



ELECTRONIC TAX COMPLIANCE: CHANGES TO CURRENT SCM PROCESSES OF PFMA ENTITIES

On 15 July 2014, National Treasury has issued NT Instruction 3 in terms of S76(4)(a) of the Public Finance Management Act (PFMA) to various accounting officers and accounting authorities of national departments, constitutional institutions, public entities and provision treasuries as listed in Schedule 2 and 3 to the PFMA (PFMA entities).

Following abuse in the supply chain management systems pertaining to tax compliance of those persons conducting business with the State (at the time of submission of bid, the award of bid and during the full duration of their supply chain contracts), the South African Revenue Service (SARS) will be implementing an electronic Tax Compliance Status (TCS) system, to provide PFMA entities to verify and track the compliance status of such persons conducting business with the State through means of online real-time verification.

From 1 November 2014, SARS is to phase out of paper-based tax clearance certificate issued and to replace it with an electronic tax compliance system. From 1 April 2015, SARS is to cease to issue paper based tax clearance certificates.

This article provides for a summary of the NT Instruction, with focus on:

- i. Electronic Tax Compliance Status system
- ii. Disclosure of information (consent required through Bid documents & information disclosure to SARS by PFMA entities)
- iii. Tax compliance status checks required to be performed
- iv. Non-compliance and challenges that can be raised by bidders, with consideration of re-evaluation by PFMA entity and deviations by NT

NT Instruction 3 of 2014/15 summary

Consideration	Bidder	PFMA entity	National Treasury
Use of Electronic Tax Compliance Status System	Bidder to obtain a unique security personal identification (PIN) number from SARS, as part of tax compliance status disclosure.	The accounting officer or accounting authority must use the PIN to verify a person's tax compliance status with SARS.	The NT Instruction allows NT to detail the procedure for obtaining a PIN and for verifying a person's tax compliance status with SARS.
Disclosure of information <i>Consent within bid documents for SARS to provide Tax Compliance Status;</i> <i>Obligation of PFMA entity to provide information to SARS</i>		The accounting officers and accounting authorities must ensure that bid documents provide for: - Written confirmation from bidder that SARS may continuously disclose bidder's tax compliance status at submission of bid and during term of contract; - Specific tax compliance considerations of (Table 1): - Sub-contractors - Undisclosed principals - Partners in a partnership - Non-South African resident bidders	National Treasury may issue a Tax Compliance Guideline to assist accounting officers and accounting authorities to implement NT Instruction No 3 of 2014/15. The accounting officer or accounting institution of a PFMA entity is obliged to disclose any relevant information pertaining to a government contract to SARS in such form and manner as to be prescribed by NT's Tax Compliance Guideline.
Tax compliance checks		The accounting officer of specific PFMA entities must perform tax compliance checks at specific timings during the SCM process. See Table 2 for more info.	

Consideration (continued)	Bidder	PFMA entity	National Treasury
Non-compliance: • <i>Impact</i> • <i>challenge of tax compliance status by bidder with SARS</i> • <i>Re-evaluations</i> • <i>NT deviations</i>	Challenge: A person who is not tax complaint may indicate to PFMA entity that it intends to challenge its tax compliance status with SARS.	Identify non-compliance status: Should the accounting officer or accounting authority identify that a person (bidder) or its sub-contractor is not tax compliant; they must immediately inform such a bidder accordingly. Challenge: Unless a person who is not tax complaint may indicate to the PFMA entity that it intends to challenge its tax compliance status with SARS, guidance is given as to the procedures to follow by the PFMA entity(Table 3): • award the bid, where remedy has taken place within 10 days after non-compliance status notification • issue of warnings to withheld payment • non-release of payment; • cancel the contract. Re-evaluation: Where confirmation of a person's tax compliance states is urgent and the system indicates that a person's request for re-evaluation is still pending, the PFMA entity must obtain written permission from SARS to grant the non-compliant person an extension.	Deviation: If after conducting the tax compliance check and the bidder is found to be non-compliant, the National Treasury may on good grounds approve a departure on these timings. This departure may entail: • Providing the bidder with an extension of time to remedy its tax compliance status; • Or excusing a non-compliant bidder from being and / or remaining tax compliant. Approval: Such departures due to non-compliance pertaining to the timing of tax compliance checks shall: • be approved in terms of S79 of PFMA; and • only be granted by National Treasury under exceptional circumstances. Considerations: The accounting officer of a PFMA entity may provide the Chief Procurement Officer in NT with: • compelling reasons why a non-compliant supplier should continue doing business with the state; and • why payments should not be withheld where a person becomes non-compliant after date of award.

