

Somerset County Council

Anti-Tax Evasion Policy

December 2019



For queries on VAT and non-PAYE tax issues please contact:

Paul Griffin, Service Manager – Chief Accountant – pxgriffin@somerset.gov.uk

For queries on PAYE issues please contact:

Rachel Ellins, Strategic Manager HR Amin and Payroll Services -

RAEllins@somerset.gov.uk

This policy will be reviewed on an annual basis and updated as required.



Introduction

Somerset County Council is determined to pursue a policy of zero tolerance in relation to all areas of fraud and corruption. As part of the Council's Constitution and controls and standards the Council's Audit Committee has responsibility for Anti-Fraud and Corruption Policy. The purpose of the Anti-Tax Evasion policy is to support the specific area of Tax Evasion alongside the existing zero tolerance stance on fraud and corruption, to provide guidance to staff and others on action to prevent or report on tax evasion or the perception of tax evasion and to emphasise the need to be aware and to continue the County Council's good record.

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.

The County Council controls millions of pounds of public money and takes very seriously its stewardship of this money. The County Council is proud of the excellent reputation it has established for integrity and honesty. Acts of dishonesty within the County Council are rare and the County Council has a very good track record on tax evasion.

The County Council is, however, determined to protect itself against all areas of fraud including tax evasion both from within and from external sources. The County Council already has in place a Constitution, which includes the Members' Codes of Conduct and Protocols setting out expected behaviours of both members and employees. It also includes Financial Regulations which provide clarity about accountabilities of individuals, Members, Senior Leadership Team etc. The HR content on the Council's Intranet site includes detailed Standards of Conduct expected of Officers.

The Anti-Tax Evasion Policy brings together the key elements from the Council's and government documents and provides a link to where further information may be found. As part of its aim to ensure Value For Money (VFM) and Efficiency, the County Council is committed to an effective Anti-Tax Evasion policy designed to:

- ensure prevention
- facilitate detection, and
- identify a clear pathway for investigation and remedial action.



Approach

This policy sets out Somerset 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 senior officers and elected members through Corporate Governance Board and Audit Committee.

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.

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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:

- *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.*
- *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.*
- *A third-party requests payment in cash and/or refuses to provide an invoice or receipt for a payment made.*
- *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.*

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 (“Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion”) 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 will therefore be 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 takes its legal responsibilities seriously.

5. Policy Statement – Tax Evasion

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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 so as 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 including all services, business units and corporate and support 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 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. Senior 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 Strategic Manager - Governance (Monitoring

Officer), the Director of Finance, the Chief Internal Auditor 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 Standing Orders, Financial Regulations;](#)
- [Anti-Fraud and Corruption Policy;](#)
- [Employee Whistleblowing Policy;](#)
- [Gifts & Hospitality Policy;](#)
- [Standards of Conduct;](#)

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 Finance (s.151 Officer), the Council's Corporate Governance Board and the Audit Committee are responsible for ensuring the continuous review and amendment of this policy document, to ensure that it remains compliant with good practice and legislative requirements.

Next Review date: December 2020

