FAQs for councillors & officers

1. General questions

Why can't we just stop doing business with tax dodging firms? A supplier can only be excluded if it is found 'in breach' of tax obligations, but this exclusion no longer applies where 'self-cleaning' has occurred (e.g. paying back taxes). The bar is set far too high and the criteria are not, as far as we are aware, ever triggered. So, the declaration focuses on pursuing good tax conduct where possible; encouraging tax transparency and bringing the voice of councils to the call for reform of procurement rules.

Can we add 'good' tax conduct criteria to our contract award criteria? In short, no. Current procurement regulations only permit social and environmental criteria that can be clearly linked to the subject matter of the contract. The legal opinion we sought concluded that tax cannot be linked in this way as it constitutes general corporate-wide behaviour. The 'subject matter' restriction means authorities cannot reward 'good' conduct e.g. award points to suppliers with have a tax policy shunning use of artificial tax avoidance schemes and tax haven abuse, but the rules disallow authorities from specifying general corporate wide policy.

Why does the Declaration commit councils to demanding supplier beneficial ownership & full financial reporting? Financial transparency is a core fair tax consideration and is a requirement of businesses that gain our Fair Tax Mark accreditation. Public disclosure of the persons who ultimately own and control a business (beneficial owners, or 'persons of significant control') is key to reducing the risk of tax evasion and fraud too. The Declaration commits councils to demanding transparency from suppliers (beneficial ownership and full financial reporting) as part of financial due diligence, where lack of clarity, or complexity may be an indicator of poor financial standing, that is, not as an award/exclusion criteria, but to help identify potential financial risks.

Are we committing to check the tax records of all our suppliers? No, the Declaration does not ask a council to do this. The rules only allow authorities to consider 'bad' supplier tax conduct via exclusion criteria for non-payment of taxes. The Declaration is forward-looking and about *encouraging good tax conduct* e.g. by promoting responsible tax conduct and the Fair Tax Mark to your supplier firms.

What do residents think about this? Polling for the Fair Tax Mark has found that two-thirds of the public agree that the government and local councils should consider a company's ethics and how they pay their taxes as well as value for money and quality of service, when undertaking procurement.[1] Support remains at this level amongst people who voted for all the major political parties.

Isn't this for central government and HMRC to sort out? Regulatory change is needed, but there is a legitimate role for councils. Local government action on responsible tax aligns with public values and follows in a similar vein to other initiatives that seek to ensure that public money is used responsibly and for wider benefit, such as improving local labour standards and environmental standards in supply chains. Local authorities have a direct stake in the health of their local economies, and see challenges faced by their local high streets that is in part down to the aggressive tax avoidance strategies of some multinational companies.

I know tax evasion is illegal but what about tax avoidance? There is a distinction between legitimate 'tax planning' where individuals and businesses make use of tax reliefs in the way they were intended and on the other hand aggressive tax strategies which go against the intent or spirit of the law (examples of the former would be use of an ISA savings account for an individual, or business tax reliefs for research & development). Fair Tax Mark accreditation for business makes allowances for such reliefs, where used as intended. You will often hear campaigners talk about 'aggressive' or 'abusive' tax avoidance where arrangements are clearly against spirit of the law. This handy explainer from Tax Justice Network gives more information.

[1] https://fairtaxmark.net/trust-in-hmrc-on-the-increase-but-record-levels-of-concern-on-businesses-tax-behaviour/

s

2. Councils for Fair Tax Declaration commitments

Ensure IR35 is implemented robustly and a fair share of employment taxes are paid by contractors. We note planned changes due in April '23.	The IR35 commitment does not require the Council to go any further than is legally required. This commitment is a reaffirmation of existing requirements mandated by the public sector off-payroll rules. This will already be well embedded in the council's practices. The Declaration does not ask or expect council to audit contractors that fall outside the scope of the rules imposed on public bodies.
Shunning the use of offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.	For example, not actively setting up an offshore company to 'wrap up' a purchase of land or property, meaning stamp duty land tax (payable had the property been purchased directly) is avoided. Capital gains would be payable but only on sale of the company and at a lower rate than SDLT.
Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately as an artificial device to reduce the payment of tax and business rates.	There are isolated examples of for-profit companies (Carillion was one) establishing not-for-profit subsidiaries to win & deliver public contracts. The subsidiaries can claim various tax reliefs e.g. on VAT and business rates. Typically, an 'administration' charge is made back to the parent company often equal to the surplus on the contract. We do not expect that councils will review all not-for-profit relationships, or review all existing contracts, but consider how questions can be asked going forward.
Demand clarity on the ultimate beneficial ownership of suppliers…	Beneficial Ownership is a core tax transparency issue: disclosure reduces the risk of fraud and tax evasion and helps prevent conflicts of interest. All UK registered companies are already required to disclose beneficial ownership via Companies House as part of the UK's anti corruption regime. Govt announced (Dec '21) it intends to require publication of the beneficial ownership of public contract bidders (on larger contracts) – UK and overseas – at contract award stage as part of wider open contracting plans. The current Standard Selection Questionnaire asks UK companies to disclose beneficial ownership above 25%, in line with Companies House requirements. The new proposals would go beyond this, by publishing the beneficial ownership details of contract bidders (overseas contractors as well as companies registered in the UK) so creating a more level playing field – as we have been calling for. As outlined above the Declaration commits councils to demanding this information from suppliers as part of financial due diligence.
(cont)… and their consolidated profit & loss position.	As a first step this could involve asking potential suppliers for the profit and loss accounts of the holding and subsidiary companies, grouped

	together into a single profit and loss account. (This will only apply to larger company groups.) Ensuring that the information is presented in this way enables the reader to see the entity as a whole and therefore enables proper assessment of a business' financial standing and performance. We can provide some 'red flag' indicators to look for in reports.
Promote Fair Tax Mark certification, especially to any business in which we have a significant stake and where corporation tax is due.	This could be via your portfolio holder for finance or similar writing to the council-owned company board to encourage consideration of applying for Fair Tax Mark assessment. Our fees are based on the size, structure, and complexity of the organisation. Some Fair Tax Councils are writing to their top suppliers about Fair Tax Mark certification.
Join in and support Fair Tax Week events in the area, and celebrate the tax contribution made by responsible businesses who say what they pay with pride.	Fair Tax Week is an annual celebration of the businesses and organisations that are proud to pay their fair share of tax, and of the role that tax plays in our society. It usually runs in early June. Fair Tax Foundation provides easy-to-use resources to support council participation.
Support calls for reform of UK law to enable local councils to revise their procurement policies and better penalise poor tax conduct and reward good tax conduct amongst suppliers.	Read more about our policy proposals.

More information on Councils for Fair Tax.

The Fair Tax Foundation was launched in 2014 and operates as a not-for-profit social enterprise. The Fair Tax Foundation believes that companies paying tax responsibly should be recognised and celebrated; and any global race to the bottom on tax competition should be resisted. The Fair Tax Mark accreditation scheme is the gold standard of responsible tax conduct. It seeks to encourage and recognise organisations that pay the right amount of corporation tax at the right time and in the right place. Tax contributions are a vital part of the broader social and economic contribution made by businesses, helping the communities in which they operate to deliver valuable public services and build infrastructure that paves the way for growth. Accredited businesses include listed PLCs, co-operatives, social enterprises and large private businesses. A Fair Tax Global Multinational Business Standard was launched in November 2021, enabling multinationals headquartered outside of the UK to be accredited for the first time. https://fairtaxmark.net