Dockets: 2012-1020(IT)G
2012-1921(IT)G
2012-4808(IT)G

BETWEEN:

RIO TINTO ALCAN INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on September 26, 27, 28 and 29, 2016 at Montréal, Quebec and October 6 and 7, 2016 at Toronto, Ontario.

Before: The Honourable Justice Johanne D'Auray

Appearances:

Counsel for the Applicant:	Yves St-Cyr
Counsel for the Respondent:	Nathalie Labbé Amelia Fink

ORDER

UPON application by the applicant, notice of which was filed on June 5, 2015, under section 58 of the *Tax Court of Canada Rules (General Procedure)* for:

A. An order declaring invalid the assessments issued to the applicant for the taxation years ending December 31, 2006, October 31, 2007, and December 31, 2007, (Appeal Books 2012-1020(IT)G, 2012-4808(IT)G and 2012-1921(IT)G) in respect of the expenditures and investment tax credits claimed by the applicant for scientific research and experimental development relating to the activities of Aluminerie Alouette inc., which were arbitrarily disallowed by the Canada Revenue Agency.

B. An order declaring invalid in part the assessment issued to the applicant on April 19, 2013, and October 3, 2013, respectively, for the taxation years ending December 31, 2006, (Appeal Book 2012-1020(IT)G) and October 31, 2007, (Appeal Book 2012-4808(IT)G), on the ground that they were made outside the "normal reassessment period."

GIVEN the written submissions of the respondent, who objects to the application;

AND after having heard the parties;

The application is dismissed with costs.

Signed at Ottawa, Canada, this 26th day of April, 2017.

"Johanne D'Auray"

D'Auray J.

Translation certified true

on this 17th day of May 2018.

Francois Brunet, Revisor

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Glossary

Abbreviations:

AAI	Aluminerie Alouette inc.
EP	Experimental production
FAPI	Foreign accrual property income
FR	Financial Reviewer
ITCs	Investment tax credits
ITRD	Income Tax Rulings Directorate
Montréal TSO	Montréal Tax Services Office
NCLs	Non-capital losses
Québec TSO	Québec Tax Services Office
RTA	Research and Technology Advisor
RTA	Rio Tinto Alcan Inc.
SR&ED	Scientific research and experimental development

Participants :

RTA	Mr. Paradis, Vice President, Taxation, RTA
AAI	Mr. Nadeau, Director of Financial Services, AAI
	Hugo Lévesque, Superintendent of Technology Development
	Mr. De Luca, Deloitte Chartered Accountant representing AAI
	Ms. Bibeau, Novafisc, contract employee, assists in preparing AAI applications relating to SR&ED expenditures
Montréal TSO	Ms. Martin, FR
Québec TSO	Mr. Fournier, FR
	Mr. Dufour, RTA
	Yvan Marceau, Assistant Director, SR&ED Division

Table of Important Dates

2006			
Question A	Initial Assessment	Reassessment	End of the Normal Reassessment Period
	August 3, 2007	July 14, 2011	August 3, 2011

Question B			Extended period assessment 152(4.01)
		April 19, 2013	August 3, 2014

Year ending October 31, 2007			
Question A	Initial Assessment	Reassessment	End of the Normal Reassessment Period
	May 12, 2008	September 22, 2011[1]	May 12, 2012
		November 2, 2011	
		May 11, 2012[2]	

Question B			Extended period assessment 152(4.01)
		September 3, 2013	August 3, 2014
		October 3, 2013	

Year ending December 31, 2007			
Question A	Initial Assessment	Reassessment	End of the Normal Reassessment Period
	August 6, 2008	November 10, 2011	August 6, 2012
		August 3, 2012	

For Question A, in my reasons, I made reference to the September 22, 2011, reassessment for the year ending October 31, 2007, as did the parties in their respective factums.
For Question B, I made reference to the May 11, 2012, reassessment, as did the parties in their respective factums.

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[1] The September 22 reassessment disallowed for the first time the AAI SR&ED expenditures and ITCs claimed by RTA.

[2] The May 11, 2012, reassessment disallowed for the first time expenditures relating to the Novelis spin off.

Citation: 2017 TCC 67
Date: 20170426
Dockets: 2012-1020(IT)G
2012-1921(IT)G
2012-4808(IT)G

BETWEEN:

RIO TINTO ALCAN INC.,

Applicant,

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HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

D'Auray J.

QUESTION A

[1] The first issue raised by Rio Tinto Alcan Inc. ("RTA") before this Court, under section 58 of the *Tax Court of Canada Rules*,[3] can be formulated as follows:

> Did the *Income Tax Act*[4] (the "ITA") authorize the Minister of National Revenue (the "Minister")[5] to make reassessments – on July 14, 2011, for the taxation year ending December 31, 2006, September 22, 2011 for the taxation year ending October 31, 2007, and on November 10, 2011, for the taxation year ending December 31, 2007, – disallowing the expenditures for scientific research and experimental development ("SR&ED") and the investment tax credits ("ITCs") claimed by the applicant in respect of Aluminerie Alouette inc.'s activities, without first having examined the facts

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3 *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a.

4 RSC 1985, c. 1 (5th Suppl.).

5 Although the feminine is used, it includes the masculine gender, depending on the period in which the assessments were made.

relating to the applicant in order to determine its liability for tax and without having assessed the amount of tax payable based on such a determination?

[2] In the negative, are the reassessments valid with respect to the SR&ED expenditures and the ITCs disallowed for the Period?

I. **BACKGROUND**

[3] RTA is part of a consortium that owns Aluminerie Alouette inc. ("AAI").

[4] AAI was incorporated in 1989 to manage and operate an aluminum smelter in Sept-Îles, Quebec.

[5] During the periods at issue, the AAI consortium included five co-owners: RTA (40%), Aluminium Austria Metall (Quebec) inc. (20%), Société en commandite Hydro Aluminium Canada (20%), Albecour Inc. (13.33%) and Marubeni Métaux & Minéraux (Canada) Inc. (6.67%).

[6] AAI conducts research and development activities on behalf of its co-owners.

[7] Under the agreement between the co-owners of AAI, the inputs and aluminum produced by AAI remain the property of the co-owners, based on the percentage of their respective ownership. Also under this agreement, expenditures incurred by AAI in connection with SR&ED work and ITCs are claimed by each co-owner based on the percentage of their ownership.

[8] During the years at issue, the 2006 taxation year, the taxation year ending October 31, 2007, and the taxation year ending December 31, 2007 (I will refer to "2007" for both years ending in 2007), RTA claimed the deduction for expenditures relating to its own research activities ("SR&ED expenditures specific to RTA"). RTA also claimed for 2006 and 2007, as a co-owner of AAI, its share of SR&ED expenditures and ITCs relating to research activities undertaken by AAI.

[9] With the exception of RTA, all AAI co-owners were under the Québec Tax Services Office's ("TSO") jurisdiction. The RTA file was handled by the Montréal TSO. As a result, the Montréal TSO processed all RTA tax affairs, including the financial and technological assessment of SR&ED projects specific to RTA.

[10] However, because AAI was under the Québec TSO's jurisdiction, that office had to determine whether SR&ED activities undertaken by AAI were SR&ED activities within the meaning of section 248 of the ITA.

[11] Typically, SR&ED project audits include a technical review and a financial review. The technical review involves determining whether the claimed work meets the definition of SR&ED in subsection 248(1) of the ITA and resolving resolve any issues regarding the eligibility of the expenditures for which the deduction is claimed.

[12] Hélène Martin was one of the persons at the Canada Revenue Agency ("CRA") who was involved in that issue. As a Financial Reviewer ("FR") at the Montréal TSO, Ms. Martin was responsible for ensuring that expenditures for which the deduction was claimed by RTA were related to SR&ED and were therefore eligible.

[13] Marc Fournier was the FR at the Québec TSO and Martin Dufour was the RTA. The Québec TSO was to make reassessments for all AAI co-owners except RTA.

[14] Each year at issue, RTA filed several amended income tax returns with the CRA, which were all accepted.

[15] For 2006 and 2007, the Montréal TSO completed the RTA audit before the Québec TSO completed the audit of AAI's SR&ED expenditures. As she had done for 2003 to 2005, Ms. Martin asked RTA to sign waivers for 2006 and 2007 to allow the Québec TSO to complete the AAI audit. The waivers prepared by Ms. Martin proposed to disallow the expenditures claimed by RTA regarding AAI's SR&ED expenditures. Although RTA agreed to sign Ms. Martin's waivers for 2003 to 2005, AAI's new representative, Mr. De Luca, from Deloitte, refused to sign them on behalf of RTA, for 2006 and 2007. According to Mr. De Luca, there was no advantage for RTA to sign waivers under which AAI's SR&ED expenditures were disallowed. The waivers prepared by Ms. Martin required RTA to file notices of objection.

[16] However, Mr. De Luca told Ms. Martin he was prepared to sign waivers for 2006 and 2007. AAI's SR&ED expenditures and ITCs having already been allowed by the Minister, the waivers would have allowed the normal reassessment period to be suspended. As soon as the Québec TSO completed its AAI audit, Ms. Martin could have made reassessments on the basis of the audit results.

[17] Ms. Martin was of the view that the waivers that she had prepared conformed with the Act. Thus, wanting to give effect to the agreement that she had entered into with RTA regarding SR&ED expenditures specific to RTA, she made reassessments for 2006 and 2007 reflecting the terms and conditions of the agreement. However, she disallowed the portion of AAI's SR&ED expenditures and ITCs claimed by RTA. That said, Ms. Martin had indicated that RTA would be reassessed as soon as the Québec TSO had completed the RTA audit for 2006 and 2007.

[18] RTA filed notices of objection against the reassessments for 2006 and 2007. However, RTA filed an appeal for each year at issue after the expiration of 90 days from the day the notices of objection were sent, pursuant to paragraph 169(1)(b) of the ITA. When RTA filed the notices of appeal, the Québec TSO had not completed its AAI audit.

[19] The respondent indicated in her factum and reiterated at the hearing that the Minister was prepared to consent to judgment. In this regard, the Minister offered RTA the same tax treatment as the Québec TSO gave to AAI's other co-owners regarding SR&ED expenditures and ITCs for 2006 and 2007.[6]

II. **HISTORY OF ASSESSMENTS FOR THE PERIOD AT ISSUE**

A. **2006**

[20] For the 2006 taxation year, the Minister issued an initial assessment to RTA, notice of which was dated August 3, 2007.

[21] The period established for issuing reassessments to RTA – commonly called the "normal reassessment period" – expired on August 3, 2011.

[22] By notice of assessment dated July 14, 2011, the Minister made a reassessment which disallowed the AAI SR&ED expenditures and ITCs claimed by RTA for the 2006 taxation year. This reassessment also allowed the SR&ED expenditures and ITCs specific to RTA.

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[6] The other co-owners had signed waivers prepared by the Québec TSO. The purpose of the waivers was to keep 2006 and 2007 open to allow the Québec TSO to complete the AAI audit. In the light of these waivers, the SR&ED expenditures and ITCs were not disallowed.

B. **Year ending October 31, 2007**

[23] For the taxation year ending October 31, 2007, the Minister made an initial assessment, notice of which was dated May 12, 2008.

[24] The normal reassessment period expired on May 12, 2012.

[25] By notice of assessment dated September 22, 2011, the Minister made a reassessment which disallowed the AAI SR&ED expenditures and ITCs claimed by RTA for the taxation year ending October 31, 2007. This reassessment also allowed the SR&ED expenditures and ITCs specific to RTA.

C. **Year ending December 31, 2007**

[26] For the taxation year ending December 31, 2007, the Minister made an initial assessment, notice of which was dated August 6, 2008.

[27] The normal reassessment period expired on August 6, 2012.

[28] By notice of assessment dated November 10, 2011, the Minister made a reassessment which disallowed the AAI SR&ED expenditures and ITCs claimed by RTA for the taxation year ending December 31, 2007. This reassessment also allowed the SR&ED expenditures and ITCs specific to RTA.

III. **POSITIONS OF THE PARTIES**

A. **RTA**

[29] RTA submits that the reassessments are not valid. In this regard, RTA argued that according to subsection 152(1) of the ITA, the Minister must do three things:

> The Minister shall, with all due dispatch,
>
> - examine a taxpayer's return of income for a taxation year,
> - assess the tax for the year, the interest and penalties, if any, payable and
> - determine
>
> a) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or

> b) the amount of tax, if any, deemed by subsection . . . to be paid on account of the taxpayer's tax payable under this Part for the year.
>
> [Emphasis added.]

[30] RTA submits that the Minister acting through its agent, Ms. Martin, did not meet the requirements set out in subsection 152(1) of the ITA.

[31] RTA submits that for the 2006 and 2007 taxation years, the Minister arbitrarily disallowed the SR&ED expenditures and ITCs that it claimed as a co-owner of AAI. According to RTA, when the reassessments were made, the Québec TSO officials had not initiated any audit or audit process of AAI SR&ED expenditures.

[32] RTA submits that, even if the Court were to decide that the audit process regarding AAI's SR&ED activities for the years at issue had commenced, which RTA denies, Ms. Martin can not claim that she knew the audit was underway and that AAI was not cooperating, because there is no contemporaneous evidence that shows Ms. Martin was aware that the audit process was underway and that there was an alleged lack of cooperation on the part of AAI.

[33] RTA argues that Ms. Martin had no knowledge of AAI's SR&ED activities. Thus, when the reassessments were made for 2006 and 2007, she had no factual basis upon which to make reassessments. According to RTA, a taxpayer is entitled to know the basis of an assessment, that is, the factual basis upon which the Minister made it.

[34] RTA also argues that it offered Ms. Martin waivers for 2006 and 2007 regarding AAI's SR&ED and ITCs. Ms. Martin refused to accept such waivers and made reassessments that disallowed the deduction for AAI's SR&ED expenditures claimed by RTA, without any review by the Québec TSO or her, and without having relied on any facts.

[35] RTA submits that these breaches by the Minister are substantial (procedural) defects in substance, not simple technicalities. Consequently, RTA argues that the saving provisions that validate the assessments despite certain errors, i.e. subsections 152(3) and 152(8) as well as section 166 of the ITA, do not apply in this case because these provisions cannot be used to correct palpable or overriding errors.

[36] RTA is asking this Court to refer the reassessments to the Minister for reassessment to have the AAI SR&ED expenditures and ITCs claimed by RTA allowed.

B. **Respondent**

[37] The respondent argues that subsection 152(4) of the ITA applied in this case, because the dispute pertains to reassessments. According to the respondent, the procedural requirements of subsection 152(4) were satisfied by the Minister. As a result, the reassessments are valid.

[38] The respondent submits that if RTA's position waiss correct, and that it is subsection 152(1) of the ITA that applies in this case, the Minister satisfied the procedural requirements of subsection 152(1). As a result, the reassessments are valid. At any rate, the respondent submits that if the procedural requirements under subsection 152(1) were not satisfied, the saving provisions under subsections 152(3) and 152(8) and under section 166 of the ITA deem the reassessments for 2006 and 2007 valid.

[39] The respondent submits that the evidence showed that the AAI audit process performed by the Québec TSO was initiated on February 10, 2009, well before the Minister made the reassessments in 2011.

[40] In addition, the respondent argues that the documentary evidence clearly establishes the lack of cooperation on the part of AAI's representatives. Many requests for information and documents for 2006 and 2007 were sent to AAI, and most of these requests were left unanswered.

