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## **Interpreting Taxing Statutes # 112 – Drafting guidance and views of those involved in preparation of legislation**

**Views expressed by the drafter and others in private while preparing legislation are not admissible as an aid to construction. But it may be appropriate in certain circumstances to have regard to views expressed in public by a drafter or other officials if they form part of the material available to the legislature at the time the legislation is enacted. [Ben 24.10]**

### SYNOPSIS

When trying to work out the meaning of words used in an Act, views of drafters and other officials involved in the preparation of legislation may seem like an obvious source of information. But correspondence and internal government documents relating to the effect that officials or even ministers thought they were producing when preparing a Bill are wholly irrelevant when it comes to determining the legal meaning of the eventual Act. What is relevant is the notional intention of the legislature not the intention of those who prepared the Act. Moreover, the need for legal certainty demands that only information in the public domain should be available as an aid to construction

#### ***Evidence after the event of government policy at time an Act was being prepared***

It is also doubtful whether it would be right to place any particular reliance on evidence generated after an Act is passed of what the departmental policy was at the time at which it was being prepared.

#### ***Commentaries written by drafters and other involved in preparation of legislation***

There is no reason why a commentary written by the drafter of an Act or others involved in the development or formulation of policy should not be taken into account by the courts in the same way as any other commentary.

From time to time the courts have suggested that opinions expressed in a commentary by a person closely involved in the formation of an Act deserve particular weight. The better view is that while a commentary by someone involved in the preparation of legislation may provide a valuable insight, it should be given no greater weight than the cogency of the material deserves.

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It is important not to confuse the drafter's personal or professional views as to the meaning or intended meaning of a provision with legislative intent. As Lord Halsbury LC cautioned in *Hilder v Dexter*: [(1902) AC 474]

‘I have more than once had occasion to say that in construing a statute I believe the worst person to construe it is the person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which in fact has been employed. At the time he drafted the statute, at all events, he may have been under the impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was in his mind was what was intended, though, perhaps, it was not done.’

This is best viewed as meaning that a commentary written by a drafter has no intrinsic weight by virtue of having been written by the drafter. There is no reason why the opinion of a drafter should not be persuasive in the same way as opinions expressed in a commentary written by any other author. The persuasiveness will depend solely on the cogency of the argument.