

Summary:

- *New Corporate Criminal Offences came into force on the 30th September 2017, this policy exists to assist staff to identify and prevent the facilitation of UK and overseas tax evasion.*

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Policy Owner	<i>Director of Finance</i>
Policy Author & Department	<i>Lorraine Lindsay Internal Audit & Counter Fraud</i>
Related Documents	<p>Criminal Finance act 2017 http://www.legislation.gov.uk/ukpga/2017/22/contents/enacted <i>Tackling Tax Evasion -Government Guidance</i> https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672231/Tackling-tax-evasion-corporate-offences.pdf Bribery Act 2010 http://www.legislation.gov.uk/ukpga/2010/23/contents <i>The Facilitation of Tax Evasion Offences (Guidance About Prevention)</i> Regulations 2017 http://www.legislation.gov.uk/uksi/2017/876/made <i>Portsmouth city council policy hub: Financial Rules.</i> <i>Anti -Bribery and Corruption. Whistle Blowing. Code of Conduct</i> <i>Anti Money Laundering.</i></p>
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1 The Reason for Tax Evasion Policy

- 1.1 This Policy has been introduced to set out details of the new Corporate Criminal Offences in relation to the failure to prevent Tax Evasion under the Criminal Finance Act 2017.
- 1.2 The Council is required to take prevention measures to prevent tax evasion.

2 Legislation

- 2.1 The Government believes that councils should be criminally liable where they fail to prevent those who act for, or on their behalf from criminally facilitating tax evasion.
- 2.2 The new offence does not fundamentally alter what is criminal; it simply focuses on who is to be held accountable for acts contrary to the current law.
- 2.3 The new offence focusses on the failure to prevent the crimes and those who act for or on behalf of a corporation, rather than trying to attribute acts to the corporation.
- 2.4 The new legislation in relation to Corporate Tax Evasions is laid out in the Criminal Finance Act 2017 ("CFA 2017"). This new act came into force on the 30th September 2017:-.

Part 3 CFA 2017 creates two separate corporate offences:

- Failure to prevent facilitation of UK tax evasion and;
 - Failure to prevent facilitation of overseas tax evasion:
- 2.5 The Council would be guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with the Council.

Under S45 (4) CFA 2017 a UK tax evasion offence is either of the following:

- (a) An offence of cheating the public revenue.
- (b) An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in or taking steps with a view to, the fraudulent evasion of a tax.

Under s45 (5) CFA 2017 'UK tax evasion facilitation offence' means an offence under the law of any part of the United Kingdom consisting of:-

- (a) Being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax of another person,
- (b) Aiding, abetting, counselling or procuring the commission of a UK tax evasion offence, or
- (c) Being involved in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of tax.

3. Who can be held accountable for Tax Evasion?

3.1 The Government guidance refers to both the 'Relevant body', namely (Portsmouth City Council) and 'persons acting as associates,' (any employee, agent or other person who performs services for on behalf of Portsmouth City Council). The associate person can be an individual or an incorporated body.

3.2 For Corporate offences to be committed a criminal offence must have been committed at the taxpayer level (stage one)

Stage one: The criminal tax evasion by a taxpayer (either an individual or a legal entity) under existing law.

3.3 It is a crime to deliberately and dishonestly facilitate the commission of revenue fraud or to assist a person to fraudulently evade tax. It is also a crime to aid and abet another person in committing a revenue fraud.

Stage two: The criminal facilitation of the tax evasion by an associated person of a relevant body.

3.4 Only a relevant body can commit the new offences. If an associate deliberately and dishonestly criminally facilitates a tax evasion offence whilst performing services for or on behalf of Portsmouth City Council, the Council is accountable, unless they could evidence that reasonable prevention procedures have been put in place to prevent its associated persons from committing tax evasion.

4. Prevention Procedures

4.1 Government guidance suggests the proportionate prevention measures should be taken based on an assessment that identifies the specific risks of the organisation.

4.2 The Government has set the same threshold for Tax Evasion prevention measures as those set for Bribery (under s7 of the Bribery Act 2010). i.e. When an offence has been committed, an organisation must be able to evidence that there have adequate procedures in place designed to prevent persons associated with Portsmouth City Council from undertaking such conduct.

