NORTH YORKSHIRE COUNTY COUNCIL

22 February 2023

The Report of the Executive concerning the Notice of Motion on Fair Tax referred to the Executive at the meeting of the County Council on 16 November 2022

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 PURPOSE OF THE REPORT

1.1 To provide County Council with a summary of the deliberations and recommendations of the Executive concerning a Notice of Motion on Fair Tax that was referred to the Executive at the meeting of the County Council on 16 November 2022.

2.0 BACKGROUND

2.1 At the meeting of the County Council on 16 November 2022, a Notice of Motion regarding Fair Tax was considered. County Council resolved that the motion be referred to a meeting of the Executive for consideration, with recommendations to be brought back to the meeting of the County Council on 22 February 2023. A copy of the report that went to the Executive at their meeting on 7 February 2023 that includes a copy of the Notice of Motion is at Appendix A.

2.2 The Council's Constitution (Council Procedure Rules, section 11, page 193) states:

(h) If a motion is referred to the Executive or one committee only, the Executive or that committee shall report to the Council upon that motion together with its recommendation. If a motion is referred to more than one committee, the Executive shall report to the Council upon that motion together with its recommendations. The report of the Executive or any committee to which a motion has been referred shall contain a statement of that motion.

(i) When the Executive or a committee reports back on a motion, the motion, as originally moved and seconded at the earlier meeting, will be the matter before the Council. Any recommendation of the Executive or committee to amend the motion will therefore be an amendment to the motion and any recommendation to support or oppose the motion will be only an expression of views.

3.0 EXECUTIVE MEETING ON 7 FEBRUARY 2023

3.1 The motion was considered at the meeting of the executive that was held on 7 February 2023. County Councillor Liz Colling introduced the motion and report.

3.2 The minutes of the meeting of the Executive meeting on 7 February 2023 can be accessed via the following link - Agenda for Executive on Tuesday, 7th February, 2023, 11.00 am | North Yorkshire County Council.

3.3 Having considered the motion, report and the representations of County Councillor Liz Colling, the Executive Members present voted unanimously to support the motion.

4.0 FINANCIAL IMPLICATIONS

4.1 The financial implications are considered in the report to the Executive at Appendix A.

5.0 LEGAL IMPLICATIONS

5.1 The legal implications are considered in the report to the Executive at Appendix A.

6.0 CLIMATE CHANGE IMPLICATIONS

6.1 There are no specific climate change implications in this report.

7.0 EQUALITIES IMPLICATIONS

7.1 There are no specific climate change implications in this report.

8.0 RECOMMENDATION

8.1 That County Council considers the recommendation of the Executive and supports the Notice of Motion on Fair Tax that was referred to the Executive at the meeting of the County Council on 16 November 2022.

Barry Khan
Assistant Chief Executive (Legal and Democratic Services)

County Hall, Northallerton

14 February 2023

Report authors:

Gary Fielding, Corporate Director (Strategic Resources)
Daniel Harry, Democratic Services and Scrutiny Manager
Rachel Woodward, Head of Procurement & Contract Management

Background documents: Constitution of North Yorkshire County Council - New Council Constitutions (northyorks.gov.uk)

Appendix A – Report to the Executive regarding the Notice of Motion on Fair Tax

NORTH YORKSHIRE COUNTY COUNCIL

EXECUTIVE

07 February 2023

Consideration of the Motion on Fair Tax referred to the Executive at the meeting of the County Council on 16 November 2022

Report of the Corporate Director (Strategic Resources)

1. PURPOSE OF REPORT

1.1. To provide Executive members with a summary of the fair tax motion including the key elements of the motion to enable the Executive to make a formal recommendation to County Council on the 22 February 2023.

2. BACKGROUND

2.1. At the meeting of the County Council on 16 November 2022 a Motion relating to NYCC's response to the Fair Tax Declaration was considered. County Council resolved the Motion be referred to a meeting of the Executive for consideration, with recommendations to be brought back to the meeting of the County Council on 22 February 2023. The Motions are detailed in the report that went to the meeting of the County Council on 16 November 2022.

