

Federal Court



Cour fédérale

Date: 20201109

Docket: T-1125-20

Citation: 2020 FC 1044

Ottawa, Ontario, November 9, 2020

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

EDWARD ENTERPRISE INTERNATIONAL GROUP INC.

Respondent

ORDER AND REASONS

I. Overview

[1] This Order and Reasons relate to a summary application brought by the Minister of National Revenue [the Minister], seeking a compliance order under s 289.1(1) of the *Excise Tax Act*, RSC 1985, c E-15 [the ETA], to compel the Respondent, Edward Enterprise International Group Inc. [EEIGI], to provide certain access, assistance, information and documentation sought by the Minister in connection with an audit under the ETA.

[2] EEIGI does not oppose the issuance of the requested order but takes the position that, under the authority of s 289.1(3) of the ETA, the Court should include in the order a condition that the Minister give EEIGI reasonable notice before any sharing, or application to access, any of the information that is the subject of the order outside of the authority which is entitled to invoke s 289.1(1) of the ETA.

[3] For the reasons explained in greater detail below, this application is granted, without the inclusion of the condition proposed by EEIGI.

II. **Background**

[4] The Minister's written representations describe EEIGI as a corporation purporting to be in the business of selling wholesale vitamins and supplements. Mr. Xiao Hua (Edward) Gong is the sole shareholder, director and officer of EEIGI. The Canada Revenue Agency [CRA] is conducting a GST/HST audit of EEIGI for the period from March 1, 2014 to September 30, 2018 [the Audit Period], in order to verify whether EEIGI has complied with its obligations under the ETA.

[5] The Minister supports this application with an affidavit sworn by Adey El-Rayes, the CRA auditor responsible for the audit of EEIGI. He attests that the CRA has issued to EEIGI requests to provide books and records under s 288(1) of the ETA, commencing on August 17, 2018, and that on September 4, 2019, the Minister issued to EEIGI a notice under s 289(1) of the ETA, requiring it to provide certain information and documents related to the Audit Period [the Required Information]. Mr. El-Rayes explains that the CRA seeks to obtain the Required

Information as part of the Minister's GST/HST audit, in order to determine EEIGI's compliance with the ETA, and that it may also be used to verify EEIGI's compliance with the *Income Tax Act*, RSC 1985, c 1, 5th Supp. [the ITA] and Mr. Gong's compliance with the ITA and/or the ETA.

[6] As certain of the Required Information has not been provided by EEIGI to the CRA, the Minister brought the present application to compel compliance. EEIGI's counsel explained at the hearing of this application that EEIGI does not object to providing the Required Information. However, EEIGI wishes for such provision to take place under the compulsion of a Court order. As identified in the record of communications between the parties attached to Mr. El-Rayes' affidavit, EEIGI takes this position on the advice of Mr. Gong's criminal counsel in the context of certain criminal proceedings in which he is involved.

[7] As such, EEIGI does not oppose the present application, other than taking the position that the compliance order requested by the Minister under s 289.1(1) of the ETA should include a condition that EEIGI be given notice before any of the Required Information is shared outside the authority that is entitled to invoke that section. EEIGI takes that position because of concern that its privacy, confidentiality interests, and/or rights under the *Canadian Charter of Rights and Freedoms* [the *Charter*] may be adversely affected by sharing of the Required Information, including sharing with any foreign interest, particularly in the context of criminal proceedings. In support of its position, EEIGI has filed an affidavit of a law student working in the office of its legal counsel, describing and attaching documentation relevant to other legal proceedings (including foreign proceedings) in which Mr. Gong is involved [the Respondent's Affidavit].

[8] The Minister opposes the imposition of the condition proposed by EEIGI.

III. **Issues**

[9] The Minister's application, and EEIGI's response, raise the following substantive issues to be addressed by the Court:

A. Has the Minister met the requirements prescribed by s 289.1 of the ETA for the Court to issue an order compelling EEIGI to produce the Required Information?

B. Should the order issued by the Court include a condition requiring that EEIGI be provided reasonable notice before any sharing of the Required Information?

