Fair Tax Mark Criteria Notes

Solely UK-based business Standard

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I. Foreword

This Solely UK-based business Standard was first released in 2014. Redesign and minor amends undertaken April 2019 and spring 2021.

Placing business at the heart of society

Tax is an issue whose time has come.

In November 2013, the Institute of Business Ethics reported that:

> *"Worries about tax avoidance have shot to the top of public concerns about business behaviour, replacing executive remuneration by a wide margin, according to the latest survey of public opinion conducted for the Institute of Business Ethics by IPSOS Mori."* [1]

The Fair Tax Mark, which has grown out of the campaign for greater corporate tax fairness that has been supported by a wide range of NGOs, civil society organisations, trades unions and churches, reflects that concern.

However, in addition to outlining a code of corporate ethics when it comes to tax, we encourage and reward the use of these principles when they are put into practice.

That's our reason for being and what is unique about what we do. In that sense we are ahead of the curve on this issue because nothing like the Fair Tax Mark has existed until now.

Principles behind the Fair Tax Mark

The Fair Tax Mark's guiding principles when it comes to corporation tax are that:

- a business / organisation should pay the right amount of tax (but no more) in the right place at the right time, according to the spirit of the law of the jurisdiction in question;
- a business / organisation should be able to be held to account on its tax behaviour by the public, based on the disclosure of sufficient information.

It should be noted that we are not alone in thinking that these issues are important. The principles we are promoting directly relate to two of the seven tax principles that the CBI promotes, which say:

- UK businesses should only engage in reasonable tax planning that is aligned with commercial and economic activity and does not lead to an abusive result;
- [Firms should] seek to increase public understanding in the tax system in order to build public trust in that system, and, to that end:
    - *they should consider how best to explain more fully to the public their economic contribution and taxes paid in the UK;*
    - *this could include an explanation of their policy for tax management, and the governance process that applies to tax decisions, together with some details of the amount and type of taxes paid.*[2]

Businesses with the Fair Tax Mark bring these aspirations to life and seek to:

- pay the right amount of tax (but not more) in the right place at the right time. By following the spirit and not just the letter of the law, using only legitimate reductions, and not abusing tax havens or avoidance schemes;

- set the standard for transparency. By publishing their profit and loss statement even if not required to do so by law, reporting economic activity and taxes in different countries (if applicable) and explaining tax charges clearly;

- lead the pack on responsibility. By committing publicly to responsible tax practices and disclosing the supporting information as required.

Tax and the bottom line

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.

More and more business now recognise that they need to consider their triple bottom line, and now manage and account for their social and environmental impacts, as well as their conventional economic impacts.

The founders of the Fair Tax Mark have advocated for this broader approach for some time; in 2006, they were key contributors to a flagship publication on tax and corporate responsibility[3] which did much to advance the issue and concluded that:

- there is increasing attention and importance being given to the wider economic impacts that companies have on their stakeholders;

- the interests and involvement of stakeholders in the debate about corporate tax policies and planning is transforming the agenda from one driven primarily by the observance of legal and financial standards, to one focused on economic accountability to stakeholder groups;

- a significant barrier to the integration of corporate responsibility principles into tax policies and planning is the cultural framing of tax as a specialist, technical and non-core business activity; and

- increased transparency of corporate approaches to tax is primarily an opportunity to build more robust tax strategies and to generate greater confidence among stakeholders.

These conclusions are now widely accepted across the political spectrum, and have informed the Fair Tax Mark's mission and purpose, which is to:

- encourage the development by companies (and other organisations) of robust tax strategies that reflect sound corporate governance principles, fair play, integrity and an approach to business that all stakeholders can trust;
- champion open and honest reporting of the implementation of these policies, which should be delivered in a readily accessible and (where possible) non-technical manner;
- strengthen trade with companies that adopt such progressive strategies.

By doing so we are unambiguously seeking to boost the fortunes of those companies that pay fair tax and are transparent and fully accountable about it. For us, this is evidence that they are good corporate citizens who are willing to pay their way in the world for the benefit of the common good, of which they form a valuable part. We are unashamed about that: doing the right thing should pay a return to those who lead progressive change.

The development process

The UK-only Fair Tax Mark criteria have been devised in a process that has taken more than a year of research and consultation. This has involved a broad range of stakeholders including civil society NGOs, business representatives and industry practitioners. Input has also come from our group of independent technical advisors drawn from academia and the professions.

