

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.

By

[Bobby B. Solhi](#)

Expertise

[Tax](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.