Federal Court Cour fédérale

Date: 20240513

Docket: T-908-23

Citation: 2024 FC 729

Ottawa, Ontario, May 13, 2024

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

JÜRGEN SCHREIBER

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Minister of National Revenue (the Applicant or the Minister) seeks a compliance order under section 231.7 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) as amended [*ITA*], requiring Jürgen Schreiber (the Respondent) to provide the Applicant with documents and information sought from him pursuant to a demand issued on July 5, 2022.

II. Background

[2] The Respondent is a successful businessman.

[3] Prior to December 28, 2016, the Respondent was a Canadian resident. After this date, he declared himself a non-resident, stating that he primarily resided in the Bahamas.

[4] From 2017 to 2019, Bateman MacKay LLP prepared income tax returns for the Respondent in order to report his Canadian-source rental income. The Respondent reported rental income under section 216 of the *ITA*. In 2018, the firm also prepared a second return concerning the Respondent's employment income for 2017, which was issued by a Canadian employer.

[5] From 2017 to 2019, the firm determined that the Respondent remained a non-resident.

[6] The Respondent re-established Canadian residency in 2022. During this time, he advised Bateman MacKay LLP of the change in his residency status, and the firm filed the Respondent's 2022 personal income tax return.

[7] Although the Respondent declared himself a non-resident from the end of 2016 to 2019, the Canada Revenue Agency (the Agency) noted that he still had ties to Canada given:

A. The Respondent owned at least two Canadian properties;

B. The Respondent continued his employment or engagement with Canadian companies, including OEG Inc., Aldo Group Inc. and GTEC Holdings Ltd. (later

Avant Brands Inc.). The Respondent also received electronic fund transfers (EFTs) to and from his related offshore corporations, including Hiroko Holdings Inc. (Hiroko Holdings), Retail Invest & Consulting PTE Ltd. (Retail Invest), D'Banyan International Ltd. (D'Banyan) and Eight Treasures Limited (Eight Treasures). Some of these EFTs were made to a "Kevin Schreiber" in Canada, whom the Agency believes is related to the Respondent; and

C. The Respondent incorporated three Canadian corporations: 1195282 B.C. Ltd (119 BC), 1151807 B.C. Inc. (115 BC), and 11134981 Canada Inc. (111 Canada) in 2018 and 2019. The Respondent was a shareholder of 119 BC and 111 Canada, and served as a director of 115 BC.

[8] In 2022, the Agency commenced an audit of the Respondent in respect of the January 1, 2016 to December 31, 2019 taxation years. The purpose of the audit was to: i) determine the Respondent's residency status; and ii) determine whether the Respondent had complied with his duties and obligations under the *ITA*, including whether he had reported all of his domestic and offshore holdings and transactions as required.

[9] To verify his residency and compliance with the *ITA*, the Agency issued a demand to the Respondent under subsection 231.1(1) of the *ITA*, dated July 5, 2022 (the Demand).

[10] The Demand compelled the Respondent to provide certain documents that the Agency reasonably believed were available or located in Canada and in the Respondent's power, possession, and control. In particular, the Demand required information about seven entities of

which the Respondent was either an owner, shareholder or director: Hiroko Holdings, Retail Invest, D'Banyan, Eight Treasures, 119 BC, 115 BC, and 111 Canada.

[11] The Demand asked for the following:

A. Complete answers to an enclosed questionnaire;

B. Financial statements, trial balances, accounts groupings and year end adjusting entries for all entities;

C. Copies of all foreign tax returns for all entities;

D. Corporate organizational charts, for each year if different, including all resident and non-resident, corporations, trusts, bare trusts, partnerships, co-ownerships and joint ventures which the Respondent or a member of his family controlled, directly or indirectly, either alone or together with related parties;

E. Details and copies of all intercompany loan agreements, including those loan agreements with related non-resident entities, and reconciled to the trial balances of the relevant entities;

F. Details of all dividends issued and received, and reconciled to the trial balances of the relevant entities, along with dividend surplus calculations for dividends received from related non-resident entities;

G. Copies of any and all intercompany agreements and shareholder agreements (i.e. service agreements, research and development agreements, royalty agreements, unanimous shareholder agreements, etc.);

H. Details supporting and a reconciliation to the relevant trial balances for any filed T106, T1134, T1135, T1141 and T1142 forms for all entities;

I. Minute books of 119 BC from inception, including but not limited to the following: general shareholders meetings, special committee meetings, corporate governance and compensation committee meetings, board of trustees meetings, agenda files, finance committee meetings, audit committee meetings, investment

committee meetings, executive committee meetings and conduct review committee meetings;

J. Copies of any rulings or opinions requested by the entities from the Agency and the reply received;

K. Any documents relating to tax planning for all entities that occurred during the audit period; and

L. The calculation of tax attributes of all shares held by the Respondent during 2015 to 2019 for all entities.

(Collectively, the Required Material.)

[12] The Respondent was afforded 60 days, until September 6, 2022, to provide all of the Required Material. He requested several extensions to provide this information, totalling approximately six additional months. The last extension required the Respondent to produce all of the Required Material by February 28, 2023.

[13] In response to the Demand, the Respondent's representative, Miller Thomson LLP (the Representative), provided annual returns that were filed with BC Registry Services for 115 BC for the 2019 to 2022 taxation years. The Respondent also provided corporate tax returns for 115 BC for the 2018 and 2019 taxation years.

[14] On December 6, 2022, the Representative responded to the Agency with a loan agreement between Hiroko Holdings and 115 BC dated February 8, 2018. In respect of Hiroko Holdings, the Representative claimed several items in the Demand did not exist. The Respondent

also refused to provide copies of all foreign tax returns for Hiroko Holdings on the basis that this entity was a Bahamian corporation and did not carry on business in Canada.

[15] On January 20, 2023, the Representative responded to the Agency regarding a different entity, D'Banyan, claiming that the Agency's powers did not extend to the 2017 and 2018 taxation years, as the Respondent was not a resident of Canada. For the 2016 taxation year, the Representative concluded that the Respondent fulfilled his obligations concerning D'Banyan. An enclosed schedule indicated that the majority of documents for the 2016 taxation year did not exist.

[16] Around January 25, 2023, the Department of Justice wrote to the Respondent, advising that compliance proceedings would be initiated under section 231.7(1) of the *ITA* if he did not provide all of the Required Material by February 15, 2023.

[17] On February 2, 2023, the Representative wrote to the Agency about Hiroko Holdings, claiming that the Agency could not compel the production of materials for the 2017 and 2018 taxation years, as neither the Respondent nor the corporation were residents of Canada. An enclosed schedule noted that the majority of documents for the 2016 taxation year did not exist.

[18] On February 2, 2023, the Representative responded about Retail Invest, stating that the Agency could not request information for the 2017 and 2018 taxation years, as neither the Respondent nor the corporation were residents of Canada. The Representative only provided Retail Invest's financial statements, trial balance and foreign tax return for the financial year

ended November 30, 2016. The Representative claimed that the majority of documents for the 2016 taxation year did not exist.

[19] Around February 10, 2022, the Agency was advised that the Department of Justice had a call with the Representative. The Agency agreed to wait until February 28, 2023 before initiating a compliance application.

[20] On February 17, 2023, the Representative informed the Agency that, as the Respondent was not a resident of Canada during the 2019 taxation year, the Agency could not compel the production of documents for D'Banyan, Retail Invest and Hiroko Holdings for this year.

[21] On February 21, 2023, the Representative advised the Agency about Eight Treasures, claiming that the Agency could not compel the production of materials relating to the 2017, 2018 and 2019 taxation years, as neither the Respondent nor the entity were residents of Canada. The Representative also claimed that several items requested for the 2016 taxation year did not exist.

[22] On February 28, 2023, the Representative responded to the Agency about 111 Canada, noting that the entity did not have any documents for the 2016 and 2017 taxation years, as the company was not incorporated until December 7, 2018. For the 2018 and 2019 taxation years, the Representative claimed that the majority of documents did not exist.

[23] For 115 BC, the Representative stated that there were no documents prior to its incorporation date on February 5, 2018. For the 2018 to 2019 taxation years, the Representative claimed that the majority of documents did not exist.

[24] For 119 BC, the Representative stated that there were no documents prior to its incorporation date on January 24, 2019. For the 2019 taxation year, the Representative claimed that the majority of documents did not exist.

[25] On February 28, 2023, the Respondent provided financial statements and trial balances for 115 BC for the fiscal years ended October 31, 2018 and October 31, 2019. The Respondent also included 119 BC's minute book and related documents, and a share purchase agreement between 119 BC and the Respondent. Lastly, the Respondent provided his answers to the Agency's questionnaire.

[26] Apart from tax planning documents for 119 BC, neither the Respondent nor his Representative claimed solicitor-client privilege or common interest privilege over any of the Required Material.

[27] On April 27, 2023, the Applicant initiated this application against the Respondent on the basis that he did not provide all of the information requested in the Demand. The Applicant argued that the majority of the Required Material remained outstanding, and this documentation was not protected from disclosure by solicitor-client privilege.

[28] During the course of oral submissions, the Applicant indicated that the minute books of 119 BC were no longer being sought. Rather, on this application, the Applicant requested the following information:

A. Complete answers to questions 1.1 to 7.3 of the questionnaire for the 2017 to 2019 taxation years;

B. Financial statements, trial balances, accounts groupings and year end adjusting entries for all entities other than 115 BC;

C. Copies of all foreign tax returns for all entities;

D. Corporate organizational charts for each year, if different, for all entities, including all resident and non-resident, corporations, trusts, bare trusts, partnerships, co-ownerships and joint ventures which the Respondent or a member of his family controlled, directly or indirectly, either alone or together with related parties;

E. Details and copies of all intercompany loan agreements for all entities, including those loan agreements with related non-resident entities, and reconciled to the trial balances of the relevant entities;

F. Details of all dividends issued and received, and reconciled to the trial balances of the relevant entities. For dividends received from related non-resident entities, provide details of the dividend surplus calculations;

G. Copies of any and all intercompany agreements and shareholder agreements for all entities;

H. Details supporting and a reconciliation to the relevant trial balances for any filed T106, T1134, T1135, T1141, and T1142 forms for all entities;

I. Copies of any rulings or opinions requested by the entities from the Agency and the reply received;

J. Any documents related to tax planning for all entities that occurred during the audit period; and

K. The calculation of tax attributes of all shares held by the Respondent from 2015-2019 in respect of all entities.

III. Issue

[29] The primary issue underlying this application is whether the Applicant is entitled to a compliance order under subsection 231.7(1) of the *ITA* compelling the Respondent to provide the outstanding Required Material. However, in order to address this question, a related concern is whether a non-resident is required to respond to a request for information under section 231.1(1).

