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REFORMING ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING SUPERVISION

Response by Association of Taxation Technicians

1 Introduction

1.1 We are pleased to provide comments on the HM Treasury Consultation: Reforming anti-money laundering and counter-terrorism financing supervision[1].

1.2 The Association of Taxation Technicians (ATT) strongly supports the UK's drive to combat money laundering and terrorist financing and recognises the need to make changes to the model of AML supervision to combat financial crime and meet the requirements of the Financial Action Task Force.

2 About us

2.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

2.2 Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

2.3 The objects of the ATT include the requirements:

(i) to prevent crime and
(ii) to promote the sound administration of the law for the public benefit

[1] https://www.gov.uk/government/consultations/reforming-anti-money-laundering-and-counter-terrorism-financing-supervision

by promoting and enforcing standards of professional conduct amongst those engaged in the provision of advice and services in relation to taxation and monitoring and supervising their compliance with money laundering legislation.

2.4 The ATT is an AML Supervisory supervisor for about 600 firms of tax advisers who provide related accountancy services. Firms vary in size considerably and whilst it is often the view that the market is dominated by larger accountancy firms this ignores a large number of smaller firms. These firms need additional support and assistance to comply and have less scope to absorb or pass on additional regulatory costs. 49% of the firms ATT supervise have fees of £50,000 or less and therefore very clearly fall into this smaller firm category although many with higher fees are also sole practitioners without compliance teams internally.

3 Executive Summary

3.1 The ATT accepts that supervisory effectiveness does require attention and that changes are required.

3.2 It should be noted that as a current professional body AML supervisor there is a potential conflict of interest in commenting on this consultation as it could be argued we have an interest in maintaining the status quo and retaining our position as an AML supervisor. We do however feel it is important on behalf of our members to respond in full on this consultation.

3.3 In short, we are in support of the OPBAS+ model. We accept that in the long term a single AML supervisor in the UK or a single supervisor of the accountancy and legal sectors could improve system coordination and potentially could improve supervisory effectiveness in a number of areas. (Indeed if this system had been implemented in 2007 we may not be facing the problems we have in the system now.) However, we need to start from where we are and seek the most practical and cost effective way to improve supervision, which is neither the option of a single professional body supervisor (PBS) for the accountancy sector or the single professional services supervisor (SPSS) or the single anti-money laundering supervisor (SAS) options.

3.4 A consolidated professional body supervisor is an unlikely solution in the accountancy sector at this time. Our understanding is that none of the 13 existing professional bodies wish (or are currently equipped) to take on the role.

3.5 Overall, we consider that OPBAS+ is the most feasible and robust solution. The other options risk a decrease in supervisory effectiveness in the short to medium term. There are a number of problems with the movement of vast numbers of firms from one supervisor to another and the cost of any new supervisory body would be disproportionately expensive and a considerable burden on the government and supervised firms. Trained staff in the current AML supervisory professional bodies usually deal with other work as well as AML. There would be a loss of expertise as many staff would not move into AML work in the new body but would work in other areas for the supervisory professional body. New staff would need to be recruited and trained by the new supervisory body which would take time.

3.6 It should be noted that OPBAS has been in operation for less than 6 years and in that time there has been improvement in professional body AML supervision and, in particular in information and intelligence sharing between bodies. We consider that further time is needed to see fruition of the improvements which OPBAS could bring about and enhancing their powers appropriately would support this.

3.7 The ATT also consider that AML supervision should not be considered in isolation without also considering the potential to raise standards in the tax advice market through the regulation of tax advisers (through building on the work already done by the professional bodies).

4 Responses to this Consultation

4.1 Alongside this consultation response, the ATT is a signatory to a joint letter to Baroness Penn by the 13 Accountancy AML supervisory bodies which make up the Accountancy AML Supervisors' Group (AASG).

4.2 We have also seen the response by our sister body the Chartered Institute of Taxation (CIOT) and support the observations made in that response.

5 Objectives

5.1 **Question 1. Do you agree that increased supervisory effectiveness, improved system coordination, and feasibility are the correct objectives for this project? Do you agree with their relative priority? Should we amend or add to them?**

Supervisory Effectiveness

5.2 We agree that increased supervisory effectiveness has to be the top priority when considering supervisory reform. The ATT acknowledge that supervisory effectiveness is an area which has required attention. Whilst the Financial Action Task Force Mutual Evaluation Report of the United Kingdom 2018[2] concluded that the UK's overall AML/CFT regime is effective in many respects it did identify the need to strengthen supervision. The UK is one of the largest financial services providers in the world and in order to retain the UK's reputation in this field it is essential that supervisory effectiveness is addressed.

5.3 Included in the priority actions identified in the Financial Action Task Force report was that the UK should "continue its efforts to address the significant weaknesses in supervision by the 22 legal and accountancy sector supervisors through: ensuring consistency in ML/TF risk understanding; taking a risk-based approach to supervision; and ensuring that effective and dissuasive sanctions apply. The UK should closely monitor the impact of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) in undertaking this work."

5.4 When considering supervisory effectiveness the consultation refers to the following important areas of the work of a supervisor:

- A risk-based and data led approach to AML/CTF supervision
- Proportionality in supervision
- Effective gatekeeping
- Policing of the regulatory perimeter
- Tailored and targeted supervisory interventions including guidance
- Targeting activity at the firms most in need of support
- Dissuasive but proportionate enforcement

[2] https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-united-kingdom-2018.html

There are a number of areas to be balanced here and different supervisory regimes may achieve these aims to varying degrees.

5.5 It should be noted that OPBAS was set up under the OPBAS Regulations 2017[3] and was established in 2018 and has worked since that time to:

- ensure a robust and consistently high standard of supervision by the Professional Body Supervisors (PBSs) overseeing the legal and accountancy sectors
- facilitate cooperation and information and intelligence sharing between PBSs and law enforcement agencies.

The ATT has worked with OPBAS to improve supervisory effectiveness and has been subject to two reviews to date.

