



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

## **POLICY STATEMENT AND PROCEDURES**

### **Document Details:**

Owner/Lead Officer: Head of Internal Audit & Assurance Service, Corporate Resources Department

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## **Prevention of the Facilitation of Tax Evasion Policy Statement and Procedures**

This Statement sets out Leicestershire County Council's (the Council's) policy in relation to tax evasion. It has the full support of both the Council's senior management in the form of the Chief Officers and elected members through Corporate Governance Committee (CGC).

Part 3 of the Criminal Finances Act 2017 creates a new corporate criminal offence where a corporate entity fails to prevent the facilitation of tax evasion by its staff, agents and contractual associates.

The Council has a zero tolerance approach to all forms of tax evasion, whether under UK law or under the law of any foreign country. Employees of the Council, its agents and contractual associates must not undertake any transactions which:

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

The Council is committed to acting professionally, fairly and with integrity in all its dealings and relationships wherever we operate and implementing and enforcing effective systems to counter tax evasion facilitation. At all times, Council business should be conducted in a manner such that the opportunity for, and incidence of, tax evasion is prevented.

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.

This Policy Statement is supplementary to the Council's wider Anti-Fraud and Corruption Strategy (the Strategy), which sets out what actions the Council proposes to take over the medium-term future to continue to develop its resilience to fraud, corruption and other financial irregularity. The Strategy sets out the key responsibilities with regard to fraud prevention, what to do if fraud or financial irregularity is suspected and the action that will be taken by management.

## Prevention of the Facilitation of Tax Evasion Policy Statement and Procedures

### 1. 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.

### 2. Examples of Tax Evasion

It is not possible to give examples covering every possible scenario, however, some 'red flag' indicators are detailed below to give a flavour of the scope of the legislation:

<p><i>You become aware, in the course of your work, that a third party has made or intends to make a false statement relating to tax; has failed to disclose income or gains to, or to register with, HMRC; has delivered or intends to deliver a false document relating to tax; or has set up or intends to set up a structure to try to hide income, gains or assets from a tax authority.</i></p>	<p><i>You become aware, in the course of your work, that a third party has deliberately failed to register for VAT (or the equivalent tax in any relevant non-UK jurisdiction) or failed to account for VAT.</i></p>
<p><i>A third party requests payment in cash and/or refuses to provide an invoice or receipt for a payment made.</i></p>	<p><i>You become aware, in the course of your work, that a third party working for us as an employee asks to be treated as a self-employed contractor, but without any material changes to their working conditions.</i></p>

### 3. The Criminal Finances Act 2017

Under the Criminal Finances Act 2017, a separate criminal offence is automatically committed by a corporate entity where the tax evasion is facilitated by a person

acting in the capacity of an “associated person” to that body. For the offence to be made out, the associated person must deliberately and dishonestly take action to facilitate the tax evasion by the taxpayer. If the associated person accidentally, ignorantly, or negligently facilitates the tax evasion, then the corporate offence will not have been committed. The Council does not have to have deliberately or dishonestly facilitated the tax evasion itself; the fact that the associated person has done so creates the liability for the Council.

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

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;
- the proportionality of risk-based prevention procedures;
- top level commitment;
- due diligence;
- communication (including training);
- monitoring and review.

The Council must ensure a policy on prevention is brought to the attention of all staff. This policy is, therefore, published on the Council’s web-site.

#### **4. Penalties**

As an employer, if the Council fails to prevent its employees, workers, agents or service providers facilitating tax evasion, the Council can face both criminal sanctions including an unlimited fine, and associated reputational damage. The Council therefore take its legal responsibilities seriously.

#### **5. Policy Statement – Tax Evasion**

Leicestershire County Council has a zero tolerance approach to all forms of tax evasion, whether under UK law or under the law of any foreign country. 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.

#### **6. Objective of this policy**

This policy provides a coherent and consistent framework to enable the Council’s employees (and other “associated persons”) to understand and implement arrangements enabling compliance. In conjunction with related policies and key

documents it will also enable employees to identify and effectively report a potential breach.

The Council requires that all relevant persons:

- Act honestly and with integrity at all times and to safeguard the Council's resources for which they are responsible
- Comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities

## **7. Scope of this policy**

This policy applies to all of the Council's activities. For partners, joint ventures and suppliers, it will seek to promote the adoption of policies consistent with the principles set out in this policy.

Responsibility to control the risk of tax evasion occurring resides at all levels of the organisation. It does not rest solely within assurance functions, but in all business units and corporate functions.

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members, volunteers and consultants.

