

Federal Court



Cour fédérale

**Date: 20191029**

**Docket: T-2148-18**

**Citation: 2019 FC 1342**

**Ottawa, Ontario, October 29, 2019**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**YING CHAU**

**Applicant**

**and**

**CANADA (ATTORNEY GENERAL)**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Ying Chau, has applied for judicial review of a Canada Revenue Agency Officer's decision to deny relief from interest that has accrued on her tax debt. Ying Chau was self-represented. She indicated that a translator was not needed and that she understood what was being said at the hearing.

II. Preliminary issues

[2] Both parties have filed affidavits. The Court will not give any weight to information that was not before the decision-maker. I will accept the affidavits as background information but not

to supplement the submissions before the decision maker or the reasons of the Respondent. (*Association of Universities and Colleges of Canada v Canada Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

### III. Facts

#### A. Fraud of Accountant & Reassessment

[3] The Applicant was a director and 50% shareholder of 994820 Ontario Inc. (“the corporation”) as was her now deceased husband. The corporation was defrauded by a prior accountant without the knowledge of the Applicant. The fraud resulted in the corporation’s 2003 and 2004 tax returns being reassessed on March 11, 2009 by the CRA. The total balance owed by the corporation was \$40,609.51 after the reassessment.

#### B. Requests for relief by the corporation

[4] Following the CRA’s March 11, 2009 reassessment of the corporation, the corporation requested relief from the underlying tax liability, interest, and penalties. The Minister granted the corporation relief from the \$13,532.81 of interest that had accrued up until February 17, 2010. Importantly, a letter sent from the CRA to the corporation on October 14, 2009 stated “that arrears interest will continue to accrue on unpaid balances.” Even after the interest relief was granted in the amount of \$13,532.81, the corporation never paid the tax debt that it owed. Importantly, a letter sent from the CRA to the corporation on October 14, 2009 before the relief was granted indicated “that arrears interest will continue to accrue on unpaid balances.”

[5] Yet, between July 1, 2008 and June 30, 2010, the Applicant paid herself \$70,000 in dividends from the corporation. Since the Applicant received dividends from a corporation in a non-arms length transfer when the corporation owed taxes, she was held jointly and severally

liable under subsection 160(1) of the *Income Tax Act* (“the Act”) for the amount transferred. The Applicant’s husband (now deceased) was also jointly and severally liable as a director of the corporation but is not a party to this case.

[6] After the CRA applied the Applicant’s prior overpayments against her outstanding tax liabilities, the CRA issued an assessment on October 3, 2012. The total amount of this assessment was \$33,147.13. This included interest: between February 17, 2010 (the date at which interest began accruing as indicated in the CRA letter dated October 14, 2009) and October 3, 2012 (the date of assessment), \$3,941.66 of interest had accrued as the tax debt continued to go unpaid while she was paid dividends from the corporation.

[7] The Applicant filed a Notice of Objection on November 9, 2012 and the CRA issued a Notice of Confirmation on October 3, 2013. The taxpayer brought an application with the Tax Court of Canada on December 29, 2013.

#### C. Applicant’s first taxpayer relief request filed June 2015

[8] The Applicant in her personal capacity as a director made her first formal request for taxpayer relief in June 2015. The Applicant asked the Minister to exercise its discretion under subsection 220(3.1) of the Act to waive the \$3,941.66 of arrears interest that accumulated between February 17, 2010 and October 3, 2012.

[9] A few weeks after this first relief request was submitted, the Applicant settled the underlying claim one day before the matter was to be heard by the Tax Court. The settlement involved setting a payment plan to pay off the debt of \$33,147.13. A Notice of Discontinuance was received by the Tax Court on July 14, 2015. The first reviewing officer denied the interest relief request on February 9, 2016.

D. Applicant's second taxpayer relief request filed March 2018

[10] The Applicant applied for another review seeking taxpayer relief of her interest obligations on March 31, 2018. This request again challenged the \$3,941.66 of arrears interest from 2010 to 2012. The Applicant's request was based on CRA error, CRA delay, and extraordinary circumstances. As well, she asked the officer to consider the fact of the settlement of the tax debt as new information.