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II. Introduction

These criteria notes provide guidance on our Solely UK-based business Standard. It sets out what we are seeking to measure, and why.

Companies are awarded points for meeting each criterion, up to a potential total score of 20 points.

Companies can achieve a Fair Tax Mark by scoring on or above the threshold of 13 points. However, in future years this may be raised, as the methodology and learning evolves.

The overall assessment is split into two parts:

- transparency;
- tax rate, tax avoidance and disclosure.

Note: in 2017 we developed a separate standard for small business (turnover of £1 million or less) that trade exclusively from the UK. This takes account of the lighter reporting standards they are generally required to adhere to, and changes to company law that were progressed at this time.

Aims and benefits of the Fair Tax Mark

The Fair Tax Mark is about acknowledging, assuming responsibility for and being transparent about the impact of a company's taxation decision-making and policy.

The Fair Tax Mark is an indication that a business is accountable to a range of stakeholders when it comes to tax.

As such, the Fair Tax Mark is a recognition that tax is more than a quantitative issue about the amount of tax paid; it is also an issue of qualitative importance and central to business culture and practice.

The basic premise of the Fair Tax Mark is that a Fair Tax business or organisation:

- has adopted a fair tax policy that suggests that it is seeking to pay the right amount of tax (but no more) in the right place at the right time, where 'right' means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes;
- is transparent about who owns it, what it does and where it is;
- provides sufficient accounting data to suggest that its fair tax policy has been put into practice.

The Fair Tax Mark criteria support responsible business in two ways: they help protect an organisation from reputational and financial risk, at the same time as projecting an image of openness, honesty and trustworthiness to consumers, employees and investors.

This Solely UK-based business Standard has been designed for use by:

– UK limited companies, co-operatives and plcs. It is not suitable for sole traders and partnerships that do not put their accounts on public record. Nor is it suitable for limited liability partnerships where the owners pay the tax for the business and so no tax declaration is made by the organisation;

– companies that solely trade from the UK;

– companies that do not use tax havens (including for employee benefit trusts etc.).

Note: Companies that have made losses over multiple years will be assessed on a case-by-case basis.

III. Assessment criteria

This section explains the assessment criteria used in the Solely UK-based business Standard scorecard (set out in section IV).

Part 1: Transparency

Each criterion in this section is worth one point.

1. Report and accounts

Question [one point available]:

Does the company publish a full set of accounts (i.e. including a profit and loss account and notes), even if not required to do so by law?

Purpose

This criterion ascertains whether or not a business places on public record the full set of accounts (rather than abbreviated accounts) that it is required to give to its shareholders. Usually this would involve the accounts submitted to Companies House, but exceptions can be made where a company permanently uploads its full accounts to its website.

If the business does not publish its accounts in any of the above ways (or is against this), the information required to award a Fair Tax Mark is not available and the assessment cannot continue.

Information required

Please attach a copy of the most recent financial statements or accounts of the business.

2. Company activity

Question [one point available]:

Is there clear evidence of what the company does either within its accounts or on an easily identifiable website that it runs?

Purpose

This criterion assesses whether it is possible to find out what a business does. The amount of public information required by law on this issue is very limited. However, it is difficult to form any objective opinion on a business, its accounts and its tax payments without a good idea of what the business actually does. There needs to be sufficient information to understand the nature of the company's trade.

Information required

Evidence of what the business does. This might be obtained from:

- website;
- advertising or brochures.

3. Trading location

Question [one point available]:

Is there clear reference to a trading address (as opposed to a registered office), or a statement that they are the same in the accounts or on a company website?

Purpose

This criterion assesses whether it is possible to clearly identify the company's place of trading. The only address that a business has to record on public record is that of its registered office, but in many cases it does not trade from that address. Unless information on where it actually trades from is made available in its accounts, it can be very difficult to find out where a business might be contacted, contravening the principles of transparency.

Information required

Evidence of the address at which the business trades if distinct from registered address.

This might be obtained from:

- website;
- advertising or brochures;
- directories.

4. Beneficial ownership

Question [one point available]:

Is it clear who the ultimate beneficial owners of all shareholdings of more than 10% in the company are, either from statements in the accounts or at Companies House?

Purpose

This criterion assesses whether it is possible to ascertain who ultimately benefits from the trade a company undertakes. Beneficial ownership is a core transparency issue because public knowledge of the people behind a business reduces the risk of fraud and tax evasion. It is also vital to the establishment of a relationship of trust that is the precondition of a successful market economy.

