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## **Interpreting Taxing Statutes # 103 – Admissibility and public availability of external aids**

The rules as to the admissibility of external aids to construction vary according to the nature of the material and the purpose for which it is sought to be used. An overarching principle running through the case law is that material ought not to be admitted as an aid to construction unless it is publicly available. Where there is a doubt as to the admissibility of an external aid to construction the court may allow it to be cited pending a decision on admissibility. [Ben 24.2]

### SYNOPSIS

The starting point is that the court should admit all publicly available material that it considers likely to be relevant and reliable, so long as doing so is consistent with those rules.

A judge in interpreting a statute is able to take judicial notice of much information relating to the legal, economic and other aspects of society in which it operates. Provided the court thought that the information was relevant and reliable, there do not seem to be any specific limitations on the information to which the court might refer under [this] heading’.

### ***Importance of material being publicly available***

Material ought not to be admitted as an aid to construction unless it is publicly available. For example, to admit material such as internal briefings produced by government departments for ministers would offend against basic principles of legal certainty and accessibility inherent in the rule of law. The courts have been on their guard to keep out material that is not generally accessible to members of the public and their advisers. R (on the application

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of public and Commercial Services Union) v Minister for the  
Civil Service: [(2011) 3 All ER 54]

‘An Act of Parliament creates law applicable to all citizens. In my judgment, it is fundamental that all materials which are relevant to the proper interpretation of such an instrument should be available to any person who wishes to inform himself about the meaning of that law. That is not the position in relation to notes on clauses and for that reason I do not consider they are a legitimate aid to construction of an Act of Parliament.’

***Admission of material de bene esse***

A judge who is doubtful of the admissibility of material may allow it to be cited de bene esse. To take or do a thing de bene esse, is to accept or allow it as well done for the present; but when it comes to be more fully examined or tried, to stand or fall according to the merit of the thing in its own nature.

R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd. [(2001) 2 AC 349] Having expressed hope that counsel would be sparing in their references to reports of legislative debates he went on:

‘As Lord Cooke points out in his speech, this does not mean that the courts will shut out, and not even look at, parliamentary material which one party reasonably contends supports his interpretation of ambiguous legislation. Rather, the courts will consider the material to see whether counsel’s contention is well-founded. If the parliamentary statements relied upon are not clear, they are of little or no value and cannot qualify as an external aid in the particular case.’