5.6 OPBAS has been in operation for less than six years and the ATT would argue that further time is needed to assess the impact of the introduction of OPBAS before radical and wholesale reform takes place. OPBAS was introduced alongside considerable changes in the requirements placed on supervisors and firms under the Money Laundering Regulations 2017. It has taken time to address these requirements and for supervisors to work with OPBAS to improve supervisory effectiveness.

5.7 Over the last six years the ATT has introduced a number of measures to strengthen its supervisory effectiveness including:

- the introduction of an automated risk assessment system for our firms who are subject to review each year
- the requirement for criminality check certificates to be supplied for all new AML supervision registrations and for AML visits
- introducing use of the FCA's SIS system
- Increased monitoring of member annual returns to police the regulatory perimeter in relation to our own membership and identifying and taking action with unregistered firms.
- Improving the selection of firms requiring AML supervision visits based on our risk assessment of firms and adjusted our selection based on feedback provided by OPBAS. We also improved timescales for follow up action.
- Extending the guidance provided to members through FAQ on our website and regular AML webinars.
- Identifying and providing support to those members requiring further assistance.
- Overhauling the structure of our disciplinary operations to ensure going forward we have greater oversight and improving dissuasive but proportionate enforcement action.

We consider that supervisory effectiveness would be best improved by building on the work of OPBAS to date. A move to a consolidated professional body supervisor, one supervisor of the legal and accountancy sectors or one overarching supervisor is likely to result in PBSs in general moving away from investment in further improvements at this time. It would also create uncertainty for supervised members who have become familiar with where to find the information they need to comply.

[3] https://www.legislation.gov.uk/uksi/2017/1301/contents/made

Improved system coordination

5.8 Information and intelligence sharing is key in the fight against economic crime. The accountancy sector bodies have worked hard over the last five years to share more information through AASG. OPBAS have worked with the supervisors in setting up initiatives such as the Intelligence Sharing Expert Working Groups (ISEWG). The development of the AASG alerts summarising JIMLET alerts has been a key development in getting information out to our firms relating to AML risks.

5.9 The amendment of Regulation 52 MLR in 2022 to expand information and intelligence sharing is already resulting in noticeable increases in sharing of information, which in turn we expect to result in the removal of more bad actors from the sector. Again, it is early days in relation to this initiative and the ATT considers that we need to build on changes to date and seek other ways to work together rather than considering wholesale reform of supervision at this stage.

5.10 As AML supervisors we continue to press for more granularity in the feedback provided to the sector by law enforcement. Information needs to be shared more regularly by law enforcement and HMRC so action can be taken against supervised firms involved in economic crime and so the supervisor is aware of trends in relation to AML risks. Changing the AML supervisory regime is unlikely in itself to ensure greater system coordination if law enforcement are unable to share information on a more granular basis.

5.11 Whilst some of the accountancy sector AML supervisors are large, the work of AASG ensures the key AML staff within each supervisory body know whom to contact on a consistent basis to share information about firms and about their supervisory approaches in general. It is difficult to see how system coordination would be improved through the consolidation of supervision into one large accountancy sector supervisor or overarching supervisors. Our experience of dealing with other large government led organisations in particular is that frequent staff changes, changes of government emphasis etc can lead to more difficulty in sharing information or the need to have to share information in multiple ways with many different parties.

5.12 The services provided by tax advisers and accountants is diverse and the accountancy body supervisors represent different sectors of the industry facing different risks and challenges. They are experts in the areas they supervise and work on having a good insight into the industry and the firms they supervise. The consolidation of the supervisors or their replacement with larger overarching bodies is likely to lead to a loss of this expertise and a reduction in the assistance available to firms seeking industry tailored advice on AML/CTF.

5.13 It is important to note that system coordination and information sharing is improved through the non-AML related work which Professional Bodies are involved in. The ATT uses information from work on the annual membership returns, continuing professional development checks and other work to inform AML risk assessment of firms and to pass on useful information to other bodies. Active sharing of this type of information would be difficult, if not impossible, if the professional body model of supervision ceased.

5.14 The ATT consider that system coordination is important and in particular (as set out in paragraph 2.12 of the consultation) any reform needs to align with wider government priorities. We have been in discussions with HMRC about the standards of tax agents and potential regulation of tax advisers for some years. Supervisory reform must be considered alongside these reforms rather than the issues being looked at in isolation. As set out in our response[4] to the government's 2020 Call for Evidence on Raising standards in the tax advice

[4] https://www.att.org.uk/technical/submissions/raising-standards-tax-advice-market-call-evidence-response-association

market [5] we consider that any regulation of the tax profession should build on the work which the professional bodies have collaboratively built.

Feasibility

5.15 As set out in the ATT response[6] on the Call for Evidence: Review of the UK's AML/CTF regulatory and supervisory regime[7] having one AML supervisor for everyone would mean there was consistency of supervision which would be a positive factor. If one supervisor had been put in place at the outset in 2007 that may have proved beneficial for the UK supervisory regime however dismantling a system which has been in place for over 15 years should not be entered into lightly and the ATT consider that the only feasible plan under consideration is the OPBAS+ model.

5.16 It should be noted that the accountancy sector is not a homogenous group of firms. There is a wide variety of different services provided and the current regime means that firms are supervised by professional bodies which understand the work they do and the risks they face. For example, the ATT supervises firms of tax advisers, and we understand the technical work they do and the main AML risks they face. Moving all firms to one supervisor risks losing the value of this.

5.17 The consultation document refers to the fact that the model must be appropriately funded. We have not seen any potential costings of the different supervisory models but experience suggests that the most cost effective option would be to build on the organisations already in place.

5.18 The ATT has concerns that the move to a consolidated professional body supervisor or a larger supervisory body would result in considerable loss of staff with the right levels of expertise working on AML supervision. Almost all ATT staff working on AML supervision also cover other Professional Standards work and we would expect to redeploy people to other projects if AML supervision ceases.

