



Australian Taxation Office:

RESOLVING TAX FILE NUMBER COMPROMISE

September 2010

Report by the Commonwealth Ombudsman,
Mr Allan Asher, under the *Ombudsman Act 1976*

REPORT NO. **12|2010**

Reports by the Ombudsman

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EXECUTIVE SUMMARY

Complaints investigated by the Ombudsman identified concerns with the Australian Taxation Office's (ATO) response when Tax File Numbers (TFNs) are compromised or TFN records are incorrectly linked. Three key areas of concern are the ATO's:

- failure to respond appropriately to problems arising from compromised TFNs
- inadequate policy oversight and recognition of the systemic issues demonstrated by these complaints
- inadequate communication with taxpayers.

TFN integrity and ATO data and systems quality are areas of high importance to the tax system. Australian National Audit Office (ANAO) reviews and a Parliamentary inquiry into ATO management of TFNs in the past decade highlighted the need to improve the integrity of the TFN system,¹ and resulted in significant government funding being given to the ATO to achieve this.²

We consider that action taken by the ATO in eight cases involving TFN compromise was unreasonable. Our investigations suggest a systemic failure by the ATO to properly recognise and respond to the issues faced by taxpayers who, through no fault of their own, have their TFNs compromised or are incorrectly linked, by the ATO, to another person's TFN.

In the cases we investigated, the taxpayers with compromised TFNs had not been able to resolve their problems with the ATO, despite having made a number of attempts to do so. Responses to these investigations suggest that there is a need for the ATO to improve its systems and processes for resolving more complex TFN compromise cases.

Recommendations

We recommend the ATO should:

1. Review its systems and oversight for identifying and responding to TFN compromise and consider ways to improve outcomes for affected taxpayers. This should include ensuring a clearer line of authority to resolve issues, considering ways to improve its recognition and handling of TFN complaints, and giving greater priority to investigation of cases involving recurrent TFN fraud or involving multiple taxpayers.
2. Review known TFN compromise cases, particularly those stemming from records linked by the ATO, with a view to ensuring that these are adequately resolved in a timely way.

¹ House of Representatives Standing Committee on Economics, Finance and Public Administration Report: *Numbers on the Run: Review of the ANAO Audit Report No. 37 1998–99 on the Management of Tax File Numbers*.

² The ATO's budget for 2002–03 and 2003–04 included, in total, an additional \$26 million for the implementation of TFN improvements recommended by Audit Report No. 37 and the *Numbers on the Run* reports. ANAO Audit Report No. 47 of 2004–05 *Australian Taxation Office Tax File Number Integrity* reviewed implementation of recommended improvements.

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3. Ensure that it has adequate policy guidance to support identification and resolution of TFN compromise cases, including how to determine which transactions should be transferred to the account for a new TFN and to fully resolve cases where two taxpayers have been linked to the same TFN.
4. Provide general advice to taxpayers on its website about how to address problems with TFN compromise or errors in information matching.
5. Improve its communication with taxpayers affected by TFN compromise. This should include ensuring that call centre scripting about the expected timeframe for resolution of TFN cases is consistent with procedures.

PART 1—INTRODUCTION

Background

1.1 Most complaints to the Ombudsman are resolved without the need for a formal report. However, the Ombudsman can publish a report where investigation has identified administrative shortcoming by an agency. Most commonly such a report is prepared where there have been numerous complaints on a related topic that can usefully be brought together in a single report to highlight a problem with agency administration.

1.2 This report sets out the findings of our investigation of a number of cases where the ATO's administration of TFN compromise was defective and unreasonable.

What is a TFN?

1.3 A TFN is a unique identifying number issued by the ATO to individuals and organisations to enable the ATO to administer tax and other Australian Government systems. TFNs enable the ATO to collect taxation-related information about each taxpayer.

1.4 The ATO advises, 'We only issue one TFN to you during your lifetime, even if you change your circumstances such as your name or residency ... Your TFN is one of your most important forms of identification. It's yours for life and keeping it secure is a good defence against identity theft'.³

1.5 It is not compulsory to have a TFN, however, if a person does not have one they may have more tax withheld than necessary or be unable to receive government benefits to which they are entitled.⁴

What is TFN Compromise?

1.6 The ATO considers a compromised TFN to be 'one that may have been lost, stolen or made known to another person and is therefore in danger of being used by another person for unauthorised or fraudulent purposes'.⁵

1.7 The ATO differentiates TFN compromise into two streams:

- compromised TFNs without identity fraud implications—where the information is lost or where the carrying medium (for example, a computer or electronic device) is stolen
- compromised TFNs with identity fraud implications—where the purpose of the theft is to gain and then misuse TFNs.⁶

1.8 If a TFN is thought to be compromised, the solution recommended is for the person to be provided with a new TFN. The ATO position on compromised TFN situations is that 'Where the owner of a TFN believes that their TFN has been

³ *Tax file numbers*, ATO fact sheet for taxpayers NAT 1753-11.2007.

⁴ *Tax file numbers*, ATO fact sheet for taxpayers NAT 1753-11.2007.

