Federal Court  Cour fédérale

Date: 20140902

Dockets: T-1-05
T-2155-10

Citation: 2014 FC 839

Ottawa, Ontario, September 2, 2014

PRESENT: The Honourable Madam Justice Gagné

Docket: T-1-05

BETWEEN:

IMPERIAL OIL RESOURCES LIMITED

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-2155-10

AND BETWEEN:

IMPERIAL OIL RESOURCES VENTURES LIMITED

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

Overview

[1] These are two applications for judicial review brought by Imperial Oil Resources Limited (file T-1-05) and Imperial Oil Resources Venture Limited (file T-2155-10) [collectively "Imperial Oil"] against the Minister of National Revenue [Minister] relating to the *Syncrude Remission Order*, CRC, c 794 [SRO], an initiative undertaken in 1976 by the federal government to provide some federal tax relief to participants in the Syncrude (oil sands) Project in northern Alberta. This tax relief served to counterbalance increased royalty charges by the Albertan government that, as of 1974, had to be included in the participants' taxable income. In essence, until 2003, the Syncrude participants were entitled to a remission of federal tax paid on the amount they paid Alberta in royalty charges.

[2] These applications were heard concurrently with file T-1382-06. Reasons for that file, dealing with the remission entitlement for the 2001 taxation year, will be addressed in a companion judgment. These three files are test cases; 44 other files are currently in abeyance before this Court.

[3] The common arc for the present applications centres on Imperial Oil's belief that a remission order is the same as a refund of a tax overpayment under section 164 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA], with the result that the federal government would owe interest on the remission ultimately granted to it for a given year, much like it does in instances of an overpayment to the Canada Revenue Agency [CRA] by a taxpayer.

[4] The Minister contends that no interest is owed on the remissions, as they are tax liabilities relieved by the CRA, and not "overpayments" as defined by section 164 of the ITA. In practice, the Minister applies the remission granted to Imperial Oil's tax liability owed to the federal government for a given taxation year; as such, the remission does not reduce its tax liability, but merely affects its collection.

[5] More specifically, file T-1-05 is an application for judicial review of the Minister's decision not to grant the interest accrued on an alleged "overpayment" of taxes paid to the CRA for the 1999 taxation year.

[6] Meanwhile, file T-2155-10 is an application about timely filing for Imperial Oil's claim for refund interest accrued during the 1996 taxation year. The question at issue is "when" the Minister can be said to have made a decision regarding the payment of refund interest for the purposes of determining when the time limitation set out in subsection 18.1(2) of the *Federal Courts Act*, RSC, 1985, c-7 [FCA], starts to run. Should the application not be time-barred, then Imperial Oil is seeking refund interest on the remission amount from that year.

[7] For the reasons discussed below, these applications for judicial review will be dismissed. Imperial Oil is not owed refund interest pursuant to the SRO. Moreover, I find the application in file T-2155-10 to be time barred.

Background

[8] Imperial Oil is involved in the exploration for and the production of petroleum, natural gas, other hydrocarbons and minerals. By way of its various subsidiaries, it is a participant in a joint venture created pursuant to the Syncrude Project Ownership and Management Agreement, which had been put into place for the purposes of the acquisition, development, construction, maintenance and operation of the Syncrude Project [Syncrude Joint Venture].

[9] As the Federal Court of Appeal explains in *Canada (Attorney General) v Imperial Oil Resources Limited*, 2009 FCA 325 [*Imperial Oil*], which dealt with a previous disagreement on the manner in which the SRO should be taken into account in determining Imperial Oil's rights and obligations under the ITA, for the 1997 taxation year:

> [3] Generally, a provincial royalty on the production of a non-renewable resource represents the share of the resource that is reserved or payable to the province pursuant to a provincial law or a contract between the province and the producer. Prior to the events that gave rise to this case, a royalty reserved to a province was excluded from the producer's income as determined for income tax purposes, and a royalty payable to a province was deductible in computing the producer's income.
>
> [4] In the early 1970s, the provinces made significant changes to the structure and quantum of provincial resource royalties, to the extent that the federal government perceived a threat of serious erosion to the federal income tax base. The federal government responded with amendments to the *Income Tax Act*. The amendments were intended to ensure that federal tax relief for royalties would be limited to an amount the federal government considered appropriate. The amendments were enacted on March 13, 1975, effective after May 6, 1974.

