

27 June 2018

Mr Patrick Boneham
Black Economy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: blackeconomy@treasury.gov.au

Dear Patrick

Increasing the integrity of the Commonwealth procurement process

Thank you for the opportunity for Chartered Accountants Australia and New Zealand (Chartered Accountants) to provide a submission regarding the consultation paper: Increasing the integrity of the Commonwealth procurement process.

1 Executive summary

Chartered Accountants supports the concept of needing a tax clearance certificate to obtain procurement contracts with the government.

However, greater clarity regarding the purpose and potential expansion of this programme would be useful in providing a framework to analyse the various policy choices proposed in the paper.

Our review of the use of tax clearance certificates in other countries indicate that this policy has been quickly adopted for a variety of government purposes, and by the private sector to assist in ensuring the integrity of their supply chains. Accordingly, our submission advocates for the use of a few simple objective tax clearance criteria (i.e. registration, lodgment, payment and no convictions) in determining whether or not a satisfactory tax record exists and does not support the use of the tax transparency code.

Our submission also advocates for the use of a number of safe harbours to ensure that the tax clearance certificate represents satisfactory tax compliance rather than absolute tax compliance.

Tax clearance certificates have been successfully implemented in South Africa and Ireland. These certificates can be applied for, corrected (either by making payments or lodgements or objecting) and issued digitally at any time. Chartered Accountants supports such an approach and has included details of how this is achieved in the body of this submission.

Successful implementation of this initiative requires time. The 1 July 2019 start date may be optimistic, especially if it is to extend to sub-contractors of entities that have tendered for government contracts in excess of \$4 million.

2 Clarifying the purpose

The Black Economy Taskforce Final Report states that: “if governments want better supply chain practices in the private sector, they should lead by example. Governments should only purchase goods and services from suppliers who meet their tax, workplace relations and other legal obligations. They should be exemplars of best practice, sending a strong message to all that cutting corners is not acceptable.”¹

Other countries have already taken such a stance. In these countries, being a good taxpayer is seen as an essential component of having a social licence to operate in a country. For example:

- The United Kingdom is currently [consulting](#) on making access to statutory licences (such as taxis, waste management, scrap metal and private security) conditional upon tax compliance.
- Ireland requires tax compliance certificates not only for government contracts but also licences, grants and some government positions.
- South Africa requires tax compliance certificates for tenders, licences in some industries, emigrating from South Africa or investing outside of South Africa.
- Fiji requires tax compliance certificates for employment, visas, sale of vehicles, licencing and borrowing as well as government procurement.

Our colleagues at the South African Institute of Chartered Accountants (SAICA) have advised us that the once the public sector required tax compliance certificates, the private sector rapidly adopted this requirement as well. The reason for this was two-fold. First, the tax compliance certificate was seen as a good risk management tool (i.e. the business that you were dealing with was probably being run properly). Second, it was also a consequence of the government requiring sub-contractors of government procurement opportunities to have tax compliance certificates.

In our view, it is likely that once the tax compliance certificate process is working appropriately it is likely that the system will be expanded to sub-contractors and to government licences. Given recommendation 9.2 of the Black Economy Taskforce Final Report² (agreed to by the Government), it is also likely that private sector organisations may require tax compliance certificates from their suppliers to ensure supply chain integrity.

3 Satisfactory tax record³

The potential wide range of users of tax compliance certificates means that the criteria for meeting a satisfactory tax record should be simple, objective and quick to ascertain. Accordingly, Chartered Accountants supports (subject to comments below) the inclusion of the following criteria for determining whether an entity has a satisfactory tax record:

- Registration for tax
- Lodgement of tax returns on time
- Payment of tax liabilities on time or in accordance with a payment plan
- Absence of a conviction for tax evasion.

Chartered Accountants does not support a requirement that the voluntary tax transparency code be implemented by an entity as it adds:

¹ Page 205 Final Report of the Black Economy Taskforce.

² Recommendation 9.2 – The Government should establish national probity standards that private supply chain certification credentials should comply with to ensure responsible supply chain management practices are followed.

³ Response to questions 1, 2 and 5 of the consultation paper

- Subjective criteria as to whether or not the disclosure under the voluntary tax transparency code is sufficient. As a consequence it will make it harder and slower to determine whether or not a tax clearance certificate should be issued. It is noted that other countries do not include a similar requirement.
- Unnecessary red tape. In this respect it is noted that the consultation paper states that “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.”

