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Criminal Facilitation of Tax Evasion Policy

Policy and Guidance Document

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Criminal Facilitation of Tax Evasion (CFTE) Policy

INTRODUCTION

1. This policy has been introduced to set out details of new corporate criminal offences in relation to the failure to prevent Tax Evasion under the Criminal Finance Act 2017.
2. The Council is required to take measures to prevent tax evasion.
3. Under Part 3 of the Criminal Finances Act 2017 a new corporate criminal offence was created, where a corporate entity fails to prevent tax evasion by an 'associated person', whether the tax evaded is owed in the UK or in a foreign country.
4. For Hyndburn Borough Council, an associated person includes:
 - An employee of the Council (including temporary and agency staff)
 - An agent of the Council
 - Any other 'person' (individual or corporate) who performs services for or on behalf of the Council including contractors, subcontractors, volunteers, suppliers and other parties in the supply chain etc.
5. It is an offence to dishonestly "take steps with a view to" or "be knowingly concerned in" the evasion of tax. For these offences to be committed it is not necessary that any tax actually be successfully evaded.
6. There are three elements of both the domestic and foreign tax evasion facilitation offences:
 - Stage One – the criminal tax evasion by a taxpayer under existing law.
 - Stage Two – the tax evasion was by an "associated person" of the Council.
 - Stage Three – the Council failed to prevent the associated person from committing the tax evasion.
7. However in this context, the Council is only responsible for the actions of associated persons in respect of the things they do for, or on behalf of the Council. The Council is not responsible for the way such associated persons manage their business.
8. If the Council fails to prevent its employees, workers, agents or contractorsservice providers from committing tax evasion, the Council may be prosecuted for a tax evasion facilitation offence for which the penalty is an unlimited fine.

POLICY OBJECTIVE

9. 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 while engaged in any form of activity with the Council.
10. This policy requires employees agents and contractors to understand their responsibilities and oblige them to take the action to prevent tax evasion e.g. by for instance reporting any suspected breaches of any of the Council's policies which could result in tax evasion.
11. To prevent tax evasion, Council staff (and associates) should:
 - Always follow Council policies, procedures and guidance.
 - Immediately report any suspected tax evasion to a senior officer.
 - Attend any appropriate training offered.
12. Staff and associates must not knowingly do anything that helps someone else evade tax.

SCOPE OF THIS POLICY

13. This policy applies to all the council's activities. Responsibility to control the risk of tax evasion occurring applies to resides at all levels of the Council organisation. This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, volunteers, contractors, sub-contractors and consultants.

POLICY STATEMENT

14. The Council has a zero-tolerance to all forms of tax evasion whether under UK laws or the laws 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; or
 - b.) facilitates tax evasion by an associated party.
15. 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 a corporate policy will help the Council defend any allegation that it has facilitated tax evasion.

16. This policy should be read in conjunction with the Anti-Fraud and Corruption Policy and Employee and Member Codes of Conduct.

CRIMINAL FACILITATION OF TAX EVASION (CFTE)

WHAT IS TAX EVASION?

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

EXAMPLES OF TAX EVASION?

21. 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 processing a payment to an employee / contractor as an expense rather than another type of payment which would be subject to tax.
 - Becoming aware of, or colluding in processing invoice payments or raising debt to facilitate the underpayment of tax.
 - Becoming aware of, or colluding in providing documents for services supplied to the Council by an associated party as being outside the scope of VAT.

OFFENCES

22. Part 3 of the Criminal Finances Act 2017 introduces a new corporate offence of failure to prevent the criminal facilitation of tax evasion. The offence is failing to prevent tax evasion by employees, agents or other persons or incorporated bodies acting for or on behalf of the relevant body. This is applicable to the Council.

23. In order for a prosecution to be brought there must first be two offences that have taken place. In addition to below, further detail is available in **APPENDIX 1**.
- Criminal tax evasion by a taxpayer – This must be a criminal offence by the tax payer. Under the legislation this includes “taking steps with a view to” or “be knowingly concerned in” the evasion of tax. An actual loss of public revenue or a criminal prosecution need not necessarily take place for the offence to be committed. Non-compliance that falls short of fraud will not result in the corporate charge being brought.
 - Criminal facilitation by an associated person – The associated person must deliberately and dishonestly take action to facilitate the taxpayer’s evasion. To accidentally, ignorantly or negligently facilitate the evasion of tax will not result in the corporate offence.
24. If both offences have been committed then the Council will have committed the corporate offence of failure to prevent the facilitation of tax evasion unless it can be demonstrated that it had reasonable preventative procedures in place.

