
SUBMISSION

**Submission to the Black Economy
- Increasing the Integrity of
Government Procurement policy
guidelines**

December 2018

OVERVIEW

The Business Council of Australia welcomes the opportunity to make a submission to the Black Economy – Increasing the Integrity of Government Procurement policy guidelines.

The Business Council strongly believes all companies and individuals must meet their tax and legal obligations, including as they relate to the government procurement process across all levels of government. We fully endorse the intent behind the proposal to reduce black economy activity. All stakeholders must have faith and trust in the tax system working effectively.

The Australian Taxation Office (ATO) recently reported that large companies paid \$45.7 billion, or almost two-thirds of all company tax in 2016-17. The level of compliance of large companies has increased over the years to be over 95 per cent, “the vast bulk of which is paid voluntarily”.¹

Any proposed changes to the tax and regulatory system must be assessed on a cost-benefit basis, and subject to comprehensive assessment. The appropriate benchmark is that policy will have a net positive effect on the economy and the welfare of Australians.

This is critical, because in competitive markets, additional costs that arise from regulatory measures may ultimately be passed onto consumers. In this context, this would fall on the agency tendering the contract and ultimately the taxpayer.

Key recommendations

- ▶ Within two years of the new regulations commencing operation, a post-implementation review (PIR) should be undertaken to assess the effectiveness of the policy in reducing black economy activity. The PIR should also assess the impact of the policy on business, government procurement costs and administration costs for the ATO. Potential future changes to the policy should only apply to new contracts.
- ▶ Outstanding issues in the policy guidelines should be clarified:
 - The policy should clarify that ‘outstanding debt’ refers to debt past a due date. For example, on 1 November a payment notice is issued to a company with a due date of 1 December. The debt should only be considered ‘outstanding’ if it has not been paid by 1 December.
 - The policy should not prevent the issuance of a Statement of Tax Record (STR) where a company enters a 50/50 payment arrangement with the ATO as they intend to file an objection and/or proceed to court, in response to an amended assessment. This is a common occurrence.
 - The policy should consider the reach and application of the requirements relating to the tenderer’s subcontractors. Clarity is required in relation to the purpose and potential liability of the tenderer obtaining and holding the subcontractor’s STR. It would appear

¹ <https://www.ato.gov.au/Media-centre/Media-releases/ATO-releases-corporate-tax-data/>

duplicative to require a private entity to seek a Government certificate from another private entity.

- ▶ The policy should be enacted in a way that ensures both taxpayer confidentiality and that the STR can only be used for Commonwealth Government Procurement processes.

Black economy

The Black Economy Taskforce detailed the key drivers of the black economy, which include high tax and regulatory burdens. Policy changes that seek to curtail the black economy should seek to level the playing field for businesses doing the right thing. They should also be easy to comply with and not unduly burden taxpayers who are compliant with the law.

Accordingly, the Business Council has previously noted that concerns around the black economy may be best addressed through broader tax reform and by making existing regulation more effective. This may be more effective than increasing the stock of regulation.

Standards for new regulation

The Business Council's *Standards for Rule Making* outlines principles and standards for new regulation. The principles are:

- the problem to be solved must be well understood
- new regulation must be subject to cost-benefit analysis
- regulation achieves its objectives at least cost.

The proposed changes have been subject to analysis considered equivalent to a regulation impact statement. This analysis shows increased compliance costs for business, with regulatory offsets yet to be identified. However, the proposed changes will also likely impact government procurement costs and administration costs for the ATO.

Well-designed and rigorously observed best practice regulation processes help to identify the best policy solution and reduce regulatory costs on businesses, taxpayers and the wider community. In this instance, a lack of analysis on the impact of government procurement costs suggests the costs of this policy initiative may be understated.

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Statement of Tax Record

The policy requires businesses from 1 July 2019 to provide an STR when applying for new Australian Government procurement contracts valued above \$4 million (inclusive of GST). The Business Council supports this measure provided it is implemented in a way:

- that minimises compliance and administrative costs on stakeholders

- the STR does 'not rely on subjective criteria that could be open to conjecture or result in delays in the procurement process'²
- that does not unnecessarily delay or hinder companies tendering for contracts
- that ensures the STR is only accessible by government procurers
- that provides certainty the STR is only used for government procurement processes.

There were over 64,000 Australian Government procurement contracts issued in 2016-17, with a value of over \$47 billion. Almost 800 contracts, or around 1 per cent, were valued over \$5 million – the total value of these contracts was over \$36 billion.³ While the vast majority of government contracts will not require an STR, all taxpayers should be compliant with their tax and legal obligations at all times. The ATO has estimated the level of company tax compliance of large companies has increased over the years to be over 95 per cent, "the vast bulk of which is paid voluntarily".⁴

Statement of Tax Record criteria

The Business Council supports the proposed criteria that form part of the STR. The criteria are objective and non-arbitrary, and help to show satisfactory engagement with the tax system while also addressing black economy concerns.

It is critical that STR criteria remain objective and non-arbitrary. The criteria should not be extended to include firms in dispute with the ATO, for example due to different interpretations of the law, or where minor issues have occurred.

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- The policy should not prevent the issuance of a STR where a company enters a 50/50 payment arrangement with the ATO as they intend to file an objection and/or proceed to court, in response to an amended assessment. This is a common occurrence.
- The policy should consider the reach and application of the requirements relating to the tenderer's subcontractors. Clarity is required in relation to the purpose and potential liability of the tenderer obtaining and holding the subcontractor's STR. It would appear duplicative to require a private entity to seek a Government certificate from another private entity.

² Australian Government, *Increasing the integrity of the Commonwealth procurement process* (Canberra: Commonwealth of Australia, 2018).

³ <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>

⁴ <https://www.ato.gov.au/Media-centre/Media-releases/ATO-releases-corporate-tax-data/>

ATO system for Statement of Tax Records

A system will be developed by the ATO to enable businesses to receive an STR within 4 days of application, and the Business Council welcomes these commitments. Any longer period would risk unnecessarily interfering with the procurement process.

- ▶ The policy should be enacted in a way that ensures both taxpayer confidentiality and that the STR can only be used for Commonwealth Government Procurement processes.

The STR system could be further developed and automated, such that companies could receive STRs in real time. Such a system could also potentially track the lodgement of tax returns and instalment payments in real time. In addition, the STR system could be extended by developing a register of STRs only accessible by Commonwealth Government procurers, and developed in a way that does not undermine tax secrecy provisions. For example, taxpayers could provide procurers with permission to access this register. These developments would reduce compliance costs in the long run for business, the ATO and Commonwealth Government entities.

Business and supply chains

Business has a critical role to play in addressing the black economy, including through the prism of responsible supply chain management. The Business Council has already taken steps that will go part of the way to improving both better supply chain management and the black economy through the Australian Supplier Payment Code (ASPC). This is a voluntary, industry-led initiative to enshrine the importance of prompt and on-time payment for suppliers through a set of best practice standards. The ASPC currently has 89 signatories and they accounted for over \$400 billion of revenue in 2016-17.

As part of the ASPC, signatories will work with supplier businesses, where practicable, to apply technologies and practices that will speed up invoice reconciliation, approval and payment processes (such as through online portals, electronic invoicing, Electronic Funds Transfer, payment cards etc.).

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