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Economic crime levy: Funding new government action to tackle money laundering

Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 We provide our comments on the HM Treasury consultation on the Economic crime levy: Funding new government action to tackle money laundering.
- 1.2 The CIOT strongly supports the UK's drive to combat money laundering and terrorist financing and recognises that funding is required to ensure that there can be an effective policy in place to reduce levels of financial crime.
- 1.3 Our response needs to be considered in the context of the market in which tax advisers operate and Appendix one refers to relevant background information and provides the context in which our members operate.

2 Executive summary

- 2.1 The CIOT considers that the Economic crime levy has to be considered as part of a consolidated approach to AML compliance and alongside the other regulatory requirements and costs.
- 2.2 We consider that the government should raise money in as few ways as possible and with as few additional collection costs. Medium to longer term planning should aim to look at overall needs over that period in order to minimise repeated requests for additional funding via different levies and fees.
- 2.3 The levy should fund the priorities under the Economic Crime plan with clear reporting on the impact of the expenditure on financial crime (not merely how the levy was spent).
- 2.4 The revenue basis of collecting the levy would be preferable. Whilst we accept the limitations of this approach it is the best measure of activity and therefore of risk. The CIOT considers any issues with the measurement of revenue could be overcome by use of the figure of revenue used for tax purposes in relation to entities subject to the levy.

- 2.5 Revenue can also be taken to be indicative of the level of risk as it reflects the scale of the activity of supervised firms. The measurement of risk in any other way is subjective.
- 2.6 We consider that HMRC should collect the levy. Professional bodies do not currently collect government debt and HMRC are a collection authority who already hold details of revenue for tax purposes.
- 2.7 The CIOT would favour a threshold whereby firms with turnover below £10.2 million were exempt. When considered in the round small firms already bear a disproportionate cost in relation to AML compliance.
- 2.8 Increasing AML compliance costs for smaller firms in particular risks the following:
- Driving firms out of the market completely reducing choice for consumers.
 - Increasing the costs of engaging a tax adviser which in particular hits those with complicated tax problems but low incomes.
- 2.9 As set out in Appendix one tax advisers are not a regulated profession. Anybody can set themselves up as a tax adviser and membership of a professional body is therefore effectively optional. Any required increase in supervision fees or additional charges will have an impact on membership and the number of firms being supervised. Members can choose to reduce overall costs by resigning from membership with the following potential implications:
- Disadvantages for consumers as firms become deprofessionalised (outside of professional body membership they would not be required to meet the high professional standards required by professional bodies and could therefore operate without professional indemnity insurance or continuing professional development etc).
 - Deprofessionalism also potentially increases the tax gap.
 - A movement away from professional body AML supervision would result in an increase in numbers requiring HMRC AML supervision (applicable to those who are tax advisers but not members of AML supervisory bodies). This would impact HMRC supervision costs.
- 2.10 The CIOT response to the individual questions set out in the consultation document are set out below.

Levy Principles

- 3 Question 1: Do you agree with the design principles as set out above? Should the government consider any further criteria?**
- 3.1 Answer 1: We agree and make a number of points in our response in relation to how these principles should align with the proposed process and where we consider they are not aligned.
- 3.2 We consider that these principles should be applied to the costs and burdens of AML compliance overall and that the levy should be considered as part of this overall picture. For example, in relation to the principle of solidarity, all parts of the AML regulated sector are required to meet a number of the same legislative requirements (such as having written policies and procedures and a written practice risk assessment) and the burden of AML compliance therefore already falls disproportionately on smaller businesses required to put the same in place as much larger entities. Please refer to an indication of the costs and the increases in those costs over recent years as set out in Appendix one of this document.

Spending the levy funds**4 Question 2: What do you believe the levy should fund? Are there any other activities the levy should fund in its first five years?**

- 4.1 Answer 2: As a general principle we consider that the levy should pay for the priorities outlined under the Economic Crime plan. Funds should be ring fenced for those purposes.
- 4.2 In relation to the areas which are initially intended to receive funding we would comment as follows:
- 4.3 We note that part of the funding will be used for Companies House Reform (paragraph 3.9). Fees are payable for a variety of Companies House services and remain modest. For example, incorporation can be dealt with for as little as £10. The low level of these fees does not act as a disincentive to financial crime as there is minimal cost to criminals setting up shell companies etc.
- 4.4 If our members are subject to the levy and contributing to the costs of areas such as the SARS reform programme and the UKFIU then we would suggest that consideration be given to providing greater levels of intelligence sharing on a reduced cost basis to supervisors. This ties in with the proposal to fund Awareness Raising Campaigns. At present the Accountancy Supervisors are required under the OPBAS sourcebook to use the Financial Crime Information Network (FIN-NET) or the Shared Intelligence Service (SIS), there are currently costs associated with these tools which must be met by Supervisors and are therefore passed on to supervised firms by way of the fee structure. Introduction of a levy on supervised members and the increase in costs in this way may reduce the other costs which supervisors can bear and pass on to their supervised firms. Please refer to the comments in the executive summary in relation to the implications of increased fees.