[10] The first amendments included the enactment of paragraphs 12(1)(*o*) and 18(1)(*m*) of the ITA. By the combined operation of those provisions, a resource producer, in computing its income for income tax purposes, was required to include and could not deduct any resource royalty payable to a province.

[11] During the period when the resource royalty amendments were being made to the ITA, the development of the oil sands in northern Alberta was in its beginning stages. In 1975, the oil companies involved in that development (including the corporate predecessors of Imperial Oil) worked out a contractual royalty arrangement with Alberta called the "Alberta Crown Agreement", the purpose of which was to evidence the agreement between the province of Alberta and the Syncrude Joint Venture participants concerning the royalty receivable by Alberta with respect to the Syncrude Project [Syncrude Royalties].

[12] As a counterbalance to this new royalty arrangement, resource producers became entitled to a federal abatement, replaced in 1976 by a new statutory deduction called the "resource allowance." These measures provided tax relief as a surrogate for what the federal government considered to be a reasonable royalty on resource profits.

[13] In that vein, on May 6, 1976, the Governor in Council enacted the SRO, which provides in relevant part:

> 3. (1) Subject to subsection (2), remission is hereby granted to each participant of any tax payable for a taxation year pursuant to Part I of the *Income Tax Act* as a result of the royalty provisions being applicable to
>
> (a) amounts receivable and the fair market value of any property receivable by the Crown as a royalty, tax, rental or levy with

> respect to the Syncrude Project, or as an amount however described, that may reasonably be regarded as being in lieu of any of the preceding amounts;
>
> […]

[14] Prior to enacting the SRO, the federal government had considered two options: providing the relief promised to the participants by way of an amendment to the ITA or by way of a remission order pursuant to the *Financial Administration Act*, RSC 1985, c F-11 [FAA]. It ultimately elected to proceed by way of the latter. As such, the SRO was enacted under subsection 17(1) of the FAA, as it read in 1976. It is undisputed that subsection 17(1) as it then read is substantially the same as subsection 23(2) today:

23. (2) The Governor in Council may, on the recommendation of the Treasury Board and when he considers it in the public interest, remit any tax, fee or penalty.	23. (2) Sur recommandation du Conseil du Trésor, le gouverneur en conseil peut, s'il le juge d'intérêt public, faire remise de tous droits, taxes ou pénalités.

[15] To elaborate upon the SRO, an Advance Tax Ruling [ATR] was issued on April 29, 1976. The ATR addressed the treatment of Imperial Oil's obligations and liabilities under the ITA. Therefore, in accordance with the SRO and the ATR, Imperial Oil was entitled to remission of specific tax payable in the circumstances described in the SRO and was given, via remission, related relief from its ITA obligations and liabilities. Meanwhile, instalments and other payments of tax, interest and penalties would be calculated on this basis. Its relevant parts read as follows:

> A. As long as the remission order is in effect, its results for each taxation year will be that the tax remitted to Imperial will reduce the tax otherwise payable under the Income Tax Act of Canada to the amount which would be payable on the basis that:

> 1. The 50% share of the Deemed Net Profit of the Alberta Joint Venture, and the leased substances taken in satisfaction thereof, and the proceeds of the disposition thereof, held by Alberta Royalty under the Alberta Crown Agreement, will not be taxable to Imperial or Syncrude under the provisions of paragraphs 12(1)(o) or 18(1)(m) of the Income Tax Act of Canada.
>
> 2. The gross production royalty reserved to Alberta Royalty under the Alberta Crown Agreement, and the proceeds of disposition thereof, will not be taxable to Imperial or Syncrude under the provisions of paragraphs 12(1)(o) or 18(1)(m) of the Income Tax Act of Canada.
>
> 3. The royalty prescribed to be paid to Alberta Royalty under the leases pursuant to the provisions of The Mines and Minerals Act of the Province of Alberta with respect to the Leased Substances and the proceeds of disposition thereof, will not be taxable to Imperial or Syncrude under the provisions of paragraphs 12(1)(o) or 18(1)(m) of the Income Tax Act of Canada.
>
> [. . .]
>
> C. The instalments and other payments of tax, interest and penalties required under the Income Tax Act of Canada for all relevant years will be computed in accordance with the rulings above.

[16] Imperial Oil argues that the SRO was to nonetheless operate as an "amendment to the ITA." In this respect, it cites an April 28, 1976 letter sent by a senior official with the Department of Finance to the rulings officials:

> At your request I am writing to confirm that it was the government's clear intention to have the attached remission order operate as an amendment to the Income Tax Act for all purposes.

[17] The administration of the SRO caused no controversy until 1997, when a dispute arose as to the proper amount of the remission order and related interest for that year. In *Imperial Oil*, the Federal Court of Appeal overturned a Federal Court ruling holding that there had been an underpayment of remission.

[18] Relevant for our purposes, Imperial Oil had cross-appealed the Federal Court's decision, which had initially awarded interest on the remission underpayment based on subsection 31(2) of the *Crown Liability and Proceedings Act*, RSC, c C-50. Imperial Oil argued before the Federal Court of Appeal that a remission is the same as a refund of a tax overpayment under the ITA, with the result that interest would accrue on the entire amount of the remission for 1997, not just on the amount of the alleged shortfall.

[19] The Federal Court of Appeal, in *Imperial Oil*, dismissed the cross-appeal on its factual basis for the 1997 fiscal year, but did not express an opinion on the legal argument. I reproduce the relevant discussion from the decision:

> [38] The *Syncrude Remission Order* by its terms remits tax payable under Part I of the *Income Tax Act*. The *Syncrude Remission Order* does not mention interest.
>
> [39] I note from item C of the advance income tax ruling quoted above that the tax authorities determined in 1976 that the *Syncrude Remission Order* should be administered on the basis that the determination of Imperial's liability to pay interest on unpaid Part I tax, or on late or deficient instalments of Part I tax, must take the remitted Part I tax into account. Neither party suggests that this is incorrect in law. The issue raised in the cross-appeal is a different one, which is whether Imperial is entitled to interest on the remitted tax pursuant to section 164 of the *Income Tax Act*.
>
> [40] I agree with the Crown that there is no statute or regulation providing any entitlement to interest on a payment made to a person pursuant to a remission of tax, even if the remission order

results in a refund of a tax debt that has been paid. I also agree that there is no merit to the argument of Imperial that it should be entitled to an award of interest on the basis that if no interest is paid, the Crown is unjustly enriched.

[41] It remains only to consider the argument of Imperial that, because the *Syncrude Remission Order* reduces Imperial's Part I tax payable, the amount of the remission should be taken into account in determining the entitlement of Imperial to refund interest pursuant to section 164 of the *Income Tax Act*. Justice O'Reilly did not address this point in his reasons but ordered that interest would be payable on the amount of his judgment according to subsection 31(2) of the *Crown Liability and Proceedings Act*. The Crown had conceded, appropriately in my view, that if Imperial was entitled to judgment for a shortfall in the remission for 1997, subsection 31(2) of the *Crown Liability and Proceedings Act* would apply to the judgment.

