



ECONOMIC CRIME LEVY: FUNDING NEW GOVERNMENT ACTION TO TACKLE MONEY LAUNDERING

Issued 13 October 2020

ICAEW welcomes the opportunity to comment on the consultation document *Economic crime levy: Funding new government action to tackle money laundering* published by HM Treasury on 21 July 2020, a copy of which is available from this [link](#).

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ICAEW is also a Supervisory Authority under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, supervising approximately 11,000 firms.

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CONSULTATION RESPONSES

Levy Principles

Question 1: Do you agree with the design principles as set out above? Should the government consider any further criteria?

1. We agree with the design principles set out in Chapter 2. We don't believe there are any other criteria that the government should consider.

Spending the levy funds

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

2. We agree that the levy should fund those areas that tackle money laundering and should be ring-fenced to only fund those areas. We believe that it is important that the UK has the right level of resources within the UKFIU and NECC to harness and utilise the information and intelligence held by the AML-regulated sector, supervisory authorities and law enforcement agencies but to also disseminate information on AML risks and typologies to the AML-regulated sector.
3. We are concerned with the plan to fund Companies House reform through the AML-regulated sector. Plans to improve Companies House should be funded by its users (namely businesses) through increased fees. We understand that there are limits on the amount by which Companies House can increase its fees, or what the fees it collects can be used for, however government should consider changes in statute to allow Companies House to raise its own funding for reform.
4. However, we do see some benefit in the AML-regulated sector funding elements of the Companies House reforms if the AML-regulated sector is able to see a reduction in its own compliance burden as a result of those reforms. For example, if those reforms allow the AML-regulated sector to rely on the information held at Companies House, it would be possible to change/streamline the client due diligence regime.
5. We agree that more can be done to improve the education and awareness of economic crime threats. However, any such campaigns have to have a demonstrable impact and be capable of reaching all areas of the AML-regulated sector. We are concerned that previous campaigns focussed on particular geographical areas and primarily engaged with those firms that already show good levels of engagement with the AML regime. The challenge for any awareness raising campaign is to target and penetrate those firms that do not have a well-established AML community for them to participate in.

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?

6. We agree that the government should publish an annual report.

7. We recommend that the government uses the annual report as a joint report from government, law enforcement and the private sector that reflects on the successes of the previous year and determines the priorities for the following year. The report should have clear key performance indicators that shows how the economic crime levy has delivered tangible impacts – with not only lists of achieved actions but with the value of seized criminal property. This will help set the tone, and provide the justification, for contributions in future years.

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

8. Five years is too long for such a review and we recommend that it should be three years, as is the case of other pieces of legislation.
9. The review should encompass the types of questions set out in this consultation – is the revenue basis still appropriate, is the calculation still fair, should there be an exemptions – but should also consider the matters presented in the annual reports we have suggested in paragraph 7.

Levy calculation

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.

10. Yes, we agree that revenue from UK business is the best of the options available and should form the basis of the levy calculation.
11. We have considered all of the potential options sent out in Table 4A of the consultation paper and balanced the advantages and disadvantages. However, when considering the levy principles, revenue from UK business meets most of the requirements with the fewest disadvantages. We agree that revenue provides proportionality and is a metric that businesses will be able to report easily. We also agree that revenue is most likely to lead to fewer unintended consequences and shouldn't result in a change to behaviour.
12. However, it is important that this doesn't become a tax where the levy rate increases significantly year on year with no real accountability for why the additional funds are required, or how the funds are spent. A revenue metric only works if strong governance and review procedures are in place.

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?

13. We are not sufficiently aware of the circumstances of the other sectors to understand whether revenue will pose a significant challenge but we do not think that the accountancy sector will be disproportionately impacted if revenue is used as a metric.
14. Generally, the trend within our supervised population is that the largest firms present the highest AML risk (owing to eg, their geographical reach, the range of services they offer and

how attractive their brand and reputation are to criminals). However there is a very small number of firms with low levels of revenue that present a high level of AML risk.