5.19 Recruitment of suitable staff to either a consolidated professional body supervisor or to a large overarching supervisor would be a long and difficult process and if staff do move from the existing supervisors during a transitional period then this would serve to weaken supervision in those bodies during this period.

5.20 ATT experience suggests that close governance is needed in relation to AML supervisory activity and the need to be accountable to OPBAS is an important safeguard in the supervisory regime. The move to other models of supervision risks the weakening of this accountability and governance.

5.21 The ATT considers that transition risks would be considerable under any option other than OPBAS+. Risks include:

- Potential reduction in supervisory activity by current supervisors as soon as they became aware that all supervisory activity was moving to another body whilst at the same time limited supervisory activity would be undertaken by the new supervisor as they recruited and trained staff.

- Reduced supervisory activity during the period might result in a lack of risk assessment of firms, and intelligence and information sharing might not be maintained. Supervisors losing their remit will lose

[5] https://www.gov.uk/government/calls-for-evidence/call-for-evidence-raising-standards-in-the-tax-advice-market
[6] https://www.att.org.uk/technical/submissions/review-uks-amlcft-regulatory-and-supervisory-regime
[7] https://www.gov.uk/government/calls-for-evidence/call-for-evidence-review-of-the-uks-amlctf-regulatory-and-supervisory-regime

incentive to maintain these areas and no resourcing to do so if AML supervision fees are no longer received from firms.

- AML supervision is a specialist area of work and it is important that any changes do not risk losing the specialist knowledge of those staff currently working on professional body AML supervision at all levels including policy leads, compliance staff and AML reviewers.

- Determining what information needed to be provided from one supervisor to a new one and how it would be supplied would be complex and the movement of huge amounts of data carries risk.

- There would be uncertainty within firms in relation to AML guidance and the expectation of the new supervisor.

- The move of supervisor would require considerable communication with supervised firms and a programme of education about the changes.

- New registrations and disciplinary actions in process would need to be managed and carefully transferred.

- The potential for duplication of regulation should be minimised and the system of overall regulation should be clear for all those supervised. ATT and CIOT members are not currently subject to any practice licencing requirements but other bodies do have these requirements. If our members were supervised by another body with those requirements would they also have to have a practice licence?

- The transitional arrangements and any new model of supervision should not result in additional costs for supervised firms because of the following risks:
    - Additional costs may result in tax advisers retiring or ceasing in practice. This reduces capacity in the market and the smaller firms most impacted by cost increases also tend to be the ones providing lower priced services to those on lower incomes. Not all of those on low incomes have uncomplicated tax affairs and therefore any reduction in this sector of the market potentially reduces the advice available to those on lower incomes.
    - If costs increase for AML fees members may decide to reduce costs in other areas by ceasing professional body membership to avoid paying a membership subscription. This would result in them no longer being subject to the professional body professional standards and disciplinary processes. This might result in firms no longer being required to meet standards such as undertaking continuing professional development or having professional indemnity insurance in place thus reducing consumer protection. A reduction in professional standards requirements on tax advisers would be counter to HMRC's agenda to raise standards amongst tax agents. Again this points to the question of AML supervision being looked at in conjunction with wider consideration of industry standards.

- Costs must be minimised for both the body taking on the supervision of firms and the previous PBSs. The ATT and CIOT charge annual AML supervision fees (currently £330 per firm per year). If there were additional costs in dealing with the handover of supervised firms to a new supervisor we would need to either pass this on to supervised firms (in addition to our current fees and the fees of their new supervisor) or would need to pass on the costs to all of our membership (the majority of which work for firms supervised by other professional bodies such as ICAEW or for businesses outside the regulated sector). The risks outlined in the previous bullet point are also relevant here and broadened to all members. We do not view the loss of AML fees as having a potential impact on the financial viability of the ATT but there is a public policy risk in a reduction in professional body membership and some professional bodies may not have a sustainable future following a reduction in AML fees and membership numbers.

- Collectively a huge amount of resource would be spent managing the transition rather than focusing on supervisory action and the fight against economic crime. And it is not clearly evidenced how the end result would better meet the objective.

5.22 The ATT notes that the government have recently been considering [the future of insolvency regulation][8] and have decided not to pursue the proposal for a single regulator of insolvency services. It is noted that the potential loss of expertise was one of the factors quoted by respondents in relation to the associated consultation, similar to our concern here.

5.23 Whilst we do not consider it is feasible to move to a consolidated professional body supervisor at this stage or to one overarching supervisor it is possible that a gradual move to a more streamlined and consolidated system could be achieved. If for example supervisory activity was so poor that a body was removed from Schedule 1 and their population was moved to another body (paragraph 3.5 option 3) then this could reduce the number of supervisors and improve supervisory activity overall. However, it would still be necessary to find a professional body willing to take on this role.

6 OPBAS+

6.1 **Question 2. What would the impact be of OPBAS having the FCA's rule- making power? What rules might OPBAS create with a new rule- making power that would support its aim to improve PBS supervision?**

6.2 The ATT are not experts on the rule making powers of the FCA however we note that OPBAS consider this would assist them in improving effectiveness.

6.3 The risk based approach needs to be preserved in order to ensure rules introduced are not a "one size fits all" but equally, as a supervised body it would be helpful if OPBAS had the power to provide clear requirements to a professional body which they consider would improve that body's effectiveness. To date OPBAS has not been able to clearly set out what would move a PB's inspection rating from, for example, largely effective to effective. We would also encourage OPBAS to develop a full understanding of the businesses being supervised for example, OPBAS training should include work to understand the role of a tax adviser and how their businesses operate.

