

# **Prevention of the Facilitation of Tax Evasion**

**POLICY STATEMENT AND PROCEDURES**

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## 1. Policy Statement and Scope

Solihull Metropolitan Borough Council (“the Council”) has a zero tolerance approach to all forms of tax evasion. This document sets out the policy in relation to tax evasion and has the full support of the Director of Resources and Deputy Chief Executive (S151 officer) as well as the Council’s Audit and Governance Committee.

The Council recognises that it has a responsibility to prevent tax evasion in all activities that it has control over, or responsibility for. The Council already has a number of policies, controls and regulations designed to deter, detect and prevent any wrongdoing and is committed to acting professionally, fairly and with integrity in all its dealings and relationships.

Employees of the Council, its agents and contractual associates must not undertake any transactions which:

- Cause the Council to commit a tax evasion offence; or
- Facilitate a tax evasion offence by a third party.

This document sets out the background to this policy, key responsibilities, steps and actions in place to prevent any tax evasion and how to raise any concerns there may be.

The purpose of this policy is to:

- set out the Council’s responsibilities, and the responsibilities of those working for the Council, in observing and upholding our position on preventing the criminal facilitation of tax evasion; and
- provide information and guidance to those working for the Council on how to recognise and avoid tax evasion.

If the Council fails to prevent its employees, workers, agents or service providers facilitating tax evasion, the Council can be criminally prosecuted, subject to a large fine and incur reputational damage. The Council therefore takes its legal responsibilities seriously.

**Specifically, staff and associates must not knowingly do anything that helps someone else evade tax.**

## 2. What is Tax Evasion

**Tax evasion** is the illegal non-payment or under-payment of taxes, usually as the result of making a false declaration (or no declaration) of taxes due to the relevant tax authorities, which results in legal penalties if the perpetrator is caught.

Tax evasion involves all forms of tax, including income tax, corporation tax, VAT, national insurance, landfill tax, Council tax and excise duties such as road fund licence and tax on the sale of alcohol and tobacco. This list is not exhaustive.

**Tax avoidance**, by contrast, is seeking to minimise the payment of taxes without deliberate deception. This is often legitimate but is sometimes contrary to the spirit of the law, e.g. involving the exploitation of loopholes.

Importantly the corporate criminal offence of facilitation only applies to tax evasion. The third party must be found guilty of tax evasion before the Council can be found to have facilitated it.

### 3. Legislation and an overview of the offences

#### Legislation

The Government has set out that Councils are criminally liable if they fail to prevent those who act for, or on their behalf from criminally facilitating tax evasion. The new offence does not fundamentally alter what is criminal; it simply focuses on who is to be held accountable for acts contrary to the current law. The new offence focuses on the failure to prevent the crimes and those who act for or on behalf of a corporation, rather than trying to attribute acts to the corporation.

The new legislation in relation to Corporate Tax Evasion is laid out in the Criminal Finance Act 2017 ("CFA 2017"). This new act came into force on the 30 September 2017:

Part 3 CFA 2017 creates two separate corporate offences:

- Failure to prevent facilitation of UK tax evasion and;
- Failure to prevent facilitation of overseas tax evasion.

The Council would be guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with the Council.

Under S45 (4) CFA 2017 a UK tax evasion offence is either of the following:

- An offence of cheating the public revenue.
- An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in or taking steps with a view to, the fraudulent evasion of a tax.

Under S45 (5) CFA 2017 'UK tax evasion facilitation offence' means an offence under the law of any part of the United Kingdom consisting of:

- Being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of a tax of another person,
- Aiding, abetting, counselling or procuring the commission of a UK tax evasion offence, or
- Being involved in the commission of an offence consisting of being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of tax.

The Council must, and intends to, take these matters very seriously. There are potentially severe consequences for not taking the aforementioned reasonable steps:

- Unlimited financial penalties
- Ancillary orders such as confiscation orders or serious crime prevention orders
- Possible disclosure requirements to professional regulators

#### Overview of the offences

There are three stages that apply to both the domestic and foreign tax evasion facilitation offences.

**Stage one: The criminal tax evasion by a taxpayer (either an individual or a legal entity) under existing law.**

For the corporate offence to be committed there must first be a criminal offence at the taxpayer level (stage one). Non-compliance, falling short of fraud, at the taxpayer level will not result in the corporate offence being committed. This offence only relates to the failure to prevent the facilitation of tax evasion.

The domestic offence applies to all categories of taxation in the UK and national insurance contributions except for Scottish Devolved Taxes.

## **Stage two: the criminal facilitation of the tax evasion by an “associated person” of the relevant body**

It is already a crime to deliberately and dishonestly facilitate the commission of revenue fraud by another person. It is already a crime for a person to be knowingly concerned in, or take steps with a view to, another person fraudulently evading tax. It is also a crime to aid and abet another person in committing a revenue fraud.

Therefore if a professional such as a banker, accountant or lawyer, deliberately and dishonestly facilitates the commission of revenue fraud by a client, then that banker, accountant or lawyer also commits a crime. The fact that the crime is committed during the course of their work is no defence.

For the corporate offence to be committed there must be criminal facilitation of the taxpayer evasion by a person acting in the capacity of a person associated with the relevant body (stage two). The associated person must deliberately and dishonestly take action to facilitate the taxpayer-level evasion. If the associated person is only proved to have accidentally, ignorantly or even negligently facilitated tax the evasion offence then the new offence is not committed by the relevant body.

