



THE TAX INSTITUTE
THE MARK OF EXPERTISE

30 November 2015

The Hon. Justice Pagone
Judges' Chambers
Federal Court of Australia
305 William Street
MELBOURNE VIC 3000

By email: practice.notes@fedcourt.gov.au

Dear Judge,

National Tax Practice Consultation Process

Thank you for your correspondence dated 2 and 12 November 2015 inviting the Tax Institute to provide feedback on the draft National Tax Practice Note (**Practice Note**).

We appreciate the Court's determination to improve procedures in tax matters and are grateful for the invitation to participate. However, our members have provided us with substantially divergent views on whether changing the Practice Note significantly from what is proposed would yield benefits in practice which would outweigh the complexity and uncertainty that may arise from such changes.

In particular, some of our members have suggested that the Practice Note should require the following:

- More specific guidance on the form and content of appeal.
- A requirement that the Commissioner file and serve a document stating in respect of each fact contended for by the applicant in their appeal statement whether the Commissioner admits, does not admit, or denies that fact.
- The adoption of the current practice concerning discovery in tax matters as presently provided by para 6 of the Practice Note Tax 1.
- Further guidance concerning the preparation of the Joint Exhibit List for consideration at the Pre-Trial Case Management Hearing.
- Revisions to the Pro forma Questionnaire to reflect the Court's intention to identify and develop new alternative process and procedures (**ADR**) for the just and efficient resolution of taxation dispute.
- That the Court should exclude the application of para 8.5(l) of the Central Practice Note (relating to the capping of costs) from tax dispute.

Some of these members were involved in discussions leading to the Law Council of Australia submission dated 27 November 2015. Those members would in general endorse then comments made in that submission for the reasons contained in it.

Other members have expressed strong reservations in relation to the following:

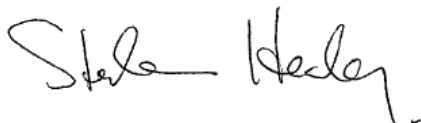
- On more specific guidance on appeal statements (first dot point on page 1) – the current form of appeal statements is well-known and understood and is broad enough to cover matters the parties may wish to raise. Being more prescriptive may lead to more uncertainty and interlocutory arguments about whether the Practice Note has been complied with. If a party seeks to raise new issues later in a case, there is existing case law dealing with when this should be allowed.
- On notice as to facts (second dot point on page 1) - there is an existing procedure in the Federal Court Rules in relation to notices to admit facts. There are cost implications from those rules where a taxpayer lodges such a notice. Placing a further obligation in the Practice Note that operates as the default will cause confusion as to its effect and interaction with the Federal Court Rules.
- Changes to pro forma questionnaire to deal with ADR (fifth dot point on page 1) – such matters are already dealt with in the Genuine Steps Statement and there is an existing ADR emphasis in the steps leading up to a Federal Court tax matter.
- Capping of costs (sixth dot point on page 1) – tax cases are not sufficiently different to other cases to exclude them from para 8.5(1) of the Central Practice Note. The Practice Note seeks consistency with general practice unless there are significant points of difference.

Accordingly, rather than present either an unbalanced or misleading description of our members' views, we consider it preferable to refrain from expressing a concluded view on any significant change to the way tax proceedings are currently conducted in the Federal Court.

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If you would like to discuss any of the above, please contact either me or Tax Counsel, Thilini Wickramasuriya, on 02 8223 0044.

Yours faithfully,



Stephen Healey
President