



ANTI-FACILITATION OF TAX EVASION POLICY

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HALTON BOROUGH COUNCIL

ANTI-FACILITATION OF TAX EVASION POLICY

1. Policy statement

- 1.1 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. This statement sets out Halton Borough Council's policy in relation to tax evasion.
- 1.2 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:
- Cause the Council to commit a tax evasion offence; or
 - Facilitate a tax evasion offence by a third party.
- 1.3 The Council is committed to acting professionally, fairly and with integrity in all its business dealings and relationships wherever it operates and implementing and enforcing effective systems to counter tax evasion facilitation.
- 1.4 At all times, Council business should be conducted in a manner such that the opportunity for, and incidence of, tax evasion is prevented.

2. Scope of the policy

- 2.1 The purpose of this policy is to:
- set out the Council's responsibilities, and the responsibilities of those working for the Council, in observing and upholding our position on preventing the criminal facilitation of tax evasion; and
 - provide information and guidance to those working for the Council on how to recognise and avoid tax evasion.
- 2.2 If the Council fails to prevent its employees, workers, agents or service providers facilitating tax evasion, the Council can be criminally prosecuted, subject to a large fine and incur reputational damage. The Council therefore takes its legal responsibilities seriously.

3. Prevention measures

- 3.1 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.

- 3.2 **Risk assessment** - The Council's systems of control are designed to ensure regularity. Management is expected to consider risks from the Anti-Facilitation of Tax Evasion Policy within their established risk assessment procedures. The Council also operates a continuous internal audit function that provides ongoing assurance over the Council's financial and non-financial systems.
- 3.3 **Proportionality of risk-based prevention procedures** - The Council has governance processes and procedures to address specific counter fraud risks:
- The Audit and Governance Board is responsible for monitoring and reviewing the adequacy of the Council's anti-fraud and anti-corruption arrangements. It receives an annual report on the Council's anti-fraud, bribery and corruption arrangements.
 - This policy, the Anti-Fraud, Bribery and Corruption Policy, Whistleblowing Policy, Fraud Response Plan and Fraud Sanction and Prosecution Policy comprise the Council's suite of anti-fraud related plans and policies;
 - The Council is an active participant in the National Fraud Initiative;
 - The Council runs regular fraud awareness campaigns encouraging members of the public and employees to raise any concerns about fraud and corruption;
 - The Council collaborates with other local authorities across the region and shares best practice in regard to tackling fraud and corruption;
 - The Council maintains an effective system of internal control, which includes relevant policies and systems, e.g. Procurement Standing Orders, Finance Standing Orders, etc.
- 3.4 **Due Diligence** - Reasonable care and caution is exercised when processing all financial transactions, particularly high value/high risk payments. Regular monitoring takes place and particular caution is exercised when making payments to new suppliers. Specific controls are maintained in relation to payments being processed through the Council's Accounts Payable function which undertakes checks on suppliers prior to payments being made.
- 3.5 **Communication and training** - The Council is committed to ensuring that mandatory training on this policy is offered to those staff who have been identified as being at risk of exposure to criminal tax evasion. This may include staff involved with procurement, commissioning, invoice processing, property transactions, Bacs payments, Payroll and Pensions. Training will be provided through the completion of specific on-line training modules. All staff will be made aware of the Council's Anti-Facilitation of Tax Evasion Policy through internal briefing communications.
- The Council's zero-tolerance approach to tax evasion and foreign tax evasion must be communicated to all suppliers, contractors and business partners at the outset of our business relationship with them and as appropriate after that. This will be done by making reference to the Council's Anti-Facilitation of Tax Evasion Policy on our Supplier Set Up and Supplier Amendment forms and tender documentation.
- 3.6 **Monitoring and review** - The Operational Director – Finance (S151 Officer) will monitor developments that are relevant to the Anti-Facilitation of Tax Evasion Policy and the policy itself will be reviewed at least annually. Revisions will be published on the Council's Intranet and staff will be made aware through the usual channels.
- 3.7 **Top level commitment** – This policy is subject to review and approval by the Council's Audit and Governance Board.

4. Who must comply with this policy?

- 4.1 This policy applies to all persons working for the Council or on the Council's behalf in any capacity, including employees at all levels, directors, officers, agency workers, seconded workers, volunteers, interns, agents, contractors, external consultants, third-party representatives and business partners, sponsors, or any other person associated with the Council, wherever located.

