



OFFICER REPORT TO COUNCIL

**FEEDBACK FROM THE RESOURCES AND PERFORMANCE
SELECT COMMITTEE ON A REFERRAL FROM COUNCIL –
'MOTION ON PROCUREMENT POLICY, TAX AVOIDANCE AND
THE FAIR TAX MARK'**

KEY ISSUE / DECISION:

To provide feedback from the Resources and Performance Select Committee on the Council motion titled 'procurement policy, tax avoidance and the fair tax mark' as requested by the Council.

This report sets the recommendations agreed by the Select Committee – in collaboration with key stakeholders – asking the Council to sign up to the Fair Tax Declaration with the exceptions listed under the recommendations heading.

BACKGROUND:

On Tuesday 12 July 2022, at the meeting of Council held at Woodhatch, Members of Surrey County Council under item 8 voted to refer motion (iv) on 'procurement policy, tax avoidance and exemplary tax conduct' to the Resources and Performance Select Committee for their feedback and input.

Focussing on leading by example and the fair tax mark accreditation, the motion asked the Council to take active steps in order to promote exemplary tax conduct – including ensuring contractors pay their proper share of tax; deterring potential corporate tax avoidance; and inviting the Council to

approve the “[Councils for Fair Tax Declaration](#)”. Full text of the motion presented to the Council meeting on 12 July is as follows:

Jonathan Essex (Redhill East) to move under Standing Order 11 as follows:

This Council notes that:

- Polling from the Institute for Business Ethics finds that “corporate tax avoidance” has, since 2013, been the clear number one concern of the British public when it comes to business conduct.
- 66 per cent of people believe the Government and local councils should at least consider a company’s ethics and how they pay their tax, as well as value for money and quality of service provided, when awarding contracts.
- 17.5 per cent of UK public contracts have been won by companies with links to tax havens. Lost corporation tax revenues from multinational profit-shifting (just one form of tax avoidance) have been estimated to be costing the UK some £17 billion per annum.
- The Fair Tax Mark offers a means to demonstrate good tax conduct and has been secured by a wide range of UK businesses, including The Financial Times Stock Exchange (FTSE) -listed Public Limited Companies (PLCs).

This Council believes that:

- As recipient of significant public funding, Surrey County Council should promote exemplary tax conduct, including ensuring contractors pay their proper share of tax, and refusing to condone offshore tax arrangements when buying land and property.
- This should apply equally to trading companies partially or fully owned by Surrey County Council.
- Current UK procurement law imposes restrictions on councils’ ability to both penalise poor tax conduct and reward responsible tax conduct.
- Due diligence into tax arrangements of suppliers will help identify the Council’s exposure to Russia and other international bad actors. Information on the beneficial ownership of companies will help Surrey County Council ensure its procurement maximises benefit to Surrey’s economy.

This Council resolves to:

- I. Approve the “Councils for Fair Tax Declaration.”
- II. Lead by example and demonstrate good practice in its tax conduct of both Surrey County Council and its trading companies.
- III. Ensure IR35 is implemented robustly such that contract workers pay a fair share of employment taxes.

- IV. Avoid offshore vehicles for the purchase of land and property.
- V. Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers to reduce the payment of tax and business rates.
- VI. Demand clarity on the ultimate beneficial ownership of suppliers and their consolidated profit & loss position.
- VII. Include tax conduct in social value scoring for assessing contracts.
- VIII. Support Fair Tax Week events in Surrey and celebrate the tax contribution made by businesses who pay their fair share of corporation tax.
- IX. Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies.

THE PROCESS:

According to the Surrey County Council constitution, Part 1 of the Standing Orders states that:

- When an original motion is referred to the Cabinet or appropriate committee under Standing Order 12.3, the Member of the Council who has moved the original motion and his/her seconder shall be notified of the meeting at which the Cabinet or committee will consider it. They shall have the right to attend the meeting and speak to the motion.
- Where an original motion is referred to the Cabinet or a committee, it will report upon the motion to the following ordinary meeting of the Council and Standing Order 8.8(b) shall not apply to such report.

The motion was referred to the Resources and Performance Select Committee at the Council meeting on 12 July 2022 and considered by the Select Committee at its meeting on 7 October 2022.

KEY ACTIVITIES AND ANALYSIS:

Following the referral, the Resources and Performance Select Committee leadership:

- a. engaged with relevant stakeholders – a range of informal discussions and meetings were held with the service representative, proposer of the motion, Chair and Vice Chair of the Select Committee and Fair Tax Campaign Group.
- b. requested an updated service briefing report on this topic (Annex 1) and invited the proposer and seconder of the motion to present their case at its next public meeting.

- c. arranged a full committee pre-meeting to consider the referral and feedback, along with other items of interest.
- d. agreed that the Select Committee will take this item to its October public meeting. On 7 October 2022, the Select Committee heard from the proposer of the motion, service representatives and considered the briefing report, prepared by procurement team with input from finance analysing the motion in detail.

In considering the matter, the Select Committee, inter alia, noted that:

- i. The Public Contracts Regulations 2015 (PCR 2015, regulation 57) provide for contracting authorities to exclude a supplier if they are aware it is in breach of its obligations relating to the payment of taxes or social security contributions, and where the breach has been established “by a judicial or administrative decision having final and binding effect”.
- ii. The PCRs do not make provision for discretionary exclusion based on concerns about matters such as tax arrangements or beneficial ownership.
- iii. Legal opinion (including that obtain by the Fair Tax Foundation themselves) notes excluding bidders due to perceived tax avoidance would be against the PCRs and thus open to legal challenge.
- iv. In the broadest sense it seems reasonable to state that fair tax conduct has value for society. However, it would be hard to argue that conducting tax affairs to a higher moral standard could reasonably be awarded additional points in the evaluation of a tender against an entity whose affairs remained legal but were considered by some measure to be sub-optimal.
- v. Furthermore, it is doubtful doing so could be deemed to constitute social value as per the Public Services Act (Social Value) 2012. That act requires the public sector to ensure that the money it spends on services creates the greatest economic, social and environmental value for local communities.
- vi. Government has defined social value through a series of priority themes and policy outcomes which are important to deliver through the public sector’s commercial activities. Nowhere in that definition are tax arrangements highlighted as potential social value.

- vii. It is felt that it would not be possible to objectively rule that it was and apply this in a fair and transparent manner that was legal under the PCRs.
- viii. The new regulations, which the original motion calls for, under the heading 'Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies' are likely to make greater provision for discretionary exclusions; more variable evaluation criteria; a greater scope – to a degree – by including environmental and social value selection criteria, but the principle that criteria must go to the heart of the contract remains.
- ix. The requirement to comply with World Trade Organisation rules will continue to limit the scope here. It is also noted that such a resolution would require a fundamental reconsideration of the application of social value to the Council tenders, and members would have to be aware that doing so might be at the expense of the additional social value commitments the Authority is currently obtaining during the tendering process.
- x. Moreover, it would be a very imperfect mechanism, and one in which the outcome of a tender evaluation could conceivably be the highest scoring bidder securing a contract despite having declared what could be deemed to be suboptimal tax arrangements as part of their tender response; such an outcome would present moral and reputational risk to the Authority.
- xi. Discussions with the Fair Tax Foundation identified that this element of the motion (include tax conduct in social value scoring for assessing contracts) is not included in the wording they propose for this fair tax declaration pledge, and they agree that it would not be possible to include tax conduct in social value scoring for assessing contracts.

Based on the above information and analysis, the Select Committee was therefore not able to recommend adopting this specific element of the original motion, i.e. to include tax conduct in social value scoring for assessing contracts which is reflected in its recommendation. However, working collaboratively with the service, proposer of the motion and others, the Select Committee agreed a set of broadly supportive recommendations listed below.

RECOMMENDATIONS:

The Resources and Performance Select Committee recommends that Council accepts Jonathan Essex's motion to accept the Fair Tax Declaration with the following exceptions:

1. Agree to alternative wording with the Fair Tax Foundation regarding the following items:
 - a. Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers to reduce the payment of tax and business rates.
 - b. Demand clarity on the ultimate beneficial ownership of suppliers and their consolidated profit & loss position.
 2. Remove the following item:
 - a. Include tax conduct in social value scoring for assessing contracts.
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Sources/background papers:

Council Agenda - 12 July 2022:

[\(Public Pack\)Agenda Document for Council, 12/07/2022 10:00 \(surreycc.gov.uk\)](#)

Resources and Performance Select Committee Agenda and Minutes - 7 October 2022

[Agenda for Resources and Performance Select Committee on Friday, 7 October 2022, 10.00 am - Surrey County Council \(surreycc.gov.uk\)](#)

Annexes:

Annex 1 - Procurement Service Briefing on Responsible Tax Conduct Motion