

PREVENTING FACILITATION OF TAX EVASION

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We will on request produce this policy / procedure, or parts of it, in other languages and formats, in order that everyone can use and comment upon its content.

DOCUMENT CONTROL
Changes History

Issue No	Date	Amended By	Summary of Changes
1.0	19/03/2021	Christos Constantinou	Creation of Preventing Facilitation of Tax Evasion Policy document
1.1	08/03/2022	Daniella Thompson-Green	Changes according to new Policy Guidance
1.2	17/05/2023	Christos Constantinou	Review and minor amendments

Authorisation (Responsible Owner)

Role	Name	Approval Date
Counter-Fraud Manager	Christos Constantinou	17/05/2023

Approval (Accountable Owner)

Role	Name	Approval Date
Chief Financial (S151) Officer	Louise Aynsley	22/05/2023

Reviewers (Consulted)

Role & Review Responsibilities	Name	Approval Date
Peter Frost	Head of Internal Audit	18/05/2023

Distribution List - Once authorised (Informed)

Name	Organisation
All County Council Staff & Councillors	County Council

Review Period

Date Policy to be Reviewed	By whom
31/05/2024	Christos Constantinou

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INTRODUCTION

1. Under Part 3 of the Criminal Finances Act 2017, a new corporate criminal offence was created, where a corporate entity fails to prevent the facilitation of tax evasion by an 'associated person', whether the tax evaded is owed in the UK or in a foreign country.
2. For Suffolk County Council, an associated person includes:
 - An employee of the Council
 - An agent of the Council
 - Any other 'person' (individual or corporate) who performs services for or on behalf of a Council including contractors, subcontractors, suppliers and other parties in the supply chain etc.
3. It is an offence to dishonestly “take steps with a view to” or “be knowingly concerned in” the evasion of the tax. For these offences to be committed it is not necessary that any tax actually be successfully evaded.
4. There are three stages that apply to both the domestic and foreign tax evasion facilitation offences.
 - Stage One: the criminal tax evasion by a taxpayer (either an individual or a legal entity) under existing law.
 - Stage Two: the criminal facilitation of the tax evasion by an “associated person” of the corporate entity acting in that capacity.
 - Stage Three: the corporate entity failed to prevent its representative from committing the criminal facilitation act.
5. Note in this context though, that the Council is only responsible for the actions of associates in respect of things they do for, or on behalf of, the Council. Other than this the Council is not responsible for the way contractors manage their business.
6. 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.

OBJECTIVE

7. The objective of this policy is to provide a coherent and consistent approach to all employees and any person who performs services for and on behalf of the Council (including contractors and subcontractors) on the prevention of tax evasion by those parties engaged in any form of activity with the Council.
8. It will enable employees, contractors etc. to understand their responsibilities and allow them to take the necessary action, e.g., reporting any potential breaches of the policy.

9. To prevent tax evasion, Council staff (and associates, so far as relevant) should:
- Always follow Council policies, procedures, and guidance.
 - Tell management if any criminal activity is suspected.
 - Attend any appropriate training offered.
10. ***Specifically, staff and associates must not knowingly do anything that helps someone else evade tax.***

SCOPE OF THIS POLICY

11. This policy applies to all the Council's activities. Responsibility to control the risk of tax evasion occurring resides at all levels of the organisation (not just assurance functions). This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Councillors, volunteers, and consultants.

POLICY STATEMENT

12. This statement sets out the Council's policy in relation to tax evasion. 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 and its 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.
13. The Council is committed to acting professionally, fairly and with integrity in all its dealings and relationships wherever it operates; 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.
14. 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.
15. This Policy forms part of the Council's wider Anti-Fraud and Corruption Policies.

WHAT IS TAX EVASION?

16. **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.

17. 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.
18. 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.
19. Importantly the corporate criminal offence of facilitation only applies to tax evasion.

Examples of Tax Evasion?

20. It is not possible to give examples covering every possible scenario, however, some examples below will give a flavour of the scope of the legislation:
 - Knowingly entering false or misleading information in relation to the employment of an individual to facilitate the underpayment of income tax.
 - Knowingly process a payment to an employee / contractor as an expense rather than another type of payment which would be subject to tax.
 - Become aware or collude in processing invoice payments or raising debt to facilitate the underpayment of tax.
 - Become aware or collude to document services supplied to the Council by a third party as being outside the scope of VAT.

