



treasury

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TEL: 033 897 4239
DATE: 01 November 2014

**TO: HEADS OF DEPARTMENTS
HEADS OF PROVINCIAL PUBLIC ENTITIES
ALL HEADS OF SCM**

POSTPONEMENT OF THE IMPLEMENTATION OF THE NATIONAL TREASURY INSTRUCTION NOTE ON TAX COMPLIANCE MEASURES FOR PERSONS CONDUCTING BUSINESS WITH THE STATE

On the 15th of July 2014, the National Treasury, in line with Section 76(4) of the Public Finance Management Act, 1999 (PFMA), issued an Instruction Note (Annexure A) on Tax Compliance Measures for Persons Conducting Business with the State (Instruction Note No. 3 of 2014/15). This Instruction Note would have implications in the manner with which the South African Revenue Service issues documents and details of tax compliance and the manner with which organs of State verify the tax affairs of service providers during bid processes. The implementation date of Instruction Note No. 3 of 2014/15 was 01 November 2014.

On the 31st of October 2014, National Treasury issued Instruction Note No. 3A of 2014/15 to, until further notice, postpone the implementation of Instruction Note No. 3 of 2014/15. All heads of departments and provincial public entities are advised to continue using the Tax Clearance Certificate as a form of tax verification until further notice.

The attached Instruction Note (Instruction Note No. 3A of 2014/15) is applicable to all provincial departments, municipalities and municipal entities and all provincial public entities in the province of KwaZulu-Natal.

Yours faithfully,

MR. LS MAGAGULA
HEAD OF DEPARTMENT: KWAZULU-NATAL PROVINCIAL TREASURY
DATE: 03/12/2014



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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**TO ALL: ACCOUNTING OFFICERS OF DEPARTMENTS AND
CONSTITUTIONAL INSTITUTIONS**

**: ACCOUNTING AUTHORITIES OF SCHEDULE 2 AND 3 PUBLIC
ENTITIES**

: HEAD OFFICIALS OF PROVINCIAL TREASURIES

NATIONAL TREASURY INSTRUCTION NO. 3A OF 2014/15

CLARIFICATION REGARDING IMPLEMENTATION OF TAX COMPLIANCE STATUS INSTRUCTION

1. PURPOSE

The purpose of this Treasury Instruction is to address certain matters to the implementation of National Treasury Instruction No. 3 of 2014/2015 dated 15 July 2014 ("the Instruction No. 3 of 2014/2015") issued in terms of section 76(4) of the Public Finance Management Act, 1999 ("the PFMA").

2. BACKGROUND

On 15 July 2014, the National Treasury issued an instruction on tax compliance measure for persons conducting business with the state, where institutions are no longer required to obtain a hardcopy of an original and valid tax clearance certificate but check the tax compliance status of bidders through an electronic Tax Compliance Status (TCS) system.

3. STATUS

Accounting officers and accounting authorities are advised that National Treasury and South African Revenue Services are currently evaluating the implications of the Instruction No. 3 of 2014/2015. Therefore, the implementation date of that Instruction is deferred and further instructions on its applicability and implementation date will be issued at a later date.

Postponing implementation of Tax Compliance Status instruction

4. APPLICABILITY

This Instruction applies to all departments, constitutional institutions and public entities listed in Schedules 2 and 3 to the PFMA.

5. DISSEMINATION OF INFORMATION CONTAINED IN THIS INSTRUCTION

- 5.1 Heads of provincial treasuries are requested to bring the contents of this Instruction to the attention of accounting officers and supply chain management officials of their respective provincial departments;
- 5.2 Accounting officers of national and provincial departments are requested to bring the contents of this Instruction to the attention of accounting authorities and the supply chain management officials of Schedule 3A and 3C public entities reporting to their respective executive authorities; and
- 5.3 Accounting authorities of Schedule 2, 3B and 3D public entities are requested to bring the contents of this Instruction to the attention of the supply chain management officials of their public entities.

6. NOTIFICATION TO THE AUDITOR-GENERAL

A copy of this Instruction will be forwarded to the Auditor-General for notification.

7. AUTHORITY FOR THIS INSTRUCTION

This Instruction is issued in terms of section 76(4) of the PFMA.



