

Information released following a decision notice by the Information  
Commissioner on 3 November 2009 in connection with the award of the  
contract to Mapeley STEPS Contractor Limited for managing HM Customs &  
Excise and Inland Revenue properties.

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-----Original Message-----

From: Harrison, Kevin  
Sent: 17 March 2003 15:41  
To: 'Hannan, Janine {HQM, Commerce, LD}'  
Cc: Ashworth, Gillian {HQM, Commerce, LD}; Bratley, Keith {HQS,  
Commerce LD}; Winkley, Julian {HQM, HRC, SOLS}; Sean Byrne (E-mail)  
Subject: RE: Advice

Janine

Thank you for your email.

I think your email correctly points to regulation 14 which determines the circumstances where a company might be excluded from a procurement. In this case, as you say, one would have to show that they had broken the law or not fulfilled their tax obligations, for them to be excluded. Of course, there may be other qualification criteria under which a company may be excluded but none are specific to what tax it pays.

There have also been suggestions that one might make it a requirement that the company be based in the UK or that there should be a blanket exclusion of companies residing offshore. In both cases there would be problems with such a course of action, most probably they would be direct breaches of our EC Treaty obligations.

I mentioned that Treasury has been heavily involved in the whole offshore issue, not just from procurement angle (for which we have contributed to briefing for the Chief Secretary). They are preparing some more general advice which will be issued to departments but you might wish to check with them, as another Chancellor's department, if there is anything that they can usefully add. My contact there is Sean Byrne (to whom I am copying this email)

Kevin Harrison  
OGC  
Procurement Policy

-----Original Message-----

From: Hannan, Janine {HQM, Commerce, LD}  
Sent: 14 March 2003 15:13  
To: 'kevin.harrison'  
Cc: Ashworth, Gillian {HQM, Commerce, LD}; Bratley, Keith {HQS,  
Commerce LD}; Winkley, Julian {HQM, HRC, SOLS}  
Subject: Advice

Kevin

I refer to our conversation earlier in relation to the legality of excluding potential suppliers registered in tax-free countries that do not adhere to European Community tax laws.

HM C&E has recently been involved in numerous discussions in relation to this issue and is looking to ensure that 'lessons learnt from the Mapeley situation' have been applied in other strategic contracts

currently been tendered for. Both ourselves and the Revenue are been asked questions at a Parliamentary level to confirm our interpretation of the provisions within the Directives. I am now been asked by my Director to seek a second opinion and view from OGC on this matter.

I can confirm that the view of HM C&E is that the legal situation is set out in The Public Supply/ Services Contracts Regulations Part IV Regulation 14 deals with the selection of suppliers and criteria for rejection.

Specifically Reg 14 (g) states " has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or the State in which the supplier is established".

Legally, bidders can only be excluded if they have not paid tax they owe, or if they have been involved in illegal tax evasion. Therefore purchasers are prevented from excluding bidders using an offshore tax structure in any shape or form.

I would be grateful for confirmation in writing on the above in order that I can respond to an urgent PQ question and would appreciate a response by Wednesday next week if possible.

If you need clarification on any of the above do not hesitate to call me.

Many thanks for your assistance on this matter.

Regards

Janine Hannan  
Senior Commercial Manager

**From:** Stewart, Ian {HQ Ldn, POLICY, Business Services & Taxes}  
**Sent:** 21 March 2003 10:07  
**To:** Tailby, Chris {HQ Ldn, BST, Director Tax Practice}; Hannan, Janine {HQM, Commerce, LD}  
**Cc:** Ashworth, Gillian {HQM, Commerce, LD}; Allen, Linda {LBG London}  
**Subject:** RE: Tax Avoidance - Mapeley

Janine

The only points I would add to Chris' comments below are:

- there is not much logic in trying to exclude, from any procurement exercise, any suppliers registered in a tax haven **if that is the only new exclusion**. Reason for this is that, while these suppliers are probably avoiding direct taxes like Corporation Taxes, they are not the main players in VAT avoidance schemes.
- if it were legally feasible to exclude, from procurement exercises, any supplier involved in an avoidance scheme, it would be preferable to exclude **all avoiders**, not only those suppliers who are involved in avoidance as a result of being established in a tax haven
- but, as Chris notes, there are **definitional problems** with such an approach and it would be difficult to draw up rules which would make it clear which suppliers would then be excluded from the procurement
- so I think that the only way we could do this would be to have the ability to differentiate, when considering any bids, between suppliers that we see as avoiders and others. In other words, if A and B tender for a procurement and A's tender is the better deal for the department, we would want to be able to award the contract to B if we considered that A was sufficiently involved in avoidance to warrant that "discrimination". (I am assuming that current rules prevent us from discriminating against A in this way?)
- we would only want to do this for major procurement exercises
- we could not have a Government wide scheme, since it would be a breach of taxpayer confidentiality if we were to tell MoD, say, that supplier A was considered to be a tax avoider. However, I imagine that we could have a joint IR/CE system - though you would have to check on the legality of that - so that we could exclude a supplier that was involved in either direct or indirect tax avoidance.
- one of our current objectives is to dissuade businesses from using avoidance schemes. Making it more difficult for avoiders to win IR/CE contracts could help achieve that objective. So my feeling is that, if the legal advice that you get suggests that some form of discrimination against avoiders would be legal, it would be worth exploring this in more detail.

