

Interpreting Taxing Statutes # 67 - Exhaustive, inclusive and exclusive definitions

An exhaustive definition sets out a comprehensive description of everything covered by the defined term and displaces any meaning that the term would otherwise have.¹

An inclusive definition modifies the natural meaning of the defined term by enlarging it or clarifying potential doubt about what is covered.²

An exclusive definition modifies the natural meaning of the defined term by narrowing it or clarifying potential doubt about what is excluded.³

SYNOPSIS

Exhaustive definition

Inclusive definition

Exclusive definition

Means and includes

Exhaustive definition

An exhaustive definition provides a comprehensive statement of everything that is covered by the defined term and displaces its natural meaning. It may be contrasted with inclusive and exclusive definitions which specify matters that are, or are not, to be treated as caught by the defined term, but otherwise leave the natural meaning of the term intact. This is not to say that an exhaustive definition will be construed wholly without regard to the natural meaning of the term.⁴

¹ Bennion 2020 s 18.2

² Bennion 2020 s 18.3

³ Bennion 2020 s 18.3

⁴ Bennion 2020 p 576

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An exhaustive definition typically takes the form ‘X means...’ although other forms of expression are equally effective. For example, the court construed the words ‘two employees are to be treated as associated if ...’ as introducing an exhaustive definition.<sup>5</sup>

### **Inclusive and exclusive definition**

An inclusive definition is used to enlarge the meaning of the defined term to cover things that are not or might not otherwise be caught. It does not normally affect the width of the term being enlarged. The term as used in the Act has its natural meaning (which is left undefined) and addition has the special meaning given to it by the inclusive definition.

Exclusive definitions work in a similar way in the sense that the starting point is that the term is to be given its natural meaning subject to the matters excluded by the definition.

Inclusive and exclusive definitions are often adopted where the core meaning of a term is sufficiently clear to mean that it does not need definition but there is some doubt around the edges. For example, ‘animal’ may be defined so as to include or exclude birds or fish. This kind of definition can sometimes puzzle those unfamiliar with legislation since it only addresses the marginal case: this is, of course, deliberate since the core meaning of the word does not need defining.

Another way in which an inclusive definition is used is to define a term so as to include a related concept that the provision in question treats in the same way as the main case. This technique is used in order to make drafting of the provision easier to read, and is perhaps best suited to situations where the related concept

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<sup>5</sup> Merton London Borough Council v Gardiner (1981) QB 269 cited in Bennion 2020 p 577

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arises much less frequently in practice than the main case. Examples include providing that ‘lease’ includes a licence or that ‘employment’ includes self-employment.

An inclusive definition typically takes the form ‘X includes ...’. The word ‘includes’:

‘... is used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such thing as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include’.⁶

Similarly,

‘An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there is nothing in the context or the subject matter to the contrary, to be applied to some things to which it would not ordinarily be applicable.’⁷

This reasoning holds good for a statutory definition that does not use the word ‘includes’ but uses some other form of expression to add to the natural meaning of a term without being exhaustive. For example, in relation to a definition of ‘settlement’ in the Finance Act 1936 of England s 21(9):

‘... the object of the subsection is, surely, to make it plain that ... the word “settlement” is to be enlarged to include other transactions which would not be regarded as “settlements” within the meaning which that word ordinarily bears’.⁸

⁶ *Dilworth v Commissioner of Stamps* (1899) AC 99 cited in Bennion 2020 p 578

⁷ *Robinson v Local Board of Barton-Eccles* (1883) 8 App Cas 798 cited in Bennion 2020 p 578

⁸ *Thomas v Marshall (Inspector of Taxes)* (1953) AC 543 cited in Bennion 2020 p 578

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An exclusive definition typically takes the form ‘X does not include ...’, although again alternative forms are also used as illustrated by the following passage:

‘... In our case the technique that the drafter used was that “X does not constitute Y” unless two conditions are satisfied. Simply as a matter of propositional logic “Not X unless Y” is not equivalent to “If y then X”. [Counsel] illustrated this by a syllogism. A flag is not a Union Jack unless it is red, white and blue. But it does not follow that if a flag is red, white and blue it is the Union Jack. The result of propositional logic has added force where the drafter has not used algebraic symbols but words ...’<sup>9</sup>

### **Means and includes**

There are some examples of statutory definitions that provide for a term to mean one thing and include another. For example, the Railways Act 1993 of England s 83(1) defines ‘rolling stock’ to mean ‘any carriage, wagon or other vehicle used on track and includes a locomotive’. The core meaning of a term is defined and at the same time the term is expanded to cover something that would not normally be covered.<sup>10</sup>

As a matter of language this device is problematic: if a term means one thing it cannot include something else. The more usual course is simply to use ‘means’, which achieves the same result. Using the example above to illustrate the point, the definition could be rewritten to provide that ‘rolling stock’ means ‘any locomotive, carriage, wagon or other vehicle used on track’.

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<sup>9</sup> R (Sisangia) v Director of Legal Aid Casework (2016) EWCA Civ 24 cited in Bennion 2020 p 578

<sup>10</sup> Begg v Comr. of Inland Revenue (2009) 3 NZLR 353 cited in Bennion 2020 p 579