Implementing a tax clearance certificate raises questions (which are discussed below), such as:

- What taxes will be covered?
- What entities will be covered?
- What historical timeframe should be considered?
- What leeway should be given in determining what is satisfactory?
- How can a new business obtain a tax compliance certificate?
- What requirements should be placed on an existing entity that does not have an Australian connection?

2.1 Taxes to be covered?

The Australian tax system has a myriad of taxes. We have assumed that tax clearance certificate arrangements will only apply to taxes imposed by the Federal government and to taxes that are collected by the Australian Taxation Office. Even so, it is important to clarify the scope (e.g. will it be limited to income tax, FBT, GST and PRRT, or will it also include PAYG withholding, Superannuation Guarantee payments, luxury car taxes, and wine equalisation, just to name a few?).

There are also numerous reporting obligations (e.g. country by country reporting) in addition to traditional lodgement of returns.

Rather than try to cover all taxes, it is suggested that the top five critical tax bases be covered –for example: income tax, PAYG withholding, GST, FBT and Superannuation Guarantee payments.

2.2 Entities to be covered?

Tax consolidation

Taxes are generally levied on a specific legal entity.

But income tax can be levied at a consolidated group (head entity) level. If an entity that is not the head entity of a consolidated group is tendering for a government contract, will it be the legal entity or the head entity (or both) that needs to have the tax compliance certificate? In Ireland the revenue authorities look at the applying entity and the head entity and this would appear to be an appropriate approach given the limited tax type coverage of the tax consolidation regime.

Nonetheless, if a holding entity applies, will *all* of its subsidiary members also have to be tax compliant?

Partnerships and trusts

Our membership base includes accounting firms which often tender for government contracts. These firms may be structured as partnerships with numerous partners, and the partnership may have an associated service entity. Law firms and other businesses may have similar arrangements.

Some businesses are structured as trusts, with a trustee entity and beneficiaries \ unitholders.

To cater for such structures, the design of the tax clearance certificate model will presumably need to take account of the “primary entity” (the applicant) and associated entities.

2.3 Timeframe for satisfactory tax record⁴

The Black Economy Taskforce Final Report suggested that there should be a good tax compliance history over a five year time frame. The consultation paper is silent on this issue.

Given that this is a new initiative and some entities may not have been as vigilant about lodgement and payment as they should have been in the lead-up to the start date, it may be more appropriate to start this initiative for a more limited look-back period, say three years. Adopting a shorter window will also make it administratively easier to ensure that the appropriate information is flowing through to the tax compliance certificate – especially in its first year of operation.

2.4 Leeway needed to remain “satisfactory” for tax lodgements and payments⁵

Providing an absolute number of times that an entity may be late in lodgement or payment, whilst easy to understand, potentially disadvantages large complex entities compared to single stand-alone entities.

In these circumstances, it may be better to provide a safe harbour percentage (e.g. 5% or 10% of lodgements and/or payments have been made out of time).

In determining when a lodgement or payment is due, it may also be advisable to have a safe harbour (say 14 days after the due date) given the significant impact that a non-compliant tax clearance certificate may have.

There may also need to be a Commissioner’s discretion to allow the issuance of a tax clearance certificate where there has been non-compliance due to an extraordinary reason (e.g. natural disaster, cyber-attack, death/departure/absence of key personnel etc).

It is noted that the consultation paper allows a tax clearance certificate to issue even though there is an outstanding tax liability provided that there is a tax payment plan in existence and that plan is being adhered to. Chartered Accountants supports this and notes that both South Africa and Ireland have similar provisions.

Some tax amounts are not paid because they are in dispute with the revenue authority. South Africa deals with this situation by excluding such debts from the tax clearance certificate application process provided that an agreement to suspend payment pending resolution of the matter has been made with the revenue authority. A similar approach could be adopted in Australia.

To reduce administrative angst and accidental errors for small amounts, South Africa ensures that total debts of less than R1,000 (A\$99) will not affect the issuance of a tax compliance certificate. This is probably not relevant to people who are tendering for contracts of \$4 million but may become relevant once the tax clearance certificate scheme is expanded.

2.5 Newly established entities⁶

Newly established entities obviously have no tax history, or only have an incomplete history if they have been operating for a little while.

