



The binding *Tax File Number Guidelines 2011* and the protection of tax file number information

April 2012

This fact sheet outlines issues related to the handling of Tax File Numbers (TFNs) and the application of the binding *Tax File Number Guidelines 2011* (TFN Guidelines) issued under s 17 of the *Privacy Act 1988* (Privacy Act). This fact sheet uses frequently asked questions (FAQs) to suggest a number of steps individuals and TFN recipients, including investment bodies, should consider taking to protect the privacy of TFN information. For each FAQ, reference is made to the relevant TFN guideline/s.

PART A – For individuals:

1. What is a TFN?
2. Are there privacy rules about how my TFN information is handled?
3. Can just anyone ask for my TFN?
4. Do I have to give out my TFN to someone even if they are allowed to ask for it?
5. Is there any special information I must be told when an authorised person asks for my TFN?
6. My TFN is on a document I have been asked to provide. What should I do?
7. Do I have to give my TFN (as part of an identity check) if I want to rent a flat or buy a car?
8. Can my TFN be collected when I earn income or invest my money?
9. Who can I complain to if my TFN information is not handled properly?

PART B – For TFN recipients:

10. What are TFNs?
11. What is TFN information and what do the TFN Guidelines protect?
12. What is a TFN recipient?
13. Why is it important to protect the privacy of TFNs?
14. Can anyone ask for and receive an individual's TFN?
15. Do individuals need to provide their TFN to an authorised TFN recipient?
16. What happens when an authorised TFN recipient collects an individual's TFN?

17. How do the TFN Guidelines and other privacy obligations interact?

18. What should TFN recipients do if a person provides information which includes a TFN?

19. What can an individual's TFN be used for?

20. How can I, my agency or organisation protect the security of TFNs?

21. How can I, my agency or organisation limit access to TFNs?

22. What is involved in securely destroying and de-identifying TFN information?

23. How can I make staff aware of their obligations under the TFN Guidelines?

24. How do the ATO, APRA and assistance agencies make information about their TFN handling practices publicly available?

Resources

PART C – For investment bodies:

25. Can investment bodies collect an individual's TFN?

26. Is there a difference between how TFNs are handled by superannuation funds compared to other investment bodies?

27. How must organisations collect TFNs in relation to investments?

28. Do investment bodies need to ask for an individual's TFN at the time each new investment is taken out?

29. What options should be made available to investors when they are asked to quote their TFNs for investments that are not parts of the one facility?

The purpose of this fact sheet is to provide assistance in interpreting the TFN Guidelines. The fact sheet reflects the content of the TFN Guidelines which replace the previous *Tax File Number Guidelines 1992* following their review by the Office of the Australian Information Commissioner (OAIC). The fact sheet also replaces the advisory Commissioner's Notes (which used to be included in an annotated version of the previous TFN Guidelines) and the advisory TFN Compliance Notes on *Security, Investment Bodies, and Investment Bodies further advice*. Relevant material from these documents has been incorporated into this fact sheet.

This fact sheet is not legally binding and should be read in conjunction with the binding TFN Guidelines and the advisory *Classes of lawful tax file number recipients* document – both of which can be accessed on the OAIC's website.

The fact sheet is divided into three parts:

Part A – aimed at individuals

Part B – aimed at people, government agencies and private sector organisations who are lawful TFN recipients

Part C – aimed at investment bodies.

PART A – For individuals:

1 What is a TFN?

Tax file numbers (TFNs) are unique numbers created by the Australian Taxation Office (ATO). The ATO gives you, other people and organisations a TFN because it helps them handle your tax and administer Australian Government payments such as those given out by the Department of Human Services (DHS) which administers the Centrelink, Child Support Agency and Medicare Programs.

TFNs can also be used to help manage your superannuation. For example, your TFN may be used by your superannuation fund to locate and combine your superannuation accounts.

Your TFN is given to you for life, so it is a **very important** number.

TFN information is information that connects your TFN with your identity (for example, a document that links your name and date of birth with your TFN).

Make sure that you:

- keep your TFN information in a safe place
- properly destroy any TFN information that you no longer need. This will help prevent other people stealing your identity. Don't just throw your old TFN information in the bin
- report any lost, stolen or unauthorised access of your TFN information to the ATO.

If you consider that your TFN information has not been handled lawfully, you may also make a complaint to the Australian Information Commissioner.

TFN Guidelines reference: see Introduction; TFN Guideline 2.2

2 Are there privacy rules about how my TFN information is handled?

Yes.