⁵ *Compromised tax file numbers and identity fraud* (at 8 March 2010).

⁶ *Compromised tax file numbers and identity fraud* (at 8 March 2010).

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compromised, or has been advised that it has been compromised, they have a right to have a new TFN issued, irrespective of who was responsible for the breach of security'.⁷

1.9 This is not just a matter of the ATO issuing the person with a new number. The ATO needs to assess the circumstances that led to the TFN compromise (including in some cases fraud investigation). It then needs to determine what aspects of the person's tax account history to transfer onto the new TFN and deactivate the compromised TFN. In simple cases, where a person's TFN has been disclosed to an unauthorised person but no change has been made to their account, this is relatively straightforward. Where the TFN has been used by a third party, or two taxpayers are both using the same number, resolving the compromise is more complicated.

1.10 TFNs are not cancelled but are locked down and made inactive. This is referred to as 'culling'. This is done, for example, in cases where the ATO has been advised that a person is deceased or has departed the country or where another entity type has ceased to exist. It may also 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.

What is the impact on taxpayers?

1.11 In the cases investigated, the impacts of having a compromised TFN were significant. Most of the cases that we investigated did not have identity fraud implications. However, taxpayers' tax records had been incorrectly merged, linked or updated with another taxpayer with a similar name.

1.12 Complainants experienced a range of consequences including:

- ATO delays in processing their tax returns or bonus payments
- having debts wrongly attributed to them
- problems with other agencies, such as Centrelink, that exchange information linked through TFNs with the ATO
- loss of faith in the integrity of the tax system and security of TFNs
- lack of resolution with scope for problem to recur or cause delays and difficulties for future lodgement
- loss of tax revenue (but in small amounts so that ATO investigation resources are not used to investigate or to recover funds)
- difficulty and delay in being provided with an accurate account record
- possible breach of privacy and confidentiality by the ATO
- the need to go through objections and complaints.

1.13 The ATO's call centre scripting for enquiries about a compromised TFN without identity fraud implications prompts ATO staff to advise taxpayers that 'compromised TFN cases generally take 28 days to be processed due to the

⁷ *Compromised tax file numbers and identity fraud* (at 8 March 2010).

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numerous actions that need to be taken on the client's account. If the case is complex, it may take longer to complete all the necessary processes'.⁸

1.14 However, the ATO's procedures on how to action a compromised TFN case advise staff 'Do not give a timeframe to the client for completion of the compromised case. Most compromised TFN cases take longer than 28 days, depending on the information to be transferred'.⁹ In the cases we looked at, the ATO took much longer than 28 days to take the appropriate action.

⁸ *Compromised tax file numbers and identity fraud*, COMTFN006I (at 8 March 2010).

⁹ *Compromised TFN (operations)—actioning—procedure* (at 8 March 2010).

PART 2—CASES INVESTIGATED

Cases without identity fraud implications

Mr A: ATO error perpetuates TFN compromise

2.1 In January 2008 Mr A lodged his 2006–07 income tax return. Without him knowing, the ATO had deactivated (or culled) his original TFN because it incorrectly decided that he had been issued with two TFNs. In fact, the other TFN belonged to another taxpayer with the same name and date of birth (Mr A2) who had applied for a TFN through the Department of Immigration and Citizenship. As Mr A2 had already lodged his tax return, the ATO processed Mr A's tax return as an amended assessment under Mr A2's TFN.

2.2 When Mr A contacted the ATO to find out what had happened he was advised to object to the amended assessment he had received. In May 2008 the ATO allowed Mr A's objection in full and explained that it had mistakenly culled his TFN. He was advised that he would be issued with a new TFN and did not need to apply for this or provide proof of identity. He was also advised that he would be paid the correct return.

2.3 In September 2008, Mr A complained to us when he still had not received his refund or new TFN and was unable to get any answers from the ATO.

2.4 The ATO advised that the records for Mr A and Mr A2 had been linked through data matching. The ATO procedure should then have been to determine if it was an actual duplication—that is, two TFNs for the one person. The ATO accepted that inadequate action had been taken to determine whether this was so.

2.5 In response to our investigation, the ATO identified a failure to follow the correct process for requesting a new TFN. The area that had responded to Mr A's objection had sent the request for TFN compromise action to a decommissioned email address. This meant that the Compromised TFN team did not receive the request until we investigated the complaint, some four months later. The Compromised TFN team then wrote to Mr A asking him to complete an application for a new TFN.

2.6 We contacted the TFN Compromise area and asked why Mr A was being asked to do this when he had previously been advised that he did not need to. The request to complete a new TFN application was then withdrawn, and processing of the new TFN was expedited within a week and the refunds owing to Mr A were subsequently paid to him with interest. This was seven months after he had contacted the ATO.

2.7 Believing Mr A's situation to be resolved, we highlighted our concerns with the ATO about its insufficient investigation of the suspected duplication and unreasonable delays in correcting the ATO's error and finalised our investigation.