I hope that's helpful. We'd be happy to discuss the ideas in this and Chris' e-mail with you in more detail if the legal advice you receives suggests that this could be a runner.

Ian

-----Original Message-----

**From:** Tailby, Chris {HQ Ldn, BST, Director Tax Practice}  
**Sent:** 20 March 2003 18:38  
**To:** Hannan, Janine {HQM, Commerce, LD}  
**Cc:** Ashworth, Gillian {HQM, Commerce, LD}; Stewart, Ian {HQ Ldn, POLICY, Business Services & Taxes}  
**Subject:** RE: Tax Avoidance - Mapeley

Janine - we are having a think about this and will respond asap. As you will appreciate, avoidance and evasion are different in that the latter is fraud and therefore criminal whereas avoidance is not. One initial comment I would

make is that if we excluded everyone who practised tax avoidance from supplying us we might not have many suppliers. Definitions are difficult as well as what we may think is avoidance the trader may think is tax mitigation. We do, as a Department check whether a company supplying us owes us VAT - but I doubt we check whether that company owes money to the Inland Revenue or any OGD, for that matter. We do try to discourage businesses from avoiding tax by explaining our strategy when we find avoidance. In the past we have spoken to OGD, I believe, in an attempt to persuade them not to sanction VAT avoidance - I gather with some effect in the NHS. I have asked Ian Stewart to comment as well. I am sure he will have some views.

Pls come back to me if I can help further

Chris

*Chris Tailby*

Director, Tax Practice

-----Original Message-----

**From:** Hannan, Janine {HQM, Commerce, LD}  
**Sent:** 20 March 2003 13:01  
**To:** Tailby, Chris {HQ Ldn, BST, Director Tax Practice}  
**Cc:** Ashworth, Gillian {HQM, Commerce, LD}  
**Subject:** Tax Avoidance - Mapeley

Chris

You are probably aware of the recent press attention on the joint HM C&E and Inland Revenue-STEPS Mapeley contract. We have been asked by Mike Hanson, Director of Logistics, to respond to a question raised in Parliament recently. We are being asked to clarify our view on the legal position of excluding potential suppliers registered in tax-free 'havens' that do not adhere to European Community tax law. Namely Mapeley are registered tax-free in Bermuda.

As background, the procurement rules prevent us from excluding suppliers other than those who have not paid tax they owe, or if they have been involved in illegal tax evasion. I am seeking confirmation from OGC and Solicitors Office on this matter. It seems that we are acting within the legal boundaries, which are clearly defined, but it is more a matter of the ethics of this particular arrangement. My personal view is that ethically we should be able to exclude suppliers but to explicitly state this in any documentation, clearly we would be in breach of the EC Procurement Directives.

It seems MP's are urging the Government to revamp procurement and departmental guidance after slating us for awarding a contract to a company who allegedly practice tax avoidance (which as I understand is currently not illegal).

I saw with interest in the Business plans for BST for next year there are plans a foot to tackle tax avoidance and compliance issues.

In order to provide a fully informed response to Mike Hanson I am seeking views from key business stakeholders. I therefore ask that if you have points of interest or relevance on the above matter please forward these to me for reference purposes.

Additionally if you think it warrants a meeting, then my manager Gill Ashworth is in London on Monday.

If you require any further information or clarification on any of the above please let me know.

Regards

Janine Hannan

Lee Corrigan  
Policy & Professional Development  
5th Floor West Ralli Quays  
3 Stanley Street Salford M60 9LA



**HM Customs and Excise**  
Logistics and Finance

To Dave Mooney

cc Viv Consalvey

Date 27<sup>th</sup> February 2003

Subject **Mapeley – Treasury Parliamentary Questions**

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***Question – That the legitimate and legal arrangements of Mapeley’s structure would not be a legal reason for the Revenue to act other than award the contract?***

The legal situation is set out in The Public Supply Contracts Regulations 1995 No 201 (and also in the Goods and Services Regulations).

Part IV, Regulation 14 deals with the selection of suppliers. Specifically Reg 14(g) states *“has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or the State in which the supplier is established.”*

Clearly Mapeley has not acted illegally, and therefore their “tax avoidance” measures do not constitute grounds for rejection.