The Australian Privacy Commissioner has released the TFN Guidelines which deal with how your TFN information should be collected, stored, used, disclosed and kept safe. All people, agencies and organisations that are allowed to ask for your TFN information must follow the TFN Guidelines.

Under the TFN Guidelines, people, agencies and organisations that are allowed to ask for your TFN information must not record, collect, use or pass on your TFN unless this is permitted under taxation, personal assistance or superannuation law.

The Commissioner of Taxation (the head of the ATO) and the Australian Prudential Regulation Authority (APRA) have also released rules and advice about handling TFN information. This information is available from the ATO and APRA websites.

TFN Guidelines reference: see Introduction; TFN Guidelines 2, 3, 4, 5, 6 and 8

3 Can just anyone ask for my TFN?

No.

There are very strict rules about who is allowed to ask for your TFN. The TFN Guidelines only allow certain people, agencies and organisations that are authorised by law to ask for your TFN.

The ATO and APRA are required to make information available that identifies people, agencies and organisations allowed by law to request and handle TFNs. One way they make this information available is by maintaining a list of the classes of people, agencies and organisations allowed to ask for your TFN, what they will do with it and who they can give it to. The list includes:

- the ATO
- your employer
- banks and other financial institutions
- the Department of Human Services (DHS) (which administers the Centrelink, Child Support Agency and Medicare Programs and has the authority to request a TFN from you if you receive personal assistance payments such as pensions, benefits and allowances)
- superannuation funds and retirement savings account (RSA) providers.

If you are not sure that the person, agency or organisation asking you for your TFN is allowed to ask for it, talk to the ATO.

TFN Guidelines reference: see TFN Guidelines 3 and 8

4 Do I have to give out my TFN to someone even if they are allowed to ask for it?

No.

There is no law in Australia that says you **must** give an authorised person, agency or organisation your TFN if they ask for it.

However, sometimes there may be financial consequences if you don't give your TFN to someone who is **allowed by law** to ask you for it.

Examples

- If you are claiming or receiving a personal assistance payment from DHS (which administers the Centrelink, Child Support Agency, and Medicare Programs) such as a pension, benefit or allowance, DHS may ask for your TFN so it can check the information you give them with the ATO and other agencies that make payments. If you do not give DHS your TFN, certain personal assistance payments may not be paid to you. Providing your TFN is a condition of receiving most Australian Government personal assistance payments
- If you don't give your employer, bank, other financial institution or superannuation fund your TFN, it may affect how much tax you pay and could result in tax deducted from your income or your interest payments at the highest marginal rate
- Your superannuation fund may provide you with an opportunity to quote your TFN to facilitate the location and combination of your superannuation accounts. If you decide not to quote your TFN, the fund may not be able to find any additional accounts that you may have.

TFN Guidelines reference: see TFN Guideline 2

5 Is there any special information I must be told when an authorised person asks for my TFN?

Yes.

When an authorised person, agency or organisation asks you for your TFN, they must tell you:

- why they are collecting it (including the name of the law or laws that allow them to collect your TFN and the purpose for which they are collecting it)
- that it is not an offence if you do not give them your TFN
- what will happen if you do not give them your TFN.

This information can be given to you in person but must also be included in any forms that ask you for your TFN. The description of the purposes for

collection can be reasonably general as long as it adequately informs you of what the law authorises the person, agency or organisation to do with your TFN.

Remember: You can ask questions if you do not think you have been given enough information!

TFN Guidelines reference: see TFN Guideline 3.2

6 My TFN is on a document I have been asked to provide. What should I do?

If you are asked for some information and the document includes your TFN, you are allowed to **cross out or remove** the TFN before you hand over the information. You can do this even if the person, agency or organisation is authorised to collect your TFN information.

Remember: You do not have to give anyone your TFN. However, if you do not give your TFN to a person who is authorised to ask for it there may be financial consequences.

TFN Guidelines reference: see TFN Guidelines 2.3 and 4

7 Do I have to give my TFN (as part of an identity check) if I want to rent a flat or buy a car?

No.

Generally, your TFN must never be used as an identity check. If someone wants to use your TFN in this way and you are not sure whether they are allowed to ask for your TFN, you should contact the ATO.

Remember: Only authorised people, agencies or organisations are allowed to ask you for your TFN.

TFN Guidelines reference: see TFN Guidelines 2.1, 2.2 and 3.1

8. Can my TFN be collected when I earn income or invest my money?

Yes.