6.4 **Question 3. Which, if any, of these powers should OPBAS be granted under this model? Are there any other powers that OPBAS could be granted under this model to aid OPBAS in increasing the effectiveness and consistency of PBS supervision?**

6.5 The ATT would welcome consultation on a range of potential powers for OPBAS. However as a starting point we would hope that changes in rule making powers might enhance OPBAS's ability to provide definitive guidance on supervisory activity where a professional body is seeking to improve and wants more details on improvements which should be made. The ATT strive to improve supervision but in the same way that our firms require detailed guidance from us we would often appreciate more detailed guidance to enable us to meet supervisory requirements. The system would therefore be improved considerably if OPBAS were able

[8] https://www.gov.uk/government/consultations/the-future-of-insolvency-regulation/outcome/the-future-of-insolvency-regulation-government-response

not just to say, for example, that the number of AML visits must be increased but to actually state the number which they would consider acceptable and why. The ATT would hope that before moving on to more serious sanctions, an initial collaborative approach between OPBAS and the professional body supervisors would improve supervisory activity.

6.6 In relation to each of the supervisory interventions it is difficult to comment without knowing how often OPBAS would have used these sanctions if they had been in place and without knowing the sanctions already imposed and the effectiveness of those sanctions. Comments on the possible options as set out in the consultation document and from our perspective as a body supervised by OPBAS are as follows:

1. **Publicisation of supervisory interventions** – we can see that this sanction could encourage compliance by a professional body supervisor. We would not be in favour of OPBAS having the right to publish without a robust review and appeal procedure being in place. Our disciplinary body the Taxation Disciplinary Board cannot publicise disciplinary action against our members without having gone through due process and we would expect the same in relation to OPBAS processes.

2. **Graduation of Sanctions** – in principal this proposal makes sense but again we would press for a collaborative approach to resolve issues at the outset where possible. There would need to be a robust process in place to ensure there was consistency in relation to the imposition of sanctions and the right of appeal.

3. **Restrict or reduce supervisory populations** – the temporary move of supervised firms from one body to another is unlikely to be feasible but if a supervisor performs poorly over a period of time it would seem reasonable to remove them as a supervisor and move supervised firms to another supervisor although there are number of practical issues which would need to be considered.

4. **Fining power** – Fining powers are used by all professional body supervisors so use of them by our own supervisor does in principle appear appropriate although, as stated, this would ultimately increase costs for the supervised population. The fine would also potentially divert resources away from AML supervision itself. For example, supervision might be better improved by a direction that a body must employ an extra staff member on a temporary basis rather than imposing a fine of £60,000.

6.7 **Question 4. What new accountability mechanisms would be appropriate in order to ensure proportionate and effective use by OPBAS of any new powers?**

6.8 The ATT considers that there should be rights of appeal and independent assessors involved with sanctions and that there should be opportunity to respond to proposed sanctions prior to publication.

6.9 **Question 5. Do you have evidence of any specific types of regulated activity which are at high risk of being illegally carried out without supervision?**

6.10 Areas which the ATT is considering carefully at present include the services provided by capital allowances and R&D advisers and when software services come within the scope of defined tax advice services. In some of these cases members consider they are not providing tax advice and we need to work with them to analyse the work they do, provide guidance and bring them into compliance. This is the type of issue which we have the expertise to look at and deal with but that expertise and the time required may not be available in a large supervisory body.

6.11 **Question 6. Do you think a "default" legal sector supervisor is necessary? If so, do you think a PBS could be designated as default legal sector supervisor under the OPBAS+ option?**

6.12 ATT has no comment in relation to this matter.

6.13 **Question 7. Overall, what impact do you think the OPBAS+ model would have on supervisory effectiveness? Please explain your reasoning.**

6.14 Whilst there would be no structural change to the regime under the OPBAS+ model we consider that enhanced OPBAS powers could be used to work closely with individual supervisors to improve performance. Collaboration and guidance will ultimately produce improved supervisory performance especially when reinforced by more stringent sanctions.

6.15 As OPBAS has been in place for less than 6 years and other changes (such as Regulation 52 amendments) have been in place for even less time. We consider that it is appropriate to build on what has already been achieved rather than sweep it away which is likely to result in reduced supervisory effectiveness in at least the short to medium term because of transitional issues.

6.16 OPBAS+ has the advantage that expertise is maintained by the current supervisors and there will be no disruption to supervisory activity.

6.17 One of the disadvantages of the current regime which would continue under OPBAS+ is that at present there is different guidance issued by different supervisors. OPBAS could seek to address these problems by being instrumental in requiring one core guidance document to be in place across all sectors. There is no reason why the banks, accountants and lawyers should be subject to different CDD requirements and guidance in relation to taking on a private limited company or individual client. Sector specific guidance could then be limited to specific practice areas which only appear in particular areas or are significantly different. This could be addressed in additional guidance approved by the Treasury which could not conflict with the core guidance and supplemented it.

6.18 **Question 8. Overall, what impact do you think the OPBAS+ model would have on system coordination? Please explain your reasoning.**

6.19 ATT views one of the most successful areas of OPBAS work as having drawn the AML supervisors together more closely to share information, encouraging the use of SIS and FIN-NET and setting up the ISEWG and other information sharing opportunities. OPBAS+ would enable us to continue to develop this coordination and cooperation.

6.20 All of the models will benefit from the sharing of granular information by law enforcement with the supervisory bodies. OPBAS have been exploring this and working on informing law enforcement on how professional body supervisors operate.

6.21 One downside of the OPBAS+ model is that there is not the same access to law enforcement information as a public body would be able to access. For example, HMRC are able to do a number of internal checks to assist them in their AML function. With appropriate safeguards in place the ATT consider that this problem could be overcome. We would particularly welcome more granular information which HMRC have on which of our members are engaged in poor practice, fraud or tax evasion which would better inform our supervisory activity.

6.22 **Question 9. Overall, how significant do you think feasibility constraints would be for the OPBAS+ model? Please explain your reasoning.**

6.23 OPBAS+ is the most feasible option out of all of those presented in the consultation document. It avoids a transitional period which would be likely to reduce supervisory effectiveness in the medium term.

