

ATO RECEIVABLES POLICY

PART D Registration of Entities

Chapter 61 APPLYING FOR A TAX FILE NUMBER

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.

Date of effect: 24 July 2008 (This version replaces the 2006 version.)

Key legislation: Section 202 of the *Income Tax Assessment Act 1936*, section 17 of the *Privacy Act 1988*

PURPOSE

1. This chapter deals with the application for a tax file number (TFN) and policy in relation to the issue of a TFN registration.

INTRODUCTION

2. The TFN is a key identifier for participants in the Australian income tax system.
3. The objects of Part VA of the *Income Tax Assessment Act 1936* (ITAA 1936) – Tax File Numbers include:
 - use of TFNs to facilitate the administration of various laws where it is relevant to link to taxation information, for example, superannuation, social security benefits, child support payments and higher education charges.

POLICY

Applying for a TFN

4. A person may apply for a TFN in the approved form. The TFN application form is subject to the approved form provisions in the *Taxation Administration Act 1953* (TAA). Law Administration Practice Statement PS LA 2005/19 Approved forms sets out the Tax Office position on approved forms. An application must be in a form approved by the Commissioner and shall be accompanied by documentary evidence of the applicant's identity.
5. The approved forms provisions in the TAA allow an agent to give a document to the Commissioner on behalf of an applicant.
6. Subject to paragraph 7, individual applicants who have never had a TFN will generally be required to complete and lodge a paper TFN application form. The tax file number application form can be obtained from the web site www.ato.gov.au or by contacting the Tax Office. Separate forms are available for resident and overseas applicants.

7. Certain individuals may apply:
 - through Centrelink or the Department of Veterans' Affairs if applying for government benefits or a pension
 - through a secondary school if a student at that school, or
 - through online application (at www.ato.gov.au) on arrival in Australia by non-residents holding migration or working visas.
8. If the person applying for the TFN is less than 13 years of age, their parent or guardian must sign the application form. If the applicant is 16 years of age or older they must sign their own application form. Between these ages either the applicant or the parent can sign the application form. In certain circumstances (for example, there is an applicable power of attorney) an appointed representative may apply on behalf of the applicant.
9. Non-individual applicants can apply for a TFN either on the appropriate TFN application form or in conjunction with an application form for an ABN. They can apply:
 - online via www.abr.gov.au or through the Business Entry Point (BEP) at www.abr.business.gov.au
 - through a tax agent via the electronic lodgment service (ELS), or
 - by completing a paper application.

Proof of identity (POI) for Australian residents

10. Individuals applying for a TFN must provide original documents to establish their identity. Documents required depend on the circumstances, but may include an Australian birth certificate, or certificate of Australian citizenship, an overseas passport with evidence of Australian immigration status and an Australian passport. POI is intended to prove that the individual exists and is operating in the community. Specific details of the documents required are available on the relevant applications for TFN, available at www.ato.gov.au.
11. POI requirements for non-individual persons include establishing the existence of the person, and specified individuals associated with the person (associates). Documents required depend on the type of person and circumstances and may include a certificate of incorporation of a company. Details of these requirements are available on the relevant applications for TFNs, available at www.ato.gov.au.
12. Verification of identity may be obtained from other government agencies, such as the Australian Securities and Investments Commission (ASIC).
13. If an original evidence of identity document is in a language other than English, then a written translation that is certified as a true and correct copy by an authorised translation service must be provided – for example, Department of Immigration and Citizenship or an appropriate embassy or professional translation service.
14. If a parent or guardian is completing a TFN application or enquiry for an individual who is under 16 years of age, proof of identity documents must also be provided for both the parent or guardian and the applicant. A further document that shows the relationship between the parent or guardian and the applicant, for example, guardianship papers or the applicant's full birth certificate is required. Where the parent has previously provided documents to the Tax Office to establish their identity, they will only need to confirm their identity and provide a document proving their relationship with the child.

15. Secondary school students can apply for a TFN through their school. They must provide details of their birth certificate, overseas passport number or Australian citizenship certificate on the application. The school will check the details before sending the application to the Tax Office.

Proof of identity for non-residents

16. Non-resident persons are also required to prove their identity. Details of documents required for each person, and the requirements for certification and translation (as required) are included on the Tax Office's website along with the relevant forms.
17. Individual non-residents who hold migration or working visas and apply online use their passport and visa details to confirm their identity.

Partnerships between persons represented by the same person in different capacities

18. Where a person acts in the capacity as a trustee of a trust or in the capacity as the trustee of more than one trust then that person is a different person in each of those capacities. They are also a separate person in their own capacity as an individual.
19. Where the Registrar receives an application from a partnership for issue of a TFN, and is satisfied that:
 - two or more persons being an individual or company in their own right and that individual or company as trustee of one or more trusts, or
 - two or more persons being an individual or company as trustee of two or more trusts

are together proprietors of the relevant business or assets that are being used to carry on a business or to derive income jointly, the Registrar may accept the application and issue the requested TFN.

Reconstituted partnerships

20. Where there are changes to the membership of a general law partnership ('the partnership') and the partnership continues to trade without interruption, and the remaining partners agree that the business or firm may be carried on by the continuing partners (with or without new partners) a technical rather than a general dissolution has occurred. This is known as a reconstituted partnership.
21. A reconstituted partnership, provided certain conditions are met, need not register for a new TFN and can continue to use the same TFN as the previous partnership. The partnership will only be required to complete one income tax return for the income year in which the reconstitution took place. Note that the reconstituted partnership treatment only applies to general law partnerships and does not apply to tax law partnerships.
22. The following conditions must be satisfied if a reconstituted partnership wishes to not register for a new TFN and to continue to use its existing TFN:
 - (i) There must be at least one continuing partner who is a member of the partnership prior to and following the reconstitution
 - (ii) There must be an express or implied continuity clause agreed to by the continuing, incoming and outgoing partners. This includes a clause in the

partnership agreement, a statement signed by the partners or an oral agreement by the partners.