You have the option of giving your TFN to an employer or investment body in relation to income that you have or will earn (either employment

or investment income). Deciding not to give your TFN may result in you paying tax on your relevant income (either employment or investment income) at the highest marginal rate.

TFNs can be collected in relation to the following investments:

- interest-bearing accounts with a financial institution (like a bank, building society or credit union)
- some interest-bearing deposits with a financial institution
- loans of money to a government body or to a body corporate
- unit trusts
- shares in a public company
- deposits of money with a solicitor for the purpose of:
 - being invested by the solicitor, or
 - being lent under an agreement to be arranged by or on behalf of the solicitor.

Remember: You do not need to give your TFN. You should be told this for each investment you consider making.

TFN Guidelines reference: see TFN Guideline 3

9 Who can I complain to if my TFN information is not handled properly?

If you consider someone has not handled your TFN information properly, you can make a complaint to the Australian Information Commissioner.

Generally, before you can make a complaint to the Australian Information Commissioner, you must first complain in writing to the person, agency or organisation you consider has mishandled your TFN information. You must also give the person, agency or organisation a reasonable time (usually 30 days) to respond to your complaint. In some cases the Australian Information Commissioner may hold off investigating where a person, agency or organisation has advised you within the 30 days that it is taking action but has not yet provided a formal response.

If you are not satisfied with the response you receive from the person, agency or organisation,

or if you do not receive a response, you can make a complaint to the Australian Information Commissioner.

You can also report lost or stolen TFNs or unauthorised access of your TFN information to the ATO. If your TFN is known by, or being used by someone who shouldn't have it, this is referred to as a compromised TFN. If the ATO establish with you that your TFN has been compromised, they will re-establish and confirm your identity, and check your tax records. The ATO may take other action depending on your situation.

TFN Guidelines reference: see Introduction

PART B – For TFN recipients:

This section of the fact sheet is aimed at people, agencies and organisations that are TFN recipients.

10 What are TFNs?

The TFN Guidelines define 'TFN' by reference to the definition of 'tax file number' in s 6 of the Privacy Act. It generally means a unique number issued to the person by the Commissioner of Taxation under certain provisions of taxation law to identify individuals, companies and others who lodge income tax returns with the Australian Taxation Office (ATO).

The purpose of the TFN is to facilitate the effective administration of taxation law and certain aspects of personal assistance and superannuation law and **not** to assist with the identification of individuals for other purposes.

TFN Guidelines reference: see Introduction and TFN Guidelines 1.2, 2.1 and 5.2

11 What is TFN information and what do the TFN Guidelines protect?

The TFN Guidelines protect the TFN information of individuals only. They are not intended to protect TFN information relating to other entities, such as corporate entities, partnerships, superannuation funds and trusts.

Where TFNs are assigned to individuals, TFN information is information that connects a TFN with

the identity of a particular individual (for example, a database record that links a person's name and date of birth with the person's TFN).

Under the TFN Guidelines, a TFN recipient must not record, collect, use or disclose TFN information unless this is permitted under taxation, personal assistance or superannuation law.

In addition to the TFN Guidelines, TFN recipients must also abide by the *Taxation Administration Act 1953* (TAA). However, the TAA protects **all** TFNs, including of individuals and other entities. Sections 8WA and 8WB of the TAA create offences for unauthorised requirements or requests that a person's TFN be quoted, and the unauthorised recording, maintaining a record of, use or disclosure of an individual's TFN respectively, unless an exception applies.

TFN Guidelines reference: see Introduction and TFN Guidelines 1, 3, 4, 5, and 6

12 What is a TFN recipient?

Under the TFN Guidelines, 'TFN recipient' has the same meaning as 'file number recipient' in s 11 of the Privacy Act and covers any person, agency or organisation that is (whether lawfully or unlawfully) in possession or control of a record that contains TFN information. A TFN recipient includes:

- the Commissioner of Taxation (i.e. the ATO)
- the following government assistance agencies:
 - the Department of Human Services (DHS) (which administers the Centrelink, Child Support Agency and Medicare Programs)
 - the Department of Families, Housing, Community Services and Indigenous Affairs
 - the Department of Education, Employment and Workplace Relations
 - the Department of Veterans' Affairs
- an authorised recipient, ie lawful TFN recipients, other than the Commissioner of Taxation or assistance agencies, who are authorised by taxation, personal assistance or superannuation law to receive TFNs, such as:
 - employers
 - employers in their capacity as employee share scheme (ESS) providers

- higher education providers (such as universities)
- investment bodies
- an approved recipient, ie lawful TFN recipients who are engaged by authorised recipients to provide services where it is reasonably necessary to have access to TFN information or who have obtained an individual's consent to access their TFN to help manage that individual's taxation, superannuation or personal assistance affairs. This can include the following:
 - solicitors
 - tax agents
 - accountants
 - share registries and agents of ESS providers
 - the trustee of a superannuation fund. Trustees, other than those of a superannuation fund are also able to collect and use TFNs where this is authorised by taxation law.

