Federal Court  Cour fédérale

Date: 20190228

Docket: T-355-18

Citation: 2019 FC 235

Ottawa, Ontario, February 28, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

HOWARD KLOPAK

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Howard Klopak [the "Applicant"] applies for judicial review of a January 31, 2018 decision ["Decision"] of the Minister's Delegate, arising from the second level review. The second level review did not give the taxpayer relief for the penalties and interest levied by the Canada Revenue Agency ["CRA"]. The Decision was made pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 ["Act"].

II. Background

[2] The Applicant is self-employed and works as a sound engineer for the iconic Canadian band “The Guess Who”. The band performs largely in the United States and the Applicant works as an independent sub-contractor to the US Company KalPet LP.

[3] The Applicant was filing US 1040NR Tax Returns with the IRS, paying income tax to the IRS, and working with KalPet LP throughout the process to achieve compliance with American tax obligations. The Applicant used an “experienced tax preparer” for his tax advice.

[4] The Applicant submits that after significant personal research, he attempted to take advantage of US/Canada tax treaties and tried to convince KalPet LP to file adjustments with the IRS. Upon doing so, the Applicant filed Voluntary T1 Adjustments for 2012, 2013, and 2014 on August 17, 2016.

[5] The CRA responded with reassessments, noting that the income tax and interest were due. In addition, the CRA also charged penalties and associated interest to the Applicant. The Applicant indicated at the hearing that the penalties are in the range of $1500 to $2000.

[6] The Applicant made a request for cancellation of penalties with respect to his 2012 through 2014 taxation years, dated March 30, 2017, which was received by the CRA on April 3, 2017. An officer of the CRA in the Winnipeg Taxation Centre reviewed the Applicant’s March

30, 2017 request and the information contained within the CRA's records. The officer recommended denying the Applicant's request ["First Level Review"].

[7] A Team Leader in the Agency's Taxpayer Relief Division at the Winnipeg Taxation Centre issued a letter to the Applicant on July 25, 2017, denying the Applicant's request for relief from penalties.

[8] The Applicant made a subsequent request for cancellation of penalties with respect to his 2012 through 2014 taxation years, dated December 21, 2017, and received on December 29, 2017.

[9] On January 24, 2018, an officer conducted a second level review [the "Second Level Review"]. The officer found that the First Level Review and the decision arising from it were reasonable. The Applicant did not present circumstances that were beyond his control as an explanation for his late filings of the 2012-2014 returns.

[10] On January 31, 2018, Michelle Langan, Team Leader in the CRA's Taxpayer Relief Division at the Winnipeg Taxation Centre, acting as Delegate for Minister of National Revenue [the "Delegate"], issued the Decision on the basis of the Second Level Review.

[11] The Delegate, in denying the taxpayer the relief sought, noted that:

a. the Decision reaffirms the first finding that relief is not warranted;

b. the additional late-filing penalties were charged when returns were reassessed resulted from the increase in tax payable for the 2012-2014 tax years due to the reassessments to remove the foreign tax credits; and
c. there were no appropriate circumstances presented that would have prevented the Applicant from filing the 2012-2014 returns.

[12] The Applicant acknowledges that he filed his 2012, 2013, and 2014 tax returns late. As well, the record shows that from 2008 to 2016, only the 2015 and 2016 returns were filed in time.

A. *Style of Cause*

[13] The style of cause will be amended to reflect the proper Respondent "The Attorney General of Canada".

III. Issues

[14] The issues are:

A. Was the Decision reasonable?
B. Was there a breach of procedural fairness?

IV. Standard of Review

[15] Decisions of the Delegate are entitled to a high degree of deference in the exercise of statutory discretion and therefore are reviewable on the standard of reasonableness. At paragraph

20 of *Phillips v Canada (Attorney General)*, 2011 FC 448, Justice Kelen noted that discretionary decisions of the Minister under section 220(3.1) of the Act are subject to a standard of reasonableness.

[16] Justice Kelen further held at paragraph 22 that questions of procedural fairness, on the other hand, are to be determined on a standard of correctness. The issues relating to procedural fairness are reviewable on the standard of correctness.

V. Analysis

[17] The relevant provisions of the Act and the Taxpayer Relief Provisions, IC07-1R1 [also referred to as "the guidelines"] are listed in Appendix A.

