



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?	Keven Bader
What is your email address?	keven@citma.org.uk
If applicable, what is the name of your organisation?	The Chartered Institute of Trade Mark Attorneys (CITMA)
What size is your organisation for the purpose of the Companies Act 2006? (see: definitions)	<input type="checkbox"/> Large <input type="checkbox"/> Medium <input type="checkbox"/> Small <input type="checkbox"/> Micro <input checked="" 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 Chartered Institute of Trade Mark Attorneys (CITMA) is the professional membership body representing the interests of trade mark attorneys, paralegals, barristers and solicitors and others with an interest in IP. It has over 1,600 members and membership covers those operating in industry as well as private practice. CITMA is also the Approved Regulator of Registered Trade Mark Attorneys in the UK.
If applicable, who is your AML-supervisor?	None
For the purposes of the call for evidence on the fraud response, to what sector(s) does your organisation most closely belong?	Legal services
Would you like your response to be confidential and, if so, why?	No

Applicability of the proposed Economic Crime Levy to Patent Attorneys

Background

The Chartered Institute of Trade Mark Attorneys (CITMA) is the professional membership body representing trade mark attorneys primarily in the UK. CITMA represents over 850 Chartered Trade Mark Attorneys (CTMAs) working in industry or private practice.

CITMA and its sister institute, the Chartered Institute of Patent Attorneys (CIPA) are both Approved Regulators under the Legal Services Act 2007 (LSA). CIPA and CITMA have delegated their responsibility as Approved Regulators to the Intellectual Property Regulation Board (IPReg). IPReg is a Licensing Authority under the LSA and maintains a register of ‘authorised persons’ (s18 LSA) authorised to carry out “reserved legal activities”.

CTMAs are specialist legal advisors, qualified by examination and regulated by IPReg. The primary activity of CTMAs is drafting, filing and prosecuting trade mark applications on behalf of their clients. CTMAs will represent their clients directly before the UK Intellectual Property Office and currently before the European Intellectual Property Office (EUIPO). They will also co-ordinate the filing and prosecution of their clients’ trade mark applications and registrations throughout the world via a network of local Intellectual Property attorneys in the relevant jurisdictions. In addition to obtaining the registration of trade marks for their clients, CTMAs advise their clients on the infringement, enforcement and defence of their rights and have rights of representation before the relevant Courts in the UK.

The clients of CTMAs are not only supporting businesses in the UK, but also international businesses seeking protection in the UK and Europe.



Anti-Money Laundering

IPReg is not a Supervisory Authority under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017). In 2019, IPReg, CIPA and CITMA together sought advice from Leading Counsel on the applicability of the MLR 2017 to the activities of patent and trade mark attorneys. The conclusion of the advice was that the activities of some patent and trade mark attorneys fall within the definition of “independent legal professional” in regulation 12(1) MLR 2017 to a limited extent where they participate, as part of a wider transaction transferring ownership in a business from one party to another, in the conveyance of the intellectual property element owned by that business, but the compliance requirements triggered by regulation 12(1) are only engaged with respect to the transactional work itself. As explained above, the vast majority of the work of patent and trade mark attorneys does not involve participation in such business transfers. Participation of most patent and trade mark attorneys in transactions to which the MLR 2017 would apply is very rare, if it happens at all. It is our belief that no case exists of a UK patent or trade mark attorney ever being involved in money laundering or suspected money laundering.

Following Counsel’s advice, IPReg issued guidance to its regulated community:

<https://ipreg.org.uk/sites/default/files/Money%20laundering%20regulations%20guidance%20for%20patent%20and%20trade%20mark%20attorneys%20December%202019.pdf>

In accordance with that guidance “IPReg, CIPA and CITMA considered carefully whether a Supervisory Authority was necessary or desirable for the regulated Intellectual Property Sector. Given the extent to which the work of some attorneys engages reg 12(1) and the limited risks of money laundering and terrorist financing arising from that work, IPReg, CIPA and CITMA considered that it was not necessary or desirable to establish a Supervisory Authority at this time. This will be kept under review and the position may change if ongoing risk assessments warrant the formation of such a body.”

Economic Crime Levy

Our view is that the risk of economic crime arising from the work of patent and trade mark attorneys is so tiny that it would be disproportionate for the proposed levy to apply to patent and trade mark attorneys. Significant time and money has already been spent establishing with reasonable clarity the extent to which the provisions of the MLR 2017 apply to the activities of patent and trade mark attorneys. Applying the levy to patent and trade mark attorneys would add a new administrative burden to the businesses of patent and trade mark attorneys, which would result in little contribution to the levy total.

The amount of activity undertaken by patent and trade mark attorneys which gives rise to the risk of money laundering is so miniscule that any levy would be disproportionate and unlikely to be fair, when the administrative costs to the business and the levy-collecting authority are considered. Given the efforts to date by IPReg, CIPA and CITMA to understand the application of the existing MLR 2017 legislation to this sector, a levy that is simple to understand and calculate for patent and trade mark firms seems unlikely and we expect the likely collection cost relative to the amount being collected to be high.

Neither IPReg, CIPA nor CITMA is listed as a Supervisory Authority in Schedule 1 of MLR 2017, despite their status as Approve Regulators in the LSA. It is conceivable that MLR 2017 was never intended to cover any of the activities of patent and trade mark attorneys, particularly in view of the low risk of economic crime. The applicability of the MLR 2017 to this sector may be an unintended consequence.



