ICAEW

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TREASURY SELECT COMMITTEE ENQUIRY ON ECONOMIC CRIME

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ICAEW welcomes the opportunity to comment on the *Treasury Select Committee enquiry on economic crime* published by Treasury Select Committee, a copy of which is available from this link.

ICAEW is a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 and 2017 dealing with approximately 13,000 member firms.

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MAJOR QUESTIONS

What is the purpose of the Anti-Money Laundering (AML) regime?

1. The UK AML regime appears to be suffering from an identity crisis at present. The purpose of the regime is no longer clear. Is it designed to address all instances of financial crime (eg, omitting £50 from a tax return), or the most serious (billions of drug money entering the London financial system)? Without clarity here we are destined to persevere with a system that is inefficient, misallocates resources, and doesn't truly demonstrate a risk based approach. We therefore need a much clearer definition and analysis of what the UK is most concerned about and what we regard as the most egregious socially or economically damaging crimes.

2. We note that the European Data Protection Supervisor has questioned the proportionality of using information and personal data gathering requirements within money laundering and terrorist financing legislation to achieve a different purpose, thereby infringing data protection principles. We draw attention to the use of the AML regime to gather information for tax administration purposes. We support the strengthening of the tax regime, but the measures to achieve this should be proportionate and transparently communicated.

3. The lack of clarity of purpose is borne out in recent developments. For example, it has been suggested that The Office for Professional Body AML Supervision (OPBAS) is being created for the benefit of the professional bodies and the professions as a whole. This is clearly misguided. The function and purpose of the AML regime is effectively an extension of the UK's law enforcement activity - to deter and detect those wishing to launder the proceeds of crime - and is therefore clearly and demonstrably for the public benefit. No additional income, business or profit emanates from the overhead created by this system but all those involved support the regime created by the 2007 and 2017 regulations as operating in the public interest.

4. The fact that recent regulatory changes largely deal with the censure and discipline of regulated entities is indicative of an approach that doesn't actually focus on the various sources of criminal funds. The narrative that accompanies such changes fails to recognise the professional, co-operative and supportive relationships that exist in the regulated sector.

Are reforms sufficiently evidence based?

5. The justification for recent reforms outlined in the consultation is the UK National Risk Assessment. The document rated all sectors supervised by the private sector as highest risk, and those supervised by the public sector as lowest. We do not intend to repeat our criticisms of the report here, but instead suggest that future updates and iterations, whilst commissioned by government, are carried out by an independent third party or at least involve a balance of delegates with essential knowledge of the different sectors and their associated risks, in conjunction with the outcomes of the recent Financial Action task Force mutual evaluation review. So as to reflect a truly risk based approach unfettered by political motivations and resourcing considerations.

6. For example, HM Treasury has failed to provide an evidence base to justify the purpose and design of OPBAS, to provide an opportunity for public consultation on its setup or scope, or to publish an impact assessment on the potential benefits and costs of the proposed approach. In fact the 2015 UK National Risk Assessment, cited as the

driver behind this change, explicitly stated that there was merely a "perception" of a conflict of interest affecting the adequacy of professional body supervision.

Do we have a genuine understanding of what is meant by risk-based? And does the regime reflect this?

7. We would suggest the government looks at this from a risk-based perspective, redeploying regulation from low risk to high risk areas. For example, making it more onerous to create and continue UK private companies and LLPs with a small number of overseas owners based in jurisdictions with opaque ownership regimes. Approaches might include restrictions on the ownership of property and assets. Another example might be the routine disqualification from directorships of those convicted of money laundering offences.

8. Less time and resource should be funnelled into potentially wasteful and cosmetic reforms when there are more effective measures that could be taken to address money laundering. For example, trust and company service providers (TCSPs) are now to subject to registration with HMRC, regardless of who supervises them. We question the purpose of such a register since the UK system already satisfies Article 47 of the Directive. TCSPs are already required to be licensed or registered either with a professional body or HMRC. Meanwhile, a gaping vulnerability remains in that companies can be set up directly at Companies House with no client due diligence and no questions asked. There are two obvious solutions. One would be to require company formation through a TCSP, the other would be to require client due diligence checks to be carried out centrally at Companies House. The latter has the added advantage of enhancing the accuracy and reliability of beneficial ownership registers, a separate issue which is highlighted by regulation 28(9) and leads us to question the very purpose of the registers. Furthermore the UK approach to such registers has resulted in a huge amount of unnecessary red tape in that the definition of 'person with significant control (PSC)' differs from that of 'beneficial owner' under AML regulations.

9. The implementation of OPBAS puts greater distance between private and public sector supervisors. This, combined with the de-regulatory approach taken to the gambling sector, raises serious questions about the government's appreciation of where the greatest risks lie in the UK's fight against ML/TF and the direction it has taken in addressing these.