A. *Inadmissible Paragraphs of Affidavits & Memorandum*

[18] The Respondent submits that:

A. the affidavits of Mark Jones and Maurice Hogue must be struck as they were not before the Delegate prior to the Decision being rendered.
B. the following portions of the Applicant's affidavit should be struck, as they were also not before the Delegate:
    i. Paragraph 8;
    ii. Subparagraphs 10.1, 10.3, 10.4:
    iii. Paragraphs 11 and 12 (and each subparagraph thereof);
    iv. Paragraph 14;

v. Exhibits “F” and “G”;

vi. Exhibits “K” through “N”; and

vii. Exhibits “U” through “AE”.

C. portions of the Applicant’s affidavit be struck for consisting of argument, and are therefore improper:

i. The final sentence of paragraph 3;

ii. The final sentence of paragraph 5; and

iii. Paragraphs 9 and 10.

iv. paragraphs of the Applicant’s Memorandum of Fact and Law should be struck, as the Respondent argues that the impugned paragraphs put forward facts that were not before the Delegate:

v. Paragraphs 10 through 17;

vi. Paragraphs 23 through 25; and

vii. Paragraphs 32, 39, 45, 48.

(1) Affidavits of Mark Jones & Maurice Hogue

[19] Maurice Hogue’s affidavit was sworn on March 21, 2018, and Mark Jones’ affidavit was sworn on March 22, 2018. Thus, by default, the affidavit evidence was not before the Delegate when the Decision was made. None of the information found in the affidavits is found in the certified tribunal record.

[20] In *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 [“*Association*”], Justice Stratas discussed the different roles of

administrative decision makers and the Court in reviewing those decisions. Justice Stratas confirmed for the Court that the purpose of judicial review is to canvass a review of the certified tribunal record, and not to adjudicate on the basis of further evidence not before the decision maker. As Justice Stratas stated at paragraph 19 of *Association*, "[a]ccordingly, as a general rule, the evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the Board".

[21] At paragraph 20 of *Association*, Justice Stratas set out a list of non-exhaustive potential exceptions where the Court can receive affidavit evidence in a judicial review application. Three such exceptions are:

> (a) Sometimes this Court will receive an affidavit that provides general background in circumstances where that information might assist it in understanding the issues relevant to the judicial review: see, e.g., *Estate of Corinne Kelley v. Canada*, 2011 FC 1335 (CanLII) at paragraphs 26-27*; Armstrong v. Canada (Attorney General)*, 2005 FC 1013 (CanLII) at paragraphs 39-40; *Chopra v. Canada (Treasury Board)* (1999), 1999 CanLII 8044 (FC), 168 F.T.R. 273 at paragraph 9. Care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider. In this case, the applicants invoke this exception for much of the Juliano affidavit.
>
> (b) Sometimes affidavits are necessary to bring to the attention of the judicial review court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, so that the judicial review court can fulfil its role of reviewing for procedural unfairness: e.g, *Keeprite Workers' Independent Union v. Keeprite Products Ltd.* (1980) 1980 CanLII 1877 (ON CA), 29 O.R. (2d) 513 (C.A.). For example, if it were discovered that one of the parties was bribing an administrative decision-maker, evidence of the bribe could be placed before this Court in support of a bias argument.
>
> (c) Sometimes an affidavit is received on judicial review in order to highlight the complete absence of evidence before the

> administrative decision-maker when it made a particular finding: *Keeprite*, supra.

[22] In my assessment, both the Hogue and Jones affidavits are attempts by the Applicant to "bootstrap" his application with evidence that was not before the Delegate. However, I temper this finding with the fact that the Applicant was representing himself.

[23] While the Court has the authority to strike out a non-compliant affidavit, in *Canada (Board of Internal Economy) v Canada (Attorney General)*, 2017 FCA 43 [*Board of Internal Economy*], the Federal Court of Appeal held that the discretion to strike out a non-compliant affidavit must be exercised sparingly and only where it is in the interest of justice to do so. The Court suggested that this discretion was warranted in cases where a party would be materially prejudiced or where not striking an affidavit or portions of it would impair the orderly hearing of the application. At paragraph 29 of the decision, the Federal Court of Appeal reaffirmed that procedural impacts of the nature of a motion to strike an affidavit are "more often than not, needlessly, a decision on the merits".

[24] The Hogue and Jones affidavits speak specifically to the circumstances by which the Applicant filed his tax returns late over the course of a number of years. This information was relevant and was available to file before both of his applications for taxpayer relief. It was evidence that may have influenced the Delegate. The Applicant had ample opportunity to have provided it before the Second Level Review, given that he had already received the first decision arising from the First Level Review.

