

Federal Court



Cour fédérale

Date: 20180430

Docket: T-1888-16

Citation: 2018 FC 462

Ottawa, Ontario, April 30, 2018

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

BILJANA STANKOVIC

Respondent

ORDER AND REASONS

I. INTRODUCTION

[1] This is a summary application under s 231.7(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act], for an order requiring the Respondent to provide the Applicant with all books, records and information specified in the demand letters that were issued to the Respondent on November 2, 2015, December 23, 2015, and February 17, 2016, pursuant to s 231.1(1) of the Act.

II. BACKGROUND

[1] In November 2015, the Canada Revenue Agency [CRA] commenced an audit of the personal tax returns of the Respondent for the 2006 to 2014 taxation years.

[2] The audit was triggered by information that the CRA received from French authorities under Article 26 of the *Convention between Canada and France for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital*, Canada and France, 2 May 1975, Can TS 1976 No 30, as amended [Treaty].

[3] The information relates to what is publicly known as the “Falciani List.” Around 2007-2008, an employee at HSBC Private Bank [HSBC] in Switzerland, Hervé Falciani, copied account holder information. French authorities obtained the Falciani List in 2009, and offered information to Canada pertaining to Canadians. Pursuant to Article 26 of the Treaty, Canadian authorities asked French authorities to provide the names of Canadians on the list.

[4] The information the CRA obtained indicated that the Respondent held assets, and possibly earned income from one or more HSBC accounts in Switzerland. The Respondent, however, had not reported money or assets held in Swiss HSBC accounts, or any income earned therefrom, on her personal T1 returns for any of the years under audit.

[5] On November 2, 2015, a CRA auditor [Auditor] sent a letter advising the Respondent of an audit of her personal income taxation years 2006 to 2014. Pursuant to s 231.1(1) of the Act,

the letter contained a questionnaire and requested information, books and records needed to conduct the audit. The Respondent returned the questionnaire to the Auditor but various parts were unanswered or incomplete.

[6] On December 18, 2015, the Auditor and the Respondent had a phone conversation. The Auditor asked the Respondent if she had any HSBC accounts in Switzerland. She replied that she did not.

[7] On December 23, 2015, the Auditor sent the Respondent a second request letter pursuant to s 231.1(1) of the Act.

[8] On February 9, 2016, the Auditor met with the Respondent and her former counsel. The Respondent disclosed the existence of a bank account she had in the United States, which had not been disclosed on her income tax filings for the years in question. But she denied having an HSBC account in Switzerland. The Auditor alleges that, at this meeting, he advised the Respondent and her former counsel that the CRA had obtained information from a tax treaty partner that the Respondent had an HSBC account in Switzerland with a balance in excess of \$1,000,000.

[9] On February 17, 2016, the Auditor sent the Respondent a third request letter pursuant to s 231.1(1) of the Act and advised her that a failure to comply with the request would result in the CRA seeking a compliance order under s 231.7(1) of the Act. The letter noted that the CRA had obtained information from a tax treaty partner that the Respondent had an HSBC account in

Switzerland. The letter also requested a long list of information regarding that account including various transaction details, asset and income reports, account opening documents, client profiles, letters of instruction and the Manager's file.

[10] On March 29, 2016, the Auditor received some information from the Respondent in partial response to the three outstanding request letters. The information provided, however, did not include any records concerning any HSBC account in Switzerland.

[11] On April 5, 2016, the Respondent's former counsel and the Auditor had a phone conversation. The Auditor alleges that Respondent's former counsel advised him that the Respondent would not be providing any further information about foreign bank accounts, and that she would only make full disclosure if the CRA agreed to various conditions such as no interest or penalties and immunity from prosecution. The Auditor advised the Respondent's former counsel that the Respondent is required to comply with s 231.1(1) of the Act without conditions.

[12] On April 28, 2016, the Respondent's former counsel sent the Auditor a letter expressing concerns with the legality of the procedure followed by the CRA in obtaining the information from a treaty partner, and repeating the Respondent's willingness to comply with the request subject to various conditions.

[13] On July 7, 2016, the Applicant's counsel sent a letter to the Respondent's former counsel, stating that the Respondent's concerns had no legal basis and reiterating that a failure to comply

with the request letters would result in the CRA seeking a compliance order pursuant to s 231.7(1) of the Act.

[14] On July 29, 2016, the Respondent's former counsel once again expressed concerns with the procedure and stated a willingness to comply with the request upon various conditions.

[15] On November 8, 2016, the Applicant made a summary application under s 231.7(1) of the Act for an order compelling the Respondent to provide the Applicant with all books, records and information specified in the demand letters that were issued to the Respondent on November 2, 2015, December 23, 2015, and February 17, 2016.

[16] On December 28, 2017, the Respondent removed her former counsel. In an order dated January 18, 2017, Justice Kane allowed the Respondent's motion for an adjournment but ordered that should the Respondent not retain counsel she is required to proceed on the date set down for the hearing of this application.

III. ISSUES

[17] The Applicant submits that the following are at issue in this application:

1. Are the conditions for issuing a compliance order under s 231.7(1) of the Act met?
2. Is the CRA precluded from conducting a civil income tax compliance audit on the Respondent and issuing request letters pursuant to s 231.1(1) of the Act based on information it received pursuant to the Treaty?

[18] The Respondent submits that the following are at issue in this application:

1. Is the predominant purpose of the CRA audit a determination of the Respondent's criminal liability?
2. If the compliance order is granted, should the order be limited to the provision of information, books and records from January 1, 2009 onwards pursuant to s 230(4) of the Act?

IV. STATUTORY PROVISIONS

[19] The following provisions of the Act are relevant in this application:

Limitation period for keeping records, etc.

230 (4) Every person required by this section to keep records and books of account shall retain

(a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and

(b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to

Durée de conservation

230 (4) Quiconque est requis, sous le régime du présent article, de tenir des registres et livres de comptes doit conserver :

a) les registres et livres de comptes, de même que les comptes et pièces justificatives nécessaires à la vérification des renseignements contenus dans ces registres et livres de comptes, dont les règlements prévoient la conservation pour une période déterminée;

b) tous les autres registres et livres de comptes mentionnés au présent article de même que les comptes et pièces justificatives nécessaires à la vérification des renseignements contenus dans ces registres et livres de

which the records and books of account relate.

comptes pendant les six ans qui suivent la fin de la dernière année d'imposition à laquelle les documents se rapportent.

Inspections

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 the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under this Act, and

...

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

Enquêtes

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

a) inspecter, vérifier ou examiner les livres et registres d'un contribuable ainsi que tous documents du contribuable ou d'une autre personne qui se rapportent ou peuvent se rapporter soit aux renseignements qui figurent dans les livres ou registres du contribuable ou qui devraient y figurer, soit à tout montant payable par le contribuable en vertu de la présente loi;

...

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) 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)).

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.

...

...

Judge may impose conditions

Conditions

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

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

V. ARGUMENT

A. *Applicant*

(1) Conditions for Issuing a Compliance Order

[20] The Applicant submits that the Act provides the powers necessary to compel production of information and documents. Section 220 makes enforcement of the Act a duty of the Minister of National Revenue [Minister]. Since this duty is mandatory, information provided by a foreign government cannot be ignored when that information concerns income tax compliance by persons subject to the Act. Under s 231.1(1), the Minister may, for any purpose related to the administration or enforcement of the Act, inspect, audit or examine the books and records of a taxpayer. If the Minister is acting for a purpose related to the administration or enforcement of the Act, a person served with a request under s 231.1 must provide the Minister with the required information within a reasonable time. See *Canada (Minister of National Revenue) v Marshall*,

2006 FC 279 at paras 15-16 [*Marshall*]. A taxpayer's expectation of privacy with respect to these documents is "relatively low" and the Minister cannot know whether records are relevant until they are examined: *R v McKinlay Transport Ltd*, [1990] 1 SCR 627 at 650 [*McKinlay*].

Section 231.7(1) of the Act allows a judge to order a person to provide the access, assistance, information or documents sought by the Minister. To do so, the Court must be satisfied that the person was required to provide the access, assistance, information or documents under ss 231.1 or 231.2, that the person failed to do so, and that the information or document is not protected by solicitor-client privilege. See *Marshall*, above, at paras 15-18.

[21] The Applicant says that, in this case, letters were issued to the Respondent pursuant to s 231.1(1) of the Act for the purpose of conducting a civil tax compliance audit and that the Respondent has failed to produce all of the documents and records requested. The Applicant notes that solicitor-client privilege has not been raised as an issue with respect to these documents and records.

(a) *Reliance on the Falciani List*

[22] The Applicant says that the CRA is entitled to rely on information obtained from the Falciani List. Prior to the Applicant's application for a compliance order, the Respondent had maintained that the CRA's reliance on information from the Falciani List was a violation of her rights under s 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*. While the Respondent has not maintained this argument in her written submissions to this Court, she has still submitted that the Applicant should not be able to rely on information from the Falciani List.

