

**Report to: Policy and Resources Committee, 21<sup>st</sup> March 2023**

**Report of: Corporate Director – Finance and Resources**

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**Subject: COUNCIL REFERRAL REPORT – STANDING UP FOR RESPONSIBLE TAX CONDUCT**

**1. Recommendation**

**1.1 That the Committee considers the matter referred by Council and resolves to implement the Motion.**

**2. Background**

2.1 At its meeting of 21 February the Council considered a Motion presented by Councillor Lewing as follows:

*The Council notes that:*

*1. The pressure on organisations to pay their fair share of tax has never been stronger.*

*2. Polling from the Institute for Business Ethics finds that "corporate tax avoidance" has, since 2013, been the clear number one concern of the British public when it comes to business conduct.*

*3. Two thirds of people (66%) believe the Government and local councils should at least consider a company's ethics and how they pay their tax, as well as value for money and quality of service provided, when awarding contracts to companies.*

*4. Around 17.5% of public contracts in the UK have been won by companies with links to tax havens.*

*5. It has been conservatively estimated that losses from multinational profit-shifting (just one form of tax avoidance) could be costing the UK some £17bn per annum in lost corporation tax revenues.*

*6. The Fair Tax Mark offers a means for business to demonstrate good tax conduct, and has been secured by a wide range of businesses across the UK, including FTSE-listed PLCs, co-operatives, social enterprises and large private businesses.*

*The Council believes that:*

*1. Paying tax is often presented as a burden, but it shouldn't be.*

*2. Tax enables us to provide services from education, health and social care, to flood defence, roads, policing and defence. It also helps to counter financial inequalities and rebalance distorted economies.*

*3. As recipients of significant public funding, local authorities should take the lead in the promotion of exemplary tax conduct; be that by ensuring contractors are paying their proper share of tax, or by refusing to go along with offshore tax dodging when buying land and property.*

*4. Where councils hold substantive stakes in private enterprises, influence should be wielded to ensure that such businesses are exemplars of tax transparency and tax avoidance is shunned.*

*5. More action is needed, however, as current and proposed new UK procurement law significantly restricts councils' ability to either penalise poor tax conduct (as exclusion grounds are rarely triggered) or reward good tax conduct, when buying goods or services.*

*6. UK cities, counties and towns can and should stand up for responsible tax conduct - doing what they can within existing frameworks and pledging to do more given the opportunity, as active supporters of international tax justice.*

*The Council resolves to:*

*1. Approve the Councils for Fair Tax Declaration (Copy attached).*

*2. Lead by example and demonstrate good practice in our tax conduct, right across our activities.*

*3. Ensure IR35 is implemented robustly and contract workers pay a fair share of employment taxes.*

*4. Not use offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.*

*5. Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers as an artificial device to reduce the payment of tax and business rates.*

*6. Demand clarity on the ultimate beneficial ownership of suppliers UK and overseas and their consolidated profit & loss position, given lack of clarity could be strong indicators of poor financial probity and weak financial standing.*

*7. Promote Fair Tax Mark certification especially for any business in which we have a significant stake and where corporation tax is due.*

*8. Support Fair Tax Week events in the area, and celebrate the tax contribution made by responsible businesses are proud to promote responsible tax conduct and pay their fair share of corporation tax.*

*9. Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies.*

- 2.2 In accordance with the rules set out in the Constitution, Councillor Mitchell proposed an amendment to the Motion, as follows:

*That the Council resolves to refer this Motion to Policy and Resources Committee for consideration, with specific reference to points 1-9 in the original Motion.*

This was accepted and agreed.

