

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**TREASURY**

**Australian Taxation Office**

Additional Budget Estimates 20 February 2008

**Question**                    **AET 63**  
**Topic:**                      **Filing of a statement of facts, estimates and contentions-will the Tax Office be changing its policy?**  
**Hansard Page:**            **E31**

**Senator Watson asked**

**Senator WATSON**—I have a series of questions moving across. I refer to the first GST case to be heard in the federal court dealing with anti-avoidance provisions. You might recall that Justice Giles threw out the McDonalds's claim. But there were comments from Justice Giles which have been taken up by some lawyers. This refers in particular to the situation of the need for the tax commissioner to file a statement of facts, estimates and contentions before a taxpayer files his evidence. The problem is that the tax office has been accused that these statements are often less than thorough statements. My question is: given what happened there will the tax office be changing its policy? Will it, for example, be providing more comprehensive statements?

*Mr D'Ascenzo*—*I thought that the court had changed its approach to that, but I am not certain about that. I knew that there were representations—*

**Senator WATSON**—The court threw out the McDonalds's case—

*Mr D'Ascenzo*—*No, in relation to who had to put in those statements first. I think there certainly were representations made to the court to have the taxpayer do that rather than the commissioner, but I am not sure what the outcome of that was.*

**Senator WATSON**—So what is the position, does the tax office have to file a statement of facts, estimates and contentions?

**Mr D'Ascenzo**—We do, but I think there were orders by the court that changed it to make the commissioner do that first, and then there was representation to the—

**CHAIR**—Would you like to take that on notice?

*Mr D'Ascenzo*—*It might be a good idea to take that on notice.*

**Answer**

The Tax Office does not propose to change its policy in relation to appeal statements, (formerly know as a statement of facts, issues and contentions). The policy remains that an appeal statement is not a pleading but is a document that has the practical purpose of giving a clear and succinct statement of the Tax Office's position reflective of the fact that the burden of proof in relation to the question of whether an assessment is excessive is not on the Tax Office but the taxpayer.