5 Question 3: Do you agree with the government's approach to publish a report on an annual basis? What do you think this report should cover other than how the levy has been spent?

- 5.1 Answer 3: We agree that there should be transparency and accountability in relation to the use of the levy. The issue of an annual report would therefore be helpful as part of this process.
- 5.2 It should cover actions taken and tangible improvements over the period under review and suggestions in relation to particular areas might include:
- The SARs reform programme. Member feedback currently refers to the cumbersome nature of the submission process and the lack of response to SARS submissions. We would therefore hope that each year's report would include clear statistics on improvements to the system covering:
 - Number of SARs submitted and increase/decrease on previous year
 - A measurement on the quality of SARs submitted
 - Time taken for the submission process
 - User feedback on the submission process
 - SARs actioned
 - SARs resulting in law enforcement outcomes and by which arm of law enforcement (eg. HMRC or police)
 - UKFIU, NECC and NAC. The Regulated Sector would be particularly interested in initiatives which had an impact on financial crime in their area of operation. Statistics on changes in staffing or particular projects undertaken may be useful but for us as supervisors and our supervised firms it would be

more helpful in relation to our supervisory activity to understand what particular initiatives have resulted in law enforcement action in relation to accountants, tax advisers and their clients. Case studies referring to each sector would be helpful to demonstrate that contributions by each sector had resulted in outcomes for that sector.

- Awareness raising campaigns. The campaigns funded during the period and what the money was spent on. This should include survey feedback on whether supervised firms have been aware of those campaigns and the actions taken as a result of them.

5.3 In summary the report should show how the money spent has achieved the aims set out under the Economic Crime plan and evidence of the associated reductions in economic crime.

6 Question 4: What are your views on what the proposed levy review should consider and when it should take place?

6.1 Answer 4: We note the proposal to undertake a review of the levy after 5 years and undertaking a review before that seems unlikely to provide sufficient evidence to review arrangements.

6.2 The review should include:

- An analysis of the use of the levy providing more detail than might be possible in the annual reports.
- An analysis of the funding of the levy by different regulated sectors and how that correlates with levels of economic crime in those areas.
- A review of the collection method, associated costs and cost effectiveness.
- A review of unintended consequences on business behaviour which have been observed by Regulators.
- A consultation on any improvements which could be made.

Levy calculation

7 Question 5: Do you agree with our proposal that revenue from UK business should form the basis of the levy calculation? Please explain your reasoning.

7.1 Answer 5: We agree.

7.2 The only fair basis for allocating costs of regulation is by reference to the scale of the activity regulated. Regulation for our supervised members applies to the giving of tax and other professional advice for payment; and the costs should therefore in principle be allocated by reference to the scale of that activity and of those payments, that is the fees. The fee level can also be taken to be indicative of the level of risk in the population, at least absent any more robust method of risk allocation.

7.3 All business must calculate their revenue for tax purposes and we consider that use of that figure would give the greatest simplicity and predictability for the purposes of calculating the levy. There is also the advantage that if HMRC are the central collection agency they would have access to these figures from tax return information submitted by all entities (refer also to our responses to questions 7 and 25).

8 Question 6: Are there any sectors that would be disproportionately impacted if revenue is used as a metric, or where revenue would be disproportionate to level of risk?

- 8.1 Answer 6: We supervise tax advisers/accountants and can only comment on this sector.
- 8.2 We are not aware of any particular sectors amongst our supervised community who would be disproportionately impacted if revenue is used as a metric.
- 8.3 It should be noted that risk is a broad term and is not defined here. In simple terms we need to consider:
- Inherent risk – some of our supervised population will have higher levels of inherent risk because of their client base. For example, they might deal with a number of cash businesses or overseas high net worth (HNW) individuals investing in UK property.
 - Risk because of control environment – some of our firms will have extremely sound risk control. Some have better awareness and resources to devote to their controls. Other firms may represent a higher risk of being involved in financial crime unwittingly or through negligence through a poorer control environment (in some cases because of workload or poor health). However, the probability and impact of financial crime being facilitated by these firms with poorer control environments is likely to be at a very low level.
 - Residual risk – whilst firms may have higher levels of inherent risk most will adopt appropriate control environments to manage and mitigate that risk meaning the firm has a low residual risk.
- 8.4 Through our programme of supervisory visits, we have found that most firms with high inherent risk have medium to low residual risk because of the strong control environments in place.
- 8.5 Given the difficulty of measuring risk and applying it to the calculation we consider that fee levels should be taken to be indicative of the level of risk and overall would not be disproportionate to the level of risk (refer to our responses to questions 5 and 13). It should be noted that fee levels are an objective measure unlike risk assessment which is subjective.