- Risk assessment
- Proportionality of risk-based prevention procedures
- Top Level Commitment
- Due Diligence
- Communication (including training)
- Monitoring and review

4.3 The Council must ensure that their policies and procedures are up-to-date and that staff are made fully aware of their responsibility around the recognition and prevention of tax evasion. This will not only provide a safeguard against tax evasion but also enable the Council to evidence that prevention procedures are in place.

5. Definition

- 5.1 **Tax evasion** is the non-payment or under-payment of taxes, usually resulting from making a false declaration or no declaration at all of taxes due to the relevant tax authorities, resulting in legal penalties (which may be civil or criminal) if the perpetrator of tax evasion is caught.
- 5.2 **Tax avoidance** is seeking to minimize a tax bill without deliberate deception (which would be tax evasion) but contrary to the spirit of the law. It therefore involves the exploitation of loopholes and gaps in the tax and other legislation in ways not anticipated by the law.
- 5.3 **Relevant Body** the Government guidance for the corporate offences of failure to prevent criminal facilitation of tax evasion, (1st September 2017) states that only a 'relevant body' can commit the new offences. This means that only incorporated bodies (typically companies but also includes the Council) and partnerships can commit the new offences, not individuals.
- 5.4 However, a relevant body can commit the new offences if a person acting in the capacity of a person associated with it criminally facilitates a tax evasion offence.
- 5.5 A person is associated with a relevant body if that person is an employee, agent or other person who performs services for or on behalf of the relevant body (such as sub-contractors).

6 Risk Assessment

- 6.1 It is unlikely that any one individual Council Officer would benefit individually from Tax Evasion. There would have to be collusion either with a supplier or another council employee for an individual to benefit. However, the Council's Audit Team will conduct regular compliance checks paying specific attention to areas of high risk and report back to the Governance & Audit & Standards Committee as part of its annual reporting on counter fraud activities.

7 Areas of Risk

- 7.1 The following examples are intended to illustrate situations in which a person (member of staff) or the Council could facilitate tax evasion. The examples noted are not an exhaustive list.
- 7.2 **Value Added Tax (VAT)**

VAT paid to Non-registered suppliers - suppliers adding VAT to their invoices when they are not registered for VAT with the intention of not paying the tax over to HMRC. If the invoice is approved/paid by a Council employee without questioning the incorrect addition of VAT to the invoice, they could be facilitating tax evasion by the supplier. If the Council paid the invoice and

recovered the VAT from HMRC this would not be identified as a cost in anyone's budget so would be difficult to spot.

Paying fraudulent VAT only invoices - accepting and paying a VAT only invoice without checking that it is valid and relates to goods and services received by the Council could facilitate tax evasion by a supplier. VAT only invoices would not be identified as a cost against any budget as the money would be recovered from HMRC and could therefore go undetected.

Raising invoices to a customer - having supplied goods or services to Customer A, they then ask the service to raise the invoice to Customer B. The reason for this change could be because Customer A is not VAT registered and cannot recover VAT whereas Customer B is registered and can recover the VAT. This type of request could be an indicator of tax evasion and the reason for the request should be obtained and the change only made if it is clear that the reason is not in order to evade tax.

Supplies of goods or services to customers - at a customer's request, changing the description of the goods or services supplied from those that would be subject to VAT to something that does not attract VAT. The only reason for doing this would be so that the customer does not have to pay the correct VAT due. The employee would be facilitating tax evasion by complying with this request.

7.3 Construction Industry Scheme

Invoices received from suppliers could deliberately show a false breakdown of labour costs with the intention that a lower amount of tax will be deducted on the labour element, or no tax will be deducted at all.

A lack of understanding as to what comes within the scope of the scheme or the implications of not applying the scheme, could mean that the Council is committing a criminal offence as they have assisted a third party in criminal tax evasion.

7.4 PAYE - Income Tax /National Insurance

Failure to deduct the Tax and NI at the correct rate

A Manager agrees to allow a staff member to claim home to work travel through an expense claim, by describing it in such a way to avoid its correct identification. Knowing that this is against the Council's policy and with the intention to help the member of staff member to avoid paying the tax that is properly due.

