

Notice of Motion: Tax Avoidance

Councillor Young has submitted the following motion:

“This Council recognises:

1. The growing awareness of tax avoidance and tax evasion (together termed tax abuse in this motion) and their impact in recent years;
2. The importance of curtailing and eventually eliminating tax abuse in the local economy of Barking and Dagenham if a sound market economy is to be created in which all traders, whether locally or nationally based, can compete on a level playing field to provide the goods and services that our community needs;
3. The wider impact of tax abuse on our national economy, where the gap between tax income collected by our national government and that which would be due if tax law was complied with as parliament intended is not less than £35 billion a year in the estimate of HM Revenue & Customs and may be substantially higher in the estimate of others and that this tax gap does, inevitably impact upon the level of income available to this authority to undertake its work in our local communities;
4. The impact of tax abuse internationally and in particular its cost to developing countries (many of which have close relationships with persons living in our communities) who as a result of tax abuse by multinational corporations are estimated to lose sums greater than the total world aid budget to this activity each year with consequent impact on our relationships with those communities;
5. That the UK government has taken steps to tackle the issue of tax abuse by companies seeking to secure contracts for the supply of goods or services and has issued ‘Procurement policy note 03/14: promoting tax compliance’ about which it says ‘A new policy was announced in the March 2013 Budget on the use of the procurement process to promote tax compliance. This applies with effect from 1 April 2013 to all central government contracts of more than £5 million. Suppliers bidding for these government contracts must self-certify their tax compliance’.

This Council now agrees that:

6. Both tax avoidance and tax evasion represent a threat to the operations of this Council, the services that it supplies to the communities that it represents, the effective operation of the local economy, our national economy, the economies of other countries and our relationships with them;
7. As a consequence of the noted threats created by tax abuse within and beyond our communities this Council wishes to take action to tackle tax abuse in all its forms and as a result:

- a. Requires that the Chief Executive of the Council notes 'Procurement policy note 03/14: promoting tax compliance' and adapts it for use as part of the procurement procedures of this Council excepting that the resulting policy shall apply to all companies bidding for contracts and to report back on this issue not later than ;
- b. Requires that the Chief Executive of the Council notes the 'Fair Tax Mark' and consider the ways in which that certification process may be included in the changes to the tendering process noted in paragraph (a) above;
- c. Requires that the Chief Executive of the Council prepare a policy proposal for declaring Barking and Dagenham a Fair Tax Area and shall provide plans for achieving this objective in cooperation with the local business community and the Fair Tax Mark by no later than Wednesday 1st June 2016;
- d. Requires that those who represent this Council when making decisions regarding investments that fund the pensions payable to past and present employees of this authority take tax abuse into consideration when assessing the suitability of those companies in the shares of which such funds might be invested;
- e. Agrees that this Council will actively support campaigns by HM Revenue & Customs and others, including Non-Governmental Organisations, that encourage tax compliance and an end of tax abuse in the area covered by this Council and beyond.
- f. Authorises the necessary expenditure to implement these proposals.
- g. Requires a report back on progress made with regard on each of these proposals not less than once quarterly for the next three years.
- h. Requires that the Council actively publicise this policy."

Comment of the Chief Executive

The Chief Executive has decided following consultation with the Strategic Director of Finance and Investment and the Director of Law and Governance that the above motion could have significant financial and/or contractual issues for the Council. In accordance with paragraphs 10.11 and 10.12, Part 2, Chapter 4 of the Council's Constitution the motion must be accompanied by a report setting out the relevant implications.

Set out below is a report of Jonathan Bunt, Strategic Director for Finance and Investment.

Procurement

1. With regard to the 'Procurement Policy Note 03/14: Promoting Tax Compliance', the Council's contract rules already make provision for tax compliance. Section 35.6 of the rules state:
 "The Council shall exclude a bidder from participation where a bidder has, or where the Council becomes aware, committed a criminal offence relating to fraud, corruption, terrorism, tax evasion, money laundering, or such other offences as are prescribed in Regulation 57 (1) – (5).
 The referenced 'Regulation 57 (1) – (5)' form part of the Public Contract Regulations 2015 which the 2014 'Procurement Policy Note 03/14' was updated to reflect.
2. As part of the Council's e-tendering portal, bidders are required to declare any criminal charges, including any relating to tax evasion when submitting a tender. It would be possible to amend the pre-qualification process to enable tenderers to submit their Fair Tax Mark details as a means of answering those questions. It would not be possible to limit the opportunity to bid to only those in possession of the Mark as it would be deemed that the Council would be impeding the market. The restriction of the market when tendering would also be expected to lead to higher costs for the Council as a result of reduced competition.

Fair Tax Area

3. The Fair Tax Mark is a voluntary scheme which the Council cannot impose on local businesses and would require the companies participating to undertake an annual assessment as well as paying a licence fee. As noted above, the Council could not restrict the award of work to only those in possession of the Mark as it would be considered anti competitive.

Pension Fund Investments

4. The Barking & Dagenham Pension Fund is predominantly invested in pooled funds which does not permit the Fund or its Trustees to specify the companies invested in. The fund could move to a segregated mandate which would enable it to do so but this would come with a larger management fee from the fund manager. The scale of the extra fee varies but would typically be c0.1-0.2% which, on for assets under management of £100m, would equate to additional annual costs of £100,000 - £200,000.
5. A move to a segregated mandate would also prevent the participation in the collaborative schemes mandated by central government such as the London Collective Investment vehicle. As well as adding the further costs above, it would prevent the Fund from achieving the savings expected to be delivered from the pan London scheme which includes all other London Boroughs.
6. The key duty of the Pension Panel Members, acting as Trustees of the Fund, is to ensure adequate monies exist to meet future pension liabilities. This is achieved through the Fund's investment strategy and the appointment of fund managers on specific mandates. Recent market experience has shown that companies who are

linked with tax avoidance schemes suffer a fall in their share price which is reflected in the decision of equity managers to hold specific stocks.

7. The Barking & Dagenham Pension Fund is also a member of the Local Authority Pension Fund Forum (LAPFF) which campaigns and works with companies on issues of corporate governance, employee engagement and environmental impact. As a collective, it has much more influence to ensure companies have the right policies and procedures in place to create value for shareholders over the long term.
8. As a result, there would be both financial and political implications for the Fund from adopting a specific position on tax avoidance. The stock market has shown that links tax avoidance has a detrimental impact on the share price and this will be considered by both companies and fund managers.