9 Question 7: Do you believe other levy bases would provide a better basis for the levy calculation? These could be the ones outlined in Table 4.A or those not considered in the consultation document.

- 9.1 Answer 7: We do not believe other levy bases would provide a better basis for the levy calculation. Please refer to our answer to Question 5 and also the comments included in the executive summary near the start of this document.
- 9.2 In relation to table 4.A we would make the following comments:
- 9.3 1. Charging the levy through existing supervisor levy structures

We estimated our combined costs on a fully loaded basis of operating as supervisors in the period to 5th April 2019 to be of the order of £448,000 (for both CIOT and ATT). This is a cost of around £336 compared to the £170 per firm that we charged in 2019. Costs have increased since then and our fee is now £300 per firm which remains below the average cost per firm. These costs continue to rise with the increase in supervisory activity required. Although in principle we aim to recover our costs from supervision from the registration fee for supervision, we have recently been reluctant to increase the fee at the same rate as our costs because it has been comparable with fees charged for supervision by HMRC. Although supervised firms cannot in

principle choose their own supervisor, in practice principals could bring their firms under HMRC supervision by leaving the professional bodies of which they are members. In the case of providing taxation services, this would not affect their ability to practice lawfully. Although this would entail loss of membership benefits, it would also enable them to 'save' membership subscriptions and other potentially costly professional obligations such as the obligation to maintain public indemnity insurance. The AML supervisory cost element is only one in a larger equation, but at the margin could be significant, especially where people are operating at relatively low fee levels and potentially on low margins. We refer you to Appendix one which sets out the basis on which tax advisers operate and the fee levels of the firms we supervise – you will note that over 25% of the CIOT firms supervised had fees below £20,000 and 46% had fees of £50,000 or lower. This represents gross fees not profit (which is after taking into account costs and would therefore be lower). The firms we supervise are in general small businesses with limited ability to pass on cost increases to clients or to absorb them.

- 9.4 The main potential impact of members resigning from membership would be loss of protection to the public (eg fewer tax advisors would be properly insured) and also a potentially adverse impact on HMRC as advisers without CPD obligations or the constraints of professional standards became more prone to error, or adverse behaviours such as promotion of tax avoidance. HMRC calculate that the small business sector (served generally by smaller supervised firms and where cost pressures are most significant) makes up the largest proportion of the tax gap, including taxpayer errors and failure to take reasonable care (see <https://www.gov.uk/government/news/low-tax-gap-results-in-71-billion-for-uk-public-services>). We are regularly told by HMRC in discussion that two thirds of tax agents who they see as responsible for bad behaviour are from the population of about one third who are not members of a professional body. Not only does this reflect a higher level of bad behaviour reflecting the lack of professional constraints, it also leaves HMRC with fewer levers to address the issue as they are denied the opportunity to report the relevant individuals for professional disciplining. Although 'deprofessionalised' advisers would continue to be subject to AML supervision (by HMRC in the absence of professional body membership), it is likely that the effectiveness of AML legislation would be reduced by the fact that many of the front line advisers, faced with potentially suspicious circumstances, but no longer having their judgments informed by professional constraints and CPD requirements, would simply make poorer or less compliant judgments. This would be weakening rather than strengthening the chain in our defences against money laundering in financial transactions.
- 9.5 A move away from professional body membership and professional body AML supervision would in turn potentially increase the AML supervision costs for HMRC because of an increase in tax advisers needing to be supervised by them.
- 9.6 In some cases, the imposition of additional costs would simply drive some of our supervised firms to retire or cease to practice. We have already seen this in some cases owing to the increase in our supervision fees in 2020 as a result of the OPBAS levy and the increase in our supervision fees to collect this levy. Increased regulation and costs for the tax sector can have a knock on effect of disadvantaging low income taxpayers. It is often thought that people on low incomes do not have complex tax affairs but this is incorrect. Such low income taxpayers cannot afford professional tax advice or struggle to pay for professional advice in some cases. An increase in costs and a reduction in the number particularly of smaller firms reduces choice for consumers and particularly those on low incomes. As more people are 'priced out' of obtaining good quality tax advice this may result in more taxpayers attempting to deal with matters themselves (and making more mistakes) or relying on firms who are not subject to our ethical standards (as covered in the previous

paragraph) or relying on the help of family and friends. The less interaction there is with AML supervised firms the less interaction with firms required to meet AML requirements and report suspicious activity.

