Sourced:
Christian Aid's campaign briefing for local councillors and council officers

Councils spend billions of pounds each year on goods and services. This puts them in a powerful position to insist on minimum ethical standards from the companies that they do business with. Christian Aid's Sourced campaign calls on local councils to introduce tougher questions about tax compliance when they buy goods and services from private companies.

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 up to US$300bn each year[1] – far more than they receive in aid. Meanwhile, HMRC calculated in 2013 that the UK itself is losing in the region of £30bn, of which £9bn was estimated to be unpaid tax by big businesses,[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.

What we want local authorities to do

We're asking councils to incorporate a new tax compliance measure into their procurement procedures – a measure that is already compulsory for central government contracts worth more than £5m. Our supporters are 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 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 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.

A number of UK councils have already started asking these questions of companies that bid to supply their goods and services.

The details

In 2014, the Cabinet Office issued a set of tax compliance questions (Procurement Policy Note 03/14 (PPN 03/14) – see Appendix 1), which central government departments are now obliged to pose to companies bidding for contracts of more than £5m. These questions were introduced in the wake of the new General Anti-Abuse 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, as stated in the 2015 Public Contract Regulations.

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.

'At a time when councils are struggling with ever deeper cuts to our budgets, it makes sense that we use our spending power to favour companies that pay their taxes. After all, it is companies' and individuals' tax payments that ultimately fund council budgets. I hope that councils across the UK will agree – and adopt policies similar to Oxford City Council's.'

Jean Fooks, Councillor for Summertown Ward, Oxford

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

- The tax compliance questions in PPN 03/14 (now contained in Section 4 of the 2015 Public Contract Regulations) ask 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 their attempts at failed tax-avoidance.** By posing these tax compliance questions, councils should receive a more detailed picture of a company's tax record.

It makes sense for councils to encourage companies to pay their taxes – after all, councils are funded by tax revenue.

- 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 us, as supporters of 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 distinctive procedures and structures. Councillors and council officers will have a clearer idea than we do about how your council's procurement policies can be amended. Ideally, we recommend that councils pass a motion at a 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 (page 3) for a model resolution.

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 to incorporate the tax compliance questions into their procurement procedures, too.

Has your council already passed a motion 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 next step, in order to demonstrate practical commitment to tackling tax dodging (ActionAid fully supports this).

Have any councils passed such a motion already?

Nine councils including Belfast City Council and Richmond Borough Council have now passed motions to incorporate PPN 03/14 into their procurement policies, and there has been active engagement with many more councils, including Devon County Council, Hampshire County Council, Oxford and Bristol City councils.

If you have further questions, contact:

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Appendix 1

Procurement Policy Note 03/14 – Questions

The questions below were introduced in the March 2014 budget and are detailed in a document entitled 'Cabinet Office – Procurement Policy Note 03/2014'.

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, 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 occasions of non-compliance (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', *eg, 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 motion for your council to pass

This council notes that:

- corporate tax evasion and avoidance are having a damaging impact on the world's poorest countries, to such a level that it is costing them far more than they receive in aid
- this is costing the UK as much as £30bn a year
- this practice also has a negative effect on small and medium-sized companies who pay more tax proportionately.

This council further notes that the UK Government has taken steps to tackle the issue of tax avoidance and evasion by issuing Procurement Policy Note 03/14 (PPN 03/14). This applies to all central government contracts worth more than £5m.

This council also notes the existence of voluntary schemes promoting tax compliance such as the Fair Tax Mark, which can serve as an independent means of verification. This council notes the 2015 Public Contract Regulations which state (in section 4) that local government can choose to adopt Procurement Policy Note 03/14.

This council believes that bidders for council contracts should be asked to account for their past tax record, using the higher standards in PPN 03/14.

This council therefore calls for procurement procedures to be amended to require all companies bidding for service contracts worth more than £XXXX and for works contracts worth more than £XXXX (your council can suggest the size of contract that this would apply to) to self-certify that they are fully tax-compliant in line with central government practice using the standards in PPN 03/14, applying to contracts of the size specified above.

This council asks the cabinet to publicise this policy and to report on its implementation annually.

The Fair Tax Mark

The model motion recognises the newly established Fair Tax Mark as a useful means for councils to verify independently whether a company pays a fair share of tax, although not many multinational companies have signed up to it yet.
Find out more at www.fairtaxmark.net

Tax dodging costs poor countries far more than they receive in aid.

End Notes:

1. In 2015, an International Monetary Fund Working Paper estimated the loss to developing countries to be in the range of US$100bn to US$300bn a year. See www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf
For commentary on these figures, see http://uncounted.org/2015/06/01/imf-developing-countries-beps-revenue-losses-exceed-$200-billion/
Christian Aid's research in 2009 estimated the loss to developing countries to be US$160bn a year. See report, *False profits: robbing the poor to keep the rich tax-free,* at 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

3. In 2013, the *Financial Times* reported: 'Zambia's government estimates that it is losing US$2bn annually as a result of tax avoidance and transfer pricing by foreign companies on its turf.' See: www.ft.com/cms/s/0/93b47d9a-b196-11e2-b324-00144feabdc0.html#axzz3xso2ICWF

'There is a big problem in healthcare. The government support we get now is not enough. Government will is there, but the resources are very few.'

Elisheba Chali, nurse at Kabundi East Hospital in Zambia

The Zambian government estimates it loses US$2bn a year from tax dodging. This is three times Zambia's national health budget.[3]