative in nature. We consider that administrative errors are more appropriately dealt with by way of education and guidance. There is no protection of the term 'Tax Adviser' and our members could continue to provide services without retaining their CIOT membership. It is not in the public interest for individuals to operate outside professional body membership because of the loss of other protections for consumers (for example the requirements to have Professional Indemnity Insurance (PII) in place and undertake Continuing Professional Development (CPD)). As such we seek to work with our members to bring them into compliance (in line with the Accountancy AML Supervisors' Group (AASG) approach) rather than referring administrative errors for disciplinary action.

**15 Q18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?**

15.1 The relatively low number of criminal prosecutions are a challenge insofar as we are told that the accountancy sector is high risk and that there is significant money laundering crime but we do not see the evidence of that. A lack of court cases can give the impression that there are not many instances of money laundering so more prosecutions of cases and related publicity could help reinforce the message that the authorities do take action in money laundering cases.

**Barriers to the risk-based approach**

**16 Q19. What are the principal barriers to relevant persons in pursuing a risk-based approach?**

16.1 In general, the rules are too prescriptive, for example, the requirement for written documents even for sole practitioners with no employees. As a result, the focus of a firm tends to be on the making sure paperwork is in order rather than assessing risk and adapting their approach accordingly.

16.2 Whilst in some areas the MLRs appear to be overly prescriptive in others interpretation is required. The MLRs are financial institution focused and that makes it hard in some cases for tax advisers to work out what the risk based approach means in their circumstances. Compliance costs have escalated and firms would rather take the same approach on everything than have to differentiate.

16.3 CDD and Enhanced Due Diligence (EDD) needs to be looked at in the round with less focus on collecting paperwork and more focus on assessing the position in higher risk situations. Firms will often take the defensive route of doing more than is required rather than risk disciplinary action by their supervisor.

16.4 There needs to be a wider understanding of the risk based approach within organisations. Many firms rely on the MLRO and administrative staff but this can result in procedures being viewed as 'business refusal procedures' rather than being key in the fight against economic crime and minimising risks to the business.

**17 Q20. What activity or reform could HMG undertaken to better facilitate a risk based approach? Would National Strategic Priorities (discussed above) support this?**

17.1 More real time information about AML risks would enable firms to undertake better risk assessments and address emerging risks promptly.

17.2 Having central reliable ID information would reduce the time which is needed in checking this basic requirement and enable firms to concentrate more on risks and enhanced checks where required. We hope that government will take a joined up approach in this area by linking to the work being undertaken by Department for Digital, Culture, Media and Sport work on digital identities.[1]

**18 Q21. Are there any elements of the MLRs that ought to be prescriptive?**

18.1 Flexibility in the MLRs is important to facilitate and promote a proportionate and risk based approach however it is helpful to have standard requirements in relation to:

a. Training
b. Minimum client due diligence
c. Suspicious activity reporting

Standard practices in these areas means firms are clear on the basic requirements and makes it easier for supervisors to determine levels of compliance.

[1] https://www.gov.uk/government/news/next-step-in-plans-to-govern-use-of-digital-identities-revealed--2

**Understanding of risk**

**19 Q22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?**

19.1 Firms are not always good at distinguishing AML risk and general risk to their businesses. Many firms say they prefer not to take on clients with any risks. In the tax advice sector this drives those riskier clients towards dealing with matters themselves (with the result they fall outside the regulated sector and reporting requirements) or potentially to less scrupulous advisers.

19.2 Money Laundering Reporting Officers (MLROs) advise us that principals within the business see the management and mitigation of AML risk as the responsibility of the MLRO and it is quite hard to get the message across that it is also their responsibility.

**20 Q23. What are the primary barriers to understanding of ML/TF risk?**

**Q24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?**

20.1 It is a barrier to firms that there is insufficient real time information about risks and mitigation strategies available. The most effective action that the government could take would therefore be to provide more feedback from law enforcement agencies in real time.

**Expectations of supervisors to the risk-based approach**

**21 Q25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?**

21.1 We gather information about firms by way of an annual renewal form and ask for additional information about the risks firms face and their documentation prior to any visits. This enables us to assess individual firms appropriately. We do not expect all firms to have the same approach and assess them according to their size, the nature of their work etc.