9.7 4. A levy proportionate to the number of SARs submitted

The feedback received from supervised firms is that the SARs reporting system is cumbersome and that no feedback is received in response to their reports. There is already a level of criticism surrounding SARs reporting and we agree that a levy proportionate to the number of SARs submitted potentially incentivises non-reporting and entrenches poor reporting behaviour.

9.8 In addition, this basis for calculation does not recognise how the accountancy and tax sector operates. The sector is often accused of making a low number of SARs compared to, for example, the banking sector. Unlike banks, accountants and tax advisers generally have a close working relationship with their clients and invest significant time and resources in the selective process of taking on clients. In general, an enormous amount of client due diligence is undertaken and there is a considerable amount of qualitative information which enables firms to select carefully which clients they take on. It also means they have the relevant background to transactions to enable them to consider carefully whether a SAR is required. There is not therefore the same level of automatic SAR reporting which we consider may be applicable in the banking sector. We would consider the lack of SARs submitted by our members in particular to be indicative of their unwillingness to take on high risk clients and their lack of involvement with high risk cases needing reports.

9.9 Please also refer to our answer to question 14 in relation to use of SARs as a metric.

9.10 6. A levy proportionate to the number of BOOMS

Beneficial owners, officers and managers' ('BOOMS') give a totally misleading picture of the relative scales of regulated businesses, as they significantly understate the relative scale of the larger businesses, particularly when income and capital employed are taken into account.

9.11 In a 'Big 4' accounting firm there might be of the order of 10 fee earners per 'BOOM' and we have no doubt that numbers of fee earners is a better guide to the level of supervised economic activity. The market for services within the accountancy (and legal) sector is extremely diverse as set out in Appendix one to this document. The figures provided in Appendix one indicate the high level of fees in the largest accountancy firms. This is in stark contrast to the other extreme where there are sole practitioners who operate on tight margins and whose incomes are not necessarily high. For example and as referred to in both the Appendix and our answer to question 7 at least 45% of our supervised firms have revenue of £50,000 or less and this represents gross fees not profit (which would of course be after costs and therefore lower).

9.12 It would be unconscionably unfair for our supervised, smaller firms to be treated in the same way and to have to bear the same burden of regulatory cost relative to economic activity levels that a partner in a large accountancy firm would bear.

10 Question 8: Should a fixed percentage or banded approach be taken to utilising revenue as a metric? Please explain your reasoning.

10.1 Answer 8: The CIOT would favour a fixed percentage approach which avoids the disproportionate effect for those at the bottom or top of each band range. Our view would be that the simplest approach possible should

be adopted. However, this question is closely linked to questions relating to the collection of the levy, the timing of payment following the calculation of revenue etc.

- 10.2 As set out in our response to question 9 we consider that small businesses must be exempt from paying the levy and consider that £10.2 million is the appropriate threshold. If small businesses are not exempted we see a number of potential implications as set out in our answer to question 7 and also covered in the executive summary at the start of the document.

11 Question 9: What are your views on the principle of exempting small businesses from paying the levy, and on the level of a potential threshold?

- 11.1 Answer 9: We consider that small businesses must be exempt from paying the levy and consider that £10.2 million is the appropriate threshold. This is on the basis of the design principles of proportionality, affordability, simplicity and the avoidance of unintended consequences. The potential consequences of raising costs for small firms is set out in the executive summary at the start of the document and in our response to question 7. Tax advisers do not have to be members of professional bodies in order to provide tax services and additional fees may result in them leaving the market altogether or resigning from professional body membership and the implications of this are set out in the sections referred to.
- 11.2 As set out in our response to question 10 we consider that small business should not even have to pay a small flat fee.

12 Question 10: What are your views on having businesses below the threshold subject to a small flat fee?

- 12.1 Answer 10: We would not be in favour of having businesses below the threshold subject to a small flat rate fee. The main reason for this is the significant cost of collecting small fees from a large number of supervised firms. As stated in our reply to question 9 we consider that small businesses with fees below £10.2 million should be completely exempt from the levy.

13 Question 11: Do you believe the small business threshold should be determined by reference to revenue alone or to all three of the Companies Act 2006 criteria? Please explain your reasoning.

- 13.1 Answer 11: We believe the small business threshold should be determined by reference to revenue alone. Information on other Companies Act small business criteria may not be readily available.
- 13.2 The question suggests that all firms operate as companies but it should be noted that a significant proportion of tax advisers operate through other business structures such as self-employed individuals or partnerships. We refer you to the details included in Appendix one.
- 13.3 It should also be noted that the IR35 legislation sets out different criteria for being a small business where a business is unincorporated which is based on income. Refer to HMRC's Employment Status Manual <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10006> where it states the following:

‘Other undertakings

Other undertakings, like partnerships, will be medium or large-sized if their turnover is more than £10.2 million for the last financial year ending at least nine months prior to the beginning of the tax year. Other undertakings will qualify as small in their first financial year providing it ends less than nine months prior to the beginning of the tax year.

