



Black Economy Division
The Treasury
Langton Crescent
PARKES ACT 2600

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Email: blackeconomy@Treasury.gov.au

Dear Sir/Madam

Increasing the integrity of the Commonwealth procurement process

The Corporate Tax Association (CTA) welcomes the opportunity to comment on the Treasury Discussion Paper "Increasing the Integrity of the Commonwealth Procurement Process" dated 15 May 2018 (**Discussion Paper**). We note that the Discussion Paper was released as part of the Government's 2018-19 Federal Budget response to the Black Economy Taskforce Report.

Objective of the proposed changes to the Commonwealth procurement process

As stated in the Discussion Paper, the increasing complexity and competition within supply chains in Australia is placing additional emphasis on the need for all suppliers to be participating on an even playing field, particularly in relation to their tax obligations. Suppliers that do not comply with their tax obligations are at an advantage (in terms of costs) to those that do, which in turn can result in 'compliant' suppliers being outbid at the procurement point by 'non-compliant' suppliers. The proposed process for obtaining a 'satisfactory tax record' from the ATO is aimed at deterring 'non-compliant' behaviour, and to protect those that do comply with their tax obligations from the actions of those that do not.

The CTA is a strong advocate of transparency and supports the Government in its objective of ensuring those that tender for Commonwealth contracts are complying their tax obligations. To achieve this objective in the context of the Commonwealth procurement process, care must be taken to ensure that the process does indeed deter businesses from not meeting their tax obligations or, better still, bring businesses that are not compliant into the tax system. The concern we have is that the process will unduly impact those businesses that are complying with their tax obligations via the creation of a further compliance burden. **It is crucial that the process by which businesses can obtain a statement of tax record is simple and fast and reflects the level of engagement that business has with the tax system.** To introduce a process that only serves to place a further drag on the time and resources of compliant businesses will have the inverse effect of the stated objective of levelling the playing field for businesses competing for Commonwealth contracts.

The CTA would welcome the opportunity to engage directly with the Treasury and the ATO on the design and implementation of the proposed process of obtaining a

statement of tax record. A round table discussion with Treasury and ATO officers and some CTA members who engage in the procurement process on a regular basis would, in our view, be a sensible first step in the design of a process that meets the Government's stated objective of ensuring businesses that benefit from Commonwealth contracts are complying with their tax obligations.

Criteria to be used in a statement of tax record

We provide the following responses to the questions posed in the Discussion Paper around the criteria to be used in a statement of tax record:

- Registration, lodgment and payment are the relevant criteria in the context of the black economy and should be reflected in the statement of tax record. There will need to be some flexibility in terms of compliance with lodgment and payment of liabilities. For example, the late payment of a BAS in a specific month should not result in an 'unsatisfactory' tax record for the entire year if the taxpayer complies on a regular basis. The ATO might be able to assist in determining reasonable parameters around lodgment and payment histories, keeping in mind the objective of obtaining a 'satisfactory' tax record rather than a perfect tax record. Consideration of the imposition of late lodgment penalties (taking into account any remissions) might assist in this regard.
- Only objective criteria (as listed under the following dot point) should be considered in determining a 'satisfactory tax record'. Subjective criteria, or matters requiring judgement, such as matters currently under review, matters subject to objection, matters where amended assessments have issued or matters before the courts are not relevant to determining whether a business has a satisfactory tax record for purposes outlined in the Discussion Paper. On this point, it is worth reiterating that the objective of the production of a statement of tax record is to prevent those businesses that do not engage with the tax system from benefiting from the Commonwealth procurement process, not those that are engaged in the system albeit they may be under review or in dispute. Taxpayers with the above (and other) characteristics are, by definition, engaging with the tax system and therefore should not be disadvantaged by the proposed changes to the procurement process.
- The statement of tax record should be limited to that of the relevant business and should not include tax records of any other associated party. For example, in relation to JVs, each party should be required to obtain its own statement of tax record.
- The statement of tax record should only go back for four years, thereby aligning with the standard amendment period.

