



Agenda Item

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

AUDIT COMMITTEE

19 March 2024

Report of the Director of Finance & ICT

Tax Strategy

1. Purpose

1.1 To advise Audit Committee of the latest review and update of the Council's Tax Strategy.

2. Information and Analysis

2.1 The Tax Strategy sets out the overall framework for the Council's management of its tax affairs, including tax compliance, policies and procedures, tax risk, tax planning and relationship with the tax authorities.

2.2 The Finance Act 2016 Schedule 19 sets out what should be included in a Tax Strategy. Whilst not required to publish a Tax Strategy by this legislation, the Council chooses to do so and to follow its principles, as it wishes to demonstrate transparency in its commitment to managing its tax affairs, taking into consideration its public purpose and balancing the interests of its stakeholders.

2.3 The key components of the Tax Strategy are:

- The Council's approach to risk management and governance arrangements in relation to taxation.
 - The Council's attitude towards tax planning.
 - The level of risk in relation to taxation that the Council is prepared to accept.
 - The Council's approach towards its dealings with Her Majesty's Revenue and Customs (HMRC).
- 2.4 In line with the Council's governance framework and consistent with its wider values, the Council is committed to being fully compliant with all tax laws, rules and regulations. It will conduct its tax affairs in an open, honest and timely fashion.
- 2.5 The Council will not seek to gain a tax advantage through tax avoidance but will seek to manage its tax affairs in an efficient manner, whilst following both the letter and the spirit of the law.
- 2.6 In order to achieve this, the Council undertakes to:
- Take all reasonable steps to ensure that it is fully compliant with tax legislation and pays the right amount of tax at the right time.
 - Maintain an open, honest, and collaborative relationship with the tax authorities.
 - Respond to all queries and enquiries in a timely fashion.
 - Where the correct tax treatment is ambiguous and where it is appropriate to do so, take the appropriate external advice and act in accordance with that advice, making disclosures to the tax authorities as appropriate.
 - In cases of dispute, act transparently and fairly, aiming to resolve the dispute in a manner that preserves good working relationships.
- 2.7 The Council's overall management of tax risk and supporting governance framework is the responsibility of the Council's Director of Finance & ICT.
- 2.8 The Audit Committee independently contributes to the Council's process of ensuring internal control systems are maintained and approves the Annual Governance Statement.
- 2.9 It is, therefore, prudent and responsible practice for the Council to put in place and to keep up to date a Tax Strategy and for the Council's Tax Strategy to be reviewed and reported to Audit Committee on an annual basis.

2.10 Audit Committee was last advised of a review and update of the Council's Tax Strategy at its meeting on 21 March 2023.

2.11 Following a review of the Tax Strategy in February 2024, changes have been made as follows:

- Background section updated - update to background references in respect of the creation of the East Midlands County Combined Authority (EMCCA), which has progressed since the last Tax Strategy update. There has been no change to the accountable body or VAT arrangements. The Council remains the current accountable body for related grant funding from the Department for Levelling Up, Housing and Communities (DLUHC). This grant funding is outside the scope of VAT.
- Relationship with tax authorities updated - update on the completion of the HMRC full VAT review, which was in progress at the time of the last review of the Tax Strategy. On 22 September 2023 HMRC confirmed that their inspection of the Council's VAT affairs was complete. HMRC thanked the Council's staff for their help in dealing with questions throughout the process.

2.12 The Tax Strategy is attached in Appendix Two to this report.

3. Consultation

3.1 No consultation is required.

4. Alternative Options Considered

4.1 Not to maintain or update the Tax Strategy – This option has been discounted. It is prudent and responsible practice for the Council to put in place and to keep up to date a Tax Strategy and for the Council's Tax Strategy to be reviewed and reported to Audit Committee on an annual basis.

5. Implications

5.1 Appendix One sets out the relevant implications considered in the preparation of the report.

6. Background Papers

6.1 No background papers held.

7. Appendices

7.1 Appendix One – Implications.

7.2 Appendix Two - Tax Strategy.

8. Recommendation

That Audit Committee:

8.1 Notes that a review and update of the Tax Strategy has taken place.

9. Reasons for Recommendations

9.1 It is prudent and responsible practice for the Council to put in place and to keep up to date a Tax Strategy and for the Council's Tax Strategy to be reviewed and reported to Audit Committee on an annual basis.

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Implications

Financial

- 1.1 The Council undertakes to take all reasonable steps to ensure that it is fully compliant with tax legislation and pays the right amount of tax at the right time. The Tax Strategy sets out the overall framework for the Council's management of its tax affairs, including tax compliance, policies and procedures, tax risk, tax planning and relationship with the tax authorities. This Strategy is intended to ensure full compliance with tax legislation.

Legal

- 2.1 The Finance Act 2016 Schedule 19 sets out what should be included in a Tax Strategy. Whilst not required to publish a Tax Strategy by this legislation, the Council chooses to do so and to follow its principles, as it wishes to demonstrate transparency in its commitment to managing its tax affairs, taking into consideration its public purpose and balancing the interests of its stakeholders.

Human Resources

- 3.1 None.

Information Technology

- 4.1 None.

