

THE INTERPRETATION PROVISIONS IN THE NEW ZEALAND INCOME TAX ACT 1994

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Historically, courts have been unwilling to adopt a purposive approach to the interpretation of tax statutes. This reluctance extends to the application of section 5(j) of the Acts Interpretation Act 1924, which courts say has no general applicability to income tax legislation. In 1996, as part of a process of rewriting the Income Tax Act 1994, Parliament inserted a number of interpretation provisions into the Act. The goal that the drafters had in mind is not entirely clear, but the 1996 interpretation provisions appear to be calculated to require the courts to interpret the Act more purposively, meaning, in this context, to interpret the Act more in the light of the overall objective of levying tax. If that was indeed the goal, the 1996 provisions do not achieve it, nor is it possible to determine whether the provisions achieve other worthwhile goals. Indeed, the stipulation in section AA 3(1) that provisions of the Act should be interpreted "in [the] light of the purpose provisions, the core provisions, and the way in which the Act is organised" may in future be turned against the interests of the Crown in order to support otherwise unpersuasive arguments on behalf of taxpayers.

I THE REWRITE PROJECT

New Zealand began a project to rewrite the country's income tax legislation some years ago. The raw material was the Income Tax Act 1976, the most recent consolidation of the legislation. The New Zealand project has some parallels with similar tax law rewriting tasks of the 1990s in the United Kingdom and Australia.¹ The project is ambulatory, in the sense that as each stage is completed it is enacted, without waiting for the whole exercise to be finished.

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1 All three rewriting projects are discussed in E McAra (ed) *Proceedings: 1996 Tax Drafting Conference 1997* (New Zealand Inland Revenue Department, Wellington, 1997).

The rewrite began with the enactment of the Income Tax Act 1994. The 1994 Act reordered the 1976 legislation, but made no changes of substance. The objective was to adopt a proposed new, functional, organisational structure, to replace the former thematic or regime-based structure. This article considers the functional structure at some length. In short, "functional" means that provisions are organised according to form and function, according to what they do, rather than according to the regime to which they belong. Thus, for example, provisions that relate to deductions or to anti-avoidance measures, or to timing, are respectively gathered into parts of the Act that relate to those topics, whereas the more traditional thematic structure would place deductions, anti-avoidance rules and timing rules that relate to, say, forestry or insurance together with all the other rules that relate to forestry or insurance.

The 1994 Act was extensively amended in 1996, by step 2 of the rewrite process. Step 2 enacted Parts A and B of the Act, relating respectively to interpretation and to what are called the "core provisions", which will be discussed later in this article. The enactment of the core provisions entailed extensive consequential amendments throughout the rest of the Act, but generally speaking these 1996 amendments were formal rather than substantive.

One of the more important objectives of the rewrite project appears to be to affect the process of statutory interpretation as it applies to the Income Tax Act, at least to some extent. This article discusses and evaluates certain provisions in Part A of the Act that appear to be calculated to put that objective into effect and concludes that they are unlikely to succeed.

II INTERPRETATION OF PENAL AND REMEDIAL STATUTES

Historically, courts interpreted tax legislation as penal, and interpreted it restrictively. The judgments of New Zealand courts expressly hewed to a restrictive approach to revenue statutes until relatively recent times. For example, in *Plimmer v CIR*² Barrowclough CJ cited with approval the following passage from *IRC v Ross & Coulter (Blandoch Distillery Ltd)*:³ "If the provision is reasonably capable of two alternative meanings, the courts will prefer the meaning more preferable to the subject." In *Mangin v CIR*⁴ the Privy Council approvingly quoted from Rowlatt J in *Cape Brandy Syndicate v IRC*.⁵

2 [1958] NZLR 147, 151.

3 [1948] 1 All ER 616.

4 [1971] NZLR 591, 594.

5 [1921] 1 KB 64, 71

In what is possibly the most cited explanation of the restrictive approach to interpreting tax statutes in English jurisprudence, Rowlatt J said:⁶

[O]ne has merely to look at what was clearly said. There is no room for intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

For a long time, New Zealand's Parliament has tried to prevent courts from interpreting penal, tax, or any other statutes in a restrictive manner. Instead, by section 5(j) of the Acts Interpretation Act 1924, Parliament deemed all statutes to be "remedial", which meant that courts should interpret them according to the purposive approach ordained in *Heydon's* case.⁷ To make sure that there was no doubt, section 5(j) goes further, and directs that every Act shall:

receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act ... according to its true intent, meaning, and spirit.

