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F I L E D	FEDERAL COURT COUR FÉDÉRALE  December 08, 2023 08 décembre 2023
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Josephine Chan	
TOR	1

Court File No.:

**FEDERAL COURT**

B E T W E E N :

**THE MINISTER OF NATIONAL REVENUE**

Applicant

and

**PATHEON INC.**

Respondent

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**NOTICE OF SUMMARY APPLICATION**

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**TO THE RESPONDENT:**

**A SUMMARY APPLICATION HAS BEEN COMMENCED** by the applicant under section 231.7 of the *Income Tax Act*, RSC 1985, c. 1 (5th Supp.), as amended. The relief claimed by the applicant appears on the following page.

**THIS APPLICATION** will be heard by the Court on **Tuesday, February 13, 2024 at 9:30 AM** for a two hour duration or as soon after that time as the application can be heard, at the Federal Court, 180 Queen Street West, Suite 200, Toronto, Ontario M5V 3L6. The application will take place by virtual means and the Court will provide a link to the parties prior to February 13, 2024.

**IF YOU WISH TO OPPOSE THIS APPLICATION, you or a solicitor acting for you must serve a respondent's record and file three copies of it not later than 2:00 pm on the last business day that is two days before the hearing of this application.**

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone: 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

December 8, 2023

*Issued by:*

\_\_\_\_\_  
*Registry Officer*

Address of  
local office:

Federal Court  
180 Queen Street West  
Suite 200  
Toronto, Ontario M5V 3L6

TO:

**Aird & Berlis LLP**  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, Ontario M5J 2T9

**Per: Christopher Slade and Jacob Brown**  
**Email:** [cslade@airdberlis.com](mailto:cslade@airdberlis.com)  
[jbrown@airdberlis.com](mailto:jbrown@airdberlis.com)

Counsel for the Respondent

## APPLICATION

### **THE APPLICANT MAKES AN APPLICATION FOR:**

1. an Order, pursuant to section 231.7 of the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp), as amended (the “**Act**”), compelling the respondent, Patheon Inc. (“**Patheon**”), to provide the applicant, the Minister of National Revenue (the “**Minister**”), with documents and information sought from it pursuant to demands issued under subsection 231.1(1) of the Act on December 11, 2020, October 22, 2021, April 20, 2022, May 18, 2022, October 3, 2022, October 13, 2022, and July 26, 2023 within 30 days from the date of this Court’s Order granting compliance;
2. costs of this application; and
3. such further and other relief as counsel for the Minister may request and this Honourable Court deems appropriate.

### **THE GROUNDS FOR THE APPLICATION ARE:**

#### **The Audit**

1. On or about August 31, 2020, the Canada Revenue Agency (the “**Agency**”) commenced an audit of Patheon for the 2017 taxation year (deemed year end of August 27, 2017 pursuant to subsection 249(4) of the Act).
2. The purpose of the audit is to verify Patheon’s compliance with its duties and obligations under the Act including verifying Patheon’s designated deemed disposition under paragraph 111(4)(e) of the Act *i.e.*, the adjusted cost base (“**ACB**”) of the Patheon US Holdings LLC (“**PUSH**”) shares and Patheon’s realized capital gains.

#### **The Demands**

3. To verify Patheon’s compliance with the Act, the Agency issued demands to Patheon under subsection 231.1(1) of the Act, on December 11, 2020, October 22,

2021, April 20, 2022, May 18, 2022, October 3, 2022, October 13, 2022, and July 26, 2023 (collectively, the “**Demands**”).

4. The Demands required Patheon to provide certain information and documents (the “**Required Material**”) to the Agency, which should be maintained in its books and records under section 230 of the Act and regulation 5800 of the *Income Tax Regulations* (CRC c 945) (the “**Regulations**”).

5. Patheon was afforded approximately 15-20 days per demand to provide the Required Material.

6. Patheon requested extensions to provide the Required Material. The Minister granted Patheon’s extensions.

7. Patheon provided some but not all the Required Material. The outstanding Required Material is necessary to verify the ACB of the PUSH shares and Patheon’s realized capital gains.

#### **Non-Compliance with the Demands**

8. To date, Patheon has not fully complied with the Demands and has not provided the outstanding Required Material to the Agency.

9. The length of time provided to Patheon to comply with the Demands and provide the outstanding Required Material is reasonable.

#### **Purpose of the Demands**

10. The Minister seeks the outstanding Required Material to verify the ACB of the PUSH shares and Patheon’s realized capital gains under paragraph 111(4)(e) of the Act.

11. The outstanding Required Material is not protected from disclosure by solicitor-client privilege.

**Statutory Provisions Relied On**


12. The Minister relies on sections 220, 230, 231.1, 231.7, 232, and 248(1) of the Act, regulation 5800 of the Regulations, and Rule 316.2 and Part 7 of the *Federal Courts Rules*, SC 2002, c 8, as amended.

13. Such further and other grounds as counsel for the Minister may submit and this Honourable Court may allow.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

1. the affidavit of Jade Tam or another officer of the Agency and the exhibits attached thereto; and
2. such further and other material as counsel for the Minister may submit and this Honourable Court may accept.

Dated at the City of Toronto, in the Province of Ontario, on this 8<sup>th</sup> day of December, 2023.

  
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