

WEST DUNBARTONSHIRE COUNCIL

Report by Chief Officer - Resources Services

Council: 26 October 2022

Subject: Fair Tax Declaration

1. Purpose

- 1.1** The purpose of this report is to provide Council with further information regarding adoption of the Fair Tax Declaration.

2. Recommendations

- 2.1** Council is asked to:

- a) Note the information gathered on the Fair Tax Declaration pledge.
- b) Note that under the current Procurement Regulations, the Council can only exclude any economic operator from participating in Council tenders if that operator has not met all of its obligations relating to the payment of taxes.
- c) Notes the possible implications for the Council and its services should the Fair Tax Declaration pledge be adopted.
- d) Agree that, whilst the Council is not able to fully adopt the Fair Tax Declaration pledge, it can promote and support key elements of it.

3. Background

- 3.1** At the full Council meeting on 31 August 2022, a motion in relation to the potential adoption of the Fair Tax Declaration (FTD) was considered and it was agreed that the officers review the FTD and provide a report to Council to provide a comprehensive understanding of the FTD and the implications for West Dunbartonshire Council (the Council) and its services should it be adopted

- 3.2** The FTD pledge requires councils to consider ethical, value for money and quality issues when procuring as well as ensuring that fair taxation practices are adhered too. In particular it requires councils to:

“Lead by example and demonstrate good practice in our tax conduct, right across our activities. Including:

- *Ensuring contractors implement IR35 robustly and a fair share of employment taxes are paid.*
- *Shunning the use of offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.*
- *Undertaking due diligence to ensure that not-for-profit structures are not being used inappropriately as an artificial device to reduce the payment of tax and business rates.*

- *Ensuring that there is clarity on the ultimate beneficial ownership of suppliers and their consolidated profit and loss position, given lack of clarity could be strong indicators of poor financial probity and weak financial standing.*
- *Promote Fair Tax Mark certification for any business in which we have a significant stake and where corporation tax is due.*
- *Join in and support Fair Tax Week events in the area and celebrate the tax contribution made by responsible businesses who say what they pay with pride.*
- *Support calls for urgent reform of EU, UK and Scots law to enable municipalities to revise their procurement policies and better penalise poor tax conduct and reward good tax conduct."*

3.3 The Fair Tax website details the list of councils *"that have shown significant support for fair tax"*, including City of Edinburgh Council, Dundee City Council, Midlothian Council and South Lanarkshire Council. However the website does not make any reference to councils formally approving the FTD pledge.

4. Main Issues

- 4.1** The Council, like any public sector body, has to follow the rules and regulations prescribed by law. To do otherwise, regardless of the merits of the moral obligation, would put the Council at significant risk of challenge from court regulators, auditors and / or the public. This requirement creates some issues in relation to the FTD pledge.
- 4.2** The Council's Procurement Regulations allow for the exclusion of any company convicted of an offence relating to the non-payment of taxes. Under the terms of the EU Treaty Principles of proportionality, non-discrimination and equal treatment; which still apply after the UK withdrew from the European Union, it is not possible to evaluate a company based on tax conduct deemed to be either good or poor.
- 4.3** Officers have asked the Scottish Government for comment on the FTD pledge and any government initiative to review Fair Tax. The Scottish Government responded to state that they support measures to ensure that businesses pay a fair amount of tax. The Scottish Government believes that businesses have an ethical obligation to deal openly with their tax affairs and to avoid engaging in artificial arrangements simply to reduce their tax liabilities. These principles already sit at the core of the Scottish approach to taxation.
- 4.4** The key elements of the FTD pledge can be addressed through use of the Scottish's Single Procurement Document (SPD), mandated by the Scottish Government for regulated procurement - supplies and services spend from £50k and work spend from £2m. The Council's procurement processes exceed the requirements set by the Scottish Government as all Council formal tender processes utilise the SPD. This ensures that even tenders of lower value are subject to scrutiny.

- 4.5** The SPD is used at the Selection Criteria stage of a tender process and allows officers to identify suitably qualified and experienced bidders. The Selection Criteria must be proportionate to the value of the procurement, its sensitivity, estimated risks and the complexity of the requirement. The Selection Criteria must also be published in the Contract Notice so that all bidders understand the key requirements they must hold before submitting a bid. The questions in the SPD are aligned to the requirements of the Procurement Regulations.
- 4.6** Under the SPD, bidders are asked to confirm they have met all obligations relating to the payment of taxes, both in the UK, and in the country in which the bidder is registered, if that is not the UK. Where the bidder has been convicted of not paying taxes, they are required to submit certification confirming the subsequent actions taken to address non-payment. The Council has the option to exclude a bidder convicted of non-payment of taxes where suitable measures have not been taken to address the non-payment.
- 4.7** The Council has a documented process in place which enables compliance with IR35 in terms of where the Council engage with a worker either directly or via an agency / 3rd party to assess the tax status. Where the Council engage (and are paying) directly with the worker and the assessment determines that taxation is due, an internal process exists to comply with this requirement. Where a determination places responsibility for taxation on an agency or other 3rd party, the Council are obliged to give notice of this. The Council as with any other organisation, has no means of ensuring that an external company is compliant with IR35 regulations.
- 4.8** The Council does not use offshore vehicles for the purchase of land and property and will continue to ensure that land and property transactions are tax efficient.
- 4.9** The Council has a documented process in place which enables due diligence of not-for-profit structures. The online Mandatory Charitable Rates Relief application process is undertaken and the application seeks supporting information to conduct a review of the declarations made.
- 4.10** The FTD pledge is to undertake due diligence / extra checks which will result in additional work for Council officers, when ultimately the Council is unable to act. For example, even if the Council were to uncover significant off shore tax avoidance by a company, there is no grounds in the Procurement Regulations that would allow the Council to exclude that company from bidding.
- 4.11** As referred to above there are areas of the pledge where the Council can promote and support the FTD pledge, but to accept it in full in its current wording, would require additional resource commitment that would not add value and, potentially could result in an unlawful decision.

5. People Implications

- 5.1** Approving the FTD pledge would require additional resources whilst the Council would be unable to act on this FTD pledge due to regulations circumscribed by law.

6. Financial and Procurement Implications

6.1 Financial – as stated in paragraph 5.1.

6.2 Procurement - as stated in paragraph 5.1.

7. Risk Analysis

7.1 Approving the FTD pledge would put the Council at significant risk for challenge from court, press, regulators, auditors and / or the public.

7.2 As part of the Council's annual audit planning process for 2022-23, there is a risk-based review being undertaken in relation to IR35 compliance. This is a corporate review and will involve all services looking at the use of consultants, agency staff, etc.

8. Equalities Impact Assessment (EIA)

8.1 There is no equalities impact.

9. Consultation

9.1 Consultation took place with Council officers from Legal Services, Audit and Fraud Services, Finance Services and Business Support Services.

9.2 Officers had discussed the FTD pledge with City of Edinburgh Council.

9.3 Officers have asked the Scottish Government for comment on the FTD pledge and any government initiative to review Fair Tax. The Scottish Government are yet to respond.

10. Strategic Assessment

10.1 This report supports the Council's strategic priorities: *Open, accountable and accessible local government*

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Date: 26 October 2022

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Appendices:	None
Background Papers:	<u>Councils for Fair Tax Declaration: Scotland</u>
Wards Affected:	All