

NOTICE OF MOTION REGARDING FAIR TAX DECLARATION

Council:	28 March 2024
Report Author	Chris Blundell, Director of Corporate Services
Portfolio Holder	Councillor Yates, Cabinet Member for Corporate Services
Status	For Decision
Classification:	Unrestricted
Ward:	All Wards

Executive Summary:

This Council is being asked to consider a notice of motion requesting that the Council resolves to approve the Fair Tax Declaration. This would include the Council leading by example and demonstrating good practice in their tax conduct.

Recommendation(s):

1. That Full Council considers the content of this report and takes a decision either to debate the Motion referred to or not to debate the Motion referred to based on the information provided below.

Corporate Implications:

Financial and Value for Money

It should be noted that the figures stated in the motion regarding the number of public procurement awards associated with tax havens relates to nationwide procurement activity and is not specific to either Thanet District Council or local government generally.

To adopt the Motion as originally drafted by the Fair Tax Foundation would result in additional cost to the Authority, specifically to service the requirements outlined in additional due diligence activities. This would be both additional staffing and training to develop the required skills.

The broader financial considerations pertaining to the motion are set out in the body of the report.

Legal

There are no specific legal implications arising from the decision to debate or not debate this motion. However, in the event that Council were to vote to accept the motion as drafted, this would have implications for the Council as set out in the body of this report.

Members should be reminded of Procedure Rule 3.7 which states that: “the Member whose name appears first on the notice will move the motion during his or her speech and call for a seconder. If seconded, a Member from the controlling political group will be entitled to a reply, after which the motion shall stand referred without further discussion to the Cabinet or appropriate committee for determination or report unless the Council decides to debate the motion in accordance with Rule 16” (*rules of debate*)

Risk

There is no risk associated with the decision to debate or not debate this report. Officers have however considered the Motion and as set out in the body of this report there are financial risks associated with members voting in favour of the motion as originally drafted.

Corporate

Council Procedure Rule 3 provides the opportunity for Councillors to give advance notice of motions to be put to Council.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

There are no specific equality issues arising from this report.

CORPORATE PRIORITIES

This report relates to the following corporate priorities: -

- *To keep our district safe and clean*
- *To deliver the housing we need*

- *To protect our environment*
- *To create a thriving place*
- *To work efficiently for you*

1. Introduction and Background

- 1.1. The following motion has been received from Councillor Austin in accordance with Council Procedure Rule No. 3:

“The Green Group is proposing this motion to highlight the positive role that tax plays in our society. Tax should not be seen as a burden, as it is characterised by some politicians and certain media. If we all pay our fair share, it is a means of funding essential public services and ensuring all our communities are properly supported.

As a responsible public body, we want to lead by example, to stand up for better standards and campaign to change public procurement rules. Between 2014 and 2019, 17.5% of public procurement contracts were won by businesses with a connection to a tax haven. We find this unacceptable - and so do the majority of the public. Polls show over 60% of people believe public bodies should be able to consider company ethics and responsible tax conduct when awarding contracts to suppliers - but at present we are not permitted to do so.

We are therefore asking Council to support the following motion:

This Council resolves to:

Approve the Councils for Fair Tax Declaration.

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

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

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

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.

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.

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

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.

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. Outline of the Motion

2.1. Officers have reviewed the original Declaration and Motion put forward by the Green Group. By signing up to the Councils for Fair Tax Declaration, councils need to demonstrate alignment to the Fair Tax Foundation values and encourage responsible tax practice through:

2.1.1. Leading by example on their own tax conduct;

2.1.2. Demanding to know who owns and profits from businesses the Council buys from – United Kingdom (UK) and overseas – and their full financial reports; and

2.1.3. 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.

2.2. Points 2.1.1 and 2.1.3 above do not cause any concerns. However, some of the details regarding the specific resolutions covered by 2.1.2 require further exploration.