III INTERPRETING TAX STATUTES

Section 5(j) deems all statutes to be remedial and lays down rules of interpretation that appear to be generally applicable. Nevertheless, in an apparent breach of the principle of Parliamentary sovereignty, the courts do not accord section 5(j) a status that is superior to judge-made rules of statutory interpretation. There is not a hierarchy of rules. Rather, courts treat the rules of statutory interpretation as a group of principles whose status is initially equal. In any individual case, a court gives primacy to the most appropriate principle. In statutory interpretation, the courts avoid hard and fast rules. The importance of any particular principle varies from case to case depending on the facts of the case and on the provision that is to be interpreted.

One result is that when it comes to interpreting tax legislation, section 5(j) has little effect on New Zealand courts. In *CIR v International Importing Ltd*⁸ Turner P, said that section 5(j) "is normally of little material assistance in the construction of revenue statutes". His Honour explained that the reason is that the object of a revenue statute is to collect tax, and surely it cannot be right that all tax statutes should be interpreted to, in the words of section 5(j), "ensure the attainment of [that] object".

As it happened, the *International Importing* case was not an instance of the court approaching the interpretation of the statute "normally", that is, as a normal taxing

6 Above n 5, 71.

7 *Heydon Case* (1584) 3 C Rep 7a; 76 ER 637.

8 [1972] NZLR 1095, 1096 (CA).

provision. The reason is that the case involved section 129B of the Land and Income Tax Act 1954, which was not a taxing provision but a section that conferred a benefit on exporters who increased their export sales from one year to the next. The preference took the form of a deduction calculated by reference to this increase.

Turner P held that section 5(j) is relevant in construing such provisions, because they manifestly do have a discernible purpose, a purpose that is "not fiscal but economic".⁹ In the case of section 129B this purpose was to encourage export sales and the earning of foreign currency. It followed that section 129B should be interpreted in the light of that purpose.

It is sometimes argued that Turner P's reasoning shows that in his Honour's view section 5(j) does in fact have some role in the interpretation of tax statutes. This argument is misleading. As Turner P explained, "[s]ection 129B is not a fiscal provision in the sense in which the cases on the construction of statutes use that term".¹⁰ There was no magic in section 129B's presence in a taxing statute. "Exactly the same purpose might have been achieved by an Export Encouragement Act granting a direct monetary subsidy to persons who increase their exports."¹¹ Section 5(j) has an obvious role in the interpretation of such an Act, but Turner P's judgment makes very clear his view that section 5(j) has little or no place in the construction of revenue legislation proper.

Rowlatt J's approach in the passage quoted earlier from *Cape Brandy Syndicate v IRC* appears to conflict with section 5(j) of the New Zealand Acts Interpretation Act. To mention one point of difference, consider the judge's reference to "equity about a tax". Here, the judge uses the word "equity" in its archaic meaning of "the equity of a statute". In this meaning, "equity" refers to the spirit or underlying meaning of the statute. Rowlatt J denies that a tax statute can have an "equity" or spirit. In contrast, section 5(j) directs the courts to identify the "true intent, meaning and spirit" of all Acts, and to interpret them in that light. Despite this conflict, the Privy Council cited Rowlatt J with approval in *Mangin v CIR*, as mentioned above.

Part of the explanation may be that although the principles of statutory interpretation are often called "rules" the courts treat them more as guidelines whose importance varies relative to one another depending on the facts and nature of the case. In declining to apply section 5(j), and in approving Rowlatt J's *mot*, Turner P in the *International Importing* case

9 Above n 8.

10 Above n 8, 1097.

11 Above n 8, 1096 – 1097.

and the Privy Council in *Mangin* were treating section 5(j) as if it had the same status as other "rules" of statutory interpretation.

People who are accustomed to the doctrine of the sovereignty of Parliament may find it curious that the courts treat section 5(j) of the Acts Interpretation Act as worthy of no more respect than the ordinary, judge-declared rules of statutory interpretation. These people, who include the present writer, may well argue that the conflict between Rowlatt J's "no equity about a tax" dictum and section 5(j) is not just apparent but real. Section 5(j) ordains that the courts must interpret all statutes according to their true intent, meaning, and spirit. The true intent, meaning, and spirit of tax legislation is clearly to raise tax. But the courts find this conclusion unappealing. Their response has been to decide that tax legislation simply has no true intent, meaning, or spirit, from which it follows that they can disregard section 5(j).