TFN Guidelines reference: see TFN Guideline 1

13 Why is it important to protect the privacy of TFNs?

It is important to protect the privacy of TFNs because they are unique identifiers which are issued to individuals for life.

Some of the privacy concerns associated with TFNs include:

- they could potentially be used by all government agencies and private sector organisations as part of a national identification system
- they could be used to match or link records of personal information held by many different agencies and organisations, which could:
 - enable an agency or organisation to look up detailed information about a person just by knowing their TFN
 - increase the risk of serious breaches of personal privacy if data is lost or misused
 - increase the risk of identity theft.

TFN Guidelines reference: see TFN Guidelines 2 and 5.1

14 Can anyone ask for and receive an individual's TFN?

No.

There are very strict rules about who is lawfully allowed to ask for and receive TFNs. The TFN Guidelines only allow certain people, agencies and organisations that are authorised by taxation, personal assistance or superannuation law to ask for and receive TFN information – they are known as authorised or lawful TFN recipients.

It is generally a criminal offence under the TAA and a breach of the TFN Guidelines for anyone else to request an individual's TFN. If you are not sure whether you, your agency or your organisation is an authorised or lawful TFN recipient, more information is available from the ATO.

The ATO and APRA are required under the TFN Guidelines to maintain a list of the classes of people, agencies and organisations allowed to ask for and receive TFNs, what they will do with it and who they can give it to. This list is known as the Classes of lawful tax file number recipients document.

TFN Guidelines reference: see TFN Guidelines 1, 3 and 8

15 Do individuals need to provide their TFN to an authorised TFN recipient?

No.

There is **no law** in Australia that says individuals **must** give an authorised person, agency or organisation their TFN if they are asked for it.

This forms the basis of what is known as the 'voluntary quotation principle', which recognises that taxation, personal assistance, or superannuation laws do not make the quotation of a TFN a requirement. However, the financial consequences of not quoting a TFN can be significant. For example, under personal assistance law, the quotation of a TFN is a condition for the receipt of personal assistance payments.

TFN Guidelines reference: see TFN Guidelines 2.3 and 2.4

16 What happens when an authorised TFN recipient collects an individual's TFN?

If a person, agency or organisation is authorised to request an individual's TFN they:

- must tell the individual the name of the law (or laws) that authorises them to collect the TFN, the purpose for which the TFN is collected, that it is not an offence to refuse to provide a TFN and the consequences of refusing to provide a TFN
- must take reasonable steps to ensure that the manner of collection does not unreasonably intrude on the individual's affairs
- must take reasonable steps to ensure that they only request or collect information that is necessary and relevant to the purpose of collection under applicable taxation law, personal assistance law or superannuation law.

The obligations on a person, agency or organisation relating to the collection of TFNs under the TFN Guidelines are in addition to responsibilities under the National Privacy Principles and the Information Privacy Principles and other legislation e.g. taxation laws, superannuation laws, personal assistance laws, secrecy laws and the *Data-matching Program (Assistance and Tax) Act 1990*.

A person, agency or organisation authorised to request an individual's TFN can keep the description of the purposes for collection reasonably general as long as the description is adequate to ensure that the individual is aware of what the law authorises the TFN recipient to do with the TFN.

Example

- Mary works for an agency which is authorised to collect an individual's TFN under a personal assistance law. Mary's responsibilities include collecting clients' TFNs so that her agency may make personal assistance payments to those individuals. She usually collects a client's name, postal address and TFN.

Under the TFN Guidelines, Mary may collect clients' TFNs if she gives them a form, which explains that she is authorised to collect this

information under the particular personal assistance law, that she is collecting this information so that her agency can make personal assistance payments to the individual, that it is not an offence to refuse to provide this information, but that an individual may not receive personal assistance payments if they decide not to provide this information.