2.2. The Council's Constitution (Council Procedure Rules, section 11, page 193) states:

(h) If a motion is referred to the Executive or one committee only, the Executive or that committee shall report to the Council upon that motion together with its recommendation. If a motion is referred to more than one committee, the Executive shall report to the Council upon that motion together with its recommendations. The report of the Executive or any committee to which a motion has been referred shall contain a statement of that motion.

(i) When the Executive or a committee reports back on a motion, the motion, as originally moved and seconded at the earlier meeting, will be the matter before the Council. Any recommendation of the Executive or committee to amend the motion will therefore be an amendment to the motion and any recommendation to support or oppose the motion will be only an expression of views.

What is Fair Tax?

The Fair Tax Foundation (the "**FTF**") is a not-for-profit organisation that provides accreditation to business that uphold fair tax principles. It offers Councils the opportunity to sign up to the Fair Tax Declaration (the "**Declaration**") to show support for enhancing fair tax approaches and principles in the UK, including reducing the use of tax avoidance measures, and it appears that a number of Councils have signed up to the Declaration (according to the Fair Tax Foundation's website).

3. OUTLINE OF THE MOTION

3.1. Officers have reviewed the original Declaration and Motion (Appendix 1) put forward by The Fair Tax Foundation and proposed at County Council by Cllr. Colling. By signing up to the Councils for Fair Tax Declaration, councils need to demonstrate alignment to the Fair Tax Foundation values and encourage responsible tax practice through:

3.1.1 Leading by example on their own tax conduct;

3.1.2 Demanding to know who owns and profits from businesses the Council buys from – United Kingdom (UK) and overseas – and their full financial reports; and

3.1.3 Joining calls for UK public procurement rules to change so that councils can do more to tackle tax avoidance and award points to suppliers that demonstrate responsible tax conduct.

3.2. Points 3.1.1 and 3.1.3 above do not cause any concerns. However, some of the details regarding the specific resolutions covered by 3.1.2 require further exploration. This paper reviews each of the specific resolutions as included in the original Motion.

Lead by example and demonstrate good practice in its tax conduct of both North Yorkshire County Council (NYCC) and its trading companies

3.3. The wholly-owned trading companies of NYCC have limited expenditure outside of interest on loans (to NYCC) and back office services obtained from NYCC. Finance have confirmed that there is nil or at worst negligible revenue expenditure that could fall into the categories outlined.

3.4. Finance, Legal and Procurement have no concerns with NYCC passing this resolution.

Ensure IR35 is implemented robustly such that contract workers pay a fair share of employment taxes

3.5. There are robust IR35 procedures in place. Appointment of any consultants are referred to the Human Resources department. The team carry out the IR35 checks via the governments online checking process, delivering a verdict which is then documented as part of the request.

3.6. Human Resources, Finance, Legal and Procurement have no concerns with NYCC passing this resolution

Avoid offshore vehicles for the purchase of land and property

3.7. The utilisation of offshore holding companies is common amongst property owners. If NYCC wishes to acquire land and property we have no control over the legal entity which owns that property who may be selling it. There could be a key piece of land for regeneration for example that is required. Therefore, this is proposed to be removed, however demonstrating good practice as per point 2 of the Motion should provide some comfort in this regard.

Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers to reduce the payment of tax and business rates and Demand clarity on the ultimate beneficial ownership of suppliers and their consolidated profit & loss position

3.8. Financial appraisals of potential suppliers focus on an organisation's financial viability and do not take an ethical view.

3.9. The Public Contracts Regulations 2015 (PCR 2015, regulation 57) provide for contracting authorities to exclude a supplier if they are aware, it is in breach of its obligations relating to the payment of taxes or social security contributions, where the breach has been established by a judicial or administrative decision.

3.10. Issues concerning tax avoidance are significantly more complex. The PCRs do not make provision for discretionary exclusion based on concerns such as tax arrangements or beneficial ownership. Current procurement legislation only allow exclusion in very limited circumstances – as detailed in point 3.9 above. Offshoring or other legal grounds to

minimise tax are not legitimate grounds to exclude a company from a procurement and would therefore not be complaint with the PCR 2015. Excluding suppliers on this basis would be non-compliant and therefore expose NYCC to the risk of legal challenge from any supplier NYCC excluded from the procurement process on this basis.