[41] The respondent also argues that, at the hearing, it was shown that Ms. Martin knew that the review was underway, and furthermore, the absence of cooperation on the part of AAI was reported by Mr. Fournier to Ms. Martin during their discussions.

[42] Also, the respondent submits that Ms. Martin could not be criticized for not understanding the waiver procedure.

IV. **ANALYSIS**

[43] It is important to reiterate that the issue raised by the application before me concerns the validity of the reassessments, not their correctness.

[44] Thus, throughout my analysis, I will take into account the distinction between the validity of an assessment – that is to say the procedural process leading to the assessment – and the correctness of an assessment – which involves the amount of tax determined in accordance with the applicable provisions of the ITA, correctly interpreted and applied to the relevant facts. I have attached to Appendix A of these reasons, the relevant provisions.

[45] At the beginning of her arguments, the respondent submitted that it was subsection 152(4) of the ITA that apply in this case because the assessments at issue were reassessments and not initial assessments referred to in subsection 152(1). That said, the respondent's oral argument primarily bore on subsection 152(1) in response to RTA's argument, to the effect that subsection 152(1) applies in this case.

[46] In any event, according to the respondent, if the procedural requirements set out in subsection 152(1) of the ITA are met, it follows that the procedural requirements under subsection 152(4) are met as well.

[47] I will therefore commence by examining RTA's argument and determine whether the reassessments are valid under subsection 152(1) of the ITA. To do this, I will determine whether the Minister has met the procedural requirements under subsection 152(1).

[48] I will also determine whether, as the respondent argued, subsection 152(4) of the ITA applies in this case, not subsection 152(1).

[49] I will also review the saving provisions in subsections 152(3) and 152(8) and under section 166 of the ITA to determine whether they apply in this case, and thus whether the reassessments are deemed valid.

A. **SUBSECTION 152(1) – Validity of the reassessments**

[50] Subsection 152(1) provides as follows:

> 152 (1) The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine
>
> > (a) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or

> (b) the amount of tax, if any, deemed, by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 122.8(2) or (3), 122.9(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.
>
> [Emphasis added.]

[51] According to this subsection, the Minister must do three things or fulfill three obligations with all due dispatch. The Minister shall, with all due dispatch, examine the taxpayer's return of income, assess the tax and determine under paragraph (a) of that subsection the amount of refund or, under paragraph (b), the amount of tax deemed to be paid.

1) Was the review of the tax returns underway before the reassessments were made, notices of which were dated July 14, 2011, for 2006, September 22, 2011, for the year ending October 31, 2007, and November 10, 2011, for the year ending December 31, 2007, in accordance with subsection 152(1) of the ITA?

[52] During the hearing of the application, the parties spent a great deal of time on whether the Québec TSO had initiated the AAI audit process when RTA was reassessed as a co-owner of AAI.

[53] The importance of knowing whether an examination was underway arises from the duty to examine the return of income described in subsection 152(1) of the ITA, which provides that the "Minister shall, with all due dispatch, examine a taxpayer's return of income."[7]

[54] RTA argues that the Québec TSO had not initiated an audit when the Minister made the reassessments.

[55] For her part, the respondent argues that the AAI examination process had been underway since February 10, 2009, well before the reassessments were made. The respondent also argues that AAI did not send the Québec TSO the information and documents required, which would have allowed the audit to move forward.

[56] The Québec TSO's examinations of the AAI SR&ED expenditures for 2003 to 2005 and 2006 and 2007 overlapped. Thus, a reading of the documents shows

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[7] The parties did not discuss whether there is a distinction between an examination of a tax return and an audit.

that the requests for information and documents for 2006 and 2007 were often mixed in with requests for information and documents for 2003, 2004 and 2005.

[57] On this subject, RTA argues that the Minister had not commenced the 2006 and 2007 audit because all the requests for information and documents sent to AAI before July 8, 2011, by the Québec TSO representatives, regarding 2006 and 2007 were sent as part of the 2003 to 2005 audit, which sought to determine the use of the equipment for 2003 to 2005, and not as part of the 2006 and 2007 audit.

[58] RTA also argues that the Québec TSO representatives had agreed, on October 7, 2009, to complete the 2003 and 2005 audit with respect to AAI's research activities, before initiating the 2006 and 2007 audit.

[59] RTA also submits that by way of a letter dated July 8, 2011, addressed to Mr. Nadeau, Director of Financial Services at AAI, Yvan Marceau, Assistant Director, SR&ED Division of the Québec TSO, announced that the examination for 2006 and 2007 would commence in the fall of 2011. According to RTA, the July 8, 2011, letter is consistent with the timeline because in June 2011 the Québec TSO closed the AAI SR&ED files for 2003 to 2005.

[60] According to RTA, with respect to the documentary evidence, it is obvious that when the reassessments were made for 2006 and 2007, the audit of AAI's SR&ED expenditures had not commenced. As a result, the reassessments are arbitrary because the Minister did not conduct any examination and did not have a factual basis for disallowing the deduction for AAI's SR&ED expenditures.

[61] However, RTA only referred to the documentary evidence that favoured it. The evidence as a whole shows that Mr. Dufour and Mr. Fournier of the Québec TSO sent AAI several requests to obtain information or documents relating to 2006 and 2007, starting in 2009, which was well before the reassessments were issued to RTA that disallowed AAI SR&ED expenditures and ITCs.

[62] On February 10, 2009, Mr. Dufour first wrote Mr. Nadeau of AAI to reiterate that at the November 21, 2008, meeting, he had indicated that the information to be provided needed to cover the 2006 and 2007 financial years.

[63] On February 11, 2009, Mr. Fournier wrote AAI to indicate *that 2006 and 2007 should be added to the audit period. To this end, we need to obtain the basis of calculation used to prepare the SR and E[D] claims for both [of those] years.*

[64] On May 20, 2009, Mr. Dufour confirmed in an email to AAI *that at the November 21, 2008, meeting, he had discussed [that] the new information also had to cover the 2006 and 2007 financial years, inter alia to more clearly establish the use of the equipment requested*. In that regard, many of Mr. Fournier's and/or Mr. Dufour's communications ask AAI, using this wording, to provide documents or information for 2006 and 2007. Mr. Fournier testified that the information requested for 2006 and 2007 was not related solely to the use of the equipment for 2003 to 2005, which is why the words "inter alia" were used.

[65] On May 21, 2009, Mr. Fournier asked Mr. Nadeau for information on the basis of calculation and worksheets for the SR&ED expenditures for 2006 and 2007. On July 3, 2009, Mr. Fournier reminded Mr. Nadeau that he still had not received the information requested in his May 21, 2009 email.

[66] In addition, in a letter dated July 27, 2009, Mr. Fournier asked Marie Bibeau from Novafisc, an AAI contract employee, to send him documents relating to SR&ED expenditures incurred by AAI for 2006 and 2007. We should mention that Mr. Nadeau from AAI was aware of that correspondence, having received a true copy of the letter dated July 27, 2009.

[67] Several information requests from Mr. Fournier or Mr. Dufour addressed to AAI, made throughout 2010, were clearly solely for 2006 and 2007. Moreover, Ms. Bibeau provided Mr. Fournier with some documents regarding only 2006 and 2007 claims for AAI's SR&ED expenditures.

[68] RTA also argues that Québec TSO representatives, including Mr. Fournier and Mr. Dufour, agreed, on October 7, 2009, to allow AAI to start by sending the documents for 2003, 2004 and 2005 and that the documents for 2006 and 2007 were to be forwarded subsequently. According to RTA, the Québec TSO had agreed to suspend the delivery of documents. The letter dated October 7, 2009, stated the following:

> The CRA agrees to allow AAI to begin by working on preparing and sending the supporting documentation for the file on the 2003, 2004 and 2005 financial years. The supplementary information relating to 2006 and 2007 will the sent to the CRA subsequently, as soon as possible.

[69] During Mr. Fournier's testimony regarding the letter dated October 7, 2009, he said the Québec TSO's intention was that the documents for 2003 to 2005 be sent immediately and that the documents for 2006 and 2007 were to be sent subsequently, as soon as possible. In that regard, Hugo Lévesque, Superintendent

of Technology Development at AAI, had indicated that he needed four to six months to prepare the 2006 and 2007 technical documents. According to Mr. Fournier, the audits for 2003 to 2005 and 2006 and 2007 were being conducted at the same time.

[70] The evidence corroborates Mr. Fournier's testimony because, following the letter dated October 7, 2009, Ms. Bibeau of Novafisc sent Mr. Fournier documents on November 10, 2009, specifically regarding 2006 and 2007.

[71] In a November 2, 2010, email to Mr. Dufour, Mr. Nadeau from AAI offered to personally deliver the information to him relating to 2006 and 2008 (2008 was added to the audit, but this year is not in dispute) at a meeting whose date was not yet determined.

[72] Subsequently, Mr. Nadeau confirmed that AAI was garnering the documents requested for 2006 to 2008 and specified that the information would be sent in late January 2011.

[73] However, on February 18, 2011, in response to Mr. Fournier's February 15, 2011, email, which pointed out that AAI had to comply with the July 19, 2010, request for documents for 2006 to 2008, Mr. Nadeau wrote the following to Mr. Fournier:

> [TRANSLATION] For the time being, I cannot confirm a 2006+ meeting because our (Alouette) actions will be different depending on whether the answer is positive or negative for 2003–2005. . . .
>
> Of course, if you provide us with the confirmation that 2003–2005 is approved, the meeting (possibly a one-day meeting) will be planned very quickly between you, Deloitte and Alouette.

[74] Following the February 18, 2011, email, there was a conference call on February 21, 2011, between Mr. Nadeau, Mr. Fournier and Mr. Dufour. During that conference call, Mr. Fournier and Mr. Dufour sent him their findings regarding AAI's SR&ED activities for 2003 to 2005. These findings were not favourable to AAI because the experimental production ("EP") was largely disallowed.

[75] In the light of these results, Mr. Nadeau indicated that the documents that AAI had prepared to support the 2006 to 2008 claims were "very similar to those presented for the 2003 to 2005 financial years," and that he wanted to review the findings of the technical examination report for 2003 to 2005 before sending the

documents for 2006 to 2008. The Québec TSO finalized the technical report for 2003 to 2005 on March 31, 2011.

[76] On July 8, 2011, AAI had not sent the documents for 2006 to 2008 to the Québec TSO.

[77] On this date, July 8, 2011, Mr. Fournier's and Mr. Dufour's manager, Yvan Marceau, sent a form letter to Mr. Nadeau at AAI. In that letter, Mr. Marceau explained the SR&ED program administered by the CRA. Mr. Marceau indicated the following:

> [TRANSLATION] Here is a list of the stakeholders involved in the examination of your request and the dates of the planned agenda:
>
> Canada Revenue Agency (CRA) representatives
>
> Research and Technology Advisors (RTAs)
>
> - Martin Dufour;
>
> - Véronique Lambert.
>
> Financial Reviewer (FR)
>
> - Marc Fournier.
>
> Proposed schedule:
>
> Start of examination: Fall 2011
>
> Closure of the file: Summer 2012

[78] RTA argued that that letter, dated July 8, 2011, proved that the audit was not underway when the reassessments were made for 2006 and 2007.

[79] Mr. Fournier from the Québec TSO explained that that form letter is generally sent to the taxpayer before the examination is initiated to inform the taxpayer of the dates and steps involved in the CRA examination process. However, that form letter is not generally sent in situations such as the one in this case, i.e. when previous years are already being audited. That is why Mr. Dufour and he did not send a similar letter at the start of the 2006 and 2007 audit, at the time when the first information request were sent in 2009. Such a letter was not necessary because all the players and issues were already known.

[80] However, Mr. Fournier indicated that the July 8, 2011, letter had been sent to AAI to reduce tensions between the AAI representatives and the Québec TSO representatives, and that the letter was a "courteous way to re-initiate the audit." The tensions arose from Québec TSO's findings that only part of the EP would be allowed for 2003, 2004 and 2005. As for the Québec TSO, after having sent AAI several requests for documents, Mr. Fournier and Mr. Dufour were told for the first time that AAI would not provide the documents needed to continue the 2006 and 2007 audit.

[81] RTA submits that the July 8, 2011, letter marked the start of the AAI examination for 2006 and 2007. I disagree. While I do not understand why Mr. Marceau from the CRA chose to send this form letter to AAI, I cannot depend only on the July 8, 2011, letter to determine whether the AAI examination was underway. The evidence as a whole does not raise any doubts; the 2006 and 2007 examination process was underway well before the Minister made the reassessments. Also, in the light of the evidence, AAI cannot claim that it did not know that the 2006 and 2007 examination was underway. The emails from the AAI representatives, including those sent by Mr. Nadeau, clearly show the opposite.

[82] I have only given a few examples of emails, but the evidence as a whole, including discussions, correspondence and emails, shows that the examination process was underway before the reassessments for 2006 were made on July 14, 2011. Upon reading all the documents, one sees that AAI indicated throughout the examination process that it would provide the CRA with the documents for 2006 and 2007, but never did.

[83] In this regard, Mr. Nadeau set conditions for the first time, on February 18, 2011, for providing the documents for 2006 and 2007, whereas his November 2, 2010, email indicated that he would deliver the documents for 2006 and 2007 at the next meeting, in accordance with the Québec TSO's request dated July 19, 2010. According to Mr. Nadeau's February 18, 2011, email, the meeting for 2006 and 2007, (and consequently the delivery of documents for these years) now depended on the findings for 2003 to 2005.

[84] In the light of these facts, I find that the examination of AAI's SR&ED expenditures for 2006 and 2007 was underway before the Minister made the reassessments. More than two years had elapsed since the first information requests were sent in February 2009, and the reassessment for 2006 was made on

July 14, 2011. On July 14, 2011, AAI had not provided most of the documents requested.

[85] I also find that by failing to deliver the documents required by the Québec TSO, AAI's conduct only delayed the Québec TSO representatives' work to determine whether AAI's activities were, indeed, SR&ED activities within the meaning of section 248 of the ITA, with respect to 2006 and 2007.

2) Reassessments for 2006 and 2007 issued by the Minister

[86] To understand the reassessments made on July 14, 2011 for 2006, on September 22, 2011, for the year ending October 31, 2007, and on November 10, 2011, for the year ending December 31, 2007, an overview of the reassessments made for the 2003, 2004 and 2005 taxation years is required.

[87] Ms. Martin has been employed with the CRA since 1992 where she has been active in the field of SR&ED for 23 years. She started working on the RTA file as an FR in 2003. She was responsible for the RTA file from 2003 to 2013. Her role was to examine SR&ED expenditures that RTA claimed as deductions. She worked with the Montréal TSO RTA, which was responsible for technology issues.

[88] However, as I have already indicated, because RTA, as a co-owner of AAI, claimed its share of AAI's SR&ED expenditures, and AAI taxation matters were handled by the Québec TSO, AAI expenditures were audited by Mr. Fournier, as the FR, and technology issues were handled by Mr. Dufour, as the RTA. Ms. Martin therefore had to include the result of the AAI audit in the RTA reassessments.

[89] That said, it was Ms. Martin who made the decisions, including those regarding waivers made by RTA, and, according to the evidence, Ms. Martin ensured that RTA was reassessed for 2006 and 2007.