### **3. Information**

- 3.1 The *Fair Tax Declaration* and the *Fair Tax Mark* are aspects of a campaign by an organisation called the Fair Tax Foundation Ltd. The Foundation operates as a not-for-profit social enterprise and is registered as a Community Benefit Society. The objects of the Foundation are stated to be: *to carry on for the benefit of the community by providing:*

- *research into and education on the ways in which tax, accounting and related regulation and legislation can be used to promote development, encourage citizenship and relieve poverty within the context of local, national and international economies and societies*
- *a trusted and recognised certification mark for company tax fairness and transparency assessments*
- *advice and consultancy to companies and organisations on how to develop and implement fair tax policies*
- *a fair tax community of business and consumers*
- *new standards for tax transparency and reporting and a contribution to the wider policy debates on fair tax.*

- 3.2 As part of its work the Foundation has developed a campaign focused on local authorities called *UK Councils for Fair Tax*. This asks councils to make a declaration in support of the work of the Foundation and includes a proforma resolution which was used as the text for the Motion at Council on 21 February. The objectives of the campaign focus on encouraging 'good behaviour' and changing procurement rules to enable local authorities and others to reject bids from organisations that follow certain tax management practices. The relevant extracts from their website are as follows:

*Councillors across the UK work hard to serve their local communities and help direct the delivery of essential public services. By signing up to the Councils for Fair Tax Declaration, councils can demonstrate alignment to their values and encourage responsible tax practice through:*

- *leading by example on their own tax conduct*
- *demanding to know who owns and profits from businesses the council buys from – UK and overseas – and their full financial reports*
- *joining calls for UK public procurement rules to change so that councils can do more to tackle tax avoidance and award points to suppliers that demonstrate responsible tax conduct.*

*For years, we have called on the UK Government to give greater powers to local councils and other public bodies so they can better address bad tax conduct and reward good tax conduct through procurement.*

- 3.3 The Foundation does not explicitly ask for local councils to act other than to make the declaration shown above and seek to implement the principles set out in it. Councils that have made the declaration are listed on the Foundation's website and there are currently 46 councils that have been listed. There is no accreditation process and the Foundation does not follow up to determine whether the declaration is being implemented.
- 3.4 In respect of the nine areas of activity outlined in the declaration, commentary by the S151 Officer is provided.

*1. Approve the Councils for Fair Tax Declaration (Copy attached).*

Completed at Council 21 February 2023

*2. Lead by example and demonstrate good practice in our tax conduct, right across our activities.*

The Fair Tax Foundation does not explicitly define 'good practice'. The Council complies with accounting regulations and guidance provided by the Chartered Institute of Public Finance and Accountancy and applicable UK tax law. However, there are instances when choices need to be made which may have a direct impact in terms of the tax levy payable on the transactions. Examples include the Council's de minimis threshold for input tax on business activities and the procurement of assets, where the sale is treated as the transfer of a going concern.

*3. Ensure IR35 is implemented robustly and contract workers pay a fair share of employment taxes.*

Assessment of the application of IR35 is made at the stage of appointment of external contractors.

*4. Not use offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.*

The Council does not use offshore vehicles.

*5. Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers as an artificial device to reduce the payment of tax and business rates.*

This is technically difficult to comply with. Not-for-profit structures have applicable tax regimes and it is not possible to assess whether the organisation has registered in this way because that is best suited to the purpose of the organisation or because it wishes to 'to reduce payment of tax and business rates'. However the Council can commit to tracking best practice in the sector and ensuring that through procurement processes, suppliers with a genuine commitment to social value and local supply chains, where applicable, are appropriately credited for their commitments, through the bidding process.

*6. Demand clarity on the ultimate beneficial ownership of suppliers UK and overseas and their consolidated profit & loss position, given lack of clarity could be strong indicators of poor financial probity and weak financial standing.*

Due diligence is always undertaken as part of procurement activities. However, it is not clear what the purpose of seeking clarity is. The Council would need to determine, as part of the assessment, whether it intends to disbar organisations from bidding or fail the bid if it deems that the information provided is insufficient. This could be subject to challenge and could result in contracts not being awarded to preferred suppliers on the grounds of 'lack of clarity' about overall ownership of the company.