IV. Decision under review

[11] On October 15, 2018 the CRA denied the Applicant's second request for relief. The Minister's delegate decision makes note of the Applicant's objections about the CRA delay, her perception that she was misinformed by the CRA that liabilities were being settled, and the extraordinary circumstances argument. The letter was accompanied by a CRA officer's fact sheet explaining the decision to deny relief under subsection 220(3.1).

[12] While the Applicant has now paid the tax debt and interest, she continues to dispute that the interest of \$3,941.66 should have been waived pursuant to s. 220(3.1).

[13] Only this second taxpayer relief request is under review, as the first relief decision is beyond the scope of this judicial review application (*Toastmaster Inc. v Canada (MNR)*, 2011 FC 1309 at para 22, *aff'd* 2012 FCA 317).

V. Issues

- A. Did the CRA's assessment delay make the officer's decision to refuse relief from the interest obligations unreasonable?
- B. Did a CRA assessment error make the officer's decision to refuse relief from the interest obligations unreasonable?

- C. Did the extraordinary circumstances make the officer's decision to refuse relief from the interest obligations unreasonable?

VI. Analysis

[14] The standard of review for a discretionary decision under subsection 220(3.1) of the Act is reasonableness (*Telfer v Canada Revenue Agency*, 2009 FCA 23 at paras 24 –25). The “unstructured nature” of the subsection 220(3.1) relief power “militate[s] against a court's subjecting the decision-making process to close scrutiny” (*Telfer* at para 40).

A. CRA assessment delay

[15] The Applicant argues that while interest accrued from February 17, 2010 to October 3, 2012, she had called the CRA to understand her options “but never received a direct response from the CRA.” She also received professional tax assistance to write to the CRA. It was seemingly not until October 3, 2012 when she received the Notice of Assessment that she realized she owed interest. She says the officer erred in finding she ignored her tax obligations from February 2010 to October 2012 when she and her representatives “followed up closely on the matter and acted reasonably in the circumstances” as it was CRA that did not respond to her phone call.

[16] Subsection 220(3.1) allows the Minister to “waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer” (see Annex A for the full text of s. 220(3.1)).

[17] A delegate exercising discretion under subsection 220(3.1) is instructed by Income Tax Information Circular IC07-1R1 “Taxpayer Relief Provisions” (see Annex B for relevant sections of “The Circular”). The Circular helps “inform the exercise of the Minister's discretion” (*Martel v Canada (AG)*, 2019 FC 840 at para 19). Paras 25–26 of the Circular indicate that accrued

interest “may be waived or cancelled in whole or in part” if it is a result of “circumstances beyond a taxpayer’s control.” Interest may also be waived if it “resulted mainly because of actions of the CRA, such as... delays in providing information, such as when a taxpayer could not make the appropriate instalment or arrears payments because the necessary information was not available.”

[18] The Circular at paragraph 33 lists four factors to be considered in deciding whether circumstances such as delay warrant a waiver of the interest:

- a) whether the taxpayer has a history of compliance with tax obligations
- b) whether the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued
- c) whether the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system
- d) whether the taxpayer has acted quickly to remedy any delay or omission.

[19] The officer’s Taxpayer Relief Fact Sheet went through these areas one-by-one. First, the taxpayer’s history of compliance showed payments were generally paid on time, aside from five filing periods where remittances had been filed late. This seemed to be a neutral consideration.

[20] Second, the officer’s reasons show that the taxpayer knowingly allowed a balance to exist while interest accrued. The CRA never received any payments from the corporation following the March 2009 re-assessment until the tax court settlement payment plan was set up. I should note that the corporation was previously given generous discretionary relief from the \$13,532.81 in arrears interest that it owed as of February 2010, and yet its tax debt continued to go unpaid even as the Applicant (as 50% shareholder) received \$70,000 in dividends from the corporation.

The Applicant eventually began to make payments in 2015 pursuant to the settlement in relation to the Tax Court of Canada matter.

