

Interpreting Taxing Statutes # 59 - Incorporation by reference

Acts may incorporate earlier statutory provisions by reference. Such incorporated reference may be **ambulatory**, in the sense of incorporating later amendments to the referred legislation, or **static** such that the referred legislation is imported in the form as it was on the date of incorporation.¹

SYNOPSIS

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It is fairly common for an Act to apply earlier legislation to a new context, as opposed to setting out the relevant text in full. This drafting device is particularly useful where a large body of existing legislation needs to be applied for the purposes of a temporary or marginal case.

Advantages: Incorporation by reference has the benefit of brevity and can help to promote consistency across the statute book. It may also help to make it clear that the Act is applying an existing and well understood regime (perhaps with modifications) to the new case.

Disadvantages: But these advantages may come at a considerable cost in terms of clarity and accessibility. Anyone who wants to understand the legislation needs to look at both Acts together, taking account of any modifications. Moreover, the complexity involved in this exercise increases the chances that the drafter will have missed something. Incorporation by

¹ Bennion 2020 s 17.9

reference not infrequently gives rise to difficult question of construction that have not been anticipated.

Definition: Another common use of the technique is in relation to definitions (eg 'X has the meaning given by s 10 of [name of the Act]').

Ambulatory: Where provisions are incorporated by reference questions may arise as to whether the reference is intended to be ambulatory in the sense of incorporating later amendments.

Static: Incorporation by reference is occasionally used where the intention is to replace a whole body of law, statutory or not, and to import it in its state when incorporated. Unless the contrary intention appears, the body of law as imported needs to be interpreted as if it had remained unaltered since it was imported. Difficult questions can sometimes arise as to whether the intention is to 'freeze' the body of law so as to preclude subsequent development by the courts.