6.24 The model may not produce the potentially further reaching impact of some of the other options but we should not lose sight of the progress made since OPBAS was initially set up and we should therefore build on the current system and seek to enhance and improve it, whilst keeping future ambition under review.

6.25 Funding of OPBAS+ is likely to be considerably lower than PBS Consolidation, SPSS or SAP. Care should be taken however when reconsidering fees to be charged to supervisors. The ATT welcomes a continuation of a flat rate fee for supervisors with fewer than 6,000 supervised individuals. Given the firms we supervise have very many fewer fee earners per BOOM than the larger firms operating in the market the current minimum fee system is necessary to limit what would otherwise be a major imbalance operating against the smallest firms. We have written in detail to the FCA on this subject previously and would be happy to share this again with HM Treasury separately.

7 PBS Consolidation

7.1 **Question 10. Were we to proceed with the PBS consolidation model, what would the relative advantages be of (a) a UK-wide remit, (b) retaining separate PBSs in the Devolved Administrations? Which would best achieve the consultation objectives? Please answer with explicit reference to either the legal sector, the accountancy sector, or both.**

7.2 The ATT operates within the accountancy sector. We currently supervise firms throughout Scotland, England, Wales, and Northern Ireland. We have never encountered any difficulties in operating across the devolved administrations.

7.3 **Question 11. How could HM Treasury and/or OPBAS ensure effective oversight of consolidated PBSs under this model? Would it be appropriate to provide OPBAS with enhanced powers, such as those described in the OPBAS+ model description?**

7.4 If this model were adopted either HMT could supervise the small number of bodies or a more slimmed down version of OPBAS could supervise them. OPBAS enhanced powers would continue to be valuable to enable them to work effectively with the PBSs. The option of removing the body from schedule 1 of the MLR or transferring some or all of the supervised entities would reduce under this option as there would be limited options as to who else could supervise.

7.5 Professional bodies are not organisations run by the state. If for some reason the professional body were to fail, for example through bankruptcy, then there would not be a pool of other professional bodies able to pick up AML supervision. Risk assessment of exposures to failure would need to be kept under review and in the worst case scenario the state would need to consider what support they would be willing to provide for a failing organisation

7.6 **Question 12. Under the PBS consolidation model, do you think that HMRC should retain supervision of ASPs and TCSPs which are not currently supervised by PBSs? Why/why not?**

7.7 If supervision of accountancy services is being consolidated then the ATT consider that HMRC supervised Accountancy Service Providers should come within the same regime. This is more likely to ensure consistent supervision across the sector and avoids the need for HMRC to have to issue guidance as well as the Accountancy PBSs. Whilst HMRC have access to a considerable amount of information and intelligence about the firms they supervise we should be seeking to share this with whichever supervisors are in place either under the current regime or under an OPBAS+ model. HMRC have access to businesses and individuals paying tax from providing legal services, accountancy services and a whole range of other regulated services so sharing of information by them is key.

7.8 Our understanding is that HMRC AML supervisors work closely with the agent authorisation team as agents have to be AML supervised in order to act as a tax agent. Close liaison between HMRC and the supervisors of those providing tax services does ensure an agent code can be removed (in extreme circumstances) and an agent cannot submit tax filings where a firm is not AML supervised. HMRC are already used to liaising with other supervisors in relation to this matter. If accountancy supervision moved to one accountancy body AML supervisor, very close links would need to be established to ensure agent codes were granted as required based on supervision in place and that codes are taken away where appropriate. (subject to strict procedures).

7.9 If the aim is to reduce AML supervisors to ensure more consistency it also makes sense for TCSP services to move to the PBS as well.

7.10 **Question 13. What would the impact be of consolidated PBSs having a more formal role in identifying firms carrying out unsupervised activity in scope of the MLRs? What powers would they need to do this?**

7.11 A PBS can undertake enquiries in relation to their own members. For example, the ATT uses annual return information in our "policing the perimeter" work so that we can check all individuals in practice have AML supervision in place. A consolidated PBS supervisor will have to rely on information provided by other supervisors to determine whether other professional body members should be supervised but aren't and potentially would also need to work with HMRC to receive details of businesses trading and paying tax who would need supervision.

7.12 **Question 14. Under the PBS consolidation model, what would the advantages and disadvantages be of a consolidated accountancy or legal sector body supervising a range of different specialisms/professions for AML/CTF purposes?**

7.13 One of the strengths of the current system is that those who know most about particular areas of accountancy work supervise the majority of those within that sector. For example, the ATT supervises tax advisers, and bookkeeping professional bodies supervise those who provide bookkeeping services. The disadvantage of the consolidated PBS model is that some of that expertise might be lost if staff did not transfer to the consolidated PBS. In turn that might mean particular areas of work were not so closely supervised and the risk of economic crime in that area could increase.

7.14 The consolidated PBS may need separate internal teams to deal with and bring experience to the different areas, which would water down consistency of supervision across all areas.

7.15 The ATT supervised population consists mainly of small firms, most of which do not have in-house compliance teams. Members regularly call and email the ATT for guidance and advice, and appreciate being able to deal with individuals in the organisation rather than being required to do everything online. The ATT and CIOT operate AML supervision for both bodies together and supervise around 1,400 firms in total. At present we deal with around 40 emails a week to our AML inbox during renewal season with a huge number of calls on top of that. A large PBS may focus on large firms with less assistance being provided to small firms of this nature.

7.16 There would be advantages in having a standard application procedure for all firms and the PBS would be able to look at AML risks and trends over a wider population.

7.17 **Question 15. What steps, if any, could HM Treasury take under this model to address any inconsistencies in the enforcement powers available to supervisors?**

7.18 HMT has the power to provide additional enforcement powers to professional bodies in either the consolidated model or in OPBAS+. At present in many areas of accountancy work the most severe sanction which a professional body can apply is exclusion from membership, but tax advisers can continue to act for clients without any professional body membership. If a tax adviser could only act for clients if they were a member of a professional body (either under OPBAS+ or the PBS Consolidated model) then exclusion itself would be a more severe sanction than it currently is. As referred to in 3.7, we consider that the reform of AML supervision should be considered alongside raising standards in and regulation of the tax profession.

