

Date: 29 November 2023

Item: Annual Tax Compliance Update

This paper will be considered in public

1 Summary

- 1.1 The purpose of this report is to present to the Committee the key policies and documents that form TfL's Tax Governance Framework and to detail the steps being taken to ensure TfL is compliant with all relevant tax legislation. In addition, provide an update on any key tax matters considered during the year.
- 1.2 A paper is included on the Part 2 agenda which contains supplementary information that is exempt from publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the business affairs of TfL. Any discussion of that exempt information must take place after the press and public have been excluded from this meeting.

2 Recommendation

- 2.1 **The Committee is asked to note the paper and the supplementary information on Part 2 of the agenda.**

3 Background

- 3.1 Over recent years there has been an increased focus from HM Revenue and Customs (HMRC) to ensure that tax compliance and governance issues are properly considered and understood at the highest levels within organisations. This has included making directors personally responsible for the tax affairs of the companies they manage.
- 3.2 Due to this increased focus, it is considered appropriate that the Committee is provided with an annual tax update focusing on tax governance. This annual update occurs each December to coincide with the annual Senior Accounting Officer sign off (see Section 6).
- 3.3 The Head of Financial Accounting and Tax Department hold bi-annual update meetings with the statutory Chief Finance Officer to review significant activities and provide an opportunity to discuss all tax risks and concerns.
- 3.4 The Anti-Tax Evasion and Senior Accounting Officer policies, the Anti-Tax Evasion Statement and the TfL Annual Tax Strategy were all reviewed by the Tax Department in November 2023, but no changes to the Policies as originally drafted have been considered necessary. The policies as originally drafted are provided at Appendices 1-4 for information purposes only.

- 3.5 TfL has a low risk appetite in relation to tax matters and, when evaluating tax planning, the organisation's reputation and corporate and social responsibilities are always considered. TfL seeks to be transparent and open about its approach to tax which has led to HMRC awarding TfL a 'Low Risk' tax rating.
- 3.6 The TfL Financial Accounting and Tax Department manages a range of controls and procedures to ensure that tax risks are mitigated, that TfL is compliant with all relevant tax legislation and that TfL retains its 'Low Risk' tax status.

4 TfL Tax Update 2023

- 4.1 Due to the publication deadlines of the Committee, it has not been possible to prepare any analysis of the Chancellor's Autumn Statement on 22 November 2023. However, any key announcements together with an assessment of the likely impact on TfL will be provided as a verbal update at the meeting.
- 4.2 During 2023 there has been an increased focus from HMRC across a range of different taxes:
- (a) there are a number of open HMRC enquiries and assessments. As these relate to ongoing enquiries the details are included in the paper on Part 2 of the agenda. TfL remains committed to providing HMRC with all the additional information they have requested with a view to resolving the enquiries as quickly as possible;
 - (b) VAT - HMRC conducted a two day VAT audit of TfL in June 2023. Initial feedback was that HMRC were broadly satisfied with the systems and controls which underpin submission of TfL's VAT returns. HMRC issued several VAT assessments, details of which are included in the paper on Part 2 of the agenda; and
 - (c) Business Risk Review (BRR+) – this is a separate, routine HMRC review and process to determine where TfL sits on HMRC's tax compliance spectrum and in particular whether TfL continues to meet the criteria for 'Low Risk' tax status – which has been TfL's status since HMRC's last BRR+ in 2018. The BRR+, which considers all taxes, will take place at least annually for taxpayers who are not considered by HMRC to be 'Low Risk'. For 'Low Risk' taxpayers a BRR+ will, in general, be carried out on a three year cycle. HMRC requested information on TfL's tax governance, systems, controls, and processes in order to assist with their review. The review is ongoing and is expected to conclude between December 2023 and March 2024 with a meeting between HMRC and TfL. The results of the BRR+ influence the approach taken by HMRC towards TfL. A high risk rating could result in a significant change to the level of scrutiny, frequency of HMRC tax audits and the resource required by TfL to respond to these requests.
- 4.3 The TfL Financial Accounting and Tax Department will continue to keep abreast of all legislative, HMRC policy and case-law developments across the full range of taxes that may impact TfL and communicate these changes to different TfL business areas as appropriate.