[23] The Applicant submits that the Respondent cannot invoke the *Charter* concerning the Government of France's acquisition of the Falciani List because s 32(1) of the *Charter* limits its application to Canadian state actors. While the *Charter* may apply outside of Canada when a person is acting on behalf of the Government of Canada, it does not apply to the gathering of information outside of Canada when the authorities involved were not acting on behalf of any of the governments of Canada, the provinces or the territories. See *R v Harrer*, [1995] 3 SCR 562 at para 12 [*Harrer*]. The Applicant says that when the Government of France obtained the Falciani List it was not acting on behalf of the Government of Canada. In *R v Hape*, 2007 SCC 26 at para 94, a majority of the Supreme Court of Canada held that “[a] criminal investigation in the territory of another state cannot be a matter within the authority of Parliament or the provincial legislatures, because they have no jurisdiction to authorize enforcement abroad.” The Applicant says that the Falciani List was provided by the French tax authority in 2010 after the CRA requested the list pursuant to Article 26 of the Treaty. Article 26 provides that contracting states may exchange information for tax assessment purposes.

[24] The Applicant submits that use of the Falciani List by a Canadian tax authority was considered by the Quebec Court of Appeal in *Berger v Québec (Agence du revenu)*, 2016 QCCA 226 [*Berger CA*]. In *Berger CA*, the Quebec Court of Appeal affirmed the Quebec Superior Court's dismissal of an application for judicial review brought to quash a formal request by the Agence de Revenu du Québec [ARQ] that required a taxpayer to disclose records related to the taxpayer's HSBC accounts. See *Berger c Québec (Agence du revenu)*, 2014 QCCS 3280 [*Berger CS*]. The Quebec Court of Appeal held that, despite the ARQ's reliance on information from the Falciani list, “the judge was entitled to conclude that, according to *McKinlay Transport* and

Jarvis, the issuance of the formal demand brought about no *Charter* violation” because the predominant purpose of the request was an audit investigation and not a penal investigation. See *Berger CA*, above, at paras 24-31.

[25] The Applicant also submits that the Federal Court of Appeal has held that s 7 of the *Charter* does not apply in the circumstances of a civil tax audit because s 7 does not protect economic rights. See *Kaulius v Canada*, 2003 FCA 371 at paras 29-30.

(b) *Predominant Purpose*

[26] The Applicant submits that the CRA is seeking information for the predominant purpose of civil income tax compliance and not for the purpose of a criminal investigation. The Act is a regulatory statute that grants the Minister both audit and investigatory power. See *R v Jarvis*, 2002 SCC 73 at para 99 [*Jarvis*]. This Court has observed that “[a]n audit is not a criminal process but an administrative one which does not trigger the implication of *Charter* rights”: *Stanfield v Canada (Minister of National Revenue)*, 2005 FC 1010 at para 35 [*Stanfield*]. In *Jarvis*, however, the Supreme Court of Canada held that the Minister is prevented from using the requirement powers granted by s 231.1(1) of the Act when the Minister’s “predominant purpose” is an investigation for the purpose of penal liability because that creates an adversarial relationship between the Minister and the taxpayer which engages the taxpayer’s rights under s 7 of the *Charter*. See *Jarvis*, above, at paras 84 and 96. Paragraph 94 of *Jarvis* established a set of factors for determining whether the predominant purpose of an inquiry is the determination of penal liability:

- (a) Did the authorities have reasonable grounds to lay charges?
Does it appear from the record that a decision to proceed with a criminal investigation could have been made?
- (b) Was the general conduct of the authorities such that it was consistent with the pursuit of a criminal investigation?
- (c) Had the auditor transferred his or her files and materials to the investigators?
- (d) Was the conduct of the auditor such that he or she was effectively acting as an agent for the investigators?
- (e) Does it appear that the investigators intended to use the auditor as their agent in the collection of evidence?
- (f) Is the evidence sought relevant to taxpayer liability generally?
Or, as is the case with evidence as to the taxpayer's *mens rea*, is the evidence relevant only to the taxpayer's penal liability?
- (g) Are there any other circumstances or factors that can lead the trial judge to the conclusion that the compliance audit had in reality become a criminal investigation?

[Emphasis in original.]

[27] The Applicant says that none of the factors identified in *Jarvis* indicate that the purpose of the Auditor's inquiries was the investigation of penal liability and makes the following submissions with respect to each factor:

- a. No criminal charges have been laid, so this factor does not apply;
- b. The evidence shows that the CRA is conducting a civil income tax compliance audit to verify tax liability under the Act;
- c. The Auditor is part of the CRA's Offshore Compliance Audit Division and has not referred or transferred the file to investigators in the CRA's Criminal Investigation Division;
- d. There is no evidence suggesting that the Auditor has contacted CRA investigators or that a criminal investigation is being disguised as an audit;

- e. There is no evidence that CRA investigators or any prosecutorial authority initiated the Auditor's conduct or were using the Auditor to gather evidence for penal investigation purposes;
- f. The books and records sought in the s 231.1(1) request letters relate to income tax liability under the Act and none are relevant only to proving penal liability;
- g. No other circumstances or factors beyond the Respondent's bare assertions and speculative inferences based on media articles suggest that the Auditor has misled the Respondent about his intentions and is conducting a *de facto* criminal investigation.

[28] The Applicant submits that the evaluation under the predominant purpose test must be evidence-based. See *Canada (Minister of National Revenue) v Ellingson*, 2006 FCA 202 at paras 16 and 33 [*Ellingson*]. The Respondent may have a subjective belief that she is under criminal investigation but this is a speculative inference not supported by the evidence. The Applicant emphasizes that the Auditor was consistent throughout cross-examination on his affidavit that he is conducting a civil income tax compliance audit and had not referred the Respondent's file to the CRA's Criminal Investigation Division.

[29] The Applicant says that the concept of an "inference" must be distinguished from mere speculation and that the Respondent's position that she is being investigated is speculative. An inference is a logical deduction from established facts. Speculation occurs when there is a gap in the reasoning process that "requires a leap of faith." And since an inference can only follow from established facts, if there are no proved facts then what remains must be speculation. See *Canada (Information Commissioner) v Toronto Port Authority*, 2016 FC 683 at para 80, quoting *Attaran v Canada (Foreign Affairs)*, 2011 FCA 182 at paras 32-34. See also *R v Chanmany*, 2016 ONCA 576 at para 45. The Applicant says that the Respondent's submission that the purpose of the audit is criminal investigation is based on some generalized statements of elected officials and

announcements in CRA press releases about a taxpayer's duty to comply with the Act. The Applicant says that this position is speculative and contrary to the Auditor's direct evidence that the request letters issued under s 231.1(1) of the Act are for the purpose of a civil income tax compliance audit. The Applicant submits that the Respondent's reliance on circumstantial evidence ignores this direct evidence which rebuts her position.

[30] The Applicant also submits that the Respondent failed to put the question of the Auditor's knowledge of statements of elected officials or CRA news releases to the Auditor during cross-examination. Therefore, pursuant to the rule in *Browne v Dunn* (1893), 6 R 67 (HL), fairness required the Respondent to bring the matter to the Auditor's attention and the Respondent is now precluded from suggesting that the Auditor was influenced by those facts.

[31] The Applicant also says that delay in beginning to audit the Respondent does not corroborate her position that the request letters were issued for the predominant purpose of a criminal investigation. The Auditor explained that extended delays in commencing an audit are caused by workload and are not unusual in the Offshore Compliance Audit Division. The Applicant says that the Respondent's position that delay is indicative of the predominant purpose being a criminal investigation is a bare assertion unsubstantiated by evidence and unsupported at law.

[32] Even if a criminal investigation is underway, the CRA may still concurrently rely on its audit powers to obtain information directed at determining tax liability. See *Jarvis*, above, at para 97. And the Supreme Court of Canada was clear that "the test cannot be set at the level of

mere suspicion that an offence has occurred [because] [a]uditors may, during the course of their inspections, suspect all manner of taxpayer wrongdoing, but it certainly cannot be the case that, from the moment such suspicion is formed, an investigation has begun”: *Jarvis*, above, at para 90.

[33] The Applicant also points out that the proposition that statements by government officials about the importance of offshore income tax compliance in the wake of the disclosure of the Falciani List mean that the predominant purpose of a request letter is a penal investigation was rejected in *Berger CS*, above, at para 91.

(2) Scope of the Compliance Order

[34] The Applicant says that there is no limit that prevents the CRA from requesting records for periods beyond the document retention periods set out in s 230(4) of the Act. Records and books that are still available must be provided to the Minister if they are requested under s 231.1(1) of the Act. See *Minister of National Revenue v Plachcinski*, 2016 CarswellNat 10234 (WL) at para 20 (FC) [*Plachcinski*]. Considering the requirements to provide information issued pursuant to s 231.2(1) of the Act, the Federal Court of Appeal was clear that “there is no statutory time limit for requirements”: *Canada (National Revenue) v Kitsch*, 2003 FCA 307 at para 32 [*Kitsch*]. See also *Plachcinski*, above, at para 19, and *1144020 Ontario Ltd v Canada (Minister of National Revenue)*, 2005 FC 813 at para 60 [*1144020 Ontario Ltd*].