PENALTIES

25. The penalty for this offence includes unlimited fines and ancillary orders such as confiscation orders in accordance with the Proceeds of Crime Act 2002 or serious crime prevention orders in accordance with the Serious Crime Act 2015, as well as reputational damage to the Council

DEFENCES

26. 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.
27. 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

28. 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, Audit & Investigations Team will periodically undertake audit reviews or gain assurance in areas where tax evasion could occur.

PROPORTIONALITY OF RISK BASED PREVENTION PROCEDURES

29. Within the Council's systems and processes, controls are in place, designed to ensure transactions are carried out correctly, 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

30. This Policy has been endorsed by the Council's Corporate Management Team. It has also been endorsed and approved by both the Council's Audit Committee and Standards Committee.
31. The Council's Financial Procedure Rules (Part 4 item 14F Of the Constitution) states that the Deputy Chief Executive as the Council's Responsible Financial Officer (s151 Officer) is responsible for the "proper administration of the Council's affairs" and "setting financial management standards and monitoring financial compliance with them". This includes matters relating to taxation.

DUE DILIGENCE

32. 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 payments to new suppliers or with bank mandate alteration requests.
33. In addition, appropriate due diligence is done when entering into new contractual / business relationships to ensure they are transparent and ethical.

COMMUNICATION & TRAINING

34. This policy will be publicised to all staff, will be promoted periodically through various communication channels e.g. Hyndsight, Newsround, Hyntranet etc. to

ensure staff awareness and is accessible on both the Hyntranet and external facing Council website.

35. 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.

MONITORING & REVIEW

36. 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.
37. In the event that a significant change is required of the policy, for example due to a change in legislation, then the revised policy will be re-approved by both Audit Committee and Standards Committee.

STAFF RESPONSIBILITIES

38. 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.
39. 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.

COUNCIL'S COMMITMENT TO ACTION

40. The Council is committed to the following actions:
 - Make employees aware of their responsibilities to adhere to this policy.
 - Train relevant employees so that they can recognise and avoid Criminal Facilitation of Tax Evasion by themselves and others.
 - Encourage employees to be vigilant and to report any suspicion of tax evasion, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.

- Rigorously investigate instances of alleged Criminal Facilitation of Tax Evasion and assist the police and other appropriate authorities in any resultant prosecution.
 - Take firm action against any individual(s) involved in Criminal Facilitation of Tax Evasion.
 - Provide information to all employees and elected members to report breaches and suspected breaches of this policy.
 - Ensure relevant partners, contractors and suppliers are aware of the Council's stance on Criminal Facilitation of Tax Evasion and include appropriate clauses in contracts and agreements to prevent / detect Criminal Facilitation of Tax Evasion.
 - Ensure that its policies and control systems are audited regularly to ensure that they are fit for purpose.
 - Take firm disciplinary action against any Officer or Elected Member who engages in Criminal Facilitation of Tax Evasion and assist the police and other appropriate authorities in any resultant action.
41. The Council seeks to adhere to Her Majesty's Revenues & Customs (HMRC) guidance for the prevention of Criminal Facilitation of Tax Evasion.
42. Chief Officers / Heads of Service have an additional responsibility beyond that of all employees for ensuring this policy is communicated effectively to all employees and ensuring the message is frequently refreshed through their Directorate / Service Area(s) along with other good practice regarding ethical behaviour.

RAISING A CONCERN

43. 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.
44. 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 Audit & Investigations. You can also report your concerns to the Chief Executive, Deputy Chief Executive or the Monitoring Officer although the Head of Audit & Investigations still needs to be made aware of the issue too.
45. Elected Members should report concerns or issues to the Monitoring Officer. The Council's Whistleblowing Policy can also be used as a route to report concerns where a member of staff feels this is more appropriate.
46. It must be stressed that **YOU MUST NOT** try and investigate the matter or start "digging around" your concerns / suspicions as this may ultimately become a

criminal matter and such actions in themselves may result in you being accused of interference in a criminal investigation if the police become involved.