[25] I will strike out the affidavit of Mark Jones, as that evidence should have been before the Delegate. It would pose significant challenges to judicially review applications if the Court admitted affidavits that should have been in front of the decision maker.

[26] However, paragraphs 5-7 of the affidavit of Maurice Hogue speak to procedural fairness concerns that the Applicant has. While I agree with the Respondent that much of his evidence also should have been before the Delegate, I find that the paragraphs of the Hogue affidavit fall into Justice Stratas' second exception outlined above. Given that finding the Hogue affidavit will be struck except paragraphs 5, 6, 7.

(2) Klopak Affidavit & Memorandum of Fact and Law

[27] The Respondent is correct in asserting that sections of the affidavit that are fundamentally defective should be struck out. While the Court has an obligation to make accommodations for self-represented litigants, this "obligation cannot extend to ignoring rules of evidence" [*Bhatti v Canada (Minister of Citizenship and Immigration)*, 2010 FC 25 at para 18].

[28] On the face of it, the sections and exhibits at issue appear to fall into the categories of hearsay, opinion, argument or evidence that could have been produced and been in front of the Delegate, and thus fall into the jurisprudential categorization of inadmissibility on its face and therefore could be struck. Given the circumstances and the guidance of the Federal Court of Appeal in *Board of Internal Economy* as cited above, I will not strike the paragraphs and exhibits at issue, but will afford the prejudicial paragraphs of the affidavit, exhibits and the Memorandum of Fact and Law no probative weight or value.

B. *Was the Decision of the Delegate Reasonable?*

[29] In answering the question, "was the Decision of the Delegate reasonable?" the crux of the Applicant's argument is that the Applicant did the best he possibly could and for that reason he should have received the relief he sought. The Applicant did not think there was a connection between his late filing and the penalties, and so he felt it was unfair that the lateness of filing returns was the negative factor that the negative decision was rendered on. He argues that the delays arose from circumstances that were not in his control, and were the reason for his late filings.

[30] As the Applicant came forward with a voluntary disclosure in a timely fashion, the Applicant submits that it was unreasonable for the Delegate to not exercise discretion in waiving the penalties. The Applicant specifically points to the CRA's own guidelines in Information Circular IC07 Taxpayer Relief Provisions, which state at paragraph 42, "[t]axpayers who make a valid voluntary disclosure avoid being penalized or prosecuted, but they have to pay the taxes owing and arrears interest".

[31] The Applicant further argues that the original error in the IRS filings was outside of the Applicant's control, and although he did attempt to rectify those filings, he had to rely on KalPet LP to undertake that rectification. Therefore, it was out of his control.

[32] The Applicant did not see the connection between this assessment of penalties and the fact that he had filed tax returns late in the past. The Applicant further states that had there been

better communication from the CRA decision maker, he would have had a better understanding of his obligations, and would have been able to file some of the evidence he has now gathered regarding his circumstances. Additionally, he proposes that his history of compliance for past years is moot, as he is in a completely different tax position now as he was then.

[33] The Applicant submitted that his change of tax status is a windfall for the CRA, and because it is for the benefit of Canada, that he should be given the requested relief. The Applicant argued that this consideration should have been taken into account, and given more weight. The Applicant said that his decision to pay Canadian tax rather than US tax was in order for Canada to receive more taxes. He said this choice was not easy, but it was the right thing to do, and that is why he did it. However, the Applicant asserts that the Delegate focused only on the fact that he had filed previous tax returns late.

[34] Thus, in the Applicant’s submission, the Decision was unreasonable on its face as the Delegate did not make a decision that fell within the range of justifiable, transparent, and intelligible outcomes.

[35] I do not find merit in any of the Applicant`s arguments.

[36] I disagree with how the Applicant now argues that the assessment of his late filings as a factor in assessing penalties is a surprise.

[37] The guidelines give examples of circumstances that may warrant relief from penalties at paragraphs 23 and 25. Paragraph 33 of the guidelines outlines the factors that will be used in arriving at the decision. One of the factors in paragraph 33 is: a) whether the taxpayer has a history of compliance within tax obligations.

[38] It was well within the Applicant's control to file his past tax returns in a timely manner. The Applicant provided no explanation as to why he filed late for all those years to the decision maker.

[39] It is not unreasonable for the Delegate to consider the Applicant's past late filings as a negative factor in assessing whether the Applicant will be given the relief from penalties.

[40] To address the Applicant's other argument (namely, that the penalties arose from circumstances beyond his control), I only need to refer to the examples given in the guidelines:

> 25 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.

