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Transfer pricing alert

Federal Court of Appeal upholds the Canada Revenue Agency's request for foreign-based information

February 26, 2014

Canada's Federal Court of Appeal has dismissed Soft-Moc Inc. (Soft-Moc)'s appeal challenging the Canada Revenue Agency (CRA)'s foreign-based information requirements for the purposes of conducting a transfer pricing audit. The case highlights the accessibility of foreign-based information to the CRA and provides an important reminder to taxpayers with respect to the information that may be requested in the context of an international audit.

Background on the case

Soft-Moc made an application for a judicial review of a ruling by Justice James Russell in March 2013 which upheld the CRA's request for foreign-based information relating to a transfer pricing audit. The CRA requested foreign-based information on related non-residents of Soft-Moc based in the Bahamas under subsection 231.6(2) of the Canadian Income Tax Act ("the Act"). The focus of the CRA's audit was whether the transfer prices for certain services provided by the related non-residents to Soft-Moc were at arm's length.

Soft-Moc argued that the CRA's request for foreign-based information should be set aside as being unreasonable on account of: i) it being overly broad in scope, ii) it requiring the production of information and documents that are not relevant to the administration or enforcement of the Act, and iii) it requesting information that cannot be obtained or provided by Soft-Moc because such information is confidential or proprietary, non-existent, or otherwise unavailable. Failing the CRA's request being set aside entirely, Soft-Moc sought to have the CRA's request for foreign-based information varied to delete questions relating to information that could not be obtained or provided by virtue of such information being confidential and proprietary, non-existent or otherwise unavailable. The Federal Court dismissed the motion and the Federal Court of Appeal has now upheld that ruling.

Important takeaways

This case further demonstrates the CRA's ability to request foreign-based information which can be critical to the outcome of transfer pricing audits. The type of foreign-based information that can be requested by the CRA is extremely broad based on the definition in the Act. Specifically, foreign-based information or documents are defined in subsection 231.6(1) of the Act as "any information or document that is available or

located outside Canada and that may be relevant to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person.”

Canadian taxpayers should be aware that foreign-based information is accessible to the CRA and should consider this when setting transfer prices and when faced with an international audit.

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