Courts do not explain their reasoning in these terms. But their actions speak for them. A good, recent, example is the judgment of the Court of Appeal in *CIR v Alcan New Zealand Ltd*,¹² delivered by McKay J. In a passage headed "The principles of interpretation"¹³ McKay J sets out and discusses the rules of statutory interpretation. One of them is section 5(j), which he quotes. For present purposes, two things are significant about McKay J's words. The first is that the court gives no special prominence to section 5(j). Secondly, it quotes section 5(j) only two or three paragraphs after quoting Rowlatt J in the *Cape Brandy Syndicate* case, without noting any conflict between the two.

The court makes no attempt to reconcile this conflict. If asked, no doubt judges would say that there is no true conflict: the answer simply depends on the facts and the rule in question in each case. Sometimes section 5(j) is the appropriate rule, sometimes Rowlatt J's approach is correct, and sometimes some other rule applies. All this may explain what courts *do*, but one may doubt whether it reflects the intention of Parliament that section 5(j) embodies.

IV MODERN DEVELOPMENTS IN THE INTERPRETATION OF TAX STATUTES

In fact, modern courts tend to draw back from the unequivocal import of Rowlatt J's words. In *CIR v Alcan New Zealand Ltd*,¹⁴ the Court of Appeal referred to the quotation

12 [1994] 3 NZLR 439.

13 Above n 12, 443 – 446.

14 [1994] 3 NZLR 439.

from *Cape Brandy Syndicate v IRC* and to the surrounding text in the judgment in *Mangin v CIR*. Speaking for the court, McKay J said:¹⁵

It would be a mistake to read this passage as putting revenue statutes in some different category from other legislation with their own peculiar rules of interpretation.

That is, according to McKay J, Rowlatt J's dictum should not be read literally. It is not a fundamental, over-arching rule that puts tax Acts into a category of their own. It is not *primus inter pares*, but one of a number of rules of similar significance to one another that each may help to interpret a taxing Act, depending on the circumstances. But, by the same token, despite its origin in Parliament, neither is section 5(j) *primus inter pares*.

Whether New Zealand courts, or some of them, continue to make the "mistake" that was identified by McKay J, of treating tax statutes differently from other legislation, is not something that can be demonstrated scientifically one way or the other. The difficulty is that legal reasoning in general and statutory interpretation in particular do not lend themselves to scientific analysis, nor even, beyond a certain point, to the rules of logic. Be that as it may, some generalisations about statutory interpretation are possible. Perhaps the most important is that in comparison with, say, United States courts, New Zealand courts adopt a relatively restrictive approach to statutory interpretation in general and to interpreting tax statutes in particular. Whether it is desirable to move to a more purposive approach is a matter for debate.

V CHANGES WROUGHT BY 1994 ACT

The preceding paragraphs try to offer a conspectus of the rules of statutory interpretation as they applied to taxing Acts in 1996. That is, they try to explain just what it is that the interpretation provisions of the 1994 Act, as amended in 1996, address about the way in which income tax legislation should be interpreted. Secondly, they try to shed light on the difficulty of the drafters' task by explaining something of the considerations that entrenched the traditional, non-purposive approach. In summary, the response of the drafters of the interpretation provisions that were inserted into the Act in 1996 appears to have been to oblige the courts to adopt a purposive approach in interpreting the Act, and to abandon restrictive construction.¹⁶ The remainder of this article attempts to evaluate the success of the 1996 drafting.

¹⁵ Above n 14, 448.

¹⁶ The writer derives this statement of the drafter's apparent objectives from an assessment of the apparent intent of the interpretation provisions rather than from any official statement of what it is that the drafters were attempting to achieve.

The foundations of the interpretation provisions of the Act are sections AA 1 and AA 3(1), which read:

AA 1 Purposes of Act

AA 1 The main purposes of this Act are

- (a) to impose tax on income
- (b) to impose obligations in respect of tax;
- (c) to set out rules to be used to calculate the tax and to satisfy the obligations imposed.

AA 3 Interpretation

AA 3(1) Principle of interpretation.