2.8 Mr A approached us again in August 2009, concerned that his 2009 tax return had been paid into someone else's account. Our investigation found that Mr A's new TFN had been compromised again by the ATO when it processed Mr A2's 2008 tax return under Mr A's new TFN.

2.9 Mr A2 had lodged his income tax return under his original (compromised) TFN which had been cancelled. The ATO had written to Mr A2 in October 2008

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advising that his TFN may have been compromised and he could apply for a new TFN. There is no record that Mr A2 applied for a new TFN.

2.10 As a result of the ATO incorrectly processing Mr A2's return with Mr A's TFN, the address and account information linked to the new TFN were incorrectly updated. Subsequently, Mr A2's ABN was linked to the Mr A's TFN.

2.11 Mr A's 2008 tax return was again processed as an amended assessment without the ATO recognising the same problem had recurred. Mr A's tax agent complained to the ATO in August 2009 that Mr A had not received his 2009 tax return or the \$900 tax bonus payment.

2.12 The ATO provided Mr A with a new (third) TFN in September 2009 and processed all of his tax assessments for 2006 to 2009 under the new TFN. Mr A found the notices of assessment to be confusing and was concerned that he did not receive his 2009 refund. The notices suggested that there was an amount payable from his first year as an Australian taxpayer when this was not the case. When we sought clarification about this, the ATO advised that Mr A was owed over \$800 (including his 2009 refund), and undertook to provide Mr A with an explanation about the notices of assessment. The ATO also advised that the TFN problem had been resolved with both taxpayers having been provided with new, separate TFNs. The ATO subsequently advised that Mr A was not owed any money.

2.13 The ATO undertook a reconciliation of the two men's account histories and met with Mr A to better explain the situation. Mr A has provided an additional identifier to the ATO to reduce the scope for him to be confused with Mr A2.

Mr B: Repeat TFN compromise by ATO

2.14 Almost a year before investigating Mr A's complaint we had investigated and been critical of the ATO's handling of a similar situation.

2.15 The ATO compromised the complainant, Mr B's, TFN by providing it to another person with the same name (Mr B2) who had submitted a TFN enquiry without properly checking the relevant details. When Mr B2 then lodged his 2007 tax return, ATO processing staff updated Mr B's identity details including date of birth based on the information from Mr B2's tax return without checking with the taxpayer's tax agent. When Mr B lodged his tax return, ATO systems would not process it because it was the second 2007 tax return lodged under that TFN (the first being from Mr B2). The ATO then undertook normal TFN compromise investigation procedures without recognising that the error was an ATO one. This caused a further, unnecessary delay to processing Mr B's 2007 return as he was requested to provide proof of identity documents more than once. After the ATO escalated Mr B's complaint, his assessment was processed within a month (which was more than three months after he had advised the ATO that his TFN had been compromised).

2.16 In response to our concerns, the ATO advised that it had implemented remedial action to:

- restructure the Compromised TFN team
- review letters to taxpayers
- review workflow and procedures.

2.17 However, we continued to receive complaints from people who had not been able to have their TFN compromise issues satisfactorily resolved.

Mr C: Insufficient information checking leads to wrongful payment demands

2.18 Mr C complained that the ATO pursued him for debts related to an ABN belonging to a sole trader with a similar name. Along with the requests for payment of these tax accounts, the ATO sent Mr C details of the accounts of the other taxpayer. Mr C informed the ATO about its mistake in December 2007 and March 2008. However, he continued to receive correspondence intended for the other taxpayer until June 2008.

2.19 The ATO provided information that Mr C was sent the ABN holder's tax details in error when the ABN holder's address was automatically updated as a result of a returned mail indicator on its systems. Although the ATO attempted to remedy this when Mr C first complained, the ABN holder's postal address was not updated correctly. Mr C continued to be sent demands for payment for the ABN holder's tax debts. The ATO accepted our finding of administrative deficiency and advised that it was no longer using the source of incorrect data. Notes were added to indicate that Mr C's address should not be used to contact the other taxpayer.

2.20 In October 2009, Mr C approached this office because he had once again been sent correspondence about failing to lodge a tax return, just after he had received his 2009 notice of assessment. Our investigation revealed that this had happened because the ATO had undertaken a bulk exercise regarding non-lodgement and had used the address history. The system notes that had been added not to use Mr C's address had not been accessed in the bulk mail-out. The ATO has since advised that it will not use address history as a source of information in future without further investigation.

Mrs D: Unresolved shared TFN error

2.21 Mrs D, a pensioner, was asked by Centrelink to verify her TFN as its records check indicated the number held was incorrect. Mrs D contacted the ATO and was told she had had two TFNs and one had been 'culled' to address the duplication. After this she had wage and salary income wrongly attributed to her because the ATO had incorrectly put her details on the TFN for another taxpayer with a similar name (Mrs D2). After the ATO issued a new TFN to Mrs D, it sent her debt assessments under the old TFN. It also sent her a notice advising that her TFN was the old number a month after sending advice about her new TFN. Mrs D found this upsetting and difficult to resolve, not the least because English was not her first language. With assistance she had written a letter of formal complaint but the ATO had not processed this as a complaint and did not resolve the underlying problem.