B. *Respondent*

(1) *Predominant Purpose*

[35] The Respondent submits that the Applicant's predominant purpose is investigatory because the Applicant believes that the Respondent has committed a criminal offence. The Respondent agrees with the Applicant that the factors enunciated in *Jarvis* should be used to determine whether the Applicant's predominant purpose is a criminal investigation rather than a civil tax audit. See, *Jarvis* above, at para 94. The Federal Court of Appeal has explained that, since the purpose of a criminal investigation is to determine whether an offence has been committed, the first factor in *Jarvis* addresses two distinct issues. Therefore, even if charges are not eventually laid, a criminal investigation may have already commenced. See *Kligman v Minister of National Revenue*, 2004 FCA 152 at para 29 [*Kligman*]. When the predominant purpose of an inquiry is the determination of penal liability, "an adversarial relationship... crystallizes between the taxpayer and the tax officials" that engages constitutional protections against self-incrimination: *Jarvis*, above, at para 2. The Supreme Court of Canada also held that "[i]n most cases, if all ingredients of an offence are reasonably thought to have occurred, it is likely that the investigation function is triggered": *Jarvis*, above, at para 89. The Respondent says that the Applicant reasonably thought that all the elements of a criminal offence occurred in this case and submits the following point to this conclusion: public statements about the Minister's intent; the use of stolen data from the Falciani List; the audit extends beyond the CRA's one-year standard audit policy; the over five year delay before the CRA began the audit; and similar conclusions drawn by courts in analogous circumstances.

[36] The Respondent says that a statement to Parliament by the former Prime Minister, the Right Honourable Stephen Harper, indicated that it was his government's intent to prosecute Canadians who used undisclosed Swiss bank accounts. See *House of Commons Debates*, 40th Parl, 3rd Sess, No 74 (30 September 2010) at 4616 (Rt Hon Stephen Harper). She says that the current government has maintained this policy. While acknowledging that the former Prime Minister's statement does not indicate intent to criminally investigate her specifically, the Respondent submits that the general intent of the current government indicates that a criminal investigation of her tax affairs has begun.

[37] The Respondent also submits that the Applicant should not have the right to use information from the Falciani List because French tax authorities contravened local law when they obtained the information. The Auditor confirmed that the CRA received information about the Respondent from French tax authorities pursuant to Article 26 of the Treaty and that the appearance of the Respondent's name on the Falciani List prompted the CRA to select her for audit. The Respondent points to decisions of French courts that have held that information obtained from the Falciani List cannot be used by French tax authorities. See Cass com, 31 January 2012, No 11-13097, aff'g CA Paris, 8 February 2011, *X c Directeur général des finances publiques*. The Respondent says that the Auditor's acknowledgement that the Applicant is relying on information from the Falciani List indicates that the predominant purpose of the audit is criminal investigation.

[38] The Respondent also says that the length of time it took for the CRA to begin the audit indicates that the predominant purpose of the audit is to criminally investigate her. She says that

the CRA's standard policy, described in the CRA Audit Manual, is to audit individuals and small businesses up to one year prior to the current taxation year. Section 152(3.1) of the Act provides a normal reassessment period of three years for individuals. But the Minister may reassess beyond the normal reassessment period when the taxpayer has "made any misrepresentation that is attributable to neglect, carelessness or wilful default": Act, s 152(4)(a)(i). The onus is on the Minister to prove that the taxpayer's misrepresentation was attributable to neglect, carelessness or wilful default. See e.g. *Wachsmann v The Queen*, 2009 TCC 420 at para 8. A misrepresentation alone does not satisfy this onus. See *Boucher v Canada*, 2004 FCA 46 at para 5. The Respondent accepts that it is common for CRA to reassess taxpayers based on new information provided by third parties but emphasizes that the Applicant has chosen to audit her rather than reassess. She says that the decision to reassess based on the information in the Falciani List indicates that the predominant purpose of the audit is not civil tax compliance.

[39] The Respondent also notes that the CRA waited over five years after receiving the information in the Falciani List before it began to audit her. She submits that if the predominant purpose of the audit was regulatory compliance, the audit would be limited by the normal three-year assessment period. The CRA's willingness to wait five years indicates that the CRA is confident that it will be able to establish the elements of misrepresentation or tax evasion and be able to go beyond the normal assessment period. The Respondent also points out that s 230(4) of the Act only requires taxpayers to retain books and records for six years. She says that the Applicant's request for information beyond this six year requirement indicates that the predominant purpose of the audit is not regulatory.

[40] The Respondent also submits that a case from the Ontario Court of Justice, *R v Borg*, 2007 ONCJ 451 [*Borg*], shows that the Auditor's statement that the audit's purpose is not criminal investigatory is not sufficient to show that the predominant purpose of the audit is regulatory. In *Borg*, Justice F.L. Forsyth excluded evidence obtained in the course of a CRA audit from the accused's criminal tax evasion trial. Justice Forsyth rejected the CRA Auditor's assertion that the purpose of the audit was civil tax compliance in part because the Auditor was initially suspicious that the defendant's business was in an industry rife with tax fraud and because the Auditor continued the audit to gather evidence of criminal intent. See *Borg*, above, at paras 119 and 207. The Respondent says that this is analogous to the present application because the Auditor became suspicious because the Respondent's name appeared on the Falciani List. She also says that the information the Auditor has of her financial affairs would allow the Auditor to complete a tax reassessment, so the purpose of the audit must be to gather evidence for a criminal prosecution.

[41] The Respondent submits that since the predominant purpose of the audit is criminal investigation her *Charter* rights to silence, to security against unreasonable search and seizure, and not to self-incriminate are all engaged and the Applicant's application for a compliance order must be dismissed. See *Charter*, ss 8, 11(c) and 13.

(2) Scope of the Compliance Order

[42] Should the Court grant the Applicant's request for a compliance order, the Respondent submits that the order should be limited to the provision of books and documents dated January 1, 2009 and afterwards. Since s 230(4) of the Act only requires a taxpayer to retain

books and records for six years, she says that any compliance order should not extend beyond the statutory requirement to keep records.

(3) Remedy

[43] In addition to requesting that the Applicant's application for a compliance order be dismissed, the Respondent also requests that this Court:

- a. Declare that the predominant purpose of the audit is a criminal investigation;
- b. Declare that the request letters issued by the CRA, dated November 2, 2015, December 23, 2015, and February 17, 2016 are void as they violate the Respondent's *Charter* rights; and
- c. Prohibit the CRA and the Applicant from using or continuing to use information and documents that the Respondent produced at her February 9, 2011 meeting with the Auditor.

VI. ANALYSIS

[44] The Respondent asserts – through counsel – that the Applicant is playing a “long, twisting, waiting game in order to get the Respondent to self-incriminate” in breach of her *Charter* rights. Hence, in order to justify why she does not have to comply with the s 231.1(1) request letters and produce all of her bank account information for the audit period, the Respondent has raised a number of grounds that I will deal with in turn.

A. *Predominant Purpose*

[45] The Respondent says that the CRA has issued the request letters pursuant to s 231.1(1) of the Act in order to gather books and records for the predominant purpose of a criminal

investigation and prosecution, and not for the income tax compliance audit to which the requests are ostensibly related.

[46] Relying upon the Supreme Court of Canada decision in *Jarvis*, above, and the Federal Court of Appeal decision in *Kligman*, above, the Respondent argues as follows:

47. The statutory powers vested in the CRA to administer the *Act* are very broad to ensure the compliance with the *Act*. However, the Supreme Court of Canada stated in *R. v. Jarvis* that:

“Ultimately, we conclude that compliance audits and tax evasion investigations must be treated differently. While taxpayers are statutorily bound to co-operate with CCRA auditors for tax assessment purposes (which may result in the application of regulatory penalties), there is an adversarial relationship that crystallizes between the taxpayer and the tax officials when the predominant purpose of an official’s inquiry is the determination of penal liability. When the officials exercise this authority, constitutional protections against self-incrimination prohibit CCRA officials who are investigating ITA offences from having recourse to the powerful inspection and requirement tools in ss. 231.1(1) and 231.2(1). Rather, CCRA officials who exercise the authority to conduct such investigations must seek search warrants in furtherance of their investigation.” [Emphasis and underlying *[sic]* added]

48. Consequently, if the predominant purpose of the Minister’s audit of the Respondent is criminal in substance, the audit constitutes a criminal investigation and therefore, violates the Respondent’s fundamental rights as laid out in the *Charter*.

49. In order to determine whether the CRA’s audit has been indicative of a criminal investigation rather than of a civil audit in nature, the Supreme Court of Canada in *Jarvis* has set out a non-exhaustive list of factors to be used for determining the predominant purpose of the inquiry. The non-exhaustive factors are:

- a. Did authorities have reasonable grounds to lay charges or could a decision have been made to proceed with a criminal investigation?
- b. Was the general conduct of the authorities consistent with a criminal investigation?
- c. Did the auditor transfer his or her file to the investigators?
- d. Was the auditor's conduct such that he or she was acting as an agent for the investigators?
- e. Does it appear that the investigators intended to use the auditor as their agent?
- f. Is the evidence relevant to taxpayer liability generally or only to penal liability?
- g. Do other circumstances or factors suggest that an audit became a criminal investigation?

...

52. Given the facts surrounding this application, the Minister has reasonably thought that the Respondent has committed a criminal offence such as a tax evasion or tax fraud and therefore it is likely that the CRA has began [*sic*] investigating the Respondent criminally.

[47] The Respondent has no direct evidence to support this position and seeks to convince the Court, on the basis of several circumstantial factors that, when considered cumulatively, lead to the inevitable conclusion that “it is likely that the CRA has began [*sic*] investigating the Respondent criminally.” However, all of the direct evidence on file – the affidavit of Mr. Lloyd MacElheron, the Auditor with the Offshore Compliance Audit Division who made the requests for information, and his rigorous cross-examination by the Respondent’s counsel – is crystal clear that the audit is a legitimate exercise of s 231.1(1) of the Act and has nothing to do with any contemplated criminal investigation and the Respondent’s *Charter* rights. The

Respondent does not question the Auditor's integrity. Her position is that there is likely a criminal investigation going on behind the scenes of which the Auditor has no knowledge.