IV. Relevant Provisions

[30] The relevant provisions of the *ITA* are set out in Appendix A.

V. Arguments

[31] I will not address the entirety of the parties' arguments, as some are not determinative of this matter and are slightly "offside" the real issue.

A. *Applicant's Submissions*

[32] The Applicant argues that the Respondent was properly served with the Demand under subsection 231.1(1) of the *ITA* and that he failed to provide the Required Material. The Applicant claims that the main issue on this application is whether subsections 231.1(1) and 231.7(1) of the *ITA* apply to the Respondent for the 2017 to 2019 taxation years. The Applicant states that they do. The Applicant contends that a taxpayer (or any person), whether resident or not, is required to produce any documents and information requested by the Minister whenever the statutory conditions are met.

(1) The Compliance Provisions Are Applicable to the Respondent

[33] In this case, the Applicant asserts that the compliance provisions, sections 231.1(1) and 231.7(1), are applicable to the Respondent. Under the general principles of statutory interpretation, the Applicant claims that the compliance provisions apply to any person who is in Canada, whether or not they are a resident.

[34] First, the Applicant notes that the text of the compliance provisions is precise and unequivocal. The subject of both provisions is a "person." Neither the text of the sections, nor the definitions of "person" and "taxpayer," refer to a "resident" or "non-resident." The Applicant notes that both "person" and "taxpayer" are defined terms under subsection 248(1) of the *ITA*, and that these provisions expand the scope of "person" and "taxpayer." The Applicant argues that "person" must be given its ordinary meaning, which is a human being or a natural person.

[35] Based on a textual reading, the Applicant claims that the question of whether the Respondent is a resident or non-resident for income tax purposes is irrelevant. Rather, the Applicant notes that both the English and French versions of subsection 231.1(1) require a taxpayer, which includes any person, to provide information to the Applicant. Additionally, the English and French versions of subsection 231.7(1) allow a judge to compel a "person." The Applicant states that the text of the provisions, in both languages, does not refer to residency.

[36] The Applicant also argues that the Respondent's argument, that he was a non-resident during the audit period and cannot be subject to the provisions, impermissibly reads an unexpressed condition into the text. The Respondent is asking for "resident in Canada" to be

included with every reference to “person” and “taxpayer” under the provisions. The Applicant asserts that the Court should reject this approach, as Parliament would have explicitly used the word “resident” if it sought to narrow the scope of the compliance provisions. The Applicant also argues that Parliament distinguishes taxpayers on the basis of residency in other parts of the *ITA*.

[37] In terms of context, the Applicant contends that the compliance provisions are part of a broader set of information gathering provisions under the *ITA*, including sections 231.2 and 231.6. Under the former, Parliament has carved out a class of persons, unnamed persons, from the Minister’s general authority to issue a requirement. Therefore, if Parliament had sought to exempt non-residents, the Applicant states it would have specifically done so, as seen with unnamed persons in section 231.2(1).

[38] Moreover, the Applicant notes that the enactment of section 231.6 shows Parliament’s intention to restrict the Minister’s information gathering powers on the basis of residency in other provisions. Section 231.6 states that the Minister may require a “person resident in Canada or a non-resident person carrying on business in Canada” to provide foreign-based information. The Applicant argues that Parliament has expressly narrowed the ambit of “person” in this section. In contrast, Parliament has placed no limitations, qualifications or modifications on “taxpayer” or “person” in subsections 231.1(1) and 231.7(1).

[39] As an aside, the Applicant claims that section 231.6 does not apply in this case, as it is only available where foreign-based information is exclusively accessible or located outside of Canada. In this instance, the Applicant argues that the requested information is accessible to the

Respondent in Canada. The Applicant notes that the Respondent is currently in Canada, and claims that he has power and control over the required documents in Canada.

[40] Finally, in relation to the purpose of the text, the Applicant notes that the compliance provisions permit the Minister to verify persons' records to ensure compliance with the *ITA*. The Applicant cites *R v McKinlay Transport Ltd*, [1990] 1 SCR 627 [*McKinlay*], where the Supreme Court of Canada found that the Minister must be given broad powers to audit taxpayer returns and inspect all relevant records. The Applicant asserts that "Parliament cannot have intended that an individual who has a presence in Canada simply be able to declare themselves non-resident for Canadian tax purposes with the effect of depriving the Minister of any ability to verify that declaration using the broad powers Parliament has given her: the Compliance Provisions." The Applicant notes that even non-residents of Canada are subject to tax on their Canadian-source income under the *ITA*, and the Minister must be able to audit those persons.

[41] The Applicant also refers to *1068754 Alberta Ltd v Québec (Agence du revenu)*, 2019 SCC 37 [*Alberta Ltd*], where the Supreme Court of Canada determined that a demand had been validly issued by the Agence du revenu du Québec to an entity in Alberta. In that decision, while assessing territorial jurisdiction, the Applicant argues that the Court found the "focus must be on the place where enforcement of the Demand may be sought as the determinative point in characterizing the exercise of the coercive power at issue." In this case, the Applicant claims that the consequences of failing to comply with the Demand, and its potential for enforcement, are all effected in Canada. Regardless of residency status for tax purposes, the Applicant notes that the Respondent accepts the territorial jurisdiction of Canadian law when he enters the country;

therefore, to the extent that the Respondent is present in Canada, he is subject to Canadian law. The Applicant concludes that there is "no real issue of territorial jurisdiction in this case."

(2) The Requirements of Section 231.7 Are Satisfied

[42] The Applicant asserts that the requirements of section 231.7 are otherwise satisfied. The Demand was issued for a proper purpose: to audit the Respondent's residency status and to assess his worldwide income from all sources during the audit period in order to verify whether he complied with his duties and obligations under the *ITA*.

[43] The Applicant states that the length of time afforded was reasonable. The Respondent waited months to declare that he would not be able to provide the Required Material on the basis of his residency status. The Applicant argues that it has been over a year since the Demand was issued, and the Required Material remains outstanding. Based on the record available, the Applicant contends that there is nothing showing the Respondent required more than 60 days. Additionally, the Applicant asserts that the Respondent's claims, that there are no documents existing for 2016, are bald allegations which are unsubstantiated by the evidence.

[44] Finally, the Applicant argues that the Required Material is not protected from disclosure by solicitor-client privilege. In accordance with section 231.7(1)(b) of the *ITA*, the Applicant states that privilege only attaches to communications between a solicitor and client, which were intended to be confidential for the purposes of seeking or providing legal advice. The Applicant asserts that this is not the case here, as the outstanding material consists of business and financial information.

(3) There Are No Discretionary Considerations

[45] Finally, the Applicant states that there are no discretionary considerations which warrant denying this application. The Applicant asserts that it is in the interests of justice for this Court to exercise its discretion and issue the compliance order. Furthermore, the Applicant states that a demand offers the least intrusive means of monitoring compliance with the *ITA*, as it merely calls for the production of documents or information.

B. *Respondent's Submissions*

[46] The Respondent argues that, where information is sought under section 231.1, which concerns a non-resident taxpayer, the Applicant must first make a determination about that individual's residency status. The Respondent contends that this will impact the type of production compellable under the *ITA*.

[47] The Respondent claims that he provided the Applicant with all of the information and documentation under his possession, power and control, which was sought during the period that he was resident in Canada, including information and documentation pertaining to his worldwide income and foreign holdings. The Respondent states that he answered all of the audit inquiries respecting his Canadian income and holdings for the entirety of the audit period, which is all he was required to do.

[48] The Respondent argues that this Court should order the Applicant to make a finding about his residency status. Alternatively, the Respondent asks this Court to refer the question of

residency to the Tax Court pursuant to section 18.5 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*].

(1) The Minister Needs to Determine Residency First

[49] The Respondent takes issue with the proposition that the Applicant is entitled to documents and information *before* making a determination about the Respondent's residency status. The Applicant uses *Lin* to suggest that the Agency can use section 231.1 to compel information *before or without* making a determination regarding residency status. The Respondent argues that this is incorrect at law. Rather, consistent with *Lin*, the Respondent states that this Court lacks the jurisdiction to make a determination respecting residency.

[50] The Respondent claims that a residency determination informs the type of information that the Applicant can compel under section 231.1. The Respondent asserts that section 231.1 is meant to apply to persons with a sufficient nexus to Canada, in order to impose federal income tax liability. A demand made in respect of a non-resident, with no apparent connection to Canada, would not proceed under this provision. The Respondent claims that the Agency can rely on other provisions of the *ITA*, such as sections 231.2 and 231.6.

[51] The Respondent asserts that the Applicant's argument, which states that section 231.6 does not apply in the present circumstances because the Respondent is currently in Canada, is contrary to the jurisprudence. In *Landbouwbedrijf Backx BV v Canada*, 2019 FCA 310 and *Landbouwbedrijf Backx BV v The Queen*, 2021 TCC 2, the courts confirmed that "an assessment is conclusive as between the parties only in relation to the assessment for the year in which it was

made." Given the Respondent's tax filings showed he was a non-resident from 2017 to 2019, the Respondent argues that the Applicant cannot rely on the Respondent's physical location in 2023 to bind him to the audit period.

[52] The Respondent also contends that the Applicant's statement, that section 231.1 is indifferent to residency status, would allow the Applicant to demand information from *every* non-resident with tenuous ties to Canada, which would lead to "absurd results."

