

Meeting date: 13 March 2023

Report to: Audit Committee

Report title: Prevention of the Facilitation of Tax Evasion Policy

Report from: Acting Chief Executive

Report author/lead contact officer: Adam Paterson
Finance Manager – Financial Cycle Team

Wards affected:

- All Wards | Bickenhill | Blythe | Castle Bromwich | Chelmsley Wood |
 Dorridge/Hockley Heath | Elmdon | Kingshurst/Fordbridge | Knowle |
 Lyndon | Meriden | Olton | Shirley East | Shirley South |
 Shirley West | Silhill | Smith's Wood | St Alphege
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Public/private report: Public

Exempt by virtue of paragraph: N/A

1. Executive Summary

- 1.1 This report sets out the specific Policy for the Prevention of the Facilitation of Tax Evasion.
- 1.2 The Policy will help the Council to prove it has reasonable preventative measures in place if there are instances of either successful or attempted tax evasion.
- 1.3 The Council has always had appropriate controls in place, but this Policy documents them centrally and helps to demonstrate and foster a top down commitment to this policy.

2. Decision(s) Recommended

- 2.1 Audit Committee are asked to consider and comment on this new corporate Policy which will demonstrate how the Council is actively preventing the facilitation of tax evasion before it is presented to Governance Committee on 15 March.

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3. Matters for Consideration

- 3.1 In September 2017, HM Revenue and Customs released “Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion.” The Government believes that relevant bodies should be criminally liable where they fail to prevent those who act for, or on their behalf from criminally facilitating tax evasion.
- 3.2 The new offences will be committed where a relevant body fails to prevent an associated person criminally facilitating the evasion of a tax, and this will be the case whether the tax evaded is owed in the UK or in a foreign country.
- 3.3 Previously, attributing criminal liability to a relevant body required prosecutors to show that the senior members of the relevant body were involved in and aware of the illegal activity, typically those at the Board of Directors level.
- 3.4 The offence, however, does not radically alter what is criminal, it simply focuses on who is held to account for acts contrary to the current criminal law. It does this by focussing on the failure to prevent the crimes of those who act for or on behalf of a corporation, rather than trying to attribute criminal acts to that corporation.
- 3.5 The legislation aims to tackle crimes committed by those who act for or on behalf of a relevant body. The legislation does not hold relevant bodies to account for the crimes of their customers, nor does it require them to prevent their customers from committing tax evasion. Nor is the legislation designed to capture the misuse of legitimate products and services that are provided to customers in good faith, where the individual advisor and relevant body did not know that its products were intended to be used for tax evasion purposes.
- 3.6 The types of tax evasion covered by this Policy include, but are not limited to:
 - Corporation Tax
 - PAYE / Income Tax
 - Off-payroll working (IR35)
 - Contractor or Sub-Contractor VAT
- 3.7 The Council is considered a low risk organisation for having exposure to these types of risks – businesses that are providing financial or tax advice to individuals are considered to be high-risk, although this does not mean we are not potentially exposed to risks.
- 3.8 The Council has already achieved the objectives set out in this guidance since its inception, without having a specific policy written to outline how the guidance is being satisfied. The policy set out in Appendix A documents exactly what the Council’s standpoint is, how the Council meets the objectives of the guidance and the specific preventative measures that already exist.
- 3.9 Officers began this process by conducting a detailed risk assessment outlining the

risks faced, existing controls and mitigations as well as any new controls that need to be embedded.

- 3.10 This policy applies to all persons working for the council or any subsidiary or on our behalf in any capacity, including employees at all levels, directors, officers and associates (as defined below), including but not limited to agency workers, seconded workers, volunteers, interns, contractors, external consultants, third-party representatives and business partners, sponsors or any other person associated with us, wherever located.
- 3.11 Governance and internal control procedures are already in place to meet the statutory requirements; and there is no suggestion that the Council tolerates tax evasion, or that staff engage in such behaviour. However, adopting an express corporate policy will help the Council defend any allegation that it has facilitated tax evasion.
- 3.12 It is recognised that this policy continues to refer to the “Director of Resources and Deputy Chief Executive” and during the current interim management arrangements, this also means the “Acting Chief Executive”.
- 3.13 All Council staff will be made aware of this policy to ensure that the policy is complied with and becomes incorporated into working practices.
- 3.14 Officers will also ensure that wholly owned subsidiaries have similar and appropriate policies and processes.

4. What options have been considered and what is the evidence telling us about them?

4.1 N/A

5. Reasons for recommending preferred option

5.1 N/A

6. Implications and Considerations

6.1 State how the proposals in this report contribute to the priorities in the [Council Plan](#):

Priority:	Contribution:
<p>People and Communities:</p> <ol style="list-style-type: none"> 1. Improving outcomes for children and young people in Solihull. 2. Good quality, responsive, and dignified care and support for Adults in Solihull when they need it. 3. Take action to improve life chances and health outcomes in our most disadvantaged communities. 	<p>This policy will help to prevent any financial loss to the Authority and indirectly helps to ensure the Council will achieve these priorities.</p>

Priority:	Contribution:
4. Enable communities to thrive.	
Economy: 5. Develop and promote the borough's economy, with a focus on revitalising our town and local centres. 6. Maximising the opportunities of UK Central and HS2. 7. Increase the supply of affordable and social housing that is environmentally sustainable.	As above
Environment: 8. Enhance our natural environment, improve air quality and reduce net carbon emissions.	As above
9. Promote employee wellbeing	As above

6.2 Consultation and Scrutiny:

6.2.1 This Policy has been written in conjunction with appropriate officers from Internal Audit.

6.3 Financial implications:

6.3.1 There are no direct financial implications as a result of this report.

6.4 Legal implications:

6.4.1 This policy will allow the Council to meet the Criminal Finance Act 2017.

6.5 Risk implications, including Risk Appetite:

6.5.1 The Council adopts a "sensible" approach to risk management which is about focusing attention on the real risks, those that happen more often and those with serious consequences and taking practical steps to protect people from risks that cause real harm and suffering.

6.5.2 The policy aims to reduce the risk of tax evasion being facilitated by either an employee or an associated person.

6.6 Equality implications:

6.6.1 N/A

6.7 Linkages to our work with the West Midlands Combined Authority (WMCA), Local

Enterprise Partnership or the Birmingham & Solihull Integrated Care System (ICS):

6.7.1 N/A

7. List of appendices referred to

7.1 Appendix A – Prevention of the Facilitation of Tax Evasion Policy

8. Background papers used to compile this report

8.1 N/A

9. List of Other Relevant Documents

9.1 Included in the policy.