Procuring tax compliance – an update

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Government contracts and tax avoiders

As reported in April's *Technical Newsdesk*, the Government has been taking steps to restrict the ability of tax 'defaulters' to bid for or retain government contracts. Revised proposals published with the March Budget showed that our efforts to highlight problems with the original proposals have borne considerable fruit.

To recap briefly, in our view the basis of the Government's proposals around tax and procurement seemed fair enough. A business that wants to benefit from publicly funded business should be prepared to follow the rules laid down on the public's behalf by the Government, and those rules must include tax. A 'good' record of conduct in tax affairs puts you in with a chance of government business; a 'bad' record will probably shut you out. The difficulty is defining 'good' and 'bad'.

The CIOT was not alone in voicing trenchant criticism of the initial proposals (see **www.tax.org.uk/tax-policy/public-submissions/2013/tax_procurement**); some 50 bodies responded. Thankfully, the response document, published with the Budget, shows that the Government listened and made many changes.

The most important change is probably that the 'occasion of non-compliance' (the basic indicator of 'bad' behaviour) operates on or after 1 April 2013, instead of going back 10 or more years. Next, an occasion of non-compliance will primarily be something caught by the GAAR, the 'Halifax' principle or a failed DOTAS scheme. References to TAARs in this area have gone, which makes the scope of the rules much easier to define and manage.

All of that is very welcome but there is also a key practical change in how groups have to apply the rules. The initial proposals were in terms of the group – potentially a worldwide multinational – having to certify compliance with TAARs and equivalent in every territory they had operations. The requirement will now be in terms of the

‘economic operator’, ie the part of the worldwide organisation that is really going for the contract. And to make sure that there is a level playing field, foreign bidders will have to self-certify their compliance with equivalent local tax rules.

Overall, we seem to have got to a reasonably sensible position and one has to say that the consultation has been effective. Hopefully, the Government will not take it as a sign that future consultations should be on a nine working day timescale, though Technical Committee members certainly responded to the short timescale with a deluge of comments.

This is not an academic subject: it affects whether the UK can get its public contracts carried out by the best people and whether businesses interested in such projects can operate in a sensible environment. The proposals now seem to encourage good future behaviour, which is surely as it should be.