What we would like

We would like an **explicit exemption** from the economic crime levy for regulated patent and trade mark attorneys. The risk of economic crime in the sector is very low, if it exists at all. The community of regulated professionals is small and many are in small businesses. The potential cost of collecting, or even just administering, a levy in this sector far outweighs the potential contribution to the total amount collected at any reasonable rate. Excluding patent and trade mark attorneys will also simplify the implementation of the levy by focusing on the most relevant sectors of the AML-regulated community.

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 with the design principles, but feel that the application of the levy to patent and trade mark attorneys would fail to meet the principles of proportionality, fairness, simplicity and cost-effectiveness.

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 have no view on this question, given our sector's minimal exposure to the risks of economic crime.

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?

We have no view on this question, given our sector's minimal exposure to the risks of economic crime.

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

We have no view on this question, given our sector's minimal exposure to the risks of economic crime.

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.



We would not want the levy, if applied to patent and trade mark attorneys, to be based on UK revenue, as the proportion of UK revenue for any given firm that relates to activities to which the MLR 2017 applies is so small, if any, that a calculation on this basis would be unfair.

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?

The revenue of patent and trade mark firms comes from the primary activity of filing and prosecuting patent and trade mark applications. Any revenue from activities covered by the MLR 2017 is occasional and small. Consequently, a levy based on total UK revenue would be disproportionate and unfair to patent and trade mark attorneys.

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.

We cannot envisage a calculation basis that would be proportionate to the tiny amount of work relevant to the MLR 2017 and that would meet the principles of simplicity and cost-effectiveness.

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

For the reasons given above we do not support any revenue-based levy for patent and trade mark attorneys.

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?

We support the principle of exempting small businesses, but this would not address the issue for our members that regardless of business size, the amount of AML-regulated work is very small and may not be in proportion to business size. We would like to see a total exemption from the levy for patent and trade mark attorneys regulated by IPReg.

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

We cannot envisage a flat fee that would be proportionate to the tiny amount of work relevant to the MLR 2017 and that would meet the principles of fairness and cost-effectiveness.

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.



No view. We would like to see a total exemption from the levy for patent and trade mark attorneys regulated by IPReg.

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?

No view. We would like to see a total exemption from the levy for patent and trade mark attorneys regulated by IPReg.

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

In relation to patent and trade mark attorneys we think the money laundering risk should be seen as negligible or non-existent and a total exemption applied.

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.

As far as we are aware no patent or trade mark attorney has ever submitted a SAR. If this provides a justification for a total exemption, we would support the approach.

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?

No view.

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

If the levy is to apply to patent and trade mark attorneys, we would STRONGLY advocate a levy calculated on the basis of AML-regulated activity only. However, we believe that the administrative cost to any patent and/or trade mark firm in isolating such small amounts of revenue and the cost of collecting the resultant levy would fail to be cost-effective in this sector.

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?



Across patent and trade mark attorneys as a whole the amount of revenue associated with AML-regulated activities is probably only a few percent. For most individual attorneys in any given year the amount will be zero. Tracking such small amounts would clearly involve a disproportionate administrative effort.

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

Patent and trade mark attorney revenues can include a high proportion of disbursements, typically around half. Consequently, if the levy were to apply, it should be based on professional fee income / gross profit, rather than invoiced amounts ex-VAT.

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?

If the levy were to apply to patent and trade mark attorneys, UK revenue would be appropriate. Isolating such revenue should be possible based on invoice address.

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 view. See Q. 18 though.

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 seems the simplest approach.

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.

Yes. However, it will be clear from our detailed explanation above that it can be difficult to determine from the MLR 2017 the extent to which any given activity is regulated. Any additional clarity in this regard would be extremely helpful in terms of business efficiency. Our view is that a total exemption from the levy for the activities of patent and trade mark attorneys would provide such clarity.

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

No view.



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?

Yes.

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.

A proactive submission would appear to reduce the administrative cost to the agency.

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?

We believe that exempted businesses should not be required to provide any declaration in order to minimise administrative burden.

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.

No view.

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

Our experience of applying the provisions of the MLR 2017 to the activities of patent and trade mark attorneys has been difficult, because of the general, activity-based definitions in the MLR 2017. It is conceivable that the MLR 2017 was never intended to cover patent and trade mark attorneys (neither IPReg, CIPA or CITMA are listed in Schedule 1 as Supervisory Authorities). The introduction of a single agency is likely to introduce generalised regulation that is more suited to the larger sectors of the AML-regulated community, rather than the more specialised, smaller sectors such as patent and trade mark attorneys. This risks adding to a lack of simplicity and transparency for patent and trade mark businesses in complying with that regulation. We would like to see a total exemption from the levy for patent and trade mark attorneys.

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 view.

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

IPReg is not (currently) a Supervisory Authority, in view of the low risk of economic crime in the sector. As a relatively small regulator, the burden of becoming a supervisor and then administering collection of the levy is likely to be disproportionate to the risk of economic crime and unlikely to be cost-effective relative to the collected amounts.

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

Either model is likely to impose a disproportionate burden on patent and trade mark attorneys in view of the low risk of economic crime in the sector. We would like to see a total exemption from the levy for patent and trade mark attorneys.

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

N/A

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?

N/A

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

N/A

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?

N/A

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

N/A

Other



HM Treasury

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

Please see our explanation at the start of this document.