[10] The Minister also raises the following preliminary issues in relation to the materials filed by EEIGI in response to this application:

A. Should the Respondent's Affidavit and written representations be struck for failure to comply with Rule 365 of the *Federal Courts Rules*, SOR/98-106?

B. Should the Court draw an adverse inference surrounding evidence contained in the Respondent's Affidavit for failure to comply with Rule 81 of the *Federal Courts Rules*?

IV. **Analysis**

A. *Should the Respondent's Affidavit and written representations be struck for failure to comply with Rule 365 of the Federal Courts Rules?*

[11] In raising this preliminary issue, the Minister invokes Rule 365, which sets out the material required to be included in the motion record to be filed by a respondent to a motion, including any affidavit upon which the respondent wishes to rely and written representations. The Minister submits that EEIGI has failed to comply with this Rule, as it has not assembled its materials into a record and has provided little in the way of written representations to explain its position.

[12] I suspect that the rule applicable to the present proceeding is actually Rule 310, which prescribes the contents of a record to be filed by a respondent to an application. While the present proceeding was heard during the regular General Sittings day for Toronto, which is set aside for the hearing of motions, this proceeding is actually an application. However, little turns on the Minister invoking the wrong rule, as both rules contain similar requirements. If anything, the Minister's position is more compelling under Rule 310, which requires filing of a memorandum of fact and law in response to an application, as opposed to the requirement of Rule 365 to file written representations in response to a motion.

[13] However, I agree with the position of EEIGI's counsel, that to strike its filings because they have not been assembled into a motion record would be to favour form over substance. EEIGI's written representations take the form of a document three paragraphs long entitled

“Response to Summary Application.” In that document, EEIGI identifies the conditions that it seeks to have the Court include in the requested compliance order. Striking this document would serve no purpose. Both the Minister and the Court are better able to consider EEIGI’s position by having the benefit of even this brief document.

[14] In its submissions in response to the substantive issue, as to whether the Court should impose a notice requirement as proposed by EEIGI, the Minister makes a more compelling argument that EEIGI has not provided, in advance of the hearing, a written argument of sufficient substance to permit the Minister to respond. However, I will address this submission later in these Reasons.

[15] With respect to the Respondent’s Affidavit, again the failure to properly compile that document in the form of an application record does not represent a basis to strike the document. I will turn next to the Minister’s argument that the Court should draw an adverse inference in relation to the evidence in the affidavit, because it does not comply with Rule 81.

B. Should the Court draw an adverse inference surrounding evidence contained in the Respondent’s Affidavit for failure to comply with Rule 81 of the Federal Courts Rules?

[16] Rule 81(1) provides that affidavits shall be confined to facts within the deponent’s personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent’s belief, with the grounds for it, may be included. Rule 81(2) further provides that, where an affidavit is made on belief, an adverse inference may

be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.

[17] As previously noted, the Respondent's Affidavit was sworn by an articling student working in the office of EEIGI's counsel. The student states that, unless indicated otherwise, the affidavit is based on her information and belief, derived from advice received from an associate lawyer at another law firm, who has knowledge of the sharing of information between the Ontario Securities Commission [OSC], the Chinese Ministry of Public Security [MPS], and the New Zealand Police [NZP]. EEIGI has not referred the Court to any portions of the affidavit that are not based on the student's information and belief.

[18] As the present proceeding is an application, not a motion, the Minister is correct in asserting that the Respondent's Affidavit does not comply with Rule 81(1). While the Court has the authority to strike out a noncompliant affidavit, this discretion is to be exercised sparingly (see, e.g., *Canada (Board of Internal Economy) v Canada (Attorney General)*, 2017 FCA 43 at para 29). The Minister does not seek to have the affidavit struck under Rule 81 but rather to have the Court draw an adverse inference from EEIGI's failure to provide an affidavit sworn by the associate lawyer who is purported to have knowledge of the information sharing that is the subject of the Respondent's Affidavit.

