



Increasing the integrity of the Commonwealth procurement process

Government Response to the Black Economy
Taskforce Report

15 May 2018

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Consultation Process

Request for feedback and comments

Closing date for submissions: 15 June 2018

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

Increasing the Integrity of the Commonwealth Procurement process

Introduction

The purpose of this consultation is to assist in the development of a Procurement Connected Policy (PCP) which would require businesses from 1 July 2019 to provide a Statement of Tax Record from the Australian Taxation Office (ATO). This would apply to Commonwealth contracts through a procurement processes valued at over \$4 million (inclusive of GST). The Statement of Tax Record will not be an ATO assessment of compliance. It will be a statement based on details on ATO systems including information supplied by the taxpayer under the self assessment system and declarations made by the taxpayer when requesting a statement.

The ATO will build an online system that will enable businesses to request and receive these statements in a short time frame. It is expected that most businesses will be able to obtain the Statement of Tax Record without any difficulty.

Views are sought on how this is to be implemented, including what information should be included in the statements and what tax obligations will need to be met to have a satisfactory tax record. These views will help design a system that is fair, not onerous and doesn't penalise businesses that have made genuine mistakes. The system will not rely on subjective criteria that could be open to conjecture or result in delays in the procurement process.

This policy is being implemented as a PCP. PCPs are policies of the Commonwealth Government for which procurement has been identified as a means of delivering a policy outcome. PCPs are linked to the [Commonwealth Procurement Rules](#). In line with [Resource Management Guide no. 415 \(Commonwealth Grants and Procurement Connected Policies\)](#), it is necessary to ensure that there is only the necessary minimum burden imposed on government stakeholders and potential suppliers.

Issue

The Black Economy Taskforce found that the supply chain is becoming more complex and competitive. Suppliers may be outbid at the procurement point by other suppliers that have saved costs by not complying with their tax obligations. The Government has an opportunity to lead by example and require that businesses involved in government procurement contracts have a satisfactory tax record.

The Taskforce noted that supply chain integrity can be undermined due to illegal supplier practices that are often unknown at the procurement stage or during the course of the contract. These practices are often down the supply chain and are not able to be identified at the procurement stage, particularly as sub-contractors will often not be engaged at that point. This can mean that suppliers that do meet their regulatory obligations are at a commercial disadvantage.

While most businesses are doing the right thing, some examples of the types of behaviour of concern are illustrated below.

Examples

- A business with a history of black economy behaviour including not complying with tax obligations, tenders for a large government contract. The business cuts corners in a number of areas including not meeting their tax obligations. The lack of a Statement of Tax Record

means that there is no red flag that might otherwise alert procurement officers to broader black economy behaviour.

- A sub-contractor with a history of black economy behaviour tenders for some work being done by another business on a large government contract. The business has no visibility of the sub-contractor's tax history.

The tax laws contain provisions to protect the confidentiality of taxpayer information. Tax officers are unable to provide taxpayer information to third parties other than in accordance with some limited exceptions. It will therefore be necessary to implement this policy in a way that protects taxpayer privacy and not require the ATO to provide protected information about taxpayers directly to the procurement officer. It will be up to the business to obtain the Statement of Tax Record and decide to provide it to the procurement officer if it wishes to tender for the government contract.

What is a satisfactory tax record?

Subject to consultation, from 1 July 2019, the statement will be based on information in ATO systems including any information or declarations provided by the business. It is intended that in the first year that statements are required, the criteria will be limited to allow businesses, procurement officers and the ATO to adjust to and test the new system. After this period, the criteria will be further developed in line with the outcomes of consultation and experience in the first year.

The ATO and stakeholders will co design what is meant by a 'satisfactory tax record'. The criteria could initially be in respect of the businesses' history of:

- Registering for their tax obligations
- Lodging tax returns and business activity statements etc. on time
- Tax liabilities being paid on time or as agreed with the ATO under a payment plan

The criteria to be used are intended to show that the business has demonstrated satisfactory engagement with the tax system, rather than a perfect tax record. This will ensure that businesses that generally do the right thing but may have made unintended or minor errors, and taken steps to rectify the issue, can still tender for government business. The term 'satisfactory tax record' is used to highlight this point. For the same reasons, there should be a limit on the number of years of tax history that can be included in a statement. In addition, consideration needs to be given to the status of any issues subject to a review process.

A methodology will need to be established which determines how fully the business must meet the criteria. For example, benchmarks could be established.

In some cases, information held by the ATO about the tax history will be limited, especially for new businesses and international businesses. Where the business is new, information to indicate this could be provided on the statement. The new business could also provide a declaration that they will comply with their tax obligations. An international company could provide a declaration that they have complied with their tax obligations in other countries.

Businesses could also make a declaration that they are not in the business of providing tax related advice that has involved current or recent promotion of tax schemes that are not reasonably arguable.

Using objective criteria will mean that the ATO would be able to produce the statements more quickly than would be the case if using subjective criteria that could be open to interpretation.