15. We have previously discussed with HM Treasury whether revenue should be AML-regulated revenue only, or total revenue. Not all of the revenue of the largest firms falls with the AML-regulated regime and so they may be disproportionately impacted by virtue of these service lines within their business – incurring a levy on revenue that isn't caught by the Money Laundering Regulations. We believe that the calculation should only include regulated UK revenue.
16. There may also be some inconsistency amongst the largest firms on how firms structure their practice. Some firms have all of their business in one legal entity and others have different services lines, or areas of regulated business (eg, FCA regulated work) in separate legal entities. This may mean that some firms are disproportionately impacted, depending on the calculation methodology used – either because they are able to make use of the thresholds to reduce the levy or because they spend time and resources restructuring their businesses accordingly.

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.

17. As we have set out at paragraph 11, we have considered all of the potential options sent out in Table 4A and consider that revenue from UK business meets most of the requirements with the fewest disadvantages, and is therefore the most suitable.

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

18. The approach will be determined by reference to other conclusions and outcomes as a result of the consultation.
19. A banded approach to revenue would work better if HM Treasury decides to use only AML-regulated revenue as the bandings would allow firms to be pragmatic in calculating their revenue balances rather than setting up complex and expensive processes to calculate exact figures. Should HM Treasury decide to use total UK revenue (regulated and unregulated), a fixed percentage would be most desirable.
20. A banded approach may result in a cliff-edge in the amount of levy a firm pays – such that a small increase in revenue may result in a significant increase in the levy due.
21. In paragraph 29, we suggest that HM Treasury may wish to adopt a calculation principle similar to the OPBAS levy to prevent the cliff-edge approach.

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?

22. We disagree that small businesses should be exempt from paying the levy as we believe that all firms across all sectors should participate in funding the Economic Crime Plan. All AML-regulated firms have a role to play in the fight against economic crime and there is a risk that sectors with high AML risk will be largely exempt from paying the levy if HM Treasury implements a small business exemption.
23. However, we accept that this causes a significant administrative burden as the number of firms that will fall within the levy will increase from as little as 3,520 firms to over 90,000 firms. We agree that there will be an associated cost of administering, collecting and enforcing the levy and that, in some cases, the cost of collection may be higher than the levy element. We also agree that, for some firms, the cost of calculating and declaring the levy will also incur costs.
24. In Chapter 5 of the consultation document, HM Treasury sets out that they have calculated that a levy rate of between £100 and £200 per £1million of revenue. We suggest that the exemption threshold be set at the £1million mark, with a fixed rate up to the threshold (eg, £100 or £200) with a variable rate for all revenue above the threshold (eg, £100 or £200 per £1million of revenue). We note that these figures do not include the cost to collect.
25. We also acknowledge that lowering thresholds from £10.2million to £5million or £1million has a negligible impact on the levy rate owing to the aggregate revenue of businesses between £1million and £10.2million is very small when compared to the aggregate revenue of businesses with revenue over £10.2million. Nevertheless, we feel it is important that there is solidarity of payment amongst all the firms in all of the AML-regulated sectors.

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

26. We agree that a small flat fee for businesses below the threshold will bring cost-effectiveness while ensuring solidarity of payment across all of the AML-regulated sectors.

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.

27. Whereas one of the benefits of using revenue is that it is relatively simple and transparent, allowing a clear calculation, the disadvantage of using all three of the Companies Act 2006 criteria is that the firms may incur additional costs in calculating whether they are exempt or not. There is also an additional cost associated with the calculation and collection/administrating of the levy by the levy collecting body.
28. The benefits of the Companies Act criteria actually lies in the 'two out of three' rule, that requires a firm to have risen above two out of the three thresholds for two out of three previous years. This prevents firms from moving above and below the threshold year-on-

year, and would give the business more stability and certainty as to whether they are going to fall out of the exemption. It would be beneficial to use this concept of two out of three years within the Companies Act 2006 criteria, rather than using three different metrics within the calculation.

