

Comptroller of Income Tax v MT
[2006] SGHC 120

Case Number : DA 41/2005
Decision Date : 10 July 2006
Tribunal/Court : High Court
Coram : Sundaresh Menon JC
Counsel Name(s) : Tang Siau Yau (Inland Revenue Authority of Singapore) for the appellant; Ong Sim Ho and Ong Ken Loon (Ong Sim Ho) for the respondent
Parties : Comptroller of Income Tax — MT

Revenue Law – Income taxation – Exemption – Singapore-registered vessel bareboat chartered to foreign party – Vessel's registration in Singapore suspended for duration of charter – Owner of vessel deriving income from charterparty – Whether owner entitled to exemptions in respect of such income as being derived from operation of "Singapore ship" under s 13A(16) Income Tax Act – Section 13A(16) Income Tax Act (Cap 134, 2001 Rev Ed)

Statutory Interpretation – Construction of statute – Updating construction – Definition of "Singapore ship" in s 13A(16) Income Tax Act linked to definition of same term in Merchant Shipping Act – Definition of "Singapore ship" in Merchant Shipping Act subsequently amended – Effect of such amendment on definition of "Singapore ship" in s 13A(16) Income Tax Act – Section 13A(16) Income Tax Act (Cap 134, 2001 Rev Ed), Merchant Shipping Act (Cap 179, 1996 Rev Ed)

10 July 2006

Judgment reserved.

Sundaresh Menon JC:

Background

1 The Income Tax Act (Cap 134, 2004 Rev Ed) makes provision for the imposition and collection of taxes upon income. Inevitably, it affects taxpayers across a wide range of settings. Where it is directed to taxpayers in a specific sector governed or regulated by other legislation, the Income Tax Act in some instances makes reference to that legislation. This case concerns the application and interpretation of certain provisions of the Income Tax Act (Cap 134, 2001 Rev Ed) ("the 2001 ITA") that are relevant to the merchant shipping industry, a sector governed by the Merchant Shipping Act (Cap 179, 1996 Rev Ed). The primary point in issue is how the interpretation of a provision in the 2001 ITA concerning income derived from merchant shipping is affected by amendments made to the Merchant Shipping Act (Cap 172, 1970 Rev Ed) in 1995 but not correspondingly to the editions of the Income Tax Act in force at the relevant times.

2 The appeal before me was brought by the Comptroller of Income Tax ("the Comptroller") against the decision of the Income Tax Board of Review in Appeal No 24 of 2004 dated 1 December 2005. The facts of the case are quite simple and are not in dispute.

3 The respondent before me, MT, is a company incorporated in Singapore. The respondent owned and operated a number of vessels and this case concerns the appropriate tax treatment of the revenue it derived from one of those vessels, the *MV xxx*. This was a vessel acquired by the respondent in 1996. It was provisionally registered in Singapore under the provisions of the Merchant Shipping Act in 1996. The registration ceased to be provisional in early 1997 when its ordinary registration was completed.

4 According to the agreed statement of facts that was tendered by the parties, in 1997 the respondent bareboat chartered the *MV xxx* to its parent company, C, which was incorporated and carried on business in China. During the period that the vessel was chartered out to C, its registration with the Singapore Registry of Ships was suspended under the provisions of the Merchant Shipping Act. Nonetheless, substantial income was derived by the respondent in Singapore under the charterparty.

5 In November 2002, the bareboat charter was terminated. The Singapore registry of the vessel was then reactivated shortly before it was closed on 19 December 2002 upon the sale of the vessel by the respondent to a foreign party. It was the respondent's position that even though the vessel's Singapore registration was suspended during the period it was chartered to C, the respondent was entitled to the benefit of certain exemptions provided in the Income Tax Act for income derived from the operation of a "Singapore ship".

6 Although nothing ultimately turns on this, there is some indication in the correspondence that the Comptroller initially accepted the respondent's position. However, the Comptroller later determined otherwise and the income that the respondent had derived during the entire period of the bareboat charter was then brought to tax with deductions for capital allowances. This resulted in additional tax of \$74,750.46 for the Year of Assessment 2002 being assessed against the respondent. The respondent was dissatisfied with the additional assessment and appealed to the Income Tax Board of Review. The respondent succeeded before the Board of Review and it is against the decision of the Board that the Comptroller has brought the present appeal.

