

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO CABINET

9 FEBRUARY 2021

REPORT OF THE INTERIM CHIEF OFFICER – FINANCE, PERFORMANCE AND CHANGE

ANTI-TAX EVASION POLICY

1. Purpose of report

- 1.1 The purpose of the report is to present Cabinet with the new Anti -Tax Evasion Policy for approval.

2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objective under the **Well-being of Future Generations (Wales) Act 2015:-**

1. **Smarter use of resources** – ensure that all resources (financial, physical, ecological, human and technological) are used as effectively and efficiently as possible and support the creation of resources throughout the community that can help to deliver the Council's well-being objectives.

3. Background

- 3.1 The Criminal Finances Act 2017 (the '2017 Act') became law in the summer of 2017 and Part 3 of the 2017 Act sets out how those organisations categorised as 'relevant bodies' under the Act will be considered criminally liable where they fail to prevent those who act for, or on their behalf, from criminally facilitating tax evasion.
- 3.2 The 2017 Act introduced new offences that will be committed where a relevant body fails to have taken appropriate steps to prevent an associated person criminally facilitating the evasion of a tax, and this will be the case whether the tax evaded is owed in the UK or in a foreign country.
- 3.3 '**Relevant bodies**' include corporate or partnerships (wherever incorporated or formed), local authorities and fire authorities.
- 3.4 An '**associated person**', as set out in the legislation, is an employee, agent or other person who performs services for or on behalf of the Council.
- 3.5 '**Tax evasion**' can be described as any fraudulent activity that intends to divert funds from the public revenue and constitutes the common law offence of cheating the public revenue.
- 3.6 Organisations, including local authorities, could be liable to severe penalties if they fail to put in place adequate procedures to prevent tax evasion.

- 3.7 In order for the corporate charges to be brought there must first be two offences that have taken place. There must be a criminal offence by the tax payer and an associated person must deliberately and dishonestly take action to facilitate the taxpayer's evasion. To accidentally, ignorantly or negligently facilitate the evasion of tax will not result in the corporate offence.
- 3.8 If both offences have been committed then the Council will have committed the corporate offence of "failure to prevent the facilitation of tax evasion" unless it can demonstrate that it had reasonable preventative procedures in place.
- 3.9 The penalty for this offence includes unlimited fines and ancillary orders such as confiscation orders or serious crime prevention orders, as well as reputational damage to the Council. Tax based fraud or evasion is generally investigated by Her Majesty's Customs and Revenue (HMRC) with prosecutions brought by the Crown Prosecution Service (CPS).
- 3.10 HMRC issued guidance for relevant bodies formulated around the following six guiding principles:
- a) Risk assessment
 - b) Proportionality of risk-based prevention procedures
 - c) Top level commitment
 - d) Due diligence
 - e) Communication (including training)
 - f) Monitoring and review.
- 3.11 HMRC's Freedom of Information release 'Number of live Corporate Criminal Offences Investigations' dated 21 October 2020 identified that it had 13 live Corporate Criminal Offence cases underway and a further 18 live opportunities under review. These investigations spanned 10 different business sectors including financial services, labour provision and software development. The number and spread of investigations clearly demonstrate that HMRC is actively enforcing the legislation across all tax and duty regimes and across a wide range of organisations.
- 3.12 Covid-19 has resulted in an increased risk of businesses becoming the victim of fraud, as incentive and opportunity gives rise to individual rationalisation to commit tax fraud, with furloughed schemes being identified as a high risk area for tax evasion and fraud by HMRC.

4. Current situation / proposal

- 4.1 The Council is committed to establishing and maintaining effective arrangements to prevent and detect acts of bribery, corruption and tax evasion in relation to Council services. The Council requires all Elected Members and employees to demonstrate the highest standards of honesty and integrity and this includes compliance with the relevant legislation.
- 4.2 The Council already has Anti- Fraud and Bribery and Anti-Money Laundering policies in place to support effective arrangements to prevent and detect acts of bribery and corruption which are monitored and reviewed by the Governance and Audit Committee.

4.3 A policy has now been developed specifically to address the prevention of tax evasion and will provide a coherent and consistent approach for all employees and any person who performs services for and on behalf of Bridgend County Borough Council. The Anti-Tax Evasion Policy is attached as **Appendix A**.

4.4 This policy statement is supplementary to the Council's wider Anti-Fraud and Bribery Strategy which sets out the key responsibilities with regard to fraud prevention and what to do if fraud or financial irregularity is suspected and the action that will be taken by management.

5. Effect upon policy framework and procedure rules

5.1 In the Financial Procedure Rules (Part 4 of the Constitution), the section on 'Prevention of Theft, Fraud & Corruption' will require amending to be to make reference to the new 'Anti-tax evasion' policy. Similarly under Part 3 of the Constitution, 'Responsibility of Functions', the Terms of Reference (ToR) of the Audit Committee will require amendment to include the monitoring of this policy alongside the Anti-Fraud and Bribery Strategy and Anti-Money laundering Policy.

5.2 The proposed amendments to the Constitution and ToR (attached as **Appendix B**) will be presented to Council at a future meeting, following which the Constitution will be amended accordingly.

6. Equality Impact Assessment

6.1 There are no equality implications arising from this report.

7. Well-being of Future Generations (Wales) Act 2015 implications

7.1 The well-being goals identified in the Act were considered in the preparation of this report. The following is a summary to show how the 5 ways of working to achieve the well-being goals have been used to formulate the recommendations within this report:

- **Long Term** The Anti-Tax Evasion Policy, Procedure and Reporting Arrangements will assist in the long term to support officers and Members in the successful execution of their duties by meeting the legal obligations in the course of business activities.

- **Prevention** The purpose of the procedure is to prevent the facilitation of Tax Evasion under the Criminal Finances Act 2017.

- **Integration** The outcomes that the procedure supports is that implementation of the policy will help in the prevention of the facilitation of tax evasion by persons associated with the Council and in doing so prevent fraudulent activity that intends to divert funds from the public revenue. This

objective links with the Government objective to tackle tax evasion.

- **Collaboration** An 'associated person' or person who performs services on behalf of the Council will be required to adhere to this policy.
- **Involvement** The persons mainly involved in the procedure will be BCBC staff. However any agent or other person who performs services for or on behalf of the Council will be included, this may involve a diverse range of stakeholders.

8. Financial implications

8.1 There are no financial implications directly associated with the Anti-Tax Evasion Policy.

9. Recommendation

9.1 It is recommended that Cabinet:

- Approve the Anti-Tax Evasion Policy attached as Appendix A;
- Note the proposed amendments to the Terms of Reference and Constitution attached as Appendix B to be presented to Council for approval.

Gill Lewis CPFA
Interim Chief Officer – Finance, Performance and Change
11 January 2021

Contact officer: Fran Mantle
Finance Manager Governance & Exchequer

Telephone: (01656) 643286

Email: Frances.Mantle@bridgend.gov.uk

Postal address: Raven's Court
Brewery Lane
Bridgend CBC
CF31 4AP

Background documents: None