[48] In her attempt to convince the Court that, notwithstanding the Auditor's clear evidence, she is nevertheless more likely than not the target of a clandestine criminal investigation, the Respondent asks the Court to consider the following factors:

- (a) It is public knowledge that the previous and current Canadian governments have expressed a strong intent to prosecute tax fraud and evasion, and have specifically referred to Canadians who are using secret Swiss bank accounts to avoid paying taxes;
- (b) The HSBC List of Canadians with Swiss bank accounts obtained by Canada from the French authorities was the reason the Auditor selected the Respondent for an audit;
- (c) The fact that the CRA is auditing the Respondent's tax years of 2006 through 2014, nine years beyond the standard audit policy applicable to individuals and small businesses, further corroborates the predominant purpose of the audit, that is, to criminally investigate the Respondent;
- (d) The fact that the CRA has decided to reassess the Respondent based on the information in the HSBC List indicates that the predominant purpose of the audit is not a regulatory compliance;
- (e) If the predominant purpose of the audit were a regulatory compliance, the CRA would be limited by the three-year normal reassessment limitation period and the audit would have commenced immediately or shortly after the CRA received the HSBC List, in order for the CRA to not be limited by the three-year normal reassessment limitation period. The fact that the CRA waited for five and a half years before auditing the Respondent indicates that, after receiving the HSBC list, the CRA knew that it would be able to go beyond the normal reassessment period. More specifically, the CRA waited so long because the CRA reasonably thought that the elements of misrepresentation or tax evasion, allowing the CRA to go beyond the normal reassessment period, have occurred and that waiting for five and a half years before auditing the Respondent will not limit the CRA's ability to reassess the Respondent in any taxation year. In summary, the CRA's lengthy postponement further corroborates the proposition that the predominant purpose of the audit is to criminally investigate the Respondent;
- (f) The Act provides for a six-year limitation period for the conservation of books and records at s 230(4). The Act specifically provides that taxpayers must keep "records and books of account... until the expiration of six years from the end of the last taxation year to which the records and books of account relate." Taxpayers are obligated to keep books and records only for a six-year period preceding the current tax-year end. The CRA

requested information and books and records from the Respondent beyond the six-year mandate requiring the Respondent to keep books and records. The fact that the Auditor is seeking documents beyond the six-year limitation period is indicative that the Minister may have a predominant purpose other than to conduct a regulatory audit; and

- (g) By analogy, the Auditor has likely become suspicious of the Respondent's tax affairs because of the presence of the Respondent's name on the infamous HSBC List. Furthermore, the extreme detail of the Auditor's knowledge of some of the Respondent's financial affairs, including her condominium in New York and her bank accounts with HSBC, Santander Bank and her holdings in the United Kingdom indicates that the Auditor has already accumulated enough information to reassess the Respondent, but, instead, the Auditor chose to continue the audit to pursue a fishing expedition to gather evidence for a criminal prosecution.

[49] All of the Respondent's speculation about delay, the true intent of the Auditor's actions, and what may have been in the Auditor's mind, have either been specifically addressed by the Auditor in his affidavit and his cross-examination by Respondent's counsel, or were not put to him and so cannot be relied upon here. So the Court has direct evidence on these points that refutes the mere speculations of the Respondent. Respondent's counsel has made it clear that the Auditor's integrity is not in question. The suggestion is that the Auditor does not know what is really taking place. Yet many of these speculative factors (e.g. why the delay, or why has the Respondent not been reassessed) are clearly and convincingly addressed by the Auditor in his evidence. But the Respondent continues to ask the Court to accept her subjective speculations over clear and convincing direct evidence. The Court cannot, of course, do this.

[50] As for the general climate and concerns about the use of offshore (including Swiss) bank accounts to avoid tax liability and prosecution of offenders to the full extent of the law, there is no suggestion in the evidence that the Respondent is regarded by the CRA as any kind of offender. Offshore accounts are not, *per se*, illegal and it is the duty of the Minister under the Act to inquire and ensure that those with offshore accounts are meeting their tax liabilities. That is

why the Auditor has requested information from the Respondent. If the Respondent's position were accepted, it would mean that, given the government's intent to deal with offshore tax offenders, every Canadian taxpayer with an offshore bank account would be immune from compliance with the audit requests made under s 231.1(1) because this could lead to criminal proceedings at some time in the future. The governing jurisprudence makes it clear that possible future criminal proceedings do not excuse a taxpayer from compliance with a s 231.1(1) request. See *Jarvis*, above.

[51] On this issue, I do not see any material disagreement between the parties on the applicable principles. The disagreement occurs when the principles are applied to the facts of this case and, in particular, what the evidence tells us. The law is clear that a civil tax compliance audit is not a criminal process, but is an administrative one which does not immediately engage the *Charter*. See e.g. *Stanfield*, above, at para 35.

[52] Also, as the Applicant points out, the state of the law concerning the Minister's use of s 231.1(1) of the Act to obtain information and documents and an individual's *Charter* rights is well settled. The Supreme Court of Canada decisions in *Jarvis* and *R v Ling*, 2002 SCC 74, have comprehensively and authoritatively ruled concerning situations where the Minister utilizes ss 231.1(1) or 231.2(1) of the Act to demand from a taxpayer, or any person, information and documents, and the question of when an individual's *Charter* rights may become engaged.

[53] *Jarvis* held that where the "predominant purpose" of the Minister's information and document demands were for civil audit purposes to determine tax liability, an individual's s 7

Charter rights are neither applicable nor engaged. However, where the “predominant purpose” of the Minister’s information and document demands are for the investigation of penal liability, then an individual’s s 7 *Charter* rights are engaged. *Jarvis* holds that when the predominant purpose of inquiries are penal, only at that point are the individual and Minister in an adversarial relationship which attracts *Charter* scrutiny and protection. *Jarvis* is clear that an individual and the Minister are not in an adversarial relationship in the circumstances of a civil income tax compliance audit.

[54] Only when the predominant purpose of the Minister’s inquiries are to determine penal liability do ss 7 and 8 of the *Charter* preclude the Minister from using s 231.1(1) of the Act. Conversely, when the predominant purpose of the Minister’s inquiry is the determination of civil tax liability, the Minister is not precluded from using requirement powers and the taxpayer is not able to invoke the *Charter* as a basis to refuse to produce information and documents sought by way of a requirement.

[55] It is also clear that, even if a CRA auditor has a suspicion that an offence may have occurred, a mere suspicion does not change the predominant purpose of an audit into a criminal investigation. See *Jarvis*, above, at paras 89 and 90.

[56] As both parties point out, *Jarvis* sets out a multi-factored test to be used to ascertain whether the predominant purpose of the Minister’s inquiry is for a civil audit to determine tax liability or whether the predominant purpose of the Minister’s inquiries is investigatory to determine penal liability, or at what point an audit may turn into an investigation. No one factor

of the “predominant purpose” test is determinative. A reviewing court must look at the totality of the circumstances at the time requests under s 231.1(1) of the Act are used by the Minister. The factors the Supreme Court of Canada identified in the “predominant purpose” test are set out by both parties in their written submissions:

- (a) Did the authorities have reasonable grounds to lay charges?
Does it appear from the record that a decision to proceed with a criminal investigation could have been made?
- (b) Was the general conduct of the authorities such that it was consistent with the pursuit of a criminal investigation?
- (c) Had the auditor transferred his or her files and materials to the investigators?
- (d) Was the conduct of the auditor such that he or she was effectively acting as an agent for the investigators?
- (e) Does it appear that the investigators intended to use the auditor as their agent in the collection of evidence?
- (f) Is the evidence sought relevant to taxpayer liability generally?
Or, as is the case with evidence as to the taxpayer’s *mens rea*, is the evidence relevant only to the taxpayer’s penal liability?
- (g) Are there any other circumstances or factors that can lead the trial judge to the conclusion that the compliance audit had in reality become a criminal investigation?

[Emphasis in original.]