2.22 We asked the ATO why Mrs D had continued to get correspondence under the old, compromised TFN even after she was issued with a new TFN. The ATO advised that the old TFN was still active and belonged to the other taxpayer, Mrs D2. The ATO had written to Mrs D2 to advise that her TFN might have been compromised and she could apply for a new number, but had received no response. Mrs D's address has previously been incorrectly added to the TFN but was still linked and could not be deleted. The ATO was no longer aware of how to contact Mrs D2. The ATO could not explain why Mrs D had been sent incorrect advice about which number was her TFN after she had been issued the new TFN.

2.23 In response to our suggestions, the ATO apologised to Mrs D and confirmed that she did not owe any money. It also culled Mrs D2's TFN and changed the system information for the old TFN to prevent it being linked to Mrs D again.

Mr E: Ongoing problems from ATO failure to recognise TFN compromise

2.24 ATO systems allowed two taxpayers to share the same TFN since at least 2002 until an Ombudsman investigation in 2009. Mr E complained to us because he had been unable to resolve his problem with the ATO in which he and another taxpayer with a similar name were both using the same TFN. The other person was not required to lodge income tax returns, but had reported the TFN for his pension and bank interest income.

2.25 As a result, the ATO had attributed the other taxpayer's income to Mr E under its income matching program. When Mr E had contacted the ATO about the incorrectly matched income, the ATO had only acted to put the TFN on a list of numbers not suitable for matching. The situation recurred when the non-matching list was updated. Mr E complained to the Ombudsman that the ATO had not dealt with the underlying problem. Mr E said the ATO had advised that it would probably keep happening and he was upset about the prospect of having to have his record corrected on an ongoing basis.

2.26 When we investigated, the ATO advised that because of the age of the TFN, it was uncertain whose TFN the number had been originally, or how it had come to be shared. However, TFN compromise procedures should have been commenced to resolve the situation when problems had arisen. This had not occurred because the ATO had only treated the situation as an incorrect match and had not recognised the case as a compromised TFN.

2.27 The ATO accepted our proposal to record administrative deficiency and advised that it had updated its procedures to improve identification of compromised TFNs and escalate these to a senior technical officer.

Mrs F: New TFN results in incorrect debt notices

2.28 This case illustrates issues with the transfer of information from a compromised TFN to a new TFN. Mrs F approached the Ombudsman upset that six years after finding out that someone else with a similar name had lodged a tax return under the same TFN as her, she had recurring problems with lodgement and lacked confidence in the ATO's ability to resolve the situation. Mrs F had not been sure about getting a new TFN because she believed that a TFN was for life and was an important form of identification. However, she was persuaded that it was necessary to apply for a new TFN to resolve the problem.

2.29 Mrs F advised that when the problem first arose, she had been living in a remote location and was told by the ATO she would have to travel to an ATO office and provide identification to apply for a new TFN. After she had flown to an ATO office at her own expense, the ATO office had said she did not need to apply for a new TFN. However, she continued to be contacted by the ATO about income discrepancies and had to go through the process of showing that income had been incorrectly linked to her.

2.30 After she was provided with a new TFN in 2009, she started to receive debt notices for different amounts up to \$20,000 on the old number. She was unhappy with the ATO's verbal advice that she should not worry about this because the ATO was still transferring account information and these were just automatically issued notices that she could ignore.

2.31 This office asked the ATO to stop sending the letters, provide written confirmation that the debt letters were not correct and act to provide Mrs F with an

accurate income tax account history. The ATO wrote to Mrs F to provide assurance about the debt letters and found a way to override the automatic issue of debt letters. Almost eight months after this office contacted the ATO about the problem, the ATO provided a new TFN, notices of assessment and an updated statement of account to Mrs F. This timeframe was affected by delays in processing resulting from the ATO change program roll out of a new system for income tax account processing. However, an adequate explanation was not provided about why the matter was not resolved before the change program roll out, or why the ATO processes account transfers in a way that can generate debt letters before the processing is resolved.

Cases with identity fraud implications

Ms G: Cost of ongoing delay

2.32 Ms G's case is an example of problems encountered resolving TFN compromise where identity fraud is apparent and the spill-over impacts on dealings with other agencies.

2.33 Ms G's TFN was compromised by an unknown third party who lodged an incorrect 2007 income tax return through an online lodgement service. In fact Ms G's only income for 2007 was from Centrelink, and she did not need to lodge a tax return. As a result, Ms G's income was overstated and she received a debt of some \$7,000 from Centrelink. She was also penalised \$2,250 by the ATO for a lack of reasonable care in her income tax claim.