The meaning of a provision of this Act is found by reading the words in context and, particularly, in light of the purpose provisions, the core provisions and the way in which the Act is organised.

VI SIGNIFICANCE OF SECTION AA 1

On the face of it, section AA 1 is so obvious as to be redundant. But considering section AA 1 in the light of judicial statements both explicit and implicit to the effect that revenue statutes do not have purposes that can helpfully be consulted to inform the process of statutory interpretation, one can understand the objectives of the drafters of section AA 1. If there is to be an attempt to instil a purposive approach to the interpretation of the Income Tax Act, it is probably worthwhile to attempt to set out the fundamental purpose of the statute.

As it stands, section AA 3(1) tries to instruct judges to interpret the Act in the light of its purpose, and section AA 1 makes that purpose explicit: to wit, and broadly speaking, to impose an income tax. That is, sections AA 1 and AA 3(1) appear to be intended to oblige courts (or to entitle them, depending on one's point of view) to interpret the Income Tax Act in a purposive way, more akin to the American manner than to the traditional New Zealand approach.

In the opinion of the writer, section AA 1 will not in fact have the effect that the drafters seem to have hoped. The difficulty is the problem that this article has already discussed: fundamentally, the objective of any revenue legislation is to collect tax, whether this objective is expressly stated as in section AA 1 or not. The courts have long taken the view

that Parliament cannot mean that any ambiguity in a taxing statute should be resolved in favour of maximising the tax take.¹⁷

The terms of section AA 1 may provide grounds for arguing that a court construing the Income Tax Act 1994 should revise the view that has just been described. But in the writer's opinion this argument would not be successful, and section AA 1 would not achieve that objective. That objective would require a much more fundamental change on the part of the courts. If Parliament seeks to change the courts' approach to interpreting the Income Tax Act in this radical manner, it will be necessary to enact much more specific purpose provisions than section AA 1 and, one might add, much more specific directory provisions than section AA 3.

Section AA 3(1) requires more extended evaluation, organised by reference to the four factors that it stipulates as having to influence interpretation: context, purpose provisions, core provisions, and the way in which the Act is organised.

VIII CONTEXT

Section AA 3(1)'s opening words are no more than a statement of one of the common law approaches to statutory interpretation: "The meaning of a provision of this Act is found by reading the words in context" However, reported cases show that "context" in this sense has different meanings depending on the relevant circumstances of the case in question. The meaning of the word varies from the total historical context of an Act together with Parliament's apparent intention at the time that the Act was passed, to merely the language of the adjacent part of the statute, or to something in between. Sometimes a judgment mentions more than one meaning of "context".

For example, in *CIR v Alcan New Zealand Ltd* the Court of Appeal quoted Richardson J in *Challenge Corporation Ltd v CIR*¹⁸ to this effect:¹⁹

Consideration of the scheme of the legislation requires a careful reading in its historical context of the whole statute, analysing its structure and analysing the relationships between the various provisions and recognising any discernible themes and patterns and underlying policy considerations.

In deciding the case the *Alcan* court considered both the "historical context of the whole statute" and "the relationships between [its] various provisions". In the end, the court gave

¹⁷ Above n 8, *International Importing Ltd*, 1096 per Turner P.

¹⁸ [1986] 2 NZLR 513, 549.

¹⁹ [1994] 3 NZLR 439, 444.

precedence to the latter. On the facts, the result was that the taxpayer was able to take advantage of what amounted to a loophole in the legislation.

If the court had instead given the full effect to the historical context of the provision that was urged by counsel for the Commissioner, it would have overridden the literal words of the statute, reached the opposite conclusion, and decided the case in favour of the Commissioner. This contrast reflects a relatively common pattern in tax cases where interpretation is finely balanced: a narrow, literal interpretation helps the taxpayer, whereas a broader, more purposive interpretation helps the Commissioner. The conclusion to be drawn from the discussion in these few paragraphs is that the word "context" alone, without amplification, does not advance the apparent objective of the rewrite with which this article is concerned: that objective being to instil into courts a generally more purposive approach to the interpretation of tax statutes.

To achieve the desired effect section AA 3(1) could perhaps refer to factors such as historical context and apparent policy. In fact, as explained below, the remainder of section AA 3(1) may limit rather than amplify "context", by referring to "core provisions" and "the way in which the Act is organised". The third element in section AA 3(1), the reference to "purpose provisions", will probably be neutral, except where relatively narrow purpose provisions are enacted for particular sections or groups of sections. In this latter case, the effect of "context" will be amplified.

