

## **Interpreting Taxing Statute # 23 – Interpretive criteria**

**Interpretive criteria are the body of common law principles and statutory rules that guides in deciphering the legislative intention.<sup>^1</sup>**

### SYNOPSIS

Legal meaning and text

Interpretive criteria

Interpretive factor

### **Legal meaning and text**

The legal meaning of enactment is the meaning that the conveys the legislative intention. The legislative intention is the meaning attributed to the legislature in respect of the words used. So, the interpreter's objective, when interpreting an enactment, is to the determine the true meaning of words used by the legislature.<sup>^2</sup>

The interpreter must focus on the legislative text - that is to say, on the words used by the legislature - and should view the guides to legislative intention (interpretive criteria) as aids to determining the meaning intended by those words. As summed up in an English case:

“It is the general principal of legal instrument that the text is the primary source of interpretation: others source are subordinate to it.”<sup>^3</sup>

### **Interpretive criteria**

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<sup>1</sup> Bennion 2020 s 11.1

<sup>2</sup> Bennion 2020 p 389

<sup>3</sup> R v A (No 2) [2001] UK HL25 cited in Bennion 2020 p 390

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Certain guide to understanding statutes are provided by law. These mainly consists of the rules, principles, presumptions and canon of construction which, over the centuries, the court have developed. In addition, but to relatively unimportant extent, certain rules of construction may be found in the Interpretation Acts and in other enactments. The interpretative criteria<sup>4</sup>, or the guide to legislative intention, a collective term by which reference to such judicial and statutory rules is made.<sup>5</sup>

Whilst most general legal rule or principles directly govern the action of the citizen, these are different in that they directly govern the action of the court. There is, however, an indirect effect on the citizens. Since the court is to apply an enactment in accordance with the interpretative criteria, people governed by the enactment need to read it in that light. <sup>6</sup>

Except when they are statutory, the interpretive criteria laid down or adopted by the courts may be regarded as part of the common law. As brilliantly summed up in the 16<sup>th</sup> century:

“Judges and sages of the law have always expounded general statutes according to the rule of the common law, which is built on the perfection of reason, and not according to any private or sudden conceit or opinion.”<sup>7</sup>

Occasionally, the legislature steps in to lay down general interpretative criteria. This is primarily for the purpose of shortening the language of Acts.

### **Interpretative factor**

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<sup>4</sup> Used by Bennion

<sup>5</sup> Bennion 2020 p 390

<sup>6</sup> Bennion 2020 p 391

<sup>7</sup> Harbert’s case (1584) 3 Co Rep 13b cited in Bennion 2020 p 391

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The term interpretative factor denotes a specific legal consideration which derives from the way a general interpretative criterion applies to an enactment and the fact of the instant case; and serve as the guide to the construction of an enactment in its application to those facts.<sup>8</sup>

For example, the requirement to read the text of an enactment in its context is general. When considering the context of an enactment, particular aspect of that context may give rise to one or more interpretative factor. <sup>9</sup>

A particular interpretive factor may tend in favor of or against one of the opposing constructions of the enactment. The factor is then sometimes described as positive or negative in relation to that construction. <sup>10</sup>

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<sup>8</sup> Bennion 2020 p 392

<sup>9</sup> Bennion 2020 p 392

<sup>10</sup> Bennion 2020 p 392