2.34 When Ms G complained to the ATO in early January 2008, the ATO took six months to process her complaint and closed it without the matter being resolved, telling Ms G that she would have to wait for the Serious Non-Compliance area of the ATO to consider her situation. In the meantime, Ms G had to enter into a payment arrangement with Centrelink as it would only adjust its assessment of her income if her taxable income was changed. In October 2008, Ms G contacted the ATO again and was told her complaint was closed but she would have to continue to wait for the ATO to decide what to do. Ms G then objected to the 2007 assessment, providing evidence that she had not earned the income in the original assessment. The ATO advised that she would have to withdraw the objection and wait for the ATO to decide if there had been an identity takeover.

2.35 In December 2008, having decided there had been an identity takeover the ATO advised Ms G that she would need to apply for a new TFN. The ATO would not address the penalty or incorrect assessment until Ms G applied for the new TFN. Ms G received a new TFN in November 2009, but the ATO did not address the incorrect 2007 assessment and transferred over the penalty. Her 2009 tax return was then offset against the penalty debt and Ms G was contacted by a debt collection agency about the balance of the debt.

2.36 Ms G was provided with a notice of amended assessment in March 2010 that showed that her taxable income for the year was nil. However, the ATO failed to take action to address the penalty for incorrect lodgement until May 2010.

2.37 We consider it is unacceptable that Ms G has waited over two years without her situation being properly addressed. This has caused her unnecessary and protracted expense and inconvenience. There was no evidence of the ATO giving consideration or priority to the fact that Ms G, a Centrelink recipient with dependent children, was left paying a Centrelink debt wrongly attributed to her. The case

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highlights problems with the ATO's case management of TFN compromise cases and lack of attention to the action necessary to resolve this problem.

Mr H: Repeat TFN compromise undermines faith in the TFN system

2.38 Mr H's case is an example of situations where, even though the ATO knows that fraudulent claims have been made, it will not investigate or take action to recover the funds if the amounts involved are relatively small.

2.39 Mr H's TFN was compromised by an unknown third party claiming fraudulent returns two years in a row. The first year, 2004, Mr H had registered for a TFN but did not yet need to lodge a tax return. In 2005 when Mr H lodged a tax return he became aware that someone else had fraudulently used his TFN.

2.40 The ATO did not attempt to investigate who had received the funds, assessing that the appropriate response was to provide the complainant with a new TFN and to implement 'mitigation' strategies because the amount involved was only several thousand dollars. The mitigation was to apply system indicators to direct processing staff to manually check details with the taxpayer, and refer returns under the TFN to the area that considers possibly fraudulent returns.

2.41 Despite this, a further fraudulent claim was lodged in 2006 under Mr H's old, compromised TFN. Instead of this being stopped, the ATO processed this on the new TFN without checking the system notes and paid the refund to a third party again. The ATO still did not consider that investigation was warranted. The only solution for Mr H was to go through the TFN compromise procedure again and receive another TFN. Once again the same system notes were entered into the system. The ATO issued Mr H with a third TFN and sent notification of this new number to the address that the fraudulent party had used to lodge the fraudulent claim. The ATO did not address this and maintained that there was no evidence that the latest TFN was compromised by this action.

2.42 In 2007, for a fourth time, a third party again lodged a tax return under Mr H's original TFN. The ATO manually entered data from this return onto the new TFN, however, payment was stopped when the error was realised. Mr H claimed that the ATO only realised there was an error because he had phoned to enquire about the processing of his return that had been lodged just before the fraudulent one.

2.43 In 2008 no fraudulent payment was made under Mr H's TFN. However, ATO records show that Mr H's financial institution details were added to Mr H's first compromised TFN.

2.44 We raised concerns about the ATO's administrative processes. We pointed to difficulties in linking the information about Mr H's case and an apparent lack of consideration of the ongoing and unresolved misuse of Mr H's TFN. The ATO had accepted that human error had resulted in the payment of a fraudulent claim in 2006 in spite of mitigation measures. It appears that this problem could continue to recur because the assessment processing system is designed to expedite processing so that even if tax returns are lodged with significant errors, including a culled TFN, they can be processed. We asked the ATO to reconsider whether it had compromised Mr H's current TFN when it sent notification of this number to the address nominated in the fraudulent 2006 claim.

PART 3—ANALYSIS AND RECOMMENDATIONS

3.1 Our investigation of the above complaints raises serious concerns about the adequacy of the ATO's policies, procedures and oversight for responding to complex TFN compromise cases.¹⁰

3.2 In these cases, the ATO did not deal reasonably with the problems despite repeated contact by affected taxpayers. Where the cases involved actions by a third party, affected taxpayers were not able to access all the information about how their situation arose or whether the ATO had taken appropriate action to address it. This makes it particularly important for the ATO to have appropriate systems and policies in place to resolve such cases and to communicate effectively with taxpayers.