## **Stage three: the relevant body failed to prevent its representative from committing the criminal facilitation act**

As the offence is a strict liability offence, if stages one and two offences are committed then the relevant body will have committed the new corporate offence unless it can show it has put in place reasonable preventative procedures.

**Defence:** where the relevant body has put in place reasonable prevention procedures to prevent the criminal facilitation of tax evasion by an associated person (or where it is unreasonable to expect such procedures) the relevant body shall have a defence. This guidance provides suggestions of the types of processes and procedures that can be put in place to prevent associated persons from criminally facilitating tax evasion.

## **4. Reasonable Preventative Measures**

The Government considers that prevention procedures put in place by relevant bodies to prevent tax evasion from being committed on their behalf should be informed by the following six principles.

The Government has set the same threshold for Tax Evasion prevention measures as those set for Bribery (under S7 of the Bribery Act 2010). i.e. When an offence has been committed, an organisation must be able to evidence that they have adequate procedures in place designed to prevent persons associated with Solihull Metropolitan Borough Council from committing this crime.

These principles are not prescriptive, they are intended to be flexible and outcome focussed, allowing for the huge variety of circumstances that relevant bodies find themselves in. As set out in more detail below, procedures to prevent facilitation of tax evasion should be proportionate to risk.

## Risk Assessment

*The relevant body assesses the nature and extent of its exposure to the risk of those who act in the capacity of a person associated with it criminally facilitating tax evasion offences. The risk assessment is documented and kept under review.*

The Council has a statutory responsibility to have in place arrangements for managing risks and the responsibilities are set out in the Local Government (Accounts and Audit) Regulations. The Council has also developed an approach to risk management which is detailed/ outlined within the Risk Management Policy and has a dedicated Risk Management Team (*who are part of the Audit Services Division within the Resources Directorate*). The roles and responsibilities for officers are set out in that policy.

Officers have conducted a risk assessment and will review this annually as well as implementing any improvements to controls. Any updates to the policy will also be reviewed annually and presented to Audit Committee if required.

## Proportionality of risk-based prevention procedures

*Reasonable procedures for a relevant body to adopt to prevent persons acting in the capacity of a person associated with it from criminally facilitating tax evasion will be proportionate to the risk the relevant body faces of persons associated with it committing tax evasion facilitation offences.*

The Council has a number of existing measures to prevent, detect and deter the possibility of tax evasion, including, but not limited to:

- An Audit Committee whose purpose is to “provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the Authority's financial and non-financial performance to the extent that it affects the Authority's exposure to risk and weakens the control environment, and to oversee the financial reporting process.”
- An effective Internal Audit function aimed at ensuring there is appropriate financial control and governance
- An annual External Audit that scrutinises the Council's accounts as well as ensuring Value for Money
- A specific advisory contract with an external VAT specialist
- The Council is an active participant in the National Fraud Initiative
- Various mandatory policies listed later in this policy

## Top level commitment

*The top-level management of a relevant body should be committed to preventing persons acting in the capacity of a person associated with it from engaging in criminal facilitation of tax evasion.*

This policy has been reviewed by the Director of Resources and Deputy Chief Executive (S151 officer) and approved by the Council's Audit Committee.

The Corporate Leadership Team foster a culture of openness and honesty which allows policies such as this to be effective.

## Due Diligence

*The organisation applies due diligence procedures, taking an appropriate and risk based approach, in respect of persons who perform or will perform services on behalf of the organisation, in order to mitigate identified risks.*

Reasonable care and caution is exercised when processing all financial transactions, particularly high value/high risk payments. Regular monitoring takes place and particular caution is exercised when making payments to new suppliers. Specific controls are maintained in relation to payments being processed through the Council's Accounts Payable function which undertakes checks on suppliers prior to payments being made. Any risks are included in the Risk Assessment.

## Communication (including training)

*The organisation seeks to ensure that its prevention policies and procedures are communicated, embedded and understood throughout the organisation, through internal and external communication, including training. This is proportionate to the risk to which the organisation assesses that it is exposed.*

The Council is committed to ensuring that mandatory training on this policy is offered to those staff who have been identified as being at risk of exposure to criminal tax evasion. This will include staff involved with procurement, commissioning, invoice processing, property transactions, Bacs payments, Payroll and Pensions. All staff will be made aware of the Council's Prevention of the Facilitation of Tax Evasion Policy through internal briefing communications.

The Council's zero-tolerance approach to tax evasion and foreign tax evasion must be communicated to all suppliers, contractors and business partners at the outset of our business relationship with them and as appropriate after that. This will be done by making reference to the Council's Prevention of the Facilitation of Tax Evasion Policy on our Supplier Set Up and Supplier Amendment forms and tender documentation.

## Monitoring and Review

*The organisation monitors and reviews its preventative procedures and makes improvements where necessary.*

Internal procedures and this policy will be reviewed at least annually and any revisions to this policy will be published online as they are made.

Internal Audit will also consider this policy as part of its annual cycle of works and will review and report any instances of non-compliance.

## 5. Other Supporting Policies

The Council already has a number of policies that this policy can be used in conjunction with:

- [Anti-Money Laundering Policy](#)
- [Counter Fraud and Corruption Strategy](#)
- [Prevention of Bribery Policy](#)
- [Whistleblowing Policy](#)

The Council also has a set of Financial Regulations which applies to every Council officer and Member which are reviewed annually and approved by Audit and Governance Committees.

Any officer with concerns can raise them by following the guidance in the above Policies / with the Head of Audit Services