[41] The facts here do not remotely fit into any of those extraordinary circumstances categories laid out in paragraph 25 above. Having to obtain a new tax preparer, as is in this case, is not an extraordinary circumstance. In fact, this Court has held that even when it is as a result of accountant error that the penalties were assessed, the Minister is not required to utilize their

discretion to waive penalties (*Babin v Canada (Customs and Revenue Agency)*, 2005 FC 972). The facts before me represent far less of an extraordinary circumstance than an accountant's error, and therefore I find that it does not meet the high bar set out in the guidelines.

[42] I find that the Applicant is a sophisticated individual who represented himself admirably at the hearing. His competence regarding his tax affairs is not an issue that was raised.

[43] Nor does the Applicant not escape penalties because he made a voluntary disclosure. The Federal Court of Appeal in *Sifto Canada Corp. v Canada (Minister of National Revenue)*, 2014 FCA 140 noted at paragraph 5:

> [i]t is common ground that the voluntary disclosure program is a program by which taxpayers are induced to disclose past tax compliance errors in the expectation that if the disclosure is accepted as meeting certain conditions, any penalties that might have been imposed in relation to the errors will be waived.

[44] This assumes, of course, that the voluntary disclosure is accepted to meet certain conditions. If an unfavourable response to the request is received, taxpayers may request a second administrative review. This is clearly what is occurring in this case. Therefore, the Applicant cannot rely on the voluntary disclosures program as a way to escape penalties.

[45] The Applicant's attempt to qualify under the exception that the delay was a result of the CRA's actions also cannot succeed.

[46] While the Applicant claims throughout his Memorandum of Fact and Law that the delay was caused by a lack of response from the CRA, I am not convinced that this is sufficient.

Indeed, the Applicant himself provides other reasons for delay, which include him generally being confused about the Foreign Tax Credit ["FTC"] and having to find a new accountant. As noted by the Taxpayer Relief Officer in the Second Level Review, "[t]he delay in submitting the T1 adjustments does not account for the late filing of the original returns".

[47] In *Parmar v Canada (Attorney General)*, 2018 FC 912 ["*Parmar*"], Justice Kane noted at paragraph 51, that the applicant:

> ... desires and expects fairness. The result of this judicial review will not meet this expectation. The role of this Court is not to determine what is fair, but to determine whether the decision of the Minister's Delegate pursuant to subsection 220(3.1) of the *Income Tax Act* to refuse taxpayer relief is *reasonable* as this term is understood in the realm of administrative law".

[48] Indeed, as Justice Kane further noted at paragraph 58 of *Parmar*, the Court's role is to determine, "whether the Minister's Delegate's decision to refuse to waive the penalty is reasonable, not whether the penalty should have been imposed in the first place".

[49] I am satisfied that the Decision of the Delegate was reasonable and falls well within the range of acceptable outcomes.

C. *Was there a breach of procedural fairness?*

(1) Bias

[50] The Applicant argues that the actions of the CRA are tainted by bias and a lack of procedural fairness. The Applicant submits that the CRA's conduct demonstrates actual bias. He

further asserts that, “this occurrence is not directly related to this case”. The Applicant believes that this is an example of the bias that the CRA has toward tax payers.

[51] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, it was held at paragraph 46 that the test for a reasonable apprehension of bias is:

> 46 The test for reasonable apprehension of bias was set out by de Grandpré J., writing in dissent, in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at p. 394:
>
> > ... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information... [T]hat test is "what would an [page850] informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

[52] The Applicant argued in his written material that the CRA (in the abstract) was biased against him. He specifically noted that in the past he has had limited success in having the CRA reassess his claims, even when he was in the right. The assertion that the CRA gave him a hard time in assessing a past issue cannot stand up to the reasonable apprehension of bias test.

[53] In any case, since the Applicant is taking issue with the bias of the CRA as a whole, rather than with any specific individual, the Applicant should have rightly raised this concern earlier on in the proceeding.

[54] I find that the Applicant has not in the materials established a real or an apprehension of bias on the part of CRA itself, the Delegate, or the Taxpayer Relief Officer in the Winnipeg Tax Centre as there is no evidence to support such a claim.

(2) "Right to be Heard" Argument

[55] The Applicant asserts that the CRA denied the Applicant the opportunity to make further submissions on why he filed late tax returns for a number of years, as the CRA never called him back to tell him of their concerns before making the Decision. The Applicant further asserts that he had specifically asked for the opportunity to address his concerns in a phone call, but that this request was not granted. Thus, he submits that had the CRA called him, he would have provided in his application an explanation for his late filings prior to the Decision being issued. Therefore, he would have provided the evidence to the CRA that he did for this application, which as noted above, I have either struck or given no weight to as it was not before the Delegate.

