



Report of: **Assistant Director (Service Finance) on behalf of the Procurement Board**

Meeting of:	Date	Agenda item	Ward(s)
Policy and Performance Scrutiny Committee	17 September 2015		All

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**SUBJECT: Tax Avoidance and Tax Evasion (17 September 2015)**

## 1. Synopsis

- 1.1 This report is to outline to the Policy and Performance Scrutiny Committee (the 'Committee') the situation in regard to tax avoidance and tax evasion in regards to its third party contractual arrangements.
- 1.2 The report informs the Committee on the national situation and procurement process.

## 2. Recommendations

- 2.1 To note the work completed nationally in regard to tax avoidance and tax evasion as set out in this report.
- 2.2 To note the extent the Council may act in its contractual relationships.

## 3. Background

- 3.1 Tax is a mandatory contribution levied by government to government revenue on workers' income, business profits, or added to the cost of a particular goods or services. Levying of tax is the principal mechanism by which the government pays for the services and facilities that it

provides for the nation and all taxpayers must pay their fair contribution. The majority of tax is collected and administered by the government office HMRC including demand for interest and penalties when incorrect levels of tax are paid.

### 3.2 Tax avoidance and tax evasion are not interchangeable terms:

- **Tax avoidance** is taking steps to minimise your tax liabilities and is legal (if against the spirit of the law), provided there is no objection from HMRC and you have been open about your action. It is often considered to be taking measures for a tax advantage. On a small personal scale this is ensuring that the correct tax code may be used, money is transferred to an Individual Savings Account (or ISA), artificial unnecessary transactions by business etc. On a large scale this could be paying a tax expert to find legal loopholes in the system.
- **Tax evasion** is taking deliberate steps to falsify, mislead or defraud the payment of tax. Tax evasion is illegal and may lead to individuals being subject to ten years imprisonment. Examples of this have included hiding money offshore, significant physical or virtual (online) trading and not declaring the income, failing to file a tax return, actively filing a false tax return i.e. not including your full income, hiding taxable assets.

3.3 The media has covered a number of examples of tax avoidance schemes, such as Gary Barlow, Lord Fink and Ed Milliband all receiving negative press, some of which have been accepted by HMRC and some have not. In 2014/15 the BBC reported that tax avoidance costs the taxpayer £4bn a year and tax evasion £5.1bn. In context this is approximately 25% of the £35bn tax gap lost annually to the Treasury every year.

3.4 HMRC provides guidance on the General Anti-Abuse Rule ('the GAAR') into reasonableness in regard to tax avoidance as required under the Finance Act 2013. The GAAR has made it clear that a taxpayer may decide to operate as a sole trader or through a limited company whose shares s/he owns or work as an employee. All are perfectly legal means of payment of appropriate taxation either by making payments on profits of the organisations by way of a dividend or immediate payment from the employee salary.

3.5 The history of the GAAR was that government asked Graham Aaronson QC to lead a study into whether there should be a general anti-avoidance rule for the UK. A working group was established which published its report 21 November 2011, which recommended a focused anti abuse rule to tax avoidance. The government accepted the report in the 2012 budget and this resulted in this matter being covered within the Finance Act 2013.

3.6 In September 2012, the government tasked HM Revenues and Customs (HMRC) and the Cabinet Office whether procurement could be used as a means promoting good conduct in regards to taxation. The idea was to withdraw opportunities for initially central government contracts from the minority of providers who seek either evade tax or utilise aggressive tax avoidance schemes. This move led to the Disclosure of Tax Avoidance Schemes (DOTAS) and a Procurement Policy Note: Measures to Promote Tax Compliance Action Note 06/13 25 July 2013. The policy note mandated central government to ask questions in the procurement process on tax compliance and setting out how to handle the matter.

3.7 Under the now-repealed Public Contracts Regulations 2006 a contracting authority was always able to disqualify providers if they had not met their taxation obligations in UK law. In preparation for the new regulations, the issue of taxation compliance became an increasingly interested area. This led to significant clarity being introduced within the Public Contracts

Regulations 2015 in Regulation 57.

- 3.8 Subsequently, a national standardised Pre-Qualification Questionnaire (PQQ) or application pack has been introduced in above EU threshold contracts (currently the goods or services threshold is those contracts which aggregate above £172,514) “to ensure a simpler and more consistent approach to selection across the whole public sector authorities and will remove some of the bureaucracy and barriers which make it difficult for businesses, in particular smaller firms, to access public sector contracts.”<sup>1</sup> The PQQ outlines the Council’s ability to exclude organisation from fraudulent evasion of taxes, offences in connection with taxation and non-payment of tax and/or social security contributions.
- 3.9 The Council has limited powers to exercise discretion on matters of taxation and must adhere to the Public Contracts Regulations 2015. It can have a responsibility to promote tax adherence, but limited ability to verify to take action against inappropriate tax adherence as this would be a matter reserved for the proper authorities e.g. HMRC, police and the courts. The Council are not in a position to impose unreasonable or disproportionate taxations inspections beyond the scope of the PQQ.
- 3.10 Tax avoidance is by its nature a legal act. Suspicions of tax avoidance would not be sufficient grounds to terminate a Council contract, nor exclude an organisation from a procurement process. Tax evasion would need to be proven for the Council to act. Monies due from matters of tax evasion generally rest with HMRC and thus, while the Council has a duty to report on suspicions of this nature, has no direct financial advantage from it.

## **4. Implications**

### **4.1 Financial implications:**

This is an information report only and thus has no additional financial implications.

### **4.2 Legal Implications:**

This is an information report only and thus has no specific legal implications.

### **4.3 Environmental Implications**

This is an information report only and thus has no additional environmental implications.

### **4.4 Resident Impact Assessment (incorporating the Equalities Impact Assessment):**

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

Neither the initial screening for a Resident Impact Assessment (RIA) nor a full RIA has been completed, as this is an information report only on work undertaken and thus has no additional resident and/or equalities implications.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/417963/4279-15\\_GN\\_PQQ\\_Lord\\_Young\\_Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417963/4279-15_GN_PQQ_Lord_Young_Guidance.pdf)

## 5. Conclusion and reasons for recommendations

- 5.1 This report summarises the work completed nationally in regard to tax avoidance and tax evasion for the Policy and Performance Scrutiny Committee.
- 5.2 This report additionally provides a brief digest of the extent the Council may act in its contractual relationships.

### Appendices/Background papers

- None.

Final report clearance:

#### Signed by:

Director, Service Finance

Date

#### Received by:

Head of Democratic Services

Date

Report Authors:	Steve Key, Assistant Director (Service Finance)	Peter James Horlock, Head of Strategic Procurement
Tel:	020 7527 5636	020 7527 3131
Email:	<a href="mailto:stephen.key@islington.gov.uk">stephen.key@islington.gov.uk</a>	<a href="mailto:procurement@islington.gov.uk">procurement@islington.gov.uk</a>