⁴ Response to question 4 of the consultation paper

⁵ Response to question 3 of the consultation paper

⁶ Response to question 6 of the consultation paper

It would clearly be unfair to deny a new entity the ability to compete for a government contract on the basis that they could not obtain a tax compliance certificate. Equally it would be unfair on existing players if they were required to have a tax compliance certificate but new entities do not.

It has been suggested that this may not be a problem in practice as it is unlikely that the government would deal with an entity that is completely new as such an entity does not have a track record in providing goods or services. We disagree. In some industries it is usual practice to establish new entities (e.g. a special purpose vehicle) for each project.

A possible solution for this dilemma is to widen the scope of the enquiries for the tax compliance certificate. In Ireland for example, when the revenue authorities are asked to provide a tax clearance certificate, the revenue authority looks not just at the applicant but also connected persons. Thus if a company applied, then the following entities will also be checked:

- Any director with a controlling interest in the applicant company.
- Any person or entity with a controlling shareholding in the applicant company
- A Partnerships in which the company is a member
- A previous business entity (e.g. where there has been a transfer of a liquor licence)
- The GST compliance of the applicant company.

The consultation paper suggests that a new entity could provide a declaration that they will comply with their obligations. Such a declaration is meaningless, particularly if it is made by phoenix operators. It may be worthwhile exploring whether to impose the good tax compliance history requirements on controllers of the new company.

2.6 Entities with no Australian tax connections⁷

Existing entities that have no Australian tax connections face a similar problem to that of new entities – no Australian tax history.

Increasing globalisation means the Australian government is likely to contract with such entities.

Once again the consultation paper suggests that existing entities with no Australian tax connection provide a declaration that they will comply with their obligations. Our comment regarding this option are the same as for the suggested declaration for new businesses – see above.

Ireland requires such entities to fill in a [form](#) and correspond with the non-resident tax clearance unit. A similar approach in Australia could allow the ATO to ensure that the entity is aware of its Australian tax obligations and create “watch alerts” for the ATO for transactions relevant to the government procurement opportunity.

It is noted that this is not the only provision that Ireland relies upon. It also imposes a 20% [personal services withholding tax](#) on gross professional service⁸ payments (including reimbursement of expenses and payment of interest for late payment as well as the services themselves – but not VAT or other taxes) made by government entities. The withholding tax can then be claimed as a credit against income/corporate tax liabilities any may result in a tax refund. This, in effect, ensures, that the government contractor is compliant with its tax obligations.

⁷ Response to question 6 of the consultation paper

⁸ Professional services includes: legal, accounting, economics, marketing, medical and engineering. A full list can be found [here](#).

3 Producing Tax Clearance certificates⁹

Both Ireland and South Africa have digitalised the application, review, appeal and production of the tax clearance certificate. The process of obtaining a tax clearance certificate is around 24 hours in South Africa (though legally it could take up to 21 days) and in real time in Ireland. Chartered Accountants supports this fast-track approach and we envisage that similar systems would be developed in Australia.¹⁰

Of particular importance in these systems is the ability of the applicant to check its status before applying for a tax compliance certificate, and for the information system to provide for the ability of the entity to correct (either by paying or lodging or disputing the status of a tax compliance certificate item). Appendix A contains examples of how the South Africa system displays such information and enables applicants to interact with the system in real time.

The consultation paper flags that the requirement to have a tax compliance certificate will be cascaded down to sub-contractors (presumably at all levels, not just the first sub-contractor level so that the objectives of reducing the black economy can be met). At this early stage of the policy design process, the consultation paper does not discuss how this will be done (i.e. what legal requirements will be imposed to ensure that sub-contractors do have positive tax compliance certificates? Within what time frame must these tax compliance certificates need to be obtained and provided to the original contractor and government?). Nor does it discuss which sub-contractors will be required to provide a tax clearance certificate. Presumably, it is contractors that are directly involved in the provision of government goods/services that will be subject to these requirements rather than all contractors¹¹.

Until the information systems are fully operational and have been expanded to cover a wide range of taxpayers, consideration may need to be given to providing a threshold (either a fixed amount or a percentage of the contract) before imposing a requirement that all relevant sub-contractors provide tax clearance certificates.