[56] This submission is simply not borne out by the facts or based on jurisprudence.

[57] The Respondent correctly points to the numerous opportunities that the Applicant had to present his case via written documentation and that there is no right to have the officer call him in advance to discuss his pending decision.

[58] In *Sherry v Canada (Minister of National Revenue)*, 2011 FC 1208, Justice Simpson rejected the argument that an applicant should have an opportunity to comment on the CRA's conclusion before a decision was made. Justice Simpson held that there are no specific rules of

procedural fairness set out in the Act, and that there was no breach of procedural fairness in that case.

[59] No jurisprudence was put forward by the Applicant to suggest that he has a right to make oral submissions on a Second Level Review after already filing written submissions. The onus is on the Applicant to put their best foot forward when applying for the discretionary relief of waiving or cancelling penalties and interest. I therefore do not find any breach of procedural fairness.

[60] In sum, I find that the Decision is reasonable as per the test in *Dunsmuir v New Brunswick*, 2008 SCC 9, falling well within the range of possible, acceptable outcomes on a balance of probabilities and that there was no procedural unfairness. The application is therefore dismissed.

VI. Costs

[61] The Applicant sought costs as did the Respondent. The Respondent filed a Bill of Costs in the amount of $2,203.52.

[62] I will award costs in a lump sum inclusive of fees, taxes and disbursements in the amount of $500.00 to be paid forthright by the Applicant to the Respondent.

JUDGMENT in T-355-18

THIS COURT'S JUDGMENT is that:

1. The style of cause is amending by removing "Canada Revenue Agency" as a Respondent and replacing it with the proper Respondent, "The Attorney General of Canada";
2. Costs in a lump sum inclusive of fees, taxes and disbursements in the amount of $500.00 to be paid forthwith by the Applicant to the Respondent;
3. The application is dismissed.

"Glennys L. McVeigh"
Judge

ANNEX A

Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.))

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.

R**enonciation aux pénalités et aux intérêts**

(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.

IC07-1R1 Taxpayer Relief Provisions
Legislation

8. The legislation gives the CRA the ability to administer the income tax system fairly and reasonably. The CRA does this by helping taxpayers resolve issues that come up through no fault of the taxpayers and by allowing for a common-sense approach in dealing with taxpayers who, because of personal misfortune or circumstances beyond their control, could not comply with a legal requirement for income tax purposes.

Législation

¶ 8. La législation donne à l'ARC la capacité d'administrer le régime fiscal de façon équitable et raisonnable en aidant les contribuables à régler des problèmes qui se présentent indépendamment de leur volonté et en permettant d'adopter une approche raisonnée dans le cas de contribuables qui, en raison de problèmes personnels ou de circonstances hors de leur contrôle, n'ont pas pu satisfaire à une exigence législative aux fins de l'impôt sur le revenu.

Taxpayer relief provisions

9. A taxpayer can ask for relief under the provisions of the act listed in this paragraph. After consideration of the relevant facts and circumstances of a taxpayer's situation, a delegated official of the CRA (see 17) will

Dispositions d'allègement pour les contribuables

¶ 9. Un contribuable peut demander un allègement conformément aux dispositions de la Loi énumérées dans ce paragraphe. Après l'examen des faits et des circonstances

decide whether it is appropriate to do the following:

a. waive or cancel penalties and interest under subsection 220(3.1)

b. extend the filing-due date for making certain elections or grant permission to amend or revoke certain elections under subsection 220(3.2)

c .authorize a refund of tax to an individual (other than a trust) or a graduated-rate estate under paragraph 164(1.5)(a), even though an income tax return is filed beyond the normal three-year period for such a refund

pertinents propres à la situation du contribuable, un fonctionnaire délégué de l'ARC (voir le paragraphe 17) décidera s'il convient de faire ce qui suit :

a) Annuler les pénalités et les intérêts ou y renoncer selon le paragraphe 220(3.1).

b) Proroger le délai prescrit pour produire certains choix ou permettre que certains choix soient modifiés ou annulés selon le paragraphe 220(3.2).

c) Autoriser un remboursement d'impôt à un particulier (autre qu'une fiducie) ou à une succession assujettie à l'imposition à taux progressifs selon l'alinéa 164(1.5)a) même si une déclaration de revenus est produite au-delà de la période normale de trois ans pour un tel remboursement.