The Black Economy Taskforce final report also proposed that the statement will also consider evidence of the adoption of the [Voluntary Tax Transparency Code](#) (the Code) for large businesses with a turnover of \$100 million or more. The Code is a set of principles and 'minimum standards' to

guide public disclosure of tax information by businesses. The Code was developed by the Board of Taxation at the Treasurer's request:

- to encourage large and medium-sized businesses to publicly disclose their tax affairs to highlight those that are paying their fair share and to encourage all businesses not to engage in aggressive tax avoidance; and
- for large businesses to take the lead, to become more transparent and help educate the public about their compliance with Australia's tax laws.

The Black Economy Taskforce Final Report proposed that the statement should also include convictions of tax evasion, bribery and corruption. These could be considered after the first year of implementation.

Questions on the criteria to be used in the statements

1. What should be taken into account in determining what is a 'satisfactory tax record'?
2. What could objectively be considered to be a 'satisfactory' tax record and an 'unsatisfactory' tax record?
3. What things should be taken into account if the tax history is not perfect but should not prevent a satisfactory tax record statement being issued?
4. What length of time should be taken into account in the Statement of Tax Record?
5. Should large businesses with a turnover of \$100 million or more be required to show evidence that they have adopted the Tax Transparency Code?
6. What should be the approach for new and international businesses?

Process for obtaining statements from the ATO

The process for obtaining statements needs to ensure that they are made available to businesses in a fair and efficient way to avoid disruptions to the procurement process. Businesses will be able to apply for the statements online to minimise the time and burden for businesses in applying for and receiving these statements. The statement could include an expiry date and could be obtained anytime, even if the business is not currently planning to tender for a government contract. This would mean that if they wished, businesses would be able to apply for the statements in advance and/ or renew statements about to expire to keep it current and ready for any future tendering processes.

The prime contractor (i.e. the entity contracting directly with the government) could provide the statement to the procurement officer at the time of submitting a tender. This may not be possible for sub-contractors engaged by the prime-contractor.

Noting the Government's response to the Black Economy Taskforce final report recommendation 9.2 (that the Government will consult with industry to develop appropriate standards for supply chain practices) a position on the treatment of sub-contractors needs to be considered as black economy behaviours can emerge further down the supply chain.

The situation for sub-contractors is different. In most cases the sub-contractors may not be known at the time of tendering. Sub-contractors also do not have a direct contractual relationship with the government entity. If this was to apply to sub-contractors, statements from sub-contractors could be obtained at a later time, possibly at the time they are engaged and provided to the prime contractor

or the contractor that engaged them. This would need to be done in a way that imposes minimal burdens on the businesses involved while still improving integrity in the supply chain.

The turnaround time to produce the statements from the time the business applies for the statement online is expected to be two days. For large businesses with more complex tax affairs the turnaround is expected to be four days to allow for a clerical check prior to issue.

An enquiry channel could be established to assist businesses needing clarification about information on their statement.

If the record indicates a problem which can be fixed through further engagement with the ATO, the business could apply again after taking appropriate action. Businesses would need to apply for the statement as early as possible to avoid delays in the procurement process.

While secrecy laws prevent the ATO providing information directly to procurement officers regarding the tax status of suppliers, the statement could include an ATO identifier that will enable the procurement officer to establish if the statement is valid.

Questions on the process of applying for statements

7. How should the Statement of Tax Record be obtained from the ATO?
8. It is anticipated that the statement will take between 2-4 days to produce – how will this affect the procurement process?
9. The statement will include an expiry date. How long should the statement be valid for?
10. How should businesses be able to make enquiries about their statements?
11. What arrangements should apply to sub-contractors?
12. Would the information provided in a Statement of Tax Record be useful to businesses taking on a sub-contractor?

How the statement will be used

The Statement of Tax Record would need to provide sufficient information to easily determine if the business has a satisfactory tax record for purposes of the procurement process. It will not be an ATO assessment of tax compliance, because it will be based on a limited criteria using details known to the ATO or supplied by the taxpayer, for example details included on the business' tax return.

The statement could contain notes to explain how it is to be used and the limitations of the information. Some of these limitations will include the fact that:

- new businesses do not have a tax history
- there may be insufficient information about the tax affairs of an international business
- the information is only for a point in time
- some information is not available

It should also caution that the statement is based on limited objective criteria which are unlikely to be sufficient to be used for other purposes, such as an indication of financial position, credit worthiness etc.

Questions on the design of the statement:

13. What information should be contained on the statement regarding the tax history of the business?
14. What are the limitations on use of the statement that should to be noted on the statement?

Implementation

Following this initial consultation, a co-design process on the design of the statement will occur during 2018-19. This will involve feedback from representatives of businesses wishing to tender for government contracts, government procurement officers and other stakeholders.

The new arrangements will start from 1 July 2019. In the first year, the statement will be based on basic criteria in order to allow businesses to adjust to the new system and for the ATO to ensure that the process for applying for statements is running smoothly from the beginning.

The Government will provide information to potential suppliers and procurement officers about the new requirements to ensure a smooth transition.

In addition, Australia's international treaty commitments include reciprocal access to government tendering opportunities, standards for procurement processes and equal treatment of foreign suppliers. The policy would be implemented in a manner that does not contravene Australia's treaty obligations.

The Treasury, in consultation with the ATO and the Department of Finance will review the effectiveness and regulation impacts of this proposal after implementation, in line with the Commonwealth Grants and Procurement Connected Policies Resource Management Guide No. 415.