



Economic Crime Levy Consultation Response Document

Responding to the consultation

The government recognises that the economic crime levy is novel, both in approach and motivation, and is therefore committed to working with stakeholders to ensure it operates as intended.

The government would welcome comments on this consultation by 13 October 2020. However, we would encourage responses before this date where possible.

Responses can be sent by email to: ECLevyconsultation@hmtreasury.gov.uk

As the team is currently working from home due to the Covid-19 pandemic, we would request – where possible – responses are sent electronically. However, if needed, responses can be sent by post to:

EC Levy Consultation
Sanctions & Illicit Finance Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

For the full consultation disclosure notice please refer to Chapter 8 of the consultation document itself.

Basic Information

About you	
What is your name?	Adrian Hood
What is your email address?	adrian.hood@theia.org
If applicable, what is the name of your organisation?	The Investment Association
What size is your organisation for the purpose of the Companies Act 2006? (see: definitions)	<input type="checkbox"/> Large <input checked="" type="checkbox"/> Medium <input type="checkbox"/> Small <input type="checkbox"/> Micro <input type="checkbox"/> N/A
If applicable, what type of AML-regulated business is your organisation? (see: MLR definitions)	<input type="checkbox"/> credit institution; <input type="checkbox"/> financial institution; <input type="checkbox"/> auditor, insolvency practitioner, external accountant and tax adviser; <input type="checkbox"/> independent legal professional; <input type="checkbox"/> trust or company service provider; <input type="checkbox"/> estate agents and letting agent; <input type="checkbox"/> high value dealer; <input type="checkbox"/> casino;



	<input type="checkbox"/> art market participant; <input type="checkbox"/> cryptoasset exchange provider; <input type="checkbox"/> custodian wallet provider
If your organisation is not an AML-regulated business, in what capacity is it responding to this consultation? (for example: as a civil society organisation, other type of business etc) _	The IA is the trade body for the Investment Management industry in the UK
If applicable, who is your AML-supervisor?	N/A
For the purposes of the call for evidence on the fraud response, to what sector(s) does your organisation most closely belong?	Click or tap here to enter text.
Would you like your response to be confidential and, if so, why?	No

Consultation Responses

Levy Principles

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



We agree that the resourcing model should comprise contributions from both the public and private sectors that participate in, and benefit from, the agenda to reduce economic crime, and that it is right that all those who contribute towards the risks within the UK economy should pay towards the costs of addressing those risks.

Proportionality and affordability

In order for the proportion of the levy paid by a firm to match the proportion of the money laundering risk that their activity brings into the UK economy their levy element must reflect both the size of their business and the risk of money laundering through that business.

The polluter pays principle is important for linking those who pay to how much is paid.

Solidarity

It is fair that those whose business activities are exposed to money laundering risk pay towards the costs associated with responding to and mitigating those risks.

To promote solidarity, it is important that all firms in the AML regulated sector pay something towards the levy, even if it is only a fixed *de minimis* charge each year for the smaller firms.

If all firms in the AML regulated sector pay something towards the levy then this will promote a sense of solidarity. Should small firms be exempted, then there will be a feeling that they bear no responsibility for tackling the issue, and a risk that firms would deliberately arrange their business operations to take advantage of this 'free ride' on larger firms.

Simplicity and Transparency

While we would agree that the levy should be simple enough for firms to understand and calculate, we would not support simplicity over transparency or fairness. If small firms are subject to a fixed *de minimis* charge each year, then the remaining firms will be of sufficient scale and have sufficient experience in the financial sector, that they are able to understand calculations that are not overly simplified.

Firms in the regulated sector already understand the fee calculation mechanisms of the FCA and FSCS, which are far from simple.

Cost effectiveness of levy collection

The use of a fixed *de minimis* charge each year for the vast majority of smaller firms would be cost effective, in that it would save most work on data collection (requiring only one factor to be collected) and all efforts on calculation. It should also avoid most debate on the levy imposed on a firm and it should be relatively stable and so predictable for firms.

Avoiding unintended consequences

Should small firms be entirely exempt from paying this levy then this could lead to a moral hazard, indicating to small firms that they have 'no responsibility' for tackling money laundering, and could result in firms organising their businesses so as to keep each legal entity under the threshold.



In line with the principle of proportionality, those businesses exposed to higher risk of money laundering should pay towards the costs associated with responding to, and mitigating, those risk in a way that reflects their money laundering risk profile. For example, smaller firms should not be exempt solely based on their size or revenue, as these are not indicative of the overall money laundering risk posed by them and exempting them could imply that they have a limited stake in the UK's fight against economic crime. Conversely, large revenue firms should not have to carry the whole burden of the Levy as this would be disproportionate to the risk that they pose to the financial services sector.