Other persons

Other persons will be medium or large-sized if their turnover is more than £10.2 million for the last calendar year prior to the beginning of the tax year.

‘Other persons’ are those who are not a corporate entity or an ‘other undertaking’ such as individuals performing a trade.’

- 13.4 HMRC would have the details of revenue for all supervised businesses through the tax system and therefore would automatically have access to information on which businesses are below the threshold. In relation to the levy calculation and HMRC acting as the central collection agency please refer to our answers to questions 5, 7 and 25.

14 Question 12: For businesses not exempted by a threshold, how should their revenue below the level the threshold is set at be treated – as an allowance, levied at the same level as the main levy rate, or levied through a fixed amount?

- 14.1 Answer 12: Based on the design principle that there should be solidarity of payment across the AML regulated sector we consider that the small business threshold should be an allowance for all businesses.

15 Question 13: How do you think money laundering risk should be accounted for in the levy calculation?

- 15.1 Answer 13: Please refer to our responses to questions 5 and 6. We consider that a firm’s fee level is indicative of the level of risk and no further AML risk factors should be taken into account. In addition, use of fee levels (revenue) would make the system as simple as possible to maximise levels of compliance. It would reduce scope for error if figures reported to HMRC for tax purposes were used.
- 15.2 Any other measurement of risk would be subjective.

16 Question 14: Do you believe using number of SARs reported as a metric through a banded approach would be an appropriate means of achieving this objective? Please explain your reasoning.

- 16.1 Answer 14: We do not believe that using the number of SARs reported as a metric through a banded approach would be an appropriate means of taking into account money laundering risk. Some businesses do not have reportable matters during a particular period under review and if there is nothing to report they cannot make reports. The making of SARs is not the direct result of risk but of the reportable matters they come across.

- 16.2 We also consider that use of SARs as a metric could result in unintended consequences by acting as a disincentive to make SARs.
- 16.3 The accountancy sector generally is viewed as making a low level of SARs but having a high level of money laundering risk. It is difficult to reconcile therefore why a higher level of SARs would in this context be viewed as an indicator of higher risk and why a higher figure of levy would in turn be due.
- 16.4 Please also refer to our answer to question 7.

Applying the levy calculation

17 Question 15: Do you believe there should be a periodic or annual process for setting the levy rate? If periodic, what would an appropriate period be?

- 17.1 Answer 15: We do not have a view on whether there should be a periodic or annual process for setting the levy rate. Whichever approach is adopted it should align with the principles of simplicity and predictability. Businesses often budget more than a year in advance and need to have as much certainty as possible regarding fees.

18 Question 16: Would you prefer to calculate the levy based on total revenue or revenue from AML-regulated activity only? Please explain why.

- 18.1 Answer 16: Based on our visits programme to our supervised population the vast majority have revenue from AML regulated activity only. We are therefore unable to comment on this further as whichever approach was taken would be likely to have minimal impact on our firms.

19 Question 17: If applicable, what is your initial estimate of the proportion of your UK business which is AML-regulated (in revenue terms)? How many labour hours would initially be required to enable your business to robustly calculate the proportion of regulated business on an ongoing basis?

- 19.1 Answer 17: Not applicable.

20 Question 18: Which is your preferred option for defining revenue?

- 20.1 Answer 18: Not applicable as we are not a deposit taking institution. However, for our answer on the basis of defining revenue refer to our response to question 5.

21 Question 19: Do you agree the levy should be based on UK revenue only? How easy would it be to split out your UK revenue from your total global revenue?

21.1 Answer 19: Not applicable as we are not a deposit taking institution.

22 Question 20: Do you think it would more appropriate to use total income or net operating income as a metric for calculating levy liability for deposit-taking institutions, and if so, which metric would be the most appropriate?

22.1 Answer 20: N/A as not relevant for our supervised population.

23 Question 21: Do you agree that the reference period for the levy calculation should be a business's accounting period? Please explain your reasoning.

23.1 Answer 21: We do agree that the reference period should be a business's accounting period. This reduces the administrative burden when reporting income and avoids the need to recalculate or restate income figures.

24 Question 22: Do you agree that the levy should apply to activity carried out from the date from which the activity is regulated? Please explain your reasoning.

24.1 Answer 22: We agree that the levy should apply to activity carried out from the date from which the activity is regulated. This eliminates any potential advantages to businesses which are late in registering for AML supervision.

25 Question 23: Do you believe levy liability should be calculated and invoiced at entity or group level? Please explain your reasoning.