Information required

Evidence of the names and addresses of the ultimate beneficial owners of the business. Each person owning more than 10% must be clearly identified and if the owner is a company or trust, the ownership must be traced through that company or trust to the real people who benefit from those entities until the beneficial ownership of the business is made clear. The required evidence might be obtained from:

- website;
- advertising or brochures;
- directories;
- annual return form of the company submitted to Companies House.

Exception

Some companies such as co-operatives and community interest companies may operate under different ownership structures, where many members ultimately own them or their 'share' capital does not represent ownership. In these cases, if the business is transparent about its ownership structure then it may be judged as fulfilling this criterion.

5. Management

Question [one point available]:

Are the names and addresses of all directors provided either in the accounts or at Companies House or on another public register?

Purpose

This criterion assesses whether it is possible to ascertain who manages a business. This is another core transparency issue as directors are responsible for ensuring a business fulfils its legal obligations. Knowing there are people who can be both identified and trusted is vital so that a business can be held fully to account for its actions.

Information required

Evidence of the names and addresses of the real directors of the business is required. The names given must not just be those legally recorded as being directors, but also those who are used to giving instruction to those directors if this is the case. The required evidence might be obtained from:

- website;
- advertising or brochures;
- directories;
- annual return form of the company submitted to Companies House.

Note: where directors have not disclosed addresses due to the risk of violence or intimidation, this will be factored into scoring.

Fair Tax

Part 2: Tax rate, tax avoidance and tax disclosure

Whilst the Fair Tax Mark rewards business for paying close to the headline rate and making a fair contribution to society, it also recognises (and is careful not to penalise) the fact that businesses are also allowed various allowances and reliefs that may reduce their effective rates over a number of years.

To this end, the Fair Tax Mark puts a major emphasis on the way a business explains its tax rate, awarding points for well-communicated numerical and narrative explanations of the tax charge regardless of the actual rate.

6. Tax policy

Question [five points available]:

Does the company have a tax policy either on its web site or referred to in its accounts? (one point)

Does that tax policy say that the company will not (two points for each):

- abuse tax havens?
- undertake tax avoidance e.g. by using artificial or abusive transactions to reduce taxes paid?

Purpose

This criterion assesses whether it is possible to discern what the business objectives are with regard to tax, and rewards the statements for their content and aims. Every business operates a tax policy, even if it is implicit and has never explicitly recorded it. However, few businesses publicly state what their policy is and that means that in this vital area few can explain fully their motivations for certain decisions, nor can they be held to account.

Information required

A clear statement of tax policy and clarity on:

- the intention not to abuse tax havens;[4]
- the intention not to structure transactions artificially or abusively for the purpose of avoiding tax.

Ideally the policy would be detailed in the annual Report and Accounts and cover some or all of the points below. However, having clear statements on a website will be judged sufficient to fulfil the criterion.

Model tax policy notes would include a company's commitment:

- not to maintain any type of connection to tax havens when this is not a legitimate trading activity with the purpose of serving the local community;
- not to use marketed tax avoidance schemes requiring disclosure under DOTAS regulations (Disclosure Of Tax Avoidance Schemes);
- not use any arrangement that might fall foul of the General Anti-Abuse Rule;
- not to use Employee Benefit Trusts located in tax havens;
- not to structure remuneration in a way that potentially falls foul of the IR35 or disguised remuneration rules.

7. Average current tax rate

Question [four points available]:

Is the company's average current tax rate within one percentage point (four points awarded), 1–3% (three points), 3–5% (two points) or 5–7% (one point) of the expected headline rate?

This question scores a maximum of four, but two bonus points are available if the company explains its tax position well by scoring above four points in questions 8, 9 and 10 (when combined).

Purpose

This criterion assesses the current tax rate that a company is paying and how that compares over time to the expected headline rate.

Information required

The company's total tax charges over the previous four years, split into current and deferred tax charges.

Exception

If there are years in which the business makes a loss, the expected headline rate can be dropped to 0% for those years.

8. Numerical reconciliation

Question [two points available]:

Does the company provide a numerical tax reconciliation of its actual current tax charge to the current tax charge that might be expected for the year at the tax rate applying to the profits of the company?

Note: A bonus point may be added if at least 75% of the reconciling items are precisely described e.g. using such phrases as 'The impact of capital allowance claims' or 'Reduced tax owing on capital gains arising'. Terms such as 'Other' or 'Losses' (without explanation being given) do not qualify in this respect.

Purpose

This criterion assesses whether it is possible to understand a business' tax liability using its numerical explanation.

