

Finance Sub-Committee

Date of Meeting:	19 th January 2023
Report Title:	Notice of Motion – Fair Tax Declaration
Report of:	Director of Finance and Customer Services
Report Reference No:	FSC/23/22-23
Ward(s) Affected:	N/A

1. Purpose of Report

- 1.1. This report sets out the response to a Notice of Motion on Fair Tax Declaration which was considered by Council on 19th October 2022 and referred to the relevant committee for consideration.

2. Executive Summary

- 2.1 The motion on Fair Tax Declaration, proposed by Councillor P Williams and Seconded by Councillor N Mannion, is as follows:

Recognising that Cheshire East Council already meets some of the requirements of the Fair Tax Declaration, Council resolves to sign-up to the Declaration in its entirety.

The full text of the Notice of Motion is appended to this report.

3. Recommendation

- 3.1. That the Sub-Committee approve the Council signing the Fair Tax Declaration.

4. Reasons for Recommendation

- 4.1. The Council is already supporting many of the pledges made in the Fair Tax Declaration, so by signing the Declaration the Council can demonstrate its alignment to the values and encourage responsible tax practice.
- 4.2. By signing up, the Council pledges to lead by example and demonstrate good practice in its tax conduct.

5. Other Options Considered

- 5.1.** The other option is not to sign the Fair Tax Declaration. The Council has considered this due to it already supporting many of the pledges within the declaration and the possible negative impact to Council resources in undertaking the due diligence required to support the whole pledge. However, this was discounted due to the declaration being a pledge to support fair tax and leading by example, with the Council working towards supporting all activities within the pledge in the future.

6. Background

- 6.1.** The Notice of Motion states that at least 25 local authorities across England, Wales and Scotland have so far signed up to the Councils for Fair Tax Declaration. This commits councils to do what they can to encourage fair tax practices among supplier companies when buying goods and services and calls for more powers to exclude companies with links to tax havens from their procurement processes.

- 6.2.** Specifically, the Fair Tax Declaration asks councils to pledge the following:

1. Pass a resolution approving the Councils for FairTax Declaration.
2. Lead by example and demonstrate good practice in their tax conduct right across their activities. Including:
 - Ensuring that IR35 is implemented robustly and that a fair share of employment taxes are paid by contractors.
 - Shunning the use of offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.
 - Undertaking 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.
 - Demanding clarity on the ultimate beneficial ownership of suppliers, be they UK-based or overseas, and their group consolidated profit and loss position, given that lack of clarity could be a strong indicator of poor financial probity and weak financial standing.
3. Promote FairTax Mark accreditation, especially to any business in which the Council has a significant stake and where corporation tax is due.
4. Join in and support FairTax Week events in the area, and celebrate the tax contribution made by responsible businesses that are proud to promote responsible tax conduct.
5. Support calls for reform of UK law to enable local councils to revise their procurement policies and better penalise poor tax conduct and reward good tax conduct amongst suppliers.

- 6.3.** The officers' comments are set out below.

6.4. Procurement

- 6.5.** The Council already ensures that IR35 is implemented robustly. If a worker/contractor/PSC is deemed to carry out similar or the same work as a permanent staff member their employer is required to deduct income tax and national insurance contributions as if they were an employee. All contracts/assignments deemed inside of IR35 must go through the Comensura contract and will include a Status Determination Statement (SDS). If the role is considered outside of IR35 then an IR35 assessment is carried out and retained as supporting evidence. These are procured through the Bloom contract.
- 6.6.** The Council already supports calls to reform UK law to penalise poor tax conduct and reward good. This was done recently through the consultation response to the Transforming Public Procurement Green paper.
- 6.7.** During every procurement process due diligence is carried out on a company's economic and financial standing and any sub-contracting arrangements which may be put in place. However, this is only completed to ensure a supplier is financially stable; further analysis of company structures may require additional work, and potentially specialist financial support.
- 6.8.** The Council already demands clarity on the immediate and ultimate beneficial ownership of suppliers within part 1 of each tender process and asks suppliers if they can provide (if required at a later stage) parent company accounts.