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?

29. We suggest that HM Treasury follows a similar principle to the OPBAS levy, whereby there is a fixed levy amount up to the threshold and then a variable rate per BOOM thereafter. This methodology prevents the ‘cliff-edge’ where a small jump in revenue would lead to a large jump in levy liability.
30. The challenge is identifying the appropriate threshold and the fixed levy amount up to that threshold. As we set out in paragraph 24, Chapter 5 of the consultation document sets out that they have calculated that a levy rate of between £100 and £200 per £1million of revenue. We suggest that the exemption threshold be set at the £1million mark, with a fixed rate up to the threshold (eg, £100 or £200) with a variable rate for all revenue above the threshold (eg, £100 or £200 per £1million of revenue). We note that these figures do not include the cost to collect.

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

31. We have been involved in discussions on how to apply money laundering risk to the levy for a number of months and agree with the challenges that the consultation paper sets out in relation to each possible metric:
- we agree that attaching the levy to SARs will result in the unintended consequences of under-reporting. Secondly, the number of SARs reported doesn’t equate to risk. We will publish a thematic review on SARs at our highest risk firms soon.
 - the National Risk Assessment isn’t granular enough to allow the risk to be translated to an individual firm; and
 - there is too much risk that the approaches used by supervisory authorities are inconsistent across, and within, sectors.
32. For these reasons, we consider that UK revenue remains the most appropriate method.

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.

33. Using the threshold of 10,000 SARs over the past two years will mean that all but a limited number of firms in the finance sector will be caught by this methodology (the accountancy sector only submits 5,000 SARs per year in total). Based on this, we are not well placed to

say whether 10,000 is the correct threshold to bring in a risk multiplier but such a multiplier does mean that the greatest users of the SARs Online system will pay more towards its reform (which will, in turn, benefit them by streamlining their own SARs reporting systems).

Applying the levy calculation

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?

34. We suggest that a periodic process would be most appropriate. This would remove the additional cost burden associated with the ASTRAC annual level setting but would also give firms certainty of their likely levy.
35. When considering the single agency versus supervisor model, the periodic model also reduces the flow of information between the supervisor and a central agency/department to calculate the levy. It seems counter-intuitive to set up a supervisor model to allow the supervisor to use the information/infrastructures it already holds to calculate and collect the levy but to also send that information annually to a third party.
36. We suggest that the periodic review of the levy rate should coincide with the levy review set out in Chapter 3 / Question 4 but that any increase in the levy rate is carefully justified through the annual reports, and clear allocation of funds to projects and initiatives that provide demonstrable impact.

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

37. As we set out in paragraph 15, we have previously discussed with HM Treasury whether revenue should be AML-regulated revenue only, or total revenue. Not all of the revenue of the largest firms falls with the AML-regulated regime and so they may be disproportionately impacted by virtue of these service lines within their business – incurring a levy on revenue that isn't caught by the Money Laundering Regulations. We believe it to be fairest to include revenue from AML-regulated activity only, otherwise all unregulated businesses should be included in the scope of the levy and not just the unregulated activity of regulated businesses.
38. We are aware that some of the largest firms may find it difficult to accurately split out their revenue between AML-regulated and AML-unregulated balances. While the firms report their income by service line and sector, it is possible that particular engagements may change from unregulated to AML-regulated and vice-versa and the firms would need to create processes to capture those changes. This will bring additional cost and administrative burdens to the firms.
39. However, basing the levy on AML-regulated only may lead to significant work in identifying the relevant revenue figure. As we set out in paragraph 19, a banded approach to revenue would work remove some of this work (and associated cost) as the bandings would allow firms to be pragmatic in calculating their revenue balances rather than setting up complex

and expensive processes to calculate exact figures. We note that the consultation suggests that firms could 'estimate' the proportion of their total business activity which is AML-regulated UK business. In this scenario, there would need to be clear guidance on what an acceptable error rate / range may be and confirmation that inaccuracies in estimated revenue levels will not be regarded as matters for disciplinary or enforcement action if those estimates were reasonably based on information available at the time.