5 Anti-Tax Evasion Policy and Statement

- 5.1 The Criminal Finances Act 2017 created a new corporate criminal offence of failure to prevent either domestic or foreign tax evasion.
- 5.2 This legislation makes it a criminal offence for a body corporate or partnership to fail to prevent the facilitation of tax evasion by one of its associates (employee, contractor or any other person providing services on their behalf).
- 5.3 Prosecution under the legislation could lead to:
- (a) an unlimited fine;
 - (b) public record of the conviction; and
 - (c) significant reputational damage and adverse publicity.
- 5.4 A defence exists in the legislation for having 'reasonable prevention procedures' in place. The following steps have been taken to ensure TfL is able to demonstrate reasonable prevention procedures are in place:
- (a) a six monthly risk assessment is undertaken by the Tax Department in conjunction with Risk and Assurance. This risk assessment considers key areas of risk where tax evasion could be facilitated and ensures that sufficient controls are in place to mitigate the risk. The risks captured on the latest assessment (May 2023) are currently held on TfL's Enterprise Risk Assessment Matrix and have been assessed as low or very low risk;
 - (b) the Criminal Finances Act 2017 is included in the wider Fraud Awareness ezone training course;
 - (c) the Anti-tax evasion policy at Appendix 1 is held on the TfL Management System and is linked to both Fraud team and Group Tax SharePoint sites. While not a strict requirement of the legislation it further demonstrates TfL's commitment to having a zero tolerance approach to all forms of tax evasion. Everyone working for, or on behalf of, TfL or any subsidiary company must comply with this policy. This policy has not changed since the version shared with the Committee on 30 November 2022; and
 - (d) the Anti-tax evasion statement at Appendix 2 has been published on [TfL's website](#).

6 Tax Strategy

- 6.1 The Finance Act 2016 requires large companies with UK operations (turnover of more than £200 million or a balance sheet exceeding £2 billion) to publish their tax strategy on their external website and update it annually.
- 6.2 The tax strategy must include the following details:
- (a) the organisation's approach to risk management and governance of its UK tax;
 - (b) the organisation's attitude towards tax planning;

- (c) the level of risk the organisation is willing to accept in relation to UK tax; and
 - (d) the organisation's approach to dealing with HMRC.
- 6.3 TfL's tax strategy is included at Appendix 3. This is reviewed annually by the Financial Accounting and Tax Department and the statutory Chief Finance Officer and is updated each March in accordance with the legislation and is published on [TfL's website](#).

7 Senior Accounting Officer

- 7.1 The Finance Act 2009 introduced the Senior Accounting Officer (SAO) legislation for large companies. This legislation applies to UK incorporated companies, as defined by the Companies Act 2006, which means that Transport Trading Limited and all subsidiary companies must comply with the legislation; the Corporation is exempt.
- 7.2 The SAO should be the most senior person in an organisation with responsibility for financial accounting and with an overall view of accounting processes. The SAO for the group is the statutory Chief Finance Officer.
- 7.3 The SAO is required to ensure that appropriate accounting arrangements are in place to enable tax liabilities to be calculated accurately. These arrangements must be monitored on an ongoing basis. The SAO must also provide an annual certificate to HMRC which confirms that appropriate accounting arrangements were in place throughout the financial year or provide an explanation as to why such a declaration cannot be made.
- 7.4 The certificate for the Transport Trading Limited group must be submitted to HMRC by 31 December each year. Failure to do so will result in a £5,000 penalty which is levied on the SAO personally.
- 7.5 Details of the TfL SAO sign off procedure are included in the SAO Policy at Appendix 4. This policy is unchanged from the version shared with the Committee on 30 November 2022. The SAO certificate for the accounting period ended 31 March 2022 will be submitted before 31 December 2023.

List of appendices to this report:

Appendix 1: Anti-Tax Evasion Policy
Appendix 2: Anti-Tax Evasion Statement
Appendix 3: TfL Tax Strategy
Appendix 4: Senior Accounting Officer Policy

Exempt supplementary information on Part 2 of the agenda.

List of Background Papers:

None

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