25.1 Answer 23: The levy should attach to each leviable regulated entity. Whilst this may have an impact on group structures the division of a business into more entities to reduce exposure to the levy may result in additional AML registration and compliance costs. It would appear that our supervised population split their work into different businesses for commercial reasons even where that might result in additional AML supervision fees etc.

26 Question 24: Do you agree limited partnerships should pay the levy at partnership level? Do you have any other views on how partnerships should be treated for the purposes of the economic crime levy?

26.1 Answer 24: We agree that partnerships should pay the levy at the partnership level.

Collecting the levy

27 Question 25: Do you think the agency should issue a notice to file or that businesses should be required to submit a return proactively? Please explain your reasoning.

27.1 Answer 25: Our preference would be for HMRC to be the single agency collecting the levy and if HMRC were to take this role then neither a notice to file nor a proactive return would be required. Levy payments would be based on income as reported for tax purposes during a relevant period. For example, the levy for the period 6th April to 5th April the following year could be based on the accounting profits for the year ending between those dates. This would avoid the need for notices to file or the submission of additional returns. This would minimise paperwork and reduce the administrative and collection costs and therefore be in accordance with the levy principles of simplicity and cost effectiveness of collection.

27.2 As a general principle we consider that supervised businesses should not be required to submit multiple sets of information to multiple bodies when this information is already available to government.

28 Question 26: Do you think all businesses should report their levy liability to the agency? If not, do you think small businesses should report a nil declaration or nothing at all?

28.1 Answer 26: If the levy were based on income as reported for tax purposes then no additional reporting would be required. HMRC could refer to their own list of supervised firms and would also require a list of all businesses supervised by other bodies. HMRC would be able to see each year whether businesses were liable for the levy or within a band for a small income exemption.

28.2 If this model was not adopted then there would need to be some way of ensuring that businesses not previously required to pay (owing to, say, an exemption) were required to notify the collection body as soon as their income exceeded the relevant limit.

29 Question 27: Do you agree with the proposed approach for calculating the levy rate, invoicing, and payment of the levy? If not, please explain why.

29.1 Answer 27: There are a number of points to make in relation to the proposed approach:

29.2 **Annual rate setting once income is known:** The proposal suggests that the levy rate will be calculated annually once income figures are available. The design principles state that there should be predictability and setting the rate annually once income figures are known does not provide that predictability. This also suggests that in years where there may be lower income (because of economic recession, etc) businesses may be required to pay a greater percentage of income in levy in order to meet the required level of funding. This is not aligned with the principle of affordability. Whilst we understand the rate may need to be considered annually this should be well in advance of the period so businesses can budget accordingly.

29.3 If the levy is calculated based on revenue for an earlier year, consideration would need to be given as to whether a business could request a reduction where current year income reduced and would be lower. On the basis of the principles of proportionality and affordability it would seem appropriate to consider this option.

29.4 **Invoicing:** If HMRC administered the scheme then they should be in a position to issue invoices automatically based on income figures supplied to them through the tax system.

29.5 **Group level invoicing:** The suggestion that the levy could be invoiced at group level may reduce or increase administrative costs depending on how the system is administered. HMRC are also in a unique position to

check whether an individual or group of companies have split their operations in order to reduce their levy contribution.

30 Question 28: What are your views on the proposed compliance framework in a single agency model?

30.1 Answer 28: We agree that late payment should generate penalty charges subject to the ability to appeal against those charges. HMRC already have the knowledge and experience in dealing with automatic penalties. Individual AML supervisors may not have the legal capability of charging and collecting those penalties. For example, under our existing arrangements CIOT would have to refer the matter to our independent disciplinary body the Taxation Disciplinary Board. This would result in significant additional time and collection costs.

31 Question 29: Do you agree that supervisors should be able to determine the frequency of reporting and payment, provided they transfer levy payments to the government a maximum of a year after the end of a business' accounting period?

31.1 Answer 29: There are a number of points to consider here:

- a. The CIOT do collect turnover information from our members and therefore have this information which could be passed to a central body. We also have complete lists of supervised firms. This information could efficiently be passed to a single agency on a periodic basis for them to use for collection purposes. It should however be noted that at present we accept turnover figures as provided by members without further query because there is no supervisory reason to query or check these figures. If turnover figures as provided to us were used (rather than revenue as reported for tax purposes) then it may in turn require us to undertake more detailed checks and verification of the figures resulting in increased administration costs.
- b. Invoicing and collection of levy payments would only be simple for our supervised businesses if it was done alongside our annual renewal process and based on the same reporting periods and information as we use. Our supervision year runs from 1st June to the following 31st May each year and supervised firms are required to renew during May each year. We ask for information on gross fee income for the accounting period ending in the period to 30 April. If invoicing and collection of a levy was a separate exercise from annual renewal it would potentially double our collection costs for the supervised firms it applied to with no additional income coming to the body from this source. The position would be exacerbated if we also had to collect income details for a different period and issue invoices (as opposed to including the fee with our renewal fee). We may therefore have to increase AML supervision fees to all supervised firms to cover the additional administrative costs in relation to a proportion of firms. This would not be aligned with the principal of affordability and proportionality. We have set out in the executive summary at the start of the document and our response to question 7 the potential consequences of increasing costs for our supervised members.
- c. There are other established mechanisms for the collection of government debt. This is not one of our charitable objectives as set out in our Royal Charter and there would therefore potentially be costs associated with changing those documents.
- d. As a separate body would still be needed to set the rate of levy, support annual (or other periodic) adjustments and monitor payments into the central fund we see no advantage in making individual bodies responsible for the collection process.