A business will not always pay an amount in corporation tax equivalent to the current headline tax rate multiplied by its declared profits before tax. There are many and varied reasons for the differences that arise, from tax allowances for capital investment and research and development through to the expenses that may be disallowed for tax purposes (e.g. those relating to business entertaining expenditure).

If a business' tax liability is to be properly understood, the difference between the tax that might be expected to be paid in a period and the tax actually due for that period must be explained in a clear and transparent manner.

Information required

A numerical tax reconciliation note should be included in the accounts, which explains in sufficient detail the difference between the current reported accounting profits and the current tax rate. The reconciliation should be specific in the matters it refers to and not rely on vague descriptions. To this end, at least 75% of the reconciling items should be precisely described e.g. using such phrases as 'The impact of capital allowance claims' or 'Reduced tax owing on capital gains arising'. Terms such as 'Other' or 'Losses' (without explanation being given) do not qualify in this respect.

Exception

If the company has made a loss in previous years and only pays a low rate of tax in the current year as losses are carried forward, a full reconciliation note may not be needed. If this is the case, an explanation of how the losses affect the current rate is required to fulfil the criterion.

9. Narrative reconciliation

Question [one point available]:

Does the company provide a written explanation as to why its current tax charge differs from the charge expected for the year at the tax rate applying to the profits of the company?

Purpose

This criterion assesses whether it is possible to gain further insight into a business' tax liability; with a narrative explanation as to why the company did not pay the required rate of tax in the year, if that was the case. It provides further explanation to the numerical reconciliation of the tax note referred to above.

Information required

A narrative explanation should be included in the accounts, which explains in sufficient detail the difference between the current reported accounting profits and the current tax rate. This should refer to all the major items in the numerical reconciliation noted above and explain why they have arisen and what their consequences might be. The reconciliation should be specific in the matters it refers to and not rely on vague descriptions.

10. Deferred taxation

Question [two points available]:

Does the company have a deferred tax note with accompanying narrative explanation explaining why deferred tax provisions or assets have arisen in the period, how the balance of those assets or liabilities is made up and when they are likely in practice to have an impact on the company's tax bill?

Purpose

This criterion assesses whether it is possible to gain insight into a company's deferred taxation. The current tax charge is the subject of questions 7 and 8. The tax charge in a set of accounts can, however, also include a deferred tax charge and a company may have deferred tax assets or liabilities on its balance sheet. Like the current tax charge, these need explanation if sufficient transparency is to be provided to ensure that the company's tax affairs can be properly understood.

Information required

A numerical analysis of the deferred tax charge for the period giving sufficient explanation of the reason for the deferred tax charge for the period; a narrative note providing further explanation of the deferred tax charge; a numerical analysis of the deferred tax asset or liability stating the reason why it has arisen; and a narrative note saying when the deferred tax asset or liability might have cash implication.

Exception

If the company does not have a deferred tax charge or deferred tax assets or liabilities it is automatically exempt from this criterion and can be awarded full points.

11. Directors' remuneration

Question [one point available]:

Does the company disclose the total pay including bonuses of the company directors, with the highest paid director being disclosed separately?

Purpose

This criterion assesses whether it is possible to ascertain the total pay of directors, including separate disclosure of the payment made to the highest paid director.

The tax affairs of many small companies are intimately integrated into the tax affairs of their directors who are, in very many cases, also their beneficial owners. It is therefore activity relating to the taking of reward from the company that best indicates whether or not tax avoidance is taking place in a small company.

We have chosen not to award, or subtract, marks for the taking of reward from companies by way of dividends in lieu of salary because this arrangement is so commonplace and not at present subject to sanction (barring those rare cases subject to IR35).

However, we think it important that those using a company's accounts can form their own opinion on this matter. As such we place emphasis upon the availability of information on the salaries paid to directors, including the highest paid, as this allows such appraisal to take place. We stress, that in doing so we do little more than replicate good practice and company law.

Information required

The total salary reward cost of the directors of the company in the period with separate disclosure of the sum due to the highest paid director.

