Written evidence submitted by Fair Tax Mark

1. 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 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.

More than fifty 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 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, which encourages UK cities, towns and districts to stand up for responsible tax conduct.

We welcome this opportunity to submit evidence on the role that the further encouragement of responsible tax conduct measures can play in supporting the UK's tax base as the country recovers from the ongoing crisis.

2. Reason for submitting evidence

Pre-pandemic, Government had already taken steps to strengthen the UK's tax base through clamping down on tax avoidance and introducing other measures such as the Digital Services Tax. However, there is still much scope to ensure that all businesses pay the right tax at the right time, in line with both the letter and spirit of the law.

Our submission outlines the further encouragement of responsible tax conduct measures that we believe should be advanced by Government, in order that it can:

- Further support its fiscal mandate and strengthen the corporate tax base in a proportionate and fair manner, and in doing so contribute to recovery efforts;
- Continue to bear down on tax avoidance and evasion, securing otherwise-lost revenue and providing bricks-and-mortar businesses with a more level playing field as they rebuild;
- Reaffirm the message that tax is a vital part of the economy and society on which we all rely;

- Build on the growing levels of public trust in the Government's competence as tax collector.[1]

As such, we suggest that Government should make the further encouragement of responsible tax conduct a core principle of its recovery package.

3. Questions

We are responding primarily to the following questions:

o What more can the UK do to protect its tax base from erosion as a result of globalisation and technological change?

o Do these pressures need to be met with tax reform, and if so, is this the right time for reform?

o What reforms should be considered in response to the pressures on the tax system?

4. Evidence

The most recent set of HMRC Annual Report and Accounts (2018-19)[2] sets out the record tax revenues brought in for the UK (£627.9 billion), including £34 billion that would otherwise have been lost to UK taxpayers through tackling error, avoidance, evasion and organised crime. As set out, these monies pay for the UK's public services and help families and individuals with targeted financial support.

However, the UK's tax gap analysis[3] currently excludes significant areas of tax avoidance, such as profit shifting, which could amount to £7 billion of lost revenues per annum.[4] Globally, it has been estimated that 40% of multinational profits ($600bn) are shifted through tax havens.[5]

Recent polling data commissioned by the Fair Tax Mark showed record levels of concern among the public about the use of tax avoidance practices by business in the UK. Three quarters (75%) think it's important to celebrate businesses who can demonstrate that they pay the right amount of tax and who overtly shun the artificial use of tax havens and contrived tax avoidance practices.[6]

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[1] Polling commissioned by the Fair Tax Mark showed that 58% (up from 48% in 2018) of the public would trust the HMRC to provide accurate information on whether a company is paying the right amount of tax or not, whilst only 20% would trust the company's annual reports and accounts. Source: ICM Omnibus, a nationally representative omnibus survey of 2,043 adults across GB between 15 and 17 May 2020.

[2] https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2018-to-2019

[3]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907122/Measuring_tax_gaps_2020_edition.pdf

[4] http://www.taxresearch.org.uk/Blog/2017/11/08/the-uk-loses-20-of-total-corporate-profits-to-tax-havens-but-hmrc-are-in-denial-about-the-missing-7-billion/

[5] Thomas R. Tørsløv, Ludvig S. Wier, and Gabriel Zucman (August 2018). The Missing Profits of Nations. NBER Working Paper No. 24701. http://gabriel-zucman.eu/files/TWZ2018.pdf

[6] Up from 69% in 2018. Source: ICM Omnibus, a nationally representative omnibus survey of 2,043 adults across GB between 15 and 17 May 2020.

We suggest that advancing the following policy measures would further strengthen the UK tax base, help build trust with the public and enable a more level playing field for business competition.

1. Corporate taxation & accounting standards

1.1 Tackling profit-shifting

Whilst the UK defines its own tax base, it does so as an active participant in a changing international context. Pre-pandemic, global efforts had long been underway to reconsider a one-hundred-year-old approach to international tax rules. At the heart of the reforms are the G20 and OECD, and the Base Erosion and Profit Shifting (BEPS) project, which aims to answer the challenge of ensuring that multinational businesses are taxed where economic activities occur and value is created, and to which the UK Government lent early and vocal support.

Notwithstanding the considerable progress advanced by the BEPS Project, much base erosion and profit shifting remains untouched. For example, a recent Fair Tax Mark analysis of the 'Silicon Six'[7] concluded that there is a significant difference between the cash taxes paid and both the expected headline rate of tax and, more significantly, the reported current tax provisions. Over the period 2010 to 2019, the gap between the current tax provisions and the cash taxes actually paid was $100.2bn.[8] 'Tax risk' is now an emerging area of concern for institutional investors and asset managers.

Ultimately, as set out in the G20 St Petersburg Declaration of 2013, 'profits should be taxed where economic activities occur and value is created'. This means taxing multinationals on the basis of their global consolidated profits, with taxing rights being allocated between governments based on an agreed formula and supplemented by a minimum effective tax rate. However, this may take time manifest; so in the meantime, the pressure brought to bear by unilateral digital sales taxes (see below) is to be welcomed and encouraged.

