Sourced: Christian Aid campaign for local councils to tackle tax dodging

Briefing for local councillors and council officers

Christian Aid is an overseas development charity, working in 45 countries for the eradication of poverty and for a world in which there is equality, dignity and freedom for all, regardless of faith or nationality. We provide urgent, practical and effective assistance where the need is greatest. We also seek to tackle the root causes of poverty through advocacy and campaigning, and with the support of churches and church groups across Britain and Ireland.

In recent years, we have highlighted the damaging effect of corporate tax evasion and avoidance on the world's poorest countries. Tax dodging is costing these countries $160bn[1] a year – far more than they receive in aid. Meanwhile, HMRC calculates that the UK itself is losing approximately £30bn a year to tax dodging,[2] with serious consequences for public-sector services and jobs in this country. Tax avoidance and evasion by big multinational companies also has a negative effect on local small- and medium-sized companies that pay more tax proportionately. This means they cannot compete on a level playing field with multinational companies.

Working with other organisations in the UK and internationally (such as ActionAid and Oxfam), we have successfully persuaded the UK Government, the EU, the G20 and the Organisation for Economic Co-operation and Development to introduce measures to clamp down on corporate tax dodging. But there is still a long way to go. Part of the solution lies in persuading companies that tax dodging will no longer be tolerated by the British public and that it is in their interests to adopt more responsible tax practices.

What we want local authorities to do

We're asking councils to incorporate the new tax compliance measure into their procurement procedures – a measure that is already compulsory for central government contracts worth more than £5m. Christian Aid is appealing to local authorities in the UK to use their leverage with multinational companies, through their procurement contracts, to help increase the pressure on these companies to change their practices. We believe this is a measure that councils can easily adopt to take a stand against corporate tax dodging and demonstrate a zero-tolerance approach, especially when it relates to the use of taxpayers' money. If a critical mass of councils increase their tax-compliance scrutiny of the companies with whom they do business, we are confident that it will have a positive and knock-on effect on the tax culture in the private sector. **It is important to note that we are not asking councils to boycott certain companies or to take any kind of action that would contravene councils' existing legal obligations.**

The details

In 2013, the Cabinet Office issued a set of tax compliance questions, which central government departments are now obliged to pose to companies bidding for government contracts of more than £5m (Procurement Policy Note 03/14 – see Appendix 1). These questions were introduced in the wake of the new General Anti-Avoidance Rule (GAAR) and changes to the Disclosure of Tax Avoidance Schemes (DOTAS). Although compulsory for central government contracts, the tax compliance questions are optional for other public bodies procuring goods and services. Christian Aid would like to see local authorities incorporating these questions into their procurement procedures, so that the companies bidding for council contracts are routinely expected to account for their past tax record.

Councillors may be aware that in early 2015 the Crown Commercial Service issued new Public Contracts Regulations. These include new procurement qualification questions (PQQs), which public bodies (including councils) are now obliged to pose to companies for tenders over an EU-set threshold of £173,000 for service contracts and £4 million for works contracts. The PQQs require companies to declare any tax non-compliance either in the country in which they are established or in the UK (in line with the 2014 EU Procurement Directive). Christian Aid welcomes the introduction of the PQQs. **Nevertheless, the PQQs are not as detailed as the tax compliance questions in Procurement Policy Note 03/2014 (see next section), and critically the PQQs do not ask for disclosure of tax non-compliance in all jurisdictions where a company operates (including developing countries), as required by the tax compliance questions in the Procurement Policy Note 03/2014. Hence our request that councils incorporate Procurement Policy Note 03/2014 into their procurement procedures.**

How do the tax compliance questions go beyond existing checks and balances?

- The tax compliance questions ask companies to disclose more information than simply past criminal convictions for tax evasion. They also require companies to disclose information about tax returns submitted to HMRC (since April 2013) that have been found to be `incorrect' – in other words, to disclose incidents of failed tax-avoidance. By posing the tax compliance questions, councils should receive a more detailed picture of a company's tax record.
- The questions require companies to disclose information about convictions or challenges of their tax affairs by a foreign tax authority – not just by HMRC in the UK. This means that a multinational company either convicted or challenged over tax practices overseas (including in developing countries) would be held to account by these questions. This is of particular interest to Christian Aid, given that corporate tax evasion and avoidance (including by some of the companies bidding for council contracts in the UK) is hampering the ability of developing countries to provide essential services and lift their citizens out of poverty.

What happens if companies disclose `non-compliance' information?

The contracting council can choose whether or not to exclude a company that discloses any tax 'non-compliance'. It may decide it is satisfied with the company's stated `mitigating reasons', or it could decide that it doesn't want to do business with a company that has been `non-compliant', and could cite this as a reason for turning down a tender.

Introducing the tax compliance questions into the council's procurement procedures

Every council has its own and distinctive procedures and structures. Councillors and council officers will have a clearer idea than we do about how the tax compliance questions could be incorporated into the council's procedures. Ideally, we recommend that councils pass a motion/resolution either in a cabinet or full council meeting, so that the council's action against tax dodging is firmly in the public domain and can be publicised to local people. See Appendix 2 for a model resolution.

If you think the model resolution is too long for your purposes, Richmond council passed a much shorter resolution on 25 November 2014, as follows:

'This council notes that the UK Government has taken steps to tackle the issue of tax abuse by companies seeking to secure government contracts for the supply of goods and services and has issued Procurement Policy Note 03/14: promoting tax compliance. Subject to officers reviewing the practical implementation issues, this motion calls for the council's procurement policies to be amended to ensure that all bidders for council contracts self-certify that they are fully tax compliant in line with central government practice.'

