

SUPREME COURT PRACTICE NOTE SC Eq 10
Supreme Court Equity Division – Revenue List

Commencement

1. This Practice Note was issued on 10 August 2012 and commenced on 10 August 2012

Application

2. This Practice Note applies to proceedings in, or to be entered in, the Revenue List of the Equity Division of the Supreme Court.
3. Matters may be entered in the List if they are proceedings in which the Commissioner of Taxation or a person holding an equivalent office in a jurisdiction outside Australia is a party; proceedings in which the Chief Commissioner of State Revenue or a person holding an equivalent office outside New South Wales is a party; or proceedings in which an issue has arisen in relation to a law under which any of the above exercise functions.

Definitions

4. In this Practice Note:

Act means the *Taxation Administration Act 1996*

Chief Commissioner means the Chief Commissioner of State Revenue and, where appropriate, includes the Commissioner of State Revenue and a person exercising like functions outside New South Wales

Commissioner of Taxation means the Commissioner of Taxation of the Commonwealth of Australia and, where appropriate, includes a Second Commissioner of Taxation, or a Deputy Commissioner of Taxation and a person exercising like functions outside Australia

List means the Revenue List

List Judge means the judge designated by the Chief Justice under section 28 of the *Supreme Court Act 1970* to be the Revenue List Judge

Online Court means proceedings conducted by electronic communication sent and received by means of the ECM system as provided by clause 9 of Schedule 1 to the *Electronic Transactions Act 2000*

Request for Expert Evidence Directions means a document in terms of Annexure A to Practice Note SC Eq 5

Taxpayer means a person subject to, or being considered for, an assessment by the Chief Commissioner or the Commissioner of Taxation

UCPR means the Uniform Civil Procedure Rules 2005.

Introduction

5. The purpose of this Practice Note is to set out the case management procedures employed in the List for the just, quick and cheap disposal of proceedings.
6. Proceedings in the List will be case managed by the List Judge. Practice Note SC Eq 1 will not apply to proceedings in the List.
7. It is expected that this Practice Note will be observed in the conduct of proceedings in the List.

Entry in the List – Chief Commissioner proceedings

8. The plaintiff in proceedings seeking a review of an assessment (or other decision) of the Chief Commissioner under section 97 of the Act must:
 - (a) follow the procedures applicable to appeals in UCPR Pt 50, and in particular the Summons must be in the approved form being the form set out in Annexure A and contain a statement setting out briefly but specifically the grounds relied on in support of the review;
 - (b) annex to the affidavit filed with the Summons in compliance with Schedule 10 of UCPR, copies of the relevant notice of assessment (or other decision of the Chief Commissioner), the objection and the notice of determination of the objection given by the Chief Commissioner under section 93 of the Act;
 - (c) file and serve an Appeal Statement within 14 days of the date on which the Summons is filed and served upon the Chief Commissioner setting out the grounds upon which the assessment or other decision of the Chief Commissioner should be set aside or varied.
9. The Chief Commissioner must file and serve an Appeal Statement within 28 days of the date on which the Tax-payer's Appeal Statement is served on the Chief Commissioner setting out the basis for the assessment or other decision.
10. An Appeal Statement must state in a summary form and without undue formality:
 - (a) the basic elements of the case or defence;
 - (b) the relief sought;
 - (c) the real issues in dispute;
 - (d) the facts to be relied upon whether or not agreed, and
 - (e) the contentions, including the legal grounds for any relief claimed.
11. All Appeal Statements must include a Front Sheet identifying the names of the parties and their designation.
12. The Chief Commissioner or a Taxpayer seeking declaratory or other relief, not being in debt, must commence proceedings to be entered in the List by Summons that must include a reference to the Revenue List in the heading.
13. The Chief Commissioner or a Taxpayer seeking recovery of a debt must commence proceedings to be entered in the List by Statement of Claim that must include a reference to the Revenue List in the

Entry in the List - Commissioner of Taxation proceedings

14. The Commissioner of Taxation or a Taxpayer seeking recovery of a debt must commence proceedings to be entered in the List by Statement of Claim that must include a reference to the Revenue List in the heading.
15. The Commissioner of Taxation or a Taxpayer seeking declaratory or other relief, not being in debt, must commence proceedings to be entered in the List by Summons that must include a reference to the Revenue List in the heading.