[42] Refund interest is payable under section 164 of the *Income Tax Act* only on an "overpayment" for a particular year. A taxpayer's "overpayment" for a year is defined in subsection 164(7) essentially as the amount by which the total of all amounts paid on account of the taxpayer's tax liability for that year exceeds the amount of the liability. Imperial argues that it is entitled to refund interest for 1997 because it paid more on account of its 1997 tax liability than the amount of its 1997 tax liability as finally determined, taking into account the amount of Part I tax remitted for 1997 by the *Syncrude Remission Order*.

[43] In my view, Imperial has not established its entitlement to refund interest for 1997.

[44] It is possible to discern from the record the amount of Imperial's 1997 tax liability as assessed under the *Income Tax Act* and *Regulations*, and it is also possible to discern the amount of the Part I tax remission for that year. However, it is not possible to discern what payments, if any, Imperial made on account of its 1997 tax liability.

[45] Therefore, even if I were to assume that Imperial's argument on the cross-appeal is correct in law, it is impossible to determine from the record whether Imperial is entitled to refund interest. That is because the record does not establish that the total of all payments made by Imperial on account of its 1997 tax liability was greater than its 1997 tax liability after taking the remission into account.

> [46] In these circumstances, Imperial's cross-appeal must fail on the facts. It is not necessary to express an opinion on Imperial's legal argument on the cross-appeal, and I decline to do so. [Emphasis added.]

That is the main issue raised by the present applications.

[20] Imperial Oil argues that for about 20 years prior to the decision in *Canada v Perley*, [1999] 3 CTC 180 (FCA) [*Perley*], the Minister and the Syncrude participants applied the SRO as an integral part of the ITA—interpreting the SRO as if it simply permitted the deduction of the Syncrude Royalties in computing taxable income. In particular, prior to 1998, there was no separate line in the corporate tax return on which a Syncrude participant could itemize a deduction of Syncrude Royalties pursuant to the SRO (or the taxes otherwise payable that would be remitted pursuant to the SRO). The practice of the Syncrude participants (accepted by the Minister) was that they simply obtained the relief afforded by the SRO by not including the Syncrude Royalties in the computation of their taxable income.

[21] For his part, the Minister argues that his decision that refund interest was not payable on remission was consistent with his past administration of the SRO. In particular, a practice existed to remove remission from the calculation of refund interest. While this was not always successfully done, it was the Minister's intention to not allow interest on remission. In essence, previous unintended mistakes by a CRA computer program should not serve as precedent to bar the Minister from refusing to pay interest it never legally owed.

Issues and Standard of Review

[22] These applications for judicial review raise the following issues:

1. Whether Imperial Oil is entitled to refund interest for the 1999 taxation year, computed in accordance with section 164 and subsection 248(11) of the *Income Tax Act*; and
2. Whether the application relating to the 1996 taxation year was filed within the time limitation set out in subsection 18.1(2) of the FCA, or, alternatively, whether this Court should extend the deadline for filing this application to the date such application was filed. If so, whether the Imperial Oil is entitled to refund interest for the 1996 taxation year.

[23] The parties agree that the applicable standard of review concerning the proper interpretation of the SRO and the ITA is correctness, as it is a question of law (*Imperial Oil* at para 2).

The 1999 taxation year (T-1-05 file)

The Parties' position

[24] The parties agree that the Minister was obligated to pay Imperial Oil the SRO amount for the 1999 taxation year and that, instead of paying that amount to Imperial Oil, the Minister applied it to Imperial Oil's tax liability for the year.

[25] The parties also agree as to the SRO amount for that year. Initially, the Minister determined that Imperial Oil was entitled to remission in respect of the 1999 taxation year of approximately $1.5 million. On December 7, 2004, the Minister made a revised determination of Imperial Oil's remission entitlement, reducing the SRO amount to $885,918, effective February 29, 2000 (Imperial Oil's balance due-date for the 1999 taxation year).

[26] In his Notice of Reassessment dated September 27, 2007, the Minister confirmed that the remission amount was $885,918 and that Imperial Oil had no entitlement to refund interest on this amount. Imperial Oil's total federal income tax liability for the 1999 taxation year was $12,617,222.