The relevant statutory provisions

7 It was common ground before me that the appeal turns on the resolution of a single issue: Whether the vessel was a "Singapore ship" within the meaning of the Income Tax Act during the period it was chartered out to C. The term "Singapore ship" is defined in the Income Tax Act; but that definition makes reference to the Merchant Shipping Act which also has a definition of the term. To add to the complexity, both these statutes were amended at different times. To resolve the issue before me it is necessary first to trace the development of the legislative framework as it existed at various times.

8 In this judgment, I refer to four sets of legislation. These are:

(a) The Merchant Shipping Act (Cap 172, 1970 Rev Ed) which I refer to as "the pre-1996 MSA".

(b) The Merchant Shipping Act (Cap 179, 1996 Rev Ed) which is the version of the enactment that came into being following substantial amendments in 1995 and which I refer to as the "Merchant Shipping Act". This was the version in force at the material times.

(c) The Income Tax Act was amended on a number of occasions during the period in question but these amendments did not materially affect the provisions that are relevant to this case up to and including the enactment of the 2001 ITA. For convenience I treat the 2001 ITA as the version of the Income Tax Act in force at the material times.

(d) The amendments to the Income Tax Act that were passed in 2003 by the Income Tax (Amendment) Act (Act 21 of 2003) which I refer to as "the 2003 amendments".

9 The relevant exempting section is s 13A(1) of the 2001 ITA which provides:

There shall be exempt from tax the income of a shipping enterprise derived or deemed to be derived from the operation of Singapore ships ... as hereinafter provided.

10 Section 13A(1A) of the 2001 ITA then provides:

Such exemption ... shall be backdated to the date of provisional registration if the owner has subsequently obtained a *permanent certificate of registry* in respect of the ship. [emphasis added]

11 It may be noted that both these provisions are almost identical in the versions of the Income Tax Act as it stood at the time of the charter of the *MV xxx* as well as following the passing of the 2003 amendments.

12 The term "Singapore ship" is defined in s 13A(16) of the 2001 ITA. This section was altered by the 2003 amendments. I first set out the version of this definition as it stood at the time of the charter of the vessel:

"Singapore ship" means a ship in respect of which a *permanent certificate of registry* has been issued under any written law in Singapore relating to merchant shipping. [emphasis added]

13 It was common ground before me that the relevant written law relating to merchant shipping in Singapore that is referred to in this definition is the Merchant Shipping Act. As I have already noted, that enactment also contains a definition of a "Singapore ship" to which I will turn shortly. However, it may be seen that the 2001 ITA did not simply ascribe to the term "Singapore ship" the identical meaning it is given under the Merchant Shipping Act. Rather, the relevant criterion under the 2001 ITA was simply whether "a permanent certificate of registry" had been issued under the Merchant Shipping Act.

14 This definition of a "Singapore ship" was affected by the 2003 amendments as follows:

"Singapore ship" means a ship in respect of which a certificate of registry, other than provisionally, has been issued under the Merchant Shipping Act (Cap. 179) and its registry is not closed or deemed to be closed or suspended.

15 I make two observations on this amendment:

(a) the term "permanent certificate of registry" has been replaced with the term "certificate of registry, other than provisionally"; and

(b) there is an additional requirement, namely, that the certificate of registry issued under the Merchant Shipping Act must not have been closed or deemed to have been closed or suspended.

16 I turn now to the relevant provisions of the Merchant Shipping Act. This Act was repealed and re-enacted with substantial changes in form and in substance in 1995. The Ministerial Statement made at the time the Bill was read in Parliament noted that the amendments were designed to remove certain obsolete provisions and to update other provisions. One amendment of some relevance to the present case, related to the introduction of the means for registering vessels in Singapore where such vessels though owned elsewhere were being operated here under a bareboat charter. The following extract from the Ministerial Statement made at the time the amendments were introduced in Parliament explains the legislative thinking behind this (*Singapore Parliamentary Debates, Official*

Report (25 May 1995) vol 64 at col 1141 (Goh Chee Wee, Minister of State for Communications)):

Register books are where records of Singapore ships are kept. They serve as registers of titles to the ships ...

The Bill also contains a provision to empower the Minister to make regulations for the registration of bareboat chartered ships and to allow Singapore ships to be bareboat chartered out and registered in other countries. Our law currently allows the registration of a ship under the name of its legal owner only. Bareboat registration allows the charterers the flexibility to charter the ship and register it with our Registry without having to buy over the vessel.

17 The thrust of the foregoing statement is directed at allowing parties chartering a foreign-owned vessel on bareboat terms to register it in Singapore and have it treated as a "Singapore ship" for the purposes of the Merchant Shipping Act. It was also contemplated that provision should be made to facilitate Singapore ships that are bareboat chartered out to charterers in other countries being registered there. The question is whether in the latter situation, such vessels cease to be Singapore ships.