[19] At the hearing, I asked the Minister's counsel to identify whether there were particular components of the evidence contained in the Respondent's Affidavit, relevant to the disputed issue of the notice provision sought by EEIGI, that the Minister considered should be afforded

little weight. Counsel identified paragraphs 16 to 22 of the affidavit, which describe the OSC entering into information sharing agreements with the NZP and the MPS (including attaching copies of those agreements as exhibits) and the sharing of information between those bodies. The Respondent's Affidavit refers in particular to information shared with the NZP having included documents obtained from the CRA and attaches as exhibits correspondence between those bodies, which indicates that those documents were disclosed in error. In that correspondence, the OSC asks the NZP not to look at the documents from the CRA.

[20] The Minister's counsel also identifies that the Respondent's Affidavit attaches as exhibits copies of affidavits sworn by Chinese and New Zealand police officers in the context of the proceedings in those countries. The Minister submits that it is improper to attempt to introduce evidence through an affidavit by attaching it as an exhibit to another affidavit (see *Alameddine v Canada (Citizenship and Immigration)*, 2019 FC 1285 at paras 20-22) and that such evidence should be given little weight (see *Krah v Canada (Citizenship and Immigration)*, 2019 FC 361 at para 17).

[21] I agree in principle with the Minister's submissions surrounding evidence contained in affidavits that form exhibits to another affidavit, as the Minister is not able to cross-examine the deponents of the affidavits within the exhibits. However, EEIGI submits that these affidavits were introduced not to establish the truth of their contents but as evidence of events that have occurred in the foreign jurisdictions. EEIGI also emphasizes that it is not seeking to establish through the Respondent's Affidavit any wrongdoing on the part of the Minister in connection with the sharing of information. Rather, EEIGI is simply concerned about maintaining visibility

upon, and potentially limiting, the sharing of information, and wishes to establish the context in which it raises these concerns.

[22] In my view, the Minister has not identified any evidence contained in the Respondent's Affidavit, detrimental to the Minister's position, to which the Court should afford little weight due to the deponent's lack of first-hand knowledge. As EEIGI notes, the Minister has not challenged the authenticity of the documents attached as exhibits to the affidavit, and I do not understand the Minister to be disputing that Mr. Gong is the subject of legal proceedings in foreign jurisdictions. Furthermore, the Minister submits that the correspondence, related to the CRA documents inadvertently disclosed by the OSC to the NZP, demonstrates that the OSC is alive to restrictions applicable to the disclosure of certain CRA documents (although the nature of those restrictions is not identified) and alerted the NZP to these restrictions. I agree with this submission and, as explained later in these Reasons, consider this evidence to favour the Minister's position on the substantive issue in this application.

C. Has the Minister met the requirements prescribed by s 289.1 of the ETA for the Court to issue an order compelling EEIGI to produce the Required Information?

[23] As previously noted, EEIGI does not oppose the issuance of the requested compliance order under s 289.1 of the ETA. EEIGI does not argue that the Minister has failed to meet the requirements prescribed by that section. However, for the sake of good order, I confirm that I have considered and am satisfied that the Minister has met these requirements.

[24] As explained by the Federal Court of Appeal in *Minister of National Revenue v Lee*, 2016 FCA 53 at para 6 (in the context of the equivalent provision of the ITA), the Court must be satisfied that:

- A. the person against whom the order is sought was required under the applicable statutory provisions (in the ETA, s 288 or 289) to provide the access, assistance, information or documents sought by the Minister;
- B. although the person was required to provide the information or documents sought by the Minister, he or she did not do so; and
- C. the documents or information sought is not protected from disclosure by solicitor-client privilege as defined within the statute.

[25] Based upon the Minister's affidavit evidence and written submissions, I am satisfied that these requirements are met. The Minister is entitled to an order compelling EEIGI to provide the Required Information. I therefore turn to the issue in dispute, whether the order should include the condition proposed by EEIGI.

D. Should the order issued by the Court include a condition requiring that EEIGI be provided reasonable notice before any sharing of the Required Information?