To avoid legal challenge or potential perverse outcomes from procurement processes, it is important a blanket restriction is not introduced. In practical terms, the best way to implement this commitment through procurement is to ensure that the Council's assessment processes for financial standing are robust and proportionate to the nature of the contract being awarded. For contracts where the Council wishes to use local supply chains, it is unlikely that the financial assessment of those types of bidders will need to include examination of any complex company ownership structures. By contrast, where a high value contract is being awarded which may attract national or international companies, the Council's financial assessment should in any event be sufficiently robust to detect "poor financial probity and weak financial standing".

*7. Promote Fair Tax Mark certification especially for any business in which we have a significant stake and where corporation tax is due.*

The Council can state a preference for working with companies with Fair Tax Mark accreditation but the Fair Tax Foundation advises that procurement rules do not allow authorities to specify that as a criterion for selection – e.g. additional 'points' cannot be awarded for it. More details are provided in a Frequently Asked Questions sheet provided by the Foundation at **Appendix 2**.

*8. Support Fair Tax Week events in the area, and celebrate the tax contribution made by responsible businesses are proud to promote responsible tax conduct and pay their fair share of corporation tax.*

The Foundation's website states that:

*Fair Tax Week 2023 will run from 8th – 18th June, incorporating Tax Justice Sunday on 11th June. Fair Tax Week is a UK-wide recognition of the companies and organisations that are proud to promote responsible tax conduct and financial transparency. Through webinars, events and social media activity, Fair Tax Week will celebrate the positive contribution corporation tax makes to society. A platform to highlight and explore topics such as beneficial ownership, ESG, anti-corruption and procurement, Fair Tax Week will consider the wider role of corporation tax. The Week will also look at corporation tax as an important source of revenue for public services and how the public sector and individuals can play their part in contributing to a fairer economy for all.*

There are no regional events specified but the Council could subscribe to the newsletter and undertake promotions via the Council's website and social media, as appropriate.

*9. Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies.*

The Foundation provides publicity and campaigning material which can be drawn on to support this activity and procurement guidance can be amended to include requirements of 'good tax conduct' such as seeking the Tax Mark accreditation.

#### **4. Preferred Option**

4.1 That the Council notifies the Fair Tax Foundation of its approval of the Fair Tax Declaration at full Council on 21 February 2023.

#### **5. Alternative Options Considered**

5.1 Not to approve the Fair Tax Declaration. The report has highlighted some instances where there may be a conflict between perceived 'good practice' in respect of tax management and actions by the Council. These can be resolved on a case-by-case basis. In some instances implementing the declaration will be difficult to do and officers will need to seek further guidance on these matters.

#### **6. Implications**

##### 6.1 Financial and Budgetary Implications

There are no direct financial implications arising from this report. Some specific activities may have a budget impact but these will be considered as they arise and, if necessary, referred to the Committee for approval of supplementary estimates.

##### 6.2 Legal and Governance Implications

There are no statutory restrictions which limit the Council's support for the Fair Tax Declaration. The Council will need to continue to follow statutory guidance and best practice in the administration of its affairs and in instances where there is a potential conflict between the declaration and statutory guidance, the Council will be bound by its duties under statute.

##### 6.3 Risk Implications

There are no risk implications arising at this stage.

##### 6.4 Corporate/Policy Implications

The Council's Procurement Policies will be reviewed to incorporate a commitment to refer to the expectations of the Motion during procurement exercises.

##### Equality Implications

There are no direct equalities implications arising from the report.

##### 6.5 Human Resources Implications

There are no direct equalities implications arising from the report.

##### 6.6 Health and Safety Implications

There are no direct equalities implications arising from the report.

##### 6.7 Social, Environmental and Economic Implications

The potential social and economic benefits of the declaration are set out in the report.

**Ward(s):** All wards  
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**Background Papers:** Minutes of Full Council, 21 February 2023.