(2) The Compliance Provisions Are Not Applicable to the Respondent

[53] While the Respondent recognizes that the language of the *ITA* is broad, he argues that the case law has narrowed that scope. In particular, he states that the definition of a "taxpayer" cannot include non-residents who do not have Canadian-source income or Canadian holdings. Otherwise, there would be no limit on who could be characterized as a taxpayer under the *ITA*, as this could include *every* existing individual and corporation, whether or not they were a Canadian resident. The Respondent claims that this would be in "blatant disregard" of international law.

[54] The Respondent asserts that, based on the Agency's own internal records, the Agency recognizes that it has to rely on international tax treaties and Tax Information Exchange Agreements to obtain information from non-residents. The Respondent argues that, as he was a non-resident for several years, he filed his income tax returns as such. For all years, he states that his non-resident related entities were not taxpayers and, accordingly, were not subject to section 231.1.

(3) Non-Resident Related Entities Are Not Taxpayers Under Section 231.1

[55] The Respondent contends that he was not required to provide the Applicant with information about his non-resident related entities during the years that he was not a resident, as the entities were not "taxpayers" under the *ITA*. Since the Respondent was a taxpayer and resident of Canada in 2016, he provided all of the information pertaining to his worldwide income for that year. However, from 2017 to 2019, the Respondent states that he was a taxpayer under the *ITA* for only Canadian-source income or gains arising from the disposition of Canadian property, and he was not required to produce information relating to his non-Canadian income.

[56] The Respondent claims the Federal Court of Appeal considered this very issue. In *Oceanspan Carriers Ltd v Canada*, [1987] 2 FC 171, 1987 CanLII 9009 (FCA) [*Oceanspan*], the Respondent argues that the Court determined that a non-resident corporation, which did not earn income from Canadian sources, could not be considered a "taxpayer" under the *ITA*. More specifically, the Respondent refers to the following quote:

> [. . .] **The definition of "taxpayer"**, properly understood in its context in the whole of the scheme of the Act, shows, **indisputably in my view, that it refers to resident individuals or corporations who may be liable to pay tax at some time** whether or not they are, at any given time, liable therefor. **A non-resident without income from Canadian sources can never be liable to pay tax under the Act on its foreign income. It is not, therefore, a corporation contemplated by the definition of "taxpayer" in the Act.**
>
> [Emphasis added.]

[57] The Respondent also cites *Marino v The Queen*, 2020 TCC 50 [*Marino*], which involved a non-resident individual. In that decision, the Tax Court noted that a non-resident, with no source of Canadian income, was not a "taxpayer" and did not have a taxation year. The Tax Court also analyzed section 250.1 of the *ITA*, finding that the provision did not have the effect of giving every non-resident person a taxation year.

[58] Moreover, pursuant to the case law, the Respondent asserts that the words "taxpayer" and "person" can be used interchangeably under the *ITA*.

[59] In this case, as the Respondent was not a "taxpayer" from December 28, 2016 to the end of the audit period (in accordance with *Oceanspan*), the Respondent argues that he was not a "person" under the *ITA*. Based on *Marino*, the Respondent contends that subsection 2(3) of the *ITA* identifies only a subset of non-residents that are taxable, which includes those who were employed in Canada, carried on business in Canada, or disposed of taxable Canadian property in the year or prior year. For reasons discussed more fully below, I cannot agree with this argument.

[60] The Respondent also points to Regulation 105(1) of the *Income Tax Regulations* (CRC 1977, c 945), which does not require a non-resident recipient of fees, commissions or any other amounts to file an income tax return solely on the basis of receiving payment for services rendered in Canada. Similarly, the Respondent cites the Agency's own published administrative rulings, which state that "[a] non-resident individual that does not have any Canadian source income would not be considered a "taxpayer" as it is defined in the Act."

[61] Therefore, the Respondent argues that, if a non-resident entity does not have any tax payable, either due to being employed in Canada, having carried on a business here or having disposed of taxable Canadian property, it is not a taxpayer at all. Accordingly, in the present circumstances, the Respondent claims that the Applicant has the right to seek information about his non-resident related entities and of himself as it relates to his Canadian-source income, income from a business in Canada, or gains arising from the disposition of Canadian property during the audit period. The Respondent argues that the Applicant cannot ask for all the details respecting his non-resident related entities (and himself) during his non-resident years.

[62] Finally, the Respondent factually distinguishes the Applicant's authority, *Alberta Ltd*, which is relied upon for assessing the limits of territorial jurisdiction when compelling the production of documentation. In that decision, the Respondent argues that the Supreme Court found that the bank had branch operations both inside and outside of Quebec. The Respondent contends that the Court relied on the bank's operations in Quebec to find that Agence du revenu du Québec's request had not been extraterritorial. The Respondent claims that this reasoning is not applicable here, since the Agency served the Demand on the Respondent personally (and not on a third party), and the Demand related to a period where the Respondent declared himself a non-resident and could have no tax liability for his non-Canadian worldwide income during those years.

(4) The Minister Has Deprived the Respondent of the Opportunity to Judicially Review a Residency Decision

[63] Pursuant to sections 18.1 and 28 of the *Federal Courts Act*, the Respondent notes that the Court has the power to judicially review any decision of the Agency. However, the Respondent

states that the Agency has not made a determination respecting his residency. Under the jurisprudence, a "decision" is a finding that is final and binding. In this case, the Respondent asserts that the Minister or Agency must make a *finding* respecting his residency before imposing any audit powers pursuant to section 231.1 of the *ITA*.

[64] The Respondent argues that the Applicant is "putting the cart before the horse," as he cannot judicially review the Agency's residency determination before responding to the Demand. The Respondent contends that the Applicant has denied him of procedural fairness by depriving him of the opportunity to know the case to meet.

(5) The Compliance Order is Not Warranted

[65] In order to receive a compliance order pursuant to subsection 231.7(1) of the *ITA*, the Respondent notes that the Applicant bears the burden of satisfying the tripartite test from *Canada (National Revenue) v Chamandy,* 2014 FC 354 [*Chamandy*]. The Respondent states that a judge should not exercise their discretion unless *all* of the conditions are clearly met. Moreover, the Respondent indicates that the *ITA* only requires a taxpayer to make reasonable efforts to acquire documentation when a demand is made pursuant to section 231.1. Therefore, if a document never existed or was not available (since it was not in the taxpayer's possession), then the Respondent asserts a compliance order should not be granted.

[66] In the present circumstances, the Respondent asserts that he made reasonable efforts to provide all of the available Required Material in his possession, power and control. The Respondent contends that some of the documentation, which the Applicant requested in the

Demand, does not exist. The Respondent argues that he cannot produce what does not exist, and refers to *Canada (National Revenue) v Amdocs Canadian Managed Services Inc*, 2015 FC 1234 [*Amdocs*]. The Respondent indicates that section 231.1 only requires that he provide reasonable assistance to produce the Required Material, as he does not have to "detail each and every one of his search efforts" voluntarily and without being prompted by the Minister.

[67] Moreover, the Respondent notes that section 231.1 allows the Agency to make follow-up requests for information when necessary. Therefore, the Respondent claims that the Agency is allowed to inquire about the Respondent's search for any materials which he states do not exist. The Respondent asserts that the Agency did not make any such requests. As a result, the Respondent contends that the Court should not reward the Applicant for this failure.

[68] Finally, the Respondent claims solicitor-client privilege and common interest privilege over tax planning documents relating to 119 BC, which was detailed in his February 28, 2023 submissions. The Respondent states that this Court should not grant a compliance order with respect to those documents.

VI. Analysis

A. *Preliminary Issue*

[69] As a preliminary matter, the Applicant contends that the Respondent failed to lead admissible evidence regarding his claim that he was not a resident of Canada from 2017 to 2019. The Applicant argues that the Respondent is improperly attempting to prove his residency status through his accountant, Vinay Khosla, who filed an affidavit for this application (the Khosla

Affidavit). The Respondent did not file his own affidavit. The Applicant argues that this evidence is inadmissible because it is hearsay and contrary to Rule 81 of the *Federal Courts Rules*, SOR/98-106 [*Rules*].

[70] The Applicant asserts that the Khosla Affidavit does not meet any of the hearsay exceptions, nor does it meet the necessity or reliability test set out by the Supreme Court of Canada in *R v Khelawon*, 2006 SCC 57. In particular, the Applicant states that the Respondent was available to affirm an affidavit, given he was located in Canada. Therefore, the Applicant contends that the Khosla Affidavit was not necessary. Additionally, the Applicant argues that the Khosla Affidavit is not reliable because he was unaware of the facts, had no first-hand knowledge, and made no efforts to verify the information provided.

[71] As a result, the Applicant claims that there is no admissible evidence showing that the Respondent was legally a resident of the Bahamas.

[72] Upon considering the Khosla Affidavit, I find that it is acceptable for this application. It would appear that the Applicant's argument is largely concerned with an inability to cross-examine the source of this information, the Respondent, as the Applicant states it is "an attempt to shelter [the Respondent] from cross-examination." However, similar to *Canada (National Revenue) v 2276230 Ontario Inc*, 2021 FC 242, although the Respondent did not provide the best evidence for his arguments, nor explain why such evidence could not be provided, I will not strike the Khosla Affidavit. Rather, I will afford it less weight on this application.

B. *Is Residency a Consideration in the Compliance Provisions?*

[73] The Respondent has provided documentation relating to his Canadian-source income during his self-declared non-residency. The Agency now asks this Court for a compliance order to obtain further materials from the Respondent, including information about relevant non-resident entities. The Agency asserts that a compliance order is needed to determine the Respondent's residency status and to assess whether he complied with his duties and obligations under the *ITA*.

[74] Based on the parties' submissions, it appears that the Applicant and the Respondent are in agreement that the Tax Court of Canada has exclusive jurisdiction to decide the matter of residency. Both parties rely on *Canada (National Revenue) v Lin,* 2019 FC 646 [*Lin*], which states that any determination of residency for the purposes of the *ITA* is an issue beyond this Court's jurisdiction. However, the parties disagree regarding whether residency must be decided first; that is, whether it must be considered prior to applying sections 231.1 and 231.7 of the *ITA*.

