

Procurement Policy Note - measures to promote tax compliance

Action Note 04/13 28 March 2013

Issue

1. A new policy was announced in the March 2013 Budget on the use of the procurement process to promote tax compliance. The new policy will apply to central government contracts over £5million that are advertised on or after 1 April 2013. Suppliers bidding for government contracts will be required to self-certify their tax compliance.
2. This Action Note sets out the scope and background of the new policy and advises on how to take account of it in procurement documentation. A further Procurement Policy Notice will be issued in April 2013 giving guidance on how Departments should assess suppliers' responses.

Action

3. Departments must, with effect from 1 April 2013, include the relevant questions to suppliers in their procurement documentation at selection stage (e.g. in the Pre Qualification Questionnaire (PQQ) or the Invitation to Tender (in the case of the Open procedure only) for all procurements which have or are likely to have a value of £5million or over.
4. The questions are set out in Annex A and must be incorporated into the selection stage of such procurements. The key provision is that a supplier must state whether, from 1 April 2013 onwards:
 - its tax affairs have given rise to a criminal conviction for tax related offences which is unspent, or to a penalty for civil fraud or evasion; and/or
 - any of its tax returns submitted on or after 1 October 2012 has been found to be incorrect as a result of:
 - HMRC successfully challenging it under the new General Anti-Abuse Rule (GAAR) or the "Halifax" principle; or

- The failure of an avoidance scheme which the supplier was involved in and which was, or should have been, notified under the Disclosure of Tax Avoidance Scheme (DOTAS).
5. This policy will apply to all suppliers (technically all “economic operators” as defined in the Public Contracts Regulations 2006) bidding for central Government contracts of £5 million or more and subject to EU procurement rules. Further details of how the policy applies to different types of suppliers is given in Annex A. Suppliers are not required to certify on behalf of any subcontractor or any other members of the supply chain.
 6. Where a supplier declares that it has had occasions of non-compliance, the contracting department can decide whether to exclude that supplier from the procurement process. In doing so Departments will need to take into account any mitigating factors provided as part of the supplier’s response; for example measures that the supplier has implemented to ensure future tax compliance.
 7. Further guidance on the assessment of suppliers’ responses to the questions will be issued in April 2013, and HMRC will provide a point of contact to offer support for central government departments on any tax issues arising.

Dissemination

8. Please circulate this PPN within your organisation, its Executive Agencies and Non Departmental Public Bodies and to all Contracting Authorities for which you are responsible, drawing it to the attention of those with a purchasing role.

Contact

9. Enquiries about this PPN should be directed to the Service Desk 0845 000 4999 servicedesk@cabinet-office.gsi.gov.uk.

Scope

10. The contents of this PPN apply to all Central Government Departments including their Executive Agencies and Non Departmental Public Bodies. It replaces Information Note 03/13 which consulted on the measures. Other contracting authorities (e.g. in local government and the wider public sector) may choose to apply the measures set out in this PPN.

Background

11. The Chief Secretary to the Treasury announced in September 2012 that HM

Revenue & Customs (HMRC) and the Cabinet Office had been tasked with looking into how the Government could use the procurement process for government contracts to deter the very small minority of suppliers and individuals that do so from evading tax and using aggressive tax avoidance schemes.

12. The Autumn Statement announced that HMRC and Cabinet Office would consult on the use of the procurement process to deter tax avoidance and evasion, with a view to new arrangements coming into effect from 1 April 2013. HMRC's response to the consultation can be found at www.hmrc.gov.uk/budget2013/tax-procure-con-resp.pdf
13. Under the Public Contracts Regulations 2006, an authority can disqualify a supplier from participating in a procurement process if it has not fulfilled its tax obligations under UK law or of the relevant State in which the economic operator is established.
14. DOTAS is the legislative regime which requires promoters and taxpayers to disclose to HMRC the marketing or the use of certain tax avoidance arrangements. A failed DOTAS scheme is one which has been shown either through litigation or through settlement not to achieve the tax result that it set out to obtain.

**ANNEX A: FURTHER DETAIL:
QUESTIONS TO BE INCORPORATED INTO THE SELECTION STAGE
DOCUMENTATION AND SCOPE OF APPLICATION**

SELECTION STAGE QUESTIONS:

The following questions must be incorporated in the procurement documentation at the selection stage (i.e. the PQQ or in the case of the Open procedure the ITT) for all qualifying procurements:

Q1: The supplier must state whether, from 1 April 2013 onwards;

1.1 its tax affairs have given rise to a criminal conviction for tax related offences which is unspent, or to a penalty for civil fraud or evasion; and/or

1.2 any of its tax returns submitted on or after 1 October 2012 has been found to be incorrect as a result of:

- HMRC successfully challenging it under the General Anti-Abuse Rule (GAAR) or the “Halifax” abuse principle; or
- the failure of an avoidance scheme which the supplier was involved in and which was, or should have been, notified under the Disclosure of Tax Avoidance Scheme (DOTAS).

If answering ‘yes to either Q1.1 or 1.2 above, the supplier should provide the following:

- A brief description of the occasion, the tax to which it applied, and the type of “non-compliance” i.e. GAAR, Halifax Abuse Principle etc.
- The date of the original “non-compliance” and the date of any judgement against the supplier, or date when the return was amended.
- The level of any penalty or criminal conviction applied.
- Details of any mitigating factors, including but not limited to:
 - Corrective action undertaken by the supplier to date
 - Planned corrective action to be taken.
 - Changes in personnel or ownership since the occasion.
 - Changes in financial, accounting, audit or management procedures since the occasion.

SCOPE OF APPLICATION:

This policy will apply to all suppliers (technically all “economic operators” as defined by the Public Contracts Regulations 2006) bidding for central Government contracts of £5 million or more and subject to EU procurement rules. The policy applies equally to suppliers which are:

- a body corporate or association, or an individual.
- a joint venture or consortium, where the self-certification must cover all members;
- a partnership, limited partnership or limited-liability partnership (LLP), in which case the self-certification must cover that partnership, limited partnership or LLP, but not the individual members; and/or
- a member of a group although in that case the self-certification does not cover other group companies.

The policy will apply to all HMRC administered taxes and foreign equivalents.

The policy applies to occasions of non-compliance occurring on or after 1 April 2013. As these may arise from tax returns submitted several years previously, it has been limited to tax returns submitted on or after 1 October 2012. These requirements will continue to refer back to 1 April 2013 until 31st March 2019 when a maximum 6 year retrospection will apply.