Federal Court Cour fédérale

Date: 20220110

Dockets: T-1417-20
T-1418-20

Citation: 2022 FC 29

Ottawa, Ontario, January 10, 2022

PRESENT: The Honourable Mr. Justice Fothergill

Docket: T-1417-20

BETWEEN:

FRANK C. SMITH MEDICINE PROFESSIONAL CORPORATION

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Docket: T1418-20

AND BETWEEN:

FRANK SMITH

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Dr. Frank Smith is an orthopaedic surgeon based in Hamilton, Ontario. He is also a founding member and current sole shareholder of the Cayman Orthopaedic Group [COG Ltd] based in the Cayman Islands.

[2] Since April 2018, the Canada Revenue Agency [CRA] has been conducting an audit of Dr. Smith. In July 2019, the audit was expanded to include Frank C. Smith Medicine Professional Corporation [Smith MPC]. The audits initially concerned the 2010 to 2016 taxation years.

[3] On October 21, 2020, the Minister of National Revenue [Minister] issued audit expansion and request letters [AER Letters] to Dr. Smith and Smith MPC [collectively, the Taxpayers] pursuant to s 231.1 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA]. The AER Letters stated that the audits would now encompass the Taxpayers’ 2003 to 2018 taxation years.

[4] Dr. Smith and Smith MPC have brought applications for judicial review in which they seek orders:

(a) declaring the Minister’s decisions to issue the AER Letters invalid or unlawful, in whole or in part;

(b) quashing the AER Letters, in whole or in part; and/or

(c) remitting these matters to the Minister for redetermination.

[5] The Minister is entitled to determine the scope and manner of an audit, as well as its direction. It is the CRA's prerogative to determine whether it will conduct an audit and what form that audit will take. Information may be reasonably sought in a notice of requirement even if it ultimately turns out to be irrelevant. Nevertheless, a rational connection must exist between the information sought and the administration and enforcement of the ITA.

[6] The information sought in the AER Letters is rationally connected to the audits of Dr. Smith and Smith MPC. Neither of the Taxpayers has suggested the information is unavailable, or that it would be unduly onerous or inconvenient to provide it.

[7] Any disputes regarding whether the AER Letters have been complied with may be resolved in the context of compliance applications commenced by the Minister on April 19, 2021 (Court File Nos T-665-21 and T-666-21). The compliance applications are not before this Court in these proceedings.

[8] The applications for judicial review are dismissed.

II. Background

[9] According to a background document prepared by the CRA dated April 23, 2018, the audit of the Taxpayers was prompted by responses received from Citibank and the Royal Bank of Canada to an unnamed persons' requirement for information pertaining to all transactions involving Cayman National Bank correspondent accounts in Canada. An analysis of the information received confirmed there were funds coming into Canada from the Cayman Islands, including bank drafts sent from the Cayman National Bank to car dealerships in Hamilton, Ontario for the purchase of vehicles.

[10] A third party request for information submitted by the CRA to a car dealership produced purchase information that included a copy of a facsimile letterhead originating with COG Ltd. From the list of surgeons found on the letterhead, as well as a subsequent search of the corporation's website, a total of 10 Canadian doctors were identified as affiliated with COG Ltd. The background document noted that two doctors were currently under audit, and an additional eight doctors had recently been screened for audit. All audits were to include the doctor's domestic corporations and their spouses.

[11] The background document described one doctor (not Dr. Smith) as having failed to report approximately $500,000.00 in income for the 2010 to 2016 taxation years. The CRA estimates that Dr. Smith may have failed to report approximately $57,000.00 in income during that same period.

[12] In the course of the audit that began in 2018, Dr. Smith provided documentation to the CRA that included organization charts illustrating his relationships with two corporations registered in the Cayman Islands: COG Ltd and Affects Ltd. Affects Ltd is a wholly-owned subsidiary of COG Ltd, and holds real property in the Cayman Islands for investment purposes.

[13] Dr. Smith and Smith MPC were asked to produce books and records for the 2010 to 2016 taxation years to verify the income reported in the Taxpayers' respective income tax returns. The auditor received materials pertaining to the Taxpayers and their related assets and entities in the Cayman Islands. The auditor also learned that Dr. Smith had control of a USB key that included COG Ltd's general ledgers and other data pertaining to the 2003 to 2018 taxation years. The auditor obtained authority to expand both audits to encompass the full 16-year period, and the AER Letters were issued accordingly.