[27] Pursuant to the SRO, the Minister then remitted the amount of $885,918 with respect to Imperial Oil's 1999 taxation year.

[28] In accordance with the ATR, Imperial Oil was required to make instalment payments in the amount of $14,217,301.92 during its 1999 taxation year. It made instalment payments of $4,200,000. As a consequence, Imperial Oil was charged instalment interest and penalty totalling $470,345.47.

[29] In keeping with the SRO and the ATR, the Minister adopted an administrative accounting practice to relieve Imperial Oil of arrears interest arising on late or deficient instalment payments to the extent of remission granted under the SRO, while also ensuring that refund interest was not paid on remitted amounts. Thus, while in law remission is not available until liability is

determined by assessment (*Perley*), the Minister nevertheless credited remission against Imperial Oil's tax liability as at the balance due date for administrative accounting purposes.

[30] In doing so, the Minister decided that Imperial Oil's claim for "refund interest" on remission was not supported by the ITA, the SRO, the ATR or the tax reporting of Imperial Oil.

[31] Meanwhile, Imperial Oil argues that the Minister issued these four separate refunds in its favour, in respect of its 1999 taxation year (totalling $2,012,251):

1. $46,435 was refunded on June 4, 2001;
2. $377,454 was refunded on October 7, 2005;
3. $648,967 was refunded on July 26, 2006, and
4. $939,295 was refunded on October 5, 2007.

[32] As such, the taxes payable were less than the total payments on account of its tax liability ($15,643,107 versus $17,608,823). The difference, says Imperial Oil, was owed as a refund, with interest.

[33] By asserting that no refund interest is payable to it in the circumstances, says Imperial Oil, the Minister is simultaneously interpreting related provisions of the ITA in an inconsistent manner:

1. The Minister correctly determined that Imperial Oil was entitled to a refund pursuant to subsection 164(1), on the basis that an overpayment existed within the

meaning of subsection 164(7) (treating the SRO amount as an amount paid on account of Imperial Oil's liability); and

2. However, the Minister incorrectly determined that Imperial Oil was not entitled to refund interest pursuant to subsection 164(3) even though the applicable threshold for payment of refund interest pursuant to that subsection is the issuance of a refund, a threshold that has been clearly established in the circumstances.

[34] According to Imperial Oil, the Minister cannot have it both ways, particularly in light of the fact that subsections 164(1), 164(7) and 164(3) dictate the following analysis:

1. Was there an overpayment within the meaning of subsection 164(7)?
2. If so, then subsection 164(1) would provide for a refund of that overpayment;
3. Subsection 164(3) would require the Minister to pay refund interest at the prescribed rate on that refund over the period described in subsection 164(3).

[35] Once question 1 is answered in the affirmative, the results of questions 2 and 3 automatically follow. There is no separate determination of the amount of the overpayment when determining whether subsection 164(3) would permit the payment of refund interest.

[36] Imperial Oil also argues that the interpretation of the refund interest provisions advanced by the respondent is inconsistent with a textual, contextual and purposive analysis of the refund and refund interest provisions of the ITA and the SRO.

[37] A textual interpretation of overpayment, as defined in subsection 164(7) requires one to take into account all amounts paid on account of the taxpayer's liability for the year when determining whether an "overpayment" exists (and so including the SRO amount).

[38] Moreover, a contextual and purposive analysis requires that the Minister compute Imperial Oil's refund interest entitlement in a manner consistent with the ATR and the express intention of the federal government to have the SRO operate as if it were an amendment to the ITA. In particular, at the time the SRO was issued, the parties agreed that the computation of instalment obligations, tax liabilities and interest would take into account the impact of the SRO with respect to the Syncrude Royalties and the parties proceeded on that basis. The ATR and the SRO were prepared simultaneously.

