Audit and Assurance Committee

Date: 27 November 2024

Item: Annual Tax Compliance Update

This paper will be considered in public

1 Summary

1.1 This report presents to the Committee the key policies and documents that form TfL's Tax Governance Framework and the steps being taken to ensure TfL is compliant with all relevant tax legislation. In addition, it provides an update on any key tax matters considered during the year.

2 Recommendation

2.1 **The Committee is asked to note the paper.**

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 at the November meeting of the Committee, shortly before the annual Senior Accounting Officer sign off (see Section 6).

3.3 The Financial Accounting and Tax team meets with the statutory Chief Finance Officer every eight weeks 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 have all been reviewed by the Financial Accounting and Tax team in September 2024, but no changes to those policies have been considered necessary. The appendices present the policies as originally drafted 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 team 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 2024

4.1 On 30 October 2024, the Chancellor delivered the Autumn Budget. The TfL Financial Accounting and Tax team prepared a short analysis of the key tax announcements together with an assessment of the likely impact on TfL which has been discussed with relevant business areas. A copy of this tax analysis is provided at Appendix 1.

4.2 The changes to both the rate and thresholds for Employer National Insurance Contributions (NIC) will have a significant impact on TfL with the additional NIC liability being estimated at approximately £35m per annum. We understand that the government intends to compensate public sector employers for the costs arising from this NIC change. However, we await confirmation of this and details of the mechanism for this compensation.

4.3 At the time of the Tax Update to the Committee in November 2023, HMRC were in the process of finalising their Business Risk Review (BRR+) of Transport Trading Ltd group (‘TTL Group’) which they began in June 2023. TTL Group is our holding company for our operating transport companies and our land and property companies.

4.4 The BRR+ determines where TTL Group sits on HMRC’s tax compliance spectrum: low risk; moderate risk; moderate-high risk; or high risk. HMRC confirmed in January 2024 that they were satisfied that TTL Group met the conditions for ‘low risk’ tax status. For low risk taxpayers a BRR+ will, in general, be carried out on a three-year cycle, instead of annually. We are therefore anticipating the next BRR+ to commence in the second half of 2026.

4.5 During 2024 several ongoing VAT enquiries have been resolved in TfL’s favour. These enquiries arose from HMRC’s 2023 VAT audit and were detailed in the Tax Update to the Committee in November 2023.

IFS Cloud Cable Car fares

4.6 HMRC issued protective VAT assessments on the grounds that IFS Cloud Cable Car fares income is VAT standard-rated (20 per cent) not zero rated because “services provided via the London Cable Car have been overwhelmingly marketed, used and perceived as those relating to a place of attraction and entertainment, rather than a means of passenger transport”. Therefore, the VAT assessment was that IFS Cloud Cable Car fares should not benefit from the zero-rating for VAT provided to passenger transport.

4.7 This VAT assessment gave rise to a potential unbudgeted tax cost of around £3.9m and the risk of increased IFS Cloud Cable Car fares due to the application of VAT as 20 per cent. TfL disputed HMRC’s tax analysis and over the course of 14 months responded to multiple requests for information and provided different forms of evidence which demonstrated the cable car was a means of passenger transport. HMRC accepted our arguments and withdrew their VAT assessments in full on 22 October 2024.

London River Services pier handling income

4.8 HMRC issued protective VAT assessments on the basis that the London River Service pier handling “facilities are not supplied in a port” such that income should have been subject to 20 per cent VAT and not VAT zero-rated.

4.9 This VAT assessment gave rise to a potential unbudgeted tax cost of around £2.2m. TfL disputed this tax analysis on the basis that the Port of London Authority covers the stretch of the River Thames east of Teddington Lock. HMRC accepted our arguments and withdrew their VAT assessments in full on 15 January 2024.

Other Tax Matters

4.10 On 18 June 2024, HMRC contacted TfL with several queries in relation to TfL’s compliance with Construction Industry Scheme (CIS) reporting over the previous four years. As part of this a small number of administrative errors were identified which may result in a total CIS tax payment to HMRC of around £4,500. We continue to engage with HMRC on their queries and no significant issues have been identified in our processes and controls across the total volume of construction spend during the same period.

4.11 On 18 September 2024, the Committee was given an update on other commercially sensitive tax matters. There have been no significant developments in relation to these matters and no further update is included in this paper.

4.12 The TfL Financial Accounting and Tax team 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 Financial Accounting and Tax team in conjunction with the Risk and Assurance directorate. 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 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 e-learning training course;

(c) the Anti-tax evasion policy at Appendix 2 is held on the TfL Management System and is linked to both the Counter-fraud and Corruption 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 29 November 2023; and

(d) the Anti-tax evasion statement at Appendix 3 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 £200m or a balance sheet exceeding £2bn) 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 4. This is reviewed annually by the Financial Accounting and Tax team and the statutory Chief Finance Officer and is updated each March in accordance with the legislation and is published on TfL's website. There were no substantive changes to the tax strategy from the version shared with the Committee on 29 November 2023.

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 the TTL Group must comply with the legislation; although the TfL 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 TTL 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 5. This policy is unchanged from the version shared with the Committee on 30 November 2022 and 29 November 2023. The SAO certificate for the accounting period ended 31 March 2023 will be submitted before 31 December 2024.

List of appendices to this report:

Appendix 1: TfL Tax Analysis of the Chancellor’s Autumn Statement
Appendix 2: Anti-Tax Evasion Policy
Appendix 3: Anti-Tax Evasion Statement
Appendix 4: TfL Tax Strategy
Appendix 5: Senior Accounting Officer Policy

List of Background Papers:

None

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