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?

40. Not applicable to ICAEW.

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

41. We prefer the definition that follows the UK Financial Reporting Standards definition so that firms are able to use the information they already prepare for their financial statements.

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?

42. There are not many accountancy firms in our supervised population with non-UK revenue. Those firms that do have non-UK revenue would be able to split out their revenue relatively easily (and present their UK revenue segment in their financial statements).

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?

43. Not applicable to ICAEW.

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

44. Yes, we do agree. This information is easy for the firm to produce as it is already produced for the firm's financial statements.

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.

45. Yes, we agree. Businesses should be liable for the period that they are in the regulated sector, rather than the date from which they registered with an AML supervisor. We also agree that newly regulated entities will be liable for the levy from their first full accounting period they are regulated, onwards, to reduce the administrative burden of identifying the relevant regulated income in a transition accounting period.

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

46. In paragraph 16, we described that there may be some inconsistency amongst the largest firms on how firms structure their practice. Some firms have all of their business in one legal entity and others have different services lines, or areas of regulated business (eg, FCA regulated work) in separate legal entities. Likewise some firms have their AML-regulated business across various entities and this may result in them falling below any thresholds and/or utilising exemptions or allowances.
47. Ideally, the levy would be set at the group level to mitigate this risk. This would rely on the firm disclosing the group UK revenue to the levy collecting body as the information might not be easy to identify from publicly available records.

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?

48. Yes, we do agree. ICAEW collects revenue information on its firms at the partnership level (we supervise the firm) and it is most appropriate for the levy to fall to the firm rather than the individual partners.

Collecting the levy

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.

49. We believe that the agency should issue a notice to file. This would create a record, with the agency, of who was due to pay and the levy liability, which would make enforcement more straight-forward. It would also allow for a cleansing of the data – as any business that considers themselves to have received a notice to file incorrectly would be able to contact the collecting agency to have themselves removed from the register (if appropriate and with the agreement of the collecting agency/supervisory authority).
50. Relying on the businesses to submit a return pro-actively will inevitably result in a significant amount of credit control management – identifying which businesses hadn't submitted the return and then following up with the business. In our experience, this chasing is a significant administrative burden.

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?

51. We believe that all regulated businesses should pay a small flat rate fee who fall below a small business exemption threshold. Those businesses will need to report a declaration to the collecting agency that they meet the exemption criteria.

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.

52. Yes. We have stated in paragraph 34 that we believe the periodic levy calculation to be the most suitable methodology and, on this basis, we agree that once the business has filed its revenue data, the agency could proceed immediately to sending an invoice.
53. We agree that one regulated business can pay a liability on behalf of the group.

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

54. The suggestions sound reasonable. HM Treasury should use existing tried and tested compliance frameworks for a single agency model.

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?

55. Yes, we agree that frequency of reporting and payment should fall to the supervisor. However, our processes do not allow us to be able to confirm that we would transfer levy payments to the government a maximum of a year after the end of a business' accounting period in *all* cases.
56. Under our existing processes, firms submit an annual return to ICAEW throughout the year – a firm's annual return is due a year after the firm was registered with ICAEW or in line with its PII renewal. This means that we receive approximately 1/12 of annual returns each month. Within this annual return, the firm provides information on the UK revenue earned in the financial reporting period that fell within the period of the annual return. We invoice our membership fees, regulatory fees and levy collections in November and collect them throughout the winter.
57. In practice, this means that a firm with an annual return date of February 2020 may have reported its UK income to ICAEW for the period ended March 2019. We will invoice the firm in November 2020 and we would not pay that to government until March 2021.
58. We will need to explore what additional information we can reasonably collect from firms to shorten this timeline.