**22 Q26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?**

22.1 No examples.

**23 Q27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?**

23.1 As a supervisor we share good practice with others through AASG. As OPBAS see the approach of all the accountancy sector supervisors we would look to them to provide specific guidance if our risk based approach could be improved.

**24 Q28. Would it improve effectiveness and outcomes for the government and/or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?**

24.1 We consider that effectiveness would be improved if a definition was provided. This would require further consultation to ensure it was appropriate to the accountancy sector supervisors.

24.2 We do not consider that the provision of intelligence to law enforcement should be included as an explicit goal. It is not possible to report if you do not come across relevant intelligence.

**25 Q29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?**

25.1 An appropriate definition of compliance programme effectiveness could improve outcomes but those outcomes should not only be phrased in terms of the provision of intelligence or SARs. There is an improved outcome if firms receive better guidance and education and therefore improve their AML compliance and that might not result in any additional gathering of intelligence.

**Application of enhanced due diligence, simplified due diligence and reliance**

**26 Q30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?**

26.1 Yes

**27 Q31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?**

27.1 We have no feedback from law enforcement to enable us to answer this.

**28 Q32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?**

28.1 In general, we find that firms rarely undertake simplified due diligence. They like one set of rules to adhere to and in general will undertake standard client due diligence unless EDD applies.

**29 Q33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?**

29.1 Most firms want simplicity and will apply standard due diligence unless EDD applies. The only time we are aware of members undertaking simplified due diligence is where they are providing advice to a large

accountancy or law firm where details are available on the regulator's website or where they are acting for government departments, educational establishments etc.

**30 Q34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?**

30.1 Firms do not like using reliance because they are still culpable if there are CDD failures so they might as well do their own CDD checks. Reliance agreements are too complicated.

30.2 Firms would appreciate it if sufficient checks had been undertaken by agencies such as Companies House so that they could rely on the information included on their registers but at present they are not able to do this either.

**31 Q35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?**

31.1 See answer to Q34

**32 Q36. Are there any changes to the MLRs which could mitigate derisking behaviours?**

32.1 No comment – it is not clear what this question is asking.

**How the regulations affect the uptake of new technologies**

**33 Q37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?**

**Q38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?**

**Q39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?**

33.1 The MLRs are largely focused on financial institutions. They do not recognise the new ways in which tax advisers are providing services to clients such as apps where members of the public can self-serve. A tax adviser taking on an individual in order to prepare their tax return has to undertake CDD and report knowledge or suspicion of money laundering. Businesses providing self-serve apps do not have to undertake CDD and there is no requirement for them to monitor any use of the app which may facilitate money laundering.

33.2 Where new technology is available (such as electronic ID verification) it would be helpful if the government were to provide a central accredited list of providers which satisfy ID verification requirements.

**SARs reporting**

**34 Q40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?**

34.1 Increased information sharing by law enforcement would enable tax advisers to understand current risks and circumstances where reports should be made. We would welcome more detailed case studies showing how in general terms a report made by a tax adviser has led to law enforcement action or failure to where a report should have been made but has not.

34.2 At present members regularly report their view that SARs submitted to the National Crime Agency (NCA) do not result in any action. Positive feedback about the usefulness of SARs made would help firms to feel more engaged with the process.

**35 Q41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?**

35.1 It may be helpful if supervisors had the specific authority to view and assess the quality of SARs submitted by their supervised firms. but only as regards quality checks. Supervisors should, using a risk based approach, be able to exercise discretion as to whether they review the SARs of a supervised firm or not.

35.2 We consider the ability to view SARs would be of limited impact for us as supervisors because we would not expect to see high numbers of SARs during our visit programme.

**36 Q42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?**

36.1 We would require specific legal authority in order to view SARs.

36.2 Supervisors would require education on how SARs are set out, what we should be looking for and what actions we should take. For example if a SAR had been submitted a year before and is of poor quality but there had been no response from the NCA are supervisors expected to guide firms to submit the SAR again or provide additional information?

36.3 Supervisors would require protection from having to make a SAR themselves after viewing the information.

36.4 Protections should be set out for supervisors against subject access requests under data protection legislation as well as maintaining the client's privilege (where appropriate).

