

# Walsall Council

## Tax strategy and governance arrangements

### 1 Tax strategy statement

- 1.1 Walsall Metropolitan Borough Council will comply with its tax obligations and will only engage in reasonable tax planning that is aligned with commercial and economic activity.
- 1.2 We will maintain an open and transparent relationship with HMRC.
- 1.3 We will utilise tax incentives or opportunities for obtaining tax efficiencies where these:
  - do not carry significant reputational risk or significant risk of damaging our relationship with HMRC,
  - are aligned with the intended policy objectives of the government which introduced the incentives,
  - do not have a material adverse impact on the councils financial position, and
  - are aligned with business or operational objectives.
- 1.4 We will manage tax risk in such a way as to ensure that key risk areas are monitored and material risks minimized.
- 1.5 We will comply with the requirements of CIPFA's Standard of Professional Practice for tax management.

## 2 Background

2.1 As a metropolitan local authority Walsall Council pays taxes over to HM Revenue and Customs including (list is not exhaustive):

- Income Tax
- National Insurance
- Value Added Tax
- Landfill Tax
- Construction Industry Scheme

2.2 As a public body Walsall Council needs to ensure that it is also meeting CIPFA's Standard of Professional Practice for tax management. This defines tax management as ensuring that systems and procedures are in place and that records are maintained to secure that:

- The tax implications of any proposed transaction are properly recognised before decisions are made
- The tax implications of existing transactions are kept under review
- Tax liabilities, recoveries or obligations are:
  - Identified before the relevant transactions are entered into
  - Calculated in accordance with regulations
  - Recorded at the appropriate time
  - Accounted for in the proper tax period
  - Disclosed to the appropriate revenue-collecting authorities in the required manner
  - Documented satisfactorily at all stages.

2.3 As such, in line with the recent consultation by HMRC which focused on improving tax compliance by large businesses, this document seeks to formally set out the Council's strategy to ensure that there is a focus on transparency in its tax arrangements and that there are strong governance and risk management processes in place. The strategy therefore focuses on the following key areas with a view of ensuring the above criteria are met.:

- Tax compliance and reporting
- Developing tax knowledge of council officers and members
- Controlling and managing risks.

2.4 The council's tax strategy meets three of the council's corporate values: Accountability; Transparency; and Ethical. It fits within the council's overall financial strategy.

2.5 This tax strategy aims to provide:

- The general public with information on how the council conducts its tax affairs
- Members with assurance that the council's tax affairs are being conducted in accordance with legislation and the CIPFA Standard of Professional Practice
- Officers with what the roles and responsibilities are for tax affairs within the council.

### **3 Tax compliance and reporting**

#### **3.1 Tax compliance**

3.1.1 Walsall Council acknowledges that it shall pay all appropriate taxes as required under UK and EU law. It shall achieve this by the appropriate delegation of duties, as outlined in section 3.3 Governance Arrangements, putting in place appropriate financial systems and correct application of tax reporting requirements.

3.1.2 Walsall Council, in considering tax compliance, will determine the most appropriate application of tax requirements to achieve the maximum value for money for the people of Walsall. This will be achieved by:

- Keeping up to date with current tax issues and developments
- Reviewing current tax treatments to ensure they are appropriate
- Liaising with local authority tax officers to determine a unified approach to tax treatments for common areas where it is advantageous to the council.
- Ensuring that the council has an anti-tax evasion policy in place as required by the Corporate Criminal Offences Act 2017 (Appendix 1).

3.1.3 All relevant documents relating to Walsall Council's tax affairs will be retained for the period required by legislation.

#### **3.2 Tax reporting**

3.2.1 Walsall Council will ensure that all tax returns to HM Revenue and Customs shall be completed accurately and in a timely manner, within the defined timescales laid out by HM Revenue and Customs.

#### **3.3 Governance arrangements**

##### ***Chief Finance Officer's responsibilities***

3.3.1 Walsall Council recognises its obligations to ensure that it is fully compliant with all existing and future tax laws and requirements. It is the overall responsibility of the Executive Director Resources & Transformation, being the council's Section 151 officer, to ensure that the council is tax compliant.