- (iii) The following must be satisfied:
- substantially all of the partnership assets remain with the continuing partnership
 - the nature of the enterprise remains substantially unchanged
 - the client or customer base remains substantially unchanged
 - the business name or name of the firm remains unchanged
- ‘Substantially’ means largely or considerably. This is taken to mean more than 50%. Each case will need to be decided on its own facts.
- (iv) When lodging the partnership tax return, the following details must be supplied:
- the date of the dissolution
 - the date of the reconstitution
 - the names of the new, continuing and retiring partners
 - the TFN or address and date of birth of all new partners, and
 - details of the changes if the persons authorised to act on behalf of the partnership have changed.

23. If all of the conditions set out in paragraph 22 above are not met, the reconstitution will result in the formation of a new partnership. This new partnership will be required to register for a new TFN. Both partnerships (the old and the new) will need to lodge a partnership tax return. One tax return will be lodged for the old partnership from the beginning of the income year to the date of dissolution and another will be lodged for the new partnership from the date of its formation to the end of the income year.

Authority to issue a TFN without application

24. The Commissioner may issue a TFN without an application being made where necessary to perform a function under a tax law for example, for some compliance enforcement activities. Holders of these TFNs may not be able to use them for purposes such as quoting to financial institutions and when completing a TFN Declaration until the requirements of the approved form (including the provision of proof of identity documents and information) are met.
25. The Commissioner may issue a new TFN where he believes that the confidentiality of the previous TFN has been compromised, for example, where identity may have been stolen.

TFN Security

26. A TFN is an important form of identification in Australia and should be kept secure and confidential. It should only be provided to people who are authorised to receive it (for example, a tax agent, a bank officer or employer in connection with their duties). A person may not request or require another person to quote their TFN except as provided in section 8WA of the TAA. There is no legislative prohibition against a person voluntarily disclosing their TFN to a person who is not authorised

to request it, however that other person may not record, use or disclose the TFN except as allowed by section 8WB of the TAA.

27. Failure to maintain your TFN securely could result in your identity being used for fraudulent purposes, resulting in inconvenience, loss of savings and/or requests for collection of monies outstanding. Security recommendations for TFN holders include:
- not carrying it in their purse, wallet or storing it in their mobile phone
 - shredding or destroying documents containing TFN details before disposing of them
 - installing up-to-date anti-virus software on their computer
 - only providing their TFN to people who are authorised to ask for it (for example, a tax agent, a bank officer or employer), and
 - making sure if they use a tax agent to complete and/or lodge their tax return, that the tax agent is registered by checking on the Tax Agents Board website at www.tabd.gov.au.
28. A person cannot be compelled to quote their TFN, but may be denied access to Government services, or have tax withheld from income at higher rates, if they do not quote their TFN in certain circumstances.
29. In accordance with the *Privacy Act 1988*, the Privacy Commissioner has issued guidelines to protect the privacy of individuals by restricting the use of TFN information. The *Tax File Number Guidelines 1992* are available at www.privacy.gov.au.

Inactive TFNs

30. TFN's are not cancelled but are locked down and made inactive. For example, this is done in cases where the Tax Office has been advised that a natural person is deceased or has departed the country or where another entity type has ceased to exist. It also may be used when security of a TFN has been breached and is deemed to be compromised or where a person has been inadvertently issued with two or more TFNs.

Refusal

31. The Commissioner may refuse an application for a TFN if:
- the application is not received in the approved form
 - he is not satisfied as to the applicants true identity
 - the applicant already has a TFN
 - an interim notice has been issued under section 202BD of the ITAA 1936.

The Commissioner has an obligation to maintain the integrity of the TFN register and may refuse to issue a TFN in appropriate circumstances. For example, where the Commissioner receives an application for a TFN but is satisfied that the applicant does not and will not have any interactions with the Australian taxation system, the Commissioner may refuse to issue a TFN to that person.

TERMS USED

Applicant – in relation to an application for the issue of a tax file number, means the person specified in the application as the person by whom or on whose behalf the issue of a tax file number is sought.

Approved form – takes the meaning set out in section 388-50 of Schedule 1 to the TAA, and includes requirements concerning declarations, full completion of the form and the manner in which the form must be given. The Commissioner may combine in the same approved form more than one return, notice, statement or other document (for example, the business activity statement).

General law partnership - The first part of the definition of a partnership in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) refers to an association of persons (other than a company or limited partnership) carrying on a business as partners. This is consistent with the general law definition of partnership, which is the 'relation which subsists between the persons carrying on a business in common with a view to a profit'. This type of partnership is known as a general law partnership.

Passport – in relation to a person who does not hold a passport, means another official travel document held by the person.

Person – includes a partnership, a company and a person in the capacity of trustee of a trust estate.

Tax file number – in relation to a person, means a number issued to the person by the Commissioner, being a number that is:

- a number issued to the person under Division 2 of the ITAA 1936
- a number issued to a person under section 44 or 48 of the *Higher Education Funding Act 1988*, or
- a number notified, before the commencement of section 202A of the ITAA 1936, to the person as the person's income tax file number.

Tax law partnership - The second part of the definition of a partnership in section 995-1 of the ITAA 1997 includes as a partnership an association of persons (other than a company or limited partnership) 'in receipt of ordinary income or statutory income jointly'. This type of partnership is referred to as a tax law partnership.