5. Who is responsible for this policy?

- 5.1 The Audit and Governance Board has overall responsibility for ensuring this policy complies with the Council's legal and ethical obligations, and for taking steps to ensure that all those under our control comply with it.
- 5.2 The Operational Director - Finance has responsibility for implementing this policy, monitoring its use and effectiveness, dealing with any queries about it, and auditing internal control systems and procedures to ensure they are effective in preventing the facilitation of tax evasion.
- 5.3 Management at all levels are responsible for ensuring those reporting to them understand and comply with this policy and are given adequate and regular training on it.

6. What is the facilitation of tax evasion?

- 6.1 Tax evasion means the offence of cheating the public revenue or fraudulently evading UK tax, and is a criminal offence. The offence requires an element of fraud, which means there must be deliberate action or omission with dishonest intent.
- 6.2 Foreign tax evasion means evading tax in a foreign country, provided that conduct is an offence in that country and would be a criminal offence if committed in the UK. As with tax evasion, the element of fraud means there must be deliberate action or omission with dishonest intent.
- 6.3 Tax evasion facilitation means being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of tax (whether UK tax or tax in a foreign country) by another person, or aiding, abetting, counselling or procuring the commission of that offence. Tax evasion facilitation is a criminal offence, where it is done deliberately and dishonestly, but not where it is done negligently or inadvertently.
- 6.4 Under the Criminal Finances Act 2017, a separate criminal offence is automatically committed by a corporate entity or partnership where 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 organisation 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 organisation.
- 6.5 Tax evasion is not the same as tax avoidance or tax planning. Tax evasion involves deliberate and dishonest conduct. Tax avoidance is not illegal and involves taking steps, within the law, to minimise tax payable (or maximise tax reliefs).

7. What you must not do

- 7.1 It is not acceptable for any person acting on behalf of the Council to:
- engage in any form of facilitation of tax evasion or foreign tax evasion;
 - aid, abet, counsel or procure the commission of a tax evasion offence or foreign tax evasion offence by another person;
 - fail to promptly report (i) any request or demand from any third party to facilitate the fraudulent evasion of tax (whether UK tax or tax in a foreign country), or (ii) any suspected fraudulent evasion of tax (whether UK tax or tax in a foreign country) by another person, in accordance with this policy;
 - engage in any other activity that might lead to a breach of this policy; or
 - threaten or retaliate against another individual who has refused to commit or facilitate a tax evasion offence or a foreign tax evasion offence or who has raised concerns under this policy.

8. Your responsibilities

- 8.1 You must ensure that you read, understand and comply with this policy. It is the responsibility of all staff to ensure they understand and comply with the Council's Anti-Facilitation of Tax Evasion Policy, with particular emphasis on those staff that are involved with invoice processing, property transactions, BACS payments, payroll and pensions, procurement and commissioning.
- 8.2 The prevention, detection and reporting of tax evasion and foreign tax evasion, or the facilitation of the same, are the responsibility of all those working for the Council or under our control. You are required to avoid any activity that might lead to, or suggest, a breach of this policy.
- 8.3 You must notify the Operational Director - Finance as soon as possible if you know or suspect that a conflict with this policy has occurred, or may occur in the future. For example, if an employee or supplier asks for payment to be made into an offshore bank account, without good reason, or a supplier asks to be paid in cash, indicating that this will mean the payment is not subject to VAT. Further "red flags" that may indicate potential tax evasion are set out in section 12.

9. How to raise a concern

- 9.1 You are encouraged to raise concerns about any issue or suspicion of tax evasion or foreign tax evasion, or facilitation of the same, at the earliest possible stage.
- 9.2 Preferably the disclosure will be made and resolved internally (e.g. to a line manager or head of department). Alternatively concerns can be raised with the Operational Director – Finance.
- 9.3 If you are unsure about whether a particular act constitutes tax evasion or foreign tax evasion, you should raise it with the Operational Director - Finance as soon as possible. You should note that the corporate offence is only committed where you deliberately and dishonestly take action to facilitate tax evasion or foreign tax evasion. If you do not take any such action, then the offence will not be made out. However, a deliberate failure to report suspected tax evasion or foreign tax evasion, or "turning a blind eye" to suspicious activity could amount to criminal facilitation of tax evasion.