Tax justice campaigners have long called for a unitary taxation system – whereby a multinational group would be approached as a single taxable unit, rather than the individual subsidiaries in different countries being treated as separate taxable entities. Current international tax rules are based on the latter type of separate entity accounting: with transfer-pricing mechanisms used to establish the taxable profit that each entity within the multinational group might earn if it was operating at arm's length (i.e., independently) from each other entity in the group. However, this process allows for gross abuses, with huge volumes of revenue and profit shifted from where they arise into low- or no-tax jurisdictions.

1.2 Digital Services Tax

Whilst overall UK consumer spending during lockdown has fallen on last year's figures, online sales reached record highs[9] and despite the reopening of stores

[7] Facebook, Apple, Amazon, Netflix, Google and Microsoft
[8] Fair Tax Mark (2nd December 2019). Tax gap of Silicon Six over $100 billion so far this decade.
https://fairtaxmark.net/tax-gap-of-silicon-six-over-100-billion-so-far-this-decade/

as restrictions have eased, online sales are not expected to return to pre-pandemic levels. Multinational digital operators, on the whole, continue to be well positioned to capitalize on this shift[10] whilst as noted above our research shows that the 'Silicon Six' had a 'tax gap' of $100.2bn between the current tax provisions and the cash taxes actually paid over the period 2010 to 2019.

We urge Government to implement the UK's 2% Digital Services Tax as planned, and if necessary consider related measures that compensate for tax avoidance in this area of busines. Doing so will send a message that change is underway and help to create a more level playing field for our high street businesses - of particular importance as our economy rebuilds.

1.3 Public country-by-country-reporting

Government reaffirming its commitment to and progress with public country-by-country-reporting (pCbCR) as outlined in the Finance Bill 2016 is crucial not only for tackling aggressive tax avoidance but as a wider financial transparency tool.

It is considered that comprehensively implemented pCbCR would significantly increase corporate tax transparency and enable citizens worldwide to better establish if a business is paying the right amount of tax in the right place at the right time. This would be a business-friendly measure. The OECD and European Commission have both identified the competitive advantage certain multinational companies have over domestic rivals and SMEs, given that the latter frequently only operate in one country and are not able to engage in profit-shifting between tax jurisdictions to reduce their taxes, and as a consequence face a higher tax bill compared to their competitor multinationals. pCBCR has been shown to drive increased tax revenues. A University of Cologne study recently found that European multinational banks increased their tax expenses (relative to unaffected other banks) after public country-by-country reporting became mandatory. Moreover, they found a pronounced response of those banks that were particularly exposed to the new transparency due to significant activities in tax havens.[11]

Over three quarters (77%) of the public believe that the UK should take a lead and force multinational businesses to disclose how much income, profit and tax they pay in each country in which they operate.[12]

1.4 Reform accounting standards for small firms

Recent changes to financial reporting standards have led to a reduction in the level of accounting information required of firms meeting the criteria for a 'small company'. Base accounts that are in the public domain now often detail little or no information on income, profit and taxes paid. Businesses, led by their accountants, now produce and publish abridged accounts – and in some cases

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[9] https://www.ft.com/content/48a05152-25f2-44dd-a23d-c6da26256e73
[10] https://www.bbc.co.uk/news/business-53602596
[11] Overesch, M & Wolff, U (February 2019). Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance. https://ssrn.com/abstract=3075784
[12] Source: ICM Omnibus, a nationally representative omnibus survey of 2,043 adults across GB between 15 and 17 May 2020.

there are is now little or no readily accessible accounting for current tax payments.

As a result, standard practice in financial reporting transparency, including tax payments, has taken a backwards step, becoming less informative than was previously the case. This has become a real barrier to small business's ability to positively engage with the issue of fair tax.

Polling for Fair Tax Mark showed that over three quarters (78%) of the public believe that all companies, whatever their size, should have to publicly disclose the taxes that they do or don't pay in the UK.[13]

Government should engage with the relevant trade and professional bodies and effect a reversal of the tax transparency of UK SMEs.

1.5 Freeports

We also note our recent submission to the Government's Freeports consultation.

These special economic zones characteristically offer looser customs rules with the aim of attracting investment, but are also known to provide resident businesses with a wider set of preferential treatments including tax reliefs.

Freeports are an issue we are concerned about due to the likelihood that they will exacerbate tax avoidance and evasion in the UK, encourage a global race to the bottom on corporation tax, create unfair advantages to a select group of businesses, and, attract illicit actors, such as money launderers.

In response to the consultation by the Department of International Trade, we have written to ask that the question of freeport establishment be consulted on at a much more fundamental level. We are particularly concerned at the lack of detail on the tax reliefs and legal compliance relaxations that will be granted.

Our submission is available online here.

2. Encourage and reward responsible tax conduct in procurement

Public procurement in the UK represents around a third of all public spending. Significant efforts have been made by Government to leverage this considerable spend toward meeting policy priorities at both a national and local level, with notable recent efforts including a focus on increasing spend with SMEs and procuring for social and environmental value. We suggest that the ongoing consideration of procurement rules reform, necessitated by exit from the EU, offers a unique opportunity to introduce measures that will encourage responsible tax conduct.

