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## **Interpreting Taxing Statutes # 36 – Purposive construction applicable to onerous enactment**

**The principles of purposive constructions apply to all kinds of Acts, including taxing Acts and other onerous enactments. In particular the court is not precluded from giving the words of an onerous enactment a strained construction where this is required in order to give effect to the legislative purpose.<sup>^1</sup>**

### **SYNOPSIS**

Purposive construction for taxing enactment

Other onerous enactments

### **Purposive construction of taxing enactment**

In the past, judges sometimes said that the certain types of Act, for example taxing Acts, were to be construed literally or strictly (and were accordingly not to be given a purposive construction). Such dicta are contrary to principle and cannot be relied on today. The true principle applying to taxing Acts and other onerous enactments is that persons should not be subjected to a detriment on the authority of a doubtful law and the paramount principle of construction is of course that the legislative intention should be implemented.<sup>^2</sup>

As long ago at the end of nineteenth century an English court said as follows:

“I see no reason why any special canons of constructions should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the court is, in my

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<sup>1</sup> Bennion 2020 s 12.4

<sup>2</sup> Bennion 2020 p 446

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opinion, in all cases the same, whether the Act to be construed relates to taxing of any other subject, viz to give effect to the intension of the legislature”³

However, the idea that taxing Acts were to be construed literally remained prevalent until relatively recently. Said as follows:

“During the last 30 years there has been a shift away from literalist to purposive methods of construction. Where there is no obvious meaning of statutory provision the modern emphasis is on a contextual approach designed to identify the purpose of a statute and give effect to it. But under the influence of the narrow Duke of Westminster doctrine⁴ tax law remained remarkably resistant to the new non-formalist method of interpretation. It was said that the taxpayer entitled to stand on a literal construction of words used regardless of the purpose of the statute. Tax law was by the large left behind of some island to literal interpretation. The intellectual breakthrough came in 1981 in the Ramsay case Lord Wilberforce restated the principle of statutory constructions that a subject is only to be taxed upon clear words.⁵ To the questions ‘what are clear words?’ he gave the answer that the court is not confined to a literal interpretation. He added ‘There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded.’ This sentence was the critical. It marked the rejection by the House of pure literalism in the interpretation of tax statutes.”⁶

Other onerous enactments

³ Attorney General v Carlton Bank (1899) 2 QB 158 cited in Bennion 2020 p 446

⁴ (1936) AC 1

⁵ (1982) AC 300

⁶ Inland Revenue Commissioners v McGuckian (1997) 1 WLR 991 cited in Bennion 2020 p 446

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The principle that the courts should have regard to the purpose of an enactment applies equally to the other onerous enactments. Said as follows:

“There is no rule or principle to the effect that the courts will avoid a purposive construction on account only of the fact that the statute in questions touches the criminal law.” ^7

So, purposive construction is nothing but a strained construction of the enactment arrived at by reference to its purpose.^8

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<sup>7</sup> R (Kelly) v Secretary of State for Justice, Re Gibson (2008) EWCA Civ 177 cited in Bennion 2020 p 447

<sup>8</sup> Bennion 2020 p 447