18 It was accepted by the Comptroller that had the *MV xxx* been chartered out under the regime contained in the pre-1996 MSA, it would have remained a "Singapore ship" under that Act and would have enjoyed the exemption prescribed in s 13A(1) of the 2001 ITA. The Comptroller's position in essence is that as a result of the 1995 amendments to the Merchant Shipping Act, once the vessel was bareboat chartered out to C, it was no longer a "Singapore ship" under the Merchant Shipping Act and therefore by extension it ceased also to be a "Singapore ship" under the Income Tax Act. Hence, the Comptroller maintained, the respondent was not entitled to claim the exemption.

19 Before turning to the provisions of the Merchant Shipping Act, it is useful briefly to look at the corresponding position under the pre-1996 MSA.

20 In the pre-1996 MSA, a "Singapore ship" was defined to mean "a ship registered under Part XIII of this Act".

21 Part XIII was entitled "Singapore Registry" and it was not an insubstantial part of that Act. For present purposes only the following provisions need be noted:

(a) Section 399 provided for the application for registration to be made by the person applying to be registered as the *owner* of the vessel.

(b) Section 403 provided for the registrar to issue a "permanent certificate of registry" upon being satisfied as to certain conditions.

(c) Section 405 provided for the registrar to issue a "provisional certificate of registration" upon being satisfied as to certain lesser conditions than were required prior to the issuance of a permanent certificate. Further, if within a period of 30 days after the issue of the provisional certificate the ship owner failed to furnish satisfactory proof of certain matters the provisional certificate was liable to be cancelled. On the other hand if all the requirements contemplated under s 403 were met, the provisional certificate could be surrendered and in return a permanent certificate of registration would then be issued.

(d) Section 407 provided that a provisional certificate shall have effect for a period of one year unless invalidated and "shall entitle the ship to the privileges of a Singapore ship".

22 It may be noted that:

(a) The pre-1996 MSA drew a distinction between a *permanent* and a *provisional* certificate of registration. The latter was a temporary certificate with a limited life span, and it was granted essentially to enable a vessel so registered to commence enjoying the privileges of a Singapore ship in anticipation of a permanent certificate of registration being issued upon the fulfilment of all the stipulated requirements. What was referred to as the permanent certificate stood in contradistinction to the provisional certificate. Unlike a provisional certificate, a permanent certificate had an unlimited life span and it remained valid until it was cancelled or surrendered, for instance, upon the transfer of the vessel.

(b) Under the pre-1996 MSA, the vessel could only be registered by the owner and not by a charterer.

(c) Under the pre-1996 MSA, there was no provision for the suspension of the registration of a Singapore ship.

23 Under the 1995 amendments, the following provisions (among others in a general overhaul of the statute) were amended:

(a) A "Singapore ship" was defined to mean "a ship registered, provisionally or otherwise, under Part II and its registry is not closed or deemed to be closed or suspended under that Part" (see s 2 of the Merchant Shipping Act).

(b) Part II corresponds to the old Part XIII and is entitled "Singapore Registry".

(c) The provisions of this Part vary in some material respects from that of the old Part XIII.

24 For present purposes, the relevant points to note in relation to Part II of the Merchant Shipping Act are the following:

(a) Section 9 provides that the Registrar shall keep a register of ships registered as Singapore ships.

(b) Section 11 provides for an application for the registry of a vessel to be made by the owner.

(c) Section 12 provides for the Registrar to issue a "provisional certificate of registry" if certain requirements stipulated under s 11 have not been complied with. The provisional registry is valid for a maximum period of one year from the date of issue and the provisions of the Merchant Shipping Act are made applicable to a vessel that has been provisionally registered in the same way they apply to a "Singapore ship".

(d) Section 16(1) provides that "[o]n completion of the registry of a ship, the Registrar shall grant a certificate of registry...".

(e) Section 16 also provides that the provisional certificate shall be delivered up to the Registrar for cancellation. It further provides that if the registration of a ship that has been provisionally registered is not completed within the permitted period, the registry of the ship is deemed to be closed.

(f) Section 45(2) then provides that the Maritime and Port Authority of Singapore may with the approval of the Minister make regulations as to a number of matters including those providing for the registration of vessels that are bareboat chartered by persons qualified to own Singapore ships; providing for the suspension of the registry of a Singapore ship which is bareboat chartered out and registered in another state; and specifying the provisions of the Merchant Shipping Act which may be applied with any necessary modifications to vessels within either of the previous two categories.

