



Fair Tax Mark
Unit 21
41 Old Birley Street
Manchester
M15 5RF
(0161) 5210024

Cabinet Office
70 Whitehall
Westminster
London
SW1A 2AS

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Fair Tax Mark response to consultation on Green Paper: Transforming public procurement

We thank you for the opportunity to comment on the Government's proposals on the above issue.

Please note that this submission, prepared by the Fair Tax Mark, is additionally supported by:

– Tax Justice UK¹, Tax Research LLP², Church Action for Tax Justice³, Association for Accountancy and Business Affairs, UK Women's Budget Group⁴, Centre for Local Economic Strategies⁵, Taxpayers Against Poverty⁶ and Ethical Consumer Research Association⁷.

1. About the Fair Tax Mark

The Fair Tax Mark⁸ certification scheme was launched in February 2014 and seeks to encourage and recognise organisations that pay the right amount of corporation tax at the right time and in the right place. Tax contributions are a key part of the wider social and economic contribution made by business, helping the communities in which they operate to deliver valuable public services and build the infrastructure that paves the way for growth.

¹ <https://www.taxjustice.uk/>

² <https://www.taxresearch.org.uk/>

³ <https://www.catj.org.uk/>

⁴ <https://wbg.org.uk/>

⁵ <https://cles.org.uk/>

⁶ <http://taxpayersagainstpoverity.org.uk/>

⁷ <https://www.ethicalconsumer.org/>

⁸ More at <https://fairtaxmark.net>

More than sixty businesses have now been certified, including FTSE-listed PLCs, co-operatives, social enterprises and large private business – which between them have over 7,000 offices and outlets. Fair Tax Mark accredited businesses include Lush, SSE, Marshalls, Pennon, Richer Sounds, Timpson Group, Leeds Building Society, the Co-op, Capita and Severn Trent.

A suite of global accreditation standards will be rolled out in the second half of 2021. We operate as a not-for-profit social enterprise and believe that companies paying tax responsibly should be celebrated, and any race to the bottom resisted.

Other initiatives include Fair Tax Week – a UK-wide celebration of the companies and organisations that are proud to pay their fair share of corporation tax – and the Councils for Fair Tax Declaration. Launched in 2019, the Declaration encourages UK cities, towns and districts to stand up for responsible tax conduct by demonstrating good practice across their own affairs, demanding greater transparency of suppliers (including beneficial ownership disclosure and full financial reporting), and supporting calls for more meaningful powers to tackle tax avoidance amongst suppliers. 11 local councils have now made a significant commitment to fair tax practices via the Declaration, with motions proposed and supported by councillors of all political persuasions.⁹ More at <https://fairtaxmark.net>

2. Summary of submission

We welcome this opportunity to comment on reform of UK public procurement and commend the proposed step-change in transparency requirements and open data provisions.

We fully support the introduction of beneficial ownership data as a procurement consideration. As well as aiding Government's anti-corruption priorities, it is also a key indicator of good corporate tax conduct.

We believe that beneficial ownership data and other 'good' tax conduct measures can and should be more effectively considered given their contribution to enabling better identification and mitigation of financial and corruption risks by contracting authorities. In this respect we support the assertion by Open Ownership and other groups that the benefits of using BO data in procurement will stand or fall on whether the data is reliable and up to date (and, we would add, 'in the public domain' – see below).

We suggest that allowing 'good tax conduct' to permeate public procurement across the UK, provides the UK Government with an excellent opportunity to further advance both its corporate responsibility, transparency and anti-tax avoidance credentials.

⁹ As of the date of submission, the following local councils have approved the Councils for Fair Tax Declaration: Oxford City Council, Oldham Borough Council, Peterborough City Council, Cannock Chase Council, Royal Borough of Greenwich, Bingley Town Council, City of Lincoln Council, Trafford Council, Sunderland City Council, South Tyneside Council. The City of Edinburgh Council has set a target for a number of supplier businesses to meet Fair Tax Mark standards.

We suggest that tax conduct criteria, to include public disclosure of beneficial ownership and the fullest possible financial statements, as well as a tax policy, should be made a condition of contract award. Additionally, we suggest that centralised scrutiny of supplier beneficial ownership and financial reporting data (where complexity can be an indicator of poor financial standing) would assist with identification of corruption and financial risk. Such analysis is essential at both a subsidiary and parent level.