[75] The Applicant refers to *Ghermezian v Canada (Attorney General),* 2020 FC 1137 [*Ghermezian 1*], where the Court cited *Lin.* The Court noted *Lin* does not suggest that a dispute regarding residency status prevents the Minister from exercising its powers under section 231.1.

[76] While the jurisprudence has hinted at the impact of residency status, there is nothing directly on point where foreign-based information was sought by the Agency from a non-resident, under sections 231.1(1) and 231.7(1) of the *ITA,* for the purpose of making a residency determination and assessing overall compliance with the legislation.

[77] However, the question of whether the Respondent complied with the Demand, and whether the compliance order can be granted, depends, in part, on whether residency is a consideration that affects the operation of sections 231.1(1) and 231.7(1). In other words, the issue is whether residency limits the scope of these provisions, including whether it must be determined first.

(1) Relevant Jurisprudence

[78] There is limited case law on this issue. In a few instances, the Court has hinted at how residency could influence the applicability of sections 231.1(1) and 231.7(1). In other cases, there are discussions on foreign-based information, including the use of section 231.6 or relevant tax treaties. However, there is no definitive answer to this question.

[79] In *Lin*, the parties raised a residency concern, arguing that a non-resident was not required to respond to a request for information under section 231.1 of the *ITA*. In referring to this issue at paragraphs 28-29, the Court stated that:

> Resident status under the *ITA* (i.e., ordinary resident, a factual resident, a deemed resident, a deemed non-resident, and a non-resident) affects the obligations of individuals to pay taxes. Not all non-residents are exempt from paying taxes, however, as subsection 2(3) of the *ITA* specifies circumstances when a non-resident may be liable to pay tax on income earned in Canada.
>
> Mr. Lin filed tax returns for the period of the audit. However, by virtue of section 18.5 of the *Federal Courts Act*, RSC 1983, c F-7, determining his residency status for purposes of the *ITA* during the tax years in question is an issue beyond this Court's jurisdiction. That issue lies within the jurisdiction of the Tax Court of Canada because it involves determining his liability to pay tax under the *ITA* as a non-resident (*Johnson v The Queen*, 2007 TCC 288).

[80] In my opinion, *Lin* is not completely on point. In that decision, the Court did not state whether a non-resident is required to provide information under section 231.1, as Justice Boswell decided the case on another ground.

[81] However, in *Ghermezian 1*, the applicants raised *Lin* and argued that the Minister had to establish its jurisdiction over foreign entities before requesting information under section 231.2(1). In particular, the applicants claimed that the Minister could either commence a proceeding before the Tax Court, or, in the case of a foreign corporation, the Minister could start a proceeding before a competent authority prescribed by tax treaty. The Court rejected the argument that residency had to be determined first. At paragraphs 138-139, the Court stated that:

> I find little merit to these submissions. *Lin* does not assist the Applicants, as Justice Boswell's decision to dismiss the Minister's application for a compliance order in that case turned on the lack of clarity in the Minister's requests, in that it was unclear whether they were directed to the respondents personally or to related or associated entities (paras 30-32). Justice Boswell correctly notes that it is the Tax Court, not the Federal Court, which has jurisdiction over the determination of a taxpayer's residency status. However, his decision did not turn on this point, and I do not read *Lin* as suggesting that a dispute as to a person's residency precludes the Minister from exercising her powers under s 231 *et seq* to obtain information and documentation relevant to that person's tax liability, including material relevant to the residency determination.
>
> It may be that, through future proceedings before a court or other body of competent jurisdiction, it will be determined that the taxpayers under investigation by the Minister in these proceedings are not resident in Canada, with whatever impact that determination may have as to whether the taxpayers have a Canadian tax liability**.** However, the Applicants have not convinced me that the Minister is presently unable to pursue information and documentation relevant to those issues. More precisely, this argument does not convince me that it was unreasonable for the decision-maker in the present applications to issue the Triple Five RFIs.

[Emphasis added.]

[82] In *Ghermezian v Canada (National Revenue)*, 2022 FC 236 [*Ghermezian 2*], the respondents also raised the issue of residency under sections 231.2 and 231.7. The respondents asserted that they were American residents, and could not be compelled to provide documentation and information; rather, the respondents claimed that the Minister had to follow a tax treaty procedure. At paragraphs 213-214, Justice Southcott acknowledged this dispute, stating:

> I should note that I have concerns about this Court's jurisdiction to make a finding as to the respondents' residency. As observed in *Lin*, by virtue of section 18.5 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, determining residency for purposes of the Act lies within the jurisdiction of the Tax Court of Canada (at paragraph 29). Leaving that point aside, I accept the respondents' position that there is little evidence that would support a finding that Paul and/or Joshua Ghermezian is or was a resident of Canada at any potentially relevant time. However, there is similarly little evidence that would support a finding that Paul and/or Joshua Ghermezian is not or was not a resident of Canada. This outcome of any determination of this issue (if this Court had the necessary jurisdiction) would turn on the burden of proof that, in my view, would have to rest with the respondents. The respondents' residency is not one of the statutory conditions in section 231.7. Rather, it is a defence argument raised by the respondents and, more significantly, it is the respondents who would be privy to the evidence relevant to the argument.
>
> In the absence of a finding that the respondents are not residents of Canada, their arguments surrounding the statutory interpretation of sections 231.2 and 231.7, including the potential relevance of the US Treaty and principles of international law, cannot affect the outcome of these applications. Therefore, exercising judicial restraint, I decline to make findings on those arguments.
>
> [Emphasis added.]

[83] Although the issue of residency was raised in each decision, neither *Lin*, *Ghermezian 1* nor *Ghermezian 2* firmly resolved the matter. However, based on a review of these authorities, the Court appears to indicate that residency does not necessarily prevent the Minister from requiring information under section 231.1.

(2) Statutory Interpretation

[84] Given the limited jurisprudence on this issue, I have reviewed sections 231.1(1) and 231.7(1) using the modern approach to statutory interpretation. I have considered the provisions in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *ITA*, the object of the *ITA*, and the intention of Parliament (see *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 at para 21 and *Marino* at paras 22-23).

(a) *Text*

[85] The parties dispute whether sections 231.1(1) and 231.7(1) include non-residents. In particular, the Applicant and the Respondent disagree over the meaning of the words "person" and "taxpayer."

[86] A plain reading of sections 231.1(1) and 231.7(1) does not limit the scope of "person" or "taxpayer." Under section 231.1(1), an authorized person may gather information about a taxpayer or any other person, at all reasonable times, for any purpose related to the administration or enforcement of the *ITA*. At paragraph 58 of *BP Canada Energy Company v Canada (National Revenue)*, 2017 FCA 61, the Federal Court of Appeal agreed that section 231.1(1) "could not have been drafted in broader terms."

[87] Similarly, under section 231.7(1), the Court can order a person to provide access, assistance, information or documentation that was sought by the Minister under section 231.1 or 231.2, where the person was required to do so, and did not do so, and the information or documentation was not protected from disclosure by solicitor-client privilege. At paragraph 213 of *Ghermezian 2*, this Court noted that "residency is not one of the statutory conditions in s 231.7."

(i) Taxpayer

[88] A plain reading of the term "taxpayer" would include any person or entity paying taxes.

[89] Under section 248(1) of the *ITA*, the term "taxpayer" is defined as any person whether or not they are liable to pay tax. This definition is broad and does not impose any restrictions on the basis of residency.

[90] However, as the Respondent points out, the jurisprudence has narrowed the meaning of the term "taxpayer." In *Oceanspan*, the Federal Court of Appeal determined that a corporation, which was originally incorporated in Bermuda, could not carry-forward losses from the period that it was a non-resident. The Court referred to Divisions A to D of the *ITA*, noting that both residents and non-residents are liable to pay tax on income earned from Canadian sources. A non-resident with no income, from any source in Canada, would not be liable to pay tax in Canada. At paragraph 12, Justice Urie acknowledged that the definition of "taxpayer" includes "both residents and non-residents who derive income from Canadian sources … whether liable to pay tax or not." At paragraph 13 of *Oceanspan*, the Court clarified that:

> I put the reasoning in another way. The definition of "taxpayer", properly understood in its context in the whole of the scheme of the Act, shows, indisputably in my view, that it refers to resident individuals or corporations who may be liable to pay tax at some time whether or not they are, at any given time, liable therefor. A non-resident without income from Canadian sources can never be liable to pay tax under the Act on its foreign income. It is not, therefore, a corporation contemplated by the definition of "taxpayer" in the Act.
>
> [Emphasis added.]

[91] In *Marino*, the Tax Court relied on this understanding, in part, to decide an issue relating to tuition credits. The appellant, who was from the United States, later became a resident of Canada. He attempted to claim unused tuition tax credits based on tuition that he paid to American universities during the time that he was a non-resident and had no source of Canadian income. The parties disputed whether provisions 118.5(1) and 118.61 of the *ITA* applied to all non-residents, or applied to only those non-residents who were taxpayers in the years for which tuition was paid.

[92] The Tax Court determined that the provisions did not apply to all non-residents, and this was upheld by the Federal Court of Appeal (see *Marino v Canada*, 2022 FCA 115). When interpreting the sections, the Court recognized that a “taxpayer,” read literally, could include a non-resident. However, Justice Monaghan applied the *Oceanspan* interpretation of “taxpayer,” finding that the appellant was not a “taxpayer” during the years that he was a non-resident. Accordingly, the Court determined that section 118.5(1) did not apply to the appellant for that period. At paragraph 42, the Court stated that:

> Applying the principles of statutory interpretation, section 118.5 does not apply to any non-resident individual, but rather is limited

> to (resident or) non-resident individuals who are potentially liable to Canadian tax in the taxation year (i.e., are taxpayers within the Oceanspan meaning of that term in the relevant year).