Table 1 Accounting officers and accounting authorities of PFMA entities must ensure that bid documents provide:

Bidder	For the bidder to grant written confirmation upon submission of a bid that SARS may, on an ongoing basis during the contract term, disclose the bidder's tax compliance status to the applicable PFMA entity.
Successful bidders who appoint a sub-contractor in excess of NT threshold	For successful bidders who appoint a sub-contractor to execute a portion of a contract in excess of the threshold prescribed by NT, to ensure that such a sub-contractor is tax compliant and remains tax compliant for the full duration of the contract. Successful bidder must be required to provide the accounting officer or accounting authority with written consent from its sub-contractors confirming that SARS may, on an ongoing basis during the contract term, disclose the sub-contractors tax compliance status to the applicable PFMA entity
Undisclosed principal	For a bidder who acts on behalf of an undisclosed principal to disclose such a fact upon submission of a bid, as well as the identify of that principal. The principal should grant written confirmation upon submission of a bid that SARS may, on an ongoing basis during the contract term, disclose the principal's tax compliance status to the applicable PFMA entity. Where a sub-contractor forms part of the successful bid, the requirements of written consent from sub-contractor will also apply as per the section above.
Partnership	For the tax compliance status of all partners to be verified, if the bidder consist of a partnership
Non-South African residents	For bidders who are not resident in the Republic of South Africa, to apply for tax clearance from SARS.

PFMA entities should amend and update their policies and bid documentation to make provision for these requirements.

Table 2: Timing of tax compliance check	<i>The accounting officer of a Department; Constitutional institution and Public Entity listed in <u>Schedule 2 & 3</u> to the PFMA</i>	<i>The accounting officer of a Department; Constitutional institution and Public Entity listed in <u>Schedule 3A & 3C</u> to the PFMA</i>
<i>Before a supplier is added to its database of preferred suppliers</i>	X	
<i>Before a quotation is accepted from a supplier</i>	X	
<i>At the time of submission of a bid</i>	X	
<i>Before appointing of the supplier to supply goods or render services without inviting competitive bids (Treasury Regulation 16A.6.3)</i>		X
<i>Before the award of a bid</i>	X	
<i>Before any payment is made to suppliers</i>	X	X

PFMA entities should amend and update their policies and processes to make provision for these requirements.

Table 3 Unless a person who is not tax compliant may indicate to the PFMA entity that it intends to challenge its tax compliance status with SARS, the PFMA entity:

<i>Award the bid, where remedy has taken place within 10 days after non-compliance status notification</i>	May not award the bid to the non-complaint bidder, unless such a bidder is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status.
<i>Issue of warnings to withheld payment:</i> <i>First warning</i> <i>Second final warning</i>	Must issue a first warning to a non-compliant person that payments may be withheld in future for goods supplied or services rendered, before authorising any payment due to such non-compliant person Before authorising a further payment due to a person, who has failed to remedy its tax compliance status after receiving a first warning, must be issued a second, final warning to the compliant person that payments will in future be withheld for goods supplied or services rendered.
<i>Non-release of payment after 30 days lapse of second final warning issuance</i>	May not release any payments due to a non-compliant person if, after a period of 30 days have lapsed since the second warning was issued to such a person, the non-complaint person has failed to remedy its tax compliance status. A PFMA entity that has withheld such payments must inform the affected person that payment will not be released until the earliest of: - When SARS has confirmed to the PFMA entity that it does not intend to invoke its rights in terms of S179 of the Tax Administration Act, or - The tax compliance status of the person has been remedied.
<i>Cancel the contract.</i>	May cancel its contract with a non-compliant person or if applicable, instruct the bidder who appointed the sub-contractor to cancel its contract with such non-compliant sub-contractor.

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As at issue of this article, the information in this article is correct in considerations of these matters. These may change over time with new requirements and information. This article does not represent a legal opinion or professional advice, and it is advised that due consideration be given to all the applicable facts on the application of accounting standards, with necessary professional guidance, prior to its application.