Regional consortia

If the council procures some of its goods and services through consortia, we would ask that councils approach the relevant consortia and ask them also to incorporate the tax compliance questions into their procurement procedures.

Has your council already passed a resolution against tax dodging, as part of ActionAid's Towns Against Tax Dodging campaign?

If so, a decision to incorporate the tax compliance questions into the council's procurement procedures is a logical and practical next step, in order to demonstrate real commitment to tackling tax dodging (ActionAid fully supports this).

If you have further questions, please contact: campaigns@christian-aid.org or tel 020 7523 2264.

See Appendix 1: Procurement Policy Note 03/14: promoting tax compliance – questions.

See Appendix 2: Model resolution for adoption by local councils.

Appendix 1:

Procurement Policy Note 03/14: promoting tax compliance – Questions

Q1. The supplier must state whether, from 1 April 2013 onwards:

1.1. Its tax affairs have given rise to a criminal conviction for tax-related offences that is unspent, or to a penalty for civil fraud or evasion *and/or*

1.2. Any of its tax returns submitted on or after 1 October 2012 has been found to be incorrect as a result of:

- HMRC successfully challenging it under the General Anti-Abuse Rule (GAAR) or the 'Halifax' abuse principle *or*
- a tax authority, in a jurisdiction in which the supplier is established, successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or the 'Halifax' abuse principle *or*
- the failure of an avoidance scheme that the supplier was involved in and which was, or should have been, notified under the Disclosure of Tax Avoidance Scheme (DOTAS) or any equivalent or similar regime in a jurisdiction in which the supplier is established.

If answering 'yes' to either Q1.1 or 1.2 above, the supplier may provide details of any mitigating factors that it considers relevant and that it wishes the authority to take into consideration. For example, this could include:

- corrective action undertaken by the supplier to date
- planned corrective action to be taken
- changes in personnel or ownership since the OONC *or*
- changes in financial, accounting, audit or management procedures since the OONC.

In order to consider any factors raised by the supplier, procuring authorities will find it helpful to have the following information:

- A brief description of the occasion, the tax to which it applied, and the type of 'non-compliance' – for example, whether HMRC or the foreign tax authority has challenged pursuant to the GAAR, the 'Halifax' abuse principle, etc.
- Where the OONC relates to a DOTAS, the number of the relevant scheme.
- The date of the original 'non-compliance' and the date of any judgement against the supplier, or date when the return was amended.
- The level of any penalty or criminal conviction applied.

Appendix 2:

Model resolution for adoption by local councils

This council recognises:

1. The growing awareness of tax avoidance and tax evasion and their impact in recent years.
2. The importance of curtailing and eventually eliminating tax avoidance and evasion in the local economy, if a sound market economy is to be created in which all traders, whether locally or nationally based, can compete on a level playing field to provide the goods and services that our community needs.
3. The wider impact of tax avoidance and evasion on our national economy, where the gap between tax income collected by our national government and that which would be due if tax law was complied with, as parliament intended, is not less than £30bn a year in the estimate of HM Revenue & Customs, and may be substantially higher in the estimate of others; and that this tax gap does, inevitably, impact upon the level of income available to this authority to undertake its work in our local communities.
4. The impact of tax abuse internationally, and in particular its cost to developing countries (many of which have close relationships with persons living in our communities), which as a result of tax avoidance and evasion by multinational corporations are estimated to lose sums greater than the amount they receive in development aid each year, with consequent impact on our relationships with those communities.
5. That the UK Government has taken steps to tackle the issue of tax avoidance and evasion by companies seeking to secure contracts for the supply of goods or services, and has issued Procurement Policy Note 03/14: promoting tax compliance, about which it says, 'A new policy was announced in the March 2013 Budget on the use of the procurement process to promote tax compliance. This applies with effect from 1 April 2013 to all central government contracts of more than £5 million. Suppliers bidding for these government contracts must self-certify their tax compliance.'

This council now agrees that:

1. Both tax avoidance and tax evasion represent a threat to the operations of this council, the services it supplies to the communities it represents, the effective operation of the local economy, our national economy, the economies of other countries and our relationships with them.
2. As a consequence of the noted threats created by tax abuse within and beyond our communities, this council wishes to take action to tackle tax abuse in all its forms, and as a result:
   a. requires that the chief executive of the council notes Procurement Policy Note 03/14: promoting tax compliance, and adapts it for use as part of the procurement procedures of this council, excepting that the resulting policy shall apply to all companies bidding for contracts exceeding £xxx,000 in value, and to report back on this issue not later than xx xxx 2015
   b. requires that those who represent this council, when making decisions regarding investments that fund the pensions payable to past and present employees of this authority, take tax avoidance and evasion into consideration when assessing the suitability of those companies in the shares of which such funds might be invested
   c. agrees that this council will actively support campaigns by HM Revenue & Customs and others, including non-governmental organisations, that encourage tax compliance and an end of tax abuse in the area covered by this council and beyond
   d. authorises the necessary expenditure to implement these proposals
   e. requires a report back on progress made with regard to each of these proposals, not less than once quarterly for the next three years
   f. requires that the council actively publicise this policy.

Endnotes

1. $160bn relates to companies' abuse of transfer pricing rules, based on extensive research into customs data in 2008. For more details see *False Profits,* Christian Aid, 2009, www.christianaid.org.uk/Images/false-profits.pdf

2. *Measuring tax gaps, 2013 edition: Tax gap estimates for 2011-12,* HM Revenue & Customs, 2013, p4, www.gov.uk/government/uploads/system/uploads/attachment_data/file/249537/131010_Measuring_Tax_Gaps_ACCESS_2013.pdf