[21] Third, the officer's decision implies that the Applicant did not exercise reasonable care in conducting her affairs under the self-assessment system. The decision notes that the corporation's outstanding tax debt was not paid after the March 2009 assessment. Yet, the Applicant received dividends, and therefore she was held liable for the debt and the interest due to this non-arm's length transfer. She claims she could not have known the amount of interest that would be due in 2012 (the time the CRA assessed the Applicant, and ordered interest to be paid) and that paying in advance would have been costly. I have sympathy for the Applicant's position but the corporation had been notified in 2009 that interest would continue to accrue and she chose not to pay the outstanding tax liability and interest. The Applicant was again warned that interest was accruing in 2012 and yet she did not act. Other decisions of this Court have upheld decisions to refuse taxpayer relief requests based on perceived delay if the applicant was explicitly warned that interest would continue to accrue on unpaid balances if no voluntary payments were made (for e.g. *Martel v Canada (AG)*, 2019 FC 840 at para 28; *Pathak v Canada (MNR)*, 2019 FC 252 at para 55).

[22] Finally, the factor of acting quickly to remedy any delay also points against granting interest relief to the Applicant. The reasons indicate that in May 2012, the Applicant received a letter informing her of the possibility of being assessed personally for the debt. She does not seem to have acted on this until August 2012, when the Applicant's accountant phoned the CRA to argue against paying interest. The accountant was told interest was still accumulating, and yet the Applicant did not act until she received the assessment in October 2012.

[23] Of course, since the Circular is not law, the taxpayer's circumstances beyond these four factors must be assessed. That said, the delay until October 2012 in informing her of the interest due as a result of her 2008-to-2010 non-arm's-length transfers does not justify a waiver of the interest owed.

[24] The length of the delay between the transfers and the October 2012 assessment of interest was insufficient to make the delay unreasonable – after all, “every case is so factually different so the time taken to complete an assessment must be reasonable on the particular facts of each case” (*Shea v Canada (AG)*, 2019 FC 787 at para 65). Here, the context is that the Applicant received a non-arm's length transfer in the form of dividends, then within about two years was assessed by the CRA and ordered to pay the section 160 amount and the standard interest amount. There is no limitation period for section 160 assessments on non-arm's length transfers, as a section 160 assessment can be made at “any time” (as noted in *Addison & Leyen Ltd v Canada*, 2007 SCC 33 at paras 9–10). These orders are typically made along with interest, as will be explained below. In this case, the Applicant's characterization of the situation (2010-to-2012 interest on the tax debt resulting from the 2008-to-2010 non-arm's length dividends) as being some form of unacceptable CRA delay is misleading.

[25] The Applicant should have known that interest would accrue, as the corporation was informed (in October 2009) and she was personally informed (in May 2012) about the possibility of interest accruing and yet she chose not to make any payments. In a self-assessing system, the taxpayer is responsible for knowing the law and conducting their financial affairs in accordance with the Act (*Easton v Canada Revenue Agency*, 2017 FC 113 at para 55). Further supporting the reasonableness of the decision is that fact that a previous taxpayer relief request was granted to the corporation for the same underlying tax fraud. This made her aware of the interest still



owing. This was noted in the officer's analysis and it arguably makes the Applicant's request for additional interest relief a weaker case.

[26] Additionally, delays in processing the objections and relief requests are not relevant to this application because no interest was being charged at these times. The second decision letter confirms that "though the processing of the objections may have been lengthy and delayed, our files indicate that no arrears interest has accumulated on the amount of \$33,147.13.

Consequently, there was no additional interest charged by the CRA" after the issuance of the assessment in 2012. Any delay following the assessment for non-arm's length transfers did not prejudice the Applicant as no further interest was being charged during these objection periods.

[27] The decision-maker's handling of the delay did not make the decision unreasonable.

#### B. CRA assessment error

[28] The Applicant says the CRA provided incorrect information as "[t]he required payment was revised multiple times over the course of six years once the taxpayer provided proof of payment and the CRA traced payments." She seems to suggest that the CRA should have provided the correct balance owed instead of misinforming her that liabilities were being settled.

[29] The Tax Court does not deal with interest and the settlement documents are clear that the interest is not being dealt with and so would remain owing.