The Manager is allowing the staff member to make false statement to evade paying tax and is therefore committing an offence of assisting criminal tax evasion.

Inappropriate use of Gift Vouchers

A member of staff is rewarded by way of a gift voucher over the HMRC trivial gift limit (currently £50). This could be seen to be a deliberate form of reward to avoid tax liabilities.

7.5 Off Payroll Working - IR35

Failure to identify workers/contractors that should be paid via the payroll.

A supplier wishes to be treated as a self-employed contractor so that payments to them are paid gross and they can evade paying the appropriate income tax and national insurance liabilities. A council officer helps the supplier by falsifying information on the Employment Status Questionnaire to obtain a self-employed status results.

By supplying false information in this way, the Council is committing a criminal offence as they have assisted a third party in criminal tax evasion.

7.6 Direct Payments (for Care & Support Services)

The Council makes payments to people who have been assessed as needing help from Social Services and who would like to arrange and pay for their own care and support, instead of receiving the support direct from the Council. The recipient of the direct payment then becomes responsible for deductions for Income Tax and National Insurance from payments made to personal assistants and declaring this to HMRC.

As part of the Council's duty to monitor the use of the direct payments awarded to individuals, staff carrying out the monitoring should ensure that deductions for Income Tax and National Insurance are being properly deducted and declared to HMRC. In the event that the payments are not being made the member of staff must raise this with their manager.

Failure to ensure deductions for Income Tax and National Insurance are paid means that the Council or member of staff is committing a criminal offence as they have assisted a third party in criminal tax evasion.

7.7 Grants

Failure to ensure that funding is used for its intended purposes.

The Council gives a grant to an organisation for a specific project or service which may include the employment of staff. Staff are paid without the appropriate deduction of Income Tax and National Insurance. No checks are made when the grant is applied for to ensure that the organisation has sufficient funds to meet the tax liabilities and no checks are made to ensure the grant funding is used properly and for the intended purpose.

If the organisation has deliberately evaded tax, the Council is committing a criminal offence as they have assisted a third party in criminal tax evasion.

7.8 These examples are intended to be illustrative and cannot cover every form of risk. Other risks could include:-

- Encouraging elderly/disabled clients or charities to self-certify to obtain VAT zero-rating for goods they receive when they do not qualify for the zero-rating.
- Negotiating with suppliers to make cash payments (using petty cash or similar) when purchasing goods or services.

8 Proportionality of risk-based prevention procedures.

8.1 The Council has a zero tolerance for anyone committing tax evasion and recognises its responsibility to prevent the facilitation of tax evasion. This is reflected in the governance process and procedures to address specific risks.

In addition the Audit Team incorporates a number of specific audits to identify various tax irregularities.

The Council has the following policies in place that all contribute to staff awareness and Governance:

- Financial Rules
- Anti-Bribery and Corruption.
- Whistle Blowing
- Code of Conduct
- Anti-Money Laundering

9 Due Diligence

9.1 Processes and Procedures are in place in relation to payment of invoices. Regular audits take place and additional caution is exercised when making payment to new suppliers.

10 Communication & Training

10.1 All staff should be made aware of the CFA 2017 via induction and part of mandatory training and information on the Council's intranet.

10.2 An online e-learning program is available which must be completed by all employees, agents and any other persons working for in or partnership with Portsmouth City Council.

10.3 The reporting process for anyone who may have concerns that either tax evasion or the facilitation of tax evasion offences may have been committed are as follows:-

Lorraine Lindsay telephone 023 92 84137 or
Lorraine.lindsay@secure.portsmouthcc.gov.uk or via the
Whistleblowing process Whistleblowing@portsmouthcc.gov.uk

Alternatively;

Karen Thomas telephone 023 92 841633 or
Karen.Thomas@portsmouthcc.gov.uk

11. Monitoring and Reviews

- 11.1** Monitoring and reviews will form as part of the annual audit program of activities and annual reports will be presented back to the Governance & Audit & Standards Committee.

12. Top level Commitment.

- 12.1** The policy is supported by senior officers and endorsed by the Governance & Audit & Standards Committee.