Research by DatLab commissioned by the Fair Tax Mark has found that 17.5% of UK public procurement over the period 2014-2019 – with a combined value of £37.5bn – was won by businesses with connections to a tax haven.[14] Earlier

[13] Source: ICM Omnibus, a nationally representative omnibus survey of 2,043 adults across GB between 15 and 17 May 2020.
[14] Where a tax haven is defined as a jurisdiction scoring above 60 in the Tax Justice Network's Financial Secrecy Index 2018, and includes (in descending order of contracts won):

research from DatLab, which compared countries across the EU over the period 2006-2017, found that UK public procurement has substantially more exposure to businesses connected to tax havens than any other European country.[15]

Unfortunately, the EU Procurement Directive of 2014 (and associated directives)[16] and the subsequent implementation in UK Public Procurement regulations[17] has meant that 'poor' tax conduct is rarely, if ever, a meaningful factor in UK public procurement (given the extremely narrow scope for consideration allowable).

However, 'good' tax conduct can and should be a consideration given its contribution to enabling better identification and mitigation of financial and corruption risks by contracting authorities.

Polling commissioned by Fair Tax Mark showed that almost two-thirds (63%) believe that the Government and local councils should consider a company's ethics and how they pay their tax as well as value for money and quality of service provided.[18]

Post-Brexit, the reform of UK procurement rules offers a unique opportunity to advance the proper consideration of responsible tax conduct both domestically and abroad. Such an approach would additionally support the aims of and objectives of:

- the Government's Anti-Corruption Strategy[19] - which has 'reduce corruption in public procurement and grants' as one of six priorities; and
- Corporate Transparency and Register Reform[20] - as set out in the consultation of May 2019.

We suggest that the UK's procurement regime should, in future, encourage and reward responsible conduct across the following areas:

- no artificial use of tax havens
- clear and transparent reporting of income, profits and tax, and
- disclosure of who ultimately profits from and has significant control over a business.

Netherlands 8.7%, Bermuda 2.6%, British Virgin Islands 1.5%, Jersey 1.5%, Cayman Islands 0.8%, Switzerland 0.7%, Singapore 0.4%. https://www.financialsecrecyindex.com/introduction/fsi-2018-results

[15] Note: this used a different list of 'tax havens'. https://blog.datlab.eu/eu-tenders-to-tax-havens/

[16] Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services (utilities) sectors, Directive 2014/23/EU on the award of concession contracts.

[17] Namely the Public Contracts Regulations 2015 and associated PPNs.

[18] ICM Omnibus, a nationally representative omnibus survey of 2,043 adults across GB between 15 and 17 May 2020.

[19] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/667221/6_3323_Anti-Corruption_Strategy_WEB.pdf

[20] https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform

3. Government private sector financial support and the need for 'bailout' responsible tax conditionality criteria

In response to the Covid-19 crisis, the UK Government, like many across the world, has rightly made available unprecedented financial support for businesses and workers financially impacted by the crisis and the ongoing lockdown.

We propose a set of forward-looking measures which, applied to any further Government financial support (whether loans or investment), will lock-in responsible tax behaviour.

Such measures would be in line with public opinion. Polls of the public consistently reveal corporation tax to be one of their biggest concerns when it comes to company behaviour, most recently (and markedly) in relation to Government financial support to business resulting from the Covid-19 pandemic. Polling commissioned by the Fair Tax Mark shows that eight in ten people (82%) questioned believe businesses benefiting from bailouts should be forced to agree terms that prohibit tax avoidance and enforce responsible tax conduct.[21]

To qualify for Government financial support, businesses should:

- Publish a binding tax policy that explicitly shuns tax avoidance and the artificial use of tax havens, and commits to the declaration of profits in the place where their economic substance arises (i.e., no profit-shifting). This policy should be the subject of an annual compliance audit, and be "owned" by a designated board director.
- Ensure that the consolidated annual profit & loss of the parent company is publicly available, together with details of associated corporation tax payments (total, current and deferred tax). Multinational enterprise should disclose this on a Country-by-Country basis. A current tax reconciliation should be provided, together with a narrative to explain any deviations from the headline tax rate(s).
- Make clear who the ultimate beneficial owners of the business are, and those with significant control.

We believe these measures to be fair, material and proportionate. If a business is not actively involved in tax avoidance, they can quickly and easily be committed to.

Some tax-related conditionality criteria have already been advanced in recent weeks, including a ban on grant support from the Scottish and Welsh governments going to companies based in "tax havens". Whilst a welcome signal, these initiatives are ultimately weak, being premised on the EU's tax haven blacklist which does not include significant tax havens such as the British Virgin Islands, Bermuda and the Netherlands.

More recently, 'tax obligations' were reportedly included in the range of commitments asked of Celsa Steel as part of the UK's Project Birch support

[21] ICM Omnibus, a nationally representative omnibus survey of 2,043 adults across GB between 15 and 17 May 2020.

package.[22] However, no further detail of the responsible tax conditions has been provided – this is urgently required in order to judge the efficacy of this approach.

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[22] https://www.gov.uk/government/news/government-agrees-support-package-to-uk-steel-company