[26] I note that, prior to the Minister's oral submissions at the hearing of this application, EEIGI was proposing that the Court impose two conditions in the compliance order. In its brief written representations filed in advance of the hearing, EEIGI identified these conditions as follows:

- A. that under no circumstances is any of the information provided to be shared in any way with a foreign interest; and
- B. that the Respondent be given notice before any sharing or application to access any of the information outside of the relevant authority who is entitled to invoke s 289.1(1) of the ETA for purposes of the ETA.

[27] In oral submissions, the Minister's counsel argued that the first condition described above would be inconsistent with the operation of relevant provisions of the ETA in combination with the *Privacy Act*, RSC 1985, c P-21 [the PA]. Section 295(5)(c)(ii) of the ETA provides that an official (as defined in the ETA) may provide access to any confidential information (as also defined in the ETA) to any person legally entitled thereto by reason of an Act of Parliament, solely for the purposes for which that person is entitled to the information. Section 8(2)(f) of the PA provides, *inter alia*, that personal information (as defined in the PA) under the control of a government institution may be disclosed under an agreement or arrangement between the Government of Canada or any of its institutions and the government of a foreign state or any institution of such government, for the purpose of administering or enforcing any law or carrying out a lawful investigation.

[28] The Minister submits that the Required Information sought in the present application is confidential information and personal information, within the meanings prescribed by the ETA and PA respectively, and that the proposed condition prohibiting the sharing of the Required Information with any foreign interest would therefore conflict with applicable federal legislation. In his submissions at the hearing of this application, EEIGI's counsel acknowledged that he had

not previously been aware of the PA provisions relied upon by the Minister. EEIGI's counsel therefore withdrew the request for the first of the proposed conditions.

[29] However, EEIGI maintains that imposition of the second proposed condition is appropriate. It is concerned that circumstances may arise in the future in which it may wish to assert arguments, based on statutory interpretation or *Charter* rights, to oppose sharing of the Required Information by CRA with other entities including other foreign entities. EEIGI explains that, with the benefit of reasonable advance notice from CRA that it intends to share certain information, EEIGI would have the opportunity to apply to a court of competent jurisdiction to seek relief against such disclosure.

[30] EEIGI emphasizes in particular the possibility of raising the s 8 *Charter* right to be secure against unreasonable search or seizure and refers the Court to seminal authorities on that protection. In *Canada (Director of Investigation & Research, Combines Investigation Branch) v Southam Inc.*, [1984] 2 SCR 145, in considering whether search and seizure provisions of the *Combines Investigation Act*, RSC 1970, c C-23 were inconsistent with s 8 of the *Charter*, the Supreme Court of Canada explained as follows (at para 27):

27 If the issue to be resolved in assessing the constitutionality of searches under s. 10 were whether *in fact* the governmental interest in carrying out a given search outweighed that of the individual in resisting the governmental intrusion upon his privacy, then it would be appropriate to determine the balance of the competing interests *after* the search had been conducted. Such a *post facto* analysis would, however, be seriously at odds [sic] with the purpose of s. 8. That purpose is, as I have said, to protect individuals from unjustified state intrusions upon their privacy. That purpose requires a means of *preventing* unjustified searches before they happen, not simply of determining, after the fact, whether they ought to have occurred in the first place. This, in my

view, can only be accomplished by a system of *prior authorization*, not one of subsequent validation.

[31] EEIGI also relies on *United States of America v Wakeling*, 2014 SCC 72 [*Wakeling*], for the proposition that s 8 protections against unlawful search and seizure apply to the dissemination of private information that has previously been lawfully obtained. I note that, in paragraphs 38 to 40 of *Wakeling*, Justice Moldaver concluded that s 8 was engaged in the context of dissemination of information intercepted by wiretap. However, I also note that Justice Moldaver arrived at this conclusion at least in part based on Parliament's recognition that wiretap interceptions are an exceptional and invasive form of search and pose heightened privacy concerns beyond those inherent in other searches and seizures.