WHO TO CONTACT

47. Employees, agency staff, volunteers, contractors, subcontractors and other agents working on behalf of the Council should contact:

Mark Beard	Head of Audit & Investigations	01254 380634 Internal Ext. 2634 mark.beard@hyndburnbc.gov.uk
David Welsby	Chief Executive	01254 380110 Internal Ext. 2110 dave.welsby@hyndburnbc.gov.uk
Martin Dyson	Executive Director (Resources) & s151 Officer	01254 380973 Internal Ext. 2973 martin.dyson@hyndburnbc.gov.uk
Jane Ellis	Executive Director & Monitoring Officer	01254 380146 Internal Ext. 2146 jane.ellis@hyndburnbc.gov.uk

48. Elected Members should contact the Monitoring Officer. Employees who have concerns related to an Elected Member must also contact the Monitoring Officer:

Jane Ellis	Executive Director & Monitoring Officer	01254 380146 Internal Ext. 2146 jane.ellis@hyndburnbc.gov.uk
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49. In the rare event that internal disclosure proves inappropriate, concerns can be raised directly with Council's External Auditor:

Daniel Watson	Appointed External Auditor (Mazars LLP)	0161 238 9349 daniel.watson@mazars.co.uk
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50. In exceptional circumstances it may be appropriate for an employee or elected member to raise the issue directly with the police. However, this should only be used in very exceptional circumstances where it is believed that the matter could not be reported to any of the individuals listed above.

51. It would **NOT** be considered reasonable for any employee or elected member to bypass all of the reporting avenues above and make such a disclosure publicly via the media or social media. Indeed, to do so may ultimately compromise any subsequent police investigation and could result with the police bringing separate charges against you if your actions impact a criminal investigation carried out by them.

LEGISLATION & OTHER RELEVANT POLICIES

52. Links to the relevant legislation and other Council policies which are relevant or sit side by side with policy can be found at **APPENDIX 2**.

APPENDIX 1

BRIBERY AND CRIMINAL FACILITATION OF TAX EVASION – OFFENCES TABLE

Legislation	Type of Offence	Definition
Criminal Finances Act 2017	Section 45 (4): UK tax evasion offence	In this part “UK tax evasion offence” means: <ul style="list-style-type: none"> • An offence of cheating the public revenue; or • An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
	Section 45 (5): UK tax evasion facilitation offence	In this part “UK tax evasion facilitation offence” means an offence under the law of any part of the United Kingdom consisting of: <ul style="list-style-type: none"> • Being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of a tax by another person. • Aiding and abetting, counselling or procuring the commission of a UK tax evasion offence; or • Being involved in or taking part in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
	Section 45 (1) and (2): Offence of bribing another person	A relevant body is guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with that relevant body. It is a defence for the relevant body to prove that, when the UK tax evasion facilitation offence was committed: <ul style="list-style-type: none"> • The relevant body has in place such prevention procedures as it was reasonable in all the circumstances to expect the relevant body to have in place; or • It was not reasonable in the circumstances to expect the relevant body to have any prevention procedures in place.

PENALTY

A relevant body guilty of an offence under s45 of the Criminal Finances Act 2017 is liable:

- a.) On conviction on indictment, to a fine
- b.) On summary conviction in England and Wales, to a fine
- c.) On summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

APPENDIX 2

LEGISLATION & OTHER RELEVANT POLICIES

Criminal Finances Act 2017 – <http://www.legislation.gov.uk/ukpga/2017/22/enacted>

Government legislation and guidance for the corporate offence of failure to prevent the criminal facilitation of tax evasion –

<https://www.gov.uk/government/consultations/tacklingtax-evasion-a-new-corporate-offence-of-failure-to-prevent-the-criminal-facilitation-of-taxevasion>

Anti-Fraud & Corruption Policy

<http://hyntranet/download/anti-fraud-corruption-strategy/>

Whistleblowing Policy

<http://hyntranet/download/whistleblowing-policy-2010/>

Officer Code of Conduct

<http://hyntranet/download/code-of-conduct/>

Elected Member Code of Conduct

Available from Member Services