25 Some points of interest arise from this. The first is that the definition of a "Singapore ship" has been amended to exclude a vessel the registry of which has been suspended or closed or had been deemed to be closed.

26 Secondly, even after the 1995 amendments, it is apparent that there are still at least two types of certificates of registration: a "provisional certificate of registration" and what is now referred to simply as a "certificate of registration". The latter term may be contrasted with that which was used in the pre-1996 MSA, *ie*, "a permanent certificate of registration." However, notwithstanding the change of terminology, the key features of both types of certificates remain essentially the same. One is of limited life span and issued prior to the fulfilment of all the conditions to be met for a complete registration, while the other is issued upon registration being completed, is of unlimited life span and continues in force until it is cancelled or restored.

27 Thirdly, the regime relating to the registration of vessels that are bareboat chartered (in or out) is not contained in the Merchant Shipping Act itself. Rather, this is dealt with by enabling the Maritime and Port Authority to make the appropriate subsidiary legislation. This in fact came to pass when the Merchant Shipping (Registration of Ships) Regulations (Cap 179, Rg 7, 1997 Rev Ed) ("the Regulations") came into operation on 2 February 1996.

28 The Regulations so far as material to the present appeal provide as follows:

(a) Regulation 31 provides that a Singapore ship may be chartered out on bareboat charter terms and registered outside Singapore in the name of the bareboat charterer and "its registry as a Singapore ship may be suspended during the charter period".

(b) Such suspension may be conditional for a period of up to 60 days subject to certain documents being submitted within that time and if the relevant requirements are not met the suspension is terminated and ceases to have effect.

(c) Under reg 32, the Registrar may extend the period of suspension if presented with evidence of the extension of the charterparty.

(d) Under reg 33, the suspension may be terminated upon application by the owner. Such application need only show that the foreign registry of the vessel has been closed and provide such evidence of seaworthiness as the Registrar may require.

(e) Under reg 35:

During the period of suspension of the registry of a Singapore ship, the provisions of the Act ... shall cease to apply to the ship, except —

(a) the provisions relating to mortgages and property in the ship in Part II of the Act;

(b) the provisions relating to the ship's register; and

(c) the provisions of section 14 of the Act relating to the payment of annual tonnage tax in respect of the ship.

29 The Regulations are significant for present purposes in that they demonstrate the continued existence of the Singapore registry of a Singapore ship notwithstanding the fact that the registry may have been suspended. This is evident in the very term "suspension" and is emphasised in particular by the following provisions of the Regulations:

(a) Where the owner wishes to terminate the suspension and reactivate the Singapore registry of the vessel, he is not required to go through the same process and fulfil the same criteria as applies upon the initial registration of a vessel as a Singapore ship (compare reg 33 with s 11 of the Merchant Shipping Act).

(b) Even during the suspension of the registry of a Singapore ship, certain provisions of the Merchant Shipping Act (including in particular the provision relating to the payment of the annual tonnage tax) continue to apply.

30 Thus, although a scheme for the suspension of a vessel's registration has been introduced by the amendments and the Regulations, in my judgment such suspension does not by itself displace the continued existence of a valid certificate of registration during the period of suspension. Rather, where a vessel's registry has been suspended, what follows is that certain provisions of the Merchant Shipping Act cease to apply to it. However, certain other provisions of the Merchant Shipping Act continue to apply.

31 This potentially presents an interpretative conundrum. It is evident from what I have said and indeed from s 9 of the Merchant Shipping Act read with the provisions I have considered above that a vessel with a suspended registration nonetheless remains on the register of Singapore ships. Consistent with this, the Regulations all speak of the suspension of the registry of a "Singapore ship". Of particular interest:

(a) Regulation 32 deals with the extension of the suspension of the registry of a *Singapore ship*; and

(b) Regulation 35 speaks of the continued application of certain parts of the Act "[d]uring the period of suspension of the registry of a *Singapore ship*". [emphasis added]