3.11. To undertake the level of due diligence that would be required to evaluate bidders and manage suppliers based on their tax arrangements would necessitate a level of skill and capacity not currently available. Therefore, even if there were a legal route available to achieve this, there would be a direct cost of undertaking.

3.12. Some of the markets Authorities work with make use of complex beneficial ownership structures and sub-optimal tax arrangements. Examples of such sectors include (but may not be limited to):

3.12.1. The care sectors, including Adult Social Care and Children's Services, where private equity funding arrangements are increasingly impacting on suppliers in the sector, and complex ownerships structures are becoming more common even for smaller, locally owned operations who are restructuring businesses in order to mitigate costs and maintain profit margins; and

3.12.2. Sectors serviced by large multinational corporations with complex tax arrangements, such as Microsoft or Amazon, who are known to have non-UK based headquarters to benefit from alternative taxation regimes and complex beneficial ownership and offshore activities.

3.13. These examples highlight how adoption of this element of the original motion could have significant unintended consequences, and where the decisions to examine suppliers would be fraught with subjective decisions.

3.14. In May 2022 Her Majesty's Revenue and Customs (HMRC) produced a report on Tax Compliance of HMRC Suppliers. HMRC has adopted a "*strengthened approach to tax compliance for its own procurements in circumstances where the Public Contracts* Regulations *allow for HMRC to take a tougher line than the cross-government position and as such permit HMRC to apply discretion in decisions to exclude a supplier from the procurement process or terminate an existing contract*". Critically, "*exclusion is based on the grounds of tax non-compliance as determined by 'any appropriate means', which means HMRC has the advantage of being able to use any information it holds*".

3.15. NYCC does not have such information available and so it is unclear how the Authority would be able to implement tougher restrictions on its supplier base than is seen as standard across Central Government. It is also important to note that such a level of due diligence, if possible, would take additional investment in resources and skills development.

3.16. Discussions with the Fair Tax Foundation on this element of the motion highlighted that, whilst it appears many councils have signed the Councils for Fair Tax Declaration, in doing so they have made adjustments to the wording of this element of the Declaration.

3.17. Procurement and Legal are therefore not able to recommend passing the resolutions as currently drafted.

Promote Fair Tax Mark certification especially for any business in which we have a significant stake and where corporation tax is due

3.18. Fair Tax Accreditation is a paid accreditation. If we require a supplier to have accreditation it could represent a procurement risk in terms of not treating all suppliers equally and fairly. For those suppliers who may have tax efficient ways of working, which are legal, this may mean they are unable to get the accreditation.

3.19. We cannot endorse one form of accreditation over another, therefore the council would have to accept any comparable accreditation.

3.20. It should be noted that the cost to suppliers to achieve Fair Tax Accreditation ranges from £299 - £20,000 (exc. VAT) - Appendix 3 details the costs. It is likely that the Authority would see this cost included in the tender price.

3.21. Further to the financial cost to suppliers there is also the resource required to achieve Fair Tax Accreditation. Both could have a disproportionate impact on Small and Medium Enterprises (SMEs) and the Voluntary, Community and Social Enterprises (VCSEs) sectors.

3.22. Procurement and Legal are therefore not able to recommend passing the resolutions around this element as currently drafted.

Support Fair Tax Week events in North Yorkshire and celebrate the tax contribution made by businesses who pay their fair share of corporation tax

3.23. The Fair Tax Foundation's website describes Fair Tax week as: "*A UK-wide recognition of the* companies *and organisations that are proud to promote responsible tax conduct and pay their fair share of corporation tax".*

3.24. Procurement could consider what activities planned for Fair Tax week 2023 it could support when details are published next year.

3.25. Procurement does not have any concerns with NYCC passing this resolution.

Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies

3.26. The government consultation regarding the changes to procurement regulations is now closed, so it is unclear what route the Fair Tax Foundation is seeking in order to change the new drafted legislation.

3.27. Procurement collaborated with the Local Government Association (LGA), the Yorkshire and Humber Strategic Procurement Group (SPG), the National Advisory Group and Cabinet Office in terms of making submissions to the consultation.