[14] Since these applications for judicial review were commenced on November 20, 2020, the Minister has initiated compliance applications pursuant to s 231.7 of the ITA for orders compelling the Taxpayers to produce the information requested in the AER Letters. On September 28, 2021, the Minister requested that all four applications be heard together by the same judge. However, by Order dated October 29, 2021, Prothonotary Mireille Tabib declined to grant the requested relief, holding as follows:

> The Court is thus faced with the following alternatives: staying judicial review applications that are essentially ready for hearing for at least three months and potentially realizing some efficiencies in the use of judicial resources, or foregoing those efficiencies and allowing the judicial review applications to be heard and determined expeditiously while the compliance applications are briefed, heard and determined separately. In the face of the Taxpayer's objection and the

> absence of compelling arguments showing that the parties would be prejudiced by allowing the applications to proceed separately and at their own pace, the Court is not satisfied that the interest of justice would be served by requiring the Taxpayers to wait for the determination of their judicial review application[s] until the compliance applications are perfected and ready for hearing.

[15] These Reasons for Judgment therefore concern only the AER Letters issued to the Taxpayers on October 21, 2020, not the compliance applications that were commenced on April 19, 2021.

III. Issues

[16] The issues raised by this application for judicial review are:

A. Whether the expansion of the audit period was reasonable.

B. Whether the AER Letter issued to Dr. Smith is a disguised audit of COG Ltd, Affects Ltd and other persons.

C. Whether the AER Letter issued to Dr. Smith seeks "foreign based information", and should have been issued under s 231.6 of the ITA rather than s 231.1.

D. Whether the AER Letters unreasonably compel explanations from the Taxpayers.

E. Whether the AER Letters unreasonably require the Taxpayers to determine the relevance and necessity of the information to be provided.

IV. Analysis

[17] The AER Letters are subject to review by this Court against the standard of reasonableness. The Court will intervene only if it is satisfied that there are sufficiently serious shortcomings in the Minister's decisions to issue the AER Letters such that they cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 100).

[18] Where formal reasons have not been provided, the reviewing court must look to the record as a whole to understand the decision, and will often uncover a clear rationale (*Vavilov* at para 137). Without reasons, the analysis is likely to focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust; only that it takes a different shape (*Vavilov* at para 138).

[19] The Taxpayers emphasize that the outcomes of the decisions and the reasoning process that led to those outcomes must both be reasonable (citing *Vavilov* at paras 83, 87). Judicial review is concerned with both outcome and process, and applying the standard of reasonableness requires "some understanding of the extent of the demand and the reasons for which it is made" (citing *Saipem Luxembourg SA v Canada (Customs and Revenue Agency)*, 2005 FCA 218 [*Saipem*] at para 31).

A. *Whether the expansion of the audit period was reasonable*

[20] The Taxpayers maintain that expanding the audit to encompass a 16-year period, rather than the original six-year audit period, is incompatible with the six-year period for retaining books and records prescribed by the ITA and CRA policy. The Taxpayers note that standard bank retention policies do not generally contemplate such a long timeframe, and an audit period of this length will unduly prejudice any taxpayer.

[21] The Taxpayers say that the Minister must not act in defiance of published policy (citing *BP Canada Energy Company v Canada (National Revenue),* 2017 FCA 61 at para 105). The Taxpayers note that a CRA publication dated June 3, 2019, titled "*Obtaining Information for Audit Purposes*" (AD-19-02R), states that an auditor should exercise powers to require the production of documents in a manner that takes reasonable steps to limit the compliance burden on the taxpayer. Three key considerations when evaluating the need to request information are audit scope, relevancy and reasonableness, and transparency.

[22] The Minister responds that the CRA is not limited to auditing only the taxation years within a taxpayer's normal reassessment period. In *Minister of National Revenue v Plachcinski,* 2016 CarswellNat 10234 [*Plachcinski*], Justice René LeBlanc distinguished between taxation years that fell within the normal reassessment period and those that fell outside that period, referring to the latter as "prescribed taxation years". Justice LeBlanc continued at paragraphs 19 and 20:

> First, there is nothing in the language of section 231.1 limiting the Minister's audit powers to non-prescribed taxation years. As indicated above, the Minister is empowered under section 231.1, as is the case under section 231.2, to require any person to produce any information or any document "for any purpose related to the administration or enforcement of the Act". Assessing or re-assessing a taxpayer, even for prescribed taxation years, in circumstances where the taxpayer has made any misrepresentation that is attributable to neglect, carelessness or willful default, or has committed any fraud in filing the return or in supplying any information under the Act, is one such purpose as per subparagraph 152(4)(a)(i) of the Act. Again, the Minister's audit powers are needed "to achieve the objectives of the Act and to ensure compliance with it" (*GMREB*, at para 46) and the scope or breath [*sic*] of a request for information made in the exercise of these powers is a matter for the Minister (*Lee*, at para 7). The audit of prescribed years may well reveal no basis for an assessment or a re-assessment for those years but that does not deprive the Minister of the ability – and responsibility – of monitoring and verifying a taxpayer's compliance with the Act, even for a prescribed year for taxation years that would otherwise not be subject to assessment or re-assessment because of the passage of time.
>
> Second, there is no merit either to the argument that the Request for Information is unreasonable because it covers a period going beyond the six (6) year limitation period contemplated by subsection 230(4) of the Act for the keeping of books and records of account for tax return purposes. I fail to see how this provision limits the Minister's authority to request information covering years that go beyond that limitation period. It may be that books and records for those years do not exist anymore, in which case this will limit the amount of information gathered for the purposes of the audit with no possible blame on the taxpayer for not keeping the missing records. On the other hand, if such books and records are still available, then I see no reason why they should not be provided to the Minister, as required by the request for information. Here, I note that the Respondent is not claiming that the information and documents requested by the Minister for the "prescribed years" within the meaning of section 230(4), cannot be produced because they are no longer available.

[23] The Minister is entitled to determine the scope and manner of an audit, as well as its direction (*Canada (National Revenue) v Cameco Corporation*, 2019 FCA 67 [*Cameco*] at para 43). It is the CRA's prerogative to determine whether it will conduct an audit and what form that

audit will take (*Saipem* at para 36). Information may be reasonably sought in a notice of requirement even if it ultimately turns out to be irrelevant. Nevertheless, a rational connection must exist between the information sought and the administration and enforcement of the ITA (*Saipem* at paras 25-26).

[24] The auditor's notes indicate that, based on the minute book information provided by the Taxpayers' accountant, the CRA was interested in obtaining documents pertaining to COG Ltd from 1996 onwards. Dr. Smith was involved in COG Ltd when it was first incorporated in 1996. He became President in 2004, by which time he owned 13 of 82 shares in the corporation. He became the sole shareholder of COG Ltd in June 2009, and currently oversees all operations of the offshore corporation.

[25] Neither Dr. Smith nor Smith MPC has ever declared offshore income in their income tax returns. The Minister asserts that, depending on the circumstances, it may still be possible to reassess the Taxpayers for taxation years that precede 2010.

[26] In this case, the Taxpayers voluntarily disclosed the existence of a USB key containing COG Ltd's general ledgers and other data pertaining to the 2003 to 2018 taxation years. There is no question that the documents exist, or that they can be produced.

[27] I am satisfied that the documents contained in the certified tribunal record disclose a rational chain of analysis supporting the Minister's decisions to expand the audit of both Taxpayers to encompass the 2003 to 2018 taxation years. As Justice LeBlanc held in

Plachcinski, assessing or re-assessing a taxpayer, even for years that fall outside the normal reassessment period, in circumstances where the taxpayer may have made any misrepresentation attributable to neglect, carelessness or willful default, or may have committed fraud in filing a return or supplying information, is a purpose for which a request for information may be made under s 231.1 of the ITA.

[28] Given Dr. Smith’s long-standing association with, and ownership interests in, COG Ltd, the expansion of the audit of both Taxpayers to encompass the 2003 to 2018 taxation years was reasonable. The records currently stored on the USB key that pertain to COG Ltd are known to exist and are accessible. Neither of the Taxpayers adduced any evidence to suggest that complying with the AER Letters will entail inordinate expense or inconvenience.

[29] If other books and records relevant to the expanded audit period no longer exist, then this will necessarily limit the amount of information that may be gathered, with no blame attaching to the Taxpayers for failing to retain the documents. However, if the books and records are still available, there is no reason why they should not be provided to the Minister in accordance with the AER Letters (*Plachcinski* at para 20).

[30] Any difficulty in providing documents or other information may be raised in opposition to the compliance applications initiated pursuant to s 231.7 of the ITA. As explained above, the compliance applications are not before the Court in the current proceedings.

