

To: *Audit Risk and Scrutiny Board*

On: *16 March 2020*

Report by: *The Chief Executive*

Heading: *Councils for Fair Tax Declaration Scotland*

1. Summary

- 1.1 At the Council meeting on 26 September 2019, elected members considered a motion in relation to the potential adoption of the “Councils for Fair Tax declaration”.
- 1.2 It was subsequently agreed that the declaration be referred to the Audit, Risk and Scrutiny Board for further investigation, in order to provide a comprehensive understanding of the declaration and implications for the Council and its services.
- 1.3 An initial background paper was prepared for consideration at the Audit, Risk and Scrutiny Board on 20 January 2020. This provided an overview of the information available to officers on the Fair Tax declaration and highlighted key initial areas for exploration. The Board agreed that these areas would be explored by officers and a final report with recommendations be prepared for the next meeting of the Board on 16 March 2020.
- 1.4 This report provides a summary of all available information and recommends that the Council notes the content but does not adopt the Councils for Fair Tax Declaration at present.
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2. **Recommendations**

2.1 Members of the Audit, Risk and Scrutiny Board are asked to:

- note the information provided on the adoption of Councils for Fair Tax Declaration;
- note that under the current Procurement Regulations the Council can exclude any organisation from participating in Council tenders if that organisation has not met all of its obligations relating to the payment of taxes or social security contributions; and
- agree the recommendation that Renfrewshire Council does not formally adopt the Declaration at this time.

3. **Background**

3.1 At the meeting of full Council on 26 September 2019, elected members considered a motion to adopt the “Councils for Fair Tax Declaration”. The key points of the declaration were summarised in the motion as:

- Lead by example and demonstrate good practice in our tax conduct, right across our activities. Including:
- Ensuring contractors implement IR35 robustly and a fair share of employment taxes are paid.
- 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 as an artificial device to reduce the payment of tax and business rates.
- Ensuring that there is clarity on the ultimate beneficial ownership of suppliers and their consolidated profit and loss position, given lack of clarity could be strong indicators of poor financial probity and weak financial standing.
- Promote Fair Tax Mark certification for any business in which we have a significant stake and where corporation tax is due.
- Join in and support Fair Tax Week events in the area and celebrate the tax contribution made by responsible businesses who say what they pay with pride.

- Support calls for urgent reform of EU, UK and Scots law to enable municipalities to revise their procurement policies and better penalise poor tax conduct and reward good tax conduct."
- 3.2 The above declaration is promoted by a not-for-profit organisation called Fair Tax Mark (www.fairtaxmark.net), which aims to improve tax practices and encourage business and other organisations to pay their fair share of tax. It achieves this through providing accreditation to businesses and other organisations which evidences they support fair tax objectives. Fair Tax Mark has links to the Co-operative movement, Joseph Rowntree Foundation, Cadbury Trust and other ethical community and charitable organisations. There is a fee payable for assessment and accreditation. The fee is calculated based on annual turnover, starting at £199+VAT for organisations with a turnover of less than £250,000 per annum up to £4,000 - £14,000 + VAT for organisations with a turnover of over £25m calculated based on the nature and complexity of the organisation.
- 3.3 While the Fair Tax Mark is aimed predominantly at commercial businesses, the organisation also encourages local authorities as procuring bodies to consider ethical issues when purchasing as well as value for money and quality; and to also ensure fair taxation practice in other aspects of their organisation e.g. use of contractors and payment of non-domestic rates and other taxes.
- 3.4 Adopting the declaration would oblige the Council to potentially review existing procurement practice, support Fair Tax events, and support calls for reform of relevant laws to penalise poor tax practice and reward good tax conduct.
- 3.5 At the Audit Risk and Scrutiny Board of 20 January 2020, it was agreed that Council officers would seek to contact the 6 English local authorities named on the Fair Tax Mark website. (Peterborough City, Oxford City, Oldham Borough, Royal Borough of Greenwich, Bingley Town Council and Cannock Chase District). No council in Scotland has signed up as yet according to current information, whilst in the region of 50 businesses have currently gained accreditation.

