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## **Interpreting Taxing Statutes # 100 – *Expressio unius* principle and other reason of expression**

**There is no room for the application of the *expressio unius* principle where some reason other than the intention to exclude certain things exists for mentioning some but not others. [Ben 23.13]**

### **SYNOPSIS**

The fact that some things within a class are mentioned expressly while others are not may be attributable to any number of reasons. Like all linguistic canons of construction, the *expressio unius* principle is a useful starting point rather than an absolute rule and it may be displaced in cases where some other reason can be found for why some things were mentioned but not others.

If it appears that particular items were singled out for mention merely as examples, there is no room for the *expressio unius* principle to apply. But the fact that unstated items are not excluded by the principle does not, of course, mean that they are necessarily included. As Lord Diplock said in *Prestcold (Central) Ltd v Minister of Labour*: [(1969) 1 WLR 89]

‘I have already pointed out ... that the rule of construction “*expressio unius exclusio alterius*” is not appropriate where that which is expressed is introduced by a phrase such as “such as.” And that applies whether the draftsmanship is legal or non-legal. But before you include in the expression introduced by “such as” an activity which is not expressly described you must discover from the context in which the expression appears what are the relevant common characteristics of the activities expressly described, and then decide whether the undescribed activity shares those characteristics.’

### ***Abundance of caution***

An item may have been singled out for mention out of an abundance of caution, perhaps under pressure from persons with a vested interest. Its mention then has little significance in relation to items not mentioned.

### ***Other explanations***

There is no room for the application of the *expressio unius* principle where there was some other reason for singling out the item in question for expression.

### ***Excluded item new***

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If an item which on the application of the *expressio unius* principle would be excluded is of a class which came into existence only after the passing of the enactment, it is probably right to disregard the principle as an aid to construction.

### ***Mistakes***

With older Acts that were not drafted with the same precision by professional drafters, inconsistency is particularly likely to creep in.

‘The exclusio is often the result of inadvertence or accident and the maxim ought not to be applied where its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.’  
[*Colquhoun v Brooks* (1887) 19 QBD 400]

### ***Different drafters, different views***

It is also worth bearing in mind that different drafters take different views about how much to spell out and how much to leave to implication. So the fact that one Act specifies something and another is silent does not necessarily indicate that a difference in meaning was intended. Even within the same Act different provisions may have been drafted by different drafters.

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