[32] In contrast, the Minister refers the Court to authorities to the effect that taxpayers have a very low expectation of privacy in their business records, relevant to the determination of their tax liability, that they may be compelled to produce during an audit (see, e.g., *R v Jarvis*, 2002 SCC 73 at para 95 [*Jarvis*]; *Redeemer Foundation v Minister of National Revenue*, 2008 SCC 46 at para 25). Moreover, in *Tomchin v Canada*, 2015 FC 402, which considered arguments under ss 7 and 13 of the *Charter* related to protection against self-incrimination, Justice Manson relied on *Jarvis* in concluding that such protection constrains only the use that may be made of compelled information in a subsequent proceeding against the person concerned, not the collection and sharing of that information (at para 27).

[33] The Minister also submits that EEIGI is raising hypothetical *Charter* arguments in the context of speculative concerns about dissemination and use of the Required Information. The

Minister takes the position that the ability of the Minister to respond to such arguments, and the ability of the Court to consider such arguments, is significantly inhibited by EEIGI's failure to file a Memorandum of Fact and Law, articulating such arguments and their jurisprudential foundation.

[34] Of course, EEIGI is not presently seeking an adjudication of any particular *Charter* argument. Rather, through its request for inclusion of a notice provision in the compliance order, it seeks to preserve an opportunity to advance in the future whatever *Charter* or other arguments it may consider to apply to an intended sharing of the Required Information. However, I find compelling the Minister's submission that EEIGI is seeking this relief without having articulated with any precision a basis in either fact or law for its concern that it may in the future face dissemination of the Required Information in a manner that offends the *Charter*. I appreciate that EEIGI's principal, Mr. Gong, is the subject of legal proceedings in at least two foreign jurisdictions. However, as noted earlier in these Reasons, the evidence that EEIGI has presented, while indicating that there has been an inadvertent disclosure of CRA documents by the OSC to the NZP, also demonstrates awareness of applicable restrictions on such disclosure and efforts to correct the error that occurred. This evidence does not support a conclusion that either the CRA or other Canadian authorities are likely to disseminate the Required Information in an unlawful manner.

[35] When asked at the hearing what prejudice the Minister would suffer from having to abide by a notice requirement, the Minister's counsel raised concern that such a requirement could compromise a lawful investigation, for instance by causing a delay in the assembly of evidence

or providing an opportunity for the subject of an investigation to destroy evidence or flee a jurisdiction. The Minister invokes the principle of investigative privilege, the protection of which it argues is inconsistent with the imposition of a notice requirement.

[36] I do not have the benefit of any detailed submissions on the nature or scope of investigative privilege. This principle has been described as a case-specific privilege, reflecting the state's interest in preserving the confidentiality of its investigations and investigative techniques and involving the balancing of such interest against an accused's right to full answer and defence (see, e.g., *R v Amer*, 2017 ABQB 651 at paras 34-35). As such, the protection afforded by investigative privilege is not absolute. The weighing of the competing interests is typically conducted at a stage in a prosecution where the accused seeks access to certain evidence surrounding the investigation that lead to the prosecution (see, e.g., *R v Durette*, [1994] 1 SCR 469). These are not the circumstances of the present proceeding.

[37] That said, I find merit to the Minister's argument that requiring CRA to disclose, in the course of an investigation, the fact that the investigation is taking place could compromise the investigation. EEIGI has identified no precedent or statutory authority for the imposition of such a requirement, other than the general discretion that s 289.1(3) of the ETA affords to the Court to impose, in an order issued under s 289.1(1), any conditions that the Court considers appropriate.

[38] In contrast, I note (by way of example only) that s 16 of the *Access to Information Act*, RSC 1985, c A-1, entitles the head of a government institution to refuse to disclose, *inter alia*, any record requested under that statute that contains information relevant to investigative

techniques or plans for lawful investigations or the disclosure of which could reasonably be expected to be injurious to the conduct of lawful investigations, including information relating to the existence or nature of a particular investigation. While this statute is not directly applicable to the present proceeding, it represents an example of protection afforded by federal legislation to investigative information, which supports the legitimacy of the Minister's concern.