B. *Whether the AER Letter issued to Dr. Smith is a disguised audit of COG Ltd, Affects Ltd and other persons*

[31] The AER Letter issued to Dr. Smith is directed to him in his personal capacity at his home address. However, the subject line reads:

> Subject: Audit of personal/corporate income tax returns for tax years 2003 to 2018
> SIN: […]
> Cayman Orthopaedic Group Ltd; Affects Ltd.
> CRA Case Number: […]

[32] Dr. Smith notes that he does not file "corporate tax returns" in his personal capacity, and Smith MPC is the subject of a separate audit. Of particular concern to Dr. Smith is the inclusion of COG Ltd and Affects Ltd, two corporations established under the laws of the Cayman Islands that are not Canadian taxpayers and therefore not subject to audit by the CRA.

[33] Dr. Smith relies on *Canada (National Revenue) v Lin*, 2019 FC 646 [*Lin*], where Justice Keith Boswell found that requests for information that were addressed to taxpayers and their connected entities were unreasonable, because the entities were not specified. It was therefore unclear who was being audited: the individual taxpayers or the unnamed entities (*Lin* at para 31). The Minister notes that in this case the connected entities are identified by name as COG Ltd and Assets Ltd.

[34] In *Canada (National Revenue) v Friedman*, 2019 FC 1583 [*Friedman*], Justice Peter Pamel confirmed that the CRA must be specific about whom it is auditing (at para 32). The

requests for information in that case were addressed to Mr. and Mrs. Friedman personally, but also sought documentation pertaining to "entities with which [they] had a connection or affiliation" during the taxation years in question. The requests were phrased identically to those at issue in *Lin*, but Justice Pamel nevertheless held that the CRA was clearly directing its questions to Mr. and Mrs. Friedman in their personal capacity as taxpayers, and in respect of their personal tax situation (*Friedman* at para 35). Justice Pamel continued at paragraphs 41 to 43:

> It appears that the Friedmans have conflated the subjects of the inquiry – Mr. and Mrs. Friedman, respectively – with the nature of the inquiry, which is a request for documents related to the Friedmans and their connected entities, as such relates to Mr. and Mrs. Friedman's own personal income tax returns.
>
> Taking the letters as a whole, including the questionnaires that were sent with them, it is not difficult to see that they are directed at the Friedmans in their individual capacities, nor is it difficult to understand why the CRA would request such information regarding a taxpayer's related entities in the course of an audit into their foreign assets.
>
> As such, I find that the RFIs are clearly directed to Mr. and Mrs. Friedman respectively, and were issued in respect to the audit of their own personal income tax returns.

[35] Justice Pamel therefore declined to follow *Lin*, holding that an assessment of who is required to provide the requested information depends on the facts of the case. In light of the arguments and evidence presented to him, Justice Pamel was satisfied that the requests were sufficiently clear (*Friedman* at paras 34-35). *Freidman* was subsequently affirmed by the Federal Court of Appeal (*Friedman v Canada (National Revenue)*, 2021 FCA 101).

[36] In this case, the connected entities have been identified by name as COG Ltd and Affects Ltd. According to Dr. Smith, this simply confirms that the audit of him in his personal capacity is really a disguised audit of COG Ltd and Affects Ltd, and an effort to obtain information regarding the tax situation of other doctors who are affiliated with COG Ltd. The AER Letter issued to Dr. Smith focuses on the books and finances of COG Ltd, and requests general ledgers, financial statements, trial balances, bank statements, and detailed explanations of specified transactions. The AER Letter also seeks production of "Butterfield Bank investment statements for all fixed deposits and any other investments owned by COG and/or held in the name of COG on behalf of any other individual".

[37] I am satisfied that Dr. Smith is being audited with respect to potential unreported income and assets from his offshore holdings. His long association with, and ownership interests in, COG Ltd and Assets Ltd are sufficient to establish that the requests for information respecting the two entities are rationally connected to the audit of Dr. Smith personally.

[38] As the Supreme Court of Canada held in *Redeemer Foundation v Canada (National Revenue)*, 2008 SCC 46 at paragraph 22, "[r]egardless of whether or not there is a possibility or a probability that the audit will lead to the investigation of other unnamed taxpayers, the CRA should be able to obtain information it would otherwise have the ability to see in the course of an audit". The CRA's request for information pertaining to COG Ltd and Assets Ltd for the taxation years under audit was therefore reasonable.

