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## **Interpreting Taxing Statutes # 41 – Methods of evasion – doing indirectly what must not be done directly and repetitious acts**

Where an enactment prohibits the doing of a thing, the prohibition is taken to extend to the doing of it by indirect or roundabout means, even though not expressly referred to. Again, the court will infer an intention by the legislature that evasion of an Act should not be countenanced where the method used is repetition of acts which taken singly are unexceptionable, but which considered together cumulatively effect an evasion of the purpose of the Act. <sup>^1</sup>

### SYNOPSIS

Indirect method

Repetitious acts

### **Indirect method**

Where the legislature wishes to prohibit the doing of an act, it tends to concentrate in its wording on the obvious and direct ways of doing of the act. Yet if the intention is to be achieved, the prohibition must be taken to extend to indirect method of achieving the same object even through these are not expressly mentioned. The maxim *Quando aliquid prohibetur fieri, prohibetur ex directo et per obliquum*<sup>^2</sup> (whenever a thing is prohibited whether done directly or indirectly) adequately represents this principle.

### **Repetitious acts**

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<sup>1</sup> Bennion 2020 s 12.13 and 12.14

<sup>2</sup> Co Litt 223 cited in Bennion 2020 p 472

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What substantially amount to evasion of an enactment can sometimes be effected by repetition of acts which in themselves are lawful. However, in some cases repetitious acts may be regarded not as an evasion of an enactment, but rather as a person ordering their affairs so that the enactment does not apply.

Example: The Bills of Sale Act 1854 required a bill of sale to be registered within 21 days. To get around this the parties effected a manoeuvre by which, just before the 21 days expired, a new bill of sale was issued in exchange for the first. This was repeated 15 or 16 times, but the court did not consider it possible to prevent the practice.³

³ Smale v Burr (1872) LR 8 CP 64 cited in Bennion 2020 p 474