[39] The Minister argues not only that the Court should not impose the requested notice requirement, but also that the discretion in s 289.1(3) of the ETA does not provide the Court the authority to impose a notice requirement that is not contemplated by the legislative scheme of the ETA. However, I need not decide that latter point in the present application. Taking into account the evidence and argument presently before the Court, including the concerns about compromising a lawful investigation, I am satisfied that, on the circumstances of this case, the imposition of the proposed notice requirement is not appropriate.

V. **Costs**

[40] The Minister seeks costs of this application. EEIGI argues that no costs should be awarded, as it is not opposing the issuance of a compliance order but merely seeks inclusion in the order of a condition that it considers necessary to protect its interests.

[41] In my view, costs should follow the event in this application. While EEIGI did not oppose the issuance of an order, its position that the order should include a notice requirement nevertheless resulted in a contested hearing. As the Minister has prevailed on the contested issue, costs should follow.

[42] At the hearing, the Minister's counsel provided to EEIGI's counsel and the Court a Bill of Costs totaling \$1,778.77. EEIGI's counsel advised that he had no particular submissions to make on the figures in the Bill of Costs.

[43] Employing Column III of Tariff B of the Rules, the Bill of Costs calculates fees of \$900.00 related to the preparation and hearing of the present application, \$450.00 in fees related to an assessment of costs, and disbursements of \$428.77 (composed of the Court filing fee plus photocopying), the sum of which comprises the \$1,778.77 total claimed. As costs are being addressed without the need for an assessment, the \$450.00 item is not applicable. My order will therefore award the Minister lump sum costs, inclusive of disbursements, in the amount of \$1,328.77.

ORDER IN T-1125-20

THIS COURT ORDERS that, pursuant to a summary application made by the Minister under section 289.1 of the ETA:

- a. EEIGI provide to Adey El-Rayes, an officer of the Domestic Compliance Branch of the CRA, or another authorized person of the Minister who may be assigned carriage of this file, the outstanding access, assistance, and the Required Information sought by the Minister, as set out in Appendix “A” attached to this Order, within 30 days of this Court’s Order;
- b. that the Minister serve EEIGI with a copy of the Court’s Order pursuant to Rule 139 of the *Federal Courts Rules*, SOR/98-106, as amended; and
- c. that the Minister shall have costs of this application in the lump sum amount of \$1,328.77, inclusive of disbursements.

“Richard F. Southcott”

Judge

APPENDIX “A”**Outstanding Information and Documents**

The following information and source documents are required for the GST/HST audit of the GST/HST account of Edward Enterprise International Group Inc. (“EEIGI”) for the period from March 1, 2014 to September 30, 2018;

Audit Query #2 dated September 4, 2019 – required under subsection 289(1)**“Subject: Requirement for Information and source documents in accordance with subsection 289(1) of the Excise Tax Act**

Please provide the information and source documents as requested below, and provide written answers to the questions as follows:

1. Entire General Ledger in Electronic Form:

Send electronically readable copies of the General Ledger, Journal Entries and Trial Balance through the **Submit documents** service which is located in My Business Account or Represent a Client. **Submit documents** is a secure online service that allows registrants to electronically send their accounting information to the CRA. Ensure each report covers one (1) fiscal period, and the General Ledger report includes “Transaction Numbers”, “Source Name”, “Memo” fields, and all other active and inactive categories/heading. Please reference case number **21286131** when sending the records or documents. For additional information, please go to **www.canada.ca/cra-submit-documents-online**.

Business History

2. Has there been changes to the business structure and/or ownership during audit period? If yes, provide complete details of reorganization or share ownership transfers.
3. A copy of the corporate minute book, including details of all directors and shareholders, classes of corporate shares and voting control for the shares.
4. A list of all related and associated businesses and an organization chart that includes share ownership percentages and voting control.
5. Indicate whether O24 Pharma Canada is or was a trade name of Edward Enterprise International Group Inc. (EEIGI). If yes, provide proof of registration.
6. Did the business have a permanent establishment, including an office, a branch or warehouse, in a province other than Ontario or outside Canada during the audit period? If yes, provide details of locations including addresses and management structures.

