

# Preventing Facilitation of Tax Evasion



Source: HM Revenues & Customs

**Version 1 – November 2021**

## 1. Background

Under the Criminal Finances Act 2017, the Council, if found to be facilitating tax evasion, could face an unlimited fine and consequent damage to its reputation. The Council will be guilty of the offence where a third party commits tax evasion, which a member of staff (or an associate) has some way assisted.

## 2. Policy Statement

The Council aims to conduct its financial affairs in a law-abiding way and does not tolerate either the commitment or facilitation of tax evasion.

The Council already has a range of policies, procedures and guidance that underpins its financial activities.

To prevent tax evasion, Council staff (and associates, so far as relevant) should:

- Always follow Council policies, procedures and guidance;
- Tell management if any criminal activity is suspected;
- Attend any appropriate training offered.

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

Note in this context that the Council is only responsible for the actions of associates in respect of things they do for, or on behalf of, the Council. Other than this the Council is not responsible for the way associates manage their business.

## 2. Legislation

Part 3 of the Criminal Finances Act 2007 creates the Corporate Criminal Offence of failure to prevent tax evasion. Allegations of the Offence are investigated by HM Revenues and Customs (HMRC).

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 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. Defences

It is a defence to the Corporate Criminal Offence of facilitating tax evasion if the Council can prove that it has in place such prevention procedures as it is reasonable to expect in the circumstances.

Government guidance suggests an appropriate set of prevention measures which gives due recognition to the following:

- Risk assessment
- Proportionality of risk-based prevention
- Top level commitment
- Due diligence
- Communication (including training)
- Monitoring and review

The Council recognise the following groups as key in understanding the risks of the facilitation of tax evasion and carrying out activities to mitigate risk and so will ensure they are kept up to date with this policy:

- Finance Business Partners
- Internal Audit
- Exchequer Team
- Purchase Desks
- P-Card Holders

The Council will ensure a policy on prevention is brought to the attention of all staff, and it will be published as a Financial Regulation Support Document, linked to Financial Regulation 20 - Taxation. This will also be published on the Fareham Borough Council Internet site under Corporate Governance and Standards.

### 4. Obligation of staff & contractors

Staff and associates are reminded that they are always required to abide by the Council's policies, procedures and guidance, this includes the responsibility to avoid the facilitation of tax evasion.

Failure to comply with these policies, procedures and guidance, including failure to comply with the obligations detailed in this policy, may result in disciplinary action for staff and the termination of arrangements with associates.

Should staff or associates be concerned that another employee or associate is facilitating a third party's tax evasion, they should report this to their manager. The report a concern policy can also be engaged.

## 5. Risk Assessment

The Council will assess the nature and extent of its exposure to the risk of those who act for or on its behalf engaging in activity during the course of business to criminally facilitate tax evasion, analysing whether they have the motive, opportunity and means to do so and how that risk might be managed, and will keep these risks under review.

## 6. Areas of risk

The Council recognises the following 5 areas of risk:

- VAT
- Construction Industry Scheme
- PAYE
- Off Payroll Working
- Grants

These are discussed in more detail below with the main examples of how tax evasion can be facilitated.

### **6.1 Value Added Tax**

Tax evasion occurs where suppliers add VAT to their invoices when they are not registered for VAT. Payment would be made to the supplier and recovered from HMRC. The expense would not fall as a cost to anyone's budget so would be difficult to spot.

The same issue would happen when paying fraudulent VAT only invoices. The expense would not fall as a cost to anyone's budget as the money would be recovered from HMRC.

Both instances would have to be in collusion with officers for there to be an offence of assisting a third party in criminal tax evasion.

### **6.2 Construction Industry Scheme**

The risk exists of suppliers submitting artificially low labour breakdowns on their invoices to avoid tax being deducted on the labour element or no tax being deducted at all.

A lack of understanding as to what work comes within the scope of the scheme or the implications of not applying the scheme.

In both instances the Council is committing a criminal offence as they have assisted a third party in criminal tax evasion.