Land and Property

- 6.9.** The Council does not use offshore vehicles for the purchase of land and property. Due to guidance and its own corporate governance structures, it is not at all likely to take this step.
- 6.10.** The Council does from time to time let land and property to not for profit organisations, for example through its Community Right to Bid Policy. These are often 'less than best price' transactions, as defined by s123 of the Local Government Act 1972. It is able to do this by considering the benefits to the community outweighing the need to achieve best price. Businesses operating for profit may present a benefit to the community but are not eligible to benefit in this way. As a result, the Council carefully scrutinises any application to determine the type of business that is being presented.
- 6.11.** The Council is from time to time constrained in its behaviour, for example the requirement to achieve best price in property transactions. A normal feature of this activity is to openly market an asset for sale and accept the best price. In some instances, for example an auction, the Council is contractually bound to dispose of the asset to the highest bidder.

Therefore, there are instances where the Council will not be able to dictate whom it trades with.

- 6.12.** The Council may also be similarly constrained as it seeks to acquire land and property assets, where it may be forced to treat with specific vendors, due to some feature of the asset, for example its location or its type, for example acquiring land for a Highway through a CPO, or purchasing a specific type of housing asset for operational requirements in a limited market.
- 6.13.** Further officer comments are set out in the implications section of this report.
- 6.14.** As noted in the report, through many of its existing activities and approaches the Council already demonstrates good practices that ensure or encourage fair tax conduct by its suppliers and other parties. In order to carry out further due diligence and deliver the full range of activities covered by the pledge set out in paragraph 6.2, further Council resources may have to be committed.
- 6.15.** However, whilst there are potential risks of increased costs for the Council, Members may feel that there are wider benefits, both ethical and financial, for the country as a whole, in signing up to the Fair Tax Declaration.

7. Consultation and Engagement

N/A

8. Implications

8.1. Legal

- 8.1.1.** What amounts to a 'fair tax' is a difficult concept and may regularly change with time, financial and economic circumstances nationally and internationally. How this is determined and by whom in law would need to be established by central government.
- 8.1.2.** The process and due diligence that would be required by the Council in determining a fair tax would be both complex and difficult to ascertain. In addition, the setting up of a separate due diligence model for such a declaration is likely to be expensive as it is likely to require highly specialised experts undertaking such due diligence, including enquiries of many large companies with offshore holdings. This would therefore be a financial burden upon the Council.
- 8.1.3.** Tax structures internationally are complicated and the Council has a limited ability to obtain sufficient information from such organisations to make such a complex determination. Many companies have group holdings, various shareholder companies, and there would need to be

clarity as to these arrangements and who would be paying what in terms of tax.

- 8.1.4. The burden upon the Council of such a declaration and the work associated with it, would potentially present limited, if any, benefits to it at this time.

8.2. Finance

- 8.2.1. As noted in the report, through many of its existing activities and approaches the Council already demonstrates good practices that ensure or encourage fair tax conduct by its suppliers, and other parties.

- 8.2.2. In order to carry out further due diligence and deliver the full range of activities covered by the pledge set out in paragraph 6.2, there is the potential that staff time and resources may be required with regard to related management and administrative processes; and external specialist advice may be needed from time to time with regard to analysis of company structures, accounting and tax arrangements. It is also possible that the costs of services provided to, or contracts with, the Council may be higher as a consequence of our arrangements in this regard.

8.3. Policy

- 8.3.1. Any changes in policy in order to carry out further due diligence would be complex and require additional resources as mentioned elsewhere in this report.

8.4. Equality

- 8.4.1. There are no specific equality implications.

8.5. Human Resources

- 8.5.1. The Council ensures that IR35 is implemented robustly. Where a worker/contractor/PSC is deemed to carry out similar or the same work as a permanent staff member, their employer is required to deduct income tax and national insurance contributions as if they were an employee.
- 8.5.2. All contracts/assignments which are deemed to be inside of IR35 are required to go through the council's neutral vendor, Comensura, and will include a Status Determination Statement (SDS).
- 8.5.3. For roles considered to be outside of IR3, an IR35 assessment is carried out and retained as supporting evidence. These are procured through the Bloom contract.
- 8.5.4. The Council provides specific in-depth guidance on IR35 for all hiring managers.
- 8.5.5. Human Resources and Procurement work collaboratively to ensure compliance with the legislation.

8.6. Risk Management

8.6.1. There are potential risks for increased costs for the Council.

8.7. Rural Communities

8.7.1. There are no specific implications for rural communities.

8.8. Children and Young People/Cared for Children

8.8.1. There are no specific implications for children and young people/cared for children.

8.9. Public Health

8.9.1. There are no specific implications for public health.

8.10. Climate Change

8.10.1. There are no specific implications for climate change.

Access to Information	
Contact Officer:	Alex Thompson Alex.thompson@cheshireeast.gov.uk
Appendices:	Notice of Motion
Background Papers:	N/A