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

59. We do not currently operate our debt collection through a civil debt system, which attracts interest. However, if suitable provision is set out in legislation, we will be able to undertake this compliance activity.

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

60. We believe the most streamlined model, across all regulated firms, is to use a single agency for collection. As the consultation paper sets out, it is the most cost-efficient in the long term and will allow for a consistent application of the levy. While ICAEW does already have collection mechanisms in place, and we currently collect levies on behalf of the FRC and Insolvency Service, there will be additional cost to ICAEW of setting up the mechanisms to collect the Economic Crime Levy. All 25 supervisory authorities will incur these costs. We are also aware that some of the smaller professional body supervisors are concerned that the cost to collect to them, will be greater than the levy they collect and pay over to the government.
61. However, we also accept that we have proposed solidarity of payment and that this will result in over 90,000 firms paying the levy. We already have good supervisory relationships with our population of firms (11,000) and have mechanisms in place to collect revenue data, invoice the levy and collect it. We are able to operate a supervisor model if this is the conclusion that HM Treasury reach.

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

62. In a single collector model, ICAEW's costs would be relatively low. We already have the infrastructure in place to collect the information we need via our annual return, although we may need to add questions to our annual return to collect that data. We estimate the cost would be between £5,000 and £10,000 per annum.
63. If ICAEW were to collect the levy, the costs would be much higher. We would still need to incur the costs mentioned in paragraph 62 to collect the data. In addition, we would incur costs to set up the billing/levying on each of the firms in our supervised population. We estimate the set up costs to be between £15,000 and £20,000 with the estimated annual cost of between £5,000 and £10,000.

Funding for fraud

Question 33: How much did your organisation spend on countering fraud in 2019? What are these funds spent on, in high level terms?

64. ICAEW does not separate out the costs we spend on countering fraud. However, we have a significant number of areas of our business that are involved in countering fraud through awareness and education, as well as professional duty. We contribute funding to the Fraud Advisory Panel and our Technical and Members Departments produce a wide range of educational material to support our firms in their obligations to, among others: identify and report suspicions of money laundering (where fraud may be the predicate offence); and meet the auditing standards in relation to fraud.

Question 34: What additional financial contribution should the private sector contribute towards improving fraud outcomes?

65. We are unclear as to what sort of financial contribution the consultation is referring to. We don't believe that the private sector can actively participate in the policing around fraud and believe that the responsibility for policing should remain with law enforcement and funded via general taxation.
66. We do not have any evidence that the AML-regulated private sector has more of an obligation to contribute to countering fraud than any other part of the private sector. Fraud is a risk to all businesses and to all individuals, and all should play a role in protecting themselves and wider society.
67. HM Treasury also needs to consider what it means by 'fraud outcomes' and the definition of fraud. Fraud is a wide ranging topic and it affects different individuals and businesses in different ways – which elements of fraud should we tackle first? Fraud against the individual eg, investment scams; corporate reporting fraud; or fraud against the state eg, government support scheme fraud? The causes of each of these types of fraud are varied and will require very different responses – with different parts of the private sector playing a role in these responses.

Question 35: Which sectors do you think should be involved in countering the system-wide fraud risk? Please explain your rationale – for example whether you believe that those included should be included based on benefit, or risk?

68. We do not have any evidence that any one sector should be involved in countering the system-wide fraud risk any more than any other sector. As we set out in paragraph 66, fraud is a risk to all businesses and to all individuals, and all should play a role in protecting themselves and wider society.

Question 36: What mechanism would you recommend in order to collect additional funding?

69. We are surprised that there is a question on collecting additional funding when we have not discussed what funding is required, or who should be paying that funding. As we explain in paragraph 65, we believe policing for fraud and general fraud-countering measures should be funded via general taxation. As our response to Q2 sets out, we don't believe the economic crime levy should be used to fund anything other than those set out in the consultation.

Other

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

70. We have no further comments.