IV. Fair Tax Mark scorecard

Summary score card		
Criteria	**Score**	**Notes**
Transparency		
1. Does the company publish a full set of accounts (even if not required to do so by law)?	.../1	
2. Is there clear evidence of what the company does either within its accounts or on an easily identifiable website that it runs?	.../1	
3. Is there clear reference to a trading address (as opposed to a registered office), or a statement that they are the same in the accounts or on a company website?	.../1	
4. Is it clear who the ultimate beneficial owners of all shareholdings of more than 10% in the company are, either from statements in the accounts or at Companies House?	.../1	
5. Are the names and addresses of all directors provided either in the accounts or at Companies House or on another public register? *Note: where directors have not disclosed addresses due to the risk of violence or intimidation, this will be factored into scoring.*	.../1	
Transparency subtotal	**.../5**	

Summary score card		
Criteria	**Score**	**Notes**
Tax rate, tax avoidance and disclosure		
6. Does the company have a tax policy either on its web site or referred to in its accounts? (one point) Does that tax policy say that the company will not (two points for each): – abuse tax havens? – undertake tax avoidance e.g. by using artificial or abusive transactions to reduce taxes paid?	.../1 .../2 .../2	
7. Is the company's average tax rate within one percentage point (four points), 1–3% (three), 3–5% (two) or 5–7% (one) of the expected headline rate? *Note: up to two bonus points (to a limit that the total score in this section cannot exceed four) will be granted if the marks from questions 8, 9 and 10 when combined equal at least four points in total.*	.../4	
8. Does the company provide a numerical tax reconciliation of its actual current tax charge to the current tax charge that might be expected for the year at the tax rate applying to the profits of the company? *Note: A bonus point may be added if at least 75% of the reconciling items are precisely described e.g. using such phrases as 'The impact of capital allowance claims' or 'Reduced tax owing on capital gains arising'. Terms such as 'Other' or 'Losses' (without explanation being given) do not qualify in this respect.*	.../2	
9. Does the company provide a written explanation as to why its current tax charge differs from the charge expected for the year at the tax rate applying to the profits of the company?	.../1	
10. Does the company have a deferred tax note with accompanying narrative explanation explaining why deferred tax provisions or assets have arisen in the period, how the balance of those assets or liabilities is made up and when they are likely in practice to have an impact on the company's tax bill? (one mark for each)	.../2	
11. Does the company disclose the total pay including bonuses of the company directors, with the highest paid director being disclosed separately?	.../1	
Tax rate, tax avoidance and disclosure subtotal	**.../15**	
Total	**.../20**	

V. Fair Tax Mark technical committee

The criteria for this Fair Tax Mark Standard has been advised by a group of technical experts. The members of this group were at the time:

- Kate Clements, Chartered Accountant & Lecturer in Accounting, Heriot-Watt University
- Alex Cobham, Economist, Centre for Global Development
- Paul Gibson, Chartered Accountant, Mazars LLP
- Euan Grant, Former Inspector, HMRC
- Jonathan Gray, Director of Policy and Ideas, Open Knowledge Foundation
- Richard Lupson-Darnell, Chartered Tax Advisor
- Paul Monaghan, Director, Up the Ethics
- Richard Murphy, Tax Specialist, Tax Research UK
- David Quentin, Barrister

VI. About the Fair Tax Mark

About the Fair Tax Mark

The Fair Tax Mark 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 andin the right place. Certified businesses include FTSE-listed plcs, co-operatives, social enterprises and large private business. We operate as a not-for-profit community benefit society and believe that companies paying tax responsibly should be celebrated, and any race to the bottom resisted.

The Fair Tax Mark methodologies and criteria are drawn up via a combination of stakeholder dialogue and consultation with an independent committee of technical advisors drawn from academia and the professions. Three Standards have now been developed:

– Small Business, with a turnover of £1m or less

– Solely UK-based business

– UK-owned Multinational business

The Fair Tax Mark is based on business acknowledging, assuming responsibility for and being transparent about the impact of a company's taxation decision-making and policy. It is an indication that a business is accountable to a range of stakeholders, when it comes to tax.

At its most fundamental, it is a recognition that tax is more than a quantitative issue about the amount of tax paid; it is also an issue of qualitative importance and central to business culture and practice.

VII. References

[1] http://www.ibe.org.uk/userfiles/pressreleases/attitudes2013.pdf

[2] http://www.cbi.org.uk/media-centre/news-articles/2013/05/seven-tax-principles-for-uk-businessproposed-by-cbi/

[3] http://www.taxjustice.net/cms/upload/pdf/Sustainability_taxing_issues.pdf

[4] Our definition of a tax haven is a country that scores above 60 on the Tax Justice Network Financial Secrecy Index. http://www.financialsecrecyindex.com/introduction/fsi-2018-results

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Fair Tax

The UK-only Standard was first released in 2014.
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and spring 2021.