

Submission to Finance Canada on Legislative Proposals Relating to the *Income Tax Act* and the *Income Tax Regulations*

CCIA Comments on Expansion of Unnamed Persons Requirement

Introduction

We write on behalf of the Computer & Communications Industry Association (CCIA) to respectfully respond to this consultation following the publication of Finance Canada’s Legislative Proposals Relating to the *Income Tax Act* and the *Income Tax Regulations* (“Finance Canada proposed measures”).¹ The proposed measures seek to expand the Canada Revenue Agency’s (“CRA”) authority, permitting CRA to issue an unnamed persons requirement (UPR) on behalf of any country that is party to a tax treaty with Canada—including China and Russia.

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms.² For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members invest heavily in the Canadian economy and provide digital products and services to Canadian consumers, bringing vast benefits to users and Canadian businesses small and large alike that rely on digital platforms and other services.

The Expansion of the Unnamed Persons Requirement Introduces Uncertainty and Concerning Potential for Overreach

CCIA is specifically concerned by Finance Canada proposed changes to the “Requirement to provide documents or information” at 231.2. The language at this section would extend the UPR powers currently available to the Canada Revenue Agency (“CRA”) to be applicable for foreign jurisdictions that hold tax treaties with Canada as well.³

This rule, which allows the CRA to demand information from companies or individuals about a third party entity about which the agency is investigating potential tax non-compliance, does include requirements to receive approval from a judge. However, in the past, the CRA has been granted the right to compel information about customers of several companies operating in Canada, both those that are Canadian and from the United States.⁴

¹ <https://fin.canada.ca/drleg-apl/2024/ita-lir-0824-l-2-eng.html>.

² For more, please go to: www.ccianet.org.

³ The specific wording is the following: “Paragraph 231.2(3)(b) of the Act is replaced by the following: (b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act, a listed international agreement or, for greater certainty, a tax treaty with another country.”

⁴ Companies hit by CRA UPR demands include J.D. Irving, Home Depot, and PayPal, as well as cryptocurrency marketplaces. See <https://nationalpost.com/news/politics/cra-wins-big-box-stores-evading-taxes>; <https://financialpost.com/legal-post/contractors-buying-from-home-depot-other-retailers-beware-the-cra-is-coming-after-you>; <https://www.cbc.ca/news/business/canada-revenue-agency-paypal-1.4403027>; <https://nationalpost.com/news/canada/major-canadian-cryptocurrency-marketplace-must-fork-over-details-of-tho>

As such, even with the check imposed for the domestic implementation of the UPR power, the prospect of extending this oversight to every country that is party to a tax treaty with Canada—a list⁵ that includes China, Russia, and other countries that demonstrate digital autocratic tendencies—brings great uncertainty to U.S. and Canadian companies in the market. The potential for foreign countries to demand information about companies' userbases opens the door to countries disguising such requests as tax audits, when in reality they could be seeking the information for other purposes.

Requiring a company to hand over its customer list could enable corporate espionage focused on the market size of companies in Canada or espionage generally on specific sets of individuals. If Finance Canada's proposed measures are enacted, there would be insufficient guardrails to prevent China from requiring the CRA to issue a UPR on its behalf for "tax purposes," even if, in reality, China were only seeking to improve its own competitiveness against a particular company. This is made all the more troubling because Finance Canada has not articulated any protections for foreign use of the UPR authority, nor has it explained CRA's ability to decline such a request.

Further, increasing the scope of CRA's UPR authority would likely increase the number of UPRs issued—adding to the burden that companies already face. Responding to an increased volume of UPR demands would be exorbitantly costly due to the amount of information companies would have to provide and the additional staff they would need to hire in order to comply with those requests.

In sum, industry is concerned that the expansion of this UPR authority to such a broad set of foreign jurisdictions could lead to Canada effectively serving as a conduit for foreign countries to obtain information about individuals and entities that may have no connection to Canada to which those countries would otherwise not be privy. Finance Canada's proposed measures could open the door to an environment where foreign countries demand information on an entire class of third parties with no restrictions on the number of potential targets or guardrails for the specific information sought about the targets.

Allowing this cavernous loophole introduces liability for companies operating in Canada—increasing risk of corporate espionage, dampening consumer trust, and adding operational burdens. This would create a very unstable and unwelcome investment environment for companies that have otherwise brought great benefits to the Canadian consumer base, business space, and tax base.

The Added Penalty is Unreasonable

Finance Canada also proposes to amend Section 231.7 by adding a penalty of 10% of the aggregate amount of tax payable by the taxpayer for failing to comply with an order by the Minister. This proposal also grants the government the power to obtain a non-compliance order, with the accompanying penalty, without needing to give notice to the taxpayer.

[usands-of-clients-to-cra-court-rules](#); and

<https://nationalpost.com/news/canada/cra-clawing-back-54m-in-unpaid-crypto-taxes>.

⁵ <https://www.canada.ca/en/department-finance/programs/tax-policy/tax-treaties.html>.



Industry is concerned by such a regime, which is designed in an unreasonable manner and penalizes taxpayers for resisting potentially overly broad demands. This is reflected by the fact that the CRA receives no penalty if the agency loses its request for a compliance order. In practice, this means that the CRA is given no incentive to ensure its requests are reasonable, while a taxpayer may be prompted to comply with frivolous requests rather than challenge the validity of the demand.

Conclusion

CCIA appreciates the opportunity to respond to these proposed measures and would respectfully request that Finance Canada reconsider the decision to allow treaty partners (including China and Russia) to use the UPR authority. If, indeed, Finance Canada seeks to address issues of compliance with international partners as delineated in treaties, any legislative changes to do so should include robust and concrete safeguards. These protections should ensure that foreign countries cannot launch frivolous and intrusive information requests from digital suppliers operating in Canada that could lead to undermining data protection and privacy protections otherwise guaranteed to those users. Consultations should be held to ensure that such safeguards are sufficient to protect against potential abuses of the system.