



CESTNICK

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TAX MATTERS

## Disguising and dodging: The two most misunderstood tax strategies

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I recently read a paper by lawyer Donald Netolitzky, formerly the Complex Litigant Management Counsel for the Alberta Court of King's Bench. The paper explored the bizarre legal arguments – often called pseudolaw – that people use in court to try to win their cases. One story involved a Canadian couple on trial for refusing to provide income-tax records.

The couple signed their names on postage stamps and attached them to laminated badges. They claimed doing that gave them authority equal to the late Queen, exempting them from providing tax information. Wouldn't you know it – the court rejected the argument. They lost their case and were sentenced to 30 days in prison.

This ties into my recent discussion about the five pillars of tax planning. I covered the first three last week. The final two – disguising and dodging – are often misunderstood and mistakenly lumped in with stunts like this. But that would be wrong. Let's dive into what these last two pillars really mean.

### Disguising

No, I'm not talking about cheating on your taxes, wearing a fake mustache or creating a new identity to sidestep the taxman – as fun as that might sound. "Disguising" to save tax is simply about converting one type of income taxed at a higher rate into another taxed at a lower rate. Here are some clever ways to accomplish this:

#### Invest to earn capital gains

You can do this by changing your asset mix when you reinvest, or by making the Canadian securities election. The election allows you to treat all your transactions in Canadian securities as capital in nature, giving rise to capital gains. That can make sense if there's any doubt about whether profits should be taxed as business income or capital gains.

#### Consider a corporation for investments

Holding some or all of your portfolio in a corporation can enable you to complete an estate freeze to reduce taxes on death, minimize the clawback of Old Age Security benefits by removing income from your personal hands, allow

you to avoid U.S. estate tax and avoid probate fees on death. You can avoid tax on the transfer of assets to a corporation – but speak to a tax pro about it first.

### Opinion: The three tax Ds that matter most for Canadians in 2026

Set up a back-to-back prescribed annuity

Consider using some cash that you might currently have in interest-bearing investments to purchase a prescribed annuity which can provide higher after-tax cash flow. (The annuity payments are partly a return of your original capital, so they're tax-efficient). You can buy the annuity "back-to-back," or along with, an insurance policy to replace the capital used for the annuity, so that your heirs still receive money when you're gone.

### **Dodging**

This is the idea of structuring your affairs so that some of the income and benefits you receive won't be taxable at all. Consider the following ideas:

Negotiate tax-free benefits at work

Many employer-provided perks can be received tax-free. Examples include education costs related to your job, counselling services, certain social or athletic club memberships, relocation expenses, partial mobile phone costs, employer-provided daycare and gifts or awards up to \$500 annually. In some cases, parking may also qualify. Employers can even arrange interest subsidies by helping cover part of your mortgage or financing interest payments.

Use an exempt life insurance policy

An insurance policy can be used to accumulate assets inside the policy (called the cash value) on a tax-sheltered basis. You can access the funds later on a tax-free basis by borrowing against the cash value. The debt can be paid off when the policy pays out tax-free when you pass away. Think of this as a tax-efficient supplemental "pension" in retirement.

### Opinion: Focus on the 10 Ds for tax and estate planning in the new year

Use multiple wills to avoid probate

You may be able to save probate fees on death by separating your assets into those that must go through probate, and those that don't need to (like private company shares, shareholder loans, partnership interests, personal effects, promissory notes and private debts). One will should deal with the probatable assets while another can deal with the assets that don't require probate, saving probate fees. The idea may not work in all provinces – so speak to a lawyer.

Defer RRSP withdrawals until you're non-resident

If you're planning to give up Canadian residency, wait until you're a non-resident before making withdrawals from your RRSP. You'll face a withholding tax of just 25 per cent on withdrawals, which can be reduced to 15 per cent if Canada has a tax treaty with your new country and you convert your RRSP to a RRIF and make withdrawals no more than twice the required minimum each year.

Win the lottery

Okay, this is not a wealth-building strategy. But you might be interested in knowing that lottery winnings in

Canada, unlike in the United States, are generally tax-free.

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