

**Manchester City Council
Report for Resolution**

Report to: Economy Scrutiny Committee – 24 June 2015
Subject: Tax Avoidance
Report of: Strategic Director (Strategic Development)

Summary

The purpose of this report is to provide a summary to Members of the Committee with regards to Council policies and public procurement law which governs the procurement of services from any organisation found to be manipulating the UK taxation system.

Recommendations

That the Committee notes the content of this report.

Wards Affected: All

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Tax Avoidance, Economy Scrutiny Committee, 14 January 2015

1.0 Introduction

- 1.1 A report was brought to the Committee in January 2015 to provide Members with an update on ActionAid's *Towns Against Tax Dodging* campaign. The report concluded that whilst the campaign is a well established opportunity for local groups and individuals to voice their concerns about the tax avoidance of multinational companies, the nationally-administered nature of the UK taxation system, and the EU-wide procurement regulations, makes it difficult to influence change from a local authority level.
- 1.2 Several local authorities, including Manchester at its 4 February 2015 meeting of Full Council, have agreed to carry Motions which offers their support to the *Towns Against Tax Dodging* campaign.
- 1.3 This report sets out the controls that the Council is able to set through its own procurement processes within the constraints of EU public procurement law in relation to the exclusion of companies that manipulate the UK tax system.

2.0 Background

- 2.1 The ActionAid campaign highlights the tax avoidance activities of large multinational companies which it claims deprives the UK Treasury of £12 billion per annum, part of which could be used to fund local authority spending. A sample of the key points was included in the January 2015 report to this Committee. Further details can be found on the campaign website (www.townsagainsttaxdodging.org.uk).
- 2.2 In summary, the Motion carried at Full Council in February 2015 resolved to:
 - Support ActionAid's campaign;
 - To invite all interested political and campaigning groups to lobby their respective local MPs and regional MEPs to continue the focus of tackling tax avoidance and evasion and to support such measures in the future;
 - To request the Chief Executive to report back on the issue of tax avoidance in a Manchester context;
 - For a task and finish group to be established to under the remit of the Economy Scrutiny Committee, to explore what practical measures the Council can implement to tackle tax avoidance, including a review of its procurement policies; and
 - To use the Council's influence to lobby other Greater Manchester councils, other Labour groups in local government, partnership organisations, and elected members of national Government and Europe to take practical action on tax avoidance.

3.0 Tax Avoidance: The use of Public Procurement Rules

- 3.1 Over and above the support that the City Council can give through an ongoing approach to lobbying for support at a national and European level, there are very limited practical measures that the City Council can utilise as sanctions against those organisations who adopt tax avoidance.

- 3.2 Tax avoidance is clearly a complex issue and a challenging issue to tackle due to its ambiguous position in both UK and EU law. Whilst the political debate and campaign activity continues with regards this issue, the Council is obligated to ensure that it conducts its business and sets its policies in accordance with the EU and UK legal procurement framework. It is the constraints of this legal framework that limits the measures that the City Council is able to take.
- 3.3 The EU public procurement rules (enacted into UK law by the Public Contracts Regulations 2006 & 2015) contain a number of grounds where a service provider is deemed to be ineligible to apply for a public services/goods/works contract. These are referred to as mandatory grounds for rejection and discretionary grounds for rejection of applicants. These grounds of rejection are included in the relevant Council procurement documents, such as a pre-qualification questionnaire, and are evaluated by the Council on a Pass/Fail basis.
- 3.4 One of the mandatory grounds for exclusion relates specifically to non payment of taxes, where an authority is aware that an economic operator is in breach of its obligations relating to payment of taxes and the breach has been established by a judicial/administrative decision having final and binding effect.
- 3.5 There is also a discretionary ground for exclusion for non payment of taxes where an authority can demonstrate that the economic operator is in breach of its obligations relating to payment of taxes. Both the mandatory and discretionary grounds of rejection cease to apply if the economic operator has fulfilled its obligations by paying or entering into an arrangement with a view to paying the taxes.
- 3.6 It is entirely possible for a company to significantly mitigate or minimise the amount of tax it pays whilst still doing so in compliance with its obligations under UK law.
- 3.7 It is therefore problematic under the procurement rules to legitimately exclude an applicant in a Council procurement process where the applicant has complied with its tax obligations under UK law, even though the applicant may not be paying what appears to be its 'fair share of tax'. An attempt by the Council to do so would leave the Council open to risk of legal challenge and claims it is breaching EU and UK law, which could, for example, result in the Council's procurement process being set aside and/or the Council having to pay significant costs and damages.
- 3.8 In addition to the above the Council is required to conduct its procurement and contracting exercises in accordance with fundamental EU treaty principles of openness and transparency, equality of treatment, non-discrimination and proportionality. This means that, for example, Council decisions and actions should not be excessive and disproportionate in the circumstances. Therefore even if an applicant was in breach of its obligations relating to payment of taxes, for example in respect of a small amount or on a single occasion, it may

not automatically be the case that it would be excluded from a procurement exercise.

4.0 Conclusion

- 4.1 As highlighted in this report tax avoidance, and the peculiarities within UK law as relating to the tax system which enables organisations to mitigate or minimise the amount of tax it pays, is a complex and politically sensitive issue. The Council's existing procurement policy enables it to make decisions on the suitability of interested parties through the use of pre-qualification questionnaires or other appropriate suitability assessment questions.
- 4.2 Future changes at a European level may lead to stricter guidelines and more freedom at a local level to apply more robust criteria and to have greater decision-making powers over the procurement of services. However, until such changes are enacted the Council must continue to discharge its duties with regards to public procurement in a manner that is compliant with the current legal framework, thereby minimising the risk of legal challenge. The Council's legal and procurement departments will continue to monitor developments within this policy arena.
- 4.3 In carrying the Motion of 4 February 2015 Members of the Council have agreed to support the ActionAid *Towns Against Tax Dodging* campaign and to lobby elected officials in UK and EU parliament to continue the focus on tackling tax avoidance and evasion and to support such measures in the future. Manchester is one of a growing number of Local Authorities to have taken this step.