

**NOTICE OF MOTION – CLLR J MORLEY – FAIR TAX**

**Executive Summary**

At its meeting on 13 October 2022, the Council referred the following Notice of Motion to the Executive.

Councillor J Morley

“This 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 £17 billion 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.

This Council believes that:

1. Paying tax is often presented as a burden, but it should not 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.

## Notice of Motion – Cllr J Morley – Fair Tax

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 recognises the importance of delivering the Council's Key Priorities for the residents of Woking whilst acting within the confines of the law and balancing the budget. With this in mind, the Council resolves to:

1. Support the Councils for Fair Tax Declaration.
2. This commits the Council to promoting responsible tax conduct through:
  - Leading by example and demonstrating good practice in our tax conduct, right across the Council's activities.
  - Ensure IR35 is implemented robustly and contract workers pay a fair share of employment taxes.
  - Discouraging the use of offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.
  - Undertaking appropriate 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 if necessary take appropriate action within the confines of the procurement regime.
  - Seeking clarity, when appropriate, on the ultimate beneficial ownership of major suppliers UK and overseas and their consolidated profit and loss position, given lack of clarity could be strong indicators of poor financial probity and weak financial standing.
3. Promote Fair Tax Mark certification especially for any business in which we have a significant stake and where corporation tax is due.
4. 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. .
5. 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."

### Officer Comment

"By supporting 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 – United Kingdom (UK) and overseas – and their full financial reports; and
- 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.

As a political declaration, the declaration is seemingly uncontroversial. However, some of the details regarding the specific resolutions need to be clarified within the legislative and financial framework the Council must operate within. For ease of reference, the specific resolutions are taken in turn below.

## Notice of Motion – Cllr J Morley – Fair Tax

Leading by example and demonstrating good practice in our tax conduct, right across the Council's activities.

The Council sets a high standard in how it administers its own tax affairs. The Council's Finance Director oversees the Council's finance affairs and benefits from specialist tax advice in such matters. The Council has a clean record in all its dealings with the Government's tax agencies. The Council also does its best to ensure that its suppliers operate high standards in carrying out their business activities. The Council's Financial Regulations and procurement approach is in line with statutory requirements, good practice and national policy.

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

There are robust IR35 procedures in place. Any such appointment which might sit outside IR35, is referred to the Human Resources. The team carry out the IR35 checks via the governments online checking process, delivering a verdict which is then documented as part of the request.

Discouraging the use of offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.

The utilisation of offshore holding companies is common practice amongst property owners but the Council has not acquired any new properties since it purchased Dukes Court in November 2017 and has no intention to do so at the present time.

Undertaking appropriate 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 if necessary take appropriate action within the confines of the procurement regime.

It is important to note that the Council must operate within the confines of the procurement regime and that actions available to the Council to penalise poor tax conduct are currently limited by a matter of law. This is clearly recognised by the fact that the resolution calls for support 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."*

Currently, financial appraisals of prospective suppliers focus purely on an organisation's financial viability and do not normally take an ethical view. It is extremely challenging to investigate tax affairs as part of this appraisal, given there is no readily available information on how companies pay their taxes, other than in the financial press. The Public Contracts Regulations 2015 (PCR 2015, regulation 57) provide for contracting authorities to exclude a supplier if they are aware it is in breach of its obligations relating to the payment of taxes or social security contributions, and where the breach has been established "by a judicial or administrative decision having final and binding effect".

Issues concerning tax avoidance, defined by the Government as bending the rules of the tax system to try to gain a tax advantage that Parliament never intended are, however, significantly more complex. The PCRs do not make provision for discretionary exclusion based on concerns about matters such as tax arrangements or beneficial ownership. Current legislation only allows exclusion in very limited circumstances – that is if a mandatory exclusion is triggered around a breach of obligations relating to the payment of taxes or social security contributions that has been established by a judicial or administrative decision. Offshoring or other legal (but morally dubious) grounds to minimise tax are not legitimate grounds to exclude a company from a procurement and would rightly result in a legal challenge as companies have the right to organise their tax affairs how they like, provided they are lawful.

Barring suppliers on this basis would therefore expose the Council to the risk of legal challenges and, accordingly, risk financial compensation being awarded to the very companies we wished to exclude from being in receipt of funds. Hence, whilst we can undertake appropriate due diligence the Council must take a pragmatic approach to the declaration and acknowledge that information

## Notice of Motion – Cllr J Morley – Fair Tax

available to the Council may be limited and recognise that any actions that flow from the due diligence must be within the constraints of current legislation.

Furthermore, the Council needs to ensure that the resolution does not inadvertently cause any risk to the delivery of core services in areas where there is the most potential for the existence of complex beneficial ownership structures and sub-optimal tax arrangements. For example, areas serviced by large multinational corporations with complex tax arrangements, such as Microsoft or Amazon, who are known to have non UK based headquarters to benefit from alternative taxation regimes and complex beneficial ownership and offshore activities.

It is also difficult to argue that 'poor tax conduct' can be taken into consideration as a factor during the stages of the procurement decision making process, i.e. the technical specification stage, the award stage, or as a contract performance condition. This is because a company's tax conduct is not 'linked to the subject matter of the contract', but it instead constitutes general commercial policy. It is therefore not possible to construct a convincing way in which authorities could devise criteria that could satisfy the relevant legal test that the criteria 'linked to the subject matter'.

There are however opportunities to evolve in this area along the ethos of the proposed resolutions: The new regulations and supporting infrastructure proposed by Central Government will enhance access to relevant supplier data, which may allow contracting authorities to employ this data to make more informed decisions regarding which suppliers to contract with. Current assessment of what data this central platform will hold includes: central debarment list, central register of complaints and register of legal challenges.

The Council can review the supplier questionnaire and consider including enhanced self-declaration/self-assessment as part of the financial checks (on a pass/fail basis), shifting the burden to the suppliers to prove that their tax conduct is in accordance with UK legislation. Going further, we could consider the appropriateness of incorporating the Fair Tax Mark into tenders, or ask for proof that suppliers are working towards it (noting it would be advisable to offer an "or equivalent" type option, and/or give the Fair Tax Mark as simply an indication of how good tax conduct could be evidenced, rather than favour a sole indication which carries a cost for the supplier).

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 promote (but, as outlined above, not necessarily reward) Fair Tax Mark certification to businesses.

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 Fair Tax Foundation's website describes Fair Tax week as:

"A UK-wide recognition of the companies and organisations that are proud to promote responsible tax conduct and pay their fair share of corporation tax. Using #CelebratingFair, the week will highlight digital events and provide a platform to explore the positive contribution corporation tax makes to society." The Council shall consider what activities planned for Fair Tax week 2023 it would be acceptable to support when they are published next year and promote these accordingly.

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 Council can support calls for reform and utilises existing channels such as our membership of the Local Government Association and District Council Network.

The Council can support the Notice of Motion recognising the intention of the Fair Tax Mark and the legislative and financial framework we must adhere to."

## Notice of Motion – Cllr J Morley – Fair Tax

**Background Papers:** None.

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**Date Published:** 9 November 2022