C. *Whether the AER Letter issued to Dr. Smith seeks "foreign based information", and should have been issued under s 231.6 of the ITA rather than s 231.1*

[39] Pursuant to s 231.6(2) of the ITA, the Minister may require that a person resident in Canada or a non-resident person carrying on business in Canada provide any "foreign-based information or document". If a taxpayer fails to comply substantially with the request, any court having jurisdiction in a civil proceeding relating to the administration or enforcement of the ITA shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by the notice (ITA, s 231.6(8)). Dr. Smith considers this consequence to be less severe than a compliance application brought pursuant to s 231.7 of the ITA.

[40] The USB key that contains COG Ltd's general ledgers and other data pertaining to the 2003 to 2018 taxation years originated in the Cayman Islands. It was brought to Canada by Dr. Smith, who provided it to his accountant, Glenn Taylor of SB Partners LLP. However, SB Partners' office in Canada did not have the requisite software to extract the information from the USB key, and it was therefore sent to the firm's office in Buffalo, New York, United States of America, where the software was available.

[41] Dr. Smith maintains that the Minister has always known the information stored on the USB key was outside of Canada. The auditor's notes for August 4, 2020 include the following: "received a 2nd email from [Department of Justice] with response from Cayman lawyer confirming that the USB key with the COG Quickbooks data was with the firm in Buffalo". Dr. Smith therefore argues that the request for the information should have been made under s 231.6

of the ITA, not s 231.1. He notes that a significant portion of the other information sought in the AER Letter addressed to Dr. Smith also constitutes "foreign-based information or documents".

[42] In *Ghermezian v Canada (Attorney General)*, 2020 FC 1137 [*Ghermezian*], Justice Richard Southcott upheld requests for the production of information made pursuant to s 231.1 of the ITA, in part because the record before him did not contain sufficient evidence to permit a determination of whether some of the information sought was foreign-based. However, he did not rule out the possibility that "there could be circumstances in which the record before the Minister includes evidence that information is located outside Canada that is so compelling that it would be unreasonable for the Minister to proceed otherwise than under s. 231.6" (*Ghermezian* at para 104).

[43] I am not persuaded that the evidence in this case is so compelling that it was unreasonable for the Minister to proceed otherwise than under s. 231.6 of the ITA. I agree with the Minister that a taxpayer cannot transform domestic-based information into foreign-based information merely by moving it outside the country. Furthermore, information in electronic form stored on servers outside Canada is in law capable of being located in Canada (*eBay Canada Ltd v MNR*, 2008 FCA 348 at paras 48, 52).

[44] Dr. Smith did not object to providing similar categories of information pursuant to a request made under s 231.1 of the ITA in respect of his 2010 to 2016 taxation years. He does not argue that the information is beyond his power, possession or control from within Canada.

[45] Dr. Smith has adduced no evidence in these proceedings regarding the manner in which information or documentation pertaining to COG Ltd or Assets Ltd is maintained. As Justice Southcott found in *Ghermezian*, the record presented to the Court in these proceedings does not permit a definitive conclusion regarding this question. The Minister's applications under s 231.7 of the ITA will afford Dr. Smith an opportunity to adduce evidence relevant to the location of the material, to equip the Court to decide whether a compliance order should be issued (*Ghermezian* at para 107).

[46] For the purposes of the present proceedings, whether the information or documents are located within or outside Canada does not affect the reasonableness of the requests. The information sought is rationally connected to the audit of Dr. Smith, and the requests were therefore reasonable.

D. *Whether the AER Letters unreasonably compel explanations from the Taxpayers*

[47] The AER Letters require the Taxpayers to provide a number of "detailed explanations and supporting documents", including in relation to the following:

(a) the actual calculations that were used to distribute the earnings of COG Ltd to the individuals who provided medical services;

(b) specified transactions recorded in the general journal of COG Ltd;

(c) specified transactions in Dr. Smith's personal Cayman accounts;

(d) specified transactions in Dr. Smith's Royal Bank of Canada account;

(e) a mortgage receivable connected to the purchase of a property in Ancaster, Ontario, and a loan receivable following the purchase of a vehicle in March 2016; and

(f) monthly loan payments incurred by Smith MPC with specified reference numbers.