She may also request the individual's name and address to ensure that she can record the TFN against the correct record.

TFN Guidelines reference: see TFN Guideline 3

17 How do the TFN Guidelines and other privacy obligations interact?

Unauthorised use, disclosure, collection, or requests for TFNs can be an offence under the TAA as well as constituting a breach of the TFN Guidelines. Provisions related to the handling of TFNs are also contained in Part VA of the *Income Tax Assessment Act 1936* (ITAA), Part 25A of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and Part 11 of the *Retirement Savings Accounts Act 1997* (RSA Act).

Sections 8WA and 8WB of the TAA create criminal offences for mishandling TFNs. A person may be fined up to \$11,000, or imprisoned for up to two years for a breach of these provisions.

Also, it is an interference with privacy under the Privacy Act to breach the TFN Guidelines. A person who considers that their TFN information has not been handled in accordance with the TFN Guidelines may make a complaint to the Australian Information Commissioner. However they should first raise this issue with the person, agency or organisation they consider has mishandled their TFN information, unless it is not appropriate to do so.

The Australian Information Commissioner also has the power to conduct audits of TFN recipients under s 28(1)(e) of the Privacy Act.

Rules relating to TFNs are also partly contained in Part VA of the ITAA, which establishes the TFN system.

The collection of TFNs by the trustees of superannuation funds and retirement savings account providers (RSA providers) is authorised under Part 25A of the SIS Act and Part 11 of the RSA Act respectively. These Acts provide clear limitations on the use of TFNs and also outline details about the recording and destruction of TFN information.

Furthermore, the *Data-matching Program (Assistance and Tax) Act 1990* provides for, and regulates, the matching of records between the ATO and assistance agencies (ie DHS which administers the Centrelink, Child Support Agency and Medicare Programs and the Department of Veterans' Affairs) using the TFN in a data-matching process.

The obligations on a person, agency or organisation relating to the handling of TFNs under the TFN Guidelines are in addition to responsibilities under the National Privacy Principles and the Information Privacy Principles and other legislation such as taxation laws, superannuation laws, personal assistance laws, secrecy laws and the *Data-matching Program (Assistance and Tax) Act 1990*.

For example, when requesting an individual's TFN, agencies and organisations also need to consider the notice obligations under Information Privacy Principle 2 or National Privacy Principle 1.

TFN Guidelines reference: see Introduction and TFN Guidelines 1 and 2

18 What should TFN recipients do if a person provides information which includes a TFN?

Under the TFN Guidelines, a TFN recipient must not record, collect, use or disclose a TFN unless this is permitted under taxation, personal assistance or superannuation law.

If an individual provides information to a TFN recipient for a purpose not connected with the operation of a taxation, personal assistance or superannuation law and that information incidentally contains a TFN, the individual providing the information may remove the TFN.

If the individual does not remove the TFN, the TFN recipient must not use or disclose the TFN or record

the TFN in a way that is inconsistent with the TAA or the TFN Guidelines.

Unauthorised use or disclosure of TFNs can be an offence under the TAA, as well as constituting a breach of the TFN Guidelines. Specifically, ss 8WA and 8WB of the TAA create offences for unauthorised requirements or requests that a person's TFN be quoted, and the unauthorised recording, maintaining a record of, use or disclosure of an individual's TFN respectively, unless an exception applies.

Example

- An agency may receive and scan inbound correspondence which may incidentally contain TFN information. This would likely occur prior to the correspondence being identified as containing an individual's TFN information. The TFN information would then be 'recorded' even if there is no intention by the agency to retain this information. Where an individual provides TFN information incidentally in this way, the agency needs to undertake its own risk assessment to determine whether it is handling the TFN information lawfully.

TFN Guidelines reference: see Introduction and TFN Guidelines 3, 4, 5 and 6

19 What can an individual's TFN be used for?

Under the TFN guidelines, an individual's TFN can only be used for the purpose of facilitating the effective administration of taxation law and certain aspects of personal assistance and superannuation law and **not** to assist with the identification of individuals for other purposes.

For example, the ATO and other lawful TFN recipients may use a TFN to identify an individual when they:

- lodge a tax return
- apply for income assistance or support payments, such as pensions or benefits from either DHS (which administers the Centrelink, Child Support Agency and Medicare Programs) or the Department of Veterans' Affairs
- start a new job or change jobs
- have savings accounts or investments that earn income, for example, interest or dividends

- receive a payment under the Higher Education Loan Program
- join a superannuation fund.