Circumstances that may warrant relief from penalties and interest

23. The minister of national revenue may grant relief from penalties and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement:

a. extraordinary circumstances

b. actions of the CRA

c. inability to pay or financial hardship

Situations qui peuvent justifier un allègement des pénalités et des intérêts

¶ 23. Le ministre du Revenu national peut accorder un allègement des pénalités et des intérêts dans les situations suivantes si elles justifient l'incapacité du contribuable à respecter une obligation ou une exigence fiscale :

a) Circonstances exceptionnelles

b) Actions de l'ARC

c) Incapacité de payer ou difficultés financières

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. 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

Circonstances exceptionnelles

¶ 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

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

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 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

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;

f) retards excessifs pour régler une opposition

Inability to pay or financial hardship

27. It may be appropriate, in circumstances where there is a confirmed inability to pay all amounts owing, to consider waiving or cancelling all or part of the interest, to enable taxpayers to pay their debt. For example:

a.when collection has been suspended due to an inability to pay and substantial interest applies to the outstanding amount

b.when a taxpayer's demonstrated ability to pay requires an extended payment arrangement, consideration may be given to cancelling all or part of the interest for the period from when payments start until the amounts owing are paid, as long as the agreed payments are made on time and compliance with the act is maintained

c.when payment of the accumulated interest would cause a prolonged inability to provide basic necessities (financial hardship) such as food, medical care, transportation, or accommodation

d.when a taxpayer cannot make a reasonable payment arrangement because the interest charges would absorb a significant portion of the payments, cancelling all or part of the interest for the period from when payments start until the amounts owing are paid may be considered, as long as the agreed payments are made on time and compliance with the act is maintained

Factors used in arriving at the decision

33. Where circumstances beyond a taxpayer's 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

ou un appel ou pour faire une vérification.

Incapacité de payer ou difficultés financières

¶ 27. Il peut être indiqué, lorsqu'une incapacité de payer tous les montants dus est confirmée, d'envisager d'annuler les intérêts ou d'y renoncer, en tout ou en partie, pour permettre à un contribuable de payer sa dette. Par exemple, lorsque :

a) des mesures de recouvrement ont été suspendues à cause de l'incapacité de payer et qu'un montant considérable d'intérêts est dû;

b) la capacité de payer démontrée d'un contribuable exige une entente de paiement prolongée, on peut envisager l'annulation des intérêts, en tout ou en partie, pour la période allant du début des paiements jusqu'à ce que le solde soit payé, à condition que les paiements convenus soient faits à temps et que le contribuable continue de respecter la Loi;

c) le paiement des intérêts accumulés cause une incapacité prolongée (difficultés financières) à subvenir aux besoins essentiels de nourriture, de soins médicaux, de transport, ou de logement; d) un contribuable n'est pas en mesure de conclure une entente de paiement raisonnable parce que les frais d'intérêts absorbent une partie importante des paiements, on peut envisager l'annulation des intérêts, en tout ou en partie, pour la période allant du début des paiements jusqu'à ce que le solde soit payé, à condition que les paiements convenus soient faits à temps et que le contribuable continue de respecter la Loi.

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,

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

Special consideration due to extraordinary events

34. When an extraordinary event (for example, natural disaster) has prevented many taxpayers from meeting their tax obligations, the minister may issue a news release to announce that special consideration will be given to providing relief, such as a waiver or cancellation of penalty and interest charges on late tax remittances or late filing of a return. In such cases, taxpayers need to ask to get relief. CRA news releases on extraordinary events that qualify for relief can be found at canada.ca/en/news/advanced-news-search/news-results.

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.

Considération particulière en raison d’événements exceptionnels

34. Lorsqu’un événement exceptionnel (par exemple, une catastrophe naturelle) a empêché un grand nombre de contribuables de respecter leurs obligations fiscales, le ministre peut annoncer par voie de communiqué de presse qu’une considération particulière sera accordée à un allègement, tel que l’annulation ou la renonciation des pénalités et des intérêts résultant de paiements d’impôt ou de déclarations tardifs. Dans de tels cas, les contribuables doivent faire une demande pour obtenir un allègement. Les communiqués de presse de l’ARC au sujet des événements exceptionnels qui pourraient donner lieu à un allègement se trouvent à canada.ca/fr/agence-revenu/nouvelles/sallepresse/communiques-presse.

FEDERAL COURT

SOLICITORS OF RECORD

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