[39] The Minister disagrees, saying that at no time prior to April 24, 2007 did the total of all amounts paid by Imperial Oil on account of Imperial Oil's Parts I, I.3, VI or VI.1 tax liability for its 1999 taxation year exceed the amounts payable by Imperial Oil as fixed by the Minister's reassessment. It was only by reassessments to allow loss carry backs that Imperial Oil's payments on account of tax eventually exceeded their tax liability as of April 24, 2007, and at that time only to the extent of $53,377.00. The Minister duly calculated refund interest of $1,389.37 on the overpayment of $53,377.00 in accordance with section 164 of the ITA.

[40] Furthermore, the Minister determined that the amounts of $46,535, $377,454, $648,967 and $939,295 remitted pursuant to the SRO were not refunded, repaid or applied to another liability of Imperial Oil within the meaning of section 164 of the ITA. The Minister decided that

the relevant portion of Imperial Oil's tax payable was remitted by operation of the SRO, not the ITA, and only after the tax payable had been fixed by the Minister's reassessment.

[41] Zul Ladak, the CRA's Oil & Gas Industry Specialist, who is involved in an advisory capacity in the administration of the SRO, explains that the Minister proceeded on the basis that Imperial Oil had made no overpayment of tax within the meaning of paragraph 164(7)(*b*) of the ITA. For corporations, an overpayment of tax is defined in paragraph 164(7)(*b*) of the ITA as "the total of all amounts paid on account of the corporation's tax liability under this Part or Parts I.3, VI or VI.1 for the year minus all amounts payable in respect thereof".

[42] The Minister also concluded that section 23 of the FAA provides authority to the Governor in Council to "remit any tax or penalty, including any interest paid or payable thereon" but that section 23 provides no authority to pay any amount except by way of repayment or remittance. The Minister therefore proceeded on the basis that neither the SRO, which was made pursuant to section 23 of the FAA, nor its enabling statute, contemplated the payment of "refund interest."

[43] As for the ATR, the Minister believed it to be consistent with his position respecting section 164 of the ITA.

[44] The Minister's decision was also consistent with Imperial Oil's income tax reporting, which also did not treat the SRO as an amendment to the ITA.

Analysis

[45] A remission order, such as the SRO, is not an agreement nor a contract – it is an exceptional measure available for granting relief to a taxpayer when the desired result could not be otherwise achieved within the tax legislation (*Gladstone v Canada (Attorney General)*, 2005 SCC 21 at para 20). Remission relieves a taxpayer from the effect of the application of legislation to which the rest of Canadian society is subject. As such, it is a "discretionary animal of the Minister" (*Pacific Vending Ltd v Canada,* [2001] TCJ No 299 (QL) at para 7). As this implies, the extent of relief granted by the legislature is not subject to a duty of fairness or the intervention of a court (*Janda Products Canada Ltd v Canada (Minister of National Revenue)*, 2004 FC 1516 at para 21).

[46] The Minister properly determined that Imperial Oil is not entitled to refund interest on remission as:

1. there is no entitlement to refund interest on remission under any contract or statute;
2. there is no entitlement to refund interest on remission under the ITA as:
    i) remission is not an amount refunded within the meaning of section 164 of the ITA;
    ii) remission granted under the FAA did not create, in and of itself, an overpayment of tax for purposes of section 164 of the ITA;
    iii) remission under the SRO is not a payment on account of Imperial Oil's tax liability, but rather a relief of a portion of that liability; and

3. the proper interpretation of the refund provisions of the ITA is not informed or altered by the SRO, the ATR or the Minister's administrative practice (see *Imperial Oil* at para 28).

