

Technical Group Discussion

Deciphering Latin

*Understanding the tax statutes and case laws better
with a practical knowledge of Latin*
14 March 2013, Thursday



Accredited Tax Advisor (Income Tax) Mr Leung Yew Kwong explained the meanings of Latin expressions and gave his valuable insights on their implications on tax statutes.

In a packed seminar room, Mr Leung Yew Kwong, Accredited Tax Advisor (Income Tax) and Principal Tax Consultant of KPMG in Singapore, shared his insights on the common Latin terms and principles found in tax statutes and past cases. Participants gained a deeper understanding on the tax implications these Latin terms and principles could have on the tax statutes and their impacts on tax cases.

Amongst the many Latin terms and principles that Mr Leung elaborated during the seminar, this article focuses on the meanings of Latin expressions found in tax statutes, namely Sections 6(1) and 83(1) of the Income Tax Act (“ITA”), and their implications on the interpretation of these tax provisions. It will also elaborate the Latin principles of *de minimis*, *eiusdem generis*, *noscitur a sociis*, *reddendo singular singularis*, *generalia specialibus non derogant* and *ex abundanti cautela*, and how such principles will impact the contextual meanings of words in the tax statutes, and consequently affect the decisions made in certain past cases.

Section 6(1) of Income Tax Act (“ITA”)

Section 6 of ITA is the official secrecy provision in the income tax statute. Section 6(1) of ITA provides that “Every person having any official duty ... shall make and subscribe a declaration in the form prescribed to that effect before the Comptroller or a Magistrate.”

The terms “sub” and “scribe” (from the word “subscribe”) in Latin mean “under” and “write” respectively. As such, the word “*subscribe*” as used in Section 6(1) means that the person has to write or sign his name under a declaration in the form to comply with the procedure provided in that provision. In common parlance, we have used the word “subscribe” in the context of subscribing for, say, a publication. The analysis of the Latin roots of the word “subscribe” reminds us that the use of the word first started with the subscriber having to sign his name for a purpose.

Section 83(1) of ITA

Section 83 deals with the proceedings before the Board of Review and the High Court. Section 83(1) provides that “...all proceedings before the Board and in appeals to, or in cases stated for the opinion of, the High Court under the provisions of this Part, and in appeals from decisions of the High Court under section 81(5) shall be heard in camera.”

The abovementioned section does not mean that the proceedings before the Board and High Court need to be recorded by a camera. “*Camera*” in Latin means “chamber”. In this regard, Section 83(1) of ITA simply requires the proceedings to be held in a chamber where the public is excluded from the proceedings and not in open court. The modern-day camera started off first as a box or chamber where the images may be captured. The root meaning of the word has been forgotten in daily use of the word.

De Minimis Rule

De minimis is a Latin expression for “*about minimal things*”. Regulation 28 of the GST (General) Regulations is commonly referred to as the *de minimis* rule for GST. The expression comes from the longer expression, *de minimis non curat lex*, which basically means that the law does not concern itself with trifles.

Illustrating the point, if there is minimal exempt supply, according to Regulation 28 and applying the *de minimis rule*, all input tax incurred in a particular period, including those used in the making of exempt supplies, shall be treated as attributable to taxable supplies and thus claimable for GST purposes. Effectively, the minimal exempt supplies are disregarded for the purpose of allowing the claim of input tax.

The *de minimis* rule principle has also been applied in income tax cases. In *Schofield v R&H Hall Ltd*, the court in deciding the grain silos constituted “plant”, on the basis that the silos performed various functions such as fumigation. The use of the silos for storage was only a trifling matter or *de minimis* and was not to affect the capital allowances claim.

Besides explaining the meaning of specific terms, Mr Leung also elaborated to fellow tax professionals how Latin maxims are used in statutory interpretation.

Latin maxims are used to interpret some of the words or phrases found in tax statutes. Understanding these concepts is critical as they represent the techniques in statutory interpretation.

Ejusdem Generis Principle (Limited Class Rule)

The English translated version of “*ejusdem generis*” is “of the same kind”. The *ejusdem generis* principle provides for a restrictive interpretation based on the context of the matter. Using the phrase “houses, bungalows, semi-detached houses, flats and any other buildings” as an example, Mr Leung explained that the common denominator in this phrase is residential

buildings. Hence the general term “any other buildings” in the context of the phrase, should be interpreted in reference to residential buildings. In other words, the meaning of the general words “any other buildings” is constrained by the meanings of the specific words “houses, bungalows, semi-detached houses and flats”.

The *ejusdem generis* principle can be applied in the interpretation of Section 12(6)(a) of ITA, which reads “any interest, commission, fee or any other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee, or service relating to any loan or indebtedness which is ...”

In the High Court case of *ACC v Comptroller of Income Tax*, the issue was whether the interest rate swap payments fall within the ambit of Section 12(6) of ITA. The High Court held that having regard to the meaning of the specific words “interest, commission and fee”, the words “any other payment” should be construed as some form of consideration payment accruing to the payee in return for some benefit conferred by the payee to the payer in application of the *ejusdem generis* principle.

The obligation to make the payment in Section 12(6) arises out of the indebtedness and there must be a connection between the payment and the indebtedness. As there is no loan or indebtedness between the counterparties involved in an interest rate swap agreement in that case, interest rate swap payments were outside the scope of Section 12(6)(a).