32 The Regulations thus speak of such a vessel, even during the period that its registry has been suspended, as a "Singapore ship". Yet s 2 of the Merchant Shipping Act states that a ship the registry of which has been "suspended under [Part II]" is not a Singapore ship. Nothing ultimately turns on this for the purposes of the present appeal. Moreover, this point was not argued before me and I should not therefore be taken to be expressing a concluded view upon it. However, it seems to me that the exclusion of vessels with a "suspended" certificate of registration from the definition of a Singapore ship in the Merchant Shipping Act may have been excessive and inadvertent. The legislative intent plainly was to allow the registration of a Singapore ship in certain circumstances to be *suspended* but that is not equated with a registration that has been closed or is deemed to have been closed. This is especially apparent in the fact that such a vessel continues to be liable for the annual tonnage tax and to be bound by certain other provisions of the Merchant Shipping Act. It is not clear to me what the object was of excluding such vessels from the definition of "Singapore ships" when the apparent objectives could be (and were) achieved by provision of reg 35. Consistent with

this, I note that while the definition of a "Singapore ship" excludes such vessels as have been suspended "under [Part II]", there is in fact no provision in Part II of the Merchant Shipping Act providing for the suspension of the registry of Singapore ships. Sections 45(2)(e) and 45(2)(g) only provide that the Maritime and Port Authority may make regulations dealing with this and indeed this was later done. It is therefore open to question in my view whether such a vessel ceases to be a Singapore ship even for the purposes of the Merchant Shipping Act.

The arguments in the appeal

33 That having been said, in the final analysis, the resolution of the issue before me turns upon the interpretation of s 13A(16) of the 2001 ITA. There is no authority that directly covers this and it falls on me to construe the provision having regard to the legislative framework that I have set out above in some detail.

34 I now turn to the arguments that were presented before me. The Comptroller was represented by Mr Tang Siau Yau and the respondent by Mr Ong Sim Ho. I should say at the outset that both counsel presented their arguments carefully and with circumspection and freely acknowledged that the point was not without difficulty.

35 Mr Tang highlighted three key facts upon which he developed his submissions. These were that:

(a) The respondent suspended the Singapore registry of the *MV xxx* on the very day that it obtained the certificate of registration.

(b) The respondent revived the Singapore registry of the vessel in December 2002 only because it had sold the vessel to a foreign party and it was necessary to reactivate the registry before closing it.

(c) The vessel therefore did not fly the Singapore flag at any material time.

36 Mr Tang's first submission rested on the fact that the Income Tax Act prior to the 2003 amendments defined a "Singapore ship" as one for which a "permanent" certificate of registration had been issued under the Merchant Shipping Act. By the time of the charterparty in question here, the latter Act had been amended and ceased to contain any reference to a "permanent" certificate. Mr Tang contended that it would be wrong and unfaithful to the need to give full effect to the whole scheme and object of the 1995 amendments simply to treat the omission of the word "permanent" from the Merchant Shipping Act as a drafting change having no substantial effect. He argued that this change was to be seen in the context of other changes especially those relating to the regime for the registration of vessels chartered on bareboat terms. Seen in this light, he contended that vessels with a "permanent certificate of registry" under s 13A(16) of the Income Tax Act would exclude, after the 1995 amendments to the Merchant Shipping Act, vessels with a certificate of registration that had been suspended.

37 Mr Tang argued that this was consistent with the fact that such a vessel would not be a "Singapore ship" under the Merchant Shipping Act at the time of the charterparty in question. He further argued that the requirement for a "permanent" certificate in the Income Tax Act suggested that the registration had to be "effective" and this should exclude a registration that had been suspended. He developed this argument by saying that the Income Tax Act should be interpreted with deference to other specialised legislation when dealing with sectors governed by such other legislation. Accordingly, he submitted that s 13A(16) of the 2001 ITA should be interpreted as defining

a Singapore ship to mean a ship in respect of which there is in force a valid certificate of registration issued under the Merchant Shipping Act and that to examine whether a particular certificate was valid and subsisting one inevitably had to have regard to the provisions of the Merchant Shipping Act.

38 Lastly, he argued that if this were not the case, it would mean that the term "Singapore ship" would have a broader ambit under the Income Tax Act than under the Merchant Shipping Act. This, according to Mr Tang, was not sustainable. He referred, in this connection, to the 2003 amendments to the Income Tax Act not to say it had any retroactive effect but rather to illustrate that there had never been a legislative intent to accord the term "Singapore ship" a broader definition under the Income Tax Act. Mr Tang also submitted that his contentions were to be preferred to those of the respondent because they accorded with the good sense of giving to the term "Singapore ship" a definition that reflected vessels flying the Singapore flag.

39 Mr Tang did mention in passing that a ruling here in favour of the respondent would impact other taxpayers, some of whom might then have to pay higher taxes. However, he readily accepted this should have no bearing on my view of the case and requested only that I furnish a written judgment explaining my decision.