- 9.4 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. There are multiple channels to help raise concerns. Please refer to the Council's Whistleblowing Policy and determine the favoured course of action. The Whistleblowing Policy makes reference to the following four officers you can raise a concern with:
- Operational Director and Monitoring Officer (Legal and Democratic Services);
 - Strategic Director – Enterprise, Community and Resources
 - Head of Internal Audit
 - Chair of the Standards Committee (who can be contacted by a letter addressed to the Chair of the Standards Committee and sent to the Municipal Building, Kingsway, Widnes, WA8 7QF)
- 9.5 Additionally, staff can call the Council's freephone confidential fraud hotline on **0800 034 5995** or access the [online confidential reporting](#) facility on the Council website.

10. Protection

- 10.1 Individuals who raise concerns or report another's wrongdoing, are sometimes worried about possible repercussions. The Council aims to encourage openness and will support anyone who raises genuine concerns in good faith under this policy, even if they turn out to be mistaken.
- 10.4 The Council is committed to ensuring no one suffers any detrimental treatment as a result of:
- refusing to take part in, be concerned in, or facilitate tax evasion or foreign tax evasion by another person;
 - refusing to aid, abet, counsel or procure the commission of a tax evasion offence or a foreign tax evasion offence by another person; or
 - reporting in good faith their suspicion that an actual or potential tax evasion offence or foreign tax evasion offence has taken place, or may take place in the future.

11. Breaches of this policy

- 11.1 Any employee who breaches this policy may face disciplinary action, which could result in dismissal for misconduct or gross misconduct.
- 11.2 The Council may terminate its relationship with other individuals and organisations working on our behalf if they breach this policy.

12. Potential risk scenarios “red flags”

- 12.1 The following is a list of possible red flags that may arise during the course of Council work and which may raise concerns related to tax evasion or foreign tax evasion. The list is not intended to be exhaustive and is for illustrative purposes only.
- 12.2 If you encounter any of these red flags while working for us, you must report them promptly to your manager, to the Operational Director – Finance or using the procedure set out in the Whistleblowing Policy or the online confidential reporting facility.
- 12.2.1 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 (or the equivalent authority in any relevant non-UK jurisdiction), 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;

- 12.2.2 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;
- 12.2.3 A third party requests payment in cash and/or refuses to sign a formal commission or fee agreement, or to provide an invoice or receipt for a payment made;
- 12.2.4 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;
- 12.2.5 A supplier or other subcontractor is paid gross when they should have been paid net, under a scheme such as the Construction Industry Scheme;
- 12.2.6 A third party requests that payment is made to a country or geographic location different from where the third party resides or conducts business;
- 12.2.7 A third party to whom the Council has provided services requests that their invoice is addressed to a different entity, when the Council did not provide services to such entity directly;
- 12.2.8 A third party to whom we have provided services asks us to change the description of services rendered on an invoice in a way that seems designed to obscure the nature of the services provided;
- 12.2.9 You receive an invoice from a third party that appears to be non-standard or customised;
- 12.2.10 A third party insists on the use of side letters or refuses to put terms agreed in writing or asks for contracts or other documentation to be backdated;
- 12.2.11 You notice that the Council has been invoiced for a commission or fee payment that appears too large or too small, given the service stated to have been provided;
- 12.2.12 A third party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to us.

13. Useful links

Halton Borough Council's Whistleblowing Policy

<http://councillors.halton.gov.uk/documents/s58285/Whistleblowing%20Policy%20FINAL.pdf>

Halton Borough Council's Ant-Fraud, Bribery and Corruption Policy

<http://councillors.halton.gov.uk/documents/s58287/AntiFraud%20Bribery%20and%20Corruption%20Policy%20FINAL.pdf>

Halton Borough Council's Fraud Response Plan

<http://councillors.halton.gov.uk/documents/s58286/Fraud%20Response%20Plan%20FINAL.pdf>

Halton Borough Council's Fraud Sanction and Prosecution Policy

Appendix D

<http://councillors.halton.gov.uk/documents/s58288/Fraud%20Prosecution%20Policy%20FINAL.pdf>

Criminal Finances Act 2017, Part 3 – Corporate Offences of Failure to Prevent Facilitation of Tax Evasion <http://www.legislation.gov.uk/ukpga/2017/22/part/3/enacted>