[30] IC07-1R1 indicates that CRA "errors in processing" are a situation where interest may be waived. The alleged error seems to be that the Applicant was told she owed nothing, but was later found to owe a tax debt as well as interest on the tax debt that had been accruing because of

the fraud committed by her accountant. She suggests this error means she should not pay the interest.

[31] I do not believe that there was actually a CRA error. The very purpose of section 160 is to address non-arm's length transfers like this, and without the ability to require interest payments, individuals would be able to access what the Respondent calls an "interest free loan" out of their corporations. The way the legislation works is that, if a non-arm's length dividend is issued, the person who received it is later informed that they are liable for the amount owed plus interest.

[32] If there was any CRA error, it has not been clearly explained, and as indicated above, the four factors set out in the Circular generally do not support an interest waiver. At the time of the corporation's relief request, the corporation was told in writing that arrears interest would accrue on any unpaid balance. Yet, the Applicant decided to give herself discretionary dividends from the company rather than paying the company tax debt. Naturally, the Applicant was not immediately assessed for these transfers from the numbered corporations, but that was not an error.

### C. Extraordinary circumstances

[33] The "extraordinary circumstances" are not clearly spelled out in the Applicant's memorandum, but the Notice of Application suggests the extraordinary circumstances are the fraud and the Applicant's lack of control over the situation:

According to IC07-1R1, section 35, the taxpayer has the responsibility to make certain that their tax obligations are met, but there may be exceptional situations, where it may be appropriate to provide relief to taxpayers because of third-party errors or delays. Section 36 and 26 states that it may also be appropriate to consider

granting relief if an extraordinary circumstance beyond the control of a taxpayer's representative or actions of the CRA, which includes providing incorrect information to the taxpayer, have prevented the taxpayer from complying with an obligation or requirement under the act.

The "Taxpayer", was the victim of fraud. Alex Chan, a third party, committed the fraud, but the CRA had issued timely notices with no balance due to 994820 Ontario Inc. From 2003, when the fraud was first committed, to 2009, when CRA corrected the Taxpayer's tax account, there was sufficient time for the fraud perpetrator to move funds offshore. The Taxpayer reported the crime to the RCMP after being made aware of the crime, but it was too late.

[34] The extraordinary circumstances related to the fraud alone are not enough to make the officer's decision to deny relief unreasonable. The corporation was granted an initial taxpayer relief in the amount of \$13,532.81 in arrears interest on February 17, 2010 because of the fraud already. The Applicant received the non-arm's length transfers in June 2009 and June 2010. This was after the fraud was uncovered and reported, and after the March 2009 re-assessment of the corporation. The circumstances of the fraud do not support a waiver of interest and the decision-maker was reasonable.

[35] As for the Applicant's lack of knowledge about the situation, I sympathize with her but I do not find her argument to be relevant. In her answers to written examination on April 2, 2019, she says that "the system is not intuitive and confusing to the layperson." However, her concerns about not knowing which appeal route to take are irrelevant because the interest stopped accruing when she promptly filed her initial 2012 notice of objection.

[36] On August 8, 2012 the Applicant's accountant called the CRA and he was told after he said he did not think interest should accrue as they had taxpayer relief "that the interest was still accumulating on the debt after the taxpayer relief reduced the interest amount in February 2010."

The Applicant then waited another two months for the assessment and then argued she did not know interest would accrue.

[37] The Applicant also argues the amount demanded was “sizable” and paying in advance “would have resulted in expenses and liquidation losses beyond the assessed interest.” While the Applicant briefly mentioned “liquidation costs” and “expenses” in her March 2018 relief application, no details were provided. I find that these circumstances did not make the decision unreasonable particularly because the Applicant chose to receive \$70,000 in dividends when that money could have been used to pay off the tax debt and assist the corporation.

[38] Finally, as noted above, although the processing of the objections was long, no arrears interest has accumulated on the amount during the objection process. Overall, I do not find the Applicant has shown the facts to be so extraordinary that relief had to be granted.

## VII. Conclusion

[39] The perceived delay, alleged error, and extraordinary circumstances, considered alone or together, do not support a decision to waive the interest. The Applicant was diligent in paying the outstanding debts but I cannot find that the decision-maker erred in their decision not to grant further taxpayer relief.

