

# New TFN legislation impacts on solicitors

**I**t is imperative for solicitors to be aware of the new Tax File Number (TFN) legislation, a senior officer of the Australian Taxation Office warned recently.

The Assistant Tax Commissioner for South Australia and the NT, Tom Story, told a CLE seminar that the legislation could affect both solicitors and their clients.

New provisions will come into force on 1 July this year.

In certain circumstances, failure to notify the relevant TFN will result in income tax being levied on interest earned by investments at the top marginal rate of 48.25 cents in the dollar.

In such cases the income tax will be deducted by the institution paying the interest, and will be remitted direct to the Australian Taxation Office.

Where this occurs, the money remitted to the ATO will not be credited to the account, and so will not be available to earn further interest.

The money remitted to the ATO will be credited against income tax due when an income tax return is lodged by the taxpayer.

Mr Story stressed that the TFN legislation does not ever compel a person to disclose his tax file number.

But certain financial consequences result if the TFN is not disclosed.

by Peter Tiffin

A solicitor will have substantial obligations under the new legislation if the solicitor is an "investment body" as defined.

A solicitor will be an "investment body" if he invests money belonging to another person (1) in his own name, without disclosing the name of the other person; or (2) in certain types of loans arranged by the solicitor; or (3) with an investment body not prescribed under section 202D(1) of the Income Tax Assessment Act.

A solicitor will be an "investment body" in respect of loans arranged by him where (1) money is deposited with the solicitor to be loaned under an agreement to be arranged by or on behalf of the solicitor; (2) the money is deposited into an account over which the solicitor has effective control; and (3) income derived from the loan is paid into an account over which the solicitor has effective control.

A solicitor who is an "investment body" has obligations to report certain information to the ATO, and to deduct amounts equivalent to the highest marginal tax rate on income derived from investments in respect of which neither a TFN nor an exemption has been quoted.

A solicitor may become an "investment body" by virtue of an investment which came into existence before 1 July this year.

Solicitors should review all client investments for which they are responsible in the light of the new legislation. They also have responsibilities under the Privacy Act with respect to tax file numbers.

The Privacy Commissioner's Tax File Number Guidelines came into force on 16 October last year.

## Reasonable steps

Solicitors are required to take reasonable steps to prevent unauthorised access to tax file numbers, whether the number is that of a client or an employee.

Copies of the guidelines are available from the Privacy Commissioner, GPO Box 5218, Sydney, NSW, 2001.

Solicitors' responsibilities with respect to withholding tax and tax credits, and under the Cash Transactions Act, are not affected by the new legislation.

The ATO has established a telephone enquiry service to inform people about the legislation.

NT solicitors should contact Warwick Gardiner in Adelaide on (08) 2372038 or toll free on 008 888594.

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**Insolvency Simulated Opposed Action Programme** conducted by the Queensland CLE department at the Hyatt Regency Coolum between 14-16 June this year. Registration forms available from the Society.

**12th LAWASIA Conference** will be held in Perth from 15-19 September. Details and registration forms available from the Society.

**International Bar Association Section on Business Law 10th Biennial Conference** hosted by the Law Council of Australia will be held in Hong Kong from 30 September to 4 October. A variety of tour options are available. Further information from the Society.

**World Jurist Association's** conference on Law and the Preservation of Peace will be held in Barcelona from October 6-11. Advance registration forms available from the Society.

**Tenth Commonwealth Law Conference - Cyprus, May 3-7 1993.** Details from the Society.