Supplies of Goods and Services

7. Provide a detailed listing of gross sales for the month of August 2015. The listing should include the invoice date, invoice number, customer name, bill to address, ship to address, description of product, size of product, quantity of products sold, product price and total sale amount. Each line of this listing should be cross referenced to each transaction listed on the redacted documents previously provided to CRA on March 1, 2019. If the total of the sales listing differs from the amount reported on GST/HST return, please provide an explanation.
8. Provide a complete list of capital assets bought or sold during the audit period.
9. How were sales orders initiated and who was responsible for marketing activities?
10. How were goods/services marketed to customers? Provide copies of any printed marketing brochures, print-outs of online ads, or screen shots of products sold online, if any.
11. How many sales persons were employed? Provide the physical location of any sales persons involved in marketing and indicate whether they were employees or self-employed contractors?
12. How were prices established and what was the typical markup for goods or services sold?
13. Provide a list of all goods sold including, name of product, quantity per package, description of package contents, weight, price and note any price changes during the audit period?
14. Did the supply of any of the goods or services provided require any governmental regulatory approvals in terms of contents, compositions, or product labeling? If yes, provide details of any permits or applications.
15. Provide the website address for any e-commerce websites, the name of the web site developer and host.
16. If an e-commerce website was used for generating these sales, indicate whether sale orders from the e-commerce site were posted to the sales journal electronically or manually, and provide the e-commerce sales report for the August 2015 period.
17. Where were customer payments deposited for the e-commerce sales? Were deposits made in batches or per order?
18. Provide details of all related party transactions including details of all sales, purchases, payments, deposits, or transfers from related or associated businesses and individuals.

19. Were there any supplies that were made for nil consideration? If so, provide detailed listing including, type of supply, tax status, quantity, and recipient(s) information.

Maintenance of Books and Records

20. Describe in detail the process of how sales, and accounts receivable were recorded in books and records.
21. Were sales reported on the GST/HST returns based on information obtained from bank deposits, or information from periodic sales reports?
22. Who has or had prior authorization to add, edit or delete entries in the general ledger. Provide complete history of authorized individuals who were involved in preparing and maintaining the books including dates from and to.
23. What is the functional currency used to record transactions on the books and records of EEIGI? Indicate the currency type that as used for all sales including e-commerce sales, purchases, banking transactions, general ledger and sales records for the month of August 2015.
24. If any other currency other than the functional was used, provide details of how transactions were converted to the functional currency and type of conversion rates used.
25. If the functional currency used is a currency other that the Canadian dollar, indicate the method and type of rates used to convert the translation amounts to the Canadian dollar, as reported on the tax returns.

Accounting for Purchases and GST/HST Input Tax Credits (ITCs)

26. Were there any purchases made for other related corporations or individuals? If yes, provide details of the purchases, reasons, and re-supplies.
27. Were there any special formulation or composition of the goods purchased in terms of non-standard product contents or potency? If so, provide details.
28. Provide details of all types of goods purchased, including but not limited to, product name, brand name, content, potency in mg, price per bottle, quantity per bottle, bottle weight, and quantity of bottles per shipping carton.
29. Provide details as to the nature and description of supply, whether the supplies were goods and/or services, and use or purpose of the supplies purchased from the vendors listed below (an unredacted version of which has previously been provided to EEIGI):

a)



- b) [REDACTED]
- c) [REDACTED]
- d) [REDACTED]
- e) [REDACTED]

Banking

- 30. Provide a list of all bank accounts including bank names, account holders, account numbers, where proceeds from sales or other revenues were deposited to.
- 31. Provide all bank statements for EEIGI. If any funds are transferred into the business bank accounts from an account belonging to the shareholder(s), director(s), related, or associated corporations, provide their bank statements for the period under audit.
- 32. Provide details of any funds from other revenues or non-taxable sources that were deposited in the bank accounts of EEIGI.
- 33. Provide a listing of all individuals who had signing authority on the bank accounts.
- 34. Were there any business loans or lines of credit outstanding during the audit period? If yes, provide details including lender(s) information, outstanding period and amounts.
- 35. Has there ever been withdrawals or deposits of cash in excess of \$5,000.00 made from or to the business bank account(s) or personal bank accounts of the shareholder(s)? If so, provide details as to the source of funds.