[40] When the Court of Appeal’s discussion in *Telfer* about the significant discretion owed under subsection 220(3.1) is considered, it becomes clear this application should be dismissed as the decision fell within the range of possible, acceptable outcomes and it was justifiable, transparent, and intelligible (*Dunsmuir v New Brunswick*, 2008 SCC 9).

[41] Accordingly, I dismiss this application for judicial review.

### VIII. Costs

[42] The Respondent sought costs in the amount of \$500.00 lump sum. Though the Respondent was successful no costs will be awarded as the Respondent's material was lacking in clarity and necessitated further information to be provided to the Court at the hearing. For this reason, the Court is exercising their discretion and not awarding costs.

**THIS COURT'S JUDGMENT in T-2148-18 IS**

1. The application is dismissed;
2. No costs are awarded.

"Glennys L. McVeigh"

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Judge

## Annex A – Relevant legislation

### *Income Tax Act, RSC 1985 c 1 (5<sup>th</sup> Supp)*

#### **Tax liability re property transferred not at arm's length**

**160 (1)** Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

- (a) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,
- (b) a person who was under 18 years of age, or
- (c) a person with whom the person was not dealing at arm's length,

the following rules apply:

(d) the transferee and transferor are jointly and severally, or solidarily, liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted for it, and

(e) the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

- (i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property,

## Annexe A – Loi relative

### **Loi de l'impôt sur le revenu (L.R.C. (1985), ch. 1 (5<sup>e</sup> suppl.))**

#### **Transfert de biens entre personnes ayant un lien de dépendance**

**160 (1)** Lorsqu'une personne a, depuis le 1<sup>er</sup> mai 1951, transféré des biens, directement ou indirectement, au moyen d'une fiducie ou de toute autre façon à l'une des personnes suivantes :

- a) son époux ou conjoint de fait ou une personne devenue depuis son époux ou conjoint de fait;
- b) une personne qui était âgée de moins de 18 ans;
- c) une personne avec laquelle elle avait un lien de dépendance,

les règles suivantes s'appliquent :

d) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement d'une partie de l'impôt de l'auteur du transfert en vertu de la présente partie pour chaque année d'imposition égale à l'excédent de l'impôt pour l'année sur ce que cet impôt aurait été sans l'application des articles 74.1 à 75.1 de la présente loi et de l'article 74 de la Loi de l'impôt sur le revenu, chapitre 148 des Statuts révisés du Canada de 1952, à l'égard de tout revenu tiré des biens ainsi transférés ou des biens y substitués ou à l'égard de tout gain tiré de la disposition de tels biens;

e) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement en vertu de la présente loi d'un montant égal au moins élevé des montants suivants :

- (i) l'excédent éventuel de la juste valeur marchande des biens au moment du transfert sur la juste valeur marchande à ce moment de la contrepartie donnée pour le bien,

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

### **Waiver of penalty or interest**

220(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

### **Annex B - Income Tax Information Circular IC07-1R1 "Taxpayer Relief Provisions"**

#### **Extraordinary circumstances**

25. Penalties and interest may be waived or cancelled in whole or in part, if they result from circumstances beyond a taxpayer's control.

(ii) le total des montants représentant chacun un montant que l'auteur du transfert doit payer en vertu de la présente loi (notamment un montant ayant ou non fait l'objet d'une cotisation en application du paragraphe (2) qu'il doit payer en vertu du présent article) au cours de l'année d'imposition où les biens ont été transférés ou d'une année d'imposition antérieure ou pour une de ces années.

Toutefois, le présent paragraphe n'a pas pour effet de limiter la responsabilité de l'auteur du transfert en vertu de quelque autre disposition de la présente loi ni celle du bénéficiaire du transfert quant aux intérêts dont il est redevable en vertu de la présente loi sur une cotisation établie à l'égard du montant qu'il doit payer par l'effet du présent paragraphe.

