



Response to queries raised by the TPSG relating to the use and disclosure of TFNs

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| To: | Tax Practitioner Stewardship Group | | |
| From: | Robert Charles, Assistant Commissioner, Operational Policy Assurance and Law | | |
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Issue

1. Two queries have been raised at the Tax Practitioner Stewardship Group relating to the use and disclosure of tax file numbers (TFNs) including the operation of the *Taxation Administration Act 1953* (TAA) and the *Privacy Act 1988* (Privacy Act). Those queries are as follows:

Query One: *"I have an item to submit for discussion at the next TPSG meeting. I have received a query regarding the interaction between the Taxation Administration Act 1953 (Cth) and the Privacy Law.*

The issue arises with tax practitioners/agents querying whether they are in breach of the Privacy Law if they send correspondence to their clients or the ATO which include a client's TFN on it. For example, not just income tax returns, but documents including rollovers, family trust elections and other notices that include a client's TFN. Members understand that if the TFN is not included, it will take a lot longer for the form to be processed by the ATO. However, they query whether the notice / election / form that usually requires a TFN is actually valid if the TFN is not included.

Members don't feel the guidance on the ATO website is clear enough. Therefore I am seeking clarification on this issue."

Query Two: *"There is concern amongst members in practice that including TFN's would have adverse privacy outcomes, and on the other hand, there is concern that not including the TFN will invalidate the relevant document.*

As discussed, I was wanting confirmation from the ATO that all original tax declarations, elections, forms, private ruling applications and annual income tax returns signed without the taxpayers Tax File Number would not be considered invalid due to the absence of the TFN."

Law and Policy

2. There are a number of laws that govern the use of TFNs which reflect the need to balance privacy requirements and improving the efficiency and effectiveness of public administration.¹
3. The Privacy (Tax File Number) Rule 2015 (TFN Rule)² regulates the collection, storage, use, disclosure, security and disposal of individuals' TFN information. The TFN Rule is legally binding.
4. The TAA also contains offences for the unauthorised use, disclosure, collection or requests for TFNs. These provisions relate to all TFNs, not just those belonging to individuals. Under sections 8WA and 8WB of the TAA it is an offence for a person (the first-mentioned person) to require or request that another person (the TFN holder) quote their TFN, or to record, use or disclose a TFN holder's TFN, unless an exceptions applies. Relevantly, it is not an offence where:
 - i. the provision is made, or it is required by a taxation law (or certain other legislation)
 - ii. the first-mentioned person is exercising a function or performing powers under a taxation law (or certain other information), or
 - iii. the first-mentioned person is acting on behalf of the TFN holder.
5. The [ATO's Privacy Policy](#) outlines the collection, storage, access to, use and disclosure of personal information³, including the use and disclosure of TFNs by the ATO.
6. In addition, the ATO and the Australian Prudential Regulation Authority have released an advisory '[Classes of lawful tax file number recipients](#)' which provides guidance on when TFNs can be disclosed.

Query One

How do the TAA and Privacy Act apply in situations where a tax agent sends correspondence to their client or to the ATO which include a client's TFN?

7. Where a tax agent sends correspondence to their client or to the ATO which includes a client's TFN they are disclosing that client's TFN. As stated above, sections 8WA and 8WB of the the TAA provides that this will generally be an offence unless an exception applies.⁴ There is an exception to the general offence (making the disclosure permissible) where the person making the disclosure is acting on the TFN holder's behalf in relation to the TFN holder's affairs.⁵ This exception applies to circumstances where a tax agent sends correspondence, including a client's TFN, to their client or to the ATO as the tax agent is acting on the client's behalf in relation to the client's affairs.
8. The TFN Rule does not change this position, but it does provide some restrictions on how a TFN can be disclosed. TFN information must only be used or disclosed for a purpose authorised by taxation law.⁶ Reasonable steps must be taken to protect TFN information from misuse and loss and unauthorised access, use, modification or disclosure.⁷ Access to records containing TFN information is also to be restricted to individuals who need to handle that information for taxation law purposes.⁸
9. The TFN Rule does not prevent the inclusion of a client's TFN on income tax returns, family trust elections, rollovers and other taxation forms. However, tax agents should be mindful of the restrictions on how a TFN can be disclosed under the TFN Rule (such as for a purpose authorised by a taxation law) and ensure reasonable steps are taken to protect TFN information

¹ ANAO, *Management of Tax File Numbers* Audit Report No 36, 1998-99 at para 1.11.

² Issued by the Information Commissioner under *Privacy Act 1988* section 17.

³ *Privacy Act 1988* section 6.

⁴ *Taxation Administration Act 1953* subsection 8WB(1).

⁵ *Taxation Administration Act 1953* subsection 8WB(1A)(c) .

⁶ *Privacy (Tax File Number) Rule 2015* rule 10.

⁷ *Privacy (Tax File Number) Rule 2015* rule 11.

⁸ *Privacy (Tax File Number) Rule 2015* rule 11.

from unauthorised access or misuse and that access to records containing TFN information are restricted to individuals who need it.

10. The '[Classes of lawful tax file number recipients](#)' document reflects this position:
 "Tax agents registered under the *Tax Agent Services Act 2009*... may collect the tax file numbers of their clients or their client's employees (if their client is an employer) and use them as necessary to conduct the client's affairs."

Is the guidance provided on the ATO website sufficient to enable clarity for tax agents as to circumstances when they can disclose a TFN?

11. The ATO website provides guidance to tax agents concerning their responsibilities relating to the use and disclosure of TFNs under '[You and your staff's obligations](#)'. This page links agents to a dedicated webpage by the Office of the Australian Information Commissioner (OAIC) relating to the privacy of TFNs.
12. The ATO website [TFN Penalties](#), containing the penalties for unauthorised use and disclosure under the various taxation laws, also links to the OAIC's [Tax file numbers](#) and '[Classes of lawful tax file number recipients](#)' for further guidance.
13. As such, the ATO and OAIC websites do contain guidance as to when TFNs can be disclosed, however, limited information is contained within the ATO website relating to Tax Agent's obligations.
14. The ATO would welcome feedback on the current ATO website content and what further information could be included, should tax agents require further guidance and clarity concerning their obligations.

Query Two

Would a form or document be invalid if a client does not provide their TFN?

15. Individuals are not legally obliged to quote their TFNs to the ATO, except where a law explicitly requires it.⁹
16. This position has been captured in the ATO's Privacy Policy, and is reflected in the ATO's administration of the taxation system. The ATO does not make TFNs a mandatory field in our approved forms, except where a law explicitly requires it. As such, generally forms and documents will not be invalid if they do not include a TFN. The cases where the law explicitly requires a TFN to be quoted are few and the relevant forms and documents will contain instructions making it clear that the TFN must be quoted and the consequences of not quoting a TFN will be outlined.
17. While a form may not be invalid if a client does not provide a TFN, providing a TFN assists the ATO to administer a client's account efficiently and to identify the client with a high level of confidence. Without a client's TFN, the ATO may need to contact the client or undertake additional activities to be assured of a client's identity.
18. This position is not affected by the offences in sections 8WA and 8WB of the TAA as they do not apply to the TFN holder (e.g. the client) themselves. These offences focus on a person who is requiring or requesting that another person's TFN be quoted, or who is recording, using or disclosing another person's TFN.

⁹ *Privacy (Tax File Number) Rule 2015* rule 7(3).