Furthermore, the principle of solidarity would be enhanced by all firms within the AML-regulated sector contributing towards the Levy, albeit with smaller firms paying only a small or *de minimis* charge.

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?



We agree with the proposed issues (SARs Reform Programme, UKFIU uplift, NECC costs, NAC and NDEC costs, FI uplift, awareness raising campaigns and Companies House reform) on which the levy is to be spent. These would seem to be issues which would be to the benefit of the whole AML-regulated sector.

There have been other issues suggested during the development of the levy proposals (such as the development of the Bank Account Register) which would have only been to the benefit of certain sectors within the AML-regulated sectors – it is good to see that these are going to be funded separately.

It is important, when designing the detail of the Levy, that there is equal clarity over the other new funding sources (e.g. ARIS, new Government spending, civil actions etc.) for these issues, and the proportion of each source that will be directed to each issue.

The funding from the Levy must be clearly designated to build up public sector expertise and skills. At the same time, the law and the enforcement mechanisms should develop to reflect the growing and ever-changing nature of economic crime. As such, the Levy could be used to fund the government's action to:

- improve consistency between the numerous different AML supervisory bodies, including professional bodies and statutory AML supervisors; and
- ensure that enforcement agencies take more a proactive approach in sharing information with financial institutions who, in turn, can make relevant changes to their policies and processes in order, more effectively to target money laundering.

These measures would encourage higher standards of corporate governance, help to establish credible deterrents against financial crime and allow for improved investigation and enforcement.

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?

Given that the Levy is likely to be an enduring and long-term measure we agree that a report on the use of the Levy should be published annually.

As well as how the Levy is spent, the annual report should:

- outline the Government's financial crime strategy;
- set out any outcomes achieved – including whether all set targets have been met;
- detail how effectively the funds have been used to tackle money laundering;
- assess value for money in order to justify the effective spending of the Levy;
- provide a rationale for any projects which deadline wasn't met.

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



It feels reasonable to have a 3-year review period for the levy to ensure that there is a timely possibility for changes. Annual review may not scope enough information to draw balanced conclusion, whereas five years would be too long, considering the pace economic crime methods evolve, requiring measures to be promptly taken hence, involving the cost.

The proposed 5-year review could be a subsequent comprehensive, in-depth look at the levy, including the effectiveness of its design and its impact as a financial crime deterrent. The review should consider the ever-changing nature of the financial crime threats and consider potential reforms that could be made to the Levy. By this time several reform projects should be completed (for example, SARs regime or Companies House reforms).

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.

Yes, we would agree that the UK business revenue is the least bad of the proposed Levy bases, as most closely related to the money laundering risk that the firm brings into the UK.

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?

We are not aware of any.

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.

The only alternative brought to our attention would be charging the Levy through existing supervisor levy structures, where each supervisor, such as the FCA, would raise their supervision fees by a fixed percentage increase. This method may be better attuned to the risk presented and would make it simpler for firms as these could utilise existing infrastructure to pay the Levy.

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

We would regard the single fixed percentage as being the better option, as the reduced predictability would not be as detrimental as the unfairness of the banded 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?



As we have stated above, we would be against a total exemption for small businesses, but would be in favour of a fixed *de minimis* charge each year. The size of the business alone does not determine its money laundering risk.

By avoiding the fee calculation costs this approach should be efficient and fair. Excluding 85%-95% of firms subject to the Levy would go against the Principle of Solidarity, while keeping the *de minimis* levy low (e.g. £300 pa) would meet the Principles of Proportionality and affordability, as well as Simplicity and Transparency and Predictability.

If 95% of the 90,000 firms in scope (85,500 firms) paid a *de minimis* of £300 pa, this would amount to £25.65m. A *de minimis* charge of £500 pa would raise £42.75m from these smaller firms.

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

As set out in our answer to Question 9, we would be in favour of this approach. This would ensure there is 'solidarity of payment' across the AML-regulated sector.

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.

We do not have strong views on this issue, as long as those meeting the eventual criteria are subject to the *de minimis* charge.

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?

It would seem logical and consistent to treat the income of a large firm which would be below the threshold in the same way as small firms are treated. So, applying the *de minimis* charge to the first £xm of UK business revenue.

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



The more economic crime risk that a firm (or its sector) brings into the UK’s financial system, the greater its contribution to resolving the issue.

In order to minimise any unintended consequences, the metrics used should apply to separate sectors, rather than to individual firms. This way, any behaviour change by one firm would have minimal impact on the whole sector’s behaviour, and so a negligible impact on their share of the levy.

If risks are assigned to sectors based on, for instance, the supervisor risk assessments, then this would remove the risk of confidentiality being undermined. There would need to be a meeting of supervisors to ensure that risks of money laundering to the UK from the different sectors were assessed on the same basis.

