

FEDERAL COURT OF AUSTRALIA

Practice Note No 22

Appeals against Appealable Objection Decisions made under the *Taxation Administration Act 1953*

This Practice Note is to provide guidance as to what the Court expects of practitioners at the first directions hearing in appeals against appealable objection decisions.

Division 3 of Part IVC of the *Taxation Administration Act 1953* (Cth) ('the Act') and Order 52B of the Federal Court Rules ('the Rules') apply to such appeals.

Practitioners are reminded that nothing in the Rules or this Note can affect the operation of s 14ZZO of the Act, which provides that in proceedings on an appeal to the Court against an appealable objection decision the appellant ('applicant' in the Court):

- is, unless the Court orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates; and
- has the burden of proving the matters referred to in s 14ZZO, such as, if the taxation decision concerned is an assessment (other than a franking assessment), that the assessment is excessive.

Under O 52B r 5 of the Rules, the Commissioner must, within 28 days after being served with a sealed copy of the application (unless the appeal relates to a private ruling), file and serve the documents referred to in that rule. The rule gives the Commissioner a choice of filing and serving either a statement of facts, issues and contentions ('Appeal Statement') or an affidavit setting out the grounds in support of an application for an order (to be made at the first directions hearing) dispensing with that requirement and setting out, in the text of the affidavit or in a minute annexed to it, the directions proposed for the conduct of the appeal ('Appeal Affidavit'). An Appeal Statement will ordinarily be the appropriate choice since the applicant will already have stated grounds in the taxation objection.

If the Commissioner chooses to file an Appeal Affidavit, it should set forth any facts relied on as showing that it is inappropriate for the Commissioner to be required to file an Appeal Statement as the first procedural step in the appeal, and should state why the proposed directions are to be preferred.

At the first directions hearing, the Court will make directions for the future conduct of the proceeding. These will usually include a direction for the filing and service of an Appeal Statement by the applicant.

An Appeal Statement should expose the real factual and legal issues in the appeal as the Commissioner or applicant (as the case may be) understands them to be. General statements are unlikely to assist in achieving that aim.

M. E. J. BLACK
Chief Justice

1 December 2005