7.19 In order to improve consistency in AML supervision the PBSs would need to have similar legislative powers as the other statutory supervisors.

7.20 **Question 16. Which option, to the extent they are different, would be preferable for providing for supervision of non-members under the PBS consolidation model? Are there alternatives we should consider?**

7.21 At present most of the firms supervised by HMRC for accountancy services are not run by individuals who belong to one of the PBSs. If AML supervision is moved from HMRC to a consolidated PBS supervisor then again we consider this should be looked at in the wider context of raising standards and regulation of the profession.

7.22 HMRC have concerns about the standard of tax work undertaken by those who are not affiliated to professional bodies. In our experience advisers with poor standards in relation to technical work are often at higher risk of breaching AML requirements. We therefore consider the issues of raising standards and regulation go hand in hand with AML supervision.

7.23 The PBS chosen to supervise the accountancy sector would need to have the powers to take action against those who it supervises for AML even though they may belong to another professional body. Powers would also be required to enable action to be taken against those who did not belong to any professional body if supervision moved from HMRC to the PBS.

7.24 Whilst the ATT charges separately for AML supervision (currently £330) not all supervisors charge an additional fee on top of the fee for a practice licence. If the practice licence fee remains the same then those PB members may be subject to additional costs if they have to pay a practice licence fee to their own professional body and an AML fee to the consolidated PBS. It is likely that when they are having a practice assurance review their professional body will ask basic questions about AML compliance so there will continue to be some element of dual regulation.

7.25 If some of the current PBSs lost their role as an AML supervisor that may result in members deciding they no longer required membership. This would potentially not be in the public interest. ATT members in practice are required to have Professional Indemnity Insurance in place, undertake continuing professional development and adhere to the principles set out in Professional Conduct in Relation to Taxation. Further details about ATT professional standards requirements are available on the ATT website here[9].

7.26 **Question 17. What powers, if any, might be required to minimise disruption to ongoing enforcement action and to support cooperation between the PBSs retaining their AML/CTF supervisory role and the PBSs which are not?**

7.27 PBs ceasing to be supervisors would no longer have information sharing requirements under regulation 50 and regulation 52 of the MLR. There have also previously been concerns raised as to whether bulk sharing of information is permitted under current legislation. There would therefore need to be powers available for one body to hand over records to the PBS taking over as supervisor.

7.28 We would have to explore the matter fully, but as our disciplinary process is independent and only applies to our members, then provided an individual was still an ATT member disciplinary action already in train could continue with the Taxation Disciplinary Board, even if ongoing AML supervision was no longer provided by ATT. It would appear to us impractical to move a disciplinary case across to the new body part way through the process.

7.29 There would be a number of practical issues to be considered including the following:

- Would the new supervisor accept the criminality checks and other checks undertaken by the previous supervisors or require new checks? Our experience from 2018/19 was that asking for copies of criminality checks for all our sole practitioner firms was a heavy administrative burden so the administrative burden of undertaking new checks should not be underestimated.

- How would records be transferred securely from the historical supervisor to the new supervisory body? How extensive would this handover of information be? For example, it would be a huge administrative burden for bodies to provide all historic registration forms and visit records.

- Each professional body has different AML supervision registration periods. The ATT scheme runs from 1 June to the following 31 May for all firms whereas other supervisors might work on a calendar year basis or rolling annual renewals depending when the firm initially registered.

- There would need to be a plan in place as regards ongoing work on visits as well as on cases in the disciplinary process where action spanned the potential cross over to the new supervisor. For example, supervisory visits where action points remained outstanding at the date of transfer to a new supervisor, or an enforcement case which was part way through the professional body disciplinary process.

- The new supervisory body would need to be able to deal with new firm registrations from day one (or before) and be able to process registrations promptly. This is particularly important for tax advisers who have to provide HMRC with their AML supervision details in order to obtain HMRC agent codes.

- A huge information campaign would be required advising firms about the new supervision arrangements. Experience suggests this would involve a number of phone calls and emails which need to potentially be dealt with by both the old supervisor and new supervisor.

- How staffing would be maintained in the historical supervisor to deal with the handover whilst at the same time staffing the new supervisory body will be a challenge as staff will either be pulled in to work on other professional standards work or move over to the new supervisory body.

[9] https://www.att.org.uk/professional-standards/professional-rules-and-practice-guidelines

7.30 **Question 18. Overall, what impact do you think the PBS consolidation model would have on supervisory effectiveness? Please explain your reasoning.**

7.31 A key issue here is whether there is one PBS who has the capacity and willingness to take on supervision. Our understanding is that there is no appetite by any of the AASG bodies to take on the role of a consolidated PBS at this stage.

7.32 Having one AML supervisory body in place for the whole of the accountancy sector may in the long run improve AML supervision because of consistency of procedures and supervision. However, in the short to medium term the issues in relation to transitioning from the current model to the consolidated PBS model would reduce supervisory effectiveness for many years.

7.33 Larger organisations tend to have weaker direct links with supervised firms and it may be much harder for small supervised businesses to get the support and help that they need.

7.34 Larger firms currently complain that there are multiple sets of guidance which do not tie together. A number of these firms have to follow AMLGAS and LSAG guidance. Consolidation into one or two accountancy professional bodies and one or two legal bodies would still mean that there would be at least two sets of guidance to follow. See 6.17 which refers to potential solutions in relation to guidance.

7.35 **Question 19. Overall, what impact do you think the PBS consolidation model would have on system coordination? Please explain your reasoning.**

7.36 The consolidation of accountancy supervision into one PBS should make it easier for law enforcement to liaise with the supervisor and for the supervisor to assess trends and risks.

