

Appendix B

BRIEFING NOTE

MOTION: Motion on Fair Tax.

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 £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.

This 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.

This Council resolves to:

1. Approve the Councils for Fair Tax Declaration.
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.

PROPOSERS:

Cllrs Joanne Ainscough and Jean Parr.

OFFICER BRIEFING NOTE:

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:

1. Leading by example on their own tax conduct;
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
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.

Points 1 and 3 above do not cause any obvious concerns at this point. However, some of the details regarding the specific resolutions covered by 2 require further exploration. This note provides high level commentary on each of the specific resolutions as included in the original Motion.

Lead by example and demonstrate good practice in its tax conduct of Lancaster City Council and its trading companies.

The wholly-owned trading companies of the Council (More Homes for the Bay – Development & More Homes for the Bay – Investment) are currently not trading and so have limited expenditure outside of its statutory obligations for filing of accounts etc. However, once trading commences the nature of its transactions may well fall into the categories outlined in this motion and have resource implications.

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

There are IR35 procedures in place within the Council to guide Managers when appointing consultants/ agency staff. Managers are required to carry out the IR35 checks via the governments online checking process, delivering a verdict which is then documented as part of the recruitment process. To date there has been limited examples of recruitment falling within IR35, and in each instance indemnity insurance has been obtained from the individuals to protect the Council from any future tax liability.

Avoid offshore vehicles for the purchase of land and property.

The utilisation of offshore holding companies is common amongst property owners. If the Council 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 and so approval of this element of the motion this may

have unintended consequences for the Council. However, demonstrating good practice as per point 2 of the Motion should provide some comfort in this regard.

Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers to reduce the payment of tax and business rates and Demand clarity on the ultimate beneficial ownership of suppliers and their consolidated profit & loss position.

Financial appraisals of potential suppliers focus on an organisation's financial viability and do not take an ethical view.

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, where the breach has been established by a judicial or administrative decision.

Issues in relation to 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 allow exclusion in very limited circumstances. Basing companies offshore, 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 the Council to the risk of legal challenge from any supplier excluded from the procurement process on this basis.

Complex ownerships structures are becoming common even for smaller, locally owned operations who are restructuring businesses in order to mitigate costs and maintain profit margins; and 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.

Undertaking the level of due diligence required to evaluate bidders and manage suppliers based on their tax arrangements would require a level of skill and capacity not currently available, within Finance, Legal or Procurement. Therefore, even if there were a legal route available to achieve this, there would be a direct cost of undertaking.

These examples highlight how adoption of this element of the original motion could have significant unintended consequences, and where the decisions to examine suppliers would be influenced by subjective decisions.

Researching the response to this motion highlighted that although 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.

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

Fair Tax Accreditation is a paid accreditation, with costs ranging from £299 - £20,000 (exc. VAT) which could have a disproportionate impact on Small and Medium Enterprises (SMEs)and the Voluntary, Community and Social Enterprise Sectors (VCSEs) sectors. It also is likely that the Council would see this cost included in the tender price.

If the Council was to 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. The Council cannot endorse or promote one form of accreditation over another, therefore the Council would have to accept any comparable accreditation.

Support Fair Tax Week events in the Lancaster District and celebrate the tax contribution made by businesses who 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”.

The Council could consider what activities planned for Fair Tax week 2024 it could support when details are published for 2024.

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.

Government consultation regarding the changes to procurement regulations is now closed, so it is unclear what route the Fair Tax Foundation is seeking in order to change the new drafted legislation. We are not aware of any submissions made by the Council to this consultation but would not see any major resource implications from this part of the motion.

SECTION 151 OFFICER'S COMMENTS

Adoption of this motion in its original form without amendment, or revision may expose the Council to legal and financial risk, as well as requiring additional resources and expertise to meet its requirements. Councillors may wish to propose alternative wording or refer the matter to one of the Council's Scrutiny Committees for consideration.

The recommendations of the Committee could be considered at a future Council meeting.

MONITORING OFFICER'S COMMENTS

The legal and financial risks are identified in the officer commentary and, in particular, those in relation to the Public Contracts Regulations 2015. Should members wish to refer the matter for further, more detailed, consideration the advice would be for a scrutiny committee to carry out this work.

The Overview & Scrutiny Committee's terms of reference include making suggestions on the review and development of policy. Any report would be fed back into Cabinet for consideration.

Budget & Performance Panel can also scrutinise policies & procedures and other supporting arrangements for securing value for money e.g. procurement practices.

In addition to this Audit Committee can consider and endorse amendments to the Council's Financial Regulations and Contract Procedure Rules.

Council 27th September

Minute 58

Councillor Ainscough proposed the following motion having given the required notice to the Chief Executive in accordance with Council Procedure Rule 15:-

"This Council notes that:

7. The pressure on organisations to pay their fair share of tax has never been stronger.
8. 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.
9. 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.
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11. 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.
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11. 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.
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Councillor Parr seconded the motion.

An officer briefing note accompanied the motion on the agenda.

Councillor Ainscough responded to questions from Councillors prior to the debate.

An amendment to the motion was moved by Councillor Hamilton-Cox:

“Given the legal and financial risks identified in the officer briefing note and, in particular, those in relation to the Public Contracts Regulations 2015, Council is asked to refer the matter for further, more detailed, consideration by the Overview and Scrutiny Committee.

Council notes that Overview & Scrutiny Committee’s terms of reference include making suggestions on the review and development of policy and requests that any report arising is fed back into Cabinet for its consideration ahead of any final decision by full council; aiming for Cabinet's meeting in January 2024.”

With the agreement of her seconder, Councillor Ainscough accepted this as a friendly amendment.

There was a discussion about resourcing the Overview and Scrutiny inquiry work for this matter, resulting in Councillor Cooper proposing a further amendment:

“That the words “aiming for Cabinet’s meeting in January 2024” be replaced with “as soon as reasonably possible.”

Councillor Ainscough and her seconder accepted this as a friendly amendment.

At the conclusion of a lengthy debate a vote was taken and the motion was clearly carried.

Resolved:

- (1) Given the legal and financial risks identified in the officer briefing note and, in particular, those in relation to the Public Contracts Regulations 2015, Council is asked to refer the matter for further, more detailed, consideration by the Overview and Scrutiny Committee.

- (2) Council notes that Overview & Scrutiny Committee's terms of reference include making suggestions on the review and development of policy and requests that any report arising is fed back into Cabinet for its consideration ahead of any final decision by full council as soon as reasonably possible.