IX PURPOSE PROVISIONS

The 1994 Act is organised in fourteen parts, A to O, plus Part Y, which contains amendments, repeals, savings, and transitional provisions. Each part after A is organised in subparts, for example DA, DB, DC, and so on. In each part, the first subpart is reserved for purpose provisions: BA, CA, DA, EA, and so on. So far, only subpart BA has been drafted and inserted into the Act.

This article has already referred to section AA 1, the Act's over-arching purpose provision, and the difficulties in drafting that section. These difficulties do not diminish when it comes to drafting purposes for individual parts of the Act, or even subparts. The functional, non-thematic, structure of the Act is a major contributing cause. The reason is that the functional structure gathers provisions from many different regimes so that they are placed in close conjunction with one another in the various parts of the Act. As a result, drafters cannot compose a purpose provision applicable to a part of the Act about, say, forestry, because the forestry rules are scattered throughout the Act, mixed with rules that relate to all sorts of other things.

The challenge of drafting meaningful purpose provisions for whole parts of the Act may be illustrated by examining Part C, Income Further Defined and Part M, Tax Payments, by way of examples.

X PURPOSE PROVISIONS AND PART C

Part C, Income Further Defined, brings into the income tax net most of the multifarious and miscellaneous kinds of income that one could imagine, together with a number of categories of receipt that are treated as income but that would ordinarily be regarded as capital gains. At one extreme is the generality of section CD 5, which captures all items that are income according to the ordinary meaning of the word, though it uses the unnecessarily tortured prose of "any amount that is included in gross income under ordinary concepts" to do so.

Among the provisions that capture as income items that would be capital according to the ordinary usage of the term are section CD 1(f) (in some circumstances, profits²⁰ on land held as a capital asset that is subdivided and sold); section CE 1(e) (premiums paid for leases); section CF 2(1)(f) (certain issues of bonus shares by companies); and section CD 4 first limb (profits on the sale of personal property held on capital or private account where the taxpayer has a business of dealing in property of a similar kind).²¹

Examples of particular provisions in Part C that capture particular kinds of income include subpart CG (income attributed to New Zealand taxpayers from controlled foreign entities and foreign investment funds); subpart CI (fringe benefits); and subpart CJ (income from minerals, from films, and from certain special kinds of transactions that relate to petroleum mining). Part C also includes rules about life insurance, primary producer cooperatives, international sea freight and renting films. To climax the miscellany, subpart CB contains fifteen sections that, in contrast to the rest of Part C, are about exempt income.

XI PURPOSE PROVISIONS AND PART M

Part M, Tax Payments, exemplifies a different kind of mixing of categories. Subpart MB deals with provisional tax, which is essentially a collection mechanism. On the other hand, subpart MF deals with branch equivalent tax accounts, which are the mechanism for calculating people's income tax in respect of their interests in controlled foreign companies. Subpart MF does, it is true, involve payments of tax. But it is essentially a fasciculus of substantive rules, albeit framed in a mechanical form, that constitutes a large fraction of New Zealand's controlled foreign company regime. Even in form, subpart MF has little

20 Since 1996 the 1994 Act has used the expression "any amount".

21 The writer does not overlook that in a line of cases beginning with *Hazeldine v CIR* [1968] NZLR 474, the courts drew the teeth of the predecessor to this provision with the result that the rule does not have the effect that the drafter appears to have intended. In *Hazeldine*, Wilson J held that the first limb rule applies only to property that the taxpayer has committed to his or her business. Wilson J came to this conclusion even though profits on the sale of property that has been committed to a business are taxable as business income in any event.

similarity to the provisional tax rules of subpart MB. The other subparts of Part M deal with other matters again, some of which have some similarity to one or the other of subparts MB and MF.

These lists of the components of Part M, and of the components of Part C discussed above, illustrate the difficulty, and probably the impossibility, of drafting any but the most generalised rules that could capture the purposes of the whole of each of these parts in a way that will help interpretation. Examinations of other parts of the Act lead to similar conclusions.

XII CORE PROVISIONS

The second factor that section AA 3(1) directs to be taken into account in interpreting the Act is the core provisions, that is, Part B. The function of the core provisions has changed as the rewriting process has progressed. Originally,²² the core provisions were to collect the major rules of the Act: the rule imposing income tax, the rule taxing business income, the basic rule that allows deductions, the general anti-avoidance rule, and so on.