Equalities Impact

- 5.1 None.

Corporate objectives and priorities for change

- 6.1 The Council is committed to ensuring good financial management and compliance with applicable laws and regulations.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

- 7.1 None.

Tax Strategy



**Mark Kenyon BA(Hons) FCPFA
Director of Finance & ICT (Section 151 Officer)**

Approval and Authentication

Version History			
Version	Date	Detail	Author
1.0	27 05 2020	Council's first Tax Strategy noted and approved by Members of Audit Committee on 27 May 2020.	E Scriven
2.0	01 03 2021	Tax Strategy Review. Background section updated: <ul style="list-style-type: none"> • Update to companies in which the Council is involved. • Clarification that D2N2 LEP cannot become VAT registered as it makes no taxable supplies 	E Scriven
3.0	01.03.2022	Tax Strategy Review. No updates required.	E Scriven
4.0	31.01.2023	Tax Strategy Review. Background section updated: <ul style="list-style-type: none"> • Update to organisations in which the Council is involved. Relationship with tax authorities updated: <ul style="list-style-type: none"> • Update on HMRC full VAT review currently underway. 	E Scriven Approved by P Stone Feb 2023
5.0	12.02.2024	Tax Strategy Review: Background section updated: <ul style="list-style-type: none"> • Update to organisations in which the Council is involved. Relationship with tax authorities updated: <ul style="list-style-type: none"> • Update on completed HMRC full VAT review. 	E Scriven Approved by M Kenyon Feb 2024

Introduction

The Tax Strategy of Derbyshire County Council sets out the overall framework for the Council's management of its tax affairs, including compliance, policies and procedures, tax risk, tax planning and relationship with the tax authorities.

Whilst not required to publish its Tax Strategy, the Council chooses to do so, as it wishes to demonstrate transparency in its commitment to managing its tax affairs, taking into consideration its public purpose and balancing the interests of its stakeholders.

The Tax Strategy is, by design, a brief document, presented as a series of linked elements. It will be reviewed and reported to Audit Committee on an annual basis.

Background

The Council is a Local Government body. It is exempt from Corporation Tax and is a Section 33 Body under the VAT Act 1994, which entitles it to recover VAT attributable to non-business activities and to exempt business activities, providing this is an insignificant proportion of the total tax incurred.

The Council is the administering authority of the Derbyshire Pension Fund ("the Fund"), which is governed by Local Government Pension Scheme Regulations and associated pension legislation. The Fund is also a Section 33 Body and is exempt from Corporation Tax. The Fund is included within the Council's VAT registration group.

Vertas (Derbyshire) Limited (VDL) and Concertus (Derbyshire) Limited (CDL) are private limited companies in which the Council has a 49% stake. VDL and CDL are run as Joint Venture companies with the other shareholders being part of Suffolk Group Holdings Limited, whose ultimate parent undertaking and controlling party is Suffolk County Council. The Council has Board representation at VDL and CDL. Vertas Group Limited (Vertas) and Concertus Design and Property Consultants Limited (Concertus), subsidiary undertakings of Suffolk Group Holdings Limited, have day to day financial control of VDL and CDL, respectively. Financial Governance is maintained via the production of monthly Management Accounts information, which is supplied to Board members and to Finance Officers of the Council. VDL and CDL are assessable to Corporation Tax and VAT in accordance with current legislation. All taxation related matters of VDL and CDL, including Corporation Tax, VAT and Income Tax are managed by Vertas and Concertus.

PSP (Derbyshire) LLP (PSPD) is a limited liability partnership (LLP) formed between the Council and PSP Facilitating Limited (PSPF), under the provisions of the Limited Liability Partnership Act 2000. PSPD will help the Council unlock value from its land and property portfolios; facilitate the promotion, development, asset management rationalisation and economic regeneration, on a project by project basis, of Council land; and utilise private sector funding, resources and skills; resourced through the operation of the partnership. As PSPD is an LLP, rather than a company, the parties to the Joint Venture are called Partners and their representatives are called 'Corporate Representatives', rather than Directors. Each Partner has up to six Corporate Representatives. However, each Partner has only one vote, and therefore PSPD decision making, ownership and profit share are 50/50. Financial Governance is maintained via a Members Agreement and a Procedure Agreement. All financial activities of PSPD are conducted by PSPF, including statutory compliance, audit, bank account management, VAT and other taxation matters, and all liaison with HMRC and other Government bodies.

D2N2 Local Enterprise Partnership (D2N2 LEP) is a private limited company, managed by a Board made up of Derby, Derbyshire, Nottingham and Nottinghamshire councils and private sector representatives. The Council is the Single Accountable Body for the D2N2 LEP. The D2N2 LEP is assessable to Corporation Tax and VAT in accordance with current legislation. As the D2N2 LEP does not make taxable supplies it cannot become VAT registered.