Financial Information for the Director(s) and/or Shareholder(s) of EEIGI

- 36. Provide a detailed list of the following:
 - a) Any real property bought/sold during the audit period or owned currently including but not limited to, principal residence, vacation property, farm property, rental property, vacant land, or developmental property.
 - b) Any automobiles, motorbikes, boats, planes, recreational vehicles, or trailers bought/sold during the audit period or owned currently.
 - c) Any other personal asset that where bought or sold in excess of \$5,000 including but not limited to any antiques, art, collectibles, or coins.

International Information for the Director(s) and/or Shareholder(s) of EEIGI

- 37. Provide details of any international information for the director(s) and/or shareholder(s) of EEIGI including the following:
 - a) Offshore assets and liabilities.
 - b) Trust set-up offshore.

- c) Business operations offshore or offshore banking.
- d) Offshore investment information and brokerage details.
- e) Foreign pension income.

Foreign tax returns for all of the audit period.”

CRA Audit Confirmation Letter dated August 17, 2018 – requested under subsection 288(1)

“If any other electronic software (Excel, Word etc.) is utilized to track or record the Sales/Expenses, GST/HST, or ITCs, please provide the files on the CD, DVD, USB Memory Stick.

You have the option of sending your accounting dates through the **Submit documents** service which is located in My Business Account. Submit documents is a secure online service that allows registrants to electronically send their accounting information to the CRA. Please note that you will need to enter the following case number **21286131** before you can successfully send the documents.”

CRA Request for Missing Records Audit in Process Letter dated December 4, 2018 – required under subsection 288(1)

“ the initial audit period previously communicated to you has been revised to include the period from **March 1, 2014 to September 30, 2018**. We require the following books, records, or documents for the revised audit period noted above:

A. Copies of the GST/HST returns filed:

- Reports or calculations used to complete each of the GST/HST returns filed.
- Source documents for amounts filed including sales invoices and expense receipts.

B. All Operations Records pertaining to the audit period:

- General Ledger detailing day-by-day, the amount of business income and disbursements, all year-end adjustments, and the GST/HST reconciliations.
- Sales invoices and related supporting documents including all export records.
- Accounts payable records, as well as subcontractor details if applicable.
- Purchase invoices and supporting documents of all business purchases and expenses, including journal entries.

.....

- Purchase/Sale agreements of any property transactions.

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- Copies of the 2014, 2015, 2016, and 2017 financial statements, year-end adjusting journal entries, and corporate tax returns (if they have not yet been filed), as well as GIFL Groupings for corporate tax returns.

- Banking records for all business bank accounts, including bank statements, business credit card statements, cancelled cheques, deposit books, cheque stubs and bank reconciliations.
- Banking records for the personal bank accounts of the shareholder, including any line of credit account statements, loan statements, and mortgage statement.”

Note 1:

Please note that it is audit’s position that information under item # 7 “Provide a detailed listing of gross sales for the month of **August 2015.**” required in Audit Query #2 per subsection 289(1) issued on September 4, 2019 **does not limit audit’s requirement** for the information of the “Source documents for amounts filed including sales invoices and expense receipts.”, and “Sales invoices and related supporting documents including all export records.” **for the entire audit period** as required in the “CRA Request for Missing Records Audit in Process Letter” dated December 4, 2018, per subsection 288(1)

Note 2:

The registrant has provided copies of source documents related to purchases and expenses that are incomplete. Audit requests that the registrant provide the balance of any source documents not already provided to audit.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1125-20

STYLE OF CAUSE: THE MINISTER OF NATIONAL REVENUE
V EDWARD ENTERPRISE INTERNATIONAL
GROUP INC.

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 27, 2020

ORDER AND REASONS: SOUTHCOTT J.

DATED: NOVEMBER 9, 2020

APPEARANCES:

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