4 Design of the tax clearance certificate¹²

Appendix B contains an example of a South African tax clearance certificate. It is issued to the applicant and only contains basic information – namely that the applicant is compliant. It is then left to the applicant to provide the tax clearance certificate. An alternative would be for the applicant to grant access to an ATO online “portal” which reveals the certificate to those authorised to view it. Such approaches appear to be appropriate from the perspective of administrative simplicity and speed.

The consultation paper notes that the certificate may need to contain notes that highlight the limitations of the information, namely that:

- A new business does not have a tax history¹³
- There is insufficient information about an international business
- The information is only for a point in time.
- The information should not be relied upon as an indication of financial position or credit worthiness.

⁹ Responses to questions 7-8 and 10-12 of the consultation paper

¹⁰ Detailed notes of how the South African system operates can be found [here](#).

¹¹ For example, a contract to provide consultancy services would result in sub-contractors assisting with the advice to provide tax clearance certificates but not cleaners of the premises upon which the original contractor is located.

¹² Response to questions 13 and 14 of the consultation paper.

¹³ If the more detailed analysis of a new company's controlling shareholders and directors is undertaken this may mitigate (but not eliminate) the need for such a statement.

Whilst this information may not be relevant in relation to government procurement opportunities in excess of A\$4 million, it will probably be appropriate to have such limitations and an explanation of them on the reverse side of the certificate as the use of such certificates expands.

5 Start date

The consultation paper proposes that this initiative will start from 1 July 2019.

One year is quite a short period to establish and test a new information technology system.

Consideration should be given to starting a *pilot* on 1 July 2019 rather than the implementation of a full system, with the pilot involving a small group of applicants (e.g. IT tenders).

If you wish to discuss our comments please contact me on [REDACTED] or via email on [REDACTED]. Alternatively, contact my colleague Susan Franks on [REDACTED] or [REDACTED].

Yours sincerely



Michael Croker
Australian Tax Leader
Chartered Accountants Australia and New Zealand

Appendix A

TAX COMPLIANCE STATUS

CLIENT DETAILS

Client Name: _____

Trading Name: _____

Registration Number: _____

Tax Reference: _____

REFRESH STATUS

Last Refreshed: _____

SEARCH RESULTS

MY COMPLIANCE PROFILE | TAX COMPLIANCE STATUS REQUEST

MY COMPLIANCE PROFILE

- +
REGISTRATION Compliant
- +
SUBMISSION OF RETURNS Compliant
- +
DEBT Compliant
- +
RELEVANT SUPPORTING DOCUMENTS

Further Information
Challenge Status
How to address non-compliance

By selecting the expand button on the left hand side of Registration, Returns Submission, Debt and Relevant Supporting Documents, more information regarding the compliance status will be displayed

DEBT Non Compliant

NET COMPLIANCE BALANCE ACROSS ALL TAX TYPES R 82,100.87 Non Compliant

VAT Non Compliant

NET COMPLIANCE BALANCE R 82,100.87 Non Compliant

Period	Compliance balance	Remedy	Status
199901 to Date	R 82,100.87	Pay the outstanding amount or make a suitable arrangement with SARS. For more detail on the account request a statement of account.	Non Compliant
201402	R 8,077.64	Pay the outstanding amount or make a suitable arrangement with SARS. For more detail on the account request a statement of account.	Non Compliant
201404	R 72,308.07	Pay the outstanding amount or make a suitable arrangement with SARS. For more detail on the account request a statement of account.	Non Compliant
201406	R 1,715.16	Pay the outstanding amount or make a suitable arrangement with SARS. For more detail on the account request a statement of account.	Non Compliant

Non-compliance can be rectified by hovering the mouse of the non-compliance button and following the instructions to attach a return, or make a payment or request a payment plan etc. If a status needs to be challenged, then the entity simply clicks on a button and fills in a form electronically which provides details about the challenge.