[90] Thus, Ms. Martin, as the FR, examined the SR&ED expenditures specific to RTA for the 2003, 2004 and 2005 taxation years. Consequently, RTA and the CRA entered into agreements on October 7, 2008, for the 2003, 2004 and 2005 taxation years regarding SR&ED expenditures specific to RTA. However, the Québec TSO had not completed its AAI audit for 2003 to 2005.

[91] Ms. Martin, therefore, proposed a solution to RTA that would give effect to the agreement entered into regarding the SR&ED expenditures and ITCs specific

to RTA while keeping 2003 to 2005 open for purposes of reassessments, once the AAI audit was completed. RTA would sign a waiver for 2003 to 2005 regarding AAI's SR&ED expenditures and ITCs. Thus, as soon as the Québec TSO had completed its AAI audit, she would make reassessments in accordance with the audit results. However, all AAI SR&ED expenditures and ITCs claimed by RTA would be disallowed for the time being pending the findings of the Québec TSO. According to Ms. Martin, this approach protected the Minister's interests. Ms. Martin was more comfortable with this approach because Mr. Fournier from the Québec TSO had informed her that several "things" claimed by AAI for the 2003 to 2005 taxation years would not be allowed.

[92] Ms. Martin therefore entered into an agreement with RTA. Regarding AAI's SR&ED expenditures and ITCs, RTA agreed to waive the normal reassessment period for the 2003, 2004 and 2005 taxation years. Thus, Ms. Martin could make reassessments whereby SR&ED expenditures specific to RTA would be allowed for 2003, 2004 and 2005, and the AAI SR&ED expenditures and ITCs claimed by RTA would be disallowed.

[93] Consequently, on October 1, 2008, Mr. Paradis from RTA signed waivers for the normal reassessment period for 2003, 2004 and 2005.

[94] The language of the waivers produced by RTA clearly illustrates the process followed by Ms. Martin and her understanding of the waivers:

> SR&ED expenditures and ITC relatively to the Aluminerie Alouette in which Rio Tinto Alcan […] has a participation. When Rio Tinto Alcan's SR&ED claim for [2003-2004-] 2005 was closed, all expenditures and credit from Alouette had been refused because the audit done by the Québec was not finished. In order to close our file, we have agreed to [refuse] everything for Alouette and when a settlement is reached between CRA's Québec office and Aluminerie Alouette, the taxpayer will be able to reopen the year [2003-2004-] 2005 SR&ED claim ONLY to claim the Alouette portion allowed following the settlement.
>
> [Emphasis added.]

[95] According to Ms. Martin, the waiver mechanism worked as follows: even if a taxpayer waived the time limit in order to allow the Minister to make a reassessment after the normal reassessment period, the Minister had to disallow the deductions claimed by the taxpayer.

[96] On June 13, 2011, the Québec TSO completed the audit of AAI's SR&ED expenditures and ITCs for the 2003, 2004 and 2005 taxation years.

[97] As a result, the Minister reassessed RTA in order to allow part of the AAI SR&ED expenditures and ITCs claimed by RTA, in accordance with the Québec TSO audit results. The reassessments were made on August 6, 2012, for the 2003 taxation year, August 22, 2012, for the 2004 taxation year and November 19, 2012, for the 2006 taxation year.

[98] For 2006 and 2007, Ms. Martin was still the FR for SR&ED expenditures specific to RTA. She therefore reviewed the research expenditures specific to RTA, and the Montréal TSO RTA reviewed the technology aspect of research expenditures specific to RTA. As with 2003 to 2005, the Québec TSO was responsible for examining AAI's SR&ED activities.

[99] As with 2003 to 2005, the Montréal TSO audit was completed before the Québec TSO audit. In this regard, RTA and the Montréal TSO entered into an agreement for 2006 and 2007 regarding SR&ED activities specific to RTA.

[100] Ms. Martin wanted to use the same approach for 2006 and 2007 that she had used for 2003 to 2005, that is, make reassessments for 2006 and 2007 in order to:

- Give effect to the agreement entered into by RTA and the Montréal TSO regarding SR&ED expenditures and ITCs specific to RTA;
- Disallow all AAI SR&ED expenditures and ITCs claimed by RTA, keep the years open by way of waivers and make reassessments for 2006 and 2007 as soon as the Québec TSO completed the AAI audit.

[101] According to Ms. Martin, to this end, RTA had to waive the normal reassessment period for 2006 and 2007 regarding its share of the expenditures claimed for AAI's SR&ED and ITCs.

[102] However, Mr. De Luca from Deloitte, as AAI's new representative, indicated to Ms. Martin that her approach to waivers was not acceptable. Mr. De Luca indicated that RTA would provide a waiver for 2006 and 2007. However, Ms. Martin would have to wait until the Québec TSO had completed its AAI audit before making reassessments disallowing AAI's SR&ED expenditures and ITCs.

[103] Following discussions with Mr. De Luca, Ms. Martin consulted a technical advisor at the Income Tax Rulings Directorate ("ITRD") to determine whether her waivers were in compliance. She also consulted her manager at the CRA for the same purpose.

[104] The answer that Ms. Martin obtained from the technical advisor was that a waiver to allow RTA's claim regarding AAI's SR&ED expenditures would run counter to the CRA's interests. In this regard, Ms. Martin's manager also confirmed the opinion provided by the CRA technical advisor.

[105] Ms. Martin therefore informed Mr. De Luca that she had obtained an opinion from an ITRD advisor confirming that the waiver that she was proposing was correct. According to the opinion obtained from the ITRD advisor, Ms. Martin's waiver was not only correct, it also protected the CRA's interests while ensuring that the Minister could make a reassessment as soon as the Québec TSO audit was completed.

[106] RTA's representatives refused to sign a waiver for 2006 and 2007 regarding AAI's SR&ED expenditures, as Ms. Martin had proposed because, since RTA's claim for AAI's expenditures was disallowed, RTA had to file notices of objection to protect its rights.

[107] However, on June 14, 2011, agreements between RTA and the CRA were signed regarding SR&ED expenditures and ITCs specific to RTA, for 2006 and 2007. On behalf of RTA, Mr. Paradis also signed a waiver on June 14, 2011, of the right to file an objection for 2006 and 2007 regarding the SR&ED expenditures specific to RTA, noting, however, that:

> [TRANSLATION]. . . this waiver does not apply to RTA's SR&ED expenditures and ITCs relating to the Aluminerie Alouette activities for which no audits have been conducted by the CRA to date.

[108] Given that the normal reassessment period for 2006 would expire on August 3, 2011, the Minister made a reassessment for 2006 on July 14, 2011, which gave effect to the agreement on SR&ED expenditures and ITCs specific to RTA and disallowed the AAI SR&ED expenditures and ITCs claimed by RTA.

[109] However, for the year ending October 31, 2007, the reassessment was made on September 22, 2011, just over seven months before the normal reassessment period ended on May 12, 2012.

[110] For the year ending December 31, 2007, the reassessment was made on November 10, 2011, about nine months before the normal reassessment period ended on August 6, 2012.

[111] RTA argued that for the two periods in 2007, the respondent could not say that the reassessments were protective assessments because they were made well before the expiry of the normal reassessment period.

[112] In that regard, Ms. Martin indicated that the reassessments for 2006 and 2007 formed a whole. In addition, the reassessments for the years ending October 31, 2007, and December 31, 2007, allowed her to give effect to the agreement entered into with RTA that allowed RTA its own SR&ED expenditures and ITCs. At any rate, Ms. Martin indicated that she had the impression that the AAI audit would not be completed before the expiry of the normal reassessment period.

[113] Thus, in the light of the opinion that she received from the ITRD that the waivers she had prepared for signature by RTA did comply with the ITA, Ms. Martin proceeded in the same manner as for 2003 to 2005. Indeed, allowed the SR&ED expenditures specific to RTA and disallowed the AAI SR&ED expenditures and ITCs claimed by RTA, while intending to make reassessments as soon as the 2006 and 2007 AAI audit was completed, without however having waivers for these years.

3) Did Ms. Martin know that an examination was underway?

[114] RTA argued that the reassessments were made when Ms. Martin had not received any scientific or financial information from the Québec TSO regarding AAI. RTA also submits that Ms. Martin did not know whether the Québec TSO had initiated the AAI audit. Consequently, RTA submits that Ms. Martin did not perform any examinations before making the reassessments for 2006 and 2007.

[115] When the reassessments were made in 2011 for 2006 and 2007, the Québec TSO examination process was underway, that is, information requests had been sent to AAI for 2006 and 2007. However, it was difficult for the Québec TSO to commence the review because RTA was not sending the documents that the Québec TSO needed to perform the review.

[116] RTA is, therefore, correct in saying that when the reassessments were issued, Ms. Martin did not have the scientific and financial information relating to

AAI's SR&ED. That said, Ms. Martin could not have this information because neither Mr. Fournier nor Mr. Dufour, who were responsible for the AAI file, had this information. In 2011, AAI had still not sent the information that the Québec TSO would have needed to move forward with the audit.

[117] In this regard, in his examination-in-chief by Mr. St-Cyr, Mr. Fournier explained why the financial and scientific information was not provided to Ms. Martin. Mr. Fournier could not provide this information, because the Québec TSO had not yet obtained it from AAI. Here is an excerpt from the transcript to this effect:

> [TRANSLATION] Mr. ST-CYR: The financial and scientific information had not yet been submitted to Ms. Martin at that time, I imagine?
>
> Mr. Fournier: They could not be submitted to Ms. Martin. They were to be submitted to us.
>
> Mr. ST-CYR: Ah yes, yes. You're right.
>
> Mr. Fournier: Because we are the ones, it's the Agency. We are the ones who do . . . who handle the Alouette file.
>
> Mr. ST-CYR: Therefore . . . therefore, if it had not been submitted to you, it had not been submitted to Ms. Martin either.

[118] As to whether Ms. Martin knew that the AAI examination was underway, RTA cited the documentary evidence. For instance, after the reassessments were made for 2006 and 2007, Ms. Martin indicated the following in her November 29, 2011, email to her SR&ED manager, Nicole Poulin:

> [TRANSLATION] As agreed, attached are the T20s for 2006 to 2009. I remind you that the TA has signed a notice of waiver to his right to [objection] and appeal. However, this notice of waiver excluded the Alouette expenditures that I disallowed. These expenditures were disallowed because the Alouette file is being audited by the Quebec Office, and the audit has not been completed and cannot be initiated. The TA filed a notice of objection to keep this part open. . . .

[119] In her T20 report – worksheets 8100 and 8300, for 2006 and 2007, she indicated:

> [TRANSLATION] Once again this year, the entire Alouette portion is disallowed because the Québec Office has not yet completed its audit. And on the basis of what we know, some things are not eligible, but because we don't know whether

> it's 2 percent or 80 percent, we are disallowing everything and will make adjustments when the audit is completed.

[120] During her testimony, Ms. Martin said she knew that the AAI examination process was underway, because she knew that the Québec TSO had requested the information from AAI. In this regard, she did not attempt to deny what she had written. Instead, she said that she had expressed herself poorly.

[121] In this regard, Ms. Martin answered Mr. St-Cyr's questions as follows:

> [TRANSLATION] So do you still remember that you had received information indicating that the audit was clearly underway?
>
> Ms. Martin: I will – yes. I will – I still maintain that I had – because of the discussions that I had with the Québec TSO, I was informed that information requests had been sent. I was told that the information was not coming in. We had several discussions with the Québec TSO where we asked for status updates on the file.
>
> Mr. ST-CYR: Okay.
>
> Ms. Martin: I can't deny what I wrote in my T20 because it's written there. That's how I wrote it, but actually, the discussions were held with the Québec TSO and instead – maybe it's just a wrong – a wrong term. I should have said instead of "not commenced," I should have said the process is commenced, but the audit – I could have written that differently. But for the time being, that's what I wrote.
>
> For me, though, the process was clearly underway because I knew from Mr. Fournier that the information requests had been sent.

[122] Although Ms. Martin indicated that she had conversations regarding the information requests made by the Québec TSO, only one of the conversations that she had with Mr. Fournier from the Québec TSO was entered in her T2020 report and this conversation did not make reference to the information requests.

[123] However, Mr. Fournier's T2020 report shows that he spoke with Ms. Martin on four occasions before the reassessments were made in 2011 for 2006 and 2007. For example, in one of the entries in his T2020, Mr. Fournier left Ms. Martin a message indicating that some AAI documents were received regarding the *SR&ED credit for 2006 and 2007*. In addition, in another conversation, Mr. Fournier indicated that he discussed developments in the AAI file with Ms. Martin and the meetings held in Sept-Îles and Montréal. In particular, Mr. Fournier's notes regarding these meetings indicated: 1) *we should mention that 2006 and 2007 are*

being audited and 2) *no other contemporaneous documents for 2005-2006-2007 to substantiate the activities. Which Mr. Dufour had requested.*[8]

[124] If Ms. Martin's testimony had not been corroborated by Mr. Fournier and the discussions noted in his T2020, I would not have accepted Ms. Martin's testimony. However, in the light of Mr. Fournier's testimony, which I find credible and which confirms Ms. Martin's testimony, I find that Ms. Martin knew that the information requests had been sent to AAI and that the examination process for 2006 and 2007 was therefore underway.

4) Subsection 152(1) of the *ITA*

[125] As mentioned above, subsection 152(1) of the *ITA* requires that the Minister complete three different steps in making an assessment under this subsection: (1) examine the taxpayer's income tax return, (2) assess the tax and (3) determine the amount of refund or the amount deemed to be paid under the paragraphs of this subsection.

i) Duty to examine a taxpayer's income tax return

[126] In the light of the facts in this case, I find that the Québec TSO had initiated an examination for 2006 and 2007 when the reassessments were made for 2006 and 2007.

[127] In my opinion, the fact that Ms. Martin was not personally involved in the AAI examination is of relevance. Subsection 152(1) of the *ITA* does not require that the examination of the income tax return be performed by the person authorized to prepare the reassessment. Although she was not personally involved in the audit process for the AAI SR&ED expenditures, Ms. Martin knew that the examination of AAI's expenditures was underway.

[128] To give effect to the agreement between RTA and the CRA, which allowed SR&ED expenditures specific to RTA, Ms. Martin was to make reassessments for 2006 and 2007.

[129] In addition, the normal reassessment period for 2006 expired on August 3, 2011. The reassessment that gave effect to the agreement and disallowed AAI's

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[8] See the respondent's book of exhibits, tab 40, pp 63-65 of the T2020 and pp 159 to 171 of the transcript of Mr. Fournier's examination-in-chief, September 26, 2016.

expenditures was made on July 14, 2011. With respect to the years ending October 31, 2007, and December 31, 2007, the assessments were made respectively seven months and nine months prior to the expiry of the normal reassessment period. That said, if Ms. Martin had chosen to wait until the normal reassessment period was drawing to an end to make reassessments for 2007, RTA would not have benefited from the amounts allowed in respect of its own SR&ED expenditures. At any rate, according to Ms. Martin the AAI audit would not be completed before the expiry of the reassessment periods. I imagine this is why Ms. Martin indicated that the reassessments for 2006 and 2007 formed a whole.

[130] After taking steps to obtain waivers from RTA and after consulting with the ITRD, Ms. Martin indicated that she did not accept the waivers proposed by RTA because she was of the opinion that the waivers that she was proposing were correct on the basis of the opinion that she had received from the ITRD. In addition, while Ms. Martin did not know the percentage of AAI SR&ED expenditures that would be disallowed, she was of the view that the expenditures would not all be allowed. She therefore did not feel comfortable with the idea of allowing the deduction for such expenditures. According to Ms. Martin, by proceeding as she did, she was protecting the Minister's interests.