DEFENCES

21. 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.
22. Government guidance suggests an appropriate set of prevention measures which gives due recognition to the following six guiding principles:
 1. Risk assessment
 2. Proportionality of risk-based prevention procedures.
 3. Top level commitment.
 4. Due diligence.
 5. Communication (including training).
 6. Monitoring and review

RISK ASSESSMENT

23. A risk assessment process has been carried out by the Council to identify the areas of greatest risk to tax evasion and assurance gained that adequate controls are in place. In addition, the Internal Audit & Counter Fraud Service

will periodically undertake audit reviews or gain assurance in areas where tax evasion could occur.

PROPORTIONALITY OF RISK-BASED PREVENTION PROCEDURES

24. Within the Council's systems and processes, controls are in place, designed to ensure regularity, underpinned by relevant policies and governance arrangements. These include controls in relation to preventing or identifying tax evasion which are proportionate to the risk.

TOP LEVEL COMMITMENT

25. This Policy has been endorsed by the Chief Finance Officer (Section 151 Officer) who is a member of the Council's Corporate Leadership Team. In addition, this policy has been endorsed and approved by the Council's Audit Committee.
26. Furthermore, the Council's Financial Regulations (Part 4.1 of the Constitution) state that the Chief Finance Officer is responsible for all taxation issues with the exception of PAYE (pay as you earn) which is the responsibility of the Head of Human Resources who is also a member of the Corporate Leadership Team.

DUE DILIGENCE

27. Reasonable care and caution is exercised when processing all transactions particularly high value / high risk area payments. Regular monitoring takes place and particular caution is exercised when making payment to new suppliers.
28. Appropriate due diligence is done when entering into new contractual / business relationships to ensure they are transparent and ethical.

COMMUNICATION (INCLUDING TRAINING)

29. This policy will be publicised to all staff, will be promoted periodically through various communication channels to ensure staff awareness and will be accessible on suffolk.gov.uk website.
30. In areas of greatest risk, staff receive training on how to carry out their roles, adhering to the controls in place to prevent tax evasion, e.g. Payroll Team members training on how to set up correct PAYE contributions and National Insurance for employees.

MONITORING & REVIEW

31. This policy will be reviewed annually and updated as necessary. The risk of tax evasion will be monitored by the Council and relevant risk assessments will be reviewed.

STAFF RESPONSIBILITIES

32. The prevention, detection and reporting of all forms of financial irregularity, including suspected tax evasion, are the responsibility of all those working for the Council. All staff are required to avoid activity that breaches this policy. Staff are expected to:

- read, understand, and comply with this policy.
- raise concerns as soon as possible if it is believed or suspected that a conflict with this policy has occurred or may occur in the future.

33. 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.

RAISING A CONCERN

34. 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.

35. Concerns in relation to the evasion of tax should be raised with the relevant Line Manager or Head of Service and reported to the Head of Internal Audit and / or Counter Fraud Manager. The Council's Whistleblowing Policy can also be used as a route to report concerns where the member of staff feels this is more appropriate.

CONTACTS

36. Advice or guidance in relation to this policy and wider matters regarding fraud or corruption may be obtained from the Head of Internal Audit or the Counter Fraud Manager.

Contact Details

Peter Frost
Head of Internal Audit
Corporate Services
Suffolk County Council
Endeavour House
Russell Road
IP1 2BX

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Russell Road
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RELATED POLICIES

- **Anti-Fraud and Corruption Policy**

This Policy is part of the Council's Constitution and sets out the Council's approach to countering fraud and corruption.

- **Code of Conduct**

The Council's Code of Conduct sets out the minimum standards that employees should observe. It helps maintain and improve standards and protect employees from misunderstanding or criticism.

- **Whistleblowing Procedure**

Whistleblowing is 'making a disclosure in the public interest'. The Council's Whistleblowing Procedure provides a mechanism through which people can raise concerns considered 'protected disclosures' in addition to a systematic process for the making and / or investigating of such disclosures.

- **Anti-Money Laundering Policy**

Money laundering is the method by which 'dirty' money is passed through financial systems to appear like 'clean' money. The Council's Anti-Money Laundering Policy sets out the procedures to be followed to enable the Council to meet its legal obligation and prevent, detect and report any suspected money laundering.

- **Anti-Bribery Policy**

Bribery is the giving or receiving of financial or other advantage in connection with the "improper performance" of a position of trust. The Council's Anti Bribery Policy provides a framework for employees to understand bribery and prevent, detect and report its occurrence.

- **Fraud Response Plan**

This policy provides sets out how the Council will respond to allegations and provides guidance on how to report suspected fraud.

- **Sanctions Policy (Fraud)**

The Council will investigate allegations of fraud, theft, corruption or irregularity. This will be in line with the Council's Fraud Response Plan. Following an investigation, a range of factors will require consideration before deciding on appropriate sanction, including the individual circumstances of each case, the impact on the individual and the wider community, and the seriousness of the offence.