The Regulations also provide for Public Bodies to be able to request information as to an organisations economic and financial standing. Reg 15(1) covers bank statements, accounts and company turnover.

Reg 15(2) states *“Where the information specified in paragraph (1) above is not appropriate in a particular case, a contracting authority may require a supplier to provide other information to demonstrate the supplier’s economic and financial standing.”*

Reg 15(3) states *“A contracting authority which requires information to be provided in accordance with paragraphs (1) and (2) above shall specify in the contract notice or in the invitation to tender the information which the supplier must provide and it may require a supplier to provide only such of that information as it considers it needs to make the assessment or selection.”*

Reg 17 also states *“The contracting authority may require a supplier to provide information supplementing the information supplied in accordance with Reg 14, 15 and 16 or to clarify that information, provided that the information so required relates to the matters specified in regulations 14, 15 and 16.”*

From this it can be said that whilst Mapeley’s “tax avoidance” activities do not constitute illegality, no criteria within the Regulations specifically exists to exclude them. Within the Regulations, however there is scope for contracting authorities to call for financial information to be considered for evaluation within a contracting exercise.

Janine Hannan  
Commerce  
5<sup>th</sup> Floor West, Ralli Quays  
3 Stanley Street, Salford M60 9LA



**HM Customs and Excise**  
Logistics and Finance

To: Emma Broadbent  
Stuart Hartlib – Inland Revenue

CC: Dave Mooney  
Gill Ashworth

22 May 2003

***Request for Advice :***

Norman Lamb, MP for North Norfolk wrote to the Chairman to seek comment on issues in relation to the joint HM Customs Excise (C&E) and Inland Revenue (IR) STEPS contract with Mapeley. We were asked to clarify our view of the legal position under EU procurement law and World Trade Organisation rules of excluding a potential supplier based in a tax haven, such as Bermuda, from entering into a contract with a government department or agency.

In addition we were also asked to provide further detail of any proposed steps to be taken in Government to ensure this situation does not arise again.

***Context of our Advice :***

Commerce are able to provide a policy line solely with regard to the issue of tax avoidance and exclusion from any procurement exercise. This considers both the legal and ethical position.

As Commerce had no involvement in the award and subsequent management of the contract with Mapeley we are unable to provide an account of the contextual detail nor basis of the decisions taken which led to the appointment.

***Action Undertaken :***

We have sought advice from OGC Central Procurement Policy Unit, HM C&E Solicitors Office, who in turn instructed Counsel on this matter and the Department's Director of Tax Practices.  
(See attached Annexes for detailed responses).

***Comment :***

The view of Commerce Policy Team, which has been confirmed by OGC is as follows :-

The legal position is set out in 'The Public Supply/ Services Contracts Regulation Part IV'. Regulation 14 deals with the selection of suppliers and criteria for rejection.

Specifically Regulation 14 (g) states that suppliers who have "*not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or the State in which the supplier is established*" can be excluded from a procurement exercise governed by the regulations.

Therefore bidders can only be legally excluded if they have not paid tax they owe, or if they have been involved in illegal tax evasion. This prevents C&E and other UK government departments from excluding potential bidders who have an offshore tax structure in any shape or form.

The advice provided by the OGC went on to state that suggestions to make it a requirement that the bidding company be based in the UK or that there be a blanket exclusion of companies residing offshore would most probably be deemed as direct breaches of our EC treaty obligations.

<<Text redacted - section 42 FOI exemption>>

As a Department which has a clear view on tax avoidance and associated practices and has aggressive policies in place to tackle and reduce tax avoidance, it certainly would be ethically correct and of comfort to full tax paying companies/individuals if we could legally exclude bidders who practice tax avoidance. However, this is a very complex area and there are no clear distinctions or definitions of how the Department defines avoidance in order to apply an exclusion rule across the board.

<<Text redacted - section 42 FOI exemption>> However, Treasury have taken a hard line with regard to this issue and have undertaken to develop guidance to set out obligations on government departments in dealing with tax avoidance and tax planning to counter abuse and close any loop holes. Specifically in relation to procurement the guidance suggests that tax avoidance be taken into account during tender evaluation. Commerce Division will take cognisance of any forthcoming guidance and will apply its principles in future procurements whilst continuing to ensure fair and transparent procurement processes and securing value for money in line with statutory obligations.

Annex A – Response from Kevin Harrison, OGC

Annex B – <<Text redacted - section 42 FOI exemption>>

Annex C – <<Text redacted - section 42 FOI exemption>>

Annex D – Response from Chris Tailby, Director of Tax Practice

Please feel free to contact me if you require further advice or assistance on any of the information provided above.

Janine Hannan  
Senior Commercial Manager