

FAREHAM

BOROUGH COUNCIL

Report to Audit and Governance Committee

Date: 22 November 2021

Report of: Deputy Chief Executive Officer

Subject: PREVENTION OF FACILITATION OF TAX EVASION

SUMMARY

Part 3 of the Criminal Finances Act 2007 creates a Corporate Criminal Offence (CCO) of failure to prevent tax evasion by an associated person, either in the UK or Overseas.

An ongoing programme of works is being undertaken to ensure that the Council complies with the requirements of this act, including the approval of a Preventing Facilitation of Tax Evasion Policy.

RECOMMENDATION

It is RECOMMENDED that the Audit and Governance Committee approve and endorse the Prevention of the Facilitation of Tax Evasion Policy, attached as Appendix A to the report.

INTRODUCTION

1. Tax evasion is the illegal non-payment or under-payment of taxes, usually as a result of making a false declaration (or no declaration) of taxes due to the relevant tax authorities, which results in legal penalties if caught.
2. Part 3 of the Criminal Finances Act 2007 creates a Corporate Criminal Offence (CCO) if organisations fail to prevent tax evasion when delivering services and transactions. This could lead to an unlimited financial fine.
3. Only two things need to happen for the Council to be guilty of committing an offence: a fraud is committed, and it is facilitated by someone associated with the Council. An associated person can be an employee, agent or persons who perform services on behalf of the Council.
4. HM Revenue and Customs (HMRC) can at any time undertake a Business Risk Review and rate the FBC response to the CCO.
5. An organisation will have a defence to this CCO if it can show it has in place a set of prevention measures which give due recognition to the six core principles identified by HMRC; risk assessment, proportionality of risk-based prevention, top level commitment, due diligence, communication and training and monitoring and review.
6. A review has therefore been carried out as part of the Internal Audit Plan to identify and start delivering the actions that are needed to confirm we have the appropriate proportional prevention procedures in place.

ADOPTION OF AN OVERARCHING POLICY

7. The Council has started a programme of works to document and strengthen processes in areas of tax that are perceived to be the highest risk; Value Added Tax (VAT), Construction Industry Scheme (CIS), PAYE, Off Payroll Working (IR35) and Grants.
8. The first milestone of this work has been to draft an overarching Prevention of the Facilitation of Tax Evasion Policy which sets out the commitment to taking actions to prevent CCO which are proportionate to the risk the Council is exposed to.
9. The policy, as attached as Appendix A, sets out the following in relation to tax evasion:
 - The definition of tax evasion, and how it differs to tax avoidance and measures staff can undertake to prevent it.
 - Prevention procedures the Council has in place that give due recognition to the six core principles identified by HMRC: risk assessment, proportionality of risk-based prevention, top level commitment, due diligence, communication and training and monitoring and review.

- The key areas of tax risk identified by the Council, with examples of how tax evasion could be facilitated.
 - Employee responsibilities in relation to preventing the facilitation of tax evasion, with guidance on how to raise any concerns.
10. It is therefore recommended that the Committee approves the Policy as a supplementary document to the Council's Financial Regulations. It is also recommended that the Committee are added as providing top level commitment for the Policy.

OTHER ACTIONS COMPLETED AND PROPOSED

11. The Council's VAT Officer is maintaining a log of the annual and ad-hoc actions being taken to confirm procedures are being adhered to and to strengthen arrangements as deemed appropriate.
12. Key actions that have been delivered include:
- Identification of key inter-authority working groups and their role in keeping officers up to date in tax rules and procedures
 - A risk assessment has been compiled and is updated as new risks and mitigations are identified
 - Appropriate questions and terms are included in the procurement process
 - An Annual Tax working group has been set up to carry out an annual review against the CCO risks
 - Training has been held for all GPC card holders, to inform them about the CCO responsibilities, and how to correctly account for VAT
 - A new process has been introduced in which the VAT Officer obtains assurance on the VAT numbers quoted for new suppliers.
13. Further actions planned include further training and awareness sessions for targeted groups who are key to preventing the facilitation of tax evasion, and the introduction of an annual update to the Section 151 Officer.

RISK ASSESSMENT

14. Failure to demonstrate reasonable measures to prevent the facilitation of tax evasion carries a reputational risk for the Council. If an act of tax evasion, or the facilitation of tax evasion was found at the Council, the Council would be liable for an unlimited fine.

CONCLUSION

15. The Council already has measures in place to prevent the facilitation of the tax evasion, which are now being strengthened by the action plan that has been developed.

16. The adoption of the Prevention of the Facilitation of Tax Evasion Policy is one action to strengthen the arrangements and will demonstrate the Council's commitment to measures designed to prevent the facilitation of tax evasion by the Council or of persons associated with the organisation.

Appendices:

Appendix A – [Prevention of the Facilitation of Tax Evasion Policy 2021](#)

Background Papers: None

Reference Papers: Part 3 of the Criminal Finances Act 2007

Enquiries:

For further information on this report please contact Kimberley Churchill, Finance Business Partner (Ext 4331)