- The Tax Transparency Code is a voluntary code which was developed by the Board of Tax to encourage large to medium size businesses to publicly disclose their tax affairs. Although the CTA has and continues to strongly encourage its members to adopt the code, we support the voluntary nature of the code. Our support for the code remaining voluntary stems from our observations of those corporates who have decided to adopt the code. A voluntary process requires approval at the board level, which in turn requires consideration of a company's tax profile and culture at that level. Making the code a mandatory process will effectively take it out of the board's periphery and place it alongside the myriad of other mandatory disclosure obligations, thereby having no real impact on the company's 'tax culture'. That being said, the CTA accepts the view that the expectations on those who wish to engage and benefit from the Commonwealth procurement process might be higher than those that do not.
- New and international businesses should not be disadvantaged on the basis that they have no Australian tax history. Requiring international businesses to provide a declaration that they have complied with their tax obligations would pose the same problems associated with requiring Australian businesses to do the same, with the added problem of multiple jurisdictions and related tax obligations. In our view, designing a 'satisfactory' foreign tax record requires direct engagement with compliant taxpayers in this space so as to ensure the requirements to not unduly impact their ability to engage in the Commonwealth procurement process. Again, it is taxpayers who are not engaging with the tax system that are the focus of this proposal, not those that simply do not have an Australian tax history.

Process of applying for statements

We provide the following responses to the questions posed in the Discussion Paper around the process for applying for a statement of tax record:

- The CTA supports the development of an online system that produces statements within two days. We understand that the first statement of tax record for a large business may take a little longer (four days as stated in the Discussion paper), however we would expect this to only be the case on the initial statement (see next dot point).
- For large taxpayers, the process of obtaining a statement of tax record should be akin to having a passport stamped on the way through customs—that is, is it simply re-approved once a year, subject to any slippage outside the basic registration, lodgment and payment criteria.
- The statement of tax record should be an annual certificate, similar to a Tax Residency Certificate (i.e. valid for one year from date of issue). Renewal of tax statements should be a simple and intuitive process available through the

online system. Clarity around what happens if a statement of tax record expires during a contract is also required.

- The system for issuing statements of tax records must be efficient and fast. Taxpayers attempting to comply with this requirement must never be disadvantaged by a system that is slow or inaccurate.
- Those that are issued an 'unsatisfactory' statement should have the opportunity to engage with the ATO to discuss/resolve any issues via the same process it requests the statement of tax record. Such taxpayers should also not be precluded from seeking a statement of tax record at a later time.
- Clarity around how the \$4m threshold is required. Some questions that have been raised by CTA members around the \$4m threshold include:
 - What happens if the taxpayer enters into a \$3m project and an extension is added in say in 8 months to increase the project value by \$2m (bringing the total project to \$5m). Is the taxpayer required to provide some form of backdated statement of tax record to the date the original \$3m was granted or only from the increase in project value point?
 - Is the \$4 million threshold annual or for the life of the contract?
 - Is the threshold per contract or per supplier? If per contract, would this potentially encourage deconsolidating larger contracts to fall under the threshold and create supply chain inefficiencies?
 - Is the measure to be applied prospectively or to all contracts existing at 1 July 2019?
- Arrangements for sub-contractors under this process are of significant concern to large corporates, who will most often be the 'prime' contractor and will have limited, if any visibility over sub-contractors at the time of requesting the statement of tax record. These sub-contractors can range from foreign entities without an Australian tax presence, to those that have no direct or principal relationship to the contract (cleaning companies, vehicle suppliers) to individual labor hire arrangements. Some contracting chains are also extremely long and complex (sometimes with significant churn through different sub-contractors over the direction of a contract), which raises the question of how far down the sub-contracting chain the statement of tax record is required. Given that non-compliance with tax obligations is likely to happen further down the sub-contracting chain, prime contractors will need to understand the depth of their obligations in terms of communicating to sub-contractors the need to obtain a statement and the implications (for the prime contractor and the sub-contractor) if they are not provided. On this point, extreme care must be taken to not unduly

burden prime contractors who have demonstrated their own satisfactory tax record. Again, direct discussions with businesses that engage in the Commonwealth procurement process is the best way to determine what arrangements should apply to sub-contractors.

Should you wish to discuss any aspect of this submission in further detail, please do not hesitate to contact myself or Paul Suppree of this office.

We look forward to engaging constructively with both Treasury and the ATO on the issues raised above.

A handwritten signature in black ink, appearing to read 'Michelle de Niese', with a flourish extending to the right.

Michelle de Niese
Executive Director