10. The current framework allows for large scale duplication of Suspicious Activity Reports since an obliged entity is required to report a suspicion even when they are aware that a report has already been made or even when they are aware of an existing investigation by law enforcement.

Are proposed reforms accompanied by adequate impact assessments? Is a holistic cost/benefit analysis required?

11. An objective evaluation of the costs associated with the AML regime is extremely difficult as the benefits remain largely unquantified.

12. There does not appear to be sufficient evidence of a financial deterrent following reported statistics regarding the UKs asset confiscation. Without criminals being deprived of their ill-gotten gains the regime will continue to be perceived as ineffective as the 'dirty' money will remain either in circulation or in an offshore bank account, probably long after the guilty parties have been released from prison.

13. It is also difficult to comment on the effectiveness of the regime in abstract since money laundering cannot exist without a predicate offence. In this sense the regime

will only ever be effective in responding to symptoms rather than underlying causes. The regime needs to be considered as part of a holistic response to financial crime. With sufficient deterrents to prevent, for example, insider dealing and fraud, there will simply be less dirty money to launder. This again requires a more joined up approach on the part of government.

14. The implementation of the regime has substantial time and resource costs for the regulated sector, but a cost/benefit analysis is impossible as we are unable to quantify the success of the measures beyond the case studies published by the government. Such dis-connect between the cost of the regime and its benefits may result in inefficient resource allocation and confused signals that damage financial services as an export trade.

15. When an individual or organisations seeks to operate in the financial system they may well employ the services of multiple obliged persons including banks, lawyers and accountants. Currently each of these obliged persons will have to carry out the same client due diligence requirements. This represents significant duplication of work throughout the regulated sector.

16. Businesses also suffer where they are caught between conflicting legal/professional obligations. There is an uneasy tension between the AML regime and other obligations for example under general data protection regulation and professional privilege.

17. When legislative proposals are accompanied by impact assessments such assessments are frequently questionable. For example, we note that the impact assessment (analysis and evidence section) incorrectly concludes that OPBAS is ‘cost neutral’ and the fee on professional body supervisors is a ‘transfer within the system’. There is no explanation for this assessment nor, in our view, any ascertainable rationale to support it. As the OPBAS fee is a new fee for a new body - we fundamentally disagree that OPBAS is cost neutral to the public. The funding charge and the increased costs predictably emanating from increased oversight activity, will be passed on to regulated entities, who will pass the charges on to their clients (the general public) – while the high risk groups supervised by public bodies, falling outside the scope of OPBAS, will bear no costs at all.

18. It is therefore unclear how the proposals cut red tape or remove unnecessary burdens for business as has been suggested. The proposals, as we understand them, appear to achieve the exact opposite for those businesses seeking professional supervision. HMRC is already the cheap, least-demanding option for accountancy service providers (ASPs) seeking AML supervision, which the current proposals will only serve to reinforce. Increased costs are likely to increase the costs of delivering accountancy services by professional accountants or simply to drive them to HMRC. This runs contrary to the risk based approach.

Recommendations and constraints

19. Further initiatives in this area will only be truly effective if supported by a genuine investment in knowledge, skills and resources in Government, since simply pushing more cost and responsibility onto the private sector will inevitably yield diminishing returns if not met by an equivalent response from law enforcement. If there is real concern about professional enablers there needs to a clearer process within law enforcement to identify who, what, how & why so that professional bodies can work with the public sector and take appropriate action.

20. There have numerous instances of “tough new legislative powers” being announced by Government in recent years, without a necessary review of the suite of criminal and civil powers already available, that may not be being used effectively due to under-resourcing.

21. We have seen a number of reviews and consultations on economic crime from various government departments, to which a great amount of time and resource has clearly been committed. Yet it is not clear that the output is matching the input. Furthermore, real reform in certain areas is hampered by self-imposed restraints. For example, the SARs reform programme appears driven by two primary motivations. The first being that any changes have to take place outside legislation, the second being that the costs will largely be met by the private sector. Better systems (with a clear understanding of their purpose) to collect, collate and analyse data on SARs, police investigations and prosecutions don’t have to be expensive. The introduction of NCA relationship managers would be a step forward.

22. We are conscious that, as with many organisations, financial intelligence unit resource is limited. We propose that there should be an exemption from reporting based on knowledge of police action already being taken (eg possession of a crime reference number or existing SAR reference number) and surety on the part of the professional that they have no further information.

23. See our comments in paragraph 8. Companies House should have greater responsibility to carry out basic checks, and greater powers to deal with delinquent companies, thus addressing a major weakness in the UKs AML defences. This would be extremely impactful. Furthermore, the PSC register represents a step backwards. The annual return was a much more useful source of information.

24. Our points above (amongst others) are echoed in the CCAB Manifesto on Fighting Economic Crime. This is a document we support and to which we would also like to draw the committee’s attention.