[93] The Court also recognized that the *ITA*'s reference to an "individual" rather than a "taxpayer" in sections 118.5(1) and 118.61 did not mean that a tuition tax credit was available to *any* individual who otherwise met the relevant conditions. In assessing the meaning of the word "individual," as it was used in section 118.5(1), the Court considered the purpose for which it was used and the surrounding language. Justice Monaghan held that a person is an "individual" for the purposes of section 118.5(1) where "the individual is described in subsection 2(1) or 2(3) and is potentially liable to tax in Canada under Part I." Therefore, in the context of non-residents, the Court determined that, "A non-resident individual will be an individual to whom subsection 118.5(1) may apply in a taxation year only where that individual is an individual described in subsection 2(3) (*i.e.*, is a taxpayer) in that year."

[94] Upon considering these authorities, I find that the *Oceanspan* principle is applicable to this matter. A literal reading of the *ITA* would imply that any taxpayer would be caught by sections 231.1(1) and 231.7(1). However, this would be inconsistent with prior interpretations of the word "taxpayer." In *Marino*, the Court recognized that a taxpayer means an individual who is taxable under Part I of the *ITA*. For non-residents, this would include individuals identified by subsection 2(3), meaning those who were either employed in Canada, carried on business in Canada or disposed of taxable Canadian property in a year.

[95] Therefore, for the purposes of sections 231.1(1) and 231.7(1), I accept that the word "taxpayer" includes residents and non-residents who are liable for tax under Part I of the *ITA*.

[96] However, I do not find that this definition necessarily excludes the Respondent. As noted, the Respondent filed a tax return that reported employment income from a Canadian employer in 2018, which was during the time that he declared himself a non-resident. As such, he would fall within the meaning of a "non-resident" under section 2(3) of the *ITA*. As well, it seems that the Respondent elected to report rental income during his non-residency under section 216 of the *ITA*, which would, again, technically bring him within Part I of the legislation: see *Pechet v Canada*, 2009 FCA 341 at paras 5, 36, 46. Under a section 216(1) election, a non-resident can file a return and pay tax under Part I of the *ITA* on the net income from their real property in Canada. This means that the non-resident is treated as a Canadian resident: see also *Merali v The Queen*, 1988 CanLII 10016 (FCA).

[97] As a result, I do not agree that the Respondent was not a "taxpayer" under the *ITA*.

(ii) Person

[98] In any event, sections 231.1(1) and 231.7(1) are not limited to a "taxpayer," as both provisions refer to a "person."

[99] When considering the ordinary meaning of the word "person," similar to "taxpayer," this term does not necessarily import residency considerations. A plain reading of the word "person" would encompass any human being or natural person.

[100] Under the *ITA*, the term "person" is defined pursuant to subsection 248(1). "Person" includes any corporation, and any entity exempt, because of subsection 149(1), from tax under Part I on all or part of the entity's taxable income and the heirs, executors, liquidators of a

succession, administrators or other legal representatives of such a person, according to the law of that part of Canada to which the context extends.

[101] In *Canada (National Revenue) v Stanchfield*, 2009 FC 99 at paragraph 23, this Court noted that the word "person" it not limited to artificial persons, as it also includes natural persons. In that case, the respondent tried to argue that he was not a natural person, even though he agreed that he was subject to the *ITA*. In rejecting this argument, the Court determined that prior jurisprudence had "fully canvassed this issue." In particular, the Court accepted that the *ITA's* definition of the word "person" simply expanded upon the ordinary meaning of this term.

[102] In this case, the Respondent argues that the terms "taxpayer" and "person" are the same. On this point, the Respondent refers to paragraph 31 of *Kim v The Queen*, 2017 TCC 246, where the Tax Court stated that the words "taxpayer" and "person" could be used interchangeably.

[103] However, section 231.1(1) of the *ITA* explicitly states that an authorized person is allowed to gather information about a "taxpayer or any other person" (emphasis added). Section 231.7(1) does not use this wording, but it relies upon section 231.1. It states that the Court can "order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2."

[104] Given this wording, I do not find that the terms "taxpayer" and "person" can be used interchangeably. Parliament is attempting to draw a distinction, given the use of the word "or" in the sentence. As a result, an authorized person could request information from a wide array of sources, including third parties.

[105] Therefore, based on the text itself, I find that the term “person” is broad and is not limited by residency status.

(b) *Context*

[106] Under the modern approach to statutory interpretation, consideration must also be given to the relevant context. At paragraph 31 of *R v Alex*, 2017 SCC 37, the Supreme Court noted that a “plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms.”

[107] For the purposes of the application, I have considered the balance of section 231.1, along with the relevant legislative history. In particular, I have examined recent amendments to the *ITA* from 2022, which further expand the scope of section 231.1. I have also reviewed the information gathering scheme set out in the *ITA*, specifically sections 231.2 and 231.6.

(i) Balance of Section 231.1

[108] At paragraph 13 of *Redeemer Foundation v Canada (National Revenue)*, 2008 SCC 46 [*Redeemer*], the Supreme Court noted that “[…] s. 231.1(1) is broadly worded.”

[109] Section 231.1 is titled “information gathering,” and has five parts which specify the various means by which an authorized person can gather information.

[110] First, under subsection 231.1(1)(a), an authorized person can inspect, audit or examine any document of a taxpayer or any other person that may be relevant to determining the obligations or entitlements of the taxpayer or any other person.

[111] Under subsection 231.1(1)(b), an authorized person can examine any property, process or matter relating to a taxpayer or any other person.

[112] Pursuant to subsection 231.1(1)(c), an authorized person can enter premises or place where any business is carried on, any property is kept or anything is done in connection with any business or any books or records are or should be kept. This provision also allows an authorized person to enter a dwelling-house upon obtaining a warrant.

[113] Subsection 231.1(1)(d) requires a taxpayer or any other person to answer questions, whether orally or in writing, including specifying the manner of the response. Additionally, an authorized person can require a taxpayer or any other person to attend a place designated by the authorized person, or by videoconference or another form of electronic communication.

[114] Finally, subsection 231.1(1)(e) requires a taxpayer or any other person to provide an authorized person with all reasonable assistance with anything that the latter is authorized to do under the *ITA*.

[115] On this basis, it is clear that section 231.1(1) is wide in scope, and it is not limited to inspecting documents. Rather, it provides expansive powers for gathering information, allowing the Agency to conduct examinations, enter premises, question taxpayers or persons, and require

all reasonable assistance for any purposes related to the administration or enforcement of the *ITA*.

(ii) Legislative History of the Provision

[116] The breadth of section 231.1(1) is further supported by statutory amendments. The federal government has introduced legislative measures which provide the Agency with greater access to taxpayer information, both domestically and abroad: see, for example, Laurie A. Goldbach and Andrea M. Ryer, "Audit, Appeals, and Requests for Information: The View from Both Sides," in *Report of Proceedings of the Seventy-Fourth Tax Conference*, 2022 Conference Report (Toronto: Canadian Tax Foundation, 2023), 9: 1-26.

[117] In particular, following amendments to the *ITA* in 2022, section 231.1(1)(a) now allows an authorized person to request information that may be relevant to determining the “obligations and entitlements of a taxpayer,” as opposed to any amount payable under the *ITA*. This expands the basis by which the Agency can make requests, since they may relate to *any* obligations of the taxpayer. Additionally, this section permits an authorized person to request documentation that may be relevant to determining the obligations or entitlements of “any other person.”

[118] Moreover, under subsection 231.1(d), the Agency is no longer limited to written responses. Following the legislative amendments, a taxpayer or any other person must provide “all reasonable assistance, to answer all proper questions,” which may occur orally at a place “designated by the authorized person, or by video-conference or by another form of electronic

communication." Additionally, a taxpayer or any other person may be required to answer questions in writing, "in any form specified by the authorized person."

[119] The amendments also add section 231.1(1)(e), which permits an authorized person to "require a taxpayer or any other person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under this Act."

[120] In adding these changes, Parliament has broadened the means by which the Agency can gather information, whereas before section 231.1 was predominantly used for inspection purposes. However, these amendments to section 231.1 lack the same protections as section 231.2: see, for example, Almut MacDonald & Anu Koshal, "Blurring the Lines Between Inspection and Requirement Powers: Recent Legislative Amendments to Section 231.1" (12 June 2023), online (blog): <https://www.mccarthy.ca/en/insights/blogs/mccarthy-tetrault-tax-perspectives/blurring-lines-between-inspection-and-requirement-powers-recent-legislative-amendments-section-2311>.

(iii) Statutory Scheme

[121] Finally, the wide-ranging scope of section 231.1(1) is evident from the *ITA*'s overall administration and enforcement scheme. As discussed, sections 231.1(1) and 231.7(1) are part of a broader set of information gathering provisions. In *Redeemer*, at paragraph 15, the Supreme Court acknowledged that, "Statutory provisions must be interpreted in a textual, contextual and purposive way, and all sections of a related group of provisions should be given coherent meaning if possible." For this application, two relevant provisions are sections 231.2 and 231.6.

[122] Under section 231.2(1), the Minister may require a person to provide information or documentation for any purpose related to the administration or enforcement of the *ITA*, of a listed international agreement, or of a tax treaty with another country. Under subsection 231.2(2), the Minister cannot impose a requirement under 231.2(1) relating to one or more unnamed person without the authorization of a judge.

[123] In *Redeemer*, the Supreme Court of Canada discussed the interaction between sections 231.1 and 231.2. In that decision, the appellant argued that section 231.1 could not be read to allow the Minister to obtain information about unnamed persons, as section 231.2 would serve no purpose otherwise. At paragraph 15, the majority of the Court rejected this approach, stating that:

> But, we do not accept the argument that s. 231.2 serves no purpose if s. 231.1 is read as authorizing the Minister to obtain information on unnamed third parties during the audit of a taxpayer. The Minister may well need to obtain information about one or more taxpayers outside the context of a formal audit. Section 231.2 responds to this need, subject to a requirement for judicial authorization if the Minister is seeking information relating to unnamed persons from a third party record holder. It follows that the argument that s. 231.1(1) should be read down to avoid redundancy fails.