TFNs may not be used:

- by a financial institution to confirm an individual's identity
- as part of a national identification system (unless this is authorised by taxation, personal assistance or superannuation law)
- to match personal information about an individual unless it is authorised by taxation, personal assistance or superannuation law or by the *Data-matching Program (Assistance and Tax) Act 1990*.

TFN Guidelines reference: see TFN Guideline 5

20 How can I, my agency or organisation protect the security of TFNs?

Under the TFN Guidelines, TFN recipients must take reasonable steps to safeguard TFN information from loss, unauthorised access, use, modification, disclosure or other misuse, whether the information is stored in physical or electronic form. This means that the person, agency or organisation should implement security safeguards that protect the TFN information in a way that anticipates all reasonably foreseeable risks to the security of the TFN.

This could involve maintaining:

- **Physical security** – by implementing physical barriers and measures such as:
 - appropriate building security to prevent unauthorised entry to premises
 - locked filing cabinets and secure containers for storing paper-based records containing TFNs
 - systems including audit trails to detect unauthorised access.
- **Computer and network security** – by adopting logical barriers and measures to protect computer systems and networks from unauthorised access, modification and disclosure such as:
 - user identity checks and password controls

- separately storing, processing and transmitting TFNs from other information handled by the TFN recipient
- systems including audit trails to detect unauthorised access.

- **Communications security** – by protecting communications via data transmission, (including email and voice communications), from interception, and preventing unauthorised intrusion into computer networks.
- **Personnel security** – by adopting procedural and other measures for limiting access to records containing TFNs to authorised staff for approved purposes and adopting controls to minimise security risks to a person's, agency's or organisation's IT systems.

Whether steps are reasonable will depend on the particular circumstances of the TFN recipient.

In addition, Australian Government agencies who are TFN recipients would also need to comply with other relevant laws, government policies and standards regarding the security of information.

TFN Guidelines reference: see TFN Guideline 6

21 How can I, my agency or organisation limit access to TFNs?

TFN recipients must restrict access to records containing TFN information to staff who need to handle this information under taxation, personal assistance or superannuation law.

This could be achieved by, for example:

- regularly training staff in security awareness, practices and procedures in relation to TFNs
- developing policies on who can access and use records containing TFNs
- implementing a clean desk policy and requiring staff to securely store all files containing TFNs after use
- implementing access controls for authorised users, such as user passwords, screen saver passwords and limiting access to shared network drives to authorised staff.

TFN Guidelines reference: see TFN Guidelines 6 and 7

22 What is involved in securely destroying and de-identifying TFN information?

Under the TFN Guidelines, TFN recipients must take reasonable steps to securely destroy or permanently de-identify TFN information where they are no longer required by law to retain the information or the TFN information is not necessary for a purpose under taxation, personal assistance or superannuation law (including the administration of such law).

Garbage disposal of intact documents leaves personal information vulnerable to unauthorised access and misuse. This method of disposal should be avoided. Instead, for paper based records, secure disposal could include:

- shredding, pulping or disintegration of paper files, or
- contracting an authorised disposal company for secure disposal (if the TFN recipient is an agency, see Information Sheet (Private Sector) 14 – 2001: Privacy Obligations for Commonwealth Contracts).

Electronic records that are no longer needed should be deleted using a strong digital wipe utility where reasonably practicable. TFN recipients should be aware that routine file deletion is unlikely to reliably remove all traces of electronically stored information and that deletion may only remove the file reference but leave all the other information intact.

Whether steps are reasonable will depend on the particular circumstances of the TFN recipient.

TFN Guidelines reference: see TFN Guideline 6

23 How can I make staff aware of their obligations under the TFN Guidelines?

Appropriate staff awareness activities may include:

- conducting regular staff training sessions
- reminding staff who regularly handle TFN information of their obligations under the TFN Guidelines and the TAA during staff meetings, by email or in a staff bulletin
- requiring staff to review the TFN Guidelines, the Classes of lawful TFN recipients document and this fact sheet.

TFN Guidelines reference: see TFN Guideline 7

24 How do the ATO, APRA and assistance agencies make information about their TFN handling practices publicly available?

Under the TFN Guidelines, the ATO, APRA and assistance agencies such as DHS (which administers the Centrelink, Child Support Agency and Medicare Programs) need to issue publicly available information about:

- the purposes for which TFNs may be requested
- when TFN information may not be collected, recorded, used or disclosed
- penalties applying to unauthorised handling of TFNs
- where to find further detail about these matters.

