

Commonwealth tenders – new satisfactory tax record requirements

28 March 2019

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In brief

From 1 July 2019, all businesses that tender for a new Commonwealth Government procurement contract over AUD 4 million will be required to have a satisfactory Statement of Tax Record issued by the Australian Taxation Office (ATO), which focuses on up-to-date tax registrations, on-time tax lodgments and tax payment obligations being met. The new requirements also apply to first tier subcontractors where the estimated sub-contract value will be at least AUD 4 million.

In detail

In the 2018-19 Federal Budget the Government announced a range of measures to tackle the black economy, including a commitment that Commonwealth Government procurement processes will exclude businesses that do not have a satisfactory tax record.

Following consultation, a new [Procurement Connected Policy](#) was finalised on 26 March 2019 to apply from 1 July 2019 to all tenders for new Commonwealth contracts for goods and/or services valued at over AUD 4 million (GST inclusive). The new policy is intended to promote good tax behaviour and level the playing field for tenderers.

Requirements under the new policy

From 1 July 2019, in order to tender for a Commonwealth contract valued at over AUD 4 million (GST inclusive), the tenderer must:

- provide a satisfactory Statement of Tax Record (STR) that has been obtained from the ATO and is valid at the time of the tender closing; and
- hold copies of satisfactory and valid STRs for any first tier subcontractors that the tenderer will engage to deliver goods or services with an estimated value over AUD 4 million (GST inclusive) as part of the tender.

Although the obligation for having a STR rests with the business that is actually tendering for the contract (and any applicable first tier subcontractors), since different tax obligations may arise depending on the structure of the tender/subcontractor entity, the Policy also clarifies those other entities that are also required to provide a satisfactory STR as part of the procurement process. Specifically, if the tenderer or subcontractor is:

- *a member of a tax consolidated/multiple entry consolidated (MEC) group* - in addition to the legal tender /subcontractor entity providing a satisfactory STR, the head company of the consolidated/MEC group must also provide a satisfactory STR.
- *a member of a GST group* - in addition to the legal tender /subcontractor entity providing a satisfactory STR, the GST group representative must also provide a satisfactory STR.

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- *a trust* - a satisfactory STR must be provided in respect of both the trust and the trustee.
 - *a partnership* - a satisfactory STR must be provided in respect of the partnership and each partner that is directly involved in the delivery of the contract.
 - *part of a joint venture* - a satisfactory STR must be provided in respect of each party to the joint venture and the joint venture operator (if they are not a participant of the joint venture).

The consequences of failing to provide the relevant satisfactory STRs are significant as it will prevent any consideration of the tender submission by the procuring Commonwealth entity.

Statement of Tax Record

The STR is a statement issued by the ATO that indicates whether or not a business has a tax record that is satisfactory, based on the following factors:

- the entity is up-to-date with registration requirements including being registered for an Australian Business Number (ABN) and the GST, and having a Tax File Number (TFN);
- the entity has lodged at least 90 per cent of all income tax returns, Fringe Benefit Tax (FBT) returns and Business Activity Statements (BAS) that were due in the last four years (or for the period of operation if less than four years). Reasonable delays in lodgments due to extensions agreed to by the ATO will not affect the receipt of a satisfactory STR; and
- on the date the STR is issued, the entity does not have \$10,000 or greater in overdue debt due to the ATO (excluding debt subject to a taxation objection, review or appeal).

It is strongly recommended that affected entities should consider their ability to meet the above criteria on a historical basis and ensure internal processes are put in place to meet the requirements going forward.

Potential tenderers can apply for the [STR online from the ATO](#) at any time from **1 June 2019**. It is expected that the ATO will be able to issue a STR within four business days from the date of application. Since the STR will generally be valid for a maximum period of 12 months from the time of issue, some businesses will need to apply for new STRs on an annual basis.

Special requirements apply to entities that do not have a tax record of at least four years in Australia and to foreign tenderers. Any STR issued in these cases will usually be valid for six months only.

Where a tenderer is issued with an unsatisfactory STR, supporting reasons will be provided by the ATO to enable corrective action to be taken where possible by the affected party.

After the first year of operation of the new policy (i.e. potentially from 1 July 2020), subject to further consultation, additional factors may be required to be met in order to obtain a satisfactory STR, such as the business meets its superannuation law requirements and Pay As You Go Withholding obligations. In addition, the rules for subcontractors will be reviewed after the first year with a view to strengthening the requirements.

The takeaway

Although the new policy is not intended to replace the existing due diligence that Commonwealth procurement officers already undertake, it is imperative that tax and procurement teams of potential tenderers of Commonwealth contracts over AUD4 million review their current processes to ensure they are eligible to tender for such potential contracts under the new tax requirements.

Specifically, it is prudent to assess whether the entity would be able to meet the satisfactory tax record requirements to be able to participate in a tender from 1 July 2019, and that processes are put in place to ensure that before any tender closing date, the applicable and valid satisfactory STR(s) are obtained from the ATO (in addition to satisfactory STRs from applicable first tier subcontractors). Internal processes

should also be put in place to ensure an ongoing ability to meet the relevant conditions for future tender opportunities and during the course of a successfully awarded tender contract.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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