[47] As a general rule, unless a statute or contract expressly provides for it, interests cannot be claimed against the Crown. And as the Federal Court of Appeal reminded Imperial Oil in *Imperial Oil* at para 40, "there is no statute or regulation providing any entitlement to interest on a payment made to a person pursuant to a remission of tax, even if the remission order results in a refund of a tax debt that has been paid". Hence Imperial Oil's efforts to convince the Court that when the Minister decided to apply the SRO payments against Imperial Oil's tax liability, he acted in the statutory power granted by the ITA and that, in doing so, the remission amount that offset Imperial Oil's tax liability for that year was paid on account of Imperial Oil's liability within the meaning of subsection 164(7) of the ITA and had the effect of creating an overpayment.

[48] However, under the ITA, the Minister does not have the power to remit taxes otherwise payable by a taxpayer. This power is only granted by the FAA and, in this particular case, by the SRO.

[49] It seems to me that Imperial Oil is confusing the nature of the Minister's obligation with the way it is or it has been carried out.

[50] Under the SRO, the Minister had the power and duty to remit a producer's tax liability under subsections 12(1)(*o*) and 18(1)(*m*) of the ITA, including interests accrued thereon. By definition, in order for a debt or liability to be remitted, it has to be fully assessed and certain. However, depending on the circumstances, the remission could be made by issuing a cheque in reimbursement of tax paid for a given year, by offsetting amounts equally due and payable once the final assessment is made or by releasing the taxpayer's debt as contemplated in the final assessment. Those are simply different mechanisms through which the Minister can execute his duty under the SRO. Which ever mechanism is chosen, it does not create an obligation on the Minister, when acting pursuant to the SRO, to pay refund interest under the ITA.

[51] The Minister has chosen to apply the remission amount against Imperial Oil's tax liability as a mean to implement the SRO and more specifically its impact on Imperial Oil's "instalments and other payment of tax, interests and penalties required under the Income Tax Act of Canada" (see point C of the ATR).

[52] The SRO is closely tied to subsections 12(1)(*o*) and 18(1)(*m*) of the ITA as those provisions serve in establishing the quantum of the SRO payments to the producer. However, the substance and nature of the SRO payment are as determined in subsection 23(2) of the FAA.

[53] The taxpayer's duty to pay taxes arises from the ITA whereas the Minister's power and duty to remit a portion of the taxes paid or payable arise from the FAA. The latter does not provide for the payment of interests on amount that would remain outstanding once all amounts

otherwise due and payable by both parties are offset, should the balance be in favour of the taxpayer.

[54] Finally, the mere fact that the Minister has paid interests on SRO payments in the past, as they were added automatically by the Minister's computer program, does not create an obligation on the Minister, nor does it modify the SRO or the FAA.

The 1996 taxation year (T-2155-10)

The parties' position

[55] On June 10, 2003, the Minister made a revised determination of Imperial Oil's remission entitlement for the 1996 taxation year, adjusting the SRO amount to $11,682,097. The parties now agree that this is the correct amount of Imperial Oil's remission entitlement.

[56] The Minister did not send a cheque to Imperial Oil in respect of its remission entitlement. Rather, as he did for the 1999 taxation year, he applied the SRO amount as a payment on account of Imperial Oil's tax liability.

[57] Much like 1999, Imperial Oil argues that in addition to this amount, it also made instalment payments totalling $172,286,000 As such, the taxes payable with respect to the 1996 taxation year ($174,515,164) were less than the total payments on account of Imperial Oil's tax liability as of Imperial Oil's balance due-date for that year (being $183,968,070).

[58] By way of a Notice of Objection dated August 26, 2003, Imperial Oil requested that it be paid refund interest in respect of its 1996 taxation year and sought relief of at least $5,000,000 in additional interest. In doing so, Imperial Oil has acknowledged that it was seeking relief through the administrative process of objections, or through the Tax Court, but not the Federal Court.

[59] Imperial Oil claims that an oral communication from a CRA official on December 13, 2010, constitutes the first time it was told that CRA would not pay refund interest as requested by its Notice of Objection.