Initial directions hearing

16. Unless fixed earlier, the Court will hold an initial directions hearing:
 - (a) in proceedings to which paragraph 8 applies, within 14 days after the filing and service by the Chief Commissioner of an Appeal Statement under paragraph 9;
 - (b) in any other case within 14 days after the entry of the proceedings in the List.
17. At the first directions hearing orders will be made and directions given with a view to the just, quick and cheap disposal of the proceedings. The orders and directions may relate to:

- (a) the filing and service of pleadings;
- (b) the provision of proper or further particulars;
- (c) the service of affidavits by a specified date or dates;
- (d) in an appropriate case, an order that the parties seek to agree some or all of the facts by a statement of agreed facts;
- (e) subpoenas;
- (f) listing for hearing.

Online Court

- 18. For the efficient operation of a List, the legal practitioners involved in the proceedings will have the benefit of participating in an Online Court in relation to pre-hearing directions and interlocutory applications to enable a listing for hearing as expeditiously as possible.
- 19. At the first directions hearing the List Judge would normally make an order that all future directions hearings and all interlocutory applications will be conducted in an Online Court. If such an order is made, all legal practitioners involved in the proceedings including counsel must ensure that they are registered users.

Expert Assistance at Hearing

- 20. If the parties have not filed a Request for Expert Evidence Directions before the first directions hearing the legal practitioners involved in the proceedings will be expected at the first directions hearing to identify the issues, if any, upon which the trial judge will need expert assistance and to propose any directions the court should make in relation thereto.

Interrogatories

- 21. Interrogatories will not be permitted other than in exceptional circumstances.

Listing for hearing

- 22. Upon fixing a date for hearing the Court will normally direct that the Usual Orders for Hearing as set out in Annexure B shall apply with or without modification. If for any reason the parties are of the view that the Usual Orders for Hearing should be modified, they must provide a Consent Modified Orders for. Hearing by a message posted in the Online Court.
- 23. In an appropriate case the Usual Orders for Hearing in Annexure B may be modified to contain orders regarding expert evidence and provision of a Court Book.

T F Bathurst

Chief Justice of New South Wales

10 August 2012

Amendment history:

10 August 2012: This Practice Note replaces the previous version of SC Eq 10, which was issued on 22 September 2010. The replacement Practice Note includes a number of changes designed to provide additional assistance to practitioners and litigants in the Revenue List, including a template summons for Chief Commissioner proceedings.

Annexure A

Form ##
UCPR 50..4

SUMMONS

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Revenue
Registry	Sydney
Case number	

TITLE OF PROCEEDINGS

[First] plaintiff	[name]
#Second plaintiff #Number of plaintiffs (if more than two)	[#name #number Refer to Party Details at rear for full list of parties]
[First] defendant	[name]
#Second defendant #Number of defendants (if more than two)	[#name #number Refer to Party Details at rear for full list of parties]

FILING DETAILS

Filed for	[name] plaintiff[s]
Legal representative	[solicitor on record] [firm]
#Legal representative reference	[reference number]
Contact name and telephone	[name] [telephone]
Contact email	[email address]

HEARING DETAILS

This summons is listed at [time, date and place to be inserted by the registry unless otherwise known].

DETAILS OF REVIEW

1 # The plaintiff applies for a review of the whole of the assessment of the decision below.

The plaintiff applies for a review of the part of the assessment or other decision below in relation to [state the relevant part of the assessment/decision below].