2.3. This paper reviews each of the specific resolutions as included in the original Motion.

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

2.4. The council already accounts for all VAT, Stamp Duty and other tax and levies due in accordance with good practice and legal requirements. Any external revenue generated by the proposed shared Local Authority Trading company will also be treated in such a manner.

2.5. Finance, Legal and Procurement have no concerns with TDC passing this resolution.

Ensure IR35 is implemented robustly such that contract workers pay a fair share of employment taxes

2.6. There are robust IR35 procedures in place. Contracting managers undertake IR35 checks via the government’s online checking process, delivering a verdict which is then documented as part of the assessment. Most of the decisions in this area are clear and straightforward, but HR advice is available to assist with more complex or subjective cases.

- 2.7. Human Resources, Finance, Legal and Procurement have no concerns with TDC passing this resolution

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

- 2.8. The council itself does not and does not intend to use any such vehicles for the acquisition of property to avoid paying stamp duty. Notably the Housing Revenue Accounts pays Stamp Duty Land Tax (SDLT) on the acquisition of properties where applicable, for example we don't pay SDLT on subsidised housing purchases.
- 2.9. However, it should be noted, the utilisation of offshore holding companies is common amongst property owners. If TDC wishes to acquire land and property, we have no control over the legal entity which owns that property who may be selling it. There could be a key piece of land for regeneration or housing for example that is required.
- 2.10. Therefore, Property, Housing and Legal are able to recommend that Full Council pass this element of the motion, subject to the understanding that it is applicable only to our own tax arrangements and not that of prospective counterparties.

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.

- 2.11. Financial appraisals of potential suppliers focus on an organisation's financial viability. Consideration of an ethical view is only provided for in exceptional circumstances under the instruction of central government, for example the exclusion of Russian companies from UK supply chains following the war in Ukraine.
- 2.12. 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 legal obligations relating to the payment of taxes or social security contributions, where the breach has been established by a judicial or administrative decision.
- 2.13. Issues concerning tax avoidance are significantly more complex. The PCRs do not make provision for discretionary exclusion based on concerns such as tax arrangements or beneficial ownership. Current procurement legislation only allows exclusion in very limited circumstances. Offshoring or other legal grounds to minimise tax are not legitimate grounds to exclude a company from a procurement and would therefore not be compliant with the PCR 2015. Excluding suppliers on this basis would be non-compliant and therefore expose TDC to the risk of legal challenge from any supplier TDC excluded from the procurement process on this basis.
- 2.14. Similar provisions are expected to come into force under the new Procurement Act 2023, which is expected to be effective from October 2024.

Like the current provision under PCR2015, there are limited exceptions under the new Act. Mandatory exclusion grounds to apply once the Act is in force are set out in Schedule 6 of the Act. Part 1 of that Schedule includes a number of tax offences, and Part 2 includes a relatively wide range of acts classified as 'Misconduct in

relation to tax'. Whether TDC is able to exclude a supplier depends on the detail of each case, including timing of when the offence took place.