Doing so would additionally support the aims of and objectives of:

- the annual Tax Strategy reporting requirements of the Finance Act 2016 – that apply to large UK companies or large groups that are part of a Multi-National Enterprise;
- the Government’s Anti-Corruption Strategy – which has ‘reduce corruption in public procurement and grants’ as one of six priorities;
- Corporate Transparency and Register Reform – as set out in the consultation of December 2020; and
- HM Treasury’s Managing Public Money.

3. Response to questions

Q1. Do you agree with the proposed legal principles of public procurement?

We support the proposal to embed transparency by default throughout the commercial lifecycle, including implementation of the Open Contracting Data Standard.

Transparency is core consideration of Fair Tax Mark business accreditation and of good corporate tax conduct more broadly. We propose that introduction of further measures to encourage good tax conduct amongst suppliers is a key way that Government can support the proposed principles of public good, value for money, transparency and integrity (including supporting sound management of public money). This would in turn align public procurement with fiscal and corporate governance priorities more closely than at present.

We strongly agree that the principles of the new regulatory framework for public procurement should be consistent with HM Treasury’s Managing Public Money, in particular section 5.6.1.¹⁰

Q2. Do you agree there should be a new unit to oversee public procurement with new powers to review and, if necessary, intervene to improve the commercial capability of contracting authorities?

We are broadly in favour of the proposal to establish a new unit. The unit could support alignment with broader transparency policy priorities by overseeing scrutiny of supplier beneficial ownership and financial reporting data, with

¹⁰ HM Treasury ‘Managing Public Money’, 5.6.1: “Public sector organisations should not engage in, or connive at, tax evasion, tax avoidance or tax planning. If a public sector organisation were to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the Exchequer as a whole would be worse off – thus conflicting with the accounting officer’s duties (section 3.3). Thus artificial tax avoidance schemes should normally be rejected.”

attention given to identification of complex ownership structures and consistently low cash taxes paid, as indicators of poor financial standing.

Q3. Where should the members of the proposed panel be drawn from and what sanctions do you think they should have access to in order to ensure the panel is effective?

The panel should include a range of supplier representatives including from the co-operative and social enterprise business sectors. The selection process, panel membership and recommendations should be made open and transparent.

Q10. How can government more effectively utilise and share data (where appropriate) to foster more effective innovation in procurement?

We suggest the following:

- a central one-stop clearance which verifies supplier information including beneficial ownership;
- digital, open data on contracts through from planning, to award and implementation; and,
- new powers for a centralised, expert unit to scrutinise public procurement.

Data collected should enable contracting authorities to form an informed picture of a whole supplier group structure as well as full and proper assessment of its financial standing.

Q13. Do you agree that the award of a contract should be based on the "most advantageous tender" rather than "most economically advantageous tender"?

We fully support the proposal to take a broad view of value for money that includes social value.

We propose that to support delivery of Government's broader priorities the following tax conduct criteria should be introduced as a condition of contract award:

- Clear public disclosure of ultimate beneficial owners of suppliers (i.e., those with significant control)
- Suppliers providing a publicly-available tax policy that explicitly shuns tax avoidance and the artificial use of tax havens and low-tax jurisdictions – e.g., no connection to tax havens when this is not a legitimate trading activity with the purpose of serving the local community; explicitly eschews profit-shifting and commits to the declaration of profits in the place where their economic substance arises
- The consolidated annual profit/loss of the parent company should be publicly available within the UK, together with details of associated corporation tax payments (total, current and deferred tax payments) – multinational businesses should disclose this on a country-by-country basis.

We note that BEIS' recent consultation¹¹ on proposals to enhance the role of Companies House and significantly increase the transparency of UK corporate entities. Introducing the fullest possible financial reporting requirements as a contract award criteria would align public procurement with these proposals and require all UK public suppliers to adhere to equivalent transparency standards.

Q14. Do you agree with retaining the basic requirement that award criteria must be linked to the subject matter of the contract but amending it to allow specific exceptions set by the Government?

We propose allowing a specific, limited break with subject matter of contract to allow consideration of supplier tax conduct as outlined above, justifiable on the basis of its centrality to delivering on the proposed principles of public procurement.

Q16. Do you agree that, subject to self-cleaning fraud against the UK's financial interests and non-disclosure of beneficial ownership should fall within the mandatory exclusion grounds?

Yes, we fully support this proposal and the suggestion by Open Ownership that it would be sensible to integrate the plans for the use of (verified) beneficial ownership data in procurement with the existing BO data infrastructure the UK government has, to create a Single Source of Truth of beneficial ownership of legal entities across the UK, as well as foreign entities seeking to do business with the UK Government.

Q17. Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion?