[124] At paragraph 22 of *Redeemer*, the Court clarified that section 231.2(2) applies in specific circumstances, noting that it "should not apply to situations in which the requested information is required in order to verify the compliance of the taxpayer being audited….the CRA should be able to obtain information it would otherwise have the ability to see in the course of an audit."

[125] Accordingly, *Redeemer* confines the scope of section 231.2 while confirming that 231.1 confers the Agency with broad powers during the course of a formal audit.

[126] Similarly, the Federal Court of Appeal recognized that section 231.2 does not provide a distinct authority within the *ITA*, as its wording states that it applies "[n]otwithstanding any other provision" of the *ITA* (see *Miller v Canada (National Revenue)*, 2022 FCA 183 at para 67 [*Miller*]). Therefore, the Court determined that overlap could exist between different provisions. In *Miller*, the appellant attempted to argue that sections 231.1 and 232.1 afforded separate powers. The Court rejected this proposition, while referring to *Redeemer*.

[127] In *Miller*, the Court also referred to the possibility of overlap when discussing section 231.6. Under this provision, the Minister may require a person resident in Canada, or a non-resident carrying on business in Canada, to provide any foreign-based information or document. The *ITA* defines foreign-based information (and documentation) as that which is "available or located outside of Canada" and that which may be relevant to the administration or enforcement of the *ITA*.

[128] At paragraph 69 of *Miller*, the Federal Court of Appeal determined that, "Because overlap is possible, one cannot read section 232 as setting out the only process for obtaining documents from the appellant's solicitors or section 231.6 as setting out the only process for obtaining documents from the appellant's bank in Luxembourg" (emphasis added). The Court found that the Federal Court could order the appellant to make a request for information and documentation from his foreign bank pursuant to sections 231.1 and 231.7.

[129] Moreover, I note that there is another aspect to consider with respect to section 231.6. As discussed, the provision is limited to information that is "available or located outside of Canada." Therefore, in circumstances where foreign-based information is available or located inside of Canada, this would raise different considerations under the *ITA*. Or, similarly, where the taxpayer claimed to have no relationship with the foreign entity holding the information, despite being in Canada, this would change the Agency's use of the provisions.

[130] For instance, in *Levett v Canada (Attorney General)*, 2021 FC 295 [*Levett*], which was upheld on appeal (see *Levett v Canada (Attorney General)*, 2022 FCA 117), the applicants were Canadian taxpayers, who challenged requests for information that were addressed to the Swiss authorities. Justice St. Louis found that the Agency pursued all reasonable domestic means of obtaining the information. The applicants claimed to have no connection with two corporations, one of which was incorporated in the British Virgin Islands. As a result, the Court recognized that the auditor could not request information pursuant to sections 231.1 or 231.2. The Court also noted that the auditor could not use section 231.6, since there was no indication that a Canadian taxpayer could provide the requested information.

[131] In *Rémillard v Canada (National Revenue)*, 2022 FC 338 [*Rémillard*], the Court referred to *Levett*. In that case, the Agency sought information from a non-resident who was located outside of Canada. The Agency made three information exchange requests pursuant to applicable tax treaties. In their correspondence, the Agency noted that their requests complied with domestic law, and that the required information could have been obtained were it available in Canada. Amongst the issues raised, Associate Chief Justice Gagné ultimately dismissed the

judicial review, and determined that the Agency exhausted all reasonable domestic means of obtaining the information and documentation before turning to foreign authorities.

[132] Unlike in *Rémillard*, in *Miller*, the Agency did not utilize tax treaties, relying instead on section 231.1. The Federal Court granted the Agency's request to seek information and documentation relating to a foreign bank. The Federal Court of Appeal found that the Federal Court did not overreach in crafting its order, as the appellant was not required to *produce* documents and information from the foreign bank; rather, the appellant only had to *request* such materials. If the appellant was refused, then they could provide the explanation for the refusal (*Miller* at para 74). Therefore, in light of this Court order, the Federal Court of Appeal noted that the appellant was not being ordered to produce foreign-based documents.

[133] More recently, in *Canada (National Revenue) v Chad*, 2024 FC 460 [*Chad*], the Court stated that there has been no definitive ruling on whether sections 231.1 and 231.2 apply to foreign-based information or documentation. Justice Favel noted that, "…Courts have only ruled that foreign information or documents which is also available in Canada can be compelled under section 231.2." On this point, the Court referred to *Ghermezian 2* at paragraphs 177-178, which cited *Ghermezian 1* at paragraphs 95-96 and 99-100.

[134] In *Chad*, the Court also recognized other jurisprudence relating to this issue, including *eBay Canada Ltd v MNR*, 2008 FCA 348 at paras 47-48, 52 [*eBay*]. In that decision, the Court determined that information was not foreign-based, since eBay could access it on computers in Canada. Moreover, in *Frank C Smith Medicine Professional Corporation v Canada (National*

Revenue), 2022 FC 29 [*Frank C Smith*], the Court noted that domestic-based information could not be transformed into foreign-based information merely by taking it outside of the country.

[135] Ultimately, in *Chad*, the Court found that the evidentiary record was insufficient to determine whether the information was accessible from Canada. The Court did not decide whether the requested documentation and information was "foreign-based." Rather, at paragraph 34, Justice Favel stated:

> To clarify the scope of section 231.7 compliance orders, there needs to be a strong evidentiary record that the Respondent has not and continues to be unable to access the documents and information set out in the Requirements in Canada. The parties are required to adduce evidence to equip the Court in making this determination (Ghermezian 2022 at para 179). The evidentiary record in this matter is a bit more robust than in Ghermizian 2022 as the Respondent has filed affidavit evidence, including the refusal letters. The respondents in Ghermezian 2022 did not file affidavits. The Respondent was also cross-examined on his affidavit. Nevertheless, it is my view that in the present matter, like in Ghermezian 2022, the evidentiary record is lacking to support a conclusion on whether the information is accessible from Canada (at para 181). In Ghermezian 2022, the Court found that "in the absence of evidence sufficient to meet the respondents' burden, their arguments surrounding foreign-based information and documents raise no basis for resisting any of the applications" (Ghermezian 2022 at para 189).

[136] Accordingly, based on all of these prior decisions, I find that several concepts begin to emerge. The first is that, the Agency likely cannot rely on section 231.1 to obtain foreign-based information if the taxpayer claims to have no relationship with the foreign entity at issue. This can be contrasted with *Miller*, where the appellant was in Canada, had a bank account in Luxembourg, and was required to seek information from their foreign bank.

[137] Second, if foreign-based information is sought and cannot be accessed from within Canada, but could have otherwise been obtained, it is unlikely that section 231.1 will be used. As seen in *Rémillard*, the Agency has other means of obtaining the information.

[138] Third, although there has been no definitive ruling on the use of sections 231.1 and 231.2 to obtain foreign-based information, it is likely that the provisions can be used where the information is accessible and available in Canada. However, as noted in *Chad*, the parties must provide a strong evidentiary record to assist the Court in making this determination.

[139] Finally, in the event that the information is not available or accessible in Canada, then *Miller* suggests that there may be a limit on the breadth of section 231.1. In *Miller*, the Court noted that the "Federal Court carefully fashioned its Order to not overreach," and agreed that the information from a foreign bank could be *requested*, but it did not have to be produced.

[140] Accordingly, in conclusion, after considering *Redeemer* and *Miller*, I find that section 231.1 is not necessarily limited in scope by the other information gathering provisions in the *ITA*. Rather, the sections operate together, such that the Applicant may be able to obtain foreign-based information from non-residents outside of sections 231.2 and 231.6. That is, section 231.1 may be the most appropriate provision where foreign-based information is requested and the taxpayer can access the information from inside Canada. This accords with section 231.6, since that provision is applicable where the information is unavailable or located outside of Canada. It also fits with section 231.2, which is more appropriately used outside of the formal audit context. However, in order to make this determination, there must be a strong evidentiary record.

(c) *Purpose*

[141] Finally, the purpose of the provisions supports an interpretation that is not limited on the basis of residency.

[142] The *ITA* controls how federal income tax is calculated and collected, and it establishes a self-reporting taxation system. In *McKinlay*, the Supreme Court noted that, "While most taxpayers undoubtedly respect and comply with the system, the facts of life are that certain persons will attempt to take advantage of the system and avoid their full tax liability." As a result, the Minister is given broad powers under the *ITA* to supervise the regulatory scheme.

[143] As discussed previously, within this system, sections 231.1(1) and 231.7(1) form part of the administration and enforcement mechanisms of the *ITA*, which allow the Minister to investigate taxpayers and ensure compliance. At paragraph 27 of *Canada (National Revenue) v Cameco Corporation*, 2019 FCA 67, the Federal Court of Appeal stated that the purpose of section 231.1 is to "facilitate the Minister's unencumbered and immediate access to all books, records and information of the taxpayer." Regarding section 231.7, the Court noted that it provides "recourse to the authority of the Court in the face of a refusal."

[144] Therefore, within this system, I find that the purpose of sections 231.1 and 231.7 supports the Minister being able to review information from non-resident taxpayers, even if it is foreign-based, depending on certain conditions. As the Applicant notes, the taxation system is self-reporting, and the Minister is tasked with investigating and auditing taxpayers. Moreover, even non-residents are subject to tax on their Canadian-source income. Given this, the Minister must

be able to verify information provided by persons, whether resident or non-resident, to ensure their compliance with the *ITA*.

[145] Connected to this point, the Respondent argues that the Minister should be determining residency before demanding information under section 231.1. However, the purpose of section 231.1 is to assist the Minister in conducting audits. In this case, the purpose of the audit of the Respondent was, in part, to verify the Respondent's residency status. Therefore, it would be illogical for the Minister to make a determination on residency prior to having all of the necessary documentation. Rather, the Minister was asking for information under section 231.1 *in order to assess this exact issue*. Consequently, the Respondent's argument that residency should be determined first defeats the purpose of these provisions.