7.37 Policing the perimeter activity will be difficult for the consolidated PBS where they are only providing AML supervision and are not the member's main professional body. It will also be difficult to obtain and use information from other regulatory activities undertaken by the original membership body which currently informs the supervisor's risk assessment. The professional body which has lost supervision will not want to resource staff simply to monitor aspects and share information with the consolidated PBS.

7.38 **Question 20. What additional powers or tools, if any, could enable OPBAS to ensure the transition to a new model is smooth and supervision standards do not fall in the interim?**

7.39 It is difficult to see what additional powers could be put in place to ensure the continuing effectiveness of the de-selected supervisor. There is a risk that supervisors might seek to remove themselves from schedule 1 MLR sooner rather than later in order to reduce ongoing supervision work accelerating the need to move supervision to another body.

7.40 A phased move of firms from de-selected supervisors to the PBS would ease the transition to the new model and the PBS would learn from this process so it is likely to speed up over time as more efficient ways of dealing with the transfer are identified.

7.41 **Question 21. How do you believe fees should be collected under the PBS consolidation model?**

7.42 The ATT considers that fees should be paid either directly to the PBS supervisor or to a third party. In the case of the ATT fees are tied in with the AML renewal process and a considerable amount of work on IT amendments and other work is involved with this process. If the ATT is not receiving the fees then we would not be willing to incur the costs associated with collecting the fees.

7.43 We have highlighted in section 5.21 above concerns in relation to fees for supervised firms.

7.44 **Question 22. Overall, how significant do you think feasibility constraints would be for the PBS consolidation model? Please explain your reasoning.**

7.45 We think feasibility constraints would be very considerable and as set out in sections 5.15 to 5.23 we see considerable feasibility problems with any of the models other than OPBAS+.

8 SPSS

8.1 **Question 23. Do you agree these would be the key structural design features to consider if creating a new public body (whether it was an SPSS or an SAS)? Should anything be added or amended?**

8.2 In summary, the key structural features identified in the consultation are:

- What would be the body's relationship to existing government departments?
- What would its governance structure be?
- How would it be funded?

These all appear to be key structural design features.

8.3 A key question for us is what relationship an SPSS would have with professional bodies regulating the tax profession or another regulatory body (should regulation of the tax profession be introduced).

8.4 In order for the structure to have any chance of working there would need to be sufficient resources allocated to it and sufficient staffing. We liaise with HMRC on a regular basis about online only access to services and poor service levels and response times. It would be important that operation of the SPSS learnt lessons from other departments to ensure the AML supervised population can interact efficiently with the SPSS. Smaller firms in particular often need additional guidance and support and we would recommend that helplines staffed by experienced individuals are available in the same way they currently are with the PBSs.

8.5 **Question 24. If an SPSS were to be created, which sectors do you think it should supervise?**

8.6 If a key aim of the change to the model is consistency in supervision then as many sectors as possible should be supervised by the SPSS.

8.7 **Question 25. Were an SPSS to be created, what powers should it have?**

8.8 If an SPSS were to be created it should have powers broadly similar to the other statutory supervisors.

8.9 **Question 26. How should enforcement responsibility be transferred should an SPSS be created?**

8.10 Given the huge number of firms being transferred we would suggest a staged transfer to the SPSS. It would make sense to have a transitional period when all new supervisory visits and enforcement action should be undertaken by the SPSS but the previous supervisor should complete all cases in progress with the aim of completion by a final cut off date.

8.11 **Question 27. What powers should HM Treasury have to oversee an SPSS?**

8.12 An SPSS should have the same oversight as the other statutory regulators.

8.13 **Question 28. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.**

8.14 Having one AML supervisory body in place for the whole of the accountancy and legal sectors may in the long run have benefits for AML supervision because of consistency of procedures and supervision. However, in the short to medium term the issues in relation to transitioning from the current model to the SPSS model would reduce supervisory effectiveness for many years.

8.15 Larger organisations tend to have weaker direct links with supervised firms and it may be much harder for small supervised businesses to get the support and help that they need.

8.16 **Question 29. How significant would the impact be on firms of splitting AML/CTF supervision from wider regulatory supervision in the sectors to be supervised by the SPSS?**

8.17 For firms supervised by ATT the regulatory impact may not be as significant as it is for some of the other PBSs as we do not have a practice assurance scheme at present so they would simply move AML supervision from ATT to the SPSS.

8.18 **Question 30. Overall, what impact do you think the SPSS model would have on supervisory effectiveness? Please explain your reasoning.**

8.19 Already answered – question 28.

8.20 **Question 31. Overall, how significant do you think feasibility constraints would be for the SPSS? Please explain your reasoning.**

8.21 We think feasibility constraints would be very considerable and as set out in sections 5.15 to 5.23 we see considerable feasibility problems with any of the models other than OPBAS+.

9 SAS

9.1 **Question 32. Do you foresee any major challenges for effective gatekeeping, under either the SPSS or SAS model? If so, please explain what they are, and how you propose we could mitigate them?**

9.2 The consultation notes that the FCA and HMRC are currently able to use wider datasets to inform their assessment. If there are tools available to do this then we consider this should be available to all the supervisors under the current model and OPBAS+ model. This would overcome the potential gatekeeping issue in the model

9.3 **Question 33. Overall, what impact do you think the SAS model would have on supervisory effectiveness? Please explain your reasoning.**

9.4 Having one AML supervisory body in place for all supervised businesses may in the long run improve AML supervision because of consistency of procedures and supervision. However, in the short to medium term the issues in relation to transitioning from the current model to the consolidated PBS model would reduce supervisory effectiveness for many years.

9.5 Larger organisations tend to have weaker direct links with supervised firms and it may be much harder for small supervised businesses to get the support and help that they need from a SAS.

9.6 We would be concerned that the SAS would become dominated by the supervision of the banking sector and there would not be sufficient priority of resourcing and supervision of the accountancy sector.