[57] There is no disagreement between the parties on the applicability of the *Jarvis* test to this case. The Respondent simply says that, when the *Jarvis* factors are applied to the facts of this case, the “predominant purpose” of the s 231.1(1) requests is to determine penal liability. I cannot agree. The Respondent has provided the Court with little more than her subjective fears and speculative theories to offset the clear evidence that the predominant purpose of the

s 231.1(1) requests in this case are nothing more than a civil audit. With one exception, noted below, I am left with no alternative but to accept the Applicant's answers to the *Jarvis* test:

- a) This factor does not apply as no criminal charges have been laid against the Respondent.
- b) No - the evidence before the Court is that the Minister is conducting a civil income tax compliance audit. The information and documents being sought under the authority of the ss. 231.1(1) of the *Act* are for the purpose of verifying tax liability under the *Act*.
- c) No - the evidence before the Court is that the auditor has not made any referral or transfer of this matter to investigators or personnel at the CRA Criminal Investigations Directorate. The Applicant's affiant, Mr. MacElheron is an auditor in the CRA offshore compliance audit division. He does not conduct criminal investigations as part of his duties.
- d) No - the evidence of the auditor is that the auditor has had no contact with CRA investigators. There is no evidence whatsoever to indicate that a criminal investigation was being conducted under the guise of an audit, or that the conduct of the auditor was on behalf of or at the behest of CRA investigators.
- e) No - the evidence of the auditor is that he has had no contact with investigators. There is no evidence to indicate that the conduct of the auditor was initiated on behalf of CRA investigators or any other prosecutorial or police authority. The CRA was not utilizing this auditor or the CRA's information gathering powers to gather evidence for penal investigation purposes.
- f) The books and records sought relate directly to a determination of income tax payable under the *Act*. It cannot be said that the records sought relate only to criminal liability and not to liability for income tax under the *Act*. None of the information and document demands contained in the ss. 231.1(1) requests are relevant evidence only for proving penal liability.
- g) No - There are no other circumstances, factors or evidence other than bare assertions, reference to articles in the media, speculative inferences and accusations which would lend credibility to the Respondent's position that the CRA auditor has deliberately misled the Respondent about his intentions

and was actually conducting a *de facto* criminal investigation of the Respondent. The CRA auditor repeatedly informed the Respondent that an income tax compliance audit was being conducted, and the request letters issued pursuant to ss. 231.1(1) of the *Act* were issued for the purpose of conducting an income tax compliance audit.

[58] With regard to the first *Jarvis* factor, the Applicant's position cannot be the complete answer. As the Federal Court of Appeal pointed out in *Kligman*, above, at para 29, "[f]actor (a) addresses two different issues that may arise at different times in the process." In paragraph 31 of *Kligman*, above, Justice Létourneau went on to observe that, when looking at the second question in factor (a), "it is important to look at the record to see if it appears 'that a decision to proceed with a criminal investigation could have been made' [and noted] that the test is cast in terms of a mere possibility as opposed to a probability" (emphasis in original). Here, the Auditor has candidly admitted that the Respondent's name was obtained from the Falciani List. Indeed, the February 17, 2016 request letter sent to the Respondent lists her HSBC Profile Name, Customer Profile Code and five account numbers. Given that the Auditor's evidence is that the Respondent "has not reported [the] existence of any money, securities, or assets in HSBC Swiss account(s), nor any income earned therefrom," it is certainly possible that CRA could have begun an investigation to establish the elements of criminal tax evasion, although there is no evidence that it has. So this factor must weigh moderately in the Respondent's favour. The Supreme Court has made clear, however, that "[a]part from a clear decision to pursue a criminal investigation, no one factor is necessarily determinative in and of itself." See *Jarvis*, above, at para 93. Assessing the totality of the circumstances, and considering that the other *Jarvis* factors all weigh in the Applicant's favour, I conclude that the predominant purpose of the request letters

is a civil tax compliance audit and that no adversarial relationship between the state and the Respondent exists.

[59] In *Ellingson*, above, the Federal Court of Appeal has made it clear that the *Jarvis* test must be based upon evidence, and cannot be based upon the subjective suspicions of the taxpayer involved. In the present case, the Respondent offers little more than her subjective and speculative suspicions that the predominant purpose of the s 231.1(1) requests is, as her counsel put it at the hearing of this matter, to get the Respondent to self-incriminate. There is, in fact, no evidence that a penal investigation has commenced, or is even contemplated.

B. *Use of the Falciani or HSBC List*

[60] As the Respondent points out, the Auditor confirmed that the CRA received information from the government of France in May 2010, pursuant to Article 26 of the Treaty, and that the Respondent was on a list of HSBC clients. It is not clear how the French authorities acquired this list, but it seems to be accepted that it originated from a former employee of Swiss HSBC.

[61] The Respondent says that the CRA does not have the right to use any of this information obtained from French authorities because such information is stolen data.

[62] There is no clear evidence that the French authorities acquired this list illegally, and Canada certainly did not. As the Applicant points out, it is clear that the *Charter* only applies to Canadian state actors. See *Charter*, s 32(1). It is also clear that the *Charter* does not apply to information gathered extraterritorially where the authorities or source of the information were

not acting on behalf of the Government of Canada. See *Harrer*, above, at para 12. The Respondent does not appear to assert that her *Charter* rights apply extraterritorially. Her position, as elaborated in written submissions, is as follows:

36. The Respondent believes that the list of names, and other information about Canadians with funds in the HSBC bank in Switzerland, transmitted by the French authorities to the CRA, or a portion of them, is derived from the Stolen Data.

37. Furthermore, the Respondent believes that when the CRA requested, and obtained the list of names in the possession of the French tax authority and information related to them, the CRA knew or should have known that this information constituted primarily Stolen Data.

38. French courts have held that Stolen Data could not be used by the French tax authorities against their own citizens in the process of tax audits.

...

57. It is a known fact that *Falciani*, a former employee of a Swiss HSBC bank, stole a list of HSBC clients (the “HSBC List”) and the HSBC List somehow made its way to the French tax authority.

58. The Auditor has confirmed that the CRA received information from the Government of France in May 2010, pursuant to *Article 26 of the Treaty*[.]

59. The CRA should not have the right to use any of the information obtained from the French tax authorities [from] *Falciani’s* residence as these consisted primarily of the Stolen Data which the French tax authorities obtained in contravention of local law.

[63] Notwithstanding these bald assertions by the Respondent, we have clear Canadian jurisprudence directly on point that addresses these issues and, in my view, the Respondent has not distinguished her situation in any way, or raised any legal argument, that would allow me to disregard these authorities in the present case.

[64] The issues raised by the Applicant on this point were addressed by the Quebec Superior Court in *Berger CS*, above, and confirmed on appeal by the Quebec Court of Appeal. See *Berger CA*, above. The Quebec Court of Appeal affirmed the Quebec Superior Court's decision that Mr. Berger's rights under ss 7 and 8 of the *Charter* were not violated by the ARQ relying on the same HSBC List as was relied on in the present case. Incidentally, applying *Jarvis*, above and *McKinlay*, above, the Quebec Court of Appeal also affirmed that there was no basis for Mr. Berger's assertions that the information demanded of Mr. Berger relying upon that list was part of a penal investigation or that his *Charter* rights were violated by the ARQ's demand for information.

C. *Scope of Compliance Order*

[65] The Respondent asserts that any compliance order should be limited to the provision of books and documents dated January 1, 2009 and afterwards. Once again, however, the jurisprudence is clear that there is no time limit on requests for records beyond the s 230(4) retention period. See *Plachcinski*, *Kitsch*, and, *1144020 Ontario Ltd*, all above.

D. *Conclusions*

[66] The Applicant has established the requirements for issuing a compliance order pursuant to s 231.7 of the Act. The Respondent has not established before me that she has any right or reason to resist and refuse to comply with the s 231.1(1) requests for information that are at issue in this case. Consequently, the application is allowed and the Minister is entitled to the relief requested.

ORDER IN T-1888-16

THIS COURT ORDERS that

1. The application is allowed.
2. Within 45 days of the date of this Order, the Respondent shall provide to the Minister all books, records and information as set out in the demand letters dated November 2, 2015 (including fully completing the questionnaire attached thereto), December 23, 2015 and February 17, 2016 as attached hereto as Schedule "A".

"James Russell"

Judge

Schedule "A"

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Canada Revenue
AgencyAgence du revenu
du Canada

November 2, 2015

Biljana Stankovic
1008-889 Bay Street
Toronto, Ontario M5S 3K5Audit Division
Lloyd MacElheron, CPA, CGA

Dear Biljana Stankovic,

Re: Audit of Income Tax Returns for the 2006 to 2014 Taxation Years
SIN: (XXX-XXX-986)

As an information security measure, we have masked the first six digits of your social insurance number ("SIN") on this letter. However, if you are initiating contact with the Canada Revenue Agency ("CRA"), either in writing or by telephone, you are still required to provide your full SIN to ensure correct identification.

Your account has been selected for audit for the period noted above. Your income tax returns and all other forms, including but not restricted to form T1135, *Foreign Income Verification Statement*, will be audited. In this regard, please complete the enclosed questionnaire for the 2006 to 2014 taxation years, and return it to the undersigned auditor at the London Tax Services Office no later than December 2, 2015.

Please note that under subsection 230(1) of the *Income Tax Act* (the "Act"), every person who carries on business, and every person who is required to pay or collect taxes or other amounts, is required to keep records containing information to enable the determination of the person's liabilities and obligations under the Act. In addition, under subsection 231.1(1) of the Act, officers of the CRA are authorized to inspect, audit, and examine your records.

To ensure that the audit can proceed without delay, please make all books and records available for the audit period, including the following:

- bank statements for all personal and business accounts, including accounts not maintained in Canada;
- if you carried on a proprietorship or partnership:
 - general ledger, cash payments journal, and general journal;
 - supporting documents for sales, cost of sales, expenses (e.g., sales invoices, expense invoices);
 - name, address, and description of the business(es) carried on;
- details of all dispositions of shares, mutual fund units, partnership interests, and real property (e.g., land, buildings) that occurred;
- schedules or working papers detailing the calculation of all investment income (e.g., interest, dividends);
- schedules or working papers detailing the calculation of all capital gains or losses;
- any other documentation to support the amounts reported in your income tax returns.