The role of the core provisions has steadily developed and now, in a paraphrase of the words of section BA 1, it is essentially to impose income tax and to explain the scheme of the Act and the relationship between its different parts. For example, subpart BC explains that to arrive at taxable income the major steps are: to add all gross income, to subtract allowable deductions, leaving net income. From net income one subtracts any losses carried forward from earlier years, finally to reach taxable income. Each of these steps refers the reader to other parts of the Act. For example, to calculate annual gross income, section BC 4 directs that taxpayer to section BD 1, which in turn refers to any and all provisions in Parts C to I (in effect, most of the Act) that relate to the taxpayer in question.

One of the purposes of the original core provisions was to give the reader a snapshot overview of the Act. In one sense this objective is achieved; that is, the sense in which one gets an overview of a book from a rather terse table of contents. But the new core provisions do not afford an overview in the sense of a summary of the major highlights of the Act.

That original objective may have been over-ambitious. Now, second and third purposes of the core provisions have come to the fore, and the original objective has been abandoned. The second purpose is to gather in one place all the normative links that bind together the other parts of the Act. A third purpose is to add to those normative links so as

22 Consultative Committee on the Taxation of Income from Capital, "Discussion Paper on the Core Provisions of the Income Tax Act 1976" (September, 1990) para 1.3.

to ensure that each step is made explicit and that no step of reasoning relies on necessary implication.

Providing these additional links may well be a useful function, though it has to be said that much income tax legislation seems to operate well enough without such rules. For example, the former section 65(2)(a) of the Income Tax Act 1976 provided that business profits were assessable as income. It was not thought necessary to have in addition a rule equivalent to the current section BD 1(1), which ensures that this form of gross income, now caught by section CD 3, is added into a taxpayer's gross income calculation.

None of this is to say that the core provisions in their present form are harmful. They may serve as a quick response should, for example, intrepid taxpayers one day be tempted to argue that just because the Act labels an item as gross income it does not necessarily follow that taxpayers must take this item into account when calculating how much tax to pay. But it is not clear how the current core provisions are likely to help future courts or officials to interpret the Act, as provided by section AA 3(1). At the same time, neither does it seem likely that the core provisions will obscure or hamper the interpretation process: they seem to be neutral as far as interpretation goes.

Neutrality is not a good enough reason to leave the core provisions as one of the elements that contributes to interpreting the Income Tax Act. Despite the bland appearance of the core provisions, it is impossible to predict whether in some future case counsel may be able to seize on one or other of those rules to support an otherwise questionable argument.

XIII THE ORGANISATION OF THE ACT

The third factor that section AA 3(1) directs to be taken into consideration for interpretation purposes is "the way in which the Act is organised". As explained earlier in this article, the organisational scheme of the Act is one of formal function rather than of regime. This functional scheme entails that provisions that operate in the same manner are grouped together in the same part of the Act. Thus, for instance, provisions framed as deductions are grouped in Part D, rules framed as anti-avoidance provisions are in Part G, and anything that involves a credit is in Part L.

One result is that rules that deal with substantively quite different kinds of factual situations are found cheek by jowl. For instance, within Part F, Apportionment and Recharacterised Transactions, Matrimonial Transfers in subpart FF follows Amalgamation (of companies) in Part FE and precedes Apportionment of Interest Costs in subpart FG.

Another result is that regimes that in the 1976 Act were collected together are scattered in different parts of the 1994 Act. For example, the rules that apply to controlled foreign companies are mostly in subparts CG, MF, and OD.

A third result is that the location of a rule depends on its form rather than on its substance.²³

XIV IMPLICATIONS OF THE STATUTE'S FORM-BASED ORGANISATION

The formal, rather than substantive, nature of the Act's organisation described above is a fundamental and pervasive aspect of the rewrite. A thorough understanding of the Act's organisational principles is important to an understanding of the organisation itself. The discussion above suggests that the place of a rule in the organisational scheme of the Act will ordinarily shed no light on the way in which the rule is to be interpreted. At best, it would be a factor to consider in some cases. The reason is that if a court calls on the scheme of a statute for help in interpreting it, the court does so because it is trying to work out the substance of Parliament's intention in respect of that rule. The place of the rule in the statute and its relationship with other rules may help the court in this task. But if the location of the rule is purely a matter of form and of the way in which the rule functions, and not a matter of the relationship between the rule and other rules that together with the rule form a coherent regime, then generally speaking the location of the rule vis-à-vis other rules can shed little light on interpretation problems. This situation is in a sense the opposite of what drafters appear to have intended.