3.28. Procurement does not have any concerns with NYCC passing this resolution.

4. CONCLUSION

4.1. In summary, NYCC cannot pass the original motion due to the reasons outlined in this report. An amended version of the Motion has been discussed with the Member leading the Motion and with the Fair Tax Foundation. Based on these discussions and the review by Officers the revised wording as detailed in Appendix 2 is proposed.

5. FINANCIAL IMPLICATIONS

5.1. To adopt the Motion as originally drafted by the Fair Tax Foundation would result in additional cost to the Authority, specifically to service the requirements outlined in section 3.11 and 3.15. This would be both additional staffing and training to develop the required skills.

6. LEGAL IMPLICATIONS

6.1. The Declaration has been considered and amended as outlined in the report. Point 4, 5 and 6 of the original Motion have been removed:

6.1.1. Not use offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.

6.1.2. Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers as an artificial device to reduce the payment of tax and business rates. Demand clarity on the ultimate beneficial ownership of suppliers UK and overseas and their consolidated profit & loss position, given lack of clarity could be strong indicators of poor financial probity and weak financial standing.

6.1.3. Promote Fair Tax Mark certification especially for any business in which we have a significant stake and where corporation tax is due.

6.2. 6.1.1 has been removed from the amended Motion as set out in Appendix 2 due to the points raised within paragraph 3.7.

6.3. 6.1.2 and 6.1.3 have been removed from the amended Motion as set out in Appendix 2 as this is not considered to be compliant with the Public Contract Regulations 2015, specifically in relation to equal and fair treatment of suppliers and grounds for exclusion of suppliers from a public sector procurement.

7. CLIMATE CHANGE IMPLICATIONS

7.1. There are no specific climate change implications in this report. Any proposed change to council policy will require an assessment of the climate change implications as part of the detailed development and decision making.

8. EQUALITIES IMPLICATIONS

8.1. There are no specific equality implications in this report. Any proposed change to council policy will require an assessment of the equality implications as part of the detailed development and decision making.

9. REASONS FOR RECOMMENDATIONS

9.1. Given the implications noted above there is question over the credibility of a scheme which has limitations of application of its main objectives but seeks promotion of them from the Council. In addition, where full application is considered, this poses legal risks to the Council.

9.2. In order to remove the risks identified it is recommended that if the County Council wishes to support the principles of the Fair Tax Declaration that this be on the basis of the amended wording as detailed in Appendix 2.

10.0 RECOMMENDATION

10.1 The Executive is asked to consider the revised Motion as drafted in Appendix 2 that has been referred by County Council, and make recommendations for the consideration of County Council on 22 February 2023.

Gary Fielding
Corporate Director (Strategic Resources)

7 February 2023

Rachel Woodward, Head of Procurement & Contract Management

References:

Fair Tax Foundation website: Home - Fair Tax Foundation (fairtaxmark.net)

Surrey County Council: Report on Fair Tax - Report (surreycc.gov.uk)

Appendix 1 – Original declaration and Motion put forward by Cllr. Colling

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FAIR TAXATION

Full Council resolves to:

1. Approve the Councils for Fair Tax Declaration.
2. Lead by example and demonstrate good practice in our tax conduct, right across our activities.
3. Ensure IR35 is implemented robustly, and contract workers pay a fair share of employment taxes.
4. Not use offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.
5. Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers as an artificial device to reduce the payment of tax and business rates.

   Demand clarity on the ultimate beneficial ownership of suppliers UK and overseas and their consolidated profit & loss position, given lack of clarity could be strong indicators of poor financial probity and weak financial standing.
6. Promote Fair Tax Mark certification especially for any business in which we have a significant stake and where corporation tax is due.
7. Support Fair Tax Week events in the area and celebrate the tax contribution made by responsible businesses are proud to promote responsible tax conduct and pay their fair share of corporation tax.
8. Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement

Appendix 2 – Amended Motion - Fair Tax Declaration Report received by County Council on 16 November 2022

Fair Tax Declaration

Proposal:

I propose the council signs up to the Fair Tax Declaration, with required amendments to ensure compliance with the UK Public Procurement.