ORDERS SOUGHT

- 1 [State orders sought]
- 2 []
- 3 []

REVIEW GROUNDS

1 [State briefly but specifically the grounds relied on in support of the application for review].

SIGNATURE OF LEGAL REPRESENTATIVE

#This summons does not require a certificate under section 347 of the Legal Profession Act 2004.

#I certify under section 347 of the Legal Profession Act 2004 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature	
Capacity	[eg solicitor on record, contact solicitor]
Date of signature	

#SIGNATURE OF OR ON BEHALF OF PLAINTIFF IF NO LEGALLY REPRESENTED

I acknowledge that court fees will be payable during these proceedings. These fees may include a hearing allocation fee/

Signature	
Capacity	[eg authorised office, role of party]
Date of signature	

REGISTRY ADDRESS

Street address	
Postal address	
Telephone	

[on separate page]

#PARTY DETAILS

[Include only if more than two plaintiffs and/or more than two defendants.]

PARTIES TO THE PROCEEDINGS

Plaintiff[s]	Defendant[s]
[name] [role of party eg first plaintiff]	[name] [role of party eg first defendant]
[repeat as required for each additional plaintiff]	[repeat as required for each additional defendant]

FURTHER DETAILS ABOUT PLAINTIFF[S]**[First] plaintiff**

Name			
Address [The filing party must give the party's address.]	#[unit/level number]		#[building name]
	[street number]	[street name]	[street type]
	[suburb/city]	[state/territory]	[postcode]
	#[country (if not Australia)]		
#Frequent user identifier	[include if the plaintiff is a registered frequent user]		

[repeat the above information as required for the second and each additional plaintiff]

#Legal representative for plaintiff[s]

Name	[name of solicitor on record]		
Practising certificate number			
Firm	[name of firm]		
#Contact solicitor	[include name of contact solicitor if different to solicitor on record]		
Address	#[unit/level number]		#[building name]
	[street number]	[street name]	[street type]
	[suburb/city]	[state/territory]	[postcode]
DX address			
Telephone			
Fax			
Email			
Electronic service address	[#email address for electronic service eg service@emailaddress.com.au #Not applicable]		

Contact details for plaintiff[s] acting in person or by authorised officer

#Name of authorised officer	
#Capacity to act for plaintiff[s]	

Address for service [The filing party must give an address for service. This must be an address in NSW unless the exceptions listed in UCPR 4.5(3) apply. State “as above” if the filing party’s address for service is the same as the filing party’s address stated above.]	#as above #[unit/level number] [street number] [suburb/city]	#[building name] [street name] [state/territory]	[street type] [postcode]
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#Telephone	
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#Fax	
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#Email	
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DETAILS ABOUT DEFENDANT[S]

[First] defendant

Name			
Address	#[unit/level number]		#[building name]
	[street number]	[street name]	[street type]
	[suburb/city]	[state/territory]	[postcode]
	#[country (if not Australia)]		

[repeat the above information as required for the second and each additional defendant]

Annexure B

Usual Orders for Hearing

1. No later than 10 working days before the hearing date the Plaintiff shall:
 - (a) deliver to the List Judge's Associate the originals of any affidavits to be filed at the hearing;
 - (b) serve on the Defendant, and deliver to the List Judge's Associate, a list of affidavits to be read, an outline of submissions, a list of authorities and a list of any objections to the Defendant's evidence.
2. No later than 5 working days before the hearing date the Defendant shall:
 - (a) deliver to the List Judge's Associate the originals of any affidavits to be filed at the hearing;
 - (b) serve on the Plaintiff, and deliver to the List Judge's Associate, a list of affidavits to be read, an outline of submissions, a list of authorities and a list of any objections to the Plaintiffs evidence.
3. No later than 2 working days before the hearing date the Plaintiff shall serve on the Defendant, and deliver to the List Judge's Associate, any written reply.
4. Each party has liberty to apply in online court.