[131] RTA submits that Ms. Martin did not make the reassessments for 2006 and 2007 in accordance with the Québec TSO's recommendations. According to RTA, the Québec TSO never recommended to Ms. Martin that she disallow AAI's SR&ED expenditures.

[132] However, the evidence reveals that Ms. Martin had advised Mr. Fournier from the Québec TSO that reassessments would be issued to RTA for 2006 and 2007 regarding the AAI SR&ED expenditures claimed by RTA. Ms. Martin had also advised Mr. Fournier that she would disallow the SR&ED expenditures following RTA's refusal to sign the waivers that she had prepared. Still not having received AAI's documents and knowing that the normal reassessment periods would expire before the end of the AAI audit, Mr. Fournier did not object to Ms. Martin's approach.

[133] Throughout the process, Ms. Martin intended to make reassessments that would conform with the Québec TSO's AAI audit results. As a result of her misunderstanding of the waiver mechanism, she was unable to keep 2006 and 2007 open without RTA having to file notices of objection.

[134] In *Golini v. The Queen*,[9] Mr. Justice Miller ruled that a reassessment will be valid if, at the time the reassessment was made, the Minister intended to continue the audit:

> [25] It is clear from the Amended Notice of Appeal (paras 36 – 42) the CRA were not sitting idly waiting for the last day to issue a reassessment. They were actively engaged with the Appellant, providing explanations and seeking further information, and finally requesting a waiver. The Appellant refused. There is no basis in law upon which an assessment issued in those circumstances can be found invalid. . . .

[135] That said, in *Golini*, unlike the situation in this case, where RTA offered to sign waivers, Mr. Golini refused to submit waivers to the Minister to allow the audit to continue. However, in this case, Ms. Martin did not accept the waivers because she did not understand the waiver mechanism. According to Ms. Martin, despite the waivers, the deduction for AAI's SR&ED expenditures claimed by RTA had to be disallowed.

[136] In *Golini*, the Minister repeatedly requested that Mr. Golini provide certain information. On August 16, 2012, the Minister also proposed to reassess the tax liability for the 2008 taxation year by adding an amount of $6,000,000 to Mr. Golini's income and by denying interest expense in the amount of $438,626; in addition, a penalty would be applied pursuant to subsection 163(2) of the ITA. Mr. Golini filed representations, and the Minister proposed a new assessment plan on August 31, 2012.

[137] The normal reassessment period was ending on September 8, 2012. On September 7, 2012, the Minister reassessed Mr. Golini's tax liability for his 2008 taxation year by adding a taxable dividend in the amount of $7,500,000 and by denying an interest expense in the amount of $438,626 in computing his taxable income.

[138] Mr. Golini objected to the reassessment, and as soon as the 90 days set out in subsection 169(2) of the ITA had elapsed, he filed an appeal with this Court. Mr. Golini asked the CRA upon what basis the September 7, 2012, reassessment had been issued. A CRA official informed him that it was a protective reassessment, given that the audit was underway (and the normal reassessment period was expiring).

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[9] *Golini v. The Queen*, 2013 TCC 293.

[139] According to Mr. Golini, the September 7, 2012, reassessment issued by the Minister for his 2008 taxation year was not valid because it had been issued solely to allow time to proceed with an audit, and that this was not in accordance with correct procedure as defined by the case law.

[140] In *Golini*, Miller J. found that the reassessment was valid and made the following comment:

> [23] What I draw from these cases is that, yes, there can be an issue with respect to the validity of an assessment. There is no law, however, to the effect that a protective assessment is invalid if issued for the sole purpose of leaving the door open to conduct or continue an audit. . . .
>
> [Emphasis added.]

[141] In *Karda*,[10] the Minister had issued an initial assessment followed by two reassessments for the 1996 taxation year. The expiry date for the normal reassessment period for 1996 was June 2, 2000. The CRA wanted to continue the audit and the Minister's official asked Mr. Karda to sign a waiver. Mr. Karda did not respond to this request. As a result, on June 2, 2000, the Minister made a reassessment, which disallowed all the deductions claimed by Mr. Karda.

[142] Mr. Karda argued that the reassessment was not valid because that reassessment was not issued because of errors in the prior reassessment. Mr. Karda also argued that a reassessment that disallowed all the deductions that he had claimed could not be considered valid, if the sole purpose of the reassessment was to meet the limitation period. Miller J. nevertheless found that the reassessment was valid.

[143] The Federal Court of Appeal confirmed Miller J.'s decision in *Karda*.[11] Mr. Justice Nadon, of the Federal Court of Appeal, wrote as follows:

> [2] . . . With regard to the first one, we see no merit in his argument that the Notice of Reassessment of June 2, 2000, is invalid because the purpose thereof was to prevent the expiry of the three-year limitation. In our view, having requested additional information from the appellant and not having received that information, and having requested a waiver from the appellant which the appellant refused to give, the Minister was clearly entitled to issue a reassessment

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10 *Karda v. The Queen*, 2005 TCC 564.

11 *Karda v. Canada*, 2006 FCA 238.

> to protect his rights prior to the expiry of the three-year period. We therefore see no error on the Judge's part in finding that the reassessment was valid.

[144] As I have already mentioned, while the circumstances in this case are different from those in the *Golini* and *Karda* decisions, I am of the view that in the light of the facts and circumstances surrounding the reassessments, the reassessments are valid. Ms. Martin issued reassessments to allow the AAI audit to continue with the intention of issuing reassessments as soon as the Québec TSO audit ended.

[145] Also, Ms. Martin looked into the matter before issuing the reassessments. I have already described the steps that Ms. Martin took before issuing the reassessments and why she decided to disallow the AAI SR&ED expenditures and the ITCs claimed by RTA.

[146] RTA seems to be arguing that these steps were insufficient. However, the case law clearly holds that it is for the Minister to decide on the scope of the examination; it is not for the Court to determine what the Minister must or must not do when she examines an income tax return. In the Supreme Court of Canada's *Western Mineral Ltd*. [12] decision, Mr. Justice Martland made the following comment at page 596 of his reasons:

> In two cases decided in the Exchequer Court in circumstances similar to the present one, it has been decided that an assessment made on the basis of the taxpayer's return, subject only to the checking of the computations made in it, was an assessment within the meaning of *The Income Tax Act*: *Provincial Paper, Limited v. Minister of National Revenue*, and *Western Leaseholds Limited v. Minister of National Revenue*. The appellant does not take issue with these two decisions in the present appeal, but seeks to distinguish them on the ground that in the present case the evidence established that the intention to make the further examination of the appellant's return existed before the notice of July 22, 1953, was mailed.
>
> The conclusions reached in the first of those two cases and applied in the second are accurately stated in the head-note as follows:
>
> *Held*: That it is not for the Court or anyone else to prescribe what the intensity of the examination of a taxpayer's return in any given case should be. That is exclusively a matter for the Minister, acting through his appropriate officers, to decide. […]

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[12] *Western Minerals Ltd. v. Minister of National Revenue*, [1962] SCR 592.

> […]
>
> I am in agreement with these propositions.
>
> [Emphasis added.]

[147] In *Western Minerals Ltd*.[13], Martland J. confirmed the decision rendered by Mr. Justice Thorson, President of the Exchequer Court, in *Provincial Paper Ltd*.[14] According to these decisions, it is exclusively for the Minister to decide on the scope of the examination of a taxpayer's income tax return. In this regard, Thorson J. wrote the following comment in *Provincial Paper Ltd*.:[15]

> .
>
> . . . It is, therefore, idle to attempt to define what the Minister must do to make a proper assessment. It is exclusively for him to decide how he should, in any given case, ascertain and fix the liability of the taxpayer. The extent of the investigation that he should make, if any, is for him to decide. Of necessity it will not be the same in all cases.
>
> But the basic fallacy in the contention lies in the assumption that the Minister is precluded from ascertaining and fixing a taxpayer's liability on the basis of the assumed correctness of his income tax return but must do something else and that if he does not do so he has not made an assessment. While the Minister is not bound by the taxpayer's return, as was emphasized in *Dezura* (above), there is nothing in the Act to prevent him from accepting it as correct and fixing the taxpayer's liability accordingly. In *Davidson v. The King*, (1945) Ex. C.R. 160 at 170, I made the statement that the taxpayer's own return of his income, while not binding upon the Minister, may be the basis of the assessment made by him and I pointed out that it was reasonable that this should be so, since the taxpayer knew better than anyone else what his income was.
>
> The Minister may, therefore, properly decide to accept a taxpayer's income tax return as a correct statement of his taxable income and merely check the computations of tax in it and without any further examination or investigation fix his tax liability accordingly. If he does so it cannot be said that he has not made an assessment.

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13 Supra, note 12.

14 *Provincial Paper, Ltd. v. MNR*, [1955] Ex.C.R. 33, [1954] CTC 367, 54 DTC 1199.

15 RTA mentioned *No. 202 v. Minister of National Revenue* (1954 CarswellNat 171, 11 Tax A.B.C. 377 (Tax Appeal Board) in support of its position. However, *No. 202* was not followed by later cases including *Provincial Paper* whose reasons were adopted by the Supreme Court of Canada in *Western Minerals Ltd.*

[148] As a result, I am of the opinion that the Minister satisfied the requirement to proceed with an examination of the income tax return established under subsection 152(1) of the ITA.

> *ii)* The duty to assess the tax and determine the amount in paragraphs 152(1)(a) and 152(1)(b) of the ITA

[149] With respect to the duties set out in subsection 152(1) of the ITA to assess the tax and determine the amount of refund or an amount deemed to be paid, the principles laid down by the Federal Court of Appeal in *Ereiser*[16] must be followed. In that case, Madam Justice Sharlow used the word "valid" to describe an assessment made in compliance with the procedural provisions of the ITA, and the word "correct" to describe an assessment in which the amount of tax assessed is based on the applicable provisions of the ITA, correctly interpreted and applied to the relevant facts.

[150] As a result, when the Minister assesses the tax under subsection 152(1), it is clear that, pursuant to *Ereiser*, the requirement refers to the correctness of the assessment, not its validity.

[151] The only question I need to answer with respect to the application before me has to do with the validity of the reassessments, not their correctness.

[152] In this context, RTA cannot challenge the correctness of an assessment by way of an application regarding the validity of an assessment.

[153] However, RTA argues that the Minister could not assess the tax under subsection 152(1), because the Minister did not have any factual basis upon which to assess RTA's tax for 2006 and 2007. According to RTA, the following decisions of the Supreme Court of Canada in *Continental Bank of Canada v. Canada*[17] and the Federal Court of Appeal in *Anchor Pointe Energy Ltd.*[18] Stand for the proposition that a taxpayer must know the basis upon which the Minister made an assessment, reassessment or additional assessment.

[154] In my opinion, RTA is confusing the validity and the correctness of an assessment. In the *Continental Bank* and *Anchor Pointe*, the questions were related

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16 *Ereiser v. Canada*, 2013 FCA 20.

17 *Continental Bank of Canada v. Canada*, [1998] 2 SCR 358.

18 *Canada v. Anchor Pointe Energy Ltd.*, 2007 FCA 188, [2008] 1 FCR 839.

to the correctness of the assessments. In this regard, in *Golini*, Miller J. of our Court explained that, in *Anchor Pointe*, the Federal Court of Appeal examinated the correctness of the assessment, not the validity of the assessment, that is, the process. He made the following comment in his reasons:

> [20] In the case of *Anchor Pointe*, the Federal Court of Appeal dealt with the fine issue of where the onus lies in the pleading of assumptions arising at the stage of the confirmation of a reassessment. However the Federal Court of Appeal stated the following:
>
> > 33. I agree with the motions Judge that the appeal is not from the confirmation of the assessment. The appeal is, to use the words of Hugessen J.A., from the product of that assessment: see also *Parsons*, at page 814, where Cattanach J. held that the "assessment by the Minister, which fixes the quantum and tax liability, is that which is the subject of the appeal." That product refers to the amount of the tax owing as initially assessed or determined, and subsequently confirmed. From the perspective of the process itself, the assessment pursuant to sections 152 to 165 is not completed by the Minister until, within the time allotted by the Act, the amount of the tax owing is finally determined, whether by way of reconsideration, variation, vacation or confirmation of the initial assessment: see *Parsons*, supra, at page 814.
>
> [21] <u>While acknowledging "assessment" can mean both the process and the product, it is the latter which was the subject of the appeal in that case. This addresses the correctness of an assessment, but does not address the validity of an assessment as it was not at issue before that court.</u> . . .
>
> [Emphasis added.]

[155] RTA admitted at the hearing that there is a distinction between the correctness and the validity of an assessment. However, RTA argues that despite this distinction, the Minister must follow a procedure when she assesses the tax. According to that procedure, the Minister must base her decision on facts to calculate a result that represents the tax assessed.

[156] I agree with RTA, the Minister must take relevant facts into account when she assesses the tax, but that duty of the Minister refers to the correctness of the assessment, not the validity thereof.

[157] In other words, when the Minister assesses the tax, she establishes the amount of the tax payable, that is, the correctness of the assessment. RTA cannot

challenge the amount of the tax payable in this application that pertains to the validity of an assessment.

[158] In the light of these reasons, the reassessments, notices of which are dated July 14, 2011 for 2006, September 22, 2011, for the year ending October 31, 2007, and November 10, 2011, for the year ending December 31, 2007, are valid under subsection 152(1) of the ITA, that is to say, the Minister complied with the procedural requirements of this subsection.

5) Application of subsection 152(1) or subsection 152(4) of the ITA in this case

[159] As I indicated at the inception of my reasons, the respondent argues that subsection 152(4) of the ITA applies, not subsection 152(1), as RTA argues.

[160] However, because the procedural requirements of subsection 152(4) of the ITA are either the same or less stringent than the procedural requirements of subsection 152(1), I am of the view that, in the light of my finding pertaining to subsection 152(1), the Minister satisfied the procedural aspect of subsection 152(4). The reassessments are therefore also valid under subsection 152(4).

[161] However, I will contrast the two subsections in order to respond to RTA's arguments regarding the application of subsection 152(1) of the ITA. I will also explain why, in my view, in this case, it is subsection 152(4) that applies to the reassessments made by the Minister after RTA filed several amended income tax returns for 2006 and 2007.

[162] RTA argues as follows:

- Subsection 152(1) of the ITA gives the Minister the authority to make initial assessments, as well as the assessments provided for in subsection 152(4): assessments, reassessments additional assessments ("reassessments");

- Subsection 152(4) of the ITA does not give the Minister the authority to make assessments, reassessments or initial assessments. The object of subsection 152(4) is to put a time limit on the Minister's authority to make reassessments;

- The concept of acting with all due dispatch in subsection 152(1) of the ITA also applies to subsection 152(4), that is, the Minister must act with all due dispatch within the 3 or 4 years described in this subsection, namely within the normal reassessment period.

[163] If we compare the language of sections 152(1) and 152(4) of the ITA, we note that subsection 152(1) is triggered when a taxpayer files an income tax return with the Minister. As soon as the income tax return is filed, the Minister shall, with all due dispatch, examine the return of income, assess the tax payable and determine the amount of refund or the amount deemed to be paid in accordance with paragraphs 152(1)(a) and (b).

