



**ANGUS COUNCIL**  
**ANTI-TAX EVASION POLICY**

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### **Policy statement**

The Council is committed to ensuring probity in its commercial dealings and requires the same from its employees, agents, advisers and any supplier, provider or other party with which it engages or transacts. At all times, Council business should be conducted in a manner such that the opportunity for, and incidence of, tax evasion is prevented.

This Policy has been introduced to set out details of the corporate criminal offences in relation to the failure to prevent tax evasion under the Criminal Finances Act 2017 (CFA).

### **1. Background**

The CFA came into force in September 2017 and created corporate offences where a person associated with a body corporate facilitates the commission by another person of a tax evasion offence. Although it is not entirely clear that the legislation applies to local authorities, it is considered that HM Revenue and Customs (HMRC) is likely to regard a local authority as a body corporate.

Given this, under S.44(4) of the CFA, an associated person is a person (including a corporate body) who is:

- a) an employee of the Council who is acting in the capacity of an employee
- b) an agent of the Council who is acting in the capacity of an agent or
- c) any other person who performs services for or on behalf of the Council who is acting in the capacity of a person performing such services.

An offence will be committed under the CFA where the Council fails to prevent an associated person criminally facilitating the evasion of a tax, either in the UK or in a foreign country. The Council is required to take measures to prevent tax evasion. The Council having put in place a system of reasonable procedures that identify and mitigate the risk of facilitating tax evasion can be used as a defence against a corporate prosecution.

### **2. The Criminal Finance Act 2017 - Penalties**

Where an organisation is successfully prosecuted under the CFA the consequences include an unlimited fine and ancillary orders, e.g., confiscation orders. In addition, there is the likelihood of significant reputational damage and adverse publicity.

### **3. Tax evasion / avoidance**

Tax evasion is the illegal non-payment or under-payment of taxes, usually as the result of making a false declaration (or an omission of declaration) of taxes due to the relevant tax authorities.

By contrast tax avoidance as described by HMRC is:

*Tax avoidance involves bending the rules of the tax system to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage. It involves operating within the letter, but not the spirit, of the law.*

Examples and indicators of tax evasion that the Council and its staff could encounter include:

- You become aware, in the course of your work, that a third party has made or intends to make a false statement relating to tax; has failed to disclose income or gains to, or to register with, HMRC; has delivered or intends to deliver a false document relating to tax; or has set up or intends to set up a structure to try to hide income, gains or assets from a tax authority
- You become aware, in the course of your work, that a third party has deliberately failed to register for VAT (or the equivalent tax in any relevant non-UK jurisdiction) or failed to account for VAT
- A third-party requests payment in cash and/or refuses to provide an invoice or receipt for a payment made
- You become aware, in the course of your work, that a third party working for the Council as an employee asks to be treated as a self-employed contractor, but without any material changes to their working conditions
- A supplier or other subcontractor is paid gross when they should have been paid net, under a scheme such as the Construction Industry Scheme
- A third-party requests that payment is made to a country or geographic location different from where the third party resides or conducts business
- A third party to whom the Council has provided services requests that their invoice is addressed to a different entity, when the Council did not provide services to such as an entity directly
- A third party to whom we have provided services asks us to change the description of services rendered on an invoice in a way that seems designed to obscure the nature of the services provided
- You receive an invoice from a third party that appears to be non-standard or customised
- You notice that the Council has been invoiced for a commission or fee payment that appears too large or too small, given the service stated to have been provided
- A third party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to us.

The above list is not exhaustive but does cover the most common methods of tax evasion.

#### **4. Tax evasion facilitation**

Tax evasion facilitation means being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of tax (whether UK tax or tax in a foreign country) by another person, or aiding, abetting, counselling or procuring the commission of that offence. Tax evasion facilitation is a criminal offence, where it is done deliberately and dishonestly, but not where it is done negligently or inadvertently.

The corporate criminal offence of facilitation only applies to tax evasion. A third party must be found guilty of tax evasion before the Council can be found to have facilitated it.

#### **5. Obligations on the Council**

The Council, to put in place proportionate anti-tax evasion safeguards, will:

- Continue to apply customer due diligence measures when dealing with new clients or undertaking certain transactions.
- Appoint nominated officers to whom suspicions of tax evasion activity should be reported, see Section 9.
- Implement internal reporting procedures with respect to tax evasion.
- Train relevant staff in the subject.

