**St Peter’s Church, West Blatchington**

**Context, Policy and Risk Assessment to prevent the criminal facilitation of tax evasion**

1. **Context**

**Introduction**

Failure to prevent tax evasion is a serious criminal offence.

From 2017, a new Corporate Criminal Offence of ‘Failure to prevent the criminal facilitation of tax evasion’ was introduced which impacts on *all* incorporated churches of whatever size. Churches can be incorporated in a variety of ways including by statute, by Royal Charter, by registering as a company or by registering as a Charitable Incorporated Organisation: Parochial Church Councils are incorporated bodies under the Parochial Church Councils (Powers) Measure 1956, and therefore fall within its scope.

**Background**

The rules apply where a person acting on behalf of a church e.g. an employee or volunteer, knowingly facilitates someone else's tax evasion.

*Evading* tax is already illegal (as opposed to *avoiding* tax by legitimate tax-planning – which is legal). Although it has always been illegal deliberately and knowingly to facilitate tax evasion by someone else, historically it has been difficult to prosecute a company or church and the company's directors or the church's trustees for assisting tax evasion.  The law counters this by introducing the Corporate Criminal Offence which imposes a legal requirement on the church trustees (such as PCC members, deacons or elders) in the governance of the church.

**Main elements**

In order for the church to be guilty of the offence:

* criminal tax evasion (which might be evasion of UK or foreign tax) must take place by a taxpayer;
* an associated person, eg an employee, volunteer, contractor or agent of the church, must deliberately and dishonestly facilitate that evasion; and
* the PCC must have failed to prevent the associated person from committing the facilitation.

An ‘associated person’ is broadly defined to include any person providing services for or on behalf of the church. It may include those involved in providing services to outside organisations or others which use the church's facilities, eg for weddings and christenings.

If an offence occurs, the church is criminally liable *even if it is unaware of the offence* unless it can be demonstrated there were ‘reasonable procedures’ in place at the time of the offence to prevent the associated person from committing it, or that it was unreasonable to have such procedures.

There is a self-reporting procedure for churches to notify that they have facilitated tax evasion; if followed, it can be taken into account by the authorities in deciding whether or not to prosecute.

**Reasonable procedures**

While the law is not specifically targeted at incorporated churches, they will nevertheless be subject to it and they need to consider whether they have ‘reasonable procedures’ in place.  There are no exemptions for incorporated churches. What is ‘reasonable’ will depend on the facts and circumstances of each church. HMRC, which will police the new law, has issued detailed guidance ‘Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion’. This contains six guiding principles which can be used to meet the ‘reasonable procedures’ requirement:

1. Risk assessment
2. Proportionality
3. Top-level commitment
4. Due diligence
5. Communications and training
6. Monitoring and review.

These six principles are now described in terms of what we as a PCC will do on a Parish-wide basis which constitutes our Policy.

1. **Policy**
2. ***Risk assessment***

There will be a Parish-wide assessment of the areas of potential risk of involvement in the facilitation of tax evasion including consultation with trustees, employees and volunteers connected with tax and financial matters. This initial risk assessment is contained as Section C and will be subsequently updated as described in Section’s 3 and 7 below.

A conclusion as to the level of risk and the reasoning behind the conclusion will be documented in the PCC minutes.

**2. *Steps taken to mitigate risk (as appropriate)***

The procedures to mitigate the risks identified will consider the following areas:

* PCC members themselves setting the tone for the church,
* recruiting employees and volunteers,
* controls over payments and documentary evidence for services provided and received,
* training, and
* monitoring and controls.

The mitigations will be included with the risk assessment in Section C and will be updated as described in Section’s 3 and 7 below.

Any additional actions which form a reasonable and proportionate response to any remaining risk not covered by the procedures will be added to the headings below.

***3. Top-level commitment***

There will be an annual review of the risk assessment to include consideration of any changes in the Parish’s operations and procedures to be agreed by the PCC who should exert their influence over adherence to any procedures put in place.

**4. *Due diligence***

This should be tailored to the church's circumstances but should include obtaining a fit and proper persons statement from trustees, employees and volunteers confirming their understanding and complying with the church's policy of not facilitating criminal tax evasion.

**5. *Communication***

The church's policy will be widely communicated. Employees and volunteers will be advised that the church will apply its disciplinary procedures in the case of employees or other procedures in the case of volunteers if they are guilty of an offence. Any rule-book or staff manual will contain a reference to this.

**6. *Training***

Training for PCC Members, leaders, staff and volunteers will be arranged where considered appropriate.

**7. *Monitoring and review***

In-year reviews of risks where there are new activities or working processes to ensure procedures remain up to date and continue to reflect the church's needs will be carried out.

This Policy agreed by the PCC on dd/mm/yyyy and to be reviewed annually

**Section C Risk Assessment**

This risk assessment agreed by the PCC on dd/mm/yyyy and to be reviewed at least annually.

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| **Risk title** | **Risk Description (roles as examples)** | **Steps to mitigate risk including any ‘church specific’** |
| Cash payments to avoid VAT | A person or company providing services to the Parish suggests that they are paid an amount in cash that doesn’t include VAT. The Parish accepts the offer and pays cash as they are not VAT registered and would not be able to reclaim the VAT. The person or company providing the services would avoid paying VAT and income tax. | All payments for goods supplied or services rendered to the parish must be accompanied by a formal receipt. |
| Cash payments to an employee | The church engages e.g. a cleaner who works regular hours during the week. The treasurer, who is a volunteer, does not run a payroll for the church but pays the cleaner each week in cash as the cleaner has requested since "this will save the church NIC and I will be better off because the cash will be tax free" | All staff engaged by or on behalf of the parish must be paid through the payroll by bank transfer and returned to HMRC through PAYE. |
| Donations to a church | A company wishes to make a tax-deductible donation to a church which has provided benefits in return and subject to conditions which would prevent corporation tax relief being available to the donor company. The donor asks the church secretary, a volunteer, to provide a receipt showing the payment as a donation but with no reference to the benefits and conditions which are recorded separately explaining that this is so that a tax deduction can be obtained. | Receipts for donations or services rendered may only be provided by the parish treasurer or, in his or her absence, by a churchwarden or the rector, all of whom shall be aware of the requirement to avoid the facilitation of tax evasion in this manner. |
| Gift aid declarations | The treasurer of a church is provided by the church's fundraiser (a volunteer) with donations from individuals and the relevant Gift Aid declarations. He processes the Gift Aid claims online. The treasurer and fundraiser know that some Gift Aid declarations are from supporters where the money has come from other people (eg, collections at work) and other declarations are purported to be from donors who have never heard of the church. | Gift Aid declarations may only be accepted from donors who are known, or reasonably believed, to have donated the funds from their own resources. Where there is doubt, a signatory shall be asked specifically to confirm this. |
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