

Interpreting Taxing Statutes # 73 – Construction as a whole

An Act or other legislative instrument is to be read as a whole, so that an enactment within it is not treated as standing alone but is interpreted in its context as part of the instrument.¹

SYNOPSIS

It is well established that an Act or other instrument must be read as a whole. There is ‘universally acknowledged need to construe a statute as a whole’.² Reading an Act as a whole may reveal that a proposition in one part of the Act sheds light on the meaning of provisions elsewhere in the Act. The legislature is assumed to use language carefully with a view to producing a consistent and coherent legislative scheme. Said as follows:

‘... one assumes that in drafting one clause of a Bill the draftsman had in mind the language and substance of the other clauses, and attributes to Parliament a comprehension of the whole Act.’³

Conflicting propositions

Construction as a whole may not be sufficient where there is a plain contradiction. Where two enactments within an Act or other instrument appear to conflict, it may be necessary to treat one as modifying the other. And where there is a conflict between two sections in the same Act:

‘You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and

¹ Bennion 2020 s 21.1

² Customs and Excise Commissioners v Zielinski Baker & Partners Ltd [2004] UKHL 7 cited in Bennion 2020 p 629

³ IRC v Hinchy (1960) AC 748 cited in Bennion 2020 p 629

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which the subordinate provision, and which must give way to the other.’<sup>4</sup>

It was at one time suggested that where there is an irreconcilable inconsistency between two provisions in the same Act, the one nearest to the end must prevail. But the court said that if such a rule had ever existed, it was long since obsolete:

‘Such a mechanical approach ... is altogether out of step with the modern, purposive, approach to the interpretation of statutes and documents ... It is high time to put an end to any lingering doubts about this so-called rule of last resort: there is no such rule.’<sup>5</sup>

### Consolidation Acts

When applying the principle that an Act must be construed as a whole to a consolidation Act, note that a consolidation Act may combine the work of different drafters produced at different time. It is notorious that tax consolidations in particular suffer from the resultant defects. Said as follows:

‘But where quite incongruous provisions are lumped together and it is impossible to suppose that anyone, draftsman or Parliament, even considered one of these sections in light of another, I think it would be just as misleading to base conclusions on the different language of different sections as it is to base conclusions on the different language of different sections in different Acts.’<sup>6</sup>

However, after referring to ‘the rag-bag nature’ of a consolidation Act, the court said:

‘The fact that the Act is not by any means entirely consistent is not ... a reason for the courts to abandon their usual approach to

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<sup>4</sup> Institute of Patent Agents v Lockwood (1894) AC 347 cited in Bennion 2020 p 630

<sup>5</sup> Marr (a bankrupt), Re (1990) 2 All ER 880 cited in Bennion 2020 p 630

<sup>6</sup> In IRC v Hinchy (1960) AC 748 cited in Bennion 2020 p 630

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interpretation and to construe its provisions in isolation, as if they had no bearing on one another'.⁷

A drafter of a consolidation Act will aim to use language consistently although there are occasions when consistency may not be achieved.⁸

⁷ R v J (2004) UKHL 42 cited in Bennion 2020 p 630

⁸ Bennion 2020 p 630

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