MICHAEL SASS
ACCOUNTANT-GENERAL
DATE: 31 October 2014



national treasury

Department
National Treasury
REPUBLIC OF SOUTH AFRICA

**TO ALL: ACCOUNTING OFFICERS OF DEPARTMENTS AND
CONSTITUTIONAL INSTITUTIONS**

**ACCOUNTING AUTHORITIES OF PUBLIC ENTITIES LISTED IN
SCHEDULE 2 AND 3 TO THE PFMA**

HEAD OFFICIALS OF PROVINCIAL TREASURIES

NATIONAL TREASURY INSTRUCTION NO. 3 OF 2014/2015

**TAX COMPLIANCE MEASURES FOR PERSONS CONDUCTING BUSINESS
WITH THE STATE**

1. PURPOSE

The purpose of this *Treasury Instruction* is to strengthen measures to be implemented by accounting officers of departments and constitutional institutions and accounting authorities of public entities listed in Schedule 2 and 3 to the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) to ensure that persons (i.e. a bidder, supplier or subcontractor) conducting business with the State are tax compliant.

2. BACKGROUND

- 2.1 Government is committed to reducing supply chain management related fraud and ensuring that persons who conduct business with the State are afforded no scope to abuse the supply chain management system.
- 2.2 It is therefore necessary to ensure that persons conducting business with the State are tax compliant at the date of submission and award of a bid as well as for the full duration of their respective contracts.
- 2.3 To give effect to the above, the South African Revenue Service (SARS) will be implementing an electronic Tax Compliance Status (TCS) system, which will enable accounting officers and accounting authorities to verify and continuously track the tax compliance status of all persons conducting business with the State.

Tax compliance measures for persons conducting business with the State

- 2.4 The National Treasury may issue a Tax Compliance Guideline to assist accounting officers and accounting authorities to implement the tax compliance measures set out in this *Treasury Instruction*.

3. TAX COMPLIANCE MEASURES

Electronic Tax Compliance Status (TCS) System

- 3.1. As from 1 November 2014, the paper-based tax clearance certificates issued by SARS will be gradually phased out and replaced with an electronic Tax Compliance Status (TCS) system. This new system will allow for the online real-time verification of a person's tax compliance status.
- 3.2. Any person who requires his or her tax compliance status disclosed to a department, constitutional institution or public entity for purposes of submitting a bid or to confirm its good standing must request a unique security personal identification number (PIN) from SARS.
- 3.3. With effect from 1 April 2015, SARS will no longer issue paper based tax clearance certificates.
- 3.4. The accounting officer or accounting authority must use the PIN referred to in paragraph 3.2 to verify a person's tax compliance status with SARS.
- 3.5. The National Treasury may detail the procedure for obtaining a PIN and for verifying a person's tax compliance status with SARS in the Tax Compliance Guideline referred to in paragraph 2.4.

Bid documents

- 3.6. The accounting officer of a department or constitutional institution or the accounting authority of a public entity must ensure that bid documents provide:
- (a) for the bidder to grant written confirmation upon submission of a bid that SARS may, on an on-going basis during the contract term, disclose the bidder's tax compliance status to the department, constitutional institution or public entity;
 - (b) for successful bidders who appoint a sub-contractor to execute a portion of a contract in excess of the threshold prescribed by the National Treasury, to ensure that such a sub-contractor is tax compliant and remains tax compliant for the full duration of the contract. Successful bidders must be required to provide the accounting officer or accounting authority with written consent from its sub-contractors confirming that SARS may, on an on-going basis

Tax compliance measures for persons conducting business with the State

during the contract term, disclose the sub-contractor's tax compliance status to the institution;

- (c) 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 identity of that principal. The tax compliance status of that principal must be verified in the same manner as that of the bidder. The same principle applies *mutatis mutandis* to any sub-contractor appointed by a successful bidder to execute a portion of a contract in excess of the threshold prescribed by National Treasury;
- (d) for the tax compliance status of all partners to be verified, if the bidder consists of a partnership; and
- (e) for bidders who are not resident in the Republic of South Africa, to apply for tax clearance at SARS.

Tax Compliance checks

- 3.7. The accounting officer of a department or constitutional institution or the accounting authority of a public entity listed in Schedule 2 and 3 to the PFMA must perform tax compliance checks:
 - (a) before a supplier is added to its database of preferred suppliers;
 - (b) before a quotation is accepted from a supplier;
 - (c) at the time of submission of a bid;
 - (d) before the award of a bid; and
 - (e) before any payment is made to suppliers.
- 3.8. Where a department, constitutional institution or public entity listed in Schedule 3A or 3C to the PFMA appoints a supplier in terms of Treasury Regulation 16A.6.4 to supply goods or render services without inviting competitive bids, the accounting officer or accounting authority must perform tax compliance checks :
 - (a) before appointing the supplier; and
 - (b) before any payments are made to such a supplier.
- 3.9. If after conducting the tax compliance checks the bidder is found to be non-compliant, the National Treasury may, on good grounds, approve a departure from paragraphs 3.7 or 3.8 of this Treasury Instruction. This departure may entail:
 - (a) providing the bidder with an extension of time to remedy its tax compliance status; or
 - (b) excusing a non-compliant bidder from being and/or remaining tax compliant.

