

Intelligence MEMOS



From: Louise R. Summerhill
To: Finance Minister Bill Morneau
Date: May 4, 2020
Re: **AVOIDING A COVID-19 INCOME TAX DISTORTION**

The federal government is to be congratulated for moving quickly to deal with the myriad income support, wage subsidy, business loan tax holiday and related liquidity measures to support Canadians and our economic well-being during the COVID-19 economic shut down.

But sometimes, unexpected force majeure conditions can create unintended consequences in terms of tax liability. This is precisely the case with the impact of COVID-19 lockdowns, travel bans and border closings on lawful visitors to Canada, who are tax residents of other countries.

Section 250 of the *Income Tax Act* specifies how long a resident of another country can be in Canada without incurring tax liabilities here. That is normally 182 days in any 12-month period. Many business people, professionals and investors visit Canada to discharge board duties, visit friends or family, oversee investments etc., and do so lawfully, departing for their home tax jurisdiction well within the statutory limit.

As a result of the lockdown and border closings, many have been unable to do so this spring. Border closings, flight cancellations, and a general ban on international travel has made their departure impossible.

This problem has been spotted by other advanced economies.

The U.K., Ireland, Australia, Belgium, the United States and the OECD itself have all recognized the problem, and engaged to ensure that lawful visitors unable to return home are not exposed to unexpected and unintended tax liability.

Between March 19 and April 3, all of the above tax jurisdictions and intergovernmental organizations have issued clear statements to protect the lawful visitor caught through no fault of their own by the present lockdown.

The normal rhythm of free movement of persons for legitimate economic, social, cultural and trade reasons, especially in the post pandemic future, should not be limited or discouraged by failing now to clarify present tax policy, and its specific statutory intent.

Non-compliance with the *Income Tax Act* does have consequences and penalties, and always has. But forced non-compliance, caused by public health advice on lockdowns, travel and border closings, when taken by government for solid public interest reasons, should not cause problems for lawful visitors to Canada, trapped temporarily by circumstances beyond their control.

This would be a good time for the Canada Revenue Agency to clearly indicate, as revenue agencies in various advanced economies have already done, that no tax liability for staying longer than planned will be visited upon visitors to Canada unable to return to their tax domicile until present restrictions are lifted.

It's a small thread that will shape the fabric of economic recovery, but an important one, nonetheless. Failing to do so would weaken the 'open for business' attraction that Canada and Canadians seek to portray.

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