9.7 **Question 34. Does the separation of AML/CTF supervision from general regulatory activity present a major issue for those firms currently supervised by the statutory supervisors? Please explain your reasoning.**

9.8 We cannot comment on this question as we are not a statutory supervisor.

9.9 **Question 35. Overall, what impact do you think the SAS model would have on system coordination? Please explain your reasoning.**

9.10 The consolidation of supervision into one supervisor should make it easier for law enforcement to liaise with the supervisor and for the supervisor to assess trends and risks.

9.11 Policing the perimeter activity may be more effective than under current models provided there is sharing of information by other government bodies such as HMRC. It may be difficult to obtain and use information from other regulatory activities undertaken by accountancy professional bodies which currently informs the supervisor's risk assessment. The professional body which has lost supervision will not want to resource staff simply to monitor aspects and share information with the SAS.

9.12 **Question 36. Overall, how significant do you think feasibility constraints would be for the SAS? Please explain your reasoning.**

9.13 We think feasibility constraints would be very considerable and as set out in sections 5.15 to 5.23 we see considerable feasibility problems with any of the models other than OPBAS+.

10 Sanctions

10.1 **Question 37. Given the change in the sanctions context in the UK since Russia's invasion of Ukraine, have supervisors changed their approach to oversight of sanctions systems and controls amongst regulated populations? If so, what activity has this entailed?**

10.2 The ATT have included questions in the registration and renewal form and our AML visit questionnaire for a number of years to determine whether members are including sanctions checks in their firm's policies and procedures. Where we do visits, we also explain in more detail the reasons why sanctions checks should be included in policies and procedures.

10.3 Following the Russian invasion of Ukraine we asked firms to report to us where they acted for Russian clients or where there were other connections with Russia and we followed up individually where required. We also produced website guidance[10] and alerted members to sanctions related issues through our regular news emails etc.

10.4 **Question 38. Do supervisors need additional powers to monitor sanctions systems and controls effectively, or can this be done under existing powers? What would any new powers need to consist of?**

10.5 Undertaking client due diligence is a requirement on firms providing defined services as set out in Regulations 27 and 28 of the Money Laundering Regulations. Our understanding is that there is no legislative requirement to undertake sanctions checks but procedures on checking lists are considered when determining the levels

[10] https://www.att.org.uk/new-financial-sanctions-relation-russia

of fines or other penalties where a firm ends up acting for someone sanctioned. There is also no clear legislative mandate for us to require members to undertake sanctions checks.

10.6 A risk based approach in relation to sanctions checks generally works well for the smaller supervised firms who deal with longstanding clients in their local vicinity. Where we come across firms with higher risk client portfolios such as those dealing with High Net Worth clients or expatriates we would expect full screening to be in place. Most of these firms would screen for sanctions risks but based on current legislation it would be difficult to enforce this in our disciplinary process if they failed to undertake checks. A clear requirement on firms to undertake the checks and for supervisors to enforce the requirements would assist in this area.

10.7 **Question 39. Aside from legislative powers, do you foresee any other barriers to supervisors effectively monitoring sanctions systems and controls?**

10.8 The monitoring of sanctions systems and controls has been difficult over the last year mainly because of the difficulty in determining which accountancy services can be provided and which are not permitted. Professional Indemnity insurers are therefore refusing to provide insurance for work which moves anywhere beyond simple tax return completion. Firms are often advised to obtain legal advice to determine whether they can act and this is simply not cost effective where the fees for the services are only a few hundred pounds. As supervisors, the ATT would encourage more detailed guidance to be issued when new sanctions are introduced to assist supervisors and firms in complying with the requirements.

10.9 **Question 40. Should any new potential supervisory powers relating to sanctions broadly cover all types of UK sanctions?**

10.10 The ATT supervises firms of tax advisers providing related accountancy services. The main area where we check compliance and assist members is in relation to financial sanctions checks and checks on the Home Office’s Proscribed terrorist groups or organisations. We have also provided guidance, where we are able, on the ban on the provision of accounting services. We would not expect to provide guidance on other trade sanctions etc.

11 Options Comparison

11.1 **Question 41. How would expect losing AML/CTF supervision to affect PBS’ financial models, and the fees charged to supervised populations?**

11.2 The ATT do not make a surplus from AML supervision fees. An exercise was undertaken around 2020 and fees were increased to more accurately reflect costs. We have many other areas of work as a professional body and whilst fees would reduce if AML supervision ceased our costs would also reduce and resources would be released to enable work in other areas. We do not therefore consider that the loss of AML supervision would be a threat to the viability of the organisation.

11.3 **Question 42. Based on your experience and the considerations set out in this document, what is your analysis of the relative extent to which each of the four reform options would lead to (a) improved supervisory effectiveness and (b) improved system coordination.**

11.4 We consider that OPBAS+ is the most practical and feasible way to improve supervisory effectiveness over the short to medium term. Without a PBS with an appetite to act as consolidated PBS in the accountancy sector this option does not look like one whereby supervisory effectiveness could be improved. SPSS and SAS might in the long run lead to more significant improvements in supervisory effectiveness but in the short term we view this model as leading to a decrease in supervisory effectiveness mainly because of risks in relation to the transitional period including the loss of AML expertise available to the SPSS and SAS.

11.5 SAS and SPSS are likely to lead to the greatest system coordination as it is provides the easiest route for law enforcement liaison and the spotting of risks and trends over the entire supervised population. Policing the perimeter may be considerably harder under this model than under the current arrangements. However, we consider that under OPBAS supervision the professional bodies have made considerable progress in improving information sharing and policing the perimeter in relation to our own supervised populations.

12 Public Sector Equality Duty

12.1 **Question 43. Are you able to provide evidence as to how the options set out in this document would help or harm individuals or households with protected characteristics?**

12.2 We are not in a position to comment on this question.

13 Acknowledgement of submission

13.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Association of Taxation Technicians is included in the List of Respondents when any outcome of the consultation is published.

The Association of Taxation Technicians

29 September 2023