- 2.15. To undertake the level of due diligence that would be required to evaluate bidders and manage suppliers based on their tax arrangements would necessitate a level of skill and capacity not currently available. Therefore, even if there were a legal route available to achieve this, there would be a direct cost of undertaking which is estimated to be approximately £50,000 per annum of additional staffing resources.
- 2.16. Furthermore, there could be unintended consequences from adopting this motion, resulting in an impact on the cost or level of service delivery to our local residents. For example, our leisure services are provided through a leisure trust, Your Leisure Kent Ltd., with one of the main reasons for doing so being the tax efficiencies that are enjoyed by such trusts. Moreover, the re-opening and development of Dreamland was in part leveraged by the support of Sands Heritage Limited (SHL), whose tax arrangements were not based in the UK. However, had we decided to not award to SHL on this basis this site may not have been brought back into use. Due to the complexities of the tax arrangements in this area a blanket veto could place restrictions on the council's operations and opportunities.
- 2.17. In May 2022 Her Majesty's Revenue and Customs (HMRC) produced a report on Tax Compliance of HMRC Suppliers. HMRC has adopted a *"strengthened approach to tax compliance for its own procurements in circumstances where the Public Contracts Regulations allow for HMRC to take a tougher line than the cross-government position and as such permit HMRC to apply discretion in decisions to exclude a supplier from the procurement process or terminate an existing contract"*. Critically, *"exclusion is based on the grounds of tax non-compliance as determined by 'any appropriate means', which means HMRC has the advantage of being able to use any information it holds"*.
- 2.18. TDC does not have such information available and so it is unclear how the Authority would be able to implement tougher restrictions on its supplier base than is seen as standard across Central Government. It is also important to note that such a level of due diligence, if possible, would take additional investment in resources and skills development.
- 2.19. Background investigation on this element of the motion highlighted that, whilst it appears many councils have signed the Councils for Fair Tax Declaration, in doing so they have made adjustments to the wording of this element of the Declaration.
- 2.20. Procurement and Legal are therefore not able to recommend that Full Council pass this element of the motion for the reasons outlined.
- 2.21. **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.**
- 2.22. For reasons set out above, additional staffing resources of approximately £50,000 per annum would be required to undertake further due diligence directly by TDC officers,

in order to establish this degree of clarity in our supply chain. Alternatively the Council may agree to lobby central government, to mandate organisations to declare such a position on this matter, should they so wish.

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

- 2.23. For the reasons set out elsewhere in this report, it is expected the council would be able to promote itself as a Fair Tax Council and it is also expected that any future Local Authority Trading Companies that we have an ownership stake in could demonstrate Fair Tax Accreditation.
- 2.24. Officers are also content to promote fair tax accreditation with existing and potential suppliers.
- 2.25. However, because it is a paid accreditation, if we require a supplier to have accreditation it could represent a procurement risk in terms of not treating all suppliers equally and fairly. For those suppliers who may have tax efficient ways of working, which are legal, this may mean they are unable to get the accreditation. Requiring Fair Tax Mark certification may therefore expose TDC to the risk of legal challenge from any supplier TDC excluded from the procurement process on this basis.
- 2.26. We cannot endorse one form of accreditation over another, therefore the council would have to accept any comparable accreditation. It should be noted that the cost to suppliers to achieve Fair Tax Accreditation ranges from £299 - £20,000 (exc. VAT). It is probable that the Authority would see this cost included in the bid price.
- 2.27. Further to the financial cost to suppliers there is also the resource required to achieve Fair Tax Accreditation. Both could have a disproportionate impact on Small and Medium Enterprises (SMEs) and the Voluntary, Community and Social Enterprises (VCSEs) sectors.
- 2.28. Procurement and Legal are able to recommend that Full Council pass this element of the motion subject to the limitations of its scope outlined, most notably that we would not be able to restrict our procurement activity to those suppliers with such an accreditation.

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.

- 2.29. 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*".
- 2.30. Fair Tax Week 2024 is scheduled to take place from 9th-16th June. Legal, Procurement and Finance have no objection to this.

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.

- 2.31. The new Procurement Act 2023 is expected to come into effect in October 2024, which sets out changes to procurement regulations, so it is unclear what route the Fair Tax Foundation is seeking in order to change the new legislation.
- 2.32. Procurement does not have any concerns with TDC passing this resolution.

3. Options

- 3.1. To agree the motion
- 3.2. Not to agree the motion, in which case the motion will fall.

4. Decision Making Process

- 4.1. As only Full Council can agree to this motion, if the motion falls then it will not be referred to any other committee. It was agreed at the 22 February meeting to debate the motion.
- 4.2. Council deferred the item to the next regular Full Council meeting where it could consider a full report on the financial and legal impact of the proposed motion. This is that report. At the end of the debate Full Council can then choose to adopt the motion or not.

Contact Officer: Nick Hughes, Committee Services Manager

Reporting to: Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)

Annex List

No Annexes

Background Papers

There are no background papers with this report.

Corporate Consultation

Finance: Chris Blundell (Director of Corporate Services - Section 151)

Legal: Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)