4. Report Findings

- 4.1 Council Officers have issued requests for information to the six English local authorities who are signatories to the Fair Tax Declaration. To date only Oxford City and Peterborough City Council have responded.
- a) Oxford City confirmed that they are currently reviewing their processes but that they have not yet implemented any new measures to support the introduction of the Fair Tax Declaration.
 - b) Peterborough City Council confirmed that they are in the early stages of adoption, their first steps will be to provide links to the Fair Tax Mark website via their council website. They hope to encourage their existing suppliers to sign up but acknowledge that under the terms of the Procurement Regulations they cannot penalise suppliers who do not wish to engage with the scheme.
- 4.2 No Scottish Council has signed up as yet, with a number of Scottish Councils confirming that they have had no discussions or requests to consider adoption of the policy.
- 4.2 The content of the Councils for Fair Tax Declaration was raised with Scottish Government procurement policy officers at the Procurement Policy Forum. The policy officers had not previously seen the Fair Tax Declaration and confirmed that this is not a government initiative and that this will not be included in future Scottish Procurement Policy Notes nor is there any intention to revise Scottish procurement Legislation.
- 4.3 The key elements of the Declaration can be addressed through use of the European Single Procurement Document (ESPD). (Refer to Appendix 1 for excerpt from ESPD containing relevant section). Renfrewshire Council mandate use of the ESPD for all tender processes over £50,000.00. This limit is lower than the Regulatory regime requires however by requesting ESPD's for all tenders of £50,000 and above we are ensuring that even tenders of lower values are subject to scrutiny.
- 4.4 The ESPD is used at selection stage of a tender process and allows officers to identify suitably qualified and experienced bidders. The question set in the ESPD aligns to the requirements of the Procurement Regulations and it is not permitted to add questions to the ESPD. Selection criteria should be proportionate to the value of the purchase,

its sensitivity, estimated risks, and the complexity of the requirement. Selection criteria also requires to be published in the Contract Notice so that all bidders understand the level of qualification they require when submitting a bid.

- 4.5 Under the ESPD, bidders are asked to confirm that they have met all obligations relating to the payment of taxes, both in the UK, and in the country in which the bidder is registered, if that is not the UK. Where the bidder has been convicted of not paying taxes, they are required to submit certification confirming the subsequent actions taken to address non-payment. The Council as contracting authority has the option to exclude a bidder convicted of non-payment of taxes where suitable measures have not been taken to address the non-payment.
- 4.6 “Section II: Information concerning the bidder” of the ESPD asks bidders to provide background information about the bidder. This section is not normally evaluated; however, the Council may choose not to select bidders that cannot provide basic company information. In this section bidders are asked to confirm their company number, the name of their parent company (if applicable) and their ultimate parent company (if applicable). This allows due diligence to be carried out in terms of economic and financial standing of the bidder and any parent companies.
- 4.7 The current Regulations allow for the exclusion of any organisation convicted of an offence relating to the non-payment of taxes. Under the terms of the EU Treaty Principles of proportionality, non-discrimination and equal treatment it is not possible to evaluate an organisation based on tax conduct deemed to be either good or poor. To do so would be a breach of the Treaty Principles.
- 4.8 Initial analysis by officers of the obligation to “undertake due diligence to ensure that not-for-profit structures are not being used inappropriately as an artificial device to reduce the payment of tax and business rates” identified that such activities already occur in terms of applications for charitable relief from non-domestic rates.
- 4.9 The Council already has in place procedures to ensure appropriate monitoring and recording of payments to contractors who fall within IR35.
- 4.10 The Council does not use offshore vehicles for the purchase of land and property and will continue to ensure that land and property transactions are tax efficient.

- 4.11 Based on information currently available adoption of the Councils for Fair Tax Declaration may not be compliant with the procurement regulatory regime and could potentially disadvantage organisations who have not applied for the Fair Tax Mark.
- 4.12 Some of the core elements of the Declaration reflect good practice which is already taking place across the Council. Our current processes are robust and aligned to best practice across the Scottish public sector.
- 4.13 The Council will continue to benchmark this good practice with other councils and public sector bodies and will continuously review and update processes where regulation permits this.

5.0 Consultation with other public bodies

- 5.1 The Council sought feedback from other public sector bodies regarding the Fair Tax Declaration. Representatives of NHS Greater Glasgow & Clyde, Advanced Procurement for Universities and Colleges (APUC), Scottish Prison Service and Central Government have all confirmed that it is not their intention to sign up to the Fair Tax Declaration.

Implications of the Report

1. **Financial – None**
2. **HR & Organisational Development – None**
3. **Community/Council Planning – None**
4. **Legal** – There is currently no legal or statutory basis for signing the Councils for Fair Tax Declaration.
5. **Property/Assets - None.**
6. **Information Technology - None**
7. **Equality & Human Rights**
 - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for

infringement of individuals' human rights have been identified arising from the recommendations contained in the report.

