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**ITS # 35 - Ascertaining the legislative purpose**

**A statement of purpose may be set out in the text of the Act. Alternatively, the Court may ascertain the legislative purpose by consideration of the provisions of the Act and any admissible external aids to construction. But where the court is unable to find out the purpose of an enactment, or is doubtful as to its purpose, the court may be reluctant to depart from the grammatical meaning.<sup>^1</sup>**

SYNOPSIS

Discernible purpose

Ascertaining the discernible purpose

Differing purposes

**Discernible purpose**

The legislature is taken to be a rational, reasonable and informed legislature pursuing a clear purpose in a coherent and principled manner. Said as follows:

“The court should assume that the provision had some purpose and Parliament did not legislate without a purpose. But the purpose must be discernible from the statute: the court must not infer one without a proper foundation for doing so.”<sup>^2</sup>

The purpose to be “discernible” from the statute does not mean that the court is limited to considering only the Act itself - any admissible external aid to construction is also available.<sup>^3</sup>

**Ascertaining the discernible purpose**

A court may look at the text of other parts of an Act, such as the long title or any preamble or recital, as an indication of the

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<sup>1</sup> Bennion 2020 s 12.3

<sup>2</sup> Astall v HMRC (2009) EWCA Civ 1010 cited in Bennion 2020 p 443

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purpose of the Act, considering its provisions, together with any admissible external aids to construction. In the absence of any supporting materials (whether in the Act or an admissible external aid to construction), the court may treat any assertion of purpose with scepticism. Said as follows:

“In my judgment, one must be somewhat cautious before accepting any assertion of purpose of an Act of Parliament not set out in any provision of the Act itself made by a party propounding a particular statutory interpretation. Of course, I make exceptions for assertion of purpose deducible by implication from the legislative scheme or clearly stated in some material which is admissible as an aid to interpretation. The reason for being cautious is that such assertions can be self-fulfilling or examples of what is sometimes called ‘confirmation bias’.”⁴

Differing purposes

It may be necessary to look at a number of different purposes, and consider how they interact with another. For example, an Act as a whole may have an overarching purpose, each part may have its own purpose, and the different provisions within a part are likely to have their own purposes. Discerning the exact purpose of a particular enactment is often more difficult than discerning the purpose of a whole Act. Exactness may be necessary if the point is to be decided correctly. If the purpose is unknown or doubtful, the court may be reluctant to depart from the grammatical meaning.⁵

³ HMRC v Trigg (2016) UKUT 165 cited in Bennion 2020 p 443

⁴ P & O Stream Navigation Company v HMRC (2016) EWCA Civ 468 cited in Bennion 2020 p 443

⁵ Bennion 2020 p 444