

**Decision Maker:** EXECUTIVE AND RESOURCES PDS COMMITTEE

**Date:** 19 November 2014

**Decision Type:** Non-Urgent                      Non-Executive                      Non-Key

**Title:** MOTION FROM COUNCIL - UK CORPORATION TAX

**Contact Officer:** Graham Walton, Democratic Services Manager  
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**Chief Officer:** Mark Bowen, Director of Corporate Services

**Ward:** N/A

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1. Reason for report

- 1.1 At the meeting of full Council on 13<sup>th</sup> October 2014 a motion was moved by Councillor Ian Dunn and seconded by Councillor Kathrine Bance MBE requesting the Executive to include a requirement in all future tenders that successful tenderers should not make use of tax havens and should pay full UK Corporation Tax on profits made on Council contracts. The motion is set out in section 3 below. Council decided to refer the report to the Executive and Resources PDS Committee and the Executive that Members could be properly informed of the legal and financial implications.
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2. **RECOMMENDATION**

**Members are requested to consider the legal and financial advice set out in this report and decide whether to recommend to the Executive that it accepts the proposal in the motion from Councillor Dunn.**

### Corporate Policy

1. Policy Status: New Policy:
  2. BBB Priority: Excellent Council:
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### Financial

1. Cost of proposal: Not Applicable:
  2. Ongoing costs: Not Applicable:
  3. Budget head/performance centre: Not Applicable
  4. Total current budget for this head: Not Applicable
  5. Source of funding: Not Applicable
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### Staff

1. Number of staff (current and additional): Not applicable
  2. If from existing staff resources, number of staff hours: Not Applicable
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### Legal

1. Legal Requirement: None:
  2. Call-in: Applicable:
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not Applicable
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: Not applicable

### 3. COMMENTARY

3.1 At the recent meeting of full Council on 13<sup>th</sup> October 2013 the following motion was moved by Councillor Ian Dunn and seconded by Councillor Katherine Bance MBE –

**“This Council requests the Executive to include a requirement in all future tenders that the successful bidder should pay full UK Corporation Tax on the profit they make on the contract and not make use of tax havens.”**

3.2 With the agreement of Councillor Dunn, the motion was deferred to the next meeting of the Executive and Resources PDS Committee so that officers could ensure that Members were properly informed of the legal and financial implications of the motion. Subject to this, a the issue can be referred to the Executive for decision if necessary. The outcome will be reported back to the next Council meeting on 8<sup>th</sup> December 2014.

3.3 Payment of the correct amount of tax by organisations involved in public sector contracts and generally has been a sensitive issue for several years. At Central government level a new policy was introduced from 1 April 2013 requiring organisations bidding for government contracts valued over £5m to self-certify tax compliance at pre-qualification stage. Tenderers are asked to self-certify whether an occasion of non-compliance has occurred and, if it has occurred, what steps the organisation has put in place to ensure it will not occur in future. This statement of assurances can be assessed by the contracting authority when deciding whether to exclude the economic operator or not from the competition. This approach is broadly supported by Regulation 23(4)(g) of the Public Contracts Regulations 2006 which provides for discretionary exclusion on the grounds that the economic operator has “not fulfilled obligations relating to the payment of taxes...”.

3.4 The new EU procurement directive is supportive of excluding economic operators who do not comply with tax obligations and draft Regulation 57 of the draft Public Procurement Regulations 2015 provides that conviction for certain tax offences and fraudulent evasion of taxation obligations are mandatory grounds for exclusion from a tendering process for a local authority contract. There are similar grounds for exclusion where it has been proved through a binding administrative decision that an economic operator has failed to comply with its obligations to pay tax or social security contributions. There is also a discretionary exclusion where there isn't such an obligation but the contracting authority can demonstrate non-compliance. However these exclusions will cease to apply where any outstanding tax has been repaid or an economic operator has entered into an agreement to repay.

3.5 However the provisions do not include a requirement which permits exclusion where there may be “sharp practice” but no breach.

### 4. FINANCIAL IMPLICATIONS

4.1 It is not possible to quantify the impact of this requirement on future contract prices, the number of organisations affected in bidding for such work and whether such organisations affected would normally be successful in bidding for such work.

### 5. LEGAL IMPLICATIONS

5.1 The Council as a statutory corporation has to ensure that it acts within the law and has a basis in statute or regulations for its actions. The Localism Act 2011 has relaxed the position by introducing a general power of competence which serves as a power to carry out anything that a private individual can unless there is a prohibition against doing so.

- 5.2 Legally there various issues which would need to be overcome. Firstly section 117 of the Local Government Act 1988 prevents non-commercial considerations being taken into account in decisions around the award of contracts..
- 5.3 Section 17(5) (e) states that non-commercial matters include “the location in any country or territory of the business activities or interests of contractors.”
- 5.4 Secondly as has been a recent highlighted by the recent ECJ judgment in the Bundesdruckerei case (case C-549/13, judgment of 18 September 2014) introducing what may be seen as desirable objectives into the EU contracting framework will often not be straight forward. Here, a contracting authority sought to require that contractors pay their staff the minimum wage fixed by German law and that contractors undertake that their sub-contractors also did so. One contractor complained that this was unfair as its Polish sub-contractor would be obliged to pay the German minimum wage to its Polish workers, which was higher than the Polish minimum wage; such a condition would lead to the Polish sub-contractor losing the competitive advantage it otherwise had. The ECJ ruled that a minimum wage requirement could be contrary to EU law although it could in some circumstances be justified by the objective of protecting employees. In the circumstances of this case, it was not justified as the proposed measures were disproportionate and went beyond what was necessary to ensure that the objective of employee protection was attained.
- 5.5 Although the above issue deals with the minimum wage, similar principles could be applied to different approaches to taxation.

<b>Non-Applicable Sections:</b>	Policy/Personnel
Background Documents: (Access via Contact Officer)	Minutes of full Council, 13 <sup>th</sup> October 2014