## **6. Prevention procedures**

To mitigate the risk of prosecution for the corporate criminal offence of the facilitation of tax evasion, the Council would have to prove that it had in place, reasonable prevention procedures. This would enable the Council to raise a defence.

HMRC have produced guidance to help the Council put in place preventative processes and procedures. The guidance contains six guiding principles:

- Risk assessment
- Proportionality of risk-based prevention procedures
- Top level commitment
- Due diligence
- Communication (including training)
- Monitoring and review.

### Risk assessment

The Council adopts and is committed to a strong anti-fraud and anti-tax evasion culture. Senior Officers should consider risks from the failure to prevent the facilitation of tax evasion within the established risk assessment procedures.

### Proportionality of risk-based prevention procedures

Members and Senior Officers provide a high-level commitment to risk-based prevention procedures. The Council has governance and internal control procedures in place to meet the Council's statutory requirements and duties. This Policy adds to the Council's existing policies including the 'Whistleblowing Policy' and 'Counter Fraud & Corruption Policy'.

### Top level commitment

This Policy has been approved by the Council Leadership Team and the Council's Policy and Resources Committee.

### Due Diligence

Reasonable care and caution are exercised when processing all transactions, particularly high value payments.

### Communication and training

This Policy will be available on the Council's website and intranet. Training will be incorporated into the Council's online e-Learning training platform.

### Monitor and review

The Council will review and update this Policy and its procedures in response to any changes in the risks that it faces. Revisions of the Policy will be published on the Council's Intranet and staff will be made aware through the usual channels.

### **7. Employee responsibilities**

As outlined in the Council's Financial Regulations the prevention, detection, and reporting of all forms of financial irregularity, including suspected tax evasion, are the responsibility of Council employees and other associated persons. All are required to avoid activity that breaches this Policy.

Failure to comply with the obligations detailed in this Policy, may result in disciplinary action for employees and the termination of arrangements with associates.

Should employees or associated persons be concerned that another employee or associated person is facilitating a third party's tax evasion whilst acting for and on behalf of the Council, they should report this as shown in Section 9 below.

### **8. Unacceptable actions**

It is not acceptable for any person acting on behalf of the Council to:

- engage in any form of facilitation of tax evasion or foreign tax evasion
- aid, abet, counsel or procure the commission of a tax evasion offence or foreign tax evasion offence by another person
- fail to promptly report (i) any request or demand from any third party to facilitate the fraudulent evasion of tax (whether UK tax or tax in a foreign country), or (ii) any suspected fraudulent evasion of tax (whether UK tax or tax in a foreign country) by another person, in accordance with this Policy
- engage in any other activity that might lead to a breach of this Policy; or
- threaten or retaliate against another individual who has refused to commit or facilitate a tax evasion offence or a foreign tax evasion offence or who has raised concerns under this Policy.

### **9. Nominated officers and raising a concern**

Everyone has a responsibility to help detect, prevent and report instances of tax evasion. Concerns regarding suspected instances of tax evasion or the facilitation of tax evasion must be reported.

The Council has nominated the Director of Finance, as the nominated officer to whom suspicions of tax evasion activity should be reported. The Service Leader - Internal Audit will deputise in the absence of the Director of Finance. The relevant contact details are

- Director of Finance, Angus Council, Angus House, Orchardbank Business Park, Forfar DD8 1AN or email FINANCE@angus.gov.uk
- Service Leader – Internal Audit, Angus Council, Angus House, Orchardbank Business Park, Forfar DD8 1AN or email InternalAudit@angus.gov.uk

Alternative means of reporting exist in the use of the

- Whistleblowing Policy – [Whistleblowing Policy](#)
- Fraud Reporting process – [Fraud Reporting](#)

You may choose to report your concern anonymously. Such reports will still be treated seriously but may be more difficult to review or investigate. Nevertheless, to make an anonymous report is better than keeping quiet.

**Amendment Form**

<b>Version</b>	<b>Date</b>	<b>Brief Summary of Changes</b>	<b>Author</b>
1.0	20.06.2023	N/A	Ewan Ritchie