36.5 All of the MLROs we have spoken to have concerns about supervisors viewing SARs for the following reasons:

a. It would be wrong for the supervisor to see them without names and some details being redacted.
b. It risks whistle blower anonymity being compromised.
c. If there are concerns about quality it would be more appropriate for law enforcement to pick up on this and feed back to the firm or supervisor.
d. The more people involved with SARs or seeing them the more opportunity there is for information to 'leak out' and tipping off risks increase.
e. It would be better if supervisors devoted the time to education and guidance of relevance to the whole supervised population rather than checking small numbers of SARs.

f. They consider that it may dissuade MLROs from making SARs in situations which may be more 'borderline'.

**37 Q43. What else could be done to improve the quality of SARs submitted by reporters?**

37.1 An improved SARs reporting system would improve the quality of the material submitted and make it easier for reporters to provide all of the information required by the NCA. Possible improvements include:

- SARs report forms tailored to the relevant sector – the current form is banking focused and not intuitive for other sectors
- A drop down menu to select the relevant glossary code
- A requirement to detail the firm's AML supervisor

37.2 In terms of improving the quality of intelligence submitted then increased information by law enforcement would enable tax advisers to more easily identify suspicious activity and report in the right circumstances

37.3 It would be helpful to remove the requirement to report where a law enforcement agency is already aware of the facts for example if a tax underpayment has been declared to HMRC why should there be any need to make a SAR as well (in cases where the privilege reporting exemption does not apply). An unrepresented taxpayer would have no one making a report about them.

**38 Q44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?**

38.1 No. A firm is not in a position to assess whether the information they are submitting is 'high value intelligence' and the NCA advise us that a SAR may provide just one 'piece of a jigsaw' needed by law enforcement. The reporter will not be in a position to know whether their report provides that one valuable piece of information.

38.2 Firms with good CDD and ongoing monitoring policies should be managing and mitigating risk through those processes and you would expect them to potentially have a lower level of SAR reporting as a result.

38.3 If firms were to be assessed on the number of SARs made it is likely to encourage firms to be risk averse and submit unnecessary SARs. This will not provide improved levels of information to law enforcement.

**39 Q45. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?**

39.1 The CIOT already monitors their supervised population through use of annual renewal forms and the annual return sent to all members. These forms require members to confirm compliance with the CIOT's professional standards and, inter alia, to disclose any convictions, disciplinary action taken by other professional bodies, or disqualification as a director or trustee. Complaints are referred to the independent body the Taxation Disciplinary Board which has the power to expel members. It should however be noted that the term 'Tax

Adviser' is not a protected title so individuals leaving membership can continue to operate as tax advisers albeit with supervision by either another professional body or HMRC as the default supervisor.

**Gatekeeping tests**

**40 Q46. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?**

**Q47. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?**

**Q48. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?**

40.1 We see no need to add further powers unless there is evidence that the current system is failing. To date no Schedule 3 offences have been identified from the significant number of criminality check certificates submitted to us since 2018.

**Guidance**

**41 Q49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?**

41.1 We consider that sector specific guidance is very helpful for firms in meeting their obligations.

41.2 Lack of clarity in the MLRs results in the need for guidance. This in turn can lead to inconsistencies between different guidance. Clearer and more detailed MLRs would address these issues.

**42 Q50. What barriers are there to guidance being an effective tool for relevant persons?**

42.1 A significant barrier is the time it takes for HM Treasury to review and approve guidance. This means that when the MLRs change there is a period when supervisors and firms are having to take their own interpretations of the guidance and to an extent are 'working in the dark' as they try and meet new requirements.

42.2 There is no consolidated version of the updated MLRs as each change takes place. This means referring to multiple documents which is time consuming, confusing and raises the potential for changes to be overlooked. It makes it difficult for firms to be clear on current rules.

42.3 Firms have reported that they feel there is a lack of appreciation about the amount of guidance, updates to information etc they are required to deal with on AML when this is not the main part of their job.

**43 Q51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?**

43.1 We suggest that the MLRs themselves should provide more detail and be clearer on the requirements. Practical implications of changes to the MLRs and associated guidance changes should be considered in parallel to legislative updates to ensure firms are immediately clear on new requirements.

43.2 We are in agreement with the AASG response which suggests that there should be a dedicated project manager who has long term oversight of the guidance and the instigation of an HM Treasury web page which includes the latest consolidated version of the MLRs and all sector guidance.