ATO administrative arrangements

3.3 Our investigations suggested a lack of ATO coordination and oversight of these cases. It was apparent that multiple areas of the ATO had roles to play in the identification of TFN registration problems and resolution of resulting errors. The ATO has advised that the following areas are responsible for the administration of providing new TFNs and accurate account records to taxpayers with compromised TFNs:

- *Client Service and Solutions*—who respond to telephone enquiries
- *Refund Integrity*—who are the first point of contact for third party compromised TFNs
- *Registry Integrity*—who check the integrity of the Register and the client/taxpayer
- *Compromised TFN team*—who process TFN applications and oversee transfers of accounts and indicators
- *Serious Non-Compliance*—who investigate fraud and consider prosecution of perpetrators
- *Micro Enterprise and Individuals*—who manage ATO Shopfronts where they provide face-to-face service to taxpayers
- *Active Compliance*—regarding taxpayers' obligations, this can include individual fraud related cases
- *Client Account Services*—who process income tax and activity statements and arranged transfers
- *HELA*—who manage student education allowance transfers.

3.4 We consider that the ATO's information matching area should also be considered in this group. In the cases involving taxpayers with similar names, such as Mr E, TFN duplication issues were apparent but not appropriately recognised as such.

3.5 Another area of the ATO that can be involved in TFN compromise situations is the debt area. Cases discussed earlier highlighted problems with taxpayers receiving debt notices for amounts owed by another taxpayer or wrongly attributed to

¹⁰ Simple TFN compromise cases would be those where there is a risk of a third party using the TFN but this has not yet occurred. For example, where a letter containing a TFN has been sent to an incorrect address

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them. The complainants were understandably upset about being asked to pay money they did not owe. The issue that prompted them to approach the Ombudsman was that the ATO did not resolve the error when it was told about it and the complainants continued to be contacted unnecessarily.

3.6 It is also important that the ATO recognise and support the role of complaint handling in this area of administration. The cases we investigated had been through formal complaint procedures without satisfactory resolution. Our investigations suggested that complaint staff did not adequately understand, or know how to resolve, the situations raised by complainants. This is not just a matter of training, it also reflects a lack of adequate oversight of complex TFN compromise cases and recognition of how these cases can arise.

3.7 To the extent that cases we investigated were resolved (although not all of them have been), this has been partly a result of the ATO's Ombudsman Liaison Unit (OLU) undertaking a more active role in finding solutions than is generally expected. For example, in Mr E's case, the OLU resolver identified that the ATO had failed to advise Mr E that his TFN had been compromised and the necessary solution was for him to receive a new TFN. Mr E had dealt with staff from the ATO's business areas and ATO complaints on several occasions without his situation being appropriately resolved. In Mrs F's case, the ATO advised that automatically generated debt letters that resulted from the partial transfer of account transactions from the old to the new TFN account could not be stopped. The OLU resolver devised a way to override this so that the incorrect debt notices would not continue to be sent.

Recommendation 1

The ATO should review its systems and oversight for identifying and responding to TFN compromise and consider ways to improve outcomes for affected taxpayers. This should include considering ways to improve its recognition and handling of TFN complaints and giving greater priority to investigation of cases involving recurrent TFN fraud or involving multiple taxpayers.

Recommendation 2

The ATO should review known TFN compromise cases, particularly those stemming from records linked by the ATO, with a view to ensuring that these are adequately resolved in a timely way.

ATO policies and processes for resolving TFN compromise situations

3.8 The ATO has four procedures for staff involved in responding to compromised TFN situations:

- Compromised TFN—individual client initiated—procedure
- Compromised TFN—individual third party initiated—procedure
- Compromised TFN (fraud)—actioning—procedure
- Compromised TFN (operations)—actioning—procedure.

3.9 It also has guidance for call staff receiving enquiries about compromised TFN situations in its Reference Manager system.

3.10 ATO procedures identify related policies and practice notes. For the above procedures there are no related policies or practice notes.

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3.11 We consider that there is a lack of adequate policy guidance and systemic oversight of compromised TFNs to deal with the type of cases we investigated. This is particularly important in light of the number of areas in the ATO involved in TFN compromise matters, and the impact on taxpayers who experience difficulty and delay in resolving problems arising from TFN compromise, sometimes on a recurring basis.

3.12 This was evident in cases where the ATO had issued taxpayers with new TFNs but had not dealt with the transfer of transactions from the old to the new TFN. This also meant that the old TFN was not 'deactivated'. Mrs D and Mrs F were sent debt notices in error relating to the compromised TFN. In most cases where two taxpayers had been linked to the same TFN, unless the ATO contacted the other person or deactivated the compromised TFN, the situation was not fully resolved. This was often the reason why these people had suffered recurring problems even after being provided with a new TFN. In Mrs D's case, after it was known that two women had both been provided with the same TFN and their records mixed, the ATO wrote to Mrs D2 advising that her TFN might have been compromised and that she could ask for another TFN if she wanted. However, it left the TFN (that the two women had been sharing) active with Mrs D's address linked to this account. This meant that Mrs D continued to be contacted about Mrs D2's tax situation because the ATO had not resolved the situation by actively seeking to contact the other taxpayer who had been sharing the TFN, or by cancelling the TFN.

Recommendation 3

The ATO should ensure that it has adequate policy guidance to support identification and resolution of TFN compromise cases, including how to determine which transactions should be transferred to the account for a new TFN and to fully resolve cases where two taxpayers have been linked to the same TFN.