The Commissioner of Taxation (ie the ATO) and APRA also need to identify the types of entities who may request TFNs under taxation and superannuation law. The main way they make this information available is by maintaining a list of those people, agencies and organisations allowed to ask for and receive TFNs, what they will do with it and who they can disclose it to. This list is known as the Classes of lawful tax file number recipients document, and it is published on the OAIC website.

Examples of lawful TFN recipients include:

- the ATO
- the Department of Human Services (DHS) which administers the Centrelink, Child Support Agency and Medicare Programs and is an agency that has authority to request a TFN from recipients of personal assistance payments such as pensions, benefits and allowances
- an employer
- banks and other financial institutions
- superannuation funds
- higher education providers
- tax agents, accountants and solicitors.

The ATO and APRA may also use their websites and other publications to make this information available.

Also, APRA has issued legally binding legislative instruments which approve the manner of quoting,

requesting, and transferring TFNs for the purposes of Part 25A of the SIS Act and various sections of the RSA Act.

Resources

- The ATO has comprehensive information concerning TFNs on its website.
- Guidance on the collection of TFNs is also available on APRA's website.
- Both the ATO and APRA have issued the following guidance: Classes of lawful tax file number recipients document (available on the OAIC website)

TFN Guidelines reference: see TFN Guidelines 8 and 9

PART C – For investment bodies:

25 Can investment bodies collect an individual's TFN?

Yes.

However, under the TFN Guidelines no one is required by law to quote their TFN in relation to investments, although there may be financial consequences for individuals who do not.

The collection, use and disclosure of TFNs by investment bodies to build up a database or to cross-match personal information is not permitted.

The legal basis for collection must always be made clear, including the law (or laws) that allow the investment body to request or collect the TFN and the purpose for which the TFN is requested or collected. The description of the purpose for collection can be reasonably general as long as it is adequate to ensure that the individual is aware of what the law authorises the investment body to do with the TFN. Collection includes when individuals give their TFN either in written form or over the telephone.

Remember: the forms used to collect TFN information should comply with the Australian Taxation Office's (ATO) Investment Industry – Guidance on the Preparation of Tax File Number Forms.

TFN Guidelines reference: see TFN Guidelines 2, 3 and 5

26 Is there a difference between how TFNs are handled by superannuation funds compared to other investment bodies?

Yes.

The collection of TFNs by the trustees of superannuation funds and retirement savings account (RSA) providers is authorised under Part 25A of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and Part 11 of the *Retirement Savings Accounts Act 1997* (RSA Act) respectively. These Acts provide clear limitations on the use of TFNs and also outline details about the recording and destruction of TFN information.

In addition, the Australian Prudential Regulation Authority (APRA) has issued legally binding legislative instruments which approve the manner of quoting, requesting and transferring TFNs for the purposes of Part 25A of the SIS Act and various sections of the RSA Act.

The SIS Act and the RSA Act apply to the handling of TFNs regardless of whether they are provided to the superannuation fund or RSA provider by the member, the member's employer or the Commissioner of Taxation.

Superannuation laws allow superannuation fund trustees and RSA providers to use TFNs to locate member accounts and to facilitate the consolidation of multiple member accounts held by the same individual in the same superannuation fund and accounts held across multiple superannuation funds.

However, these laws do not alter an individual's right to choose not to quote a TFN, nor is the superannuation fund trustee or RSA provider allowed to use TFNs to replace their existing account identification methods (such as account or membership numbers). This ensures that the superannuation fund trustees' or RSA providers' use of TFNs operates in accordance with National Privacy Principle 7, which generally prevents private sector organisations from adopting an Australian Government identifier (eg a TFN) for an individual as its own.

In addition, regulations made under these laws impose requirements on superannuation funds and RSA providers that ensure a member's consent is obtained before consolidation of accounts can occur.

Examples

- **Consolidation within a fund**
Cassandra is not aware that she has two superannuation accounts with Fund A. Fund A is permitted to match Cassandra's TFN and consolidate the two accounts provided the conditions in the regulations are met, such as seeking Cassandra's consent before consolidating accounts.
- **Consolidation between funds**
Muhammad holds a superannuation account with Fund A and suspects that he may hold an account in Fund B. The regulations provide conditions relating to member consent that superannuation fund trustees must follow before consolidating accounts. Provided Muhammad consents to the consolidation and the other conditions in the regulations are met, the trustee of Fund A may use the TFN to facilitate the consolidation of the accounts.