.../2

London-Windsor TSO
451 Talbot Street
London, Ontario N6A 5E5BSF de London-Windsor
451, rue Talbot
London (Ontario) N6A 5E5Tel/Tél: (519) 457-4846
Fax: (519) 645-4079
Internet: www.cra.gc.ca

Canada

CRA – November 2, 2015

~2~

Initial Contact Letter

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If you wish to use the services of your accounting representative during this process, please complete form T1013, *Authorizing or Cancelling a Representative*, which can be found on our web site at www.cra-arc.gc.ca, and ensure it is provided to the undersigned auditor. This will allow us to discuss your income tax information with your chosen representative during the audit.

Please contact the undersigned auditor at (519) 457-4846 before November 23, 2015 to arrange for the books and records to be made available for the audit.

Your prompt reply is appreciated.

Yours truly,



Lloyd MacElheron, CPA, CGA
Offshore Compliance Specialized Team
Audit Division
London-Windsor Tax Services Office
Canada Revenue Agency
Tel: 519-457-4846
Fax: 519-645-4079

Enclosure

Canada

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

Taxpayer: Biljana Stankovic

Instructions

The following questions relate to the calendar years 2006 to 2014 (the years under review). For each question applicable at any time during the years under review, please place a check mark in the appropriate box and submit all information requested by attaching additional sheets and documents as necessary. Words or phrases in italics have specific meanings for the purposes of this questionnaire. The definitions for these terms appear on the following page.

As you complete this questionnaire, please initial each page at the bottom in the space provided. Please also sign and date this questionnaire in the space provided below, and return it to the writer identified on the covering letter together with your explanations and documents. Should you have any questions regarding this questionnaire please contact the writer.

Privacy notice

Personal information is collected under subsection 231.1(1) of the *Income Tax Act* for audit purposes. You have the right of protection, correction and access to your personal information under the *Privacy Act*. All personal information that the Canada Revenue Agency (CRA) collects and uses is described in the CRA chapter of the *Info Source* publication: www.infosource.gc.ca.

Certification

To the best of my knowledge, the information and documents provided in response to this questionnaire for the calendar years referenced above are true and complete.

Taxpayer's signature

Date

Taxpayer's name (printed)

Social insurance number

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

DEFINITIONS

"beneficially interested"

Has the meaning assigned under subsection 248(25) of the *Income Tax Act*.

"controlled directly or indirectly"

Means control by holding majority voting power at meetings of shareholders, members, or of the governing body of the *entity* or of another *entity* that itself controls the *entity*. Also means control where an individual or *entity* has any direct or indirect influence that, if exercised, would result in control in fact. With respect to a trust, includes arrangements where an individual or *entity* has the power to change the trustee(s) or is able to direct the manner in which the trustee acts.

"discretionary beneficiary"

Beneficiary under a *personal trust* where the trustee or another party has the right to either determine the amount or beneficiary to whom the amount of income or capital is paid, or to accumulate rather than pay out the income of the trust for each year.

"entity" or "entities"

Includes a company, trust (including a bare trust), partnership, joint venture, foundation, Anstalt, Stiftung, Sociedad Anonima, society, association, fund, and any other body or organization of any kind, whether incorporated or not, whether formed under the laws of Canada or not, and whether resident in Canada or outside of Canada, but does not include a natural person or a company the shares of which are traded on a designated stock exchange as defined under subsection 248(1) of the *Income Tax Act*.

"family"

Includes you, your spouse or common-law partner, and minor children of you, your spouse, or common-law partner, irrespective of who has custody of these children.

"personal trust"

Has the meaning assigned under subsection 248(1) of the *Income Tax Act*.

"related parties"

Include:

- (a) individuals connected by blood relationship, marriage, common-law partnership, or adoption, as defined in subsection 251(6) of the *Income Tax Act*;
- (b) an *entity* and:
 - (i) an individual who controls the *entity*, if it is controlled by one individual, or
 - (ii) an individual who together with *related parties* controls the *entity*;
- (c) an *entity* and:
 - (i) an *entity* that controls the *entity*, if it is controlled by one *entity*, or

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

- (ii) an *entity* that together with *related parties* controls the *entity*;
- (d) any two *entities* if they are controlled by the same individual or *related parties*;
- (e) any two *entities* if they are each *related parties* with respect to the same third *entity*.

"unlisted company" or "unlisted companies"

Any company, whether incorporated inside or outside of Canada, the shares of which are not traded on a designated stock exchange as defined under subsection 248(1) of the *Income Tax Act*.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

1. Personal information

1.1 Is the address of your personal residence different from the mailing address reported on your personal income tax returns? Yes [] No []

If yes, provide the address for your personal residence.

1.2 Did you have available for your use residences other than the one identified in question 1.1, whether or not directly owned by you, including residences that you might use only occasionally such as vacation properties?

- in Canada? Yes [] No []

- outside of Canada? Yes [] No []

If yes, provide the address of any such property, the name of the legal owner(s) of the property, the respective percentages of ownership, and the year acquired.

1.3 Did your family include any minor children during the years under review? Yes [] No []

If yes, provide the name, date of birth, and if available the social insurance number of each child.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

1.4 Did you or a member of your *family* own property¹, other than the properties identified above in questions 1.1 and 1.2, the original cost or fair market value of which at any time during the years under review exceeded \$100,000?

- in Canada?

Yes [] No []

- outside of Canada?

Yes [] No []

If yes, for each such property:

- (i) identify the property;
- (ii) provide the year it was acquired;
- (iii) provide its location;
- (iv) identify its owner(s) and respective percentages of ownership;
- (v) provide its estimated fair market value at December 31 of the latest year under review;
- (vi) identify the source of funds used to the purchase the property.

If the property was disposed of during the years under review, provide:

- (vii) the date of disposition;
- (viii) proceeds of disposition;
- (ix) cost amount.

If you have property for which the cost exceeds \$100,000 outside of Canada, was form T1135 filed with Canada Revenue Agency? If not, why?

¹ For the purpose of this question, please do not include property dealt with elsewhere in this questionnaire such as bank accounts, brokerage accounts, shares, partnership units, interests in a trust, bonds, GICs, and similar properties. However, without limiting the scope of this question, please identify all other property including property such as real property, art work, and other collectibles.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

2. Banking and investment information

2.1 Did you or a member of your family have bank accounts, including chequing, savings, and joint accounts?²

- held in Canada? Yes [] No []
- held outside of Canada? Yes [] No []

If yes, for each such account provide the account number, financial institution, and name(s) of the holders of the account.

For any accounts held outside of Canada, describe how you access and/or manage the funds.

For any accounts held outside of Canada, describe the source of funds for these accounts.

For any accounts held outside of Canada, describe how you transfer money to the accounts or repatriate back to Canada.

2.2 Did you or a member of your family have investment accounts, including accounts held through a discount brokerage, full service brokerage, or managed accounts?

- held in Canada? Yes [] No []
- held outside of Canada? Yes [] No []

If yes, for each such account provide statements of account as at December 31 for each year under review.

For any accounts held outside of Canada, describe how you access and/or manage the funds.

For any accounts held outside of Canada, describe the source of funds for these accounts.

For any accounts held outside of Canada, describe how you transfer money to the accounts or repatriate back to Canada

² For the purposes of this question, include accounts for which a member of your family had signing authority or in which a member of your family was *beneficially interested*. Do not include registered accounts such as Registered Retirement Savings Plans, Registered Retirement Income Funds, Tax Free Savings Accounts, Retirement Compensation Accounts, and Registered Education Savings Plans.

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QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

- 2.3 Did you or a member of your *family* have available for his or her use any stored value card, credit card, or debit card that was issued or funded outside of Canada? Yes [] No []

If yes, for each such card provide:

- (i) the name of the issuer;
- (ii) the credit limit on the card;
- (iii) the name of the person or *entity* under which the card was issued;
- (iv) the name of the person or *entity* liable for charges on the card (including any guarantor).

- 2.4 Did you or a member of your *family* receive a loan or incur other indebtedness from an *entity* or individual outside of Canada, which was outstanding at any time during the years under review? Yes [] No []

If yes, for each such loan or indebtedness provide:

- (i) the name of the member of your *family* so indebted;
- (ii) the name and address of the lender or creditor;
- (iii) the year the indebtedness arose;
- (iv) the original principal amount of the loan or debt;
- (v) the rate of interest, maturity, and terms of (re)payment;
- (vi) the principal outstanding as at December 31 of the latest year under review.

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QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

3. Interest in *unlisted companies*

3.1 Were you or a member of your *family* a shareholder or member of any *unlisted company*? For greater certainty, please note that a shareholder includes a holder of bearer shares.

- in Canada?

Yes [] No []

- outside of Canada?

Yes [] No []

If yes, for each such *unlisted company* provide:

- (i) the name of the *unlisted company*;
- (ii) the name of the member of your *family* who held the shares or membership;
- (iii) if the *unlisted company* filed income tax returns in Canada, its business number;
- (iv) if the *unlisted company* did not file income tax returns in Canada and its existence has not been disclosed in the years under review on a T1134-A or T1134-B information return, provide:
 - a. its place of incorporation,
 - b. the percentage interest in the company so held, and
 - c. financial statements of the company for each fiscal period ending in the years under review.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

3.2 Were shares of any *unlisted company*, or an option to acquire such shares, held on behalf of, or in trust for you or any member of your *family* by another person or *entity*?

