# interpretation NOW!

**Episode 5 – 16 October 2015**

Australian Government
Australian Taxation Office

One theme from Episode 2 is reflected in a recent paper from Helen Symon QC[1] – *'One's best guide is always the text of the provision in question. One cannot return to the text often enough, asking "What does the section say?" One may travel through context, purpose, extrinsic materials or legislative history. However, it is always necessary to return from one's travels to the section. What light do these travels cast on what the section says?'* In other words, begin and end with the text. We leave you this month with the High Court quoting from a 1941 US case as follows[2] – legislation *'must not be read in a spirit of mutilating narrowness'*. Please enjoy!

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## Composite expressions

### *Sea Shepherd v FCT* [2013] FCAFC 68

Composite expressions must be read as a whole, not pulled apart word-by-word against a dictionary then re-assembled out of context. Gordon J (at [35]) cautioned against this kind of 'atomised analysis' in remarks which were later drawn to attention in her swearing in as a High Court judge[3].

The point about composite expressions is not novel[4] but it is increasingly emphasised by judges[5]. Tax laws are full of composite expressions - 'supply for consideration' in the GST law, for example[6]. **iTip** – dictionaries alone rarely resolve contested interpretation issues, but they are even more a false idol when it comes to composite expressions.

## Adding words

### *Taylor v Owners Strata Plan* [2014] HCA 9

Reading words into statutes used to be right up there next to heresy[7]. With the movement to purposive interpretation, however, things began to change – first in the UK[8], then later here[9].

The High Court in *Taylor* (at [35-40]) confirms that words *can* be read into statutes, but only where – (A) the provisions themselves disclose the mischief aimed at, (B) it is clear that parliament overlooked the mischief, and (C) you can say with real certainty what words would have been added by parliament had attention been drawn to the oversight. **iTip** – this technique properly applies only for 'simple, grammatical, drafting errors'.

## Status of notes

### *Director v Adams* [2015] FCA 828

For general purposes, notes are now part of the Act[10], as this case reminds us (at [30-31]). Notes in tax legislation, however, may be subject to special rules[11]. They are part of the Act, but do not have the status of 'explanatory sections' or 'guides'. This begs the question – just what *can* notes in tax laws be used for? The answer is a little less than ideal.

Notes cannot be disregarded but, equally, cannot control the text. They are something less than 'explanatory sections' or 'guides', but may still function as some sort of interpretive aid. **iTip** – always consider the notes, but don't let them dominate your thinking on what a provision means.

## Refresher course

### *GHP 104 160 689 v FCT* [2014] AATA 515

***iNOW!*** has now covered a range of important interpretation themes. This little R&D case on 'feedstock expenditure' conveniently discusses several of them (at [166]) – importance of the text; the Act as a whole; context and purpose; policy issues (especially preconceived policy); composite expressions (see above); and statutory definitions.

A good way to refresh your understanding of things dealt with in previous episodes is to read relevant bits from this case – simply click on the link. **iTip** – to learn more, read further into the case to see how these principles played out in a practical tax setting.


- Writer – Gordon Brysland, Producer – Michelle Janczarski.
- Thanks to Ivica Bolonja, Jonathon Shaw, Peter Hoctor & Jo Stewart.


[1] Symon QC [2015] TIA Litigation Masterclass paper (at [51]).
[2] *Residual* [2000] HCA 33 (at [28]), *Hutcheson* (1941) 312 US 219 (at 235).
[3] *Ceremonial Swearing in of Gordon J* [2015] HCATrans 140.
[4] *Lorimer* (1911) 12 CLR 504 (at 508), *Biga* (1991) 21 ATR 1459 (at 1468).
[5] *XYZ v Commonwealth* [2006] HCA 25 (at [19]).
[6] Hmelnitsky SC [2015] TIA GST Intensive paper (at 7 [28]).
[7] *Marshall* (1972) 124 CLR 640 (at 649), Pearce & Geddes (at [2.32]).
[8] *Wentworth* [1980] AC 74 (at 105), *Inco Europe* [2000] 1 WLR 586 (at 592).
[9] *Kingston* (1987) 11 NSWLR 404 (at 422), *R v PLV* (2001) 51 NSWLR 736 (at 743-744).
[10] s 13 of the *Acts Interpretation Act 1901* was amended in 2011.
[11] Div 182 of the GST Act, Div 950 of ITAA97, for example.

**Episode 6 (the policy episode) – place of policy; generalised policy; preconceived policy; sources of policy**