In another illustration citing the financing charge levied in a Contract for Difference (“CFD”) agreement and the judgement made in the *Chng Gim Huat v Public Prosecutor* case as examples, Mr Leung cautioned that the nature of a payment and its consequent tax treatment is not determined by the label used for the payment. As the learned judge said in *Chng Gim Huat v Public Prosecutor*, “... the label attached to the payment is not conclusive of its true nature. Whether or not a particular payment constitutes “interest” depends on the substance of the transaction. Nomenclature does not alter the character of the payment if it is not in fact “interest” and vice versa ...”

CFDs are derivative instruments that allow investors to participate in the price movement of securities, without the ownership of the underlying securities. When trading in CFDs, one is essentially betting on the price movements. A profit or loss is made by the difference in the buy price and the sell price of the instrument. CFDs do not have an expiry date like options or future contracts.

Where a CFD is not closed on the same day and is held over by an investor after the stock market closes, the CFD provider levies a “financing charge” according to the contractual terms of the CFD agreement. It was commented that the financing charge should not fall under the definition of “any interest, commission, fee or any other payment in connection with any loan, or indebtedness”, as the financing charge is in substance an administrative charge levied by the CFD provider.

Noscitur a Sociis Principle (Associated Words Rule)

The *noscitur a sociis* principle is a concept where the words take their meanings from the meaning of neighbouring words. Where two or more words which are susceptible of analogous meaning are collocated, they are understood to be used in a cognate sense.

The *noscitur a sociis* principle can be used to interpret Section 96A(1) of ITA, which provides that “Any person who wilfully with intent to evade or to assist any other person to evade tax ...makes use of any fraud, art or contrivance or authorises the use of any such fraud, art or contrivance, shall be guilty of an offence...”. The juxtaposition of the word “fraud” with the words “art” and “contrivance” suggests that some form of fraudulent behaviour is envisaged by the words “art” and “contrivance”.

Reddendo Singular Singulis Principle

Under the *reddendo singular singulis* principle, verbs and nouns of a phrase are to be read distributively. For example, the phrase “if any one shall draw or load any sword or gun” can be interpreted to mean “if any one shall draw any sword or load any gun”.

Referring to Section 10(2) of ITA which reads as “In subsection (1)(b), “gains or profits from any employment” means – (a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance... paid or granted in respect of the employment whether in money or otherwise”, the word “paid” may be read as referring to “wages, salary, leave pay, fee, commission, bonus, gratuity or allowance”, while the word “granted” could be read as referring to “perquisite”.

Generalia Specialibus Non Derogant Principle

The *generalia specialibus non derogant* principle is a guiding principle used to reconcile conflicting statutory provisions, and generally means that the general provisions should not undermine or derogate from the specific provisions.

In the High Court decision in the tax avoidance case of *AQQ v Comptroller of Income Tax*, the issue of whether the specific provisions override the general anti-avoidance provisions was discussed. However, the High Court in that case indicated its preference of the “scheme and purpose” approach adopted by the New Zealand Supreme Court over the choice principle adopted in Australian cases. The New Zealand Supreme Court in *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* provided guidance on how the general anti-avoidance provisions should interact with the specific provisions as follows:

“We consider Parliament’s overall purpose is best served by construing specific tax provisions and the general anti-avoidance provision so as to give appropriate effect to each. They are meant to work in tandem. Each provides a context which assists in determining the meaning and, in particular, the scope of the other. Neither should be regarded as overriding. Rather they work together...”

Ex Abundanti Cautela principle

The Latin expression “*ex abundant cautela*” literally means “with abundance of caution”.

It may be argued that the words in Section 26(1) of ITA, which are underlined and italicised below, are *ex abundant cautela*:

“Subject to Section 34A, this section has effect notwithstanding anything to the contrary in this Act except that nothing in this section shall affect the chargeability to tax of any income of an insurer under Section 10.”

Those words make it clear, with abundance of caution, that Section 10 will remain the charging section of ITA. The formulaic basis for the computation of the chargeable income of an insurer under section 26, does not necessarily absolve an item of income of say an overseas branch of the insurer falling under section 10, from taxation.

As the session closes, participants were very appreciative of Mr Leung’s enlightening presentation, and valuable insights on Latin expressions and their implications on taxes.

A big thank you to Mr Leung!

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About Mr Leung Yew Kwong



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Yew Kwong is presently Principal Tax Consultant at KPMG in Singapore. When he was a tax lawyer at Wong Partnership, his landmark cases in the courts include *ACC v Comptroller of Income Tax* (concerning withholding tax on interest rate swap payments) and *ZF v Comptroller of Income Tax* (concerning capital allowances on workers' dormitories).

Prior to legal practice, Yew Kwong was in the Inland Revenue Authority of Singapore where his last held posts were Chief Legal Officer and Chief Valuer.

This technical event commentary is written by SIATP's Tax Manager, Ms Lee Shin Huay. An Accredited Tax Practitioner (Income Tax), Shin Huay has over six years of experience in corporate and individual tax. Previously from Deloitte & Touche LLP, she now champions various initiatives of Singapore's first dedicated professional body for tax specialists, to enhance Singapore's position as a centre of tax excellence.