- in Canada? Yes [] No []

- outside of Canada? Yes [] No []

If yes, for each such *unlisted company* provide:

- (i) the name of the *unlisted company*;
- (ii) the name of the member of your *family* for whom the shares or options were held;
- (iii) if the *unlisted company* filed income tax returns in Canada, its business number;
- (iv) if the *unlisted company* did not file income tax returns in Canada and its existence has not been disclosed in the period under review on a T1134-A or T1134-B information return, provide:
 - a. its place of incorporation,
 - b. the percentage interest in the company so held, and
 - c. financial statements of the company for each fiscal period ending in the years under review;
- (v) the name, address, and telephone number of the person or *entity* holding the shares or options.

3.3 Were you or a member of your *family* an officer or director of any *unlisted company*?

- in Canada? Yes [] No []

- outside of Canada? Yes [] No []

If yes, for each such *unlisted company* provide:

- (i) the name of the *unlisted company*;
- (ii) the name of the member of your *family* who held the position of officer or director;
- (iii) if the company filed income tax returns in Canada, its business number;
- (iv) if the *unlisted company* did not file income tax returns in Canada, provide:
 - a. its place of incorporation, and
 - b. financial statements of the company for each fiscal period ending in the years under review;
- (v) the position held by the member of your *family*.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

4. Relationship to personal trusts

4.1 Were you or a member of your family, or was any entity which a member of your family controlled directly or indirectly (either alone or together with related parties), a settlor, trustee, contributor, transferor, advisor, protector, or similarly linked to a personal trust that was in existence at any time during the years under review?

- in Canada? Yes [] No []
- outside of Canada? Yes [] No []

If yes, for each such trust:

- (i) provide the name of the trust, address, and if available the trust account number;
(ii) identify the trustee(s);
(iii) describe the relationship between the trust and the member of your family, and/or other entities;
(iv) provide financial statements for the trust for each fiscal period ending in the years under review;
(v) if not already filed with the CRA, provide the trust indenture or similar document by which it was created.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

4.2 Were you or a member of your *family*, or was any *entity* which a member of your *family controlled directly or indirectly* (either alone or together with *related parties*), a beneficiary (including a *discretionary beneficiary*) of or a recipient of benefits from a *personal trust* that was in existence at any time during the years under review?

- in Canada?

Yes [] No []

- outside of Canada?

Yes [] No []

If yes, for each such trust:

- (i) provide the name of the trust, address, and if available the trust account number;
- (ii) identify the trustee(s);
- (iii) describe the relationship between the trust and the member of your *family*, and/or other *entities*;
- (iv) provide financial statements for the trust for each fiscal period ending in the years under review;
- (v) if not already filed with the CRA, provide the trust indenture or similar document by which it was created.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

5. Interest in partnerships and joint ventures

5.1 Were you or a member of your *family*, or was any *entity* which a member of your *family controlled directly or indirectly* (either alone or together with *related parties*), a member of a partnership?³

- in Canada?

Yes [] No []

- outside of Canada?

Yes [] No []

If yes, for each such partnership:

- (i) provide the name and address of the partnership;
- (ii) provide the names of all members of the partnership at any time during the period under review;
- (iii) if the partnership was governed by a written partnership agreement, provide the agreement;
- (iv) provide financial statements for the partnership for each fiscal period ending in the years under review.

5.2 Were you or a member of your *family*, or was any *entity* which a member of your *family controlled directly or indirectly* (either alone or together with *related parties*), a member of a joint venture?

- in Canada?

Yes [] No []

- outside of Canada?

Yes [] No []

If yes, for each such joint venture:

- (i) provide the name and address of the joint venture;
- (ii) provide the names of all members of the joint venture at any time during the period under review;
- (iii) if the joint venture was governed by a written joint venture agreement, provide the agreement;
- (iv) provide financial statements for the joint venture for each fiscal period ending in the years under review.

³ For the purposes of this question, please do not include any partnership which has filed complete T5013 information returns for all years under review during which it was in existence.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

6. Relationship to other *entities*

6.1 Did you or a member of your *family*, or did any *entity* which a member of your *family controlled directly or indirectly* (either alone or together with *related parties*), hold an interest in any *entity* which has not already been identified in sections 3, 4, and 5 of this questionnaire?⁴

- in Canada?

Yes [] No []

- outside of Canada?

Yes [] No []

If yes, for each such *entity*:

- (i) provide the name and address of the *entity*;
- (ii) describe the legal characterization of the *entity* (e.g.: Anstalt, Stiftung, Sociedad Anonima, etc.);
- (iii) identify the jurisdiction and year in which it was created;
- (iv) identify the jurisdiction where it was resident;
- (v) describe the relationship between the *entity* and the member of your *family*, or the *related parties*;
- (vi) if the *entity* has a tax identification number issued by the CRA, please provide that number;
- (vii) provide financial statements for each fiscal period ending in the years under review.

⁴ For the purposes of this question, do not include any company that for the years under review has filed income tax returns in Canada where the interest has been disclosed on T2 schedule 50, or whose existence has been disclosed on a T1134-A or T1134-B information return.

QUESTIONNAIRE

FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

6.2 Were you or a member of your *family*, or was an *entity* which a member of your *family controlled directly or indirectly* (either alone or together with *related parties*), a member of the governing, supervisory, or advisory body of any *entity* which has not already been identified in sections 3, 4, and 5 of this questionnaire?⁵

- in Canada?

Yes [] No []

- outside of Canada?

Yes [] No []

If yes, for each such *entity*:

- (i) provide the name and address of the *entity*;
- (ii) describe the legal characterization of the *entity* (e.g.: Anstalt, Stiftung, Sociedad Anonima, charitable foundation, etc.)
- (iii) identify the jurisdiction and year in which it was created;
- (iv) identify the jurisdiction where it was resident;
- (v) describe the relationship between the *entity* and the member of your *family*, or the *related parties*;
- (vi) if the *entity* has a tax identification number issued by the CRA, please provide that number;
- (vii) unless the *entity* has filed T3010 information returns with the CRA, provide financial statements for the *entity* for each fiscal period ending in the years under review.

⁵ In your response to this question, do not include any company that is a subsidiary of a company whose existence has been disclosed under section 3 of this questionnaire.

QUESTIONNAIRE
FOR THE REVIEW OF AN INCOME TAX RETURN OF AN INDIVIDUAL

| | |
|-----------|-------------------------------|
| 7. | Additional information |
|-----------|-------------------------------|

- 7.1 Provide a personal balance sheet for you and your spouse or common-law partner as at January 1 of the first year under review and as at December 31 of the latest year under review.
- 7.2 Do you file tax returns in any other countries? If so, provide copies of the foreign returns, or notices of assessment for this returns for each year under review.
- 7.3 To what extent do you review your completed Canadian income tax returns for accuracy before they were filed?

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Canada Revenue
AgencyAgence du revenu
du Canada

December 23, 2015

Biljana Stankovic
1008-889 Bay Street
Toronto, Ontario M5S 3K5Audit Division
Lloyd MacElheron, CPA, CGA

Dear Biljana Stankovic,

Re: Audit of Income Tax Returns for the 2006 to 2014 Taxation Years
SIN: (XXX-XXX-986)

Further to our telephone conversation this morning of December 23, 2015 we have agreed to delay our previously scheduled January 11, 2016 meeting to afford you time to discuss your tax affairs with a representative. At your request, we have agreed to meet with you on a later date in January of 2016 (date to be determined) at the Toronto Centre Tax Services Office at 1 Front Street West, Toronto, Ontario.

For the purposes of the administration and enforcement of the Income Tax Act (ITA), you are hereby requested, under section 231.1 of the ITA to produce for inspection the documents noted in this letter and information that is relevant and necessary to conduct the audit of your Income Tax filings for the years noted above.

We have reproduced our list of information requested on November 2, 2015 below for your convenience:

- bank statements for all personal and business accounts, including accounts not maintained in Canada;
- if you carried on a proprietorship or partnership:
 - general ledger, cash payments journal, and general journal;
 - supporting documents for sales, cost of sales, expenses (e.g., sales invoices, expense invoices);
 - name, address, and description of the business(es) carried on;
- details of all dispositions of shares, mutual fund units, partnership interests, and real property (e.g., land, buildings) that occurred;
- schedules or working papers detailing the calculation of all investment income (e.g., interest, dividends);
- schedules or working papers detailing the calculation of all capital gains or losses;
- any other documentation to support the amounts reported in your income tax returns.

We have also included additional specific documents now requested as follows:

- property purchase documents, lawyer closing statements and mortgage documents for all rental and personal properties, both Canadian and foreign;
- property tax statements for all rental and personal properties, both Canadian and foreign;
- client profiles (list of accounts) for each bank where you have accounts, Canadian and foreign;

London-Windsor TSO
451 Talbot Street
London, Ontario N6A 5E5BSF de London-Windsor
451, rue Talbot
London (Ontario) N6A 5E5Tel/Tél: (519) 457-4846
Fax: (519) 645-4079

Internet:

www.cra-arc.gc.ca

Canada

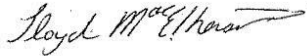
- financial documentation to show how rent payments from tenants of your New York condominium at 155, East 34th Street, New York, New York are received by you;
- names and contact information for tenants of all your rental properties, Canadian and foreign during the audit period;
- copies of all documents filed with the United States Internal Revenue Service for the audit period;
- complete tax returns for each year under audit including schedules and support for amounts claimed;
- Spreadsheets and all worksheets that you stated you provided to your Canadian income tax return preparer (Please provide an electronic copy if available)

We require that you provide the above-noted documents and information within thirty (30) days from the date of this letter. Failure to comply with this request for documents and information may result in the Canada Revenue Agency (CRA) seeking a compliance order under section 231.7 of the ITA.

