

## ~~~~~ **Interpreting Taxing Statutes # 58 - Deeming provisions (legal fiction or statutory hypotheses)**

The intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further. The formula used to set up such a hypothesis are: 'shall be deemed', 'treated as', 'regarded as', or 'taken to be'.<sup>1</sup>

### SYNOPSIS

Statutory hypothesis

### **Statutory hypothesis**

Acts often deem things to be what they are not or deem something to be the case when it may or may not be the case. A common use of statutory hypotheses is to deal with questions of valuation, for example in contexts such as of taxation, compulsory purchase or rating or the granting of a hypothetical tenancy.

The language used to set up a statutory hypothesis varies. The traditional form of words 'shall be deemed' has generally given way to expressions such as 'treated as', 'regarded as' or 'taken to be'. Whatever form is used the effect is the same. Eg, CGST 19(6):

‘Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall **be deemed** that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.’

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<sup>1</sup> Bennion 2020 s 17.8

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So, the fact is that the capital goods have not been returned by the job worker taken by him 3 years ago but using the legal fiction the liability is fixed on the supplier not from even the current date but from the time of sending of capital goods by the supplier to the job worker.

Although a useful drafting device, deeming can be problematic because ‘it is always difficult to foresee all the possible consequences of the artificial state of affairs that the deeming brings into being’.<sup>2</sup> Where an Act is silent as to the limits to the operation of a deeming provision, the interpreter is left to grapple with the consequences.

In determining the precise scope of a deeming provision the court must, as with any other question of construction, attempt to discover the legislative intention from the words used and the other relevant interpretative criteria.

The intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further.<sup>3</sup>

For approaching a deeming provision the court said:

‘For my part I take the correct approach in construing a deeming provision to be to give the words used their ordinary and natural meaning, consistent so far as possible with the policy of the Act and the purposes of the provisions so far as such policy and purposes can be ascertained; but if such construction would lead to injustice or absurdity, the application of the statutory fiction should be limited to the extent needed to avoid such injustice or absurdity, unless such application would clearly be within the purposes of the fiction. I further bear in mind that because one

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<sup>2</sup> Murphy v Ingram (Inspector of Taxes) [1974] Ch 363 cited in Bennion 2020 p 562

<sup>3</sup> Bennion 2020 p 562

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must treat as real that which is only deemed to be so, one must treat as real the consequences and incidents inevitably flowing from or accompanying that deemed state of affairs, unless prohibited from doing so.’

The imaginary state of affairs envisaged by a deeming provision should not be taken further than is necessary.<sup>4</sup>

Where a statutory hypothesis inevitably entails a particular consequence, it will, however, be necessary to taken that consequence into account.<sup>5</sup>

The artificiality inherent in a deeming provision means that courts may be more prepared to give the words a strained construction, although that is not to say that the usual principles of statutory construction cease to apply.<sup>6</sup>

A deeming provision contained in one enactment may affect the construction of a later enactment.<sup>7</sup>

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<sup>4</sup> Bennion 2020 p 563

<sup>5</sup> Bennion 2020 p 563

<sup>6</sup> Bennion 2020 p 564

<sup>7</sup> Bennion 2020 p 564

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