[164] The concept of all due dispatch is reasonable because the taxpayer expects the Minister to take action after his income tax return has been filed.

[165] This concept of all due dispatch is important in subsection 152(1) of the ITA. First, the Minister must send an original Notice of Assessment within a reasonable period of time. It informs the taxpayer of his tax debt. In addition, the normal three- or four-year assessment period, as applicable, starts running as at the date shown on the original Notice of Assessment or the notice that no tax is payable. This provides the taxpayer with the certainty that once this time period has elapsed, the Minister will not, except for certain exceptions, be able to reassess him.

[166] The language in subsection 152(4) of the ITA is completely different. Under this subsection, the Minister may make a reassessment. Nothing in the wording of the subsection requires the Minister to make a reassessment. The Minister's authority under this subsection is discretionary.

[167] Thus, I do not agree with RTA when it argues that subsection 152(4) of the ITA does not give the Minister the authority to make reassessments and that subsection 152(4)'s sole object is to restrict the Minister's authority in time. The language of subsection 152(4) is clear; it gives the Minister the authority to make assessments, reassessments or additional assessments.

[168] In addition, I do not agree with RTA when it argues that the Minister must act with all due dispatch when she makes a reassessment under subsection 152(4) of the ITA. In *Merchant*[19], indeed, Mr. Justice Bowman could not be more specific

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[19] *Merchant v. The Queen*, 1998 CarswellNat 3811, at paragraph 14.

when he stated that the due dispatch requirement applies to the initial assessment, not to a subsequent reassessment:

> Although the point was not pleaded, the appellant argued also that the assessment was not made with due dispatch. I am not prepared to find that the original assessment was not made on December 4, 1991. In any event the due dispatch requirement applies to the initial assessment under paragraph 152(1), not to a subsequent reassessment.

[169] In the light of the language used in subsections 152(1) and 152(4) of the ITA, I am of the opinion that subsection 152(1) does not apply only to initial assessments, because the Minister shall, with all due dispatch, make an initial assessment when the income tax return is filed by the taxpayer, in order to trigger the normal reassessment period. That applies only to the initial assessment or the original notification that no tax is payable.

[170] I am of the view that the doctrine propounded by the Federal Court of Appeal in *Armstrong*[20] confirms my view. In a unanimous judgment, Sharlow J.A. stated that once the initial assessment is made, even if a taxpayer files an amended income tax return, as is the case here, that will not retrigger the Minister's duties under subsection 152(1), which implies that subsection 152(1) applies only to the first assessment (initial assessment):

> [8] An amended return for a taxation year that has already been the subject of a notice of assessment does not trigger the Minister's obligation to assess with all due dispatch (subsection 152(1) of the *Income Tax Act*), nor does it start anew any of the statutory limitation periods that commence when an income tax return for a particular year is filed and then assessed. An amended income tax return is simply a request that the Minister reassess for that year.

[171] I am also of the view that the Minister's procedural duties are not the same under both subsections. According to the language used in subsection 152(4) of the ITA, the sole procedural duty under subsection 152(4) is that the Minister must make reassessments within the timelines set out in this subsection: within three or four years of the original Notice of Assessment or the initial notification that no tax is payable.[21]

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20 *Armstrong v. Canada (Attorney General)*, 2006 FCA119.

21 This subsection also allows the Minister to make an "assessment." However, in the context of subsection 152(4), this is not an initial assessment. The following is an example of making an assessment under subsection 152(4) of the ITA: the Minister, for a given year, sends a taxpayer an original notification that no tax is payable. It is trite law

[172] I find support for that proposition in *Consumer's Gas Co.*[22] and *Ereiser*[23]. In *Consumer's Gas Co.*, Hugessen J.A. defined what constituted an assessment, namely the amount of tax payable. At page 67, he wrote:

> What is put in issue on an appeal to the courts under the *Income Tax Act* is the Minister's assessment. While the word "assessment" can bear two constructions, as being either the process by which tax is assessed or the product of that assessment, it seems to me clear, from a reading of sections 152 to 177 of the *Income Tax Act*, that the word is there employed in the second sense only. This conclusion flows in particular from subsection 165(1) and from the well established principle that a taxpayer can neither object to nor appeal from a nil assessment.

[173] In *Ereiser*, the Federal Court of Appeal clearly stated that assessing the amount of tax payable refers to the correctness of an assessment, not the validity of an assessment.

[174] Thus, from a procedural standpoint, since the Minister made the reassessments when required by subsection 152(4), the procedural aspect of subsection 152(4) was satisfied.

6) Saving provisions of the ITA

[175] The respondent submits that the reassessments are valid in view of the principle that an assessment is deemed valid and binding. According to the respondent, the reassessments should be vacated simply because Ms. Martin erred in applying the waiver mechanism.

[176] According to the respondent, the error committed by Ms. Martin was a procedural error relating to the reassessments; it was not, in this case, a palpable and overriding error. The respondent submits that under subsections 152(3), 152(8)

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that a notice indicating that no tax is payable does not constitute an assessment. During the normal reassessment period, the Minister issues an assessment to the same taxpayer, indicating that tax is payable. Since no previous assessment has been issued, the Minister is making an assessment under subsection 152(4) without this assessment being an initial assessment. Subsection 152(1) does not apply because the deadlines regarding the normal reassessment period were triggered when the original notification that no tax is payable was sent to the taxpayer under subsection 152(1).

22 *Canada v. Consumers' Gas Co.*, [1987] 2 FC 60 (FCA).

23 Above, note 16.

and section 166 of the ITA, the reassessments are valid. Subsections 152(3), 152(8) read as follows:

> 152(3) Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.
>
> 152(8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.
>
> [Emphasis added.]

[177] The respondent also cites section 166 of the ITA to submit that the reassessments are valid. Section 166 provides as follows:

> An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.

[178] In this regard, the respondent cited a Federal Court of Appeal case, *Ginsberg*[24], where the issue was whether an assessment should be vacated because the Minister had not assessed the tax with all due dispatch,[25] in accordance with subsection 152(1) of the ITA.

[179] RTA submits that *Ginsberg* does not apply in this case because Mr. Ginsberg argued that the Minister had not acted with all due dispatch. Thus, in *Ginsberg*, the issue was one of time, therefore a procedural issue, whereas in this case RTA instead argues that the Minister did not examine the income tax return and that, when she assessed the tax, as provided for in subsection 152(1) of the ITA, she did not base her decision on any facts. According to RTA, these failures constitute palpable and overriding errors.

[180] In *Ginsberg*, Madam Justice Desjardins commenced her analysis on the premise that she had to agree with the finding of fact made by the judge of our Court, that is, the Minister did not make an assessment with all due dispatch. Mr. Ginsberg argued that the assessment had to be declared valid and,

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[24] *Ginsberg v. Canada*, [1996] 3 FC 334.

[25] At the time in question in *Ginsberg*, [the French version of] subsection 152(1) read "avec toute la diligence possible" (with all due dispatch) and not "avec diligence" (with all due dispatch) as it now does. [The wording remained the same in both English versions.]

consequently, had to be vacated, because the Minister had failed in her duty to act with all due dispatch.

[181] In *Ginsberg*, Desjardins J.A. decided, pursuant to the saving provisions of the ITA according to which an assessment is deemed valid, not to vacate the assessment. She wrote the following at paragraphs 17 to 19 of her reasons:

> 17 I find no escape with the clear terms of subsection 152(3), particularly the words "Liability for the tax under this Part is not affected by . . . the fact that no assessment has been made". (Le fait . . . qu'aucune cotisation n'a été faite n'a pas d'effet sur les responsabilités du contribuable à l'égard de l'impôt prévu par la présente Partie).
>
> 18 Subsection 152(8) in turn says "An assessment shall . . . be deemed to be valid and binding notwithstanding any . . . defect or omission . . . in any proceeding under this Act relating thereto." (*une cotisation est réputée être valide et exécutoire nonobstant tou[t] . . . vice de forme ou omission . . . dans toute procédure s'y rattachant en vertu de la présente loi*).
>
> 19 Section 166, in support, states that "An assessment shall not be vacated . . . by reason only of any . . . omission [or error] . . . on the part of any person in the observation of any directory provision of this Act". (*Une cotisation ne doit pas être annulée . . . uniquement par suite . . . d'omission . . . de la part de qui que ce soit dans l'observation d'une disposition simplement directrice de la présente loi*).
>
> [Emphasis added.]

[182] With respect to the saving provision under section 166 of the ITA, Desjardins J.A. asked whether subsection 152(1) was directory or mandatory, although the text of the subsection is couched in mandatory language.

[183] After having reviewed a Supreme Court of Canada case, *British Columbia v. Canada*,[26] Desjardins J.A. concluded that the difference between a mandatory and a directory provision was not very helpful in determining whether a legislative provision was mandatory or directive. Rather, the test to be used is the rule of "inconvenient" effects. In this regard, Desjardins J.A. indicated that, in adopting the saving provisions of the ITA, Parliament ruled in favour of the government. At paragraph 22 of her motives, she said that, as to the government's need to levy taxes, to share the tax burden equitably among the taxpayers and protect the

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[26] *British Columbia (Attorney General) v. Canada (Attorney General); An Act respecting the Vancouver Island Railway (Re),* [1994] 2 SCR 41.

individual by bringing certainty to his financial situation as quickly as possible, Parliament ruled in favour of the government by adopting subsections 152(3) and 152(8) and section 166 of the ITA. In this regard, she wrote:

> 22 The distinction between a "mandatory" or a "directory" provision is, therefore, not very helpful. If I were to apply the rule of "inconvenient" effects, I would say that there are, no doubt, competing interests between the need to levy revenues for government and public expenditures, the need to have the tax burden shared as equally as possible among the taxpayers, and the need to protect the individual by bringing certainty to his financial affairs at the earliest reasonable possible time. These competing interests have been settled in favour of the government by Parliament with the adoption of subsections 152(3), (8) and section 166.6.

[Emphasis added.]

[184] In *Western Minerals Ltd.*,[27] Martland J. of the Supreme Court of Canada held that within the meaning of the saving provision in subsection 42(6) of the ITA (former version of the current section 166 of the ITA) an initial assessment referred to in subsection 42(1) (former version of the current subsection 152(1) was deemed to be valid). This subsection therefore remedies the Minister's failure to examine an income tax return. However, it should be noted that at that time, the saving provisions in subsection 42(6) applied to all provisions of the ITA, not only, as provided for by the current section 166, its saving provisions.

[185] In *Western Minerals Ltd.*, no more than 15 minutes were spent on reviewing the taxpayer's return. The Minister's initial assessment charged the taxpayer for the amount of tax reported on the return. However, the Minister's assessor had written the letter "R" on the taxpayer's return, meaning "further review," which is to say that the Minister of National Revenue had decided that it would be subject to further examination.

[186] Western Minerals Ltd. argued that the assessment was not valid and should be vacated because, following the summary review, the Minister had decided, when the assessment was made, that he intended to conduct a further examination. According to the taxpayer, until that intention to conduct a further examination had been carried out, there had been no examination under subsection 42(1) of the ITA.

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[27] Above, note 12.

[187] Martland J. rejected the taxpayer's argument and stated that his conclusion was bolstered by the saving provisions of the ITA. This is what he wrote at page 597 of his reasons:

> […] I cannot agree that that which would constitute a valid assessment if not accompanied by a present intention to conduct a further examination is not a valid assessment if that intention does exist. In my opinion there can be a valid assessment made even though a further examination of the return is intended. The examination of the return which was made prior to July 22, 1953, was, in my view, an examination within the meaning of subs. (1) of s. 42. I think the Minister had authority under s. 42 to make the assessment of which notice was given on July 22, 1953. I am reinforced in this conclusion by other subsections of s. 42. Subsection (4) provides that "the Minister may at any time assess tax …", subs. (5) empowers him to assess tax notwithstanding a return and subs. (6) provides that an assessment shall be deemed to be valid notwithstanding any error, defect, or omission therein or in any proceeding under the Act relating thereto.
>
> [Emphasis added.]

[188] In *Western Minerals Ltd*., Martland J. stated that despite the Minister's failure to satisfy the procedural requirements of what is now subsection 152(1) of the ITA, the saving provisions deemed the assessment to be valid. That said, at that time, the saving provision applied equally to directive and mandatory provisions. However, since *Ginsberg*, which held that the mandatory language of subsection 152(1) of the ITA was not decisive in the application of the saving provision in section 166, it is now the test of the balance of inconvenient effects that must be applied. As a result, Martland J.'s comments in *Western Minerals* regarding saving provisions are relevant in this case.

[189] Consequently, in the light of *Ginsberg*, I am of the view that the saving provision in section 166 of the ITA deems that an assessment is valid notwithstanding the Minister's failure to meet one of the requirements of subsection 152(1).[28]

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[28] RTA cited *J. Stollar Construction Ltd v. Minister of National Revenue*, [1989] 1 CTC 2171 (TCC). In *J. Stollar Construction*, Mr. Justice Bonner held that section 166 of the ITA could not correct the Minister's failure to act "with all due dispatch" in subsection 152(1). However, subsequent cases of the Federal Court of Appeal, including *Ginsberg*, above, *Bolton v. Minister of National Revenue*, 96 DTC 6413 and *James v. Canada*, [2000] FAC No. 2135 (QL) overruled *J. Stollar Construction* by applying the saving provision of section 166 to subsection 152(1).

[190] With respect to the saving provision in subsection 152(8) of the ITA, in *Golini*, Miller J., in a situation similar to the one in this case, held that the saving provision in subsection 152(8) of the ITA applies when reassessments are issued by the Minister for the sole purpose of leaving the door open to conduct or continue an audit. At paragraph 23 of his reasons, Miller J. stated:

> [23] What I draw from these cases is that, yes, there can be an issue with respect to the validity of an assessment. There is no law, however, to the effect that a protective assessment is invalid if issued for the sole purpose of leaving the door open to conduct or continue an audit. I can find no precedent that this is a procedural unfairness that overrides the clear statement in section 152(8) of the Act that:
>
> > An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

[191] It should be further noted that, in *Ginsberg*, Desjardins J.A. also applied the saving provision of subsection 152(8) in ruling that the assessment was valid. Consequently, I am of the view that, pursuant to subsections 152(3), 152(8) and section 166 of the ITA, the reassessments issued on July 14, 2011 for 2006, September 22, 2011, for the year ending October 31, 2007, and November 10, 2011, for the year ending December 31, 2007, are deemed valid.

[192] I am not saying that reassessments can never be declared invalid on procedural grounds. For example, the case law in this regard is clear: the saving provisions of the ITA cannot remedy the Minister's failure to make reassessments once the normal reassessment period has elapsed.

[193] Nor can the saving provisions remedy the Minister's failure to prove that the Notice of Assessment relating to an assessment or a reassessment was sent to the person who filed an income tax return under subsection 52(3) of the ITA.

7) The American case law

[194] RTA also cited American cases. However, I decided not to review that case law in detail because, in my view, the Canadian case law is sufficiently informative on the matter at issue. In addition, I am of the view that the doctrine propounded

by the United States Court of Appeals for the Ninth Circuit in *Scar*[29] has a limited scope, even in American law. In fact, it was subsequently held in *Clapp*,[30] also by the Court of Appeals for the Ninth Circuit, that an assessment will be declared invalid only where the notice of deficiency reveals on its face that an error has been committed. For example, in *Scar*, the wrong tax shelter had been associated with Mr. Scar. The notice of deficiency showed on its face that an error had been committed. Mr. Scar could not be held liable for the tax debt relating to the tax shelter referred to in the notice of deficiency because he had not invested in that tax shelter.