SEARCH RESULTS

MY COMPLIANCE PROFILE

MY COMPLIANCE PROFILE

- REGISTRATION Compliant
- SUBMISSION OF RETURNS Non Compliant
- INCOME TAX Non Compliant
 - | Period | Compliance Description | Status |
|---------|--|---------------|
| to Date | According to SARS records there are one or more returns outstanding. | Non Compliant |
- PAYE/SDL/JIF Compliant
- DEBT Compliant
- RELEVANT SUPPORTING DOCUMENTS Compliant

Further Information Challenge Status How to address non-compliance

SEARCH RESULTS

MY COMPLIANCE PROFILE TAX COMPLIANCE STATUS REQUEST

MY COMPLIANCE PROFILE

- REGISTRATION Compliant
- SUBMISSION OF RETURNS Non Compliant
- DEBT Non Compliant
 - NET COMPLIANCE BALANCE ACROSS ALL TAX TYPES R 82,100.87 Non Compliant
 - VAT Non Compliant
 - NET COMPLIANCE BALANCE R 82,100.87 Non Compliant
 - | Period | Compliance balance | Remedy | Status |
|----------------|--------------------|---|---------------|
| 199901 to Date | R 82,100.87 | Pay the outstanding with SARS. For more detail on the account request a statement of account. | Non Compliant |
- RELEVANT SUPPORTING DOCUMENTS Compliant

Further Information Challenge Status How to address non-compliance

ADDRESS NON-COMPLIANCE

Remedy Description:

Pay the outstanding amount or make a suitable arrangement with SARS. For more detail on the account request a statement of account.

SARS Recommendation:

- Make Payment
 Request Payment Arrangement
 Fix My Account

Continue

ADDRESS NON-COMPLIANCE

Request Payment Arrangement

Surname:

First Name:

Cell No:

Business No:

Tel No:

Email:

Fill in the amount of the payment arrangement and state your reason.

Amount:

Reasons:

Additional Payments to SARS

This page allows you to capture additional tax payment details to SARS

- **Tip:** You can save payments to pay at a later date. You can also save payments in order to pay multiple payments at once.
- The additional payment mechanism does not entitle the user to benefit from the VAT extension date provided by SARS to all eFilers. The incentive is only for payments of VAT returns via eFiling and as result the deadline of the 25th of the month (or last business day prior) is applicable as the due date. Any payment made after this date will be liable for penalties and interest.
- **Customs and Air Passenger Tax payments:** need to be paid with a credit push banking facility as mentioned above.

Tax Type	<input type="text" value="Please select a Tax Type"/>
Taxpayer Name	<input type="text"/>
Type of Payment	<input type="text"/>
Tax Reference Number	<input type="text"/>
Tax Period	<input type="text"/>
Payment Reference Number	<input type="text"/>
Amount	<input type="text"/>

REQUEST SARS TO RE-EVALUATE MY STATUS

Request SARS to re-evaluate my Status

Category Status:
Non-Compliant categories:
Debt

Compliant categories:
Registration; Submission of Returns; Relevant Supporting Documents

Capture a clear and concise motivation why you require SARS to reconsider the overall status of your compliance profile

Contact person details

Capture the contact details of the person that must be contacted when SARS needs to correspond with you on this case

Surname:	<input type="text" value="Dea"/>	Cell No:	<input type="text" value="0000000000"/>
First Name:	<input type="text" value="Marc"/>	Business No:	<input type="text" value="0000000000"/>
Email:	<input type="text"/>	Tel No:	<input type="text" value="0440000000000"/>

REQUEST SARS TO RE-EVALUATE MY STATUS

Request SARS to re-evaluate my Status

Category Status:
Non-Compliant categories:
Debt

Compliant categories:
Registration; Submission of Returns; Relevant Supporting Documents

Capture a clear and concise motivation why you require SARS to reconsider the overall status of your compliance profile

Contact person details

Capture the contact details of the person that must be contacted when SARS needs to correspond with you on this case

Surname:	<input type="text" value="Dea"/>	Cell No:	<input type="text" value="0000000000"/>
First Name:	<input type="text" value="Marc"/>	Business No:	<input type="text" value="0000000000"/>
Email:	<input type="text"/>	Tel No:	<input type="text" value="0440000000000"/>

Appendix B – a South African tax clearance certificate



Tax Clearance Certificate Number:

0700/1/2015/A000000227

Tax Clearance Certificate - Tender

Enquiries
0800 00 SARS (7277)
Approved Date
2015-11-11
Expiry Date
2016-01-11

It is confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

This certificate is valid until the expiry date reflected above, subject to the taxpayer's continued tax compliance.

To verify the validity of this certificate, contact SARS through any of the following channels:

- via eFiling
- by calling the SARS Contact Centre
- at your nearest SARS branch

This certificate is issued in respect of the taxpayer's tax compliance status only, and does not address any other aspect of the taxpayer's affairs.

This certificate is issued free of charge by SARS