

Meeting of:	CABINET
Date of Meeting:	20 JUNE 2023
Report Title:	ANTI-TAX EVASION POLICY
Report Owner / Corporate Director:	CHIEF OFFICER – FINANCE, PERFORMANCE & CHANGE
Responsible Officer:	NIGEL SMITH GROUP MANAGER – CHIEF ACCOUNTANT
Policy Framework and Procedure Rules:	Paragraph 25.5 of the Financial Procedure Rules requires the Chief Finance Officer to develop, maintain and implement the Anti-Tax Evasion Policy. All Chief Officers are responsible for ensuring compliance with the Anti-Tax Evasion Policy and with systems of internal control
Executive Summary:	<ul style="list-style-type: none"> • The Criminal Finances Act 2017 sets out how organisations categorised as ‘relevant bodies’ will be considered criminally liable where they fail to prevent those who acted for, or on their behalf, from criminally facilitating tax evasion. • The 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, whether in the UK or in a foreign country. • The Anti-Tax Evasion Policy specifically addresses the prevention of tax evasion and provides a coherent and consistent approach for all employees and any person who performs services for and on behalf of Bridgend County Borough Council. • Cabinet approved the Anti-Tax Evasion Policy on 9 February 2021. This review updates the policy and makes a number of minor changes. These include setting out that the Policy applies to Members and Officers, updating the role of Deputy Head of Finance from Interim Deputy Head of Finance; the policy is to be reviewed biennially; and minor presentational changes and formatting. • The revised Anti-Tax Evasion Policy is attached as Appendix A, with the changes identified therein. • No instances of tax evasion have been reported to the Council.

1. Purpose of Report

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

2. Background

2.1 The Criminal Finances Act 2017 (the '2017 Act') became law in the summer of 2017. 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.

2.2 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.

2.3 '**Relevant bodies**' include corporate bodies or partnerships (wherever incorporated or formed), local authorities and fire authorities.

2.4 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.

2.5 '**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.

2.6 Organisations, including local authorities, could be liable to severe penalties if they fail to put in place adequate procedures to prevent tax evasion.

2.7 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 taxpayer 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.

2.8 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.

2.9 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 HM Revenues and Customs (HMRC) with prosecutions brought by the Crown Prosecution Service (CPS).

2.10 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.

- 2.11 On 26 January 2023 HMRC reported that they had 28 potential Corporate Criminal Offences cases underway (<https://www.gov.uk/government/publications/number-of-live-corporate-criminal-offences-investigations/number-of-live-corporate-criminal-offences-investigations>). They had 9 live investigations, and a further 26 live opportunities currently under review. These investigations spanned 11 different business sectors including software providers, labour provision, accountancy and legal services and transport.

3. Current situation / proposal

- 3.1 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 Members and employees to demonstrate the highest standards of honesty and integrity and this includes compliance with the relevant legislation.
- 3.2 The Council has in place Anti-Fraud and Bribery and Anti-Money Laundering policies to support effective arrangements to prevent and detect acts of bribery and corruption which are monitored and reviewed by the Governance and Audit Committee.
- 3.3 The Anti-Tax Evasion Policy specifically addresses the prevention of tax evasion and provides a coherent and consistent approach for all employees and any person who performs services for and on behalf of Bridgend County Borough Council. Cabinet approved the Anti-Tax Evasion Policy on 9 February 2021. This review updates the policy and makes a number of minor changes. These include setting out that the Policy applies to Members and Officers, updating the role of Deputy Head of Finance from Interim Deputy Head of Finance, the policy is to be reviewed biennially, and minor presentational changes and formatting. The revised Anti-Tax Evasion Policy is attached as **Appendix A**, with the changes incorporated.
- 3.4 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.
- 3.5 The Council has a Fraud e-learning module which includes a section in relation to Anti-tax evasion, which was rolled out in August 2020 to appropriate staff, and to date 713 staff have completed the training.
- 3.6 The Policy will be reviewed and updated as required on a biennial basis. The Governance and Audit Committee considered the policy as part of their role to obtain assurance over the Council's corporate governance and risk management arrangements on 27 April 2023. The Committee noted the policy and recommended it be forwarded to Cabinet for approval.
- 3.7 No instances of Tax Evasion have been reported to the Council.

4. Equality implications (including Socio-economic Duty and Welsh Language)

4.1 The protected characteristics identified within the Equality Act, Socio-economic Duty and the impact on the use of the Welsh Language have been considered in the preparation of this report. As a public body in Wales the Council must consider the impact of strategic decisions, such as the development or the review of policies, strategies, services and functions. It is considered that there will be no significant or unacceptable equality impacts as a result of this report.

5. Well-being of Future Generations implications and connection to Corporate Well-being Objectives

5.1 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 Policy is to prevent the facilitation of Tax Evasion under the Criminal Finances Act 2017.
- **Integration** 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** Persons mainly involved in implementing the policy will be Bridgend County Borough Council members and staff. However, any agent or other person who performs services for or on behalf of the Council will be included, and this may involve a diverse range of stakeholders.

6. Climate Change Implications

6.1 There are no direct implications arising from this report.

7. Safeguarding and Corporate Parent Implications

7.1 There are no direct implications arising from this report.

8. Financial Implications

8.1 There are no specific financial implications arising from this report.

9. Recommendation

9.1 Cabinet is recommended to approve the updated Anti-Tax Evasion Policy.

Background documents

None