8) Ms. Martin's conduct

[195] RTA also argued that Ms. Martin's conduct, and more particularly her misunderstanding of the waiver mechanism, forced RTA to file notices of objection, which is costly and complex given the rules applicable to large corporations. If RTA has suffered pecuniary damages as a result of Ms. Martin's actions, RTA can appeal to the Federal Court, because our Court does not have jurisdiction to award damages.

QUESTION B

> Did the ITA authorize the Minister to reassess RTA outside the normal reassessment period (paragraph 152(3.1)(a) of the ITA) on April 19, 2013, and October 3, 2013, respectively, for the taxation years ending December 31, 2006 ("2006"), and the year ending October 31, 2007, in respect of items other than those specifically listed in subsections 152(4) and 152(4.01) of the ITA?
>
> In the negative, are these reassessments invalid with respect to the items assessed that are not enumerated in subsections 152(4) and 152(4.01) of the ITA and, more specifically, with respect to the expenditures and ITCs that were completely disallowed relating to AAI's SR&ED activities for 2006 and the year ending October 31, 2007, and with respect to the carryback of non-capital losses ("NLCs") for the 2005 taxation year ending October 31, 2007?

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29 *Scar v C.I.R.*, 814 F2d 1363 (9th Cir 1987).

30 *Clapp v C.I.R.*, 875 F2d 1396 (9th Cir 1989).

B. FACTS RELATING TO 2006

[196] On June 29, 2007, RTA filed an income tax return with the Minister for 2006.

[197] By Notice of Assessment dated August 3, 2007, the Minister made an initial assessment for 2006.

[198] The expiry date of the normal reassessment period was August 3, 2011.

[199] After the amended income tax returns were filed on June 14, 2011, an agreement was reached on SR&ED expenditures and ITCs specific to RTA. The agreement stated that SR&ED and the ITCs claimed by RTA, as a co-owner of AAI, were not covered and that RTA could object to any future reassessments regarding AAI SR&ED expenditures and ITCs claimed by RTA.

[200] On July 14, 2011, within the normal reassessment period, the Minister made a reassessment. This reassessment gave effect to the agreement between RTA and the Minister regarding the amount that RTA could deduct as its own SR&ED expenditures and its ITCs. This reassessment disallowed all the SR&ED expenditures and ITCs claimed by RTA as a co-owner of AAI.

[201] On February 28, 2012, RTA submitted a notice of appeal from the assessment to this Court, notice of which was dated July 14, 2011, for 2006.

[202] On April 19, 2013, the Minister made a reassessment adding some "foreign accrual property income" ("FAPI") pursuant to subsection 91(1) of the ITA and allowing the deduction stipulated in subsection 91(4) of the ITA. This reassessment increased the tax payable by RTA.

[203] This reassessment, notice of which was dated April 19, 2013, was made by the Minister after the normal reassessment period, but during the extended reassessment period, under subparagraph 152(4)(b)(iii) of the ITA. Under this subparagraph, the Minister had until August 3, 2014, to make a reassessment regarding FAPI, that is, within three years of the end of the normal reassessment period.

[204] The April 19, 2013, reassessment did not amend the adjustments made in the July 14, 2011, reassessment, which was made during the normal reassessment period.

[205] On April 3, 2014, RTA filed a motion with this Court to determine whether the reassessment, notice of which was dated April 19, 2013, constituted a "reassessment" or an "additional assessment" for 2006.

[206] On October 7, 2014, Mr. Justice Favreau ruled that the April 19, 2013, assessment was a reassessment, not an additional assessment.

[207] Following Favreau J.'s order, RTA filed, on December 23, 2014, an amended notice of appeal for 2006 with this Court.

[208] RTA did not file any waivers with the Minister regarding the normal reassessment period for its 2006 taxation year.

C. **FACTS RELATING TO THE YEAR ENDING OCTOBER 31, 2007**

[209] On April 22, 2008, RTA filed an income tax return with the Minister for the taxation year ending October 31, 2007.

[210] By Notice of Assessment dated May 12, 2008, the Minister subsequently made an initial assessment for the year ending October 31, 2007.

[211] The expiry date of the normal reassessment period was May 12, 2012.

[212] After the amended income tax returns were filed on June 14, 2011, an agreement was reached between RTA and the CRA regarding the amount that RTA could deduct with respect to its own SR&ED expenditures and ITCs. This agreement clearly stated that the SR&ED expenditures and the ITCs claimed by RTA as a co-owner of AAI were not covered and that RTA could object to any reassessments regarding AAI SR&ED expenditures and ITCs claimed by RTA as a co-owner of AAI.

[213] On September 22, 2011, still within the normal reassessment period, the Minister made a reassessment. This reassessment gave effect to the June 14, 2011, agreement between RTA and the CRA regarding the amount that RTA could deduct as its own SR&ED expenditures and its ITCs.

[214] The September 22, 2011, reassessment also disallowed all the SR&ED expenditures and ITCs claimed by RTA as a co-owner of AAI.

[215] On November 2, 2011, still within the normal reassessment period, the Minister made a reassessment, because she had not included in the September 22, 2011 reassessment the $2,322,921 recovery for materials processed after the SR&ED adjustments made by the Minister. This increased the tax payable by $2,322,921. The assessment also vacated the previous assessment dated September 22, 2011. The November 2, 2011, reassessment disallowed all the SR&ED expenditures and ITCs claimed by RTA as co-owner of AAI and allowed the SR&ED expenditures and ITCs specific to RTA.

[216] On May 4, 2012, RTA signed a waiver of the normal reassessment period. The waiver regarding the year ending October 31, 2007, included the following items:

> [TRANSLATION] The normal reassessment period provided for in subparagraph 152(4)(a)(ii) of the ITA is hereby waived for the taxation year ending October 31, 2007, with respect to:
>
> > 1) The calculation of the deductible non-capital loss in the year that relates to:
> >
> > > i) An adjustment to FAPI under subsection 91(1) of the ITA and a deduction under 91(4) for the taxation year ending December 31, 2005, arising from:
> > >
> > > . . .
> > >
> > > ii) An adjustment to the taxable capital gain from the sale of Alcan Aluminio Do Brazil shares not exceeding $98,770,162
>
> . . .
>
> 3) An additional deduction to the discretionary deduction amounts (including the SR&ED capital cost and expenditure allocation)
>
> . . .
>
> 5) An amendment of the choice made under paragraph 111(4)(e).

[217] On May 11, 2012, still within the normal reassessment period, the Minister reassessed RTA for its year ending October 31, 2007. This reassessment disallowed the $16,690,318 of expenses related to the spin-off of Novelis that RTA

had claimed for its 2006 taxation year. This decreased the NCLs that RTA could carry over to the year ending October 31, 2007.[31]

[218] On July 6, 2012, RTA filed an application with the Minister to amend a designation made under paragraph 111(4)(e) of the ITA, for its year ending October 31, 2007, regarding obligations in respect of [shares denominated in a] foreign currency issued by the corporation to reduce to zero the currency exchange profit crystallized on this item.

[219] In this regard, on September 3, 2013, the Minister reassessed RTA for the year ending October 31, 2007. This reassessment reflected the change of designation sought by RTA under paragraph 111(4)(e) of the ITA. The change of designation affected RTA's capital loss balance and reduced the tax payable by RTA.

[220] Subsequent to this reassessment, the Minister detected an error regarding the capital loss balance resulting from RTA's July 6, 2012, application to amend the designation made under paragraph 111(4)(e) of the ITA.

[221] On October 3, 2013, the Minister reassessed RTA for the year ending October 31, 2007, to correct the capital loss balance to properly reflect the amount that RTA could carry over as capital losses. By way of this reassessment, the Minister also disallowed the amount of RTA's NCLs for its 2005 taxation year carried over to its 2007 taxation year relative to an adjustment of the RTA's FAPI for its 2005 taxation year.

[222] The Minister did not make the September 3, 2013, and October 3, 2013, reassessments during the normal reassessment period. However, under the waiver dated May 4, 2012, and due to the extended period to make a reassessment under subparagraph 152(4)(b)(iii) of the ITA, the Minister had the authority to make these reassessments, which reduced the tax payable by RTA.

[223] The September 3, 2013, and October 3, 2013, reassessments did not amend the adjustments made in the May 11, 2012, reassessment, which was made during the normal reassessment period.

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[31] See the respondent's factum, subsections 114, 115 and 116 as well as the attached book of exhibits, tabs 9 and 39.

[224] On April 3, 2014, RTA filed a motion with this Court to have determined whether the assessment dated October 3, 2013, constituted a "reassessment" or an "additional assessment."

[225] On October 7, 2014, Favreau J. ruled that the October 3, 2013, assessment was a reassessment, not an additional assessment. On December 23, 2014, subsequent to Favreau J.'s order, RTA filed an amended notice of appeal for the year ending October 31, 2007.

D. **POSITIONS OF THE PARTIES**

1) RTA

[226] RTA argues that according to the wording of subsection 152(4.01) of the ITA, the Minister's authority to make reassessments is limited to the items set out in subparagraphs 152(4)(a)(ii) and 152(4)(b)(iii) and subparagraphs 152(4.01)(a)(ii) and 152(4.01)(b)(iii) of the ITA. According to RTA, in the case at bar, the Minister could make a reassessment on April 19, 2013, only regarding FAPI for the 2006 tax year. For the taxation year ending October 31, 2007, the October 3, 2013, reassessment had to be limited to the designation under paragraph 111(4)(e) of the ITA and in respect of FAPI.

[227] In other words, RTA argues that under subsections 152(4) and 152(4.01) of the ITA, the Minister had the authority to make the reassessments, notice of which were dated April 19, 2013, and October 3, 2013, but only with respect to the items described in these subsections. She could not include in these reassessments the balance of tax payable from the previous assessments issued on July 14, 2011, for 2006 and May 11, 2012, for the year ending October 31, 2007.

[228] By opting to make reassessments instead of additional assessments, the Minister reviewed or recalculated the tax payable. As a result, AAI's SR&ED expenditures and the Novelis expenditures were again disallowed in 2013, while 2006 and 2007 were time-barred.

[229] Therefore, the April 19, 2013, and October 3, 2013, reassessments are valid, but only with respect to the adjustments that the Minister was authorized to make under subsections 152(4) and 152(4.01) of the ITA, namely the capital loss adjustment under the waiver and the FAPI adjustment.

[230] Also, according to RTA, the April 19, 2013, and October 3, 2013, reassessments vacated the previous reassessments dated July 14, 2011, and May 11, 2012. That said, RTA argues that the previous assessments dated July 14, 2011, and May 11, 2012, were only vacated with respect to the SR&ED expenditures, AAI's ITCs and the Novelis expenditures because only these expenditures are at issue in the case before this Court. Thus, according to RTA, the April 19, 2013, and October 3, 2013, reassessments did not vacate the items that the Minister had allowed in the previous assessments dated July 14, 2011, and May 11, 2012, in particular, the SR&ED expenditures and ITCs specific to RTA, because these expenditures are not at issue in the case before this Court.

[231] On the basis of this position, RTA argues that if the Minister did not want the previous assessments dated July 14, 2011, and May 11, 2012, to be affected, she should have made additional assessments on April 19, 2013, and October 3, 2013, to adjust the FAPI and take into account the change in designation. As a result, all the assessments could have remained in effect.

2) Respondent

[232] For its part, the respondent argues that the wording of subsection 152(4.01) of the ITA authorized the Minister to make reassessments as she did in this case and that she was not required to make additional assessments, as RTA claimed.

[233] The respondent argues that the wording of subsection 152(4.01) does not prevent the Minister from including the balance of previous assessments made within the normal reassessment period.

[234] She submits that the April 19, 2013, and October 3, 2013, reassessments did not amend the adjustments to FAPI and the change in designation in accordance with the waiver produced by RTA, under subparagraph 152(4)(a)(ii) and in accordance with subparagraph 152(4)(b)(iii) of the ITA. The respondent argued that the April 19, 2013, and October 3, 2013, reassessments did not amend the balance of the previous reassessments dated July 14, 2011, and May 11, 2012.

[235] Consequently, the respondent argues that the April 19, 2013, and October 3, 2013, assessments are valid in their entirety.

E. **ANALYSIS**

[236] Before commencing my analysis of the issue, I will quickly review the relevant items of subsection 152(4) of the ITA. I have attached to Appendix B of these reasons, the provisions that apply in this case and the provisions prior to the 1998 amendments.

[237] Subsection 152(4) of the ITA gives the Minister the authority to make assessments, reassessments and additional assessments. However, that subsection limits the Minister's authority in time; notwithstanding exceptions, the Minister must make these assessments during the normal reassessment period.

[238] The normal reassessment period is defined in subsection 152(3.1) of the ITA. The normal reassessment period is four years after the date of the first assessment for a mutual trust fund or a corporation other than a Canadian-controlled private corporation and three years after the date of the initial assessment in any other case. In this case, the normal reassessment period is four years.

[239] However, if the conditions provided for in paragraphs 152(4)(a) or (b) of the ITA are satisfied, the Minister may make assessments after that normal reassessment period.

[240] Paragraph 152(4)(a) of the ITA provides that the Minister may at any time make an assessment in the event of misrepresentation or fraud or when the taxpayer files a waiver within the normal reassessment period.[32]

[241] Paragraph 152(4)(b) of the ITA also authorizes the Minister to make an assessment after the normal reassessment period. In the cases specified in that paragraph, the Minister has three years after the end of the normal reassessment period to make a reassessment or an additional assessment.

[242] As for, subsection 152(4.01) of the ITA limits the Minister's authority to make reassessments or additional assessments after the normal assessment period. These assessments can be made by the Minister only to the extent that, *it can reasonably be regarded as relating to one of the items provided for in that*

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[32] A waiver may be revoked by the taxpayer, but it will remain in effect six months after the date on which the waiver is filed.

subsection, that is to say, misrepresentation, fraud or one of the items provided in subparagraphs 152(4.01)(b)(i) to (iv).

[243] In this case, the parties are not disputing that the Minister was authorized to make assessments with respect to the items specified in the waiver and with respect to the adjustment to FAPI, in accordance with subparagraphs 152(4)(a)(ii), 152(4)(b)(iii) and 152(4.01)(a)(ii) and 152(4.01)(b)(iii) of the ITA, after the normal reassessment period, namely April 19, 2013, for 2006 and October 3, 2013, for the year ending October 31, 2007.

[244] However, the parties do not agree as to the interpretation to be given to subsection 152(4.01) of the ITA.