Taxpayer communication

3.13 A final area of concern is the ATO's communication with taxpayers. The information provided by the ATO as part of its TFN registration information advises that TFNs are for life. While the importance of safeguarding one's own TFN is appropriately emphasised, no information is provided on the ATO website or fact sheets about recognising or dealing with TFN compromise. We consider that this is an area that needs improvement. Taxpayers should be able to find out what they should do if someone has misused their TFN or if their records have been mixed up with another taxpayer.

3.14 Inadequate communication with taxpayers was also evident after TFN compromise action had been instigated. In the cases we investigated, the ATO had not adequately explained the necessary process to taxpayers or kept affected taxpayers informed about where it was up to in resolving the issues involved.

3.15 In Mr A's case, the ATO issued him with a new TFN and then sent him four *Notice of Assessments* for previous tax years which implied that he had a tax debt. No explanation was provided to him until we escalated concerns about the response to this case. In Mrs D's case, even though the ATO had erroneously put her and Mrs D2 on the same TFN and sent her debt notices in error, the ATO had not apologised. The cases are indicative of a general lack of communication with taxpayers who were victims of identity theft or administrative error.

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3.16 This lack of communication from the ATO left those affected feeling that their case was in the ‘too hard basket’, or they were frustrated and upset about being treated as if they had done something wrong. Complainants indicated that they had lost faith in the integrity of the tax system. Much of this could have been alleviated if, once the ATO had investigated the circumstances of the TFN compromise, it had indicated a concern to help these blameless taxpayers to restore their tax identity.

3.17 Even where the ATO does not accept a person’s claim that their TFN was fraudulently misused (which did not occur in these cases but has in other cases investigated by this office), it is appropriate for the ATO to communicate the decision that it reaches. When the ATO determines what information to transfer to a new TFN account it decides whether all or only some account information should be transferred. However, we have not seen such decisions communicated effectively to taxpayers.

Recommendation 4

The ATO should provide general advice to taxpayers on its website about how to address problems with TFN compromise or errors in information matching.

Recommendation 5

The ATO should improve its communication with taxpayers affected by TFN compromise. This should include ensuring that call centre scripting about the expected timeframe for resolution of TFN cases is consistent with procedures.

PART 4—ATO RESPONSE



Australian Government
Australian Taxation Office

SECOND COMMISSIONER OF TAXATION

Mr Allan Asher
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Dear Mr Asher,

Draft Ombudsman report 'Resolving Tax File Number Compromise: Cases highlighting problems with ATO Administration.'

I refer to your letter dated 29 June 2010 and a draft report titled '*Resolving TFN Compromise: Cases highlighting problems with ATO Administration (the report)*'. Thank you for the opportunity to comment on the draft report and I am sorry for not responding before now.

We have carefully reviewed the draft report and agree that the experiences for some taxpayers with a compromised Tax File Numbers (TFN) have been less than satisfactory. However, in respect of the eight case studies set out in the draft report, we do not agree that that these cases are typical of taxpayers' experiences when a TFN is compromised.

Given there had been a growing community concern about identity crime and TFN security, in late 2009 we undertook a broad review of the way TFN compromise cases were being managed by the ATO. That review demonstrated, consistently with the views expressed above, that our controls and procedures in most cases were effective. However, it was also evident that there was room for improvement in respect of some of our procedures. As a result, we have made a number of changes in the way we handle compromised TFN case and we have further improvements under way.

Given the similarities between the recommendations contained in your draft report and the changes we have been making (refer attachment A) we agree with all five recommendations made in the draft report.

Recommendation One

ATO should review its systems and oversight for identifying and responding to TFN compromise and consider ways to improve outcomes for affected taxpayers. This should include ensuring a clearer line of authority to resolve issues considering ways to improve its recognition and handling of TFN complaints and giving greater priority to investigation of cases involving recurrent TFN fraud or involving multiple taxpayers.

Agreed.

As noted, in late 2009 the ATO undertook a review of the way it deals with compromised TFN cases. That review concluded that an approach which took a more holistic view of the taxpayer's situation was required. As a result of that review

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the Client Identity Support Centre (CISC) was established in December 2009. The CISC provides a single capability for the management and resolution of identity crime and TFN compromise cases. More details on CISC and of the changes we have made are in attachment A

Recommendation Two

ATO should review known TFN compromise cases, particularly those stemming from records linked by the ATO, with a view to ensuring that these are adequately resolved in a timely way.

Agreed.

The ATO has reviewed all known TFN compromise cases, particularly those stemming from records linked by the ATO, and taken all possible steps to ensure that these are adequately resolved in a timely way.

The ATO has also implemented procedures (refer attachment A) to ensure that on an ongoing basis all TFN compromise cases are continually monitored and reviewed.

Recommendation Three

ATO should ensure that it has adequate policy guidance to support identification and resolution of TFN compromise cases, including how to determine which transactions should be transferred to the account for a new TFN and to fully resolve cases where two taxpayers have been linked to the same TFN.

Agreed.