[60] The Minister disagrees, saying the Notice of Reassessment in 2003 did so. Moreover, the CRA had previously, and on various occasions, confirmed to representatives of Imperial Oil that there is no entitlement to refund interest resulting from the remission. In addition, prior to 2003, Imperial Oil had even applied for judicial review in respect of the interest issue in 2002 in *Imperial Oil*, and this, on the basis of a Notice of Reassessment.

Analysis

[61] The Court agrees with the respondent that this application is time-barred. The application was not filed until seven years after the Minister first communicated his decision to Imperial Oil. Accordingly, this Court finds that this application should not be allowed to proceed. There are no reasons to justify granting an extension to the filing deadline.

[62] The time limit for making a judicial review application is set out in subsection 18.1(2) of the FCA:

> An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days. [Emphasis added.]

[63] The words "first communicated" signify that "some positive action was required on the part of the decision maker in order to communicate his decisions to the parties directly affected" (*Atlantic Coast Scallop Fishermen's Association v Canada (Minister of Fisheries and Oceans)*, 189 NR 220, [1995] FCJ No 1347 at para 6).

[64] As conceded by Imperial Oil, the Minister's position that it had no entitlement to refund interest with respect to its 1996 taxation year was communicated on the Notice of Reassessment dated June 10, 2003. That communication which was consistent with prior practice was treated as a decision.

[65] The time for filing an application for judicial review is not extended by filing a Notice of Objection under the ITA. Remission is granted by authority of the FAA, which provides no statutory right of appeal. Consequently, the CRA had no authority to reconsider the Minister's decision under the provisions for an objection to an assessment made under the ITA. Therefore, at best, the Notice of Objection amounts to an improper request that the Minister reconsider his determination, which does not extend the time for filing an application for judicial review.

[66] The oral communication that Imperial Oil relies on is misplaced. The CRA officer advised Imperial Oil that the Minister would not pay refund interest, as its objection could not be considered under the appeal provisions of the ITA. This does not amount to a fresh determination of Imperial Oil's entitlement to refund interest. A refusal to reconsider an earlier decision does not extend the time for seeking judicial review of the decision as first communicated.

[67] Moreover, this Court finds no reason to grant an extension of time. The test applicable when using this discretionary power is set out in *Canada (Attorney General) v Hennelly*, [1999] FCJ No 846 at para 3:

1. a continuing intention to pursue his or her application;
2. that the application has some merit;
3. that no prejudice to the respondent arises from the delay; and
4. that a reasonable explanation for the delay exists.

[68] None of these criteria are satisfied.

[69] Imperial Oil elected to pursue the issue of refund interest for the 1996 taxation year through the statutory scheme for objections to assessment under the ITA, the recourse from which is an appeal to the Tax Court of Canada. It was only seven years later that it demonstrated its intention to pursue an application before this Court.

[70] Considering, for the reasons set out above, Imperial Oil had no right to refund interest, this application has no merit.

[71] The public interest is best served by bringing finality to administrative decisions "so as to ensure their effective implementation without delay and to provide security to those who comply with the decision or enforce compliance with it, often at considerable expense" (*Canada v Berhad*, 2005 FCA 267 at para 60).

[72] Finally, Imperial Oil timely filed its companion applications. There is no reasonable explanation for the seven year delay in the case at bar.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review in both files T-1-05 and T-2155-10 are dismissed; and

2. Costs are granted in favour of the respondent.

"Jocelyne Gagné"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1-05
STYLE OF CAUSE:	IMPERIAL OIL RESOURCES LIMITED v THE ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-2155-10
STYLE OF CAUSE:	IMPERIAL OIL RESOURCES VENTURES LIMITED v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	JUNE 3, 2014
JUDGMENT AND REASONS:	GAGNÉ J.
DATED:	SEPTEMBER 2, 2014

APPEARANCES:

Al Meghji Peter Macdonald	FOR THE APPLICANTS
William Softley Rosemary Fincham	FOR THE RESPONDENT

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