The East Midlands devolution deal, which covers Derbyshire, Nottinghamshire, Derby and Nottingham, was signed in August 2022. The Council is one of the constituent councils which form part of the East Midlands Combined County Authority (EMCCA). The Levelling Up and Regeneration Bill has received Royal Assent and all four constituent councils have formally agreed the creation of the EMCCA. The creation of the EMCCA was subject to the passing and coming into force of the Regulations laid in Parliament in December 2023. The EMCCA was established on 28 February 2024. The EMCCA is a Level 3 deal with Government, which includes having an elected Mayor. Elections will take place on 2 May 2024. The Council is currently the accountable body for related grant funding from the Department for Levelling Up, Housing and Communities (DLUHC). This grant funding is outside the scope of VAT.

Governance

The Council's governance framework comprises the systems, processes and values by which the Council is directed and controlled and the activities through which it accounts to, engages with and leads the community. It enables the Council to monitor the achievement of its strategic objectives and to consider whether those objectives have led to the delivery of appropriate, cost-effective services.

The system of internal control is a significant part of that framework and is designed to manage risk to a reasonable level. It cannot eliminate all risk of failure to achieve policies, aims and objectives and can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievement of the Council's policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them effectively, efficiently and economically.

Specific controls and procedures are in place at an operational level, to ensure compliance with relevant tax legislation and to mitigate tax risk.

The Council's overall management of tax risk and supporting governance framework is the responsibility of the Council's Director of Finance & ICT.

The Audit Committee independently contributes to the Council's process of ensuring internal control systems are maintained and approves the Annual Governance Statement.

Overriding Principles

In line with the Council's governance framework and consistent with its wider values, the Council is committed to being fully compliant with all tax laws, rules and regulations. It will conduct its tax affairs in an open, honest and timely fashion.

The Council will not seek to gain a tax advantage through tax avoidance but will seek to manage its tax affairs in an efficient manner, whilst following both the letter and the spirit of the law.

In order to achieve this, the Council undertakes to:

- Take all reasonable steps to ensure that it is fully compliant with tax legislation and pays the right amount of tax at the right time.
- Maintain an open, honest, and collaborative relationship with the tax authorities.
- Respond to all queries and enquiries in a timely fashion.
- Where the correct tax treatment is ambiguous and where it is appropriate to do so, take the appropriate external advice and act in accordance with that advice, making disclosures to the tax authorities as appropriate.
- In cases of dispute, act transparently and fairly, aiming to resolve the dispute in a manner that preserves good working relationships.

Management of Tax Risk

Tax risk falls into three broad categories:

- **Compliance Risk**
Procedures or processes are deficient in ensuring that the right amount of tax is paid at the right time.
- **Transactional Risk**
Transactions are entered into without fully considering and evaluating the immediate or wider tax implications.
- **Reputational Risk**
The wider damage that risks may have on the Council's relationship with its stakeholders, including the tax authorities, staff, and the general public.

As with any organisation of this size and complexity, it is impossible to completely eliminate tax risk. However, with careful management, the incidence and impact of tax risks can be significantly reduced.

Policies and Procedures

The Council has a number of policies and procedures covering various aspects of its financial management. All such policies and procedures are formulated to ensure that the Council is fully compliant with its tax obligations. Such procedures are subject to regular review to ensure that they are, and remain, fit for purpose.

The Council has regular support from its external tax advisor, which includes access to a fast response helpline, as well as regular VAT and Employment Taxes Forums for Local Government.

For large, complex or unusual transactions the Council will engage additional specialist legal and tax advice when required, to ensure that the tax implications are identified and fully considered before approval is given.

Attitude to Tax Planning and Tax Risk

The Council will claim such reliefs and incentives as it is properly entitled to and will take reasonable steps to minimise its tax liabilities, where it is appropriate and responsible to do so.

The Council has a low risk appetite in relation to tax matters and does not use artificial tax structures or undertake transactions whose sole purpose is to create an abusive tax result. When evaluating tax planning the Council's reputation and corporate and social responsibilities are always considered.

Relationship with Tax Authorities

The Council is transparent about its approach to tax and where it is appropriate to do so will discuss the interpretation of tax legislation with HMRC, in real-time, particularly where the tax treatment is unclear. HMRC will be kept up to date regarding major changes or transactions within the business, so that any potential tax risks can be addressed at an early stage.

The Council seeks to develop and maintain a strong and mutually respectful relationship with HMRC.

In March 2019 the Council was again given a 'Low Risk' tax status by HMRC. This followed the Council's HMRC Customer Relationship Manager meeting with key Council personnel to gain a greater understanding of the Council as an organisation and to understand the day to day systems, controls, processes, checks and governance the Council adopts in meeting its statutory obligations to ensure the completeness and accuracy of its monthly and annual returns made to HMRC. Customers assessed as Low Risk benefit from no intervention work undertaken by HMRC (with the exception of significant issues and mandatory and national projects) for a given period across all taxes.

HMRC commenced a full VAT review of the Council in September 2022. HMRC is undertaking similar VAT reviews at other upper tier authorities. On 22 September 2023 HMRC confirmed that their inspection of the Council's VAT affairs was complete. HMRC thanked the Council's staff for their help in dealing with questions throughout the process.

Mark Kenyon
S151 Officer
Derbyshire County Council

Reviewed and up to date February 2024
(Original 24 March 2020 based on the Finance Act 2016 Schedule 19,
updated annually)