[48] Pursuant to s 231.1(1)(a) of the ITA, the Minister may "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 [the ITA]". The ordinary meaning of "inspect, audit or examine" is self-directed inquiry of the books and records of a taxpayer (*Cameco* at para 18). Section 231.1 of the ITA permits the Minister to independently verify, based on the records kept at a taxpayer's place of business, the taxpayer's tax liability and compliance with the ITA (*Cameco* at para 24).

[49] The Taxpayers argue that independent verification of an audit is distinct from compelling answers. Where Parliament intends to compel a person to provide oral answers to questions in response to a government inquiry, it does so expressly and not by implication (citing *Cameco* at para 25). Section 231.1 of the ITA cannot be interpreted as permitting the Minister to compel oral interviews of the taxpayer or its employees concerning its tax liability, and the Taxpayers say this principle should apply equally to oral and written explanations.

[50] While it is open to the Taxpayers to argue in the compliance applications that the CRA's requests for detailed explanations of specified financial transactions are unenforceable, this does not render them unreasonable. It is always open to an auditor to request explanations in furtherance of an audit. It will often be in a taxpayer's best interests to comply voluntarily, and this may obviate the need for a subsequent compliance application.

[51] As the Federal Court of Appeal (*per* Rennie JA) held in *Cameco* at paragraph 28:

> […] all taxpayers should fully cooperate with reasonable requests arising in the course of an audit. However, the fact that I have concluded that the Minister does not have the power to compel a taxpayer to answer questions at the audit stage does not mean that the audit power has been rendered toothless in the face of recalcitrant taxpayers. It remains open to the Minister to make inferences when no answer is given. The Minister is also free to make assumptions and to assess on that basis.

[52] Implicit in *Cameco* is the assumption that an auditor is free to ask questions of taxpayers under audit, even if the taxpayers cannot be compelled to answer them. All taxpayers should cooperate fully with reasonable requests arising in the course of an audit. A refusal to provide answers may result in adverse inferences, the making of certain assumptions or, as has occurred in this case, compliance applications.

[53] The Taxpayers have not demonstrated that the Minister's requests for detailed explanations of specified transactions were unreasonable. Any disputes regarding whether the requests have been complied with may be resolved in the context of the forthcoming compliance applications.

E. *Whether the AER Letters unreasonably require the Taxpayers to determine the relevance and necessity of the information to be provided*

[54] The AER Letter issued to Dr. Smith includes the following language:

> For the purposes of the administration and enforcement of the Income Tax Act (ITA), you are required, under section 231.1 of the ITA, to produce for inspection the above-noted documents and information that are relevant and necessary to conduct the audit of your income tax filings for the tax years noted above.

[55] The AER Letter issued to Smith MPC contains the same language, but adds the word "still" immediately before "required". The Taxpayers say it is unreasonable for the Minister to require them to determine what information is "relevant and necessary" for the conduct of the audit.

[56] In *Ghermezian*, Justice Southcott found the following request for information to be unreasonable, because it did not sufficiently enable the taxpayers to prepare a response: "any additional information or explanations that are relevant in determining whether or not the rules of former section 94 of the [ITA] applies [*sic*] to the Royce and Regent Trusts in respect of the transaction described in the background of this query". However, the reason for the taxpayers' objection in that case was that the request required them to undertake a legal analysis concerning the operation of former s 94 of the ITA, including potentially speculating on how the Minister would propose to invoke that section, and then make a determination as to what information could be relevant to informing that analysis (*Ghermezian* at para 161).

[57] The AER Letters issued to the Taxpayers in this case provide a sufficiently detailed description of the documents and other information sought. Accounting records, bank statements, investment statements, and explanations respecting certain transactions are all specified. Consistent with *Cameco*, the Taxpayers should comply with the requests to the extent they are willing and able to do so. Any dispute as to whether the AER Letters have been sufficiently complied with may be resolved in the forthcoming compliance applications.

V. Conclusion

[58] The applications for judicial review are dismissed.

[59] If the parties are unable to agree upon costs, the Minister may make written submissions, not exceeding five (5) pages, within fourteen (14) days of the date of these Reasons for Judgment. The Taxpayers may make written submissions in reply, not exceeding five (5) pages, within fourteen (14) days thereafter.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are dismissed.

2. If the parties are unable to agree upon costs, the Minister may make written submissions, not exceeding five (5) pages, within fourteen (14) days of the date of this Judgment. The Taxpayers may make written submissions in reply, not exceeding five (5) pages, within fourteen (14) days thereafter.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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