(d) *Conclusion on Statutory Interpretation*

[146] Upon considering the text, context and purpose of the provisions, I find that residency does not necessarily preclude the Minister from seeking information under sections 231.1 and 231.7. As noted, section 231.1(1) allows the Agency to collect information from taxpayers or any other persons. The provision has been continually broadened in scope, and it does not operate in isolation from other information gathering sections within the *ITA*. Moreover, the sections ensure that the Minister is able to audit taxpayers and ensure their compliance with the legislation.

[147] Accordingly, I find that the Applicant can seek information pursuant to sections 231.1 and 231.7 about non-residents where they are liable to pay tax under Part I of the *ITA*. Moreover, this does not necessarily exclude foreign-based information. Rather, the jurisprudence suggests

that foreign-based information may be required under section 231.1, but it must be located or available inside Canada. If the information is located outside of Canada, and there is a connection between the entities, then the Applicant may request the information, rather than its production, under section 231.1 (as seen in *Miller*).

C. *Other Arguments*

[148] I will briefly address some of the other arguments raised on this application.

(1) The Tax Court Has Exclusive Jurisdiction

[149] The Applicant argues that the Respondent is asking for mandamus, as he is requesting a referral of this issue to the Tax Court. The Applicant claims that the Federal Court lacks the jurisdiction to grant this relief.

[150] The Respondent asserts that he is not asking for mandamus, noting that the Court can grant knock-on or cascading relief. Further, even if it was mandamus, the Respondent claims that the Court has the ability to grant such a request under Rules 3 and 4 of the *Rules*.

[151] Without getting into the particular arguments of the parties, the fact is that the Tax Court of Canada has exclusive jurisdiction to determine residency status. This Court will not “transfer” this matter to the Tax Court. Rather, at the end of this audit, if the Respondent believes that the Agency has incorrectly concluded on his residency status, he can challenge this assessment and seek relief in the Tax Court (see *Rémillard* at para 148). Moreover, this argument is not determinative of this application and is tangential at best.

(2) The Minister Has Deprived the Respondent of the Opportunity to Judicially Review a Residency Decision

[152] The Respondent argues that the Applicant has denied him of procedural fairness, as the Agency has not made a residency determination before requiring his response to the Demand.

[153] Again, as stated above, any review of the Respondent's residency would be undertaken by the Tax Court. In *Rémillard*, Associate Chief Justice Gagné remarked that an applicant could challenge a residency assessment at the Tax Court upon the *conclusion* of the audit.

[154] Therefore, I do not find that the Minister has deprived the Respondent of the opportunity to judicially review a residency decision.

D. *Is the Applicant Entitled to the Compliance Order?*

[155] The Applicant acknowledges that the Respondent does not dispute the relevance of the compliance order related to his Canadian-source income. As well, there is no disagreement that the Court must be satisfied of the following before an order can be granted:

A. The person was required under sections 231.1 or 231.2 of the *ITA* to provide access, assistance, information or documents sought by the Minister;

B. The person did not provide the access, assistance, information or document; and

C. The information or document is not protected from disclosure by solicitor-client privilege.

[156] Each of the requirements must be "clearly met" before the Court can exercise its discretion to grant an order (see *Canada (National Revenue) v Dominelli*, 2022 FC 1418 at para 28 [*Dominelli*]). Even if all of the conditions have been satisfied, the Court retains an overriding discretion under section 231.7(1) to impose certain conditions on any order that is granted (*Dominelli* at para 30). The Court may impose restrictions to prevent overreach or ensure that the order is suitable for the circumstances (*Dominelli* at para 30).

[157] The jurisprudence shows that the scope of an audit request can be broad and the threshold for reasonableness of an audit is low (*Dominelli* at para 30 citing *Saipem Luxembourg SA v Canada (Customs and Revenue Agency)*, 2005 FCA 218 at paras 31-37). The required purpose of an audit request can be met, even if some of the information turns out to be irrelevant to the audit (*Dominelli* at para 29 citing *Ghermezian 2* at para 225). At paragraph 67 of *Amdocs*, the Court noted that, "it is for the Minister to determine both the scope of the audit and the documentation required to complete the audit."

[158] However, there are limits on what can be produced under a compliance order. Section 231.7(1)(b) prevents privileged material from being compelled. Moreover, under the *ITA*, a taxpayer only has to exercise "reasonable efforts" to obtain the requested information (*Dominelli* at para 30 citing *Miller* at para 50). Reasonableness depends on context (*Chad* at para 42).

[159] The taxpayer must also be given a reasonable amount of time to provide the requested documentation. In this case, the Agency issued the Demand to the Respondent on July 5, 2022. The Demand initially afforded the Respondent 60 days to provide the Required Material. However, the Respondent did not provide the documentation by this date. Over the course of

several months, the Respondent indicated that he would not provide certain information on the basis of his residency status. Following several extensions, the Respondent was given until February 28, 2023 to provide all of the Required Material.

[160] In this case, I find that the Respondent was afforded a reasonable amount of time (around eight months) to respond to the Demand.

(1) Was the Respondent Required to Provide the Information or Documents Pursuant to Section 231.1 or 231.2 of the *ITA*?

[161] In relation to the first part of the test, the parties disagree regarding whether information and documentation sought by the Agency can be requested from a non-resident. As discussed earlier, I find that section 231.1(1) is applicable to a non-resident taxpayer who is liable to pay tax under Part I of the *ITA*. In this instance, the Respondent filed a tax return on Canadian-source income, which would bring him within the scope of section 231.1(1). The Respondent received employment income from a Canadian employer during the audit period and elected to report his rental income under Part I of the legislation, which would be treated like a Canadian resident.

[162] However, as noted above, another caveat is whether the information is foreign-based. For the three corporations that are Canadian, 115 BC, 119 BC and 111 Canada, this is not an issue. However, the Agency is also requesting information and documentation about four non-resident entities: Hiroko Holdings, Retail Invest, D'Banyan and Eight Treasures.

[163] Based on an affidavit from an Agency auditor, the Applicant states that the Respondent is either an owner, shareholder or director of each entity. To establish this connection, the affidavit

relies upon an RC1 Form (Hiroko Holdings), Regulation 105 Withholding Tax Waiver Application (Retail Invest) and the International Consortium of Investigative Journalists (D'Banyan and Eight Treasures). The Applicant also indicates that various EFTs demonstrate a connection between the Respondent, D'Banyan and Eight Treasures.

[164] As noted in *Ghermezian 2* and *Chad*, sufficient evidence must be provided in order for the Court to make a determination on whether the information is located in Canada. Moreover, the Respondent bears the burden of establishing the location or accessibility of the material sought (see *Chad* at para 30 citing *Ghermezian 2* at para 186).

[165] In this case, similar to *Ghermezian 2* and *Chad*, I find that the Respondent has provided insufficient evidence to show whether the information can be accessed from within Canada. The Respondent has not filed affidavit evidence, nor filed refusal letters like the party in *Chad*. In their written submissions, the Respondent predominantly refutes the logic of the Applicant's arguments. At paragraph 189 of *Ghermezian 2*, the Court stated that, "in the absence of evidence sufficient to meet the respondents' burden, their arguments surrounding foreign-based information and documents raise no basis for resisting any of the applications."

[166] Therefore, following *Ghermezian 2*, the foreign-based information could, technically, be requested from the Respondent, on the basis that he has not shown it is inaccessible or unavailable within Canada. However, in accordance with *Miller*, I find that the more appropriate alternative is to have the Respondent request this information from the foreign entities, particularly as he may be limited in obtaining the materials. As noted earlier, for each corporation at issue, the Applicant states that the Respondent is either an owner, shareholder or

director. However, it is possible that, while asking for this information, the entities may refuse depending on the Respondent's control and access to the information, as seen in *Chad*, where the respondent asked for certain information from non-resident trusts and corporations. By limiting the order to a request for information, this will prevent any possible overreach and accord with the reasoning from *Miller*.

(2) Did the Respondent Provide the Required Information or Documents Sought by the Minister?

[167] Regarding the second part of the test, the parties dispute whether the Respondent provided the requested information. The Respondent asserts that he made reasonable efforts to obtain the documentation pursuant to the Demand. The Applicant argues that the Respondent has failed to provide any of the outstanding Required Material, which was necessary to verify his compliance with the *ITA*.

[168] Based on the Respondent's submissions, a significant portion of the Required Material was not disclosed to the Agency on the basis of his self-declared residency status. Notably, during the period from 2017 to 2019, the Respondent only answered audit inquiries pertaining to his Canadian-source income, or dispositions of property in Canada, for himself, Hiroko Holdings, Retail Invest, D'Banyan and Eight Treasures. The Respondent refused to provide any other information for these years. As a result, he failed to provide information sought by the Demand.

[169] In relation to this branch, there is another issue. The Applicant asserts that the Respondent did not provide certain documents for 2016 on the basis that they did not exist. The Applicant claims that these are bald assertions which are unsupported by the evidence.

[170] Pursuant to *Amdocs*, the Minister cannot require documents which do not exist to be produced. The Respondent is correct on this point. However, I note that the Respondent has not provided any evidence to show that the documents do not exist, nor provided any evidence of his search efforts for the materials. The Respondent merely repeats this assertion.

[171] In *Dominelli*, the Court referred to this issue at paragraph 36, stating:

> In *Amdocs*, the Court refused to issue a compliance order when the taxpayer demonstrated both that (i) it was not in the possession of the information, and (ii) that it was not available to the taxpayer (at para 75). In that case, the taxpayer satisfied the Court that the evidence demonstrated, on a balance of probabilities, an inability to produce the information. Conversely, when the taxpayer has failed to demonstrate either the first element of non-possession, or the second element of non-availability, the Court should grant the Order sought (see: *Blue Bridge Trust Company Inc v Canada (National Revenue)*, 2020 FC 893 at para 120; *Miller* including paras 31, 33, 37, 48-50, 63, 75-76, 82-83).
>
> [Emphasis added.]

[172] Based on the evidence in this application, the Respondent has not shown that the documents do not exist, nor that the information is unavailable. There is no indication that the Respondent made reasonable efforts to obtain this information. Accordingly, in this case, similar to *Dominelli*, I would order that the Respondent is required to conduct a detailed search for the outstanding materials from 2016, and to provide particulars of his search efforts.