### **6.3 PAYE – Income Tax/ National Insurance (NI)**

This is failure to deduct the tax and NI at the correct rate. For example: a manager agrees to allow one of their staff to claim home to work travel through an expense claim. However, knowing that it is against Council policy and to help their member of staff from having to pay tax, which is properly due, they allow their staff member to describe the claim as travel away from the office.

The manager is knowingly allowing a member of staff to provide false information to evade tax and is thus committing an offence of assisting criminal tax evasion. By supplying false information in this way, the Council employee is committing a criminal offence as they have assisted a third party in criminal tax evasion.

Another example would be a member of staff is rewarded by way of a gift voucher over and above HMRC trivial gift limits (currently £50). This could be seen to be a deliberate form of reward to avoid tax liabilities.

#### **6.4 Off payroll working – IR35**

Facilitation of tax evasion occurs if the Council fails to identify workers and associates that should be paid via the payroll system rather than the creditors system.

A supplier wishes to be treated as a self-employed contractor so that payments to them are paid gross and they can evade paying the appropriate income tax and national insurance liabilities. The Council officer helps the supplier by falsifying information on the Employment Status Questionnaire.

By supplying false information in this way, the Council employee is committing a criminal offence as they have assisted a third party in criminal tax evasion.

#### **6.5 Grants**

Facilitation of tax evasion occurs if the Council fails to ensure that grant funding is used for its intended purpose.

The Council gives a grant to an organisation for a specific project or service which may include the employment of staff. Staff are paid without the appropriate deduction of Income Tax and National Insurance.

The Council is committing a criminal offence as they have assisted a third party in criminal tax evasion.

Another example is if the Government gives a company or an individual worker a grant to compensate for loss of income during the COVID 19 pandemic. The Council would facilitate tax evasion if they knowingly employed the company or individual receiving the grant during the period the grant covers.

## 7. Proportionality of risk-based prevention procedures

The Council has systems of controls in place to address specific risks and to ensure regularity. The Council seeks to design those systems of controls to be proportional to the risk being mitigated. The Internal Audit Team review the design and compliance of the systems of Internal Control as part of annual audit plan on a rolling basis. The Council is committed to prevent the facilitation of tax evasion. This is reflected in the governance process and procedures to address specific risks.

The Council has the following policies in place that all contribute to staff awareness and Governance:

- Financial Regulations and Support Documents
- Anti-Bribery Policy
- Anti-Fraud and Corruption Policy
- Report a Concern Policy
- Employees Code of Conduct
- Anti-Money Laundering Policy
- Procurement and Contract Procedure Rules

## 8. Top Level Commitment

This policy has been endorsed by the Section 151 Officer, the Chief Executives' Management Team and the Audit & Governance Committee.

## 9. Due Diligence

Reasonable care and caution is exercised when processing all transactions particularly high value/high risk area payments in the creditor and payroll systems. The VAT Officer undertakes additional monthly checks on high value VAT transactions. Regular monitoring takes place and caution is exercised when making payment to new suppliers.

## 10. Communication & Training

All staff, especially those involved in processing and approving financial transactions, will be made aware of this policy as part of the Council's Financial Regulations. Additional briefings will be undertaken for the key groups identified above.

The reporting process for anyone who may have concerns that either tax evasion or the facilitation of tax evasion offences may have been committed are as follows:-

report directly to individual's line manager, or email [internalconcern@fareham.gov.uk](mailto:internalconcern@fareham.gov.uk) or complete the [online form](#).

## 11. Monitoring & Review

Monitoring and reviews will form part of audit programmes with regular reports back on any findings to the Section 151 Officer.

The Council will maintain an ongoing action summary list, detailing actions being taken and to be taken, this will be kept up to date throughout the year as additional actions are identified. This will be discussed annually with members of the Tax Working Group with any significant issues being escalated to the annual S151 meeting.

## **12. Further Information**

Further information can be obtained by contacting Council's VAT Officer.