40 Mr Sim for the respondent responded to these points generally but there are just a couple of matters in his submissions I propose to highlight. First, he submitted that the two Acts in question serve quite different purposes and, in his words, have quite different "juridical underpinnings". He therefore cautioned against an undiscerning importation of provisions from one legislation into the other absent a clear legislative intent to this effect.

41 Secondly, Mr Sim pointed out that the 1995 amendments to the Merchant Shipping Act were wide ranging and affected both the structure and the content of that enactment. In those circumstances, he argued that it would be unwise to place undue emphasis upon the omission of the term "permanent" from the registration scheme that was re-enacted in the amended version of that Act especially since the overall structure of that scheme including the existence of provisional and non-provisional certificates remained in place.

42 Lastly, Mr Sim accepted that the definition of "Singapore ship" in the Income Tax Act had to be read as though the certificate of registration was valid or subsisting. He further accepted that whether it was so had to be determined by reference to the Merchant Shipping Act. However, he argued that nothing in the Merchant Shipping Act rendered a suspended certificate invalid or ineffective.

My decision

43 With all respect to the care with which Mr Tang presented his case, I am not persuaded that the Board of Review erred at all.

44 The problem posed in the interpretation of one statute by a change in another to which the former refers is sometimes resolved by the adoption of what has been termed an updating construction of the first statute. Bennion explains this as resulting from the application of a presumption that the Legislature intends the court to apply to an ongoing statute a construction that continuously updates its wording to allow for changes since the statute was initially framed (FAR Bennion, *Statutory Interpretation: A Code* (Butterworths, 4th Ed, 2002) ("Bennion") at p 762). Bennion elaborates on this in the following terms at p 764:

[T]he competent drafter frames the language in terms suitable for continuing operation into the

unforeseeable future. The drafter does not conspicuously compose the Act as at the date of the draft. ... Yet, since language (like human society) is continually in flux, the formula expressed in the words of one age may not feel comfortable as current law to its subjects in another. It might even fill them with the consciousness of governance from the grave ... Imagination and historical awareness are here required.

Each generation lives under the law it inherits. Constant formal updating is not practicable, so an Act takes on a life of its own. What the original framers intended sinks gradually into history. While their language may endure as law, its current subjects are likely to find that law more and more ill-fitting. ... Viewed like this, the ongoing Act resembles a vessel launched on some one-way voyage from the old world to the new. The vessel is not going to return; nor are its passengers. Having only what they set out with, they cope as best they can. On arrival in the present, they deploy their native endowments under conditions originally unguessed at.

45 This passage explains the need for statutory interpretation to be undertaken in a sensible way, with due sensitivity to the context in which the particular issue before the court has arisen. The problem of course can arise in a number of ways such as changes in the mischief that a statute was meant to be directed at or even in the prevailing social conditions. A change in a related law is but one facet of this. In this regard, Bennion suggests (at p 769) that while legal references in an enactment should be updated to allow for change –

Where there has been a significant change in relevant law since the enactment was framed, it is applied thereafter to the *substance* of the new law. ... The fact that the term referred to by the enactment is still in use does not mean the enactment will apply if the current use gives the term an essentially different meaning. [emphasis in original]

46 I think these extracts from Bennion are of assistance in highlighting that the court should take a dynamic approach to the construction of a statute having due regard to the fact that change is inevitable. In my view, where there is a link between two statutes, only one of which is later amended by the Legislature, the court should first examine the nature of the amendment or the change effected in that statute before determining whether to import the effect of that amendment into the second statute (which has not been amended by the Legislature). At this initial stage, the court's attention is directed primarily at the statute that has been amended and at the substance of the amendment.

47 Having ascertained the nature of the amendment effected in the first statute, the court's attention should then switch to the second statute which has not been amended. The inquiry at this second stage is directed at whether the amendment to the first statute gives rise to any ambiguity or uncertainty in the interpretation and application of the second statute as it stands, by reason of which, or for some other reason, there is potentially a need to apply an updating construction to the second statute. If the answer to this is in the negative, the inquiry should end there. If, however, the answer to this is in the affirmative, it then becomes necessary to consider whether in the circumstances an updating construction ought to be applied and, if so, how. At this third stage, it will be relevant to have regard to the objects of the second statute, how it has hitherto been applied, how the draftsman has chosen to frame the linkage between the two statutes, and whether an updating construction would entail such a substantive change to its operation that it would be best left to the Legislature or whether the change is such as may appropriately be imported into the second statute by way of an updating construction.