[245] During the hearing, the respondent showed that the Minister did not make any amendments to the amounts of tax payable in the previous assessments, notices of which are dated July 14, 2011, and May 11, 2012. The evidence shows that the amendments made by the Minister to the reassessments dated April 19, 2013, and October 3, 2013, only had to do with items provided for in paragraphs 152(4)(a) and (b) of the ITA. In this regard, the respondent referred the Court to subsections 12, 13 and 14 and Favreau J.'s above-mentioned order, where he explained the content of the April 19, 2013, reassessment:

> [12] As indicated in form T7W-C, the starting point of the April 19, 2013, reassessment is the "net revenue for income tax purposes previously assessed" in the amount of $1,694,939,106, which included the adjustments made by the previous assessment dated July 14, 2011, for the applicant's 2006 taxation year. There were no amendments to these adjustments.
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> [13] To the "net revenue for income tax purposes previously assessed," an amount of $1,681,804 was added as "foreign accrual property income" under subsection 91(1) of the Act. Because the deduction stipulated in subsection 91(4) of the Act in the amount of $281,696 was disallowed, an amount of $1,963,500 was added to the applicant's income. The revised net income for purposes of the applicant's tax was assessed at $1,696,902,606.
>
> [14] The amounts of taxable dividends, non-capital losses, capital losses and donations were subtracted from the revised amount of net income. As a result, the applicant's revised taxable income for its 2006 taxation year was assessed at $169,828,709.

[246] It did not matter to RTA that the balance of the previous assessments dated July 14, 2011, and May 11, 2012, had not been amended. According to RTA, by making reassessments instead of additional assessments, the Minister once again

recalculated the amount of tax payable, *ipso facto* disallowing again the AAI and Novelis SR&ED expenditures claimed by RTA. In 2013, the Minister was not authorized to make reassessments with respect to expenditures because the normal reassessment period had elapsed and these expenditures were not provided for in the subsection 152(4.01).

[247] Subsection 152(4.01) provides as follows:

> Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(a) or (b), applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,
>
> (*a*) where paragraph 152(4)(a) applies to the assessment, reassessment or additional assessment,
>
> (i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, or
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> (ii) a matter specified in a waiver filed with the Minister in respect of the year; and
>
> (b) if paragraph (4)(b) applies to the assessment, reassessment or additional assessment,
>
> (i) the assessment, reassessment or additional assessment to which subparagraph 152(4)(b)(i) applies,
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> (ii) the assessment or reassessment referred to in subparagraph 152(4)(b)(ii),
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> (iii) the transaction referred to in subparagraph 152(4)(b)(iii),
>
> (iv) the payment or reimbursement referred to in subparagraph 152(4)(b)(iv),
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> (v) the reduction referred to in subparagraph 152(4)(b)(v),
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> (vi) the application referred to in subparagraph 152(4)(b)(vi).
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> [Emphasis added.]

[248] To interpret subsection 152(4.01) of the ITA, the history of subsections 152(4) and 152(5) must be reviewed. The language of subsection 152(4.01) is almost the same as the language of the provisions of subsections 152(4) and 152(5) that applied before subsection 152(4.01) was added in 1998.

[249] The subsection that introduces provision 152(4.01) of the ITA uses the same words used at the very end of former subsection 152(4), which stated the following:

> . . . except that a reassessment, an additional assessment or an assessment may be made under paragraph (*b*) after the normal reassessment period for the taxpayer in respect of the year only to the extent that it may reasonably be regarded as relating to the assessment or reassessment referred to in subparagraph (*b*)(i) or (ii), the transaction referred to in subparagraph (*b*)(iii) or the additional payment or reimbursement referred to in subparagraph (*b*)(iv).

[250] We also note that subsection 152(4.01) of the ITA provides the same restrictions set out in the 1997 version of subsection 152(5). The purpose of subsection 152(5) was to protect the taxpayer by restraining the Minister's authority to make reassessments or additional assessments after the normal reassessment period.[33]

[251] In that regard, the former subsection 152(5) restrained the Minister's authority to make reassessments or additional assessments after the normal reassessment period. The restrictions under the former subsection 152(5) were as follows: there had to be misrepresentation or the assessment must have followed a waiver, and the Minister could not add an amount that had not already been included in the calculation of the taxpayer's income in a previous assessment made during the normal reassessment period. Consequently, under subsection 152(5), the Minister could include the balance of the previous assessment made pursuant to paragraphs 152(4)(a) and (b) after the normal reassessment period.

[252] However, although the object of the current subsection 152(5) of the ITA is the same as in the 1997 version, subsection 152(4.01) specifically rules out the application of subsection 152(5). That flows clearly from the language that

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[33] See the Minister of Finance's explanatory notes at paragraph 259 of these reasons.

introduces subsection 152(4.01).[34] In this regard, RTA and the respondent both argued that subsection 152(5) of the ITA does not apply to subsection 152(4.01).

[253] The legislative amendments make it clear that it is now subsection 152(4.01) of the ITA that protects the taxpayer and imposes restrictions on the Minister when she makes an assessment after the normal reassessment period under subsections 152(4)(a) and (b).

[254] However, the restriction in the former subsection 152(5) of the ITA providing that the Minister could not include in a reassessment made after the normal reassessment period *any amount that was not included in computing the taxpayer's income for a tax assessment payable under this part before the end of the normal reassessment period applicable to the taxpayer* is not one of the restrictions provided for in subsection 152(4.01). Does that mean that the Minister may make assessments, reassessments or additional assessments after the normal reassessment period that would amend the previous assessment?

[255] It is clear that the answer to this question is "no." If such were the case, the Minister could then make reassessments after the normal reassessment period, which is not the object of subsection 152(4.01) of the ITA.

[256] In my view, it is entirely logical that the restriction in the former subsection 152(5) of the ITA, namely that *any amount that was not included in computing the taxpayer's income for a tax assessment payable under this part before the end of the normal reassessment period applicable to the taxpayer*, is not included in subsection 152(4.01). If this were so, subsection 152(4.01) would be redundant.

[257] Subsection 152(4.01) of the ITA already indicates that amendments that the Minister may make by way of reassessment after the normal reassessment period must pertain only to the items provided for in that subsection. Thus, within the framework of subsection 152(4.01), Parliament was not required to provide that any amount that was not already included in the balance of the previous assessment could not be included in the reassessment after the normal reassessment period because that subsection provides that no amendments can be made except for the items set out therein. This implies that the tax balance payable from the previous

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[34] Subsection 152(5) still applies where a reassessment is made after the normal reassessment period under subsection 165(3), pursuant to a taxpayer's objection to a Notice of Assessment.

assessment may be included in the reassessment after the normal reassessment period if that balance is not altered.

[258] In this regard, nothing in subsection 152(4.01) of the ITA prevents the Minister from including the amount of tax payable from the previous unamended assessment in a reassessment made under subsections 152(4) and 152(4.01). Subsection 152(4.01) indicates that amendments must pertain only to the items set out in that subsection.

[259] The technical notes produced by the Minister of Finance relating to subsection 152(4.01) of the ITA confirm my interpretation of subsection 152(4.01) of the ITA, which stated that the restrictions in subsection 152(4.01) replaced those that were in subsections 152(4) and 152(5).

> ITA 152(4.01)
>
> New subsection 152(4.01) of the Act limits the matters in respect of which the Minister of National Revenue may reassess, where a reassessment to which paragraph 152(4)(*a*) or (*b*) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year. In general terms, such a reassessment can be made only to the extent that it can reasonably be regarded as relating to a misrepresentation, fraud or waiver, or a matter specified in any of subparagraphs 152(4)(*b*)(i) to (iv), because of which the Minister is able to reassess beyond the normal reassessment period. This limitation replaces similar ones in subsections 152(4) and (5). New subsection 152(4.01) applies after April 27, 1989.
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> [Emphasis added.]

[260] Also, this manner of interpreting subsection 152(4.01) of the ITA is consistent with the principles laid down by the Supreme Court of Canada, which indicate how to interpret the words of an Act. In *Canada Trustco Mortgage Co.*[35] Chief Justice McLachlin and Mr. Justice Major made the following comments at paragraph 10 of their reasons with respect to how the words of an Act should be interpreted:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must

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35 *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 SCR 601.

> be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[261] In applying these principles, I am of the view that the Minister may include the balance from previous assessments. The purpose of that subsection is to protect the taxpayer by limiting the Minister's authority pertaining to assessments made after the normal reassessment period. In enacting subsection 152(4.01), Parliament ensured that, after the normal reassessment period, the Minister may make assessments under paragraphs 152(4)(a) and (b), but only with respect to the items set out in subsection 152(4.01). This provision is not meant to address the balance of previous assessments made during the normal reassessment period.

[262] In addition, if I were to agree with RTA's argument, the Minister would have only one option under subsection 152(4.01) of the ITA: every time she made an assessment under subsection 152(4.01) of the ITA, she should make an additional assessment to safeguard the balance of the previous assessment. Making a reassessment under subsection 152(4.01) would vacate the previous assessment. Thus, the Minister should, under this subsection, always make an additional assessment to maintain the previous assessment made during the normal reassessment period for the same year.

[263] This runs counter to the words used in subsection 152(4.01) of the ITA, which refers not only to an additional assessment, but also to an "assessment" and a "reassessment." RTA's argument would make the words "assessment" and "reassessment" useless and superfluous, in the context of subsection 152(4.01). The Minister could never make reassessments if she had to vacate the previous assessment (as RTA contends). Vacating the previous assessment made under subsection 152(4.01) would necessarily affect the amount of tax assessed by the previous assessment, after the crystallization of this amount of tax following the expiry of the limitation period. I am of the view that this is exactly what subsection 152(4.01) of the ITA attempts to prevent. This is why RTA's position that a reassessment under subsection 152(4.01) vacates the previous assessment not only makes the word "reassessment" in this subsection superfluous, but such an interpretation of subsection 152(4.01) would run directly counter to the purpose of this subsection.

[264] RTA argues that the Minister simply had to make additional assessments if she wanted to maintain the previous assessments dated July 14, 2011, and May 11, 2012.

[265] RTA correctly says that the Minister could have made additional assessments in this case. That said, I am of the view that, given the language of subsection 152(4.01) of the ITA,the Minister has a discretion to choose to make reassessments or additional assessments.

[266] I also agree with RTA that a reassessment vacates the previous assessment.[36] However, the reassessment must be valid in order to vacate the previous assessment.

[267] Let us take the example of RTA's Notice of Reassessment, dated April 19, 2013, relating to 2006:

[TRANSLATION] RESULTS

This notice explains the result of our reassessment as well as all the other amendments we made to the "T2 Corporation Income Tax Return" for the taxation year mentioned above.

Result of the reassessment:	$679,054.40
Result of the reassessment for the reporting period ending December 31, 2005:	$0.00
Previous balance:	$1,158,056.82
Total balance:	$1,837,111.22

[268] According to RTA, the Minister could not include the $1,837,111.22 balance of tax payable from the previous July 14, 2011, assessment for 2006 in the April 19, 2013, assessment. According to RTA, this reassessment was not valid with respect to the items set out in subsection 152(4.01) of the ITA, which result in an amount of $679,054.40.

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[36] *Abrahams, Coleman C. v. MNR (No. 2)*, [1967] 1 Ex.C.R. 333, 66 DTC 5451 and *Lornport Investments Limited v. The Queen*, [1992] 2 FC 293.

[269] According to RTA, by making a reassessment, the Minister recalculated the amount of tax payable, and the April 19, 2013, reassessment vacated the previous assessment dated July 14, 2011. However, RTA argues that the April 19, 2013, reassessment only vacated the AAI SR&ED expenditures and ITCs that had been disallowed by the Minister, but not the expenditures allowed by the Minister, in particular the SR&ED expenditures and ITCs specific to RTA. According to RTA, the previous assessment would be vacated for the amounts disallowed by the Minister but valid for the amounts that the Minister allowed, because only SR&ED expenditures are at issue in this case.

[270] As I have already indicated, I am of the view that a reassessment under subsection 152(4.01) does not vacate the previous assessment. If the April 19, 2013, and October 3, 2013, assessments were to vacate the previous assessments, they would be vacated in their entirety, not just in part. I do not agree with RTA's argument that the previous assessments dated July 14, 2011, and May 11, 2012, would only be vacated with respect to AAI's SR&ED expenditures and ITCs, because these are the only items at issue before this Court.

[271] At any rate, the controversy is about how to interpret subsection 152(4.01), not whether the previous assessments were vacated.

[272] The object of subsection 152(4.01) of the ITA is to protect the taxpayer by limiting the Minister's authority to exercise her discretion to make reassessments or additional assessments after the normal reassessment period only with respect to the items set out in this subsection. As written, subsection 152(4.01) does not prevent the Minister from including the balance of previous assessments in the reassessments made after the normal reassessment period. However, according to the language of this subsection, the Minister cannot make any amendments to the amount of tax payable in the previous assessment made during the normal reassessment period.

[273] I am of the view that limiting the Minister to having to make an additional assessment in order to maintain valid and unamended previous assessments would run counter to the object and purpose of subsection 152(4.01) of the ITA.

[274] RTA also cited *Agazarian*, a Federal Court of Appeal case.[37] In that case, the Court had to determine whether the Minister could make an assessment, in the extended assessment period, under paragraph 152(4)(b) of the ITA, which allows

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[37] *Canada v. Agazarian*, 2004 FCA 32.

the Minister to make an assessment three years after the normal reassessment period. The three judges of the Federal Court of Appeal ruled that the Minister could make more than one assessment during the extended reassessment period.

[275] Also, in *Agazarian*, there was an issue regarding the period during which subsection 152(4.01) of the ITA applied. To rule on this issue, Mr. Justice Pelletier reviewed the history of subsections 152(4) and 152(4.01) of the ITA, which led him to rule that the present and former versions of subsection 152(4.01) are to the same effect.

[276] RTA invokes paragraph 31 of Pelletier J.A.'s reasons in support of its position:

> [31] Subsection 152(4.01) restricts the right of reassessment within the extended reassessment period to the subject matter which gave rise to the right to reassess outside the normal reassessment period. It is therefore to the same effect as the final paragraphs of the former subsection 152(4).

[277] I am of the view that *Agazarian* must be read in context. The issue was whether the Minister could make several assessments during the extended assessment period. In that regard, Pelletier J.A. ruled that subsection 152(4.01) was to the same effect as the language of the former version of subsection 152(4). This analysis provided sufficient grounds to state that regardless of the version (current or former), there is nothing in either one that would prevent the Minister from making several assessments within the extended assessment period. Pelletier J.A. did not need to analyse the former version of subsection 152(5), the words of which are also found in subsection 152(4.01).

[278] In addition, I am of the view that Pelletier J.A.'s comment at paragraph 31 only corroborates the position that the Minister is limited, when making reassessments during the extended assessment period, to the items set out in subsection 152(4.01). It was not for Pelletier J.A. to inquire as to whether the language of subsection 152(4.01) prevented the Minister from including the content of the previous assessment made during the normal reassessment period. I am therefore of the view that *Agazarian* does not support RTA's argument.

V. **CONCLUSION**

QUESTION A

[279] In the light of these reasons, I am of the view that the assessments made on July 14, 2011, for the taxation year ending December 31, 2006, September 22, 2011, for the taxation year ending October 31, 2007, and November 10, 2011, for the taxation year ending December 31, 2007, are valid.

QUESTION B

[280] I am of the view that the Minister had the authority to include in the April 19, 2013, and October 3, 2013, reassessments the unamended amount of tax payable from the previous assessments made during the normal reassessment period, notices of which are dated July 14, 2011, and May 11, 2012.

Signed at Ottawa, Canada, this 26th day of April 2017.

"Johanne D'Auray"

D'Auray J.

Translation certified true

on this 17th day of May 2018.