Tax compliance measures for persons conducting business with the State

- 3.10. Departures from paragraphs 3.7 and 3.8 of the Treasury Instruction shall be approved in terms of section 79 of the PFMA and shall only be granted by the National Treasury under exceptional circumstances.

Non-Compliance

- 3.11. Should the accounting officer of a department or constitutional institution or the accounting authority of public entity identify that a person is not tax compliant, that accounting officer or accounting authority must immediately inform such person accordingly.
- 3.12. In the case of a sub-contractor, the department, constitutional institution or public entity must also inform the bidder who appointed such a sub-contractor of its non-compliance.
- 3.13. Unless a person who is not tax compliant indicates to the department, constitutional institution or public entity that it intends to challenge its tax compliance status with SARS, the department, constitutional institution or public entity:
- (a) may not award the bid to the non-compliant 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;
 - (b) 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;
 - (c) must, before authorising a further payment due to a person who has failed to remedy its tax compliance status after receiving a first warning, issue a second, final warning to the non-compliant person that payments will in future be withheld for goods supplied or services rendered;
 - (d) 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 person, the non-compliant person has failed to remedy its tax compliance status; or
 - (e) 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.
- 3.14. A department, constitutional institution or public entity that has withheld payments in terms of paragraph 3.13(d) must inform the affected person that payment will not be released until such time as SARS has confirmed to the institution that it does not

Tax compliance measures for persons conducting business with the State

intend to invoke its rights in terms of section 179 of the Tax Administration Act, 2011 (Act No. 28 of 2011), alternatively until such time as the tax compliance status of the person has been remedied, whichever occurs earlier.

Re-evaluation

- 3.15. Where confirmation of a person's tax compliance status is urgent and the system indicates that a person's request for re-evaluation is still pending, the institution must obtain written permission from SARS to grant the non-compliant person an extension.

Disclosure by institutions of information to SARS

- 3.16. The accounting officer or accounting authority of an institution is obliged to disclose any relevant information pertaining to a government contract to SARS in the form and manner as prescribed in the Tax Compliance Guideline referred to in paragraph 2.4.

4. DEVIATIONS FROM THIS TREASURY INSTRUCTION

- 4.1. The contents of this *Treasury Instruction* has been finalised in consultation with SARS.
- 4.2. Requests for deviation from paragraphs contained in this *Treasury Instruction* may be considered in terms of section 79 of the PFMA.
- 4.3. The accounting officer of a department or constitutional institution or the accounting authority of a public entity may provide the Chief Procurement Officer in the National Treasury 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 the date of award.
- 4.4. All written requests for deviations from this Treasury Instruction must be forwarded to:

The Director-General
National Treasury
Private Bag X115
Pretoria
0001

For attention: The Chief Procurement Officer

Written requests may also be emailed to tcs@treasury.gov.za

5. APPLICABILITY

This *Treasury Instruction* applies to all departments, constitutional institutions and public entities listed in Schedule 2 and 3 to the PFMA.

6. EFFECTIVE DATE

6.1. This *Treasury Instruction* takes effect from:

- (a) from 1 November 2014 for implementation of the TCS system referred to in paragraph 3.1 save for (b) below;
- (b) from a date to be prescribed by Treasury Instruction for provisions contained in paragraphs 3.7(e), 3.8(b) and 3.13 (b) to 3.13 (e).

7. DISSEMINATION OF INFORMATION CONTAINED IN THIS TREASURY INSTRUCTION

7.1 Accounting officers of national departments are requested to bring the contents of this *Treasury Instruction* to the attention of all:

- (a) accounting officers of constitutional institutions that receive transfers and subsidies from its vote; and
- (b) accounting authorities of public entities that report to the executive authority responsible for the accounting officer's department.

7.2 Head officials of provincial treasuries are requested to bring the contents of this *Treasury Instruction* to the attention of all accounting officers of departments and accounting authorities of public entities in their respective provinces.

8. NOTIFICATION TO THE AUDITOR-GENERAL

The Auditor-General will be notified of the contents of this *Treasury Instruction*.

9. AUTHORITY FOR THIS INSTRUCTION

This *Treasury Instruction* is issued in terms of section 76(4)(a) of the PFMA.

10. CONTACT INFORMATION

Enquiries related to this *Treasury Instruction* may be directed to:

Henry Malinga

Chief Director: SCM Norms and Standards

Phone: 012 315 5502

Email: Henry.Malinga@treasury.gov.za


MICHAEL SASS
ACCOUNTANT-GENERAL

DATE: 15 July 2014