

CORRS IN BRIEF

APRIL 2008

FEDERAL COURT ISSUES NEW PRACTICE NOTICE FOR TAX CASES

The Chief Justice of the Federal Court has recently released a Practice Notice that sets out information about changes to the way that tax cases are managed in the Federal Court.

The Practice Notice is significant because it places tight restrictions upon the timing of the pre-trial phase of tax cases, and means that the trial date for tax cases will generally occur within 13 months of the date that the application is originally filed in the Federal Court.

Whilst the Chief Justice's desire to expedite tax cases is welcome, the Practice Notice is likely to give rise to significant challenges for the Australian Taxation Office, taxpayers and practitioners who may struggle to comply with the tight timeframes. This will particularly be the case for large matters that are technically detailed and/or factually complex.

TAX LIST COORDINATING JUDGE

A tax list coordinating judge (**Tax Judge**) has been appointed in each Federal Court registry to oversee the day to day management of cases on the Court's "tax list". The Tax Judge will be responsible for the efficient management of all tax cases listed at their registry, and will act on a regional and national basis to determine whether there are cases which are factually similar, or involve common questions of law, which can be heard together by a single judge.

LIMITED TIME TO SERVE PRE-TRIAL DOCUMENTS

The Practice Notice includes a tight timeframe for the serving of pre-trial documents. Thus, the Commissioner's Appeal Statement must be served upon the Applicant within 28 days of the date that the original Federal Court application was served on the Commissioner. The Applicant's Appeal

Statement must be served within 40 days of the date that the original Federal Court application was served on the Commissioner. In addition, both parties must serve a pro-forma questionnaire detailing the basic facts of the case within 40 days of the date that the original Federal Court application was served on the Commissioner.

SCHEDULING CONFERENCE

The Tax Judge will preside at a scheduling conference to be held not less than 45 days after the date that the application was filed. A trial date will be set at the scheduling conference and the matter will be referred to the Federal Court registry for allocation to a trial judge (known as the "docket judge"). The trial date will be set as soon as practicable, but will be no later than 12 months after the date of the scheduling conference. A hearing date beyond the 12 month period will not be granted merely because the parties and their lawyers desire a later date.

The parties will also be expected to address the following issues at the scheduling conference:

- narrowing the scope of issues to be considered at the trial;
- initial witness list;
- agreeing on a pre-trial schedule, including details as to mediation (if any); and
- determining the status of outstanding issues in the pro-forma questionnaire.

The Practice Notice makes it clear that Requests for Particulars will no longer be permitted in tax cases, as such questions will now be dealt with at the scheduling conference.

DISCOVERY

The Practice Notice also places limitations upon the discovery

process so that discovery is limited to documents:

- on which a party intends to rely;
- that materially affect the party’s own case adversely;
- that materially affect another party’s case adversely; and
- that materially support another party’s case.

Parties will be required to undertake discovery on a "good faith proportionate search" basis. That is, parties will be required to make a "good-faith effort to locate discoverable documents, while bearing in mind that the cost of the search should not be excessive having regard to the nature and complexity of issues raised by the case."

INTERLOCUTORY APPLICATIONS / MOTIONS

Where a party seeks to make an interlocutory application or motion to the Court they will need to provide a short written brief providing details of the application or motion, supporting arguments, and relevant authorities (if applicable). The Practice Notice makes it clear that the brief cannot exceed five pages, and that the application or motion will be considered on the basis of the written brief only. Oral hearings will not generally be granted.

PRE-TRIAL CONFERENCE

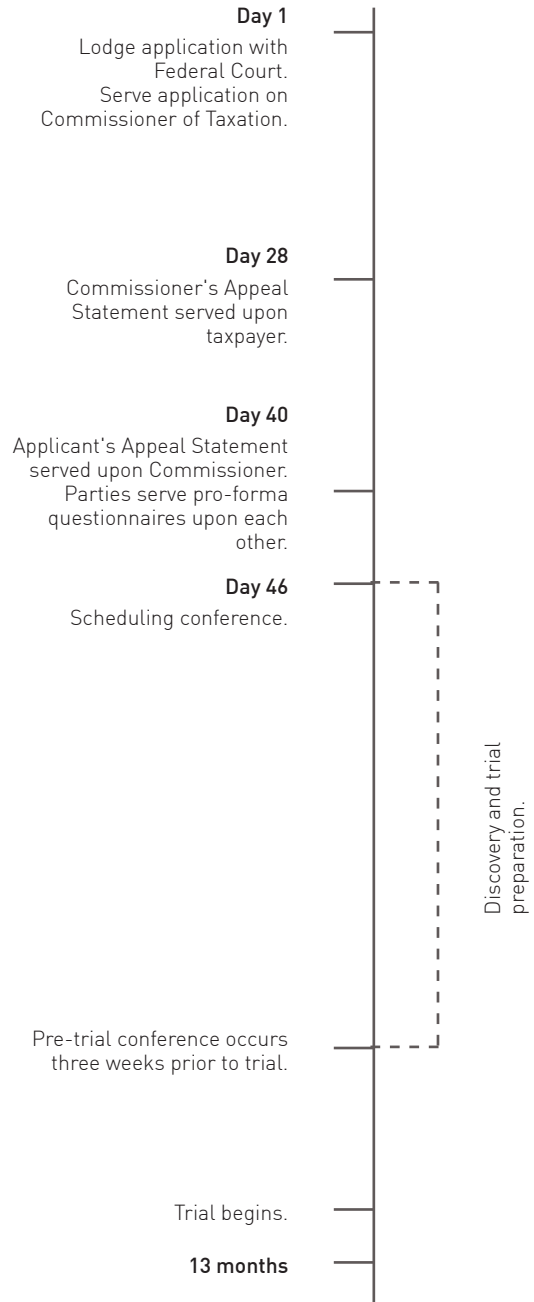
A pre-trial conference with the docket judge will be held three weeks prior to the scheduled trial date to finalise any outstanding matters.

The parties will be required to deal with the following issues at the pre-trial conference:

- determine the agreed facts, and identify material facts that are in dispute;
- finalise the witness list. Generally, witnesses cannot be added to the witness list after the pre-trial conference;
- deal with objections to evidence proposed to be tendered. The docket judge will generally rule upon objections to evidence at this time, unless it is more convenient to do so during the trial phase;
- jointly submit a numbered list of the exhibits that the parties intend to tender to the Court during the trial.

TIMELINE

As a result of the changes outlined in the Practice Notice, a Federal Court tax case will generally have a timeline that can be depicted as follows:



CONCLUSION

The new Practice Notice makes it clear that the Federal Court intends to keep a tight reign on tax matters being heard before the Court.

A copy of the Practice Notice is available at the Federal Court of Australia website at:

http://www.fedcourt.gov.au/how/practicenotices_nat02.html

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