Francois Brunet, Revisor

Appendix A

Assessment

152 (1) The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine

(a) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or

(b) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 122.8(2) or (3), 122.9(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

Cotisation

152 (1) Le ministre, avec diligence, examine la déclaration de revenu d'un contribuable pour une année d'imposition, fixe l'impôt pour l'année, ainsi que les intérêts et les pénalités éventuels payables et détermine :

a) le montant du remboursement éventuel auquel il a droit en vertu des articles 129, 131, 132 ou 133, pour l'année;

b) le montant d'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3), 122.51(2), 122.7(2) ou (3), 122.8(2) ou (3), 122.9(2), 125.4(3), 125.5(3), 127.1(1), 127.41(3) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année.

Determination of disability tax credit eligibility

(1.01) The Minister shall, if an individual requests by prescribed form, determine with all due dispatch whether an amount is deductible, or would if this Act were read without reference to paragraph 118.3(1)(c) be deductible, under section 118.3 in computing the individual's tax payable under this Part for a taxation year and send a notice of the determination to the individual.

Détermination de l'admissibilité au crédit d'impôt pour personnes handicapées

(1.01) À la demande d'un particulier faite sur le formulaire prescrit, le ministre, avec diligence, détermine si une somme est déductible en application de l'article 118.3, ou le serait en l'absence de l'alinéa 118.3(1)c), dans le calcul de l'impôt à payer par le particulier en vertu de la présente partie pour une année d'imposition et envoie un avis de la détermination au particulier.

Determination of losses

(1.1) Where the Minister ascertains

Détermination des pertes par le ministre

the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year and the taxpayer has not reported that amount as such a loss in the taxpayer's return of income for that year, the Minister shall, at the request of the taxpayer, determine, with all due dispatch, the amount of the loss and shall send a notice of determination to the person by whom the return was filed.

(1.1) Lorsque le ministre établit le montant de la perte autre qu'une perte en capital, de la perte en capital nette, de la perte agricole restreinte, de la perte agricole ou de la perte comme commanditaire subie par un contribuable pour une année d'imposition et que le contribuable n'a pas déclaré ce montant comme perte dans sa déclaration de revenu pour cette année, le ministre doit, à la demande du contribuable et avec diligence, déterminer le montant de cette perte et envoyer un avis de détermination à la personne qui a produit la déclaration.

Determination pursuant to s. 245(2)

(1.11) Where at any time the Minister ascertains the tax consequences to a taxpayer by reason of subsection 245(2) with respect to a transaction, the Minister

(a) shall, in the case of a determination pursuant to subsection 245(8), or

(b) may, in any other case,

determine any amount that is relevant for the purposes of computing the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer under this Act and, where such a determination is made, the Minister shall send to the taxpayer, with all due dispatch, a notice of determination stating the amount so determined.

Détermination selon le par. 245(2)

(1.11) Lorsque, par application du paragraphe 245(2), le ministre établit, à un moment, les attributs fiscaux d'un contribuable en ce qui concerne une opération, il doit, en cas de montant à déterminer conformément au paragraphe 245(8), ou peut, dans les autres cas, déterminer tout montant à prendre en compte pour calculer, en application de la présente loi, le revenu, le revenu imposable ou le revenu imposable gagné au Canada de ce contribuable ou l'impôt ou un autre montant payable par ce contribuable ou un montant qui lui est remboursable. Une fois le montant déterminé, le ministre doit dès que possible envoyer au contribuable un avis lui indiquant ce montant.

Application of s. 245(1)

(1.111) The definitions in subsection 245(1) apply to subsection 152(1.11).

Application du par. 245(1)

(1.111) Les définitions figurant au paragraphe 245(1) s'appliquent au

paragraphe (1.11).

When determination not to be made

(1.12) A determination of an amount shall not be made with respect to a taxpayer under subsection 152(1.11) at a time where that amount is relevant only for the purposes of computing the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer under this Act for a taxation year ending before that time.

Cas où la détermination ne peut se faire

(1.12) Le ministre ne peut déterminer un montant en application du paragraphe (1.11) en ce qui concerne un contribuable à un moment où ce montant n'est pris en compte que pour calculer, en application de la présente loi, le revenu, le revenu imposable ou le revenu imposable gagné au Canada du contribuable ou l'impôt ou un autre montant payable par le contribuable ou un montant qui lui est remboursable, pour une année d'imposition se terminant avant ce moment.

Provisions applicable

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with any modifications that the circumstances require, to a determination or redetermination under subsection (1.01) and to a determination or redetermination of an amount under this Division or an amount deemed under section 122.61 to be an overpayment on account of a taxpayer's liability under this Part, except that

(a) subsections (1) and (2) do not apply to determinations made under subsections (1.01), (1.1) and (1.11);

(b) an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by

Dispositions applicables

(1.2) Les alinéas 56(1)l) et 60o), la présente section et la section J, dans la mesure où ces dispositions portent sur une cotisation ou une nouvelle cotisation ou sur l'établissement d'une cotisation ou d'une nouvelle cotisation concernant l'impôt, s'appliquent, avec les adaptations nécessaires, à toute détermination ou nouvelle détermination effectuée selon le paragraphe (1.01) et aux montants déterminés ou déterminés de nouveau en application de la présente section ou aux montants qui sont réputés par l'article 122.61 être des paiements en trop au titre des sommes dont un contribuable est redevable en vertu de la présente partie. Toutefois:

a) les paragraphes (1) et (2) ne s'appliquent pas aux déterminations ou aux montants déterminés en application des paragraphes (1.01), (1.1) et (1.11);

the Minister only at the request of the taxpayer;

(c) subsection 164(4.1) does not apply to a determination made under subsection 152(1.4); and

(d) if the Minister determines the amount deemed by subsection 122.5(3) to have been paid by an individual for a taxation year to be nil, subsection (2) does not apply to the determination unless the individual requests a notice of determination from the Minister.

b) le montant d'une perte autre qu'une perte en capital, d'une perte en capital nette, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire subie par un contribuable pour une année d'imposition ne peut être initialement déterminé par le ministre qu'à la demande du contribuable;

c) le paragraphe 164(4.1) ne s'applique pas aux montants déterminés en application du paragraphe (1.4);

d) si le ministre établit que le montant qui est réputé, en vertu du paragraphe 122.5(3), avoir été payé par un particulier pour une année d'imposition est nul, le paragraphe (2) ne s'applique pas à la décision, à moins que le particulier ne demande un avis de décision au ministre.

Determination binding

(1.3) For greater certainty, where the Minister makes a determination of the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year or makes a determination under subsection 152(1.11) with respect to a taxpayer, the determination is (subject to the taxpayer's rights of objection and appeal in respect of the determination and to any redetermination by the Minister) binding on both the Minister and the taxpayer for the purpose of calculating the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or amount refundable to, the taxpayer, as the case may be, for

Ministre et contribuable liés

(1.3) Il est entendu que lorsque le ministre détermine le montant d'une perte autre qu'une perte en capital, d'une perte en capital nette, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire subie par un contribuable pour une année d'imposition ou détermine un montant en application du paragraphe (1.11) en ce qui concerne un contribuable, le montant ainsi déterminé lie à la fois le ministre et le contribuable en vue du calcul, pour toute année d'imposition, du revenu, du revenu imposable ou du revenu imposable gagné au Canada du contribuable ou de l'impôt ou d'un autre montant payable par le contribuable ou d'un montant qui lui est remboursable, sous réserve des

any taxation year.

droits d'opposition et d'appel du contribuable à l'égard du montant déterminé et sous réserve de tout montant déterminé de nouveau par le ministre.

Determination in respect of a partnership

(1.4) The Minister may, within 3 years after the day that is the later of

(a) the day on or before which a member of a partnership is, or but for subsection 220(2.1) would be, required under section 229 of the *Income Tax Regulations* to make an information return for a fiscal period of the partnership, and

(b) the day the return is filed,

determine any income or loss of the partnership for the fiscal period and any deduction or other amount, or any other matter, in respect of the partnership for the fiscal period that is relevant in determining the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, any member of the partnership for any taxation year under this Part.

Montant déterminé relativement à une société de personnes

(1.4) Le ministre peut déterminer le revenu ou la perte d'une société de personnes pour un exercice de celle-ci ainsi que toute déduction ou tout autre montant, ou toute autre question, se rapportant à elle pour l'exercice qui est à prendre en compte dans le calcul, pour une année d'imposition, du revenu, du revenu imposable ou du revenu imposable gagné au Canada d'un de ses associés, de l'impôt ou d'un autre montant payable par celui-ci, d'un montant qui lui est remboursable ou d'un montant réputé avoir été payé, ou payé en trop, par lui, en vertu de la présente partie. Cette détermination se fait dans les trois ans suivant le dernier en date des jours suivants :

a) le jour où, au plus tard, un associé de la société de personnes est tenu par l'article 229 du *Règlement de l'impôt sur le revenu* de remplir une déclaration de renseignements pour l'exercice, ou serait ainsi tenu si ce n'était le paragraphe 220(2.1);

b) le jour où la déclaration est produite.

Notice of determination

(1.5) Where a determination is made under subsection 152(1.4) in respect of a partnership for a fiscal period, the Minister shall send a notice of the determination to the partnership and to each person who was a member of the

Avis de détermination

(1.5) Le ministre envoie un avis de la détermination effectuée en application du paragraphe (1.4) à la société de personnes concernée et à chaque personne qui en était un associé au

partnership during the fiscal period.

Absence of notification

(1.6) No determination made under subsection 152(1.4) in respect of a partnership for a fiscal period is invalid solely because one or more persons who were members of the partnership during the period did not receive a notice of the determination.

Binding effect of determination

(1.7) Where the Minister makes a determination under subsection 152(1.4) or a redetermination in respect of a partnership,

(a) subject to the rights of objection and appeal of the member of the partnership referred to in subsection 165(1.15) in respect of the determination or redetermination, the determination or redetermination is binding on the Minister and each member of the partnership for the purposes of calculating the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, the members for any taxation year under this Part; and

(b) notwithstanding subsections 152(4), 152(4.01), 152(4.1) and 152(5), the Minister may, before the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the determination or redetermination, assess the tax, interest, penalties or

cours de l'exercice.

Absence d'avis

(1.6) La détermination effectuée en application du paragraphe (1.4) pour un exercice n'est pas invalidée du seul fait qu'une ou plusieurs personnes qui étaient des associés de la société de personnes concernée au cours de l'exercice n'ont pas reçu d'avis de détermination.

Ministre et associés liés

(1.7) Les règles suivantes s'appliquent lorsque le ministre détermine un montant en application du paragraphe (1.4) ou détermine un montant de nouveau relativement à une société de personnes :

a) sous réserve des droits d'opposition et d'appel de l'associé de la société de personnes visé au paragraphe 165(1.15) relativement au montant déterminé ou déterminé de nouveau, la détermination ou nouvelle détermination lie le ministre ainsi que les associés de la société de personnes pour ce qui est du calcul, pour une année d'imposition, du revenu, du revenu imposable ou du revenu imposable gagné au Canada des associés, de l'impôt ou d'un autre montant payable par ceux-ci, d'un montant qui leur est remboursable ou d'un montant réputé avoir été payé, ou payé en trop, par eux, en vertu de la présente partie;

b) malgré les paragraphes (4), (4.01), (4.1) et (5), le ministre peut, avant la fin du jour qui tombe un an après l'extinction ou la détermination des droits d'opposition et d'appel

other amounts payable and determine an amount deemed to have been paid or to have been an overpayment under this Part in respect of any member of the partnership and any other taxpayer for any taxation year as may be necessary to give effect to the determination or redetermination or a decision of the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada.

relativement au montant déterminé ou déterminé de nouveau, établir les cotisations voulues concernant l'impôt, les intérêts, les pénalités ou d'autres montants payables et déterminer les montants réputés avoir été payés, ou payés en trop, en vertu de la présente partie relativement à un associé de la société de personnes et à tout autre contribuable pour une année d'imposition pour tenir compte du montant déterminé ou déterminé de nouveau ou d'une décision de la Cour canadienne de l'impôt, de la Cour d'appel fédérale ou de la Cour suprême du Canada.

Time to assess

(1.8) Where, as a result of representations made to the Minister that a person was a member of a partnership in respect of a fiscal period, a determination is made under subsection 152(1.4) for the period and the Minister, the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada concludes at a subsequent time that the partnership did not exist for the period or that, throughout the period, the person was not a member of the partnership, the Minister may, notwithstanding subsections 152(4), 152(4.1) and 152(5), within one year after that subsequent time, assess the tax, interest, penalties or other amounts payable, or determine an amount deemed to have been paid or to have been an overpayment under this Part, by any taxpayer for any taxation year, but only to the extent that the assessment or determination can reasonably be regarded

(a) as relating to any matter that was

Restriction

(1.8) Lorsqu'un montant est déterminé en application du paragraphe (1.4) pour un exercice par suite d'observations faites au ministre selon lesquelles une personne était un associé d'une société de personnes pour l'exercice et que le ministre, la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada conclut, à un moment ultérieur, que la société de personnes n'a pas existé pour l'exercice ou que la personne n'en a pas été un associé tout au long de l'exercice, le ministre peut, dans l'année suivant le moment ultérieur et malgré les paragraphes (4), (4.1) et (5), établir pour une année d'imposition une cotisation concernant l'impôt, les intérêts, les pénalités ou d'autres montants payables par une contribuable, ou déterminer pour une année d'imposition un montant qui est réputé avoir été payé ou payé en trop par lui, en vertu de la présente partie seulement dans la mesure où il est raisonnable de considérer que la cotisation ou la détermination, selon le

relevant in the making of the determination made under subsection 152(1.4);

(b) as resulting from the conclusion that the partnership did not exist for the period; or

(c) as resulting from the conclusion that the person was, throughout the period, not a member of the partnership.

cas :

a) se rapporte à une question qui a été prise en compte lors de la détermination du montant en application du paragraphe (1.4);

b) découle de la conclusion selon laquelle la société de personnes n'existait pas au cours de l'exercice;

c) découle de la conclusion selon laquelle la personne n'a pas été un associé de la société de personnes tout au long de l'exercice.

Waiver of determination limitation period

(1.9) A waiver in respect of the period during which the Minister may make a determination under subsection (1.4) in respect of a partnership for a fiscal period may be made by one member of the partnership if that member is

(a) designated for that purpose in the information return made under section 229 of the *Income Tax Regulations* for the fiscal period; or

(b) otherwise expressly authorized by the partnership to so act.

Renonciation visant la période de détermination

(1.9) Un associé donné d'une société de personnes peut présenter une renonciation visant la période pendant laquelle le ministre peut faire la détermination prévue au paragraphe (1.4) relativement à la société de personnes pour un exercice. Pour ce faire, il doit :

a) soit être désigné à cette fin dans la déclaration de renseignements remplie en application de l'article 229 du *Règlement de l'impôt sur le revenu* pour l'exercice;

b) soit y être expressément autorisé par la société de personnes.

Notice of assessment

(2) After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed.

Avis de cotisation

(2) Après examen d'une déclaration, le ministre envoie un avis de cotisation à la personne qui a produit la déclaration.

Liability not dependent on assessment

(3) Liability for the tax under this Part is not affected by an incorrect or

Responsabilité indépendante de l'avis

(3) Le fait qu'une cotisation est inexacte ou incomplète ou qu'aucune

incomplete assessment or by the fact that no assessment has been made.

cotisation n'a été faite n'a pas d'effet sur les responsabilités du contribuable à l'égard de l'impôt prévu par la présente partie.

Definition of normal reassessment period

(3.1) For the purposes of subsections (