

How can we ensure that tax evaders and aggressive tax a...

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Cross posted from [the Fair Tax Mark](#):

Conservative MP for North Wiltshire, James Gray, recently asked Parliament what steps the UK Government was taking in its procurement policy to tackle aggressive tax avoidance by government suppliers.[\[1\]](#) *A reasonable question: why should tax dodgers profit from contracts funded by taxpayers?*

The answer from the Parliamentary Secretary at the Cabinet Office, Oliver Dowden, was convoluted, but seemingly positive. He said: "The 2015 Public Contract Regulations implemented the latest EU Public Procurement Directive, and require public bodies to exclude suppliers from a procurement where the supplier has been found guilty of breaching its obligations in relation to payment of taxes and this has been established by a judicial or administrative decision having final effect within the relevant jurisdiction."



The reality is very different. The UK Government rarely, if ever, considers tax justice in its procurement in a meaningful way. This is in large part because the bar for disqualification is set insanely high. For example, disqualification is admissible where HMRC has successfully challenged a potential supplier under the General Anti-Abuse Rule (GAAR). But, to date, not a single GAAR penalty has been issued in the UK.

Another ground for exclusion is where a judicial or administrative decision has established that a business has been found guilty of breaching its tax obligations. But more often than not, disputes never reach such a conclusion. Instead, "settlements" are reached outside of the courts, as happened with Google, which in 2016 agreed a deal with British tax authorities to pay £130m in back taxes in connection with a decade of

underpayment. Again we have an exclusion criterion that is highly unlikely to ever be enacted.

And unfortunately, the same factors are at play in local government procurement — not just in the UK but right across Europe. Which is an enormous missed opportunity given over 250,000 public authorities in the EU spend around 14% of GDP on the purchase of services, works and supplies — a colossal £1.9 trillion.[\[2\]](#)

But action is stirring and change may be afoot. In Spain, 37 municipalities have publicly committed to not work with companies that operate in tax havens — this includes the major cities of Madrid, Barcelona, Seville and Zaragoza.[\[3\]](#) The Danish municipalities of Copenhagen and Albertslund are actively looking to develop a means to identify tax evaders and companies exploiting tax havens.[\[4\]](#) And in Finland[\[5\]](#), the cities of Helsinki and Malmo are seeking to change their procurement and reward suppliers that embrace public country-by-country reporting, with work similarly being progressed by tax justice advocates in Slovenia and Latvia.



In the UK, the desire to take action at a local level is at least as concrete and wide-ranging, as evidenced in 2016, when the Fair Tax Mark[\[6\]](#) and Christian Aid[\[7\]](#) urged local councils to take action. They responded up and down the country. Everywhere from Manchester City Council to Durham County Council and the London boroughs of Southwark and Lewisham. But the new national Public Procurement Note[\[8\]](#) that emerged (which takes the form of revised standard Selection Questionnaire), while being a step forward, suffers from the same weak exclusion grounds that operate nationally, and relies on suppliers to self-declare compliance.

Progress has to date been slow due a number of factors. Firstly — arguably — the EU Procurement Directive constrains action as it requires that exclusion criteria must be linked to the quality of the goods and services involved. There is therefore a perception that progress on the issue of tax evasion and avoidance maybe too difficult to secure and is therefore best left alone. Secondly, there is no database of proven tax evaders for procurement officers to refer to — either in the UK or across Europe.

This isn't to say that progress is impossible — far from it. The fantastic success of the Fairtrade Towns movement serves as an example and inspiration: there are now over 2,000 Fairtrade towns in 30 countries across the globe, and over 630 in the UK alone.[\[9\]](#)

The Fair Tax Mark is looking at how it might build a similar network of Fair Tax towns and cities. This will involve working with bold local councils across the UK and with tax justice campaigners across Europe to explore what progress can be made within existing and amended EU law. The European Parliament signalled its opinion at the end of 2017, when it called on the Commission to put forward a revision of the Procurement Directive which includes measures to prevent public administrations from working with companies that use tax havens.[\[10\]](#)

It will also involve exploring what further measures can be pursued in the UK post-Brexit, as we are doing later this month at the Social Value Summit.[\[11\]](#) Could, for example, the Withdrawal Bill be amended to incorporate enhanced provisions for social value in procurement, with goods and works being newly encompassed (in addition to services) and factors such as 'aggressive tax avoidance' being more central to selection and award criteria — as argued separately by both the Society of Conservative Lawyers and the Society of Labour Lawyers.[\[12\]](#)

If like us, you think that public procurement could and should be deployed to punish tax dodgers and reward fair tax payers, then please get in touch. We'll be shaping our plans over the coming months with a view to announcing provisional action in the summer.

Paul Monaghan, Chief Executive, Fair Tax Mark

[\[1\]](#)

<https://www.theyworkforyou.com/wrans/?id=2018-02-19.128069.h&s=%22tax+avoidance%22#g128069.q0>

[\[2\]](#) https://ec.europa.eu/growth/single-market/public-procurement_sv & http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en

[\[3\]](#)

<http://www. justiciafiscal.org/2017/01/espana-municipios-no-trabajaran-con-empresas-que-operen-en-paraisos-fiscales/>

[\[4\]](#)

<http://albertslund.lokalavisen.dk/albertslund-og-koebenhavn-samarbejder-imod-skattely-/20170630/artikler/706309934>

[\[5\]](#) <https://helda.helsinki.fi/handle/10138/229642>

[\[6\]](#) <https://fairtaxmark.net/councils-tackle-tax-avoidance/>

[\[7\]](#) <https://www.christianaid.org.uk/campaigns/tax-justice-campaign>

[\[8\]](#)

<https://www.gov.uk/government/publications/procurement-policy-note-816-standard-selection-questionnaire-sq-template>

[9] <http://www.fairtradetowns.org/about-us>

[10]

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0491+0+DOC+XML+V0//EN>

[11] <https://www.socialenterprise.org.uk/social-value-summit>

[12] http://www.conservativelawyers.com/files/Public_Procurement.pdf