### **Renonciation aux pénalités et aux intérêts**

220(3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

### **Circulaire d'Information en matière d'impôt sur le revenu IC07-1R1 Dispositions d'allègement pour les contribuables**

#### **Circonstances exceptionnelles**



Extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time, or otherwise complying with an obligation under the act include, but are not limited to, the following examples:

- a) natural or human-made disasters, such as flood or fire
- b) civil disturbances or disruptions in services, such as a postal strike
- c) serious illness or accident
- d) serious emotional or mental distress, such as death in the immediate family.

### **Actions of the CRA**

26. Penalties and interest may also be waived or cancelled if they resulted mainly because of actions of the CRA, such as:

- a) processing delays that result in the taxpayer not being informed, within a reasonable time, that an amount was owing
- b) errors in material available to the public, which led taxpayers to file returns or make payments based on incorrect information
- c) incorrect information provided to a taxpayer
- d) errors in processing
- e) delays in providing information, such as when a taxpayer could not make the appropriate instalment or arrears payments because the necessary information was not available
- f) undue delays in resolving an objection or an appeal, or in completing an audit

### **Factors used in arriving at the decision**

33. Where circumstances beyond a taxpayer's

25. Les pénalités et les intérêts peuvent faire l'objet d'une renonciation ou d'une annulation, en tout ou en partie, si elles découlent de circonstances indépendantes de la volonté du contribuable. Les circonstances exceptionnelles qui peuvent avoir empêché un contribuable d'effectuer un paiement lorsqu'il était dû, de produire une déclaration à temps ou de s'acquitter de toute autre obligation que lui impose la Loi comprennent, sans en exclure d'autres, les suivantes :

- a) Catastrophes naturelles ou d'origine humaine, telles qu'une inondation ou un incendie.
- b) Troubles publics ou interruptions de services, tels qu'une grève des postes.
- c) Maladies ou accidents graves.
- d) Troubles émotifs sévères ou souffrances morales graves, tels qu'un décès dans la famille immédiate.

### **Actions de l'ARC**

26. Les pénalités et les intérêts peuvent également faire l'objet d'une renonciation ou d'une annulation s'ils découlent principalement d'actions de l'ARC, telles que des :

- a) retards de traitement, qui ont fait en sorte que le contribuable n'a pas été informé d'une somme due dans un délai raisonnable;
- b) erreurs dans la documentation mise à la disposition du public qui a amené des contribuables à soumettre des déclarations ou à faire des paiements en se fondant sur des renseignements inexacts;
- c) renseignements inexacts fournis à un contribuable;
- d) erreurs de traitement;
- e) renseignements fournis en retard, comme lorsqu'un contribuable n'a pas pu faire les paiements adéquats d'acomptes provisionnels ou d'arriérés parce que les renseignements nécessaires n'étaient pas disponibles;

control, actions of the CRA, inability to pay, or financial hardship has prevented the taxpayer from complying with the act, the following factors will be considered when determining if the minister's delegate will cancel or waive penalties and interest:

- a) whether the taxpayer has a history of compliance with tax obligations
- b) whether the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued
- c) whether the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system
- d) whether the taxpayer has acted quickly to remedy any delay or omission.

f) retards excessifs pour régler une opposition ou un appel ou pour faire une vérification.

### **Facteurs de décision**

33. Lorsque des circonstances indépendantes de la volonté du contribuable, des actions de l'ARC, une incapacité de payer ou des difficultés financières ont empêché un contribuable de respecter la Loi, les facteurs suivants serviront à déterminer si un fonctionnaire délégué du ministre du Revenu national annulera les pénalités et les intérêts ou y renoncera. On évaluera si le contribuable a :

- a) respecté, par le passé, ses obligations fiscales;
- b) en connaissance de cause, laissé subsister un solde en souffrance qui a engendré des intérêts sur arriérés;
- c) fait des efforts raisonnables et géré de façon responsable ses affaires selon le régime d'autocotisation;
- d) agi rapidement pour remédier à tout retard ou à toute omission.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2148-18

**STYLE OF CAUSE:** CHAU v. CANADA (ATTORNEY GENERAL)

**PLACE OF HEARING:** TORONTO ON

**DATE OF HEARING:** OCTOBER 8, 2019

**JUDGMENT AND REASONS:** MCVEIGH J.

**DATED:** OCTOBER 29, 2019

**APPEARANCES:**

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