Information can be mailed to London-Windsor TSO (London location) as noted in the address in this letter. Alternatively, I will endeavour to meet with you and obtain the requested records in person.

Should you require further clarification or have any questions or concerns, please do not hesitate to contact me at the number below. My Team Leader Karen Lemon can also be reached at 519-457-4858.

Sincerely,



Lloyd MacElheron, CPA, CGA
Offshore Compliance Specialized Team
Audit Division
London-Windsor Tax Services Office
Canada Revenue Agency
Tel: 519-457-4846
Fax: 519-645-4079

Canada Revenue
AgencyAgence du revenu
du Canada

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February 17, 2016

Sent via Fax to Barrett Tax Law

Biljana Stankovic
1008-889 Bay Street
Toronto, Ontario M5S 3K5Audit Division
Lloyd MacElheron, CPA, CGA

Attention: Biljana Stankovic

Dear Biljana Stankovic,

Re: Income tax audit for 2006 to 2014 Taxation Years

Further to our meeting on February 9, 2016 at Barrett Tax Law, you have not provided us with all documents and information requested in our letter dated November 2, 2015 and in our letter dated December 23, 2015. On several occasions we have requested you provide full and complete information. We are advising that information and documentation submitted to date is not complete. For greater certainty and to avoid further delays we have provided specific required information within this letter clarifying our audit information needs. We have also reproduced our initial general request for information which encompasses all of your records and information as necessary to complete our audit work.

For the purposes of the administration and enforcement of the Income Tax Act (ITA), you are hereby required, under section 231.1 of the ITA to produce for inspection the documents noted in this letter and information that is relevant and necessary to conduct the audit of Income Tax filings for the years noted above.

1. **HSBC Private Bank - Biljana Stankovic**

Profile Name 20810 BS
Customer Profile Code 5091152149

According to information obtained by the Canada Revenue Agency through an exchange of information with a treaty partner; your bank accounts have not been fully disclosed. We require you provide all bank and investment account information including, but not limited to the following documents and information:

- Account opening documents for all accounts including but not limited to individual and related corporate accounts.
- Client profiles (account listings) detailing all accounts including but not limited to individual and related corporate accounts with balances at December 31 for each year.
- Detailed transaction statements detailing the assets and interest earned for each account including but not limited to individual and related corporate accounts for each year.
- Statement of account transaction details for all accounts including but not limited to individual and related corporate accounts. For greater certainty we require details for each currency account showing daily transactions and depicting full descriptions including, but not limited to dates, title, value, debit, credit and balance for each year.

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London, Ontario N6A 5E5

BSF de London-Windsor
451, rue Talbot
London (Ontario) N6A 5E5

Tel/Tél: (519) 457-4846
Fax: (519) 645-4079

Internet:

www.cra-arc.gc.ca

- List of Income annual report with details for each account including but not limited to individual and related corporate accounts for each year.
- Statement of assets and daily transaction details including all activity for all accounts including but not limited to individual and related corporate accounts for each year.
- Statement of daily transaction details for all sub level and ancillary accounts including but not limited to individual and related corporate accounts for each year.
- List of transaction securities annual report for each year.
- Detailed investment breakdown for each account for each year.
- Portfolio transaction and balance details for each account for each year.
- All letters of instruction for all accounts including but not limited to individual and related corporate accounts for each year.
- A copy of the Manager's file for all accounts including but not limited to individual and related corporate accounts.
- A copy of the signature card for all accounts including but not limited to individual and related corporate accounts.
- Please ensure you also include the detailed daily transactions for the following accounts which have not been provided:

IBAN : CH08 0868 9050 9124 0322 4

IBAN : CH44 0868 9050 9115 0843 0

IBAN : CH66 0868 9050 9117 0378 0

IBAN : CH70 0868 9050 9103 3823 9

IBAN : CH98 0868 9050 9129 3083 6

- Please confirm when in fact accounts were closed including but not limited to individual and related corporate accounts and provide supporting documentation for where all funds were transferred.
- In order to verify the capital of the funds in offshore accounts, we require documentation supporting the source of the funds in each account including but not limited to individual and related corporate accounts.

2. CIBC Bank - Biljana Stankovic

- Client profiles (account listings) detailing all accounts including but not limited to individual and related corporate accounts with balances at December 31 for each year.
- Account statement for December 1, 2013 to December 31, 2013 for account #86-43032
- Account opening documents for all accounts including but not limited to individual and related corporate accounts.

3. Santander Bank – Biljana Stankovic and Bilyana Stankovich

- At our meeting on February 9, 2016 you provided bank statements for Santander Value Checking account #66087602 with the name on account of Bilyana Stankovich for the period from January 1, 2014 to December 31, 2014. You mentioned remaining statements are forthcoming. You are required to provide the following:
- All remaining detailed account statements for Santander Bank for account #66087602 for each year.
- Client profiles (account listings) detailing all accounts including but not limited to individual and related corporate accounts with balances at December 31 for each year.

- Account opening documents for all accounts including but not limited to individual and related corporate accounts.
 - A copy of the signature card for all accounts including but not limited to individual and related corporate accounts as maintained on file.
 - Documentation stating the bank branch where all accounts are located.
4. **Foreign Property**
- Purchase documents for your US Condo located at 155, East 34th Street, New York, New York.
 - Tenant names and contact information for US Condo for each year.
5. **Related Corporations**
- We require you to provide full information on your relationship including disclosure of ownership, interests or shareholdings with the following corporations:
 - Valensina UK Limited;
 - Valensina Limited;
 - West End UK Limited;
 - Malibu Village Inc.
 - Regency Club Inc.
 - Provide details of any and all corporate bank accounts where you had or have access, control or a beneficial interest in the account.
 - Details of all payments received from corporations.
 - Details of all payments received from Trusts.
 - In order to verify the capital of the funds in offshore accounts, we require documentation supporting the source of the funds. Provide source of funds for all accounts of related corporations.
6. **Correspondence and worksheets with Tax Preparer**
- To date, you have only provided copies of your tax returns and Remax documentation for 2012, 2013 and 2014. You have not provided tax returns for previous years and supporting worksheets as requested. At our meeting on February 9, 2016 you stated most of your contact with your tax preparer was via email. You have also stated you provided your tax preparer with a spreadsheet to complete your return. Please provide a copy of all your emails with your tax preparer with all attachments and working papers to support your tax returns filed.
 - Provide a copy of your tax returns with schedule and worksheets for all years prior to 2012.

As full and complete information has not been provided, we have reproduced our list of information requested on November 2, 2015 and again on December 23, 2015 below. You are required to provide the following in complete detail:

- bank statements for all personal and business accounts, including accounts not maintained in Canada;
- if you carried on a proprietorship or partnership:
 - general ledger, cash payments journal, and general journal;
 - supporting documents for sales, cost of sales, expenses (e.g., sales invoices, expense invoices);
 - name, address, and description of the business(es) carried on;
- details of all dispositions of shares, mutual fund units, partnership interests, and real property (e.g., land, buildings) that occurred;

- schedules or working papers detailing the calculation of all investment income (e.g., interest, dividends);
- schedules or working papers detailing the calculation of all capital gains or losses;
- any other documentation to support the amounts reported in your income tax returns.

- property purchase documents, lawyer closing statements and mortgage documents for all rental and personal properties, both Canadian and foreign;
- property tax statements for all rental and personal properties, both Canadian and foreign;
- **client profiles** (list of accounts) for each bank where you have accounts, Canadian and foreign;
- financial documentation to show how rent payments from tenants of your New York condominium at 155, East 34th Street, New York, New York are received by you;
- names and contact information for tenants of all your rental properties, Canadian and foreign during the audit period;
- copies of all documents filed with the United States Internal Revenue Service for the audit period;
- complete tax returns for each year under audit including schedules and support for amounts claimed;
- Spreadsheets and all worksheets that you stated you provided to your Canadian income tax return preparer (Please provide an electronic copy if available)

We require that you provide the above-noted documents and information within thirty (30) days from the date of this letter. Failure to comply with this request for documents and information may result in the Canada Revenue Agency (CRA) seeking a compliance order under section 231.7 of the ITA.

Information can be mailed to London-Windsor TSO (London location) as noted in the address in this letter. Alternatively, I will endeavour to meet with you and obtain the requested records in person.

Should you require further clarification or have any questions or concerns, please do not hesitate to contact me at the number below. My Team Leader Karen Lemon can also be reached at 519-457-4858.

Sincerely,



Lloyd MacElheron, CPA, CGA
 Offshore Compliance Specialized Team
 Audit Division
 London-Windsor Tax Services Office
 Canada Revenue Agency
 Tel: 519-457-4846
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1888-16

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE V BILJANA STANKOVIC

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 12, 2018

ORDER AND REASONS: RUSSELL J.

DATED: APRIL 30, 2018

APPEARANCES:

Jack Warren
Cédric Renaud-Lafrance
Nathaniel Hills

FOR THE APPLICANT

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE APPLICANT

Rotfleisch & Samulovitch
Professional Corporation
Toronto, Ontario

FOR THE RESPONDENT