The result is that the organisational scheme isolates provisions from other sections of the regimes of which they form part, so that courts lose the benefit of being able to interpret sections in the light of other nearby parts of their regimes. Moreover, because regimes are scattered it is not possible to have over-arching regime-specific purpose provisions to inform the interpretation process.

As this article has explained, section AA 3(1)'s reference to the Income Tax Act's organisational scheme cannot logically refer to substantive, regime-based, relationships between sections because the scheme does not have a substantive basis. What effect might there be from the direction in section AA 3(1) to courts to take into account "the way in which the Act is organised"?

It is unlikely that courts will be misled. The organisational scheme of the Act is so clearly unrelated to substance that it is hard to see a court being influenced by that organisational scheme in the process of statutory interpretation, notwithstanding the clear direction in section AA 3(1). However, it is hard to predict what might happen in marginal cases, particularly tax cases, which often come before High Court judges who are not familiar with the idiosyncrasies of tax law. Statutory interpretation arguments based on the

²³ For example, s DJ 14, being framed as a deduction, is found in Part D, the deductions part of the Act, notwithstanding that it is part of a charging provision.

Act's organisational structure and authorised by section AA 3(1), but having no substantive merit, could lead to perverse results.

XV WHAT SHOULD BE DONE ABOUT THE INTERPRETATION PROVISIONS?

The writer concludes from the foregoing discussion that more consideration should be given to the interpretation provisions of the rewritten Income Tax Act, and to the objectives that the interpretation provisions are expected to serve.

Approaches to statutory interpretation do not fit neatly into two categories, strict and purposive. Rather, there is a continuum, leading from the very strict to the very purposive. Generally, common law jurisdictions tend to be stricter in statutory interpretation than civil law jurisdictions. Among common law jurisdictions, New Zealand and other countries that follow the English approach are more literalist than countries that follow the United States approach.

The writer takes the view that New Zealand would be better off, at least in tax cases, to move along the continuum towards the more purposive approach of the United States. This article has mentioned the relatively common pattern in tax cases where interpretation is finely balanced: a narrow, literal interpretation helps the taxpayer, whereas a broader, more purposive interpretation helps the Commissioner.

The argument is that a shift along the continuum towards a more purposive approach to statutory interpretation would achieve a better balance between the taxpayer and the Commissioner. The drafting of the interpretation provisions in the Income Tax Act gives readers the impression that there may have been an endeavour to achieve this shift. If that is not so, what is the intention of the interpretation provisions that this article studies? On the other hand, if the intention was to make this change, one has to conclude that it has not been carried into effect. Sections AA 1 and AA 3(1) in particular promise more than they achieve.

There is a further consideration, which is that there is currently a Bill²⁴ before the New Zealand Parliament to repeal the Acts Interpretation Act 1924 and to replace it with a substantially redrafted Interpretation Act. In the Bill, the replacement for the 1924 section 5(j) is clause 5(1), which reads: "The meaning of an enactment must be ascertained from its text and in the light of its purpose." To the writer, this drafting dilutes the emphatic mandate of section 5(j) that every Act must be deemed remedial, with the consequence that has been explained.²⁵ Interpreting "text in the light of its purpose" in the Bill falls short of

24 Interpretation Bill, introduced 1997.

25 See above, S 2 of this article.

section 5(j)'s "such fair large and liberal construction and interpretation as will best ensure the attainment of the object of the Act ... according to its true intent, meaning, and spirit."

If there is a concern that nowadays courts do not interpret tax legislation in the light of Parliament's purpose to levy tax, and if courts already demote section 5(j) to parity with judge-made rules of statutory interpretation, the replacement of section 5(j) with clause 5(1) can only make the problem worse. The result will be that the interpretation provisions of the Income Tax Act, inadequate as they already are to bring about a more purposive approach to interpreting the Act, will fall even further short of that goal.²⁶

²⁶ As explained in S 5 of this article, the writer infers this goal from the language of the interpretation provisions of the Income Tax Act 1994.