8. **Health & Safety – None**
9. **Procurement** – There is currently no statutory requirement under the procurement Regulations to mandate the Fair Tax Mark or evaluate questions relating to tax conduct.
10. **Risk - None.**
11. **Privacy Impact - None.**
12. **Cosla Policy Position – None.**
13. **Climate Risk - None**

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APPENDIX 1 – Excerpt from the ESPD



European Single Procurement Document
ESPD (Scotland)

Version 1.14

The ESPD (Scotland) includes the following parts and sections:

- 1. Instructions**
- 2. Part I. Information concerning the procurement procedure and the public body**
- 3. Part II. Information concerning the bidder.**
 - A: Information about the bidder.**
 - B: Information about representatives of the bidder**
 - C: Information about reliance on the capacities of other entities**
 - D: Information concerning subcontractors on whose capacity the bidder does not rely**
- 4. Part III. Exclusion criteria:**
 - A: Grounds relating to criminal convictions.**
 - B: Grounds relating to the payment of taxes or social security contributions.**
 - C: Blacklisting.**
 - D: Grounds relating to insolvency, conflicts of interests or professional misconduct.**
- 5. Part IV. Selection criteria**
 - A: Suitability.**
 - B: Economic and financial standing.**
 - C: Technical and professional ability.**
 - D: Quality assurance schemes and environmental management standards.**
 - E: Global indication for all selection criteria.**
- 6. Part V. Reduction of the number of qualified candidates.**
- 7. Part VI. Concluding Statements**

Part III: Exclusion grounds

Instructions for Bidders

Failure to disclose information relevant to this section or misrepresentation in relation to the information disclosed may result in exclusion of the bidder from this procurement process or the termination of any subsequent contract that is to be awarded to them.

The bidder may be asked to provide the relevant documentation or to state where the extract from the relevant register, for example judicial records, is available electronically to the public body so that it may retrieve this information. **By indicating this information, the bidder agrees that the public body may retrieve the documentation subject to the national rules implementing Directive 95/46/EC on the processing of personal data, and in particular of special categories of data such as on offences, criminal convictions or security measure.**

The bidder uses the ESPD response as a self-declaration that they have not breached any of the mandatory and discretionary exclusion grounds (or, if they have, they can demonstrate to the public bodies satisfaction that they have taken **self-cleansing measures**) and that they meet the relevant selection criteria.

For further information regarding regulated procurements of OJEU threshold and above, please refer to [Regulations 58 and 59 of The Public Contracts \(Scotland\) Regulations 2015](#), [Regulation 78 of the Utilities Contracts \(Scotland\) Regulations 2016](#).

Regarding regulated procurements which are between £50k and OJEU threshold, please refer to Regulations 8, 9 and 10 of [The Procurement \(Scotland\) Regulations 2016](#).

B: GROUNDS RELATING TO THE PAYMENT OF TAXES OR SOCIAL SECURITY CONTRIBUTIONS

Question Reference	Payment of taxes or social security contributions	Answer	
3B.1	Has the bidder met all its obligations relating to the payment of taxes or social security contributions, both in the UK, and in the country in which it is registered, if that is not the UK?	Taxes	Social Security contributions
		<input type="checkbox"/> Yes, I have met all my obligations <input type="checkbox"/> No	<input type="checkbox"/> Yes, I have met all my obligations <input type="checkbox"/> No
3B.1.1	If not , please indicate: Country or Member State concerned	Taxes	Social Security contributions
		[text]	[text]

3B1.2	What is the amount concerned?	[number]	[number]
3B.1.3	How has this breach of obligations been established: Through a judicial or administrative decision:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
3B.1.4	Is this decision final and binding?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
3B.1.5	Please indicate the date of conviction or decision.	[date]	[date]
3B.1.6	By other means? Please specify:	[text]	[text]
3B.1.7	Has the bidder fulfilled or will it fulfil its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines?	<input type="checkbox"/> Yes , I have <input type="checkbox"/> No If yes, please provide details: [text]	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details: [text]
3B.1.8	If the relevant documentation concerning payment of taxes or social contributions is available electronically, please indicate:	The web address: [text]	
		The issuing authority or body: [text]	
		The precise reference of the documentation: [text]	

[Note for reference: the European Single Procurement Document is an agreement template and contracting organisations cannot add to this template nor can they amend the wording.]