- e. Collection of the levy by supervisors and then the forwarding of that levy to a consolidated fund would need to be overseen by a separate body and various points would need to be considered:
 - i) If not all of the levy could be collected from the supervised firms would it still have to be paid over by the CIOT? For example, if a member dies owing the fees or the business went into liquidation?
 - ii) We do not have the discretion to issue penalties to our members or supervised firms and our normal practice is to refer members for non-completion of forms or non-payment to our independent body the Taxation Disciplinary Board. Whilst they may deal with it as a fast track process there are costs associated with this – would the supervisory bodies be permitted to retain all or part of the levy where it resulted in additional costs which could not be recovered from the member?
 - iii) Payment of the levy to the government within a year after the end of a business' accounting period is only helpful where supervisors deal with AML compliance based on a business' accounting period. As we deal with registration in May each year to cover the period to the following May and do not record individual accounting year ends it would be more convenient to deal with matters based on the supervision year.

31.2 As stated in our response to question 25 our preference would be for HMRC to be the single agency collecting the levy rather than the supervisor collection model.

32 Question 30: What are your views on the supervisor carrying out compliance activity as set out above?

32.1 Answer 30: We note that provision for undertaking this activity would be provided in the regulations but we do not currently have the ability to do this based on our current charter and agreements with members as set out the answers to questions 28 and 29.

33 Question 31: Which model do you prefer? Please explain why. Do you have suggestions for any other models that could be used?

33.1 Answer 31: Our preference would be for a single Agency model with collection taking place by HMRC. This would have all the advantages set out in Table 6.B of the consultation document but the disadvantages would not apply because HMRC is an existing structure and businesses are used to interacting with them.

34 Question 32: If you are a supervisor, what do you estimate your costs would be in each model?

- 34.1 This is very difficult to estimate at present based on the number of variables which are being considered.
- 34.2 As an approximate guide and based on annual costs of AML supervision totalling approximately £450,000 for the CIOT and ATT combined this would equate to additional costs of £112,500 in relation to the supervisor model if all supervised firms were included. Included in this are the costs of one FTE additional staff member which we estimate would be the requirement in order to deal with the levy.
- 34.3 In relation to the single agency model we estimate that overall costs for the CIOT and ATT combined with be approximately £56,250. This includes costs for half of a FTE member of staff.

Funding for fraud

35 It is important to understand the role played by accountants and tax advisers and the nature of their work. Fraud has usually happened a long time in advance by the time it is visible to our supervised population who might not be viewing accounting records until more than a year after a transaction has taken place. The questions in this section of the consultation do not appear to relate to us as supervisors or our firms and no answers have therefore been included for questions 33 to 36.

35.1 In general terms we consider that any money raised to fight financial crime should be done so in as few ways as possible with as few extra costs and that a long term plan should be considered to minimise piecemeal requests for additional funding.

Other

36 Question 37: Is there anything you have not already included in your response that you would like us to note?

36.1 Answer 37: As stated at the outset we consider that the principles applying to the EC Levy should be applied through the whole area of AML regulation. A holistic approach must be taken to look at the EC Levy together with the other burdens placed on regulated firms and the charges they bear. A thorough consideration of the overall position would then minimise the need for further levies and charges to be considered over the medium to long term.

37 Acknowledgement of submission

37.1 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.

38 The Chartered Institute of Taxation

38.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
12 October 2020

Appendix One – Supporting Information for Economic Levy Consultation Response

Background information

The tax profession is diverse and any consideration of levies to be raised from this sector needs to take into account the way in which it operates.

Firms able to provide tax services

The provision of tax advice is not a reserved activity and therefore **anyone** can set themselves up to provide tax services whether they are qualified or not. As a result, professional advisers cover a wide spectrum including:

- Those with specialist tax qualifications such as CIOT members
- Those with more general accountancy qualifications
- Lawyers
- Ex-HMRC employees *
- Those qualified by experience *

*These groups of advisers will generally have no professional body connections and therefore no minimum standards of qualification, ongoing continuing professional development, professional indemnity insurance requirements etc.

