# Non-residents of Canada not required to disclose books and records to the CRA

**May 16, 2019**

The Minister of National Revenue (the Minister) sought an order from the Federal Court to compel three individuals to provide the Canada Revenue Agency with books, records and information required in a letter sent to them in 2016. The individual respondents received identical letters, other than their names and addresses, which read:

Re: Audit of your Income Tax Returns for the Period from January 1, 2006, to December 31, 2015.

Your personal income tax returns and any other related or associated entities have been selected for audit for the above noted period. The Canada Revenue Agency (CRA) is in possession of information that has led us to determine that you may have offshore holdings that you have failed to disclose as required by the Income Tax Act. All individuals, corporations, trusts or partnerships are required to complete and file form T1135 with their tax return (or, if a partnership, with their partnership information return) if at any time in the year the total cost amount of all specified foreign property owned or held a beneficial interest in was more than $100,000.

In order to expedite and facilitate our audit, we will require a clear understanding of all entities with which you had a connection or affiliation during the taxation years noted above. We ask that you please prepare the necessary information as outlined in the attached questionnaire, in writing, and provide it to the undersigned auditor at the International and Ottawa Tax Services Office no later than October 21, 2016. A preliminary interview to discuss the information provided will be arranged.

One of the Respondent individuals opposed the request and argued that he was a non-resident of Canada and that the CRA cannot use its audit powers under s. 231.1 prior to determining his tax status in Canada. He also argued that the letter was vague and didn't specify from whom it was seeking information, him personally or a related entity.

The Federal Court held that the CRA letter was too vague and did not specify whether the letter was directed to the individuals or their related entities, and therefore did not satisfy the requirements of s. 231.7 of the *Income Tax Act (Canada)* (ITA) to compel production of the information. The Court also noted that the determination of tax residency is beyond the jurisdiction of the Federal Court for purposes of determining

whether the individuals were required to provide their books and records. The Minister's application was dismissed with costs.

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