We recognise the potential unintended consequences of using SARs as the risk metric, as set out in paragraph 4.27. However, we also note that the legal obligation to file a SAR should outweigh the temptation to not file in order to get a, very, marginal reduction in levy. We also note that three of the uses to which the levy will be put are the SARS Reform Programme, UKFIU uplift and Financial Investigator uplift. The step change in law enforcement capability should go some way to deter firms from not filing a SAR, even where they are tempted.

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.

The banded approach would certainly have a clear effect in reducing any incentive to not report a SAR in order to marginally reduce the firm’s levy, however, we would suggest that this could be taken further. If a firm is submitting more than 10,000 SARs a year then, while clearly reflecting its controls and identification of suspicions, it would also indicate that it is bringing a considerable money laundering risk into the country, so we would suggest that a greater uplift than 10% would be justified. It may also be worth investigating the potential benefits of using three bands, for example:

SARs submitted on average over last two years	Multiplier
0 - 100	1
100 – 9,999	1.2
10,000<	2

If this approach is to be taken, then the supervisors must ensure that the relative volumes of reports from different sectors truly reflects the risk that they represent to bringing money laundering into the UK

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?



Most firms are used to their supervisory fees being set on an annual basis, and accept the risk that this will vary slightly each year.

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

The more administratively-simple calculation would be based on the total revenue. Separating AML-regulated activity from total revenue could prove to be particularly complex for larger multi-divisional businesses, who ultimately will be the main contributors of the Levy. Some firms report that the segregation of revenue like this could cost more than the resulting Levy.

It is, therefore, important that firms are able to use their total revenue as the basis.

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?

No comment.

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

The government should attempt to use a consistent approach to calculating revenue across the other business taxes and levies. For investment management firms, the definition of turnover from the Companies Act 2006 would seem appropriate to define the levied revenue.

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?

The Levy should be based on UK revenue only. This would mean simpler administration and mean the Levy would be based on robust, readily available data.

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?

No comment

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

Yes, this would be considerably simpler for firms, as it is already calculated. Any mis-match with the period covered by the Levy will be non-significant given the on-going nature of the Levy.



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.

For firms in newly regulated sectors, or those joining a regulated sector, the approach proposed seems entirely reasonable.

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

Levy liability should be calculated at legal entity level, but could be levied at group level. This would provide a level of detail down to each firm but simplify the overall payment process as a group of affiliated businesses could pay just one invoice.

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?

This seems reasonable.

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.

Notices to file a return, if sent out electronically, should have minimal cost, while providing certainty and clarity for firms subject to the Levy.

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?

While we object, above, to small firms being exempt from the Levy, considering that all firms should pay something, even if only a small flat fee, were this to go ahead, then it would be a clearer and more robust system if those small firms had to positively confirm their status.

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.

The proposed approach seems reasonable.

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



There should be a degree of leniency shown in the first year in which the Levy is raised on a specific firm, but thereafter, it should be clear that any non-compliance will result in the full cost of enforcement being reclaimed in addition to the levy plus interest. Firms' continuing non-compliance should not have any negative impact on firms which pay their levy in a timely and compliant manner.

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?

No comment.

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

There should be a degree of leniency shown in the first year in which the Levy is raised on a specific firm, but thereafter, it should be clear that any non-compliance will result in the full cost of enforcement being reclaimed in addition to the levy plus interest. Firms' continuing non-compliance should not have any negative impact on firms which pay their levy in a timely and compliant manner.

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

It should not be forgotten that there is an overarching body set up to oversee the AML supervisors. OPBAS already exists and could have this Levy collecting role added to its remit.

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

Not applicable.

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?

As a trade association, we can only comment that the cost of countering fraud for regulated firms is difficult to quantify, as it includes the cost of systems that implement fraud controls and human resource, in the form of full-time fraud-dedicated staff as well as an irregular number of employees across the firm working on mitigating the risk of fraud or investigating fraud incidents, as and when required. This can easily amount to several million pounds a year for larger firms.



HM Treasury

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

No comment.

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?

All sectors should contribute to this work. It is not only, as is made clear in the consultation paper, the financial services sector, or the AML-regulated sector, which suffers from fraud, but all private sector firms.

While fraudsters do not operate in silos and are increasingly technologically advanced and operating across borders, there is a real benefit in working together to tackle fraud, share intelligence and good practice across the businesses.

Obviously, fraud is a predicate offence, so the handling of any benefits of fraud would constitute money laundering.

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

While we have no set opinion on this issue as yet, it could be based on that used to collect the money laundering Levy, with appropriate expansions in scale.

Other

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

In addition to the formal governance framework, it would be beneficial to have periodical sectoral forums to discuss ideas and suggestions from the levied businesses as to how the Levy should be spent.