

~~~~~ **Interpreting Taxing Statutes # 51 – Preamble and recitals**

Where an Act includes a preamble stating its purpose or reciting the mischief that it is intended to remedy, the preamble may be used as an aid to construction but cannot of itself override the clear provisions of the statute.^{^1}

Recitals are a feature of some early Acts and may be used as a guide to legislative intention. They have the same function as a preamble but are confined to a single section or other unit of text.^{^2}

SYNOPSIS

Preamble

- A key
- Similarities between long title and preamble
- Rebuttable
- Part of Act

Recital

A key: Preambles are included in very few modern Acts. They are never included in Acts of the devolved legislatures. A sixteenth century judge remarked:

‘Preamble is a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress’.^{^3}

Another judge of recent years said:

‘It is an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow’.^{^4}

¹ Bennion 2020 s 16.4

² Bennion 2020 s 16.5

³ Stowel v Lord Zouch (1569) 1 Plowd 353 cited in Bennion 2020 p

⁴ Olivier v Buttigieg [1967] 1 AC 115 cited in Bennion 2020 p

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**Similarities between long title and preamble:** There are similarities between long titles and preambles as guides to legislative intention. Where a preamble is included, it may be used as a guide to legislative intention. But the courts are unlikely to allow a preamble to override inconsistent operative provisions. The modern position was summarized as follows:

‘The preamble to a statute cannot override the clear provisions of the statute. But it is legitimate to have regard to it when seeking to interpret those provisions ... and any interpretation which conflicts with the preamble must be suspect’.<sup>5</sup>

**Rebuttable:** The recital of facts in the preamble to an Act does not amount to conclusive proof that the facts are true, but constitutes prima facie evidence of them.<sup>6</sup> Further evidence in rebuttal is then admissible.<sup>7</sup>

**Part of Act:** Despite similarities between long title and preambles as an aid to construction, judges have never doubted that a preamble is part of the Act.<sup>8</sup>

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<sup>5</sup> *Matthew v State of Trinidad and Tobago* (2004) UKPC 33 cited in Bennion 2020 p

<sup>6</sup> *R v Sutton* (1816) 4 M & S 532 cited in Bennion 2020 p

<sup>7</sup> *Deputy Federal Comr of Taxation (NSW) v WR Moran Pty Ltd* (1939) 61 CLR 735 cited in Bennion 2020 p

<sup>8</sup> *West Ham Overseers v Iles* (1883) 8 App Cas 386 cited in Bennion 2020 p