## **8. The Council's commitment to action**

The Council commits to:

- Setting out a clear anti-tax evasion facilitation policy and keeping it up to date
- Making all employees aware of their responsibilities to adhere strictly to this policy at all times
- Raising awareness of the risks of tax evasion with employees so that they can recognise and avoid occurrences of potential tax evasion by themselves and others
- Undertaking a risk assessment to identify those areas of the Council's business where risk is considered to be highest
- Targeted training of services where the perceived risk is higher
- Promoting good ethical behaviour by staff in all of its forms
- Encouraging its employees to be vigilant and to report any suspicions of tax evasion, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately
- Investigating instances of alleged tax evasion
- Referring investigations to the Police where it is appropriate to do so
- Taking firm and vigorous action against any individual(s) involved in tax evasion, or the facilitation of it

- Providing information to all employees on how to report breaches and suspected breaches of this policy
- Including appropriate clauses in contracts to prevent tax evasion.

The Council seeks to maintain relevant procedures, including top-level commitment to tackling tax evasion and effective communication, including training. Chief Officers have an additional responsibility (beyond that of the employees own) for ensuring this policy is communicated effectively to staff and frequently refreshed throughout their department along with other good practice regarding ethical behaviour.

## **9. Tax Evasion is not tolerated**

It is unacceptable to:

- Engage in any form of facilitating tax evasion (including foreign tax evasion);
- Aid, abet, counsel or procure the commission of a tax evasion offence by another person;
- Fail to promptly report any request from any third party to facilitate the fraudulent evasion of tax by another person;
- Engage in any other activity that might lead to a breach of this policy;
- Threaten or retaliate against another individual who has refused to commit a tax evasion offence or who has raised concerns under this policy;
- Commit an offence under the law of any part of the UK consisting of being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of tax.

## **10. Staff responsibilities**

The prevention, detection and reporting of all forms of financial irregularity, including suspected tax evasion, are the responsibility of all those working for the organisation or under its control (“associated persons”). All staff are required to avoid activity that breaches this policy.

As individuals you must:

- Ensure that you read, understand and comply with this policy
- Raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future.

As well as the possibility of civil legal action and criminal prosecution, staff that breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

## **11. Raising a concern**

The Council is committed to ensuring that there is a safe, reliable, and confidential way of reporting any suspicious activity, and wants each and every member of staff to know how they can raise concerns.

All have a responsibility to help detect, prevent and report instances of tax evasion. If you have a concern regarding a suspected instance of tax evasion, please speak up – your information and assistance will help. The sooner it is brought to attention, the sooner it can be resolved.

There are multiple channels to help raise concerns. Please refer to the Council's Whistleblowing Policy and determine the favoured course of action. Preferably the disclosure will be made and resolved internally (e.g. to a line manager or head of department). Secondly, where internal disclosure would not be appropriate, concerns can be raised with the Director of Law & Governance (Monitoring Officer), the Director of Corporate Resources or the External Auditor. Raising concerns in these ways may be more likely to be considered reasonable than making disclosures publicly (e.g. to the media).

Concerns can be raised anonymously. In the event that an incident of suspected wrong doing is reported, the Council will act as soon as possible to evaluate the situation. It has clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in an investigation of this kind. This is easier and quicker if concerns raised are not anonymous.

Staff who raise concerns or report wrongdoing could understandably be worried about the repercussions. The Council aims to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken. The Public Interest Disclosure Act 1998 (PIDA) protects individuals who make certain disclosures of information in the public interest. Our Whistleblowing Policy complies with PIDA. The Council is committed to ensuring nobody suffers detrimental treatment through the reporting of a concern in good faith.

## 12. Other relevant policies

Further information on relevant Council policy and practice can be found in the following internal documents:

- The Council's [Constitution](#), incorporating the Members' Code of Conduct, Officers' Code of Conduct, Contract Procedure Rules, Financial Procedure Rules;
- [Anti-Fraud and Corruption Policy](#);
- [Anti-Bribery Policy](#);
- [Employee Whistleblowing Policy](#);
- [Gifts & Hospitality Policy](#);

- [Policy on the Declaration of Personal Interests;](#)
- [Anti-Money Laundering Policy.](#)

### 13. Useful links

- [Criminal Finances Act 2017, Part 3 – Corporate Offences of Failure to Prevent Facilitation of Tax Evasion](#)
- [HM Revenue & Customs](#)

### 14. Policy review

The Director of Corporate Resources (s.151 Officer) and the Council's Corporate Governance Committee will ensure the continuous review and amendment of this policy document, to ensure that it remains compliant with good practice and legislative requirements.

Responsible Officer:           Head of Internal Audit & Assurance Service

Next Review date:            October 2020 (and biennial thereafter)