(3) Are the Documents or Information Sought by the Minister Protected From Disclosure By Solicitor-Client Privilege as Defined in the *ITA*?

[173] Finally, as it relates to privilege, the Respondent has the onus of showing certain documents are protected from disclosure.

[174] On this application, the Respondent claimed privilege over several tax planning documents pertaining to 119 BC. During the course of oral submissions, the Respondent provided this Court with a copy of the materials over which solicitor-client and common interest privilege was claimed.

[175] Upon reviewing the materials, I find that the tax planning documents are privileged in accordance with the Federal Court of Appeal's decision in *Iggillis Holdings Inc v Canada (National Revenue)*, 2018 FCA 51. In that decision, based on case law from Alberta and British Columbia, the Court determined that solicitor-client privilege was not waived when a lawyer disclosed an opinion, which was provided to one party, confidentially to other parties who had a sufficient common interest in the same transaction. I find a similar situation arises in this circumstance.

[176] Therefore, I would exempt these materials from any compliance order.

VII. Conclusion

[177] For these reasons, this application should be granted in part.

JUDGMENT in T-908-23

THIS COURT'S JUDGMENT is that:

1. The Respondent, Jürgen Schreiber, provide the Applicant, the Minister of National Revenue (the Minister), with the following documents and information for the audit period pursuant to the Demand within 60 days from the date of this Order:

    a) Complete answers to questions 1.1 to 7.3 of the questionnaire for the 2017 to 2019 taxation years;

    b) For the Canadian entities, 115 BC (for the 2018 and 2019 taxation years), 119 BC (for the 2019 taxation year) and 111 Canada (for the 2019 taxation year), the Respondent will provide the following information:

        i. Financial statements, trial balances, accounts groupings and year end adjusting entries for all entities other than 115 BC;

        ii. Copies of all foreign tax returns for all Canadian entities;

        iii. Corporate organizational charts for each year, if different, for all entities, including all resident and non-resident, corporations, trusts, bare trusts, partnerships, co-ownerships and joint ventures which the Respondent or a member of his family controlled, directly or indirectly, either alone or together with related parties;

        iv. Details and copies of all intercompany loan agreements for all entities, including those loan agreements with related non-resident entities, and reconciled to the trial balances of the relevant entities;

v. Details of all dividends issued and received, and reconciled to the trial balances of the relevant entities. For dividends received from related non-resident entities, provide details of the dividend surplus calculations;

vi. Copies of any and all intercompany agreements and shareholder agreements for all entities;

vii. Details supporting and a reconciliation to the relevant trial balances for any filed T106, T1134, T1135, T1141, and T1142 forms for all entities;

viii. Copies of any rulings or opinions requested by the entities from the Agency and the reply received;

ix. Any documents related to tax planning for all entities that occurred during the audit period, except for the privileged materials raised by the Respondent on this application for 119 BC; and

x. The calculation of tax attributes of all shares held by the Respondent from 2015-2019 in respect of all entities.

c) For the four foreign entities, Hiroko Holdings, D'Banyan, Eight Treasures and Retail Invest, the Respondent will request the following information, specified in paragraphs i to x, from each entity for the entire audit period (2016 to 2019 taxation years). The Respondent will provide an explanation and supporting documentation regarding each entity's response.

2. As it relates to documentation from 2016, which the Applicant previously requested from the Respondent, the Respondent will provide the results of his search efforts for this material in a personal affidavit within 60 days from the date of this Order to the Minister. The affidavit must particularize the Respondent's search efforts, as well as his requests to his advisor(s), and include as an exhibit any documents he has located. For documents that he is unable to find, the Respondent will particularize his search efforts.

3. The Minister is authorized to effect service of this Order on the Respondent, pursuant to Rule 139 of the *Federal Courts Rules*, SOR/98-106.

4. No costs are awarded. The parties agreed to settle the matter of costs out of Court.

"Glennys L. McVeigh"
Judge

Appendix A

The following provisions of the *ITA* are relevant:

Information gathering

231.1 (1) An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act,

(a) inspect, audit or examine any document, including books and records, of a taxpayer or any other person that may be relevant in determining the obligations or entitlements of the taxpayer or any other person under this Act;

(b) examine any property or process of, or matter relating to, a taxpayer or any other person, an examination of which may assist the authorized person in determining the obligations or entitlements of the taxpayer or any other person under this Act;

(c) enter any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, except that, if the premises or place is a dwelling-house, the authorized person may enter the dwelling-house without the consent of the occupant only under the authority of a warrant under subsection (3);

(d) require a taxpayer or any other person to give the authorized person all reasonable assistance, to answer all proper questions relating to the administration or enforcement of this Act and

(i) to attend with the authorized person, at a place designated by the authorized person, or by video-conference or by another form of electronic communication, and to answer the questions orally, and

Collecte de renseignements

231.1 (1) Une personne autorisée, à tout moment raisonnable, pour l'application et l'exécution de la présente loi, peut :

a) inspecter, vérifier ou examiner tous documents, y compris les livres et registres, d'un contribuable ou d'une autre personne qui peuvent être pertinents pour déterminer les obligations ou les droits du contribuable ou de cette autre personne en vertu de la présente loi;

b) examiner tout bien ou tout procédé d'un contribuable ou d'une autre personne ou toute matière le concernant ou la concernant, dont l'examen peut aider la personne autorisée à établir les obligations ou les droits du contribuable ou de cette autre personne en vertu de la présente loi;

c) pénétrer dans un lieu où est exploitée une entreprise, est gardé un bien, est faite une chose en rapport avec une entreprise ou sont tenus ou devraient l'être des livres ou registres, sauf que, si le lieu est une maison d'habitation, la personne autorisée ne peut y pénétrer sans la permission de l'occupant, qu'après l'obtention d'un mandat décerné en vertu du paragraphe (3);

d) requérir le contribuable ou toute autre personne de lui fournir toute l'aide raisonnable et de répondre à toutes les questions pertinentes à l'application ou l'exécution de la présente loi ainsi que :

(i) de l'accompagner à un lieu désigné par celle-ci, de participer avec elle par vidéo-conférence ou par tout autre moyen de communication électronique à

(ii) to answer the questions in writing, in any form specified by the authorized person; and

(e) require a taxpayer or any other person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under this Act.

[…]

une rencontre, et de répondre à ses questions de vive voix,

(ii) de répondre aux questions par écrit, en la forme qu'elle précise;

e) requérir un contribuable ou toute autre personne de lui fournir toute l'aide raisonnable concernant quoi que ce soit qu'elle est autorisée à accomplir en vertu de la présente loi.

[…]

Requirement to provide documents or information

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice sent or served in accordance with subsection (1.1), require that any person provide, within such reasonable time as is stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

[…]

Production de documents ou fourniture de renseignements

231.2 (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l'application ou l'exécution de la présente loi (y compris la perception d'un montant payable par une personne en vertu de la présente loi), d'un accord international désigné ou d'un traité fiscal conclu avec un autre pays, par avis signifié ou envoyé conformément au paragraphe (1.1), exiger d'une personne, dans le délai raisonnable que précise l'avis :

a) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu'elle produise des documents.

[…]

Definition of foreign-based information or document

231.6 (1) For the purposes of this section, foreign-based information or document means any information or document that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act,

Sens de renseignement ou document étranger

231.6 (1) Pour l'application du présent article, un renseignement ou document étranger s'entend d'un renseignement accessible, ou d'un document situé, à l'étranger, qui peut être pris en compte pour l'application ou l'exécution de la présente loi, y compris la perception d'un

including the collection of any amount payable under this Act by any person.

Requirement to provide foreign-based information

(2) Notwithstanding any other provision of this Act, the Minister may, by notice sent or served in accordance with subsection (3.1), require that a person resident in Canada or a non-resident person carrying on business in Canada provide any foreign-based information or document.

[...]

Compliance order

231.7 (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

[…]

Judge may impose conditions

(3) A judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

[…]

Definitions

montant payable par une personne en vertu de la présente loi.

Obligation de fournir des renseignements ou documents étrangers

(2) Malgré les autres dispositions de la présente loi, le ministre peut, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne résidant au Canada ou d'une personne n'y résidant pas mais y exploitant une entreprise de fournir des renseignements ou documents étrangers.

[...]

Ordonnance

231.7 (1) Sur demande sommaire du ministre, un juge peut, malgré le paragraphe 238(2), ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les documents que le ministre cherche à obtenir en vertu des articles 231.1 ou 231.2 s'il est convaincu de ce qui suit :

a) la personne n'a pas fourni l'accès, l'aide, les renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;

b) s'agissant de renseignements ou de documents, le privilège des communications entre client et avocat, au sens du paragraphe 232(1), ne peut être invoqué à leur égard.

[…]

Conditions

(3) Le juge peut imposer, à l'égard de l'ordonnance, les conditions qu'il estime indiquées.

[…]

Définitions

248 (1) In this Act,

person, or any word or expression descriptive of a person, includes any corporation, and any entity exempt, because of subsection 149(1), from tax under Part I on all or part of the entity's taxable income and the heirs, executors, liquidators of a succession, administrators or other legal representatives of such a person, according to the law of that part of Canada to which the context extends.

[…]

taxpayer includes any person whether or not liable to pay tax.

248 (1) Les définitions qui suivent s'appliquent à la présente loi.

personne Sont comprises parmi les personnes tant les sociétés que les entités exonérées de l'impôt prévu à la partie I sur tout ou partie de leur revenu imposable par l'effet du paragraphe 149(1), ainsi que les héritiers, liquidateurs de succession, exécuteurs testamentaires, administrateurs ou autres représentants légaux d'une personne, selon la loi de la partie du Canada visée par le contexte. La notion est visée dans des formulations générales, impersonnelles ou comportant des pronoms ou adjectifs indéfinis.

[…]

contribuables Sont comprises parmi les contribuables toutes les personnes, même si elles ne sont pas tenues de payer l'impôt.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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