

Thank you again for the opportunity to participate in the consultation process for “**Black economy – increasing the integrity of government procurement (Procurement connected policy guidelines)**”.

The property industry continues to support the introduction of measures to limit black economy behaviour and provide a level playing field in respect of the procurement of government projects through requiring a satisfactory tax record. It is important however to balance administrative requirements with the practicalities of large scale or long term commercial arrangements where parties have limited ability to impact whether another entity is tax compliant.

Ongoing Statement of Tax Record requirements

A significant question arising from the policy guidelines arises from the statement made in “**section 6. Policy Requirements subsection d**” that a condition of the contract may be that the successful tender will be required to maintain the statement of tax record (STR) throughout the life of the contract.

We understand that an STR will only be valid for one year, which will mean that any contract that has a life beyond one year, will require the successful tenderer to reapply annually for refreshed STRs. This imposes a significant administrative burden for certain contracts, for example, leases, which can have terms of 10 years or more.

The policy intent of these measures is to combat at the procurement stage an unfair competitive advantage for those who are not complying with taxation obligations. It does not seem to fit with this policy that certification becomes an ongoing requirement for complying taxpayers.

The Property Council recommends that ongoing certification is not required.

If however the intention is to continue with the ongoing certification requirement, the below issues will need to be clarified to provide necessary certainty for taxpayers:

Question 1

Will the ongoing certification requirement apply to first tier sub-contractors who have provided an STR to the primary contractor at the time of tender?

The Property Council notes that the primary contractor in this situation has little ability to direct the first tier sub-contractors taxation affairs or monitor ongoing compliance with their taxation obligations. It would be an onerous and unfair outcome if the ongoing actions of the first tier sub-contractor should be detrimental to the primary contractor. The primary contractor has engaged an entity which was meeting their regulatory obligations at the time of the tender and as such is not receiving an unfair competitive advantage.

Recommendation

The ongoing requirement to provide a current STR (if applying) should only apply to the primary contracting entity.

Question 2

Where the engaging primary contractor entity is a partnership or joint venture which requires an STR to be provided for all of the partners/joint venture parties, what is the intended outcome where one partner/joint venture entity is unable to provide ongoing certification?

The Property Council notes that there is limited ability for independent entities to impact the taxation administrative requirements of other entities who may be partners/members of a single arrangement.

Recommendation

The ongoing requirements to provide a current STR should not impact parties to the arrangement who continue to meet required obligations. The government policy guidelines should note that contracts should be drafted so that breaches only impact the non-compliant entity.

Other issues requiring clarification

The Property Council has outlined below a number of other issues requiring clarity and are more than happy to discuss these further.

Issue description	Recommendation/Question.
1. Second tier sub-contractor requirements	
1.1 The Policy paper at page 4 notes that in the first year only first tier sub-contractors are in scope and this policy will be reviewed in subsequent years.	It is submitted that the proposed measures should only apply at the prime-contractor and sub-contractor level, as it will not always be practical to trace through multiple levels of sub-contractors, especially given that there will not be a direct contractual relationship with the prime contractor at all levels. Alternatively, it should be sufficient for the prime-contractor to obtain a declaration from their immediate sub-contractor that the sub-contractor has either obtained Statements from their own sub-contractors or that they will only engage with sub-contractors who have a 'satisfactory tax record' (i.e. compliant sub-contractors).
2. Debt threshold for a satisfactory STR	
2.1 The current threshold for outstanding debt to the ATO is stated at \$10,000, in light of the requirement to allow certification where 90% of income tax returns, Fringe Benefit Tax returns and Business Activity Statements to be lodged and still be compliant this amount is low and not reflective of these obligations.	The \$10,000 should not include any amounts associated with outstanding income tax returns, Fringe Benefit Tax returns – this will mean that larger taxpayers are not disadvantaged by this measure (i.e. a taxpayer may be 99% compliant for income tax returns, Fringe Benefit Tax returns and Business Activity statements but have a relatively small debt in light of the taxpayers obligations but exceed the \$10,000 threshold).
3. Discretionary procurement issues	
In our previous submission it was noted, remote or regional areas may only have one or two large sub-contractors in the area that are capable of completing the work to the required technical and safety standards. If those large sub-contractors do not have a satisfactory tax record and there are no other qualified sub-contractors in the remote or regional area, it is unclear whether the new procurement policy would allow bidding in this situation.	A discretion should be provided to allow tenders where there is insufficient expertise within particular remote or regional areas and sub-contractors are unable to obtain a compliant tax certificate. This will ensure remote and regional areas are not disadvantaged by the measure.
4. Resolution of non-compliant statements	

4.1	While it is noted that the ATO is responsible for providing reasons as to why a satisfactory STR is not issued, it is not clear that a fast process to address these issues will be instituted, impacting the ability to tender for Projects.	The measure should include an avenue to discuss and appeal any non-compliant statements in a timely manner to limit the disruption to the procurement process.
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