TFN Guidelines reference: see Introduction and TFN Guidelines 2, 3 and 5

27 How must organisations collect TFNs in relation to investments?

Application forms and prospectuses for new facilities must clearly state which taxation law authorises the collection of TFN information and that quoting a TFN is optional. In some circumstances an investor is not required to quote, or may choose not to quote, a tax file number (TFN). It should also be clear that an investor who is exempt from quoting a TFN can claim that exemption rather than quoting. Information on the circumstances where an investor can claim an exemption from quoting a TFN is available from the ATO website.

When requesting an individual's TFN, the investment body must take reasonable steps to ensure that application forms and prospectuses for new facilities have the following elements

included, are positioned in reasonable proximity to each other, and are clearly distinct from other information requested:

- a statement referring to the taxation law that authorises the investment body to request the TFN and the purpose for which the TFN is collected
- a statement that the quotation of the TFN is not compulsory but that tax may be taken out of the individual's dividend/interest/distribution if they do not quote their TFN
- the option for the individual to quote a TFN or exemption for the first time/apply a TFN or exemption already quoted/decline to apply a TFN already quoted
- if the option to apply a TFN or exemption already quoted is offered, then the default assumption, if no indication is given, must be non-application of the TFN or exemption already quoted
- if quotation is invited for an investment facility, an explanation must be given of the consequences in terms of automatic application of the TFN to subsequent investment under the facility
- a statement concerning sources of further information.

If completed forms containing TFNs are intended to be retained and accessed for purposes unrelated to the authorised purpose of collection, then they should be designed to allow prior deletion or removal of the TFN. Access to the TFN must be restricted to staff who require it to carry out their role.

More Information on the preparation of TFN forms is contained in the ATO's Investment Industry – Guidance on the Preparation of Tax File Number Forms.

TFN Guidelines reference: see TFN Guideline 3

28 Do investment bodies need to ask for an individual's TFN at the time each new investment is taken out?

Generally yes.

However, there are examples of common investment arrangements whereby an individual is not making specific decisions about each investment of money. Under these circumstances, an individual may perceive a facility within which a succession of separate investments are made, as being merely separate deposits within the one facility.

In such cases, it is not necessary to offer individuals the opportunity to quote their TFN for each new investment under the facility. The TFN may be automatically applied to subsequent investments. It would be impractical for individuals to be asked to decide whether to quote their TFN at the time each new investment of this kind is made – which in some cases can be weekly or even daily, and may not involve more than a signature or telephone call to initiate.

However investment bodies must allow the individual to choose to quote the TFN in the first instance in relation to some investments and not others. When inviting an investor to quote their TFN, a clear explanation should be provided to the individual that the TFN will be automatically used for future investments within the terms of the facility, unless the investor indicates at any time that they do not wish for their TFN to be applied to a particular investment.

Examples

Examples of such a facility include:

- common fund investments by trustees
- sub-accounts offered by credit unions to members under a single membership/account number
- repeat investments in a public company which is considered by law to be a single investment
- term deposits offered by financial institutions.

TFN Guidelines reference: see TFN Guideline 3

29 What options should be made available to investors when they are asked to quote their TFNs for investments that are not parts of the one facility?

For new and existing investments, it is necessary for investment bodies to take into account individuals who choose not to quote their TFN. The following

options should be made available to individuals when they are asked to quote their TFNs for investments that are not parts of the one facility:

- authorising the application of the TFN to all investments held in the individual's name
- authorising the application of the TFN to specific investments
- declining to quote the TFN.

However, for new investments, provision must be made to allow individuals the option of declining to quote their TFN.

In addition, provision should be made to allow individuals to authorise the investment body to use the TFN already on file.

Examples

- Where the investment body already holds a TFN in respect of previous investments by the same client, the client's approval may take the form of a 'negative option', ie a question, which, if not answered, can be taken to imply the application of the TFN to the new investment; for example: 'Please tick the box if you do not wish your TFN, already quoted, to be applied to this investment.'

However, for clients for whom the investment body does not hold a TFN, the form will necessarily have to provide for the first-time quotation of the TFN.

TFN Guidelines reference: see TFN Guideline 3

More information

See the Tax File Number Information page.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 2999, Canberra ACT 2601

GPO Box 5218, Sydney NSW 2001

or visit our website at www.oaic.gov.au