48 I think it is important not to overlook the fact that the effect of applying an updating construction is in a sense to amend the second statute by importing into it the change that has been

enacted in the first statute. The basis upon which a court may do so is not that it assumes the legislative function, but that it may fill a gap where what is missing is self-evidently within the overall spirit of the legislation and is needed to give effect to the legislative intent. Thus, where a significant legislative change has been effected in the first statute such that its importation into the second statute may have quite substantial effects, the court should ordinarily be slow to apply an updating construction to the second statute, which is likely to concern a quite different sphere with quite different objects from the first statute.

49 In the present case, there were two changes in the 1995 amendments to the Merchant Shipping Act that were possibly of relevance to s 13A(16) of the 2001 ITA and in respect of which I apply the analytical framework I have just outlined.

50 The first is the change of terminology where the word "permanent" was omitted from the description of a non-provisional certificate of registration. In relation to this, I accept Mr Sim's submission that having regard to the nature, purpose and extent of the 1995 amendments, it would be unwise to place undue emphasis on the omission of this single word.

51 I consider it significant that the overall structure of the scheme for registration that is prescribed in the Merchant Shipping Act remained the same in the sense that even after the amendments, the Act contemplates the issuance of provisional and non-provisional certificates.

52 In my judgment, a "permanent certificate" as referred to in the pre-1996 MSA (and in the Income Tax Act) was simply a certificate that stood in contradistinction to a "provisional" certificate and I regard the deletion of the word "permanent" as a mere drafting change. Because the definition of a "Singapore ship" in the Income Tax Act at the material time referred to a "permanent" certificate issued under the Merchant Shipping Act, after this term ceased to be used in the later Act, it gave rise to potential uncertainty. This amendment is minor and the uncertainty can readily be resolved by applying an updating construction to s 13A(16) of the 2001 ITA. Specifically, all this requires is that a "permanent certificate of registration" in s 13A(16) of the 2001 ITA be construed to mean a certificate of registry that is not provisional and I so hold. By doing so, this aspect of the amendment to the Merchant Shipping Act would be imported into the 2001 ITA without difficulty. I have no reason at all to think this is not in keeping with the legislative intent of the 2001 ITA. Indeed, it would entail no substantive change in the application of that Act. In this regard, I note in passing that even after the Income Tax Act was amended in 2003 to remove the reference to "permanent" in s 13A(16), it still appeared in s 13A(1A) (see at [10] above) where it is plainly expressed in contradistinction to a provisional certificate.

53 The second aspect of the amendments to the Merchant Shipping Act relates to the introduction of a scheme for the registration and for the suspension of registration (as appropriate) of vessels on bareboat charters and the apparent exclusion from the definition of a "Singapore ship" in the Merchant Shipping Act of vessels that have been bareboat chartered out. I proceed on the basis that this was effected by the 1995 amendments notwithstanding the doubts I have expressed at [31] and [32] above. This was plainly a much more fundamental change. Mr Tang argued that the omission of the word "permanent" was tied to this. I do not accept that. I regard the two as quite separate amendments with the omission of the word "permanent" being, as I have already noted, one of form only.

54 In relation to the second amendment, this was effected under the Merchant Shipping Act by the inclusion of the words "and its registry is not ... suspended" in the definition of a "Singapore ship" in s 2.

55 I would note first, that on the face of it, this amendment does not give rise to any ambiguity or uncertainty in interpretation of the 2001 ITA. The definition of the term "Singapore ship" under that Act can perfectly well co-exist with the definition of the same term in the Merchant Shipping Act even after the latter Act was amended. The definitions given to the same term in the two statutes were not identical even prior to the 1995 amendments to the Merchant Shipping Act. The fact that as a result of the 1995 amendments, there might be a greater divergence in the definition of the same term in the two statutes does not give rise to any ambiguity. Nor does it give rise to uncertainty unless one assumes this was a result of a legislative oversight. I am satisfied that one would not be entitled to make such an assumption for reasons which are set out below. The point to note, however, is that on this basis one could resolve the matter by concluding that there is no need for an updating construction to be considered at all.

56 I nonetheless turn to examine what the position would be had I concluded that there was a potential need for an updating construction to be applied. The next question I should direct myself to is whether I should apply such a construction and import this change into the 2001 ITA and in this context, it is clear to me the answer is "No".

57 The importation of this change into the 2001 ITA would plainly and quite fundamentally affect certain groups of taxpayers in the sense that the class of taxpayers who stood to enjoy the benefit of the exemption would change.