By signing up to the Councils for Fair Tax Declaration, councils demonstrate alignment to their values and encourage responsible tax practice through:

- leading by example on their own tax conduct
- undertake due diligence, including appropriate and proportionate financial assessment of suppliers within the parameters of the existing regulations
- joining calls for UK public procurement rules to change so that councils can do more to tackle tax avoidance and award points to suppliers that demonstrate responsible tax conduct.

Full Council resolves to:

1. Approve the "Councils for Fair Tax Declaration" in principle.
2. Lead by example and demonstrate good practice in our tax conduct, right across our activities.
3. Ensure IR35 including Public Sector obligations continues to be applied and is implemented robustly and contract workers pay a fair share of employment taxes.
4. Promote Fair Tax Mark certification whilst recognising the need for proportionate burdens on business, and in particular, Small & Medium Enterprises (SMEs).
5. Support Fair Tax Week events in the area, and celebrate the tax contribution made by responsible businesses, are proud to promote responsible tax conduct and pay their fair share of corporation tax.
6. Support calls for urgent reform of UK procurement law to enable local authorities to reward good tax conduct through their procurement.

Full Council notes that:

1. This council spends over £500 m per annum with external suppliers
2. The pressure on organisations to pay their fair share of tax has never been stronger.
3. Polling from the Institute for Business Ethics finds that "corporate tax avoidance" has, since 2013, been the clear number one concern of the British public when it comes to business conduct.
4. Two thirds of people (66%) believe the Government and local councils should at least consider a company's ethics and how they pay their tax, as well as value for money and quality of service provided, when awarding contracts to companies. 2022 polling (2022 ICM Omnibus, a nationally representative omnibus survey of c.2,000 adults across GB between 6 and 11 May 2022) commissioned by the Fair Tax Foundation from ICM.
5. Around 17.5% of public contracts in the UK have been won by companies with links to tax havens. Research commissioned by the Fair Tax Foundation (from DatLab). The estimate relates to the period 2014-19, with the definition of 'tax haven' formulated on the basis of Tax Justice Network index workings.
6. It has been conservatively estimated that losses from multinational profit-shifting could be costing the UK some £17bn per annum in lost corporation tax revenues. Data is derived from https://missingprofits.world/ and supported by researchers from the University of California, Berkeley and the University of Copenhagen.

7. The Fair Tax Mark offers a means for business to demonstrate good tax conduct, and has been secured by a wide range of businesses across the UK, including FTSE-listed PLCs, co-operatives, social enterprises and large private businesses.
8. Paying tax is often presented as a burden, but it shouldn't be.
9. Tax enables us to provide services from education, health and social care, to flood defence, roads, policing and defence. It also helps to counter financial inequalities and rebalance distorted economies.
10. As recipients of significant public funding, local authorities should take the lead in the promotion of exemplary tax conduct.
11. More action is needed, however, as current and proposed new UK procurement law significantly restricts councils' ability to penalise poor tax conduct.
12. UK cities, counties and towns can and should stand up for responsible tax conduct - doing what they can within existing frameworks and pledging to do more given the opportunity, as active supporters of international tax justice.

Appendix 3 - Fair Tax Accreditation Fees for Suppliers

As a not-for-profit social enterprise, the Fair Tax Foundation charge a fee for their assessment and accreditation services to cover their costs and grow the Fair Tax Mark.

Their fees are as follows and have been benchmarked against comparable ethical accreditation schemes:

Annual Turnover	Fees (+VAT)*
Less than £700k	£299
£701k – 10m	£300 – 1,000
£10.1m – 36m	£1,000 – 3,000
£36.1m – 100m	£3,000 – 5,000
£100.1m – 500m	£5,000 – 7,000
£500m and above	£7,000 – 20,000

**** The fee is dictated largely by business income, but with the nature and complexity of a business also being factors***

All fees will be discussed with the business before Letters of Engagement are issued.

For businesses with a turnover under £700k, the fee is paid in a single instalment (and covers both assessment and licence).

For businesses with a turnover over £700k, the fee is split 50/50 between:

- **Assessment**, including suggestions for improvement to secure the Mark
- **Accreditation**, and the issuance of a licence to use the Mark for one year

So, for example, a business with a turnover of between £10.1m – 36m would pay £500 – 1,500 for assessment and (if warranted) a further £500 – 1,500 for an annual licence to utilise the Fair Tax Mark.