The size of firms

Firms vary in size considerably and whilst it is often view that the market is dominated by the larger accountancy firms this ignores the large number of smaller firms. These smaller firms have less scope to absorb or to pass on to their clients any additional regulatory costs.

Tax advisers also operate through a number of business models including as self-employed sole practitioners, partnerships, LLPs and private limited companies. Not all businesses are therefore required to provide information publicly in relation to turnover, balance sheet assets and staffing. Many of the companies which our members run only have abbreviated accounts available for public inspection on the Companies House website.

There is considerable publicly available information about fee levels eg from accountancy ([Accountancy Age Top 50+50 Accountancy firms 2019](https://www.accountancyage.com/rankings/top-5050-accountancy-firms-2019/)¹) or law firms ([Consultancy. UK Top 50 law and legal firms of the United Kingdom](https://www.consultancy.uk/news/2182/top-50-law-and-legal-firms-of-the-united-kingdom)²). Tax will of course form a significant part of the practices of most accounting and law firms. About a year ago we provided the following information to the FCA about fee levels reported to us by firms supervised by us for anti-money laundering purposes (NB These are gross fees, not profits. Those whom we supervise for AML purposes are (on the whole) likely to be smaller firms, so this is unrepresentative of the market as a whole, but does serve to illustrate further the complexity and diversity of the market):

¹ <https://www.accountancyage.com/rankings/top-5050-accountancy-firms-2019/>

² <https://www.consultancy.uk/news/2182/top-50-law-and-legal-firms-of-the-united-kingdom>

Fees	Number of Firms
Less than £20K	232
£20k to £50K	153
£50,001 to £100K	165
More than £100K	278
Total	828

What is clear from the figures provided is that there is a huge variety of fee levels and size of firm. Additional costs can likely be borne much less easily in some parts of the market than others.

The regulation of tax advisers

Whilst a large proportion of tax advisers are members of professional bodies there is no requirement for them to be a member of particular bodies in order to provide services. As a result, professional body membership is optional and members of those bodies have voluntarily agreed to sign up to the payment of membership fees and to adhere to the high professional standards required as a result of membership. Members can choose to cease membership in order to reduce their operating costs.

In addition to the diverse range of suppliers of tax services there are also a wide range of professional bodies involved in the market place. This is underlined by the number of professional body AML supervisors. There are 22 professional bodies listed in [Schedule 1³ of The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017⁴](#) and tax will form a significant part of the work of all accountancy and law firms supervised by the bodies listed.

All firms providing tax services are required to have anti-money laundering (AML) supervision. Those not AML supervised by a professional body are supervised by HMRC. Members of the CIOT cannot choose to be supervised by HMRC whilst in membership but can effectively reduce their costs by resigning from membership and registering for AML supervision with HMRC. The CIOT AML supervision fees are broadly in line with the HMRC fees. If costs increase for supervision this can result in members choosing to resign their membership.

CIOT consider very carefully any increase in annual membership and AML renewal fees and would not seek to constantly increase the financial burden for a membership who have voluntarily signed up to be a part of the body. Any increases above and beyond inflationary increases have to be 'reasonable' and a considerable amount of guidance is needed when any significant change is made. We estimate that the AML supervision fee increase in 2020 (as a result of the OPBAS levy) required the FTE of one person for one month devoted solely to answering queries.

Costs of regulation

Fees for AML registration with the CIOT have already increased significantly over recent years:

Registration fee 2020/21 £300

Registration fee 2019/20 £170

Registration fee 2018/19 £130

³ <https://www.legislation.gov.uk/uksi/2017/692/schedule/1/made>

⁴ <https://www.legislation.gov.uk/uksi/2017/692/made>

Registration fee 2017/18 £120

Costs have increased significantly as a result of the introduction of OPBAS requirements placed on supervisors and the introduction of the OPBAS levy. As the figures above indicate registration fees have increased by 150% between 2017 and 2020.

At present members also have to provide criminality check certificates at the time of initial registration of their firm (the cost for a DBS is £23 per BOOM). Regular renewal of these requirements will increase costs for firms (as referred to in the recent [Financial Conduct Authority – Quarterly Consultation No 28 \(CP20/7\) – Chapter 4 - Changes to the Sourcebook for professional body anti-money laundering supervisors – criminality checks](#)⁵).

In addition, firms have been subject to increased compliance costs over recent years and in particular since the introduction of additional requirements as a result of the 2017 Money Laundering Regulations. As an example a basic software package to assist small firms with their compliance is around £230 and there are further costs for firms in training staff, administrative time spent dealing with documentation etc.

⁵ <https://www.fca.org.uk/publication/consultation/cp20-7.pdf>.