58 I regard the grant of tax exemptions and the choice of who should benefit from this as areas that are particularly within the competence of the Legislature. Such matters are dictated by wide policy considerations and in my view, this cautions against the importation of this aspect of the 1995 amendments of the Merchant Shipping Act into the 2001 ITA by the simple expedient of the court applying an updating construction to the definition of "Singapore ship" in the post-1995 versions of s 13A(16) of the Income Tax Act.

59 I also consider it relevant that the linkage between the two statutes was crafted by the legislative draftsman in a way that does not support the notion that such changes in the Merchant Shipping Act were to be imported automatically into the Income Tax Act. Had that been intended, it would have been a simple matter for the draftsman to have provided in s 13A(16) of the 2001 ITA that a "Singapore ship" is to bear the same meaning as provided in the Merchant Shipping Act subject to any applicable exclusions. Yet, this is not how that section was drafted. Instead, s 13A(16) tied the vessel's status as a "Singapore ship" for the purposes of the Income Tax Act solely to whether or not a permanent (*ie*, non-provisional) certificate of registration had been issued.

60 The view I have taken is also borne out by the fact I have noted previously, that even if a vessel whose registry has been suspended ceased to be a "Singapore ship" under the Merchant Shipping Act, it nonetheless remains subject to various provisions of that Act including the obligation to continue to pay the annual tonnage tax. On the face of it, it is quite possible that the Legislature may have wished to attract qualified ship owners to register their vessels in Singapore even if they were then to charter out their vessels on bareboat terms and seek suspension of the Singapore registry of such vessels; and to achieve this by offering the exemptions that had indisputably been offered to such shipowners under s 13A(1) of the Income Tax Act prior to the 1995 amendments to the Merchant Shipping Act. It comes down to this in the final analysis: The fact that the Legislature may have decided such vessels need not be regulated in the same way as Singapore ships under the Merchant Shipping Act in no way dictates the conclusion that the Legislature also intended at the same time that the owners of such vessels should no longer enjoy the exemption from tax which they had been enjoying until then. The latter just does not follow from the former.

61 Accordingly, in my judgment, the 1995 amendment to the Merchant Shipping Act in relation to the effects of suspending the registration of a Singapore ship is not to be incorporated into the 2001 ITA by applying an updating construction to s 13A(16).

62 Before leaving this, I should for completeness mention a few other points. It will be recalled that the definition of "Singapore ship" in s 13A(16) of the 2001 ITA was later amended in 2003 to include the words "and its registry is not closed or deemed to be closed or suspended". This bears out my conviction that such decisions as to the granting of tax exemptions are best left to the Legislature. Although Mr Tang was at pains to say that he was not advocating a retrospective application of this amendment to cover the charterparty in question here, Mr Sim submitted this was precisely the effect of Mr Tang's submission and I agree.

63 However, for the avoidance of doubt, I should state my view that whatever may be the position as to whether or not a vessel whose Singapore registry has been suspended is a "Singapore ship" for the purposes of the Merchant Shipping Act, such a vessel, in the aftermath of the 2003 amendments to the Income Tax Act, would not be a "Singapore ship" for the purposes of the latter Act having regard to the express terms of the current version of s 13A(16) which raises none of the difficulties I have identified at [31] and [32] above.

64 Three other points were raised by Mr Tang which I now briefly turn to. First, as to Mr Tang's submission that the question whether a certificate of registration is valid has to be determined with reference to the Merchant Shipping Act and not the Income Tax Act, I think this is correct in principle. However, I agree with Mr Sim who submitted that a suspended certificate remains valid and subsisting. This therefore does not advance Mr Tang's case.

65 Secondly, as to Mr Tang's submission that the term "Singapore ship" could not have a broader ambit under the Income Tax Act than under the Merchant Shipping Act, I see no force in this. I have already noted above that the definitions of the same term in the two statutes were not identical to begin with. As to which is wider or narrower, that will depend upon the particular way in which each definition is drafted. The two statutes have quite different objects and it would not be surprising if the Legislature provides that the respective provisions apply to somewhat differing groups.

66 Lastly, as to Mr Tang's argument that giving s 13A(16) of the Income Tax Act the construction that he proposed would advance the object of giving the term a meaning that covered vessels flying the Singapore flag, I again see no force in this. That is not how a "Singapore ship" is defined in the Income Tax Act. Moreover, I have no reason to think the Legislature was unduly concerned by this in determining who to grant the exemption to.

67 In the premises, the appeal is dismissed with costs to be taxed if not agreed.

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