43.3 Feedback received by us from MLROs suggests the PEP (politically exposed persons) regime should be simplified to make requirements clearer and simpler for firms to administer.

**Structure of the supervisory regime**

**44 Q52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?**

44.1 It should be noted that as an AML supervisory body there is a potential conflict of interest in commenting on this section of the call for evidence. However, we have set out points we consider are relevant for consideration.

**45 Q53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?**

45.1 Not in a position to comment

**46 Q54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?**

46.1 Professional body supervisors know their members well which helps us to provide appropriate AML supervision. We understand the rationale for having professional body supervisors but are not well placed to weigh the advantages against the effectiveness and efficiencies which could be achieved by other models.

**47 Q55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?**

47.1 Having one supervisor for everyone would mean there was consistency of supervision which would be a positive factor.

**Effectiveness of OPBAS**

**48 Q56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?**

48.1 We consider it as positive that professional body AML supervisors are held to account .

48.2 Key factors to be considered in assessing achievement of the objective are:

- Have standards of supervision been raised and is the approach of all supervisors now consistent?
- Has clear guidance been provided to professional body supervisors on how to comply with their obligations?
- Have professional body supervisors had the opportunity to feedback on the performance of OPBAS and has this been taken into account to improve OPBAS effectiveness?
- Have they exercised enforcement powers appropriately where they consider supervisors have failed to meet their requirements?

48.3 The annual OPBAS report is an opportunity for OPBAS to demonstrate how they have raised the standards of professional body supervisors and we note from the 2021 report that whilst they are satisfied that professional bodies were generally compliant with the technical requirements of the MLR, in terms of effectiveness there are differing levels of achievement and some significant weaknesses in supervision.

48.4 OPBAS effectiveness is directly related to achieving effective AML supervision by the professional bodies. Whilst understanding it is not a tick box exercise and that each body has different supervised populations with different risks OPBAS need to be clear on:

- What is meant by high standards;
- How different levels of effectiveness have been defined;
- The specific actions each supervisor should take to move from, say, being rated as mostly effective to being effective.

Clear and transparent measures of effectiveness and clear action plans will enable OPBAS to demonstrate that failing x was addressed by guidance y and resulted in improved effectiveness as demonstrated by z.

**49 Q57 What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?**

49.1 Key factors that should be considered in assessing this objective include:

- The number of information sharing sessions provided between law enforcement and the professional body supervisors each year which are rated as being relevant and useful by the professional body supervisors following the sessions.
- The relevance of the information provided to supervised populations measured by the extent to which it is disseminated by the professional bodies and any associated increase in SARs seen by law enforcement in those areas.
- The extent to which OPBAS is able to facilitate the provision of granular and real time information to a sector about the current AML risks and ways of managing and mitigating that risk.

49.2 OPBAS have facilitated useful information sharing sessions through the Accountancy Intelligence Sharing Expert Working Group (ISEWG) and through sessions with the Metropolitan Police. However, as supervisors we continue to press for more information about accountants and tax advisers and how the SARs made have resulted in law enforcement action or where a SAR was not made, what the adviser should have seen to report and what the consequences would likely to have been if a report had been made.

**Remit of OPBAS**

**50 58. What if any further powers would assist OPBAS in meeting its objectives?**

50.1 We do not consider that OPBAS need any further powers.

**51 59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?**

51.1 We consider OPBAS should have an extended remit to include consistency across both the professional body and statutory supervisors and should be able to inspect HMRC AML supervision. At present it is inconsistent that OPBAS supervises the accountancy sector professional body supervisors but not, for example, HMRC supervision of accountancy sector firms.

**Supervisory gaps**

**52 Q60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?**

52.1 No comments

**53 Q61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?**

53.1 We are unclear why this would be necessary. A lawyer cannot operate unless they are a professional body member so we are unclear why all legal firms would not be supervised by legal body supervisors.

**54 Q62. How should the government best ensure businesses cannot conduct regulated activity without supervision?**

54.1 Withdrawal of other interactions with government which are required in order to do business is an effective incentive to ensure supervision is in place. For example, tax advisers cannot have an HMRC agent code without being able to prove who their AML supervisor is.

**55 About us**

54.2 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation.

54.3 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

54.4 The CIOT is an AML supervisory body.

## 55 Acknowledgement of submission

55.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

14 October 2021