Leading up to the establishment of the Client Identity Support Centre in December 2009, a comprehensive review of the relevant ATO policy and procedures was undertaken. That review resulted in clearer guidance to staff as to what constitutes a compromised TFN. This is supported by improved approaches to training and clearer procedural documentation to align with TFN compromise and identity theft policy (refer attachment A).

Recommendation Four

ATO should provide general advice to taxpayers on its website about how to address problems with TFN compromise or errors in information matching.

Agreed.

The ATO website has been updated to include information about how a TFN can be compromised and sets out steps to take if a taxpayer thinks he or she is a victim of identity theft. This information can be seen at:

<http://ato.gov.au/individuals/content.asp?doc=/content/00092180.htm&pc=001/002/001/009/004&mnu=42807&mfp=001/002&st=&cy=1>.

Information about expected resolution times for TFN compromise cases will shortly be added.

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The ATO website also has a link to the Attorney General Department's ID Theft Booklet titled "Protecting your Identity".

For some time the ATO has been very active in promoting community awareness of the risks of identity theft with, for example, the issue of a number of media releases over the last year. These releases often refer to a recently discovered tax scam which amongst other things is directed at identity theft.

The ATO is currently considering the development of a new communication strategy on what to do in the event of a suspected compromised TFN and what steps can be taken to protect a TFN. This will be based on recent learning and will be developed in consultation with key stakeholders such as the ATO's Tax Practitioner Forum.

Recommendation Five

ATO should improve its communication with taxpayers affected by TFN compromise. This should include ensuring that call centre scripting about the expected timeframe for resolution of TFN cases is consistent with procedures.

Agreed.

The ATO has already taken a number of steps to improve communication with taxpayers affected by TFN compromise (refer attachment A). Client Identity Support Centre case managers are now responsible for personalised contact with affected taxpayers. Call centre scripting about the expected timeframe for resolution of TFN cases has been changed and are now consistent with procedures.

Thank you again for the opportunity to comment on this draft report and please contact Scott Hooper on (02) 6216 6464 if needed.

Yours sincerely,



David Butler
Second Commissioner

14 September 2010

Attachment A

Client Identity Support Centre (CISC)

Providing appropriate oversight, Deputy Commissioner, Client Account Services (CAS), has accountability for ensuring successful outcomes of the CISC. Assistant Commissioner, (Enterprise Register and Accounts) has been given accountability for the successful implementation and ongoing operation of the CISC.

Establishment of the CISC, with senior officer accountability, ensures clarity of the management of compromised TFN cases. Further, the Deputy Commissioner, and the Assistant Commissioner are accountable for the accuracy of the Client (or TFN) Register. They are also required to monitor planned activity and performance of the register, and have the ability to move resources to ensure plans are achieved.

A working group of officers from the Operations Sub-plan and Serious Non-Compliance (SNC) business line are also involved in the ongoing work of the CISC. The working group provides assurance to the Deputy Commissioner and Assistant Commissioner that necessary practices and processes in relation to fraudulent identities are in place and are being followed.

The CISC appoints a case manager for each individual case where identity theft or compromised TFN is suspected. CISC case managers are responsible for:

- tracking progress and ensuring all cases are finalised in a timely manner;
- contacting clients and ensuring they have direct contact details for the case manager;
- providing ongoing information to clients about the progress of resolving their issues;
- providing clients with suggestions about how to better manage their affairs if their identity is at risk; and
- assisting clients with contacting other government agencies, such as the Australian Federal Police and Centrelink.

If any correspondence needs to be sent to taxpayers about compromised TFN's, in most cases telephone contact is made first by a CISC case manager.

Improved procedures

New staff training packages including Proof of Identity 'master classes' have been developed and have been implemented.

We also have defined and document the differences between TFN compromise and identity compromise and including this in our staff awareness and training approaches.

Further, we are currently updating our procedures to assist our staff understand what constitutes a compromised TFN and what options are available for the taxpayer if a TFN is compromised. We will ensure that our people who deal directly with taxpayers, including our contact centre and shopfronts, are aware of any new policies and procedures.

Some of the improved procedures already implemented include:

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- from December 2009 we commenced a holistic approach for each taxpayer with a compromised TFN which focused on resolving all aspects of each taxpayers situation;
- from July 2010 we altered our systems to place an indicator on the records of all taxpayers who had a compromised TFN to ensure that those returns were carefully checked and closely scrutinised;
- if two taxpayers have been linked to the same TFN the tax affairs of both taxpayers is actively monitored; and
- the complaints handling processes for compromised TFN cases have been re-engineered with new scripting being developed for call centres.

As is the case for all taxpayer accounts, for information security and probity reasons, only a limited group of staff may transfer account information and this is clearly set out in our procedures.

Service standards

We plan to develop new benchmarks and service standards for compromised TFN cases by 31 January 2011. We also plan to undertake a post implementation review of the improved procedures for compromised TFN cases during the second half of 2011.

Identity Data Matching Strategy

We are currently examining the ATO Identity Data Matching Strategy to determine whether there are opportunities to improve our data matching processes to minimise the number of incorrectly linked records.