

18 June 2018

Black Economy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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Dear Sir/ Madam

### **Increasing the Integrity of the Commonwealth Procurement process**

CPA Australia represents the diverse interests of more than 163,000 members in 125 countries. We make this submission on behalf of our members and in the broader public interest.

We are supportive of policies and other measures that seek to improve the integrity of the tax system and remove the advantages that non-complying entities have over those that do. However, care needs to be taken to ensure that such measures do not inadvertently have a negative impact on compliant entities.

The proposed requirement that tenderers (and their sub-contractors) for certain Commonwealth contracts be required to submit a Statement of Tax Record issued by the Australian Taxation Office (ATO) as part of the procurement process may help in tackling the black economy. However, if implemented, it will also impose additional requirements on all businesses seeking Commonwealth contracts, including on small business sub-contractors.

If the government is to proceed with this policy, being able to obtain a Statement of Tax Record from the ATO should be painless and almost instantaneous, especially for compliant businesses and their tax agents.

It should be noted that for nearly all businesses, their tax agent manages their interactions with the ATO. It is therefore important that tax agents can access such a statement from ATO systems. Further, experience shows that tax agent involvement in the design and user testing of ATO systems is critical to the successful implementation of such measures.

We recommend that the measure only commence once ATO systems have been appropriately tested by users - especially tax agents - and signed off as operational.

We expect that some State and Local governments, and businesses may emulate this policy and require a Statement of Tax Record for their own procurement processes. The design and implementation of this policy should consider this expected development.

It is important that the Statement of Tax Record does not replace ordinary due diligence in the Commonwealth's procurement process.

### **Specific comments**

CPA Australia make the following specific comments on the consultation paper:

- Some Commonwealth procurement contracts will require not only a head contractor, but also multiple sub-contractors, and those sub-contractors may in turn appoint their own sub-contractors. In such circumstances, collecting Statements of Tax Records from all parties may become a lengthy process, regardless of how easy it may be to obtain a Statement of Tax Record. This issue should be considered in greater depth.

- It is important to note that businesses could have a good tax record despite being in dispute with the ATO. This should be noted in the design of the Statement and what is considered a 'satisfactory tax record'. CPA Australia suggests that where the entity is lodging on time and paying their liabilities, the Statement of Tax Record should not show whether a taxpayer is in dispute with the ATO.
- The ATO should have the general administrative power to insert information into the Statement of Tax Record that helps to explain why a taxpayer may not be lodging on time or not paying their liabilities on time, especially where such information is in the taxpayer's advantage. Such additional information should be taken into account when considering if the taxpayer has a satisfactory tax record.
- Where the ATO has applied penalties to a taxpayer, the government should consider whether all penalties should be disclosed on the Statement of Tax Record, or only penalties for recklessness or worse.
- New businesses or joint ventures should have the option of demonstrating their satisfactory tax record through disclosing the Statement of Tax Record of related businesses.
- In considering what should be taken into account in determining what is a 'satisfactory tax record', the government should consider how this proposed measure will interact with the proposals on combatting illegal phoenixing. For example, it would appear that the Statement of Tax Record would better meet its policy intent if it can show that the taxpayer is connected with people or other entities that have been found to have breached a proposed phoenix offence or are connected to people subject to director penalty notices.
- The government should in consultation with the Tax Practitioners Board provide guidance on how the proposed measure will interact with the Tax Agent Services Act – in particularly whether obtaining a Statement of Tax Record from the ATO by a third party is a tax agent service under the Act.
- A history of up to four years should provide sufficient information to determine whether the taxpayer has a satisfactory tax record.
- The voluntary Tax Transparency Code should remain voluntary at this point in time; therefore the proposed measure should not disclose whether the entity has adopted the Code.
- The ATO should aim to be able to provide a Statement of Tax Record on demand for low-risk taxpayers rather than in two days.
- Registered tax agents should be able to request and access a Statement of Tax Record for a client through an easy process on the Tax Agent Portal or new ATO online services.
- Businesses and their tax agents should be able to query, challenge or seek amendments to a Statement of Tax Record through an online process.

If you require further information on the views expressed in this submission, please contact Gavan Ord, Manager – Business & Investment Policy, on +61 3 9606 9695 or at [gavan.ord@cpaaustralia.com.au](mailto:gavan.ord@cpaaustralia.com.au).

Yours sincerely



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