We support the continued inclusion of non-payment of taxes (as set out in the Public Contract Regulations (PCR) 2015 57(3)) as a mandatory exclusion criteria, as well as the introduction of tax evasion as a discretionary exclusion criteria (alongside those already set out in the PCR 2015 57(4)), as important deterrents. We support the proposals in the Green Paper to subsume these criteria within existing broader exclusion clauses for the purposes of simplification.

We support the suggestion made by Open Contracting in their response that: "The information relating to a list of companies excluded for tax evasion or other unacceptable behaviours should be made public as open structured machine readable data recorded in their evidence locker if they have one and also added to the new centrally managed debarment list."

Additionally, we support the proposal by Spotlight on Corruption that the corporate criminal offences of failing to prevent bribery or tax evasion should be added to the grounds for mandatory exclusion as these are the primary corporate offences for these crimes.

¹¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942160/Consultation_on_improving_the_quality_and_value_of_financial_information_on_the_register.pdf

Q19. Do you agree that non-payment of taxes in regulation 57(3) should be combined into the mandatory exclusions at regulation 57(1) and the discretionary exclusions at regulation 57(8)?

Yes. We support the continued inclusion of non-payment of taxes as mandatory and discretionary exclusion criteria as an important deterrent, and support the proposals in the Green Paper to subsume these criteria within existing broader exclusion clauses for the purposes of simplification.

However, we note that an absence of legally proven misconduct is insufficient in itself an indicator of tax compliance. In recognition, Government policy over the past decade has become more forward looking, for instance improving tax compliance by mandating improvements in corporate transparency and policy (for example, beneficial ownership disclosure and tax strategy reporting).

Existing regulations permit supplier tax conduct to be considered as a material issue in procurement only where there has been a proven breach of tax obligations, and then only where self cleaning measures are judged insufficient. As far as we are aware, this approach has not resulted in any instances of exclusion in UK public procurement to date.

We suggest that these reforms offer a golden opportunity for public procurement to consider supplier tax conduct more effectively, with forward looking contract award measures as outlined above.

We note that 11 local authorities made a significant commitment to responsible tax via our 'Councils for Fair Tax Declaration'. The Declaration commits councils to leading by example on their own tax conduct, demanding greater transparency from suppliers as well as calling for measures that would allow more meaningful consideration of tax conduct in public procurement. Motions supporting the Declaration have been tabled and supported by councillors of all political persuasions.

Q21. Do you agree with the proposal for a centrally managed debarment list?

Yes. We support the suggestion made by Open Contracting in their response that: "The debarment list should underpin the process of excluding companies from individual procurements and should be able to cope with subsidiaries and related companies within and outside the UK."

Information on companies excluded for tax evasion should be included on the debarment list.

Furthermore, we suggest that government considers a centralised means of assessing whether a company has met the threshold for self-cleaning. We note the precedent of Denmark where the government commissioned external legal advice as to whether a company had adequately self-cleaned in order to be considered reliable.¹²

¹² <https://www.inhouselawyer.co.uk/legal-briefing/corruption-procurement-and-self-cleaning-in-denmark/>

Q22. Do you agree with the proposal to make past performance easier to consider?

Yes. We recognise the legitimacy of making provision for self-cleaning but, as above, suggest that assessment be managed centrally. Where a supplier has been found in breach of tax obligations the requirements for 'self cleaning' should extend beyond having paid the resulting financial penalty.

Q23. Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?

Yes, but not to the extent that simplification would undermine proper assessment of supplier financial standing.

We agree with the proposal to: "Assess the economic and financial standing of suppliers. All outsourcing projects should comply with a minimum standard when assessing the risk of a supplier going out of business during the life of a contract."

We suggest that the proposed new Unit has a role in overseeing supplier risk analysis. This could usefully include consideration of complex ownership structures which, particularly where routed through low tax jurisdictions, might suggest a financial and/or corruption risk. Recent failures indicate that complex ownership structures can be an indicator of financial risk, such as the case of care home provider, Four Seasons, where analysis indicates that complex, offshore ownership structures contributed to its collapse.¹³

Q27. Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?

Yes. This should include public disclosure of supplier beneficial ownership and the fullest possible financial reporting as outlined above.

Q28. Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?

Yes. We agree with the proposed requirement to implement the Open Contracting Data Standard. We urge that it be implemented comprehensively to include digital, open data on contracts throughout the commercial lifecycle from planning, to award and implementation. Bidder information should be supported by a central one-stop clearance which verifies supplier information including beneficial ownership.

¹³ <https://chpi.org.uk/wp-content/uploads/2019/11/CHPI-PluggingTheLeaks-Nov19-FINAL.pdf>