3.3.2 To this end the Executive Director should make arrangements to ensure the following are carried out, and that they are discharged correctly:

- Allocation of defined duties to named individuals in relation to taxation and tax matters
- That financial control systems are operating effectively to produce necessary information and minimise the risk of error
- Secure an appropriate level of knowledge and financial awareness amongst staff who might be involved in processing transactions involving elements of tax
- Provide proper assistance to any routine inspection or special investigations undertaken by the revenue authorities
- Review the justification for, and the quantum of, any assessment made as a result of any such inspection or investigation.

3.3.3 To assist them in discharging these responsibilities the Executive Director should ensure that they nominate appropriate council officers as designated tax officers, ensuring that this officer has the appropriate level of expertise and experience to discharge these duties. If the required level of expertise is not available in-house then the Executive Director should be able to obtain such assistance from professional advisors. These actions however do not negate the Executive Director's overall responsibility for the tax matters of the council.

#### ***Designated tax officers***

3.3.4 Designated tax officers are responsible for the day to day tax compliance for Walsall Council. As such they are responsible for the following:

- Preparation and verification of any relevant tax returns which require the signature of the Executive Director or nominated officer
- Dealing with communications with relevant revenue authorities
- Dealing with any external tax advisors
- Keeping up to date with legislation, case law and customs and practice developments
- Determining any implication to Walsall Council for any changes in the previous
- Provision of advice to elected members, Corporate Management Team and other officers as appropriate and within the council's communication policy
- Determining when in-house expertise is exhausted/insufficient and where external specialist advice is required
- Ensuring that council officers have a sufficient level of tax awareness
- A list of designated tax officers is shown at appendix 1.

## 4 Developing tax knowledge of council officers and members

### 4.1 Tax knowledge required by council officers and members

4.1.1 Walsall Council recognises that all council officers involved in financial matters /transactions at any level and members should have at least a basic awareness of tax matters. The council also recognises that the level of knowledge is dependent on a person's position and exposure to financial matters.

4.1.2 The levels of tax awareness within the council are as follows:

- Low awareness                      Basic awareness of tax, who deals with employment taxes and VAT, risk to council of incorrect tax treatments
- Medium awareness                General awareness of tax. If officer is a budget holder for employment taxes should be aware of requirements re: employment status. All officers dealing with charging or payments should know VAT categories for their specific areas or know who to contact if not sure. All officers should be aware of different VAT rates and what they mean.
- High awareness                    Comprehensive knowledge of specific taxes and general awareness of other taxes. Should be regarded as the council's expert for specific taxes.

4.1.3 The level of tax awareness required by different council officer/member level is as follows:

Council officer, not a budget holder, whose job involves financial transactions	Low awareness
Council officer who is a budget holder	Medium awareness
Council officer who processes invoices/payments	Medium awareness
Service managers / Heads of Service	Medium awareness
Assistant Directors/Executive Directors	Medium awareness
Councillors (members)	Low/medium awareness
Designated tax officers	High awareness

### 4.2 Ensuring tax awareness in the council

4.2.1 The council's vital skills course for budget holders should ensure that a section on tax awareness is included ensuring it is at the level required for medium awareness as defined above.

- 4.2.2 Service finance managers and lead accountants should ensure that council officers for the service areas that they support have an appropriate level of knowledge and awareness for their roles as defined above.
- 4.2.3 Designated tax officers should provide on request training materials or courses appropriate to its intended audience.
- 4.2.4 Reference guides to taxation areas should developed by designated tax officers as appropriate and made available through the intranet for council officers to refer to as required. These guides should cover regular queries. Detailed queries not covered by these guides should still be referred to the appropriate designated tax officer.

## **5 Controlling and managing risks**

### **5.1 Tax risk environment**

- 5.1.1 Walsall Council overall attitude towards tax is that of being risk neutral and therefore not pursuing tax aggressive policies.
- 5.1.2 Being risk neutral means that the council will balance taking advantage of tax opportunities as they arise to obtain value for money for local taxpayers against exposing the council to reputational damage, and potential legislative action from HM Revenue and Customs.

### **5.2 Tax planning and risk management**

- 5.2.1 Walsall Council will have regards to tax implications when reviewing all its activities both current and future. This applies equally with regards to employment taxes and also value added tax.
- 5.2.2 With regards to employment taxes consideration needs to be made with regards to the employment status of anyone contracted or employed by the council. This is particularly important with regards to personal service companies.
- 5.2.3 With regards to value added tax (VAT) the following need to be considered for council activities:
- What impact does the activity have on the council's partial exemption position?
  - What VAT does any new charge have?
  - Do financial recording systems need to be updated?

- 5.2.4 For any new council activity or major project (revenue or capital) the relevant designated tax officers need to be consulted. This is to determine what tax impact is likely and its adherence to this strategy.
- 5.2.5 To determine the council's future VAT exposure with regards to exempt VAT, projections of the council's partial exemption position need to be made on a regular basis and reported to the Executive Director or nominated officer.
- 5.2.6 For land and building purchases, sales or construction projects consideration needs to be made as to whether an option to tax should be made to preserve the council's partial exemption position. This should occur at the earliest appropriate point and be reported to the Executive Director for final decision.

## Appendix 1

### Walsall Council

#### Prevention of Tax Evasion Policy February 2019

##### 1. Background

- 1.1 Under the Criminal Finances Act 2017 (CFA2017) the council, if found to be facilitating tax evasion via either an employee or someone working for the council (associate), could face an unlimited fine and consequent damage to its reputation.
- 1.2 Walsall Council aims to conduct its financial affairs in a law abiding manner and does not tolerate the facilitation of tax evasion by its staff or its associates.
- 1.3 To support this the council has a range of interrelated policies, procedures and guidance that provide a corporate framework to underpin its financial governance activities. These are summarised in the Counter Fraud and Corruption Policy Statement and Strategy which are available on the intranet at:  
[http://int.walsall.gov.uk/Service\\_information/Internal\\_audit/Counter\\_fraud\\_toolkit](http://int.walsall.gov.uk/Service_information/Internal_audit/Counter_fraud_toolkit).

##### 2. Scope of the policy

- 2.1 This policy applies to all council employees, associates and elected members. It aims to maintain existing high standards of conduct within the council by preventing criminal activity through tax evasion. This policy sets out the procedures that must be followed to enable the council to comply with its legal obligations.
- 2.2 This policy is part of the council's counter fraud arrangements.
- 2.3 Failure by an employee to comply with the procedures set out in this policy may lead to disciplinary action and/or prosecution.
- 2.4 Should staff, associates or members become concerned that a fellow employee, associate or elected member is facilitating a third party's tax evasion they should follow the council's whistle blowing procedure which is within the counter fraud toolkit.

### **3. Definitions**

#### **Tax Evasion**

- 3.1 Tax evasion is the illegal non-payment or under-payment of taxes, usually resulting from the making of 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.

#### **Tax Avoidance**

- 3.2 Tax avoidance is seeking to minimise 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 tax and other legislation in ways not anticipated by the law.

### **4. Legislation**

- 4.1 CFA 2017 came into force on 30 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

- 4.2 The council would be guilty of an offence if a person commits a UK tax evasion facilitation offence when that person is acting on behalf of the council.

- 4.3 Under s45(4) CFA 2017 a UK tax evasion offence is either of the following:

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

- 4.4 Under s45(5) a UK tax evasion facilitation offence is an offence under the law of any part of the UK consisting of:

- Being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person.

- Aiding, abetting, counselling or procuring the commission of a UK tax evasion offence.
- 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 a tax.

## 5. Defences

5.1 It would be a defence for the council to prove that, when the UK tax evasion facilitation offence was committed:

- The council had in place such prevention procedures as it was reasonable in all the circumstances; or
- It was not reasonable in all the circumstances to expect the council to have any prevention procedures in place.

5.2 Government guidance suggests prevention measures similar to the prevention measures under s7 of the Bribery Act 2010 when dealing with defences under the offences, these being:

### - **Risk assessment**

The relevant body assesses the nature and extent of its exposure to the risk of those who act in the capacity of a person associated with it criminally facilitating tax evasion offences. The risk assessment is documented and kept under review.

### - **Proportionality of risk-based prevention procedures**

Reasonable procedures for a relevant body to adopt to prevent persons acting in the capacity of a person associated with it from criminally facilitating tax evasion will be proportionate to the risk the relevant body faces of persons associated with it committing tax evasion facilitation offences. This will depend on the nature, scale and complexity of the relevant body's activities. We recognise that the reasonableness of prevention procedures should take account of the level of control and supervision the organisation is able to exercise over a particular person acting on its behalf, and the proximity of the person to the relevant body. The new offences do not require relevant bodies to undertake excessively burdensome procedures in order to eradicate all risk, but they do demand more than mere lip-service to preventing the criminal facilitation of tax evasion.

- **Top level commitment**

The top-level management of a relevant body should be committed to preventing persons acting in the capacity of a person associated with it from engaging in criminal facilitation of tax evasion. They should foster a culture within the relevant body in which activity intended to facilitate tax evasion is never acceptable.

- **Due diligence**

The organisation applies due diligence procedures, taking an appropriate and risk based approach, in respect of persons who perform or will perform services on behalf of the organisation, in order to mitigate identified risks.

- **Communication (including training)**

The organisation seeks to ensure that its prevention policies and procedures are communicated, embedded and understood throughout the organisation, through internal and external communication, including training. This is proportionate to the risk to which the organisation assesses that it is exposed.

- **Monitoring and review**

The organisation monitors and reviews its preventative procedures and makes improvements where necessary.

5.3 As such the council must ensure its policies and procedures are up-to-date and cascaded not only so that these can be pleaded in the event that a defence is required but in an effort to make people aware and try to prevent tax evasion from occurring in the first place.

**6. Risk Assessment of Areas of Risk**

6.1 A full risk assessment of all areas of potential tax evasion within the organisation has been carried out to identify current controls and highlight any additional actions that need to be developed. Due to the sensitive nature of the document it has not been included within this policy, but is available for review by internal audit / audit committee / the councils management team as required to inform their commitment to embedding the policy.

6.2 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 employee to benefit. However, the council's Internal Audit Team will conduct regular compliance checks as part of the audit workplan, with individual audits paying specific attention to potential areas of high risk which would be reported back to Audit Committee as required.

## **7. Proportionality of risk-based prevention procedures**

7.1 We have a governance process and procedures to address specific risks. This includes a "whistle blowing" policy. We already have procedures in place with budget holder's guidance, segregation of duties and a Counter Fraud Toolkit.

7.2 Independent monitoring and scrutiny takes place on manager's IR35 decisions by payroll staff.

## **8. Top Level Commitment**

8.1 The policy is adopted by senior officers and endorsed by Cabinet as part of the Tax Strategy.

## **9. Due Diligence**

9.1 Reasonable care and caution is exercised when processing all transactions particularly high value/high risk area payments. Monitoring and review takes place as part of the councils normal checks and procedures within the areas of risk outlined within the policy.

## **10. Communication & Training**

10.1 The council's officer responsible for information and queries on CFA2017 is the Section 151 Officer, currently the Executive Director for Resources and Transformation. This is in line with the council's tax strategy.

10.2 All staff involved in processing and approving financial transactions will be aware of the CFA 2017 via induction, part of mandatory training and information on the Council's intranet. This is in line with the council's tax strategy.

## **11. Monitoring & Review**

11.1 Monitoring and review will form part of the audit programme and regular reports back to Audit Committee in accordance with their work programme.

## **Appendix 2**

### **List of Designated Tax Officers**

Overall tax responsibility	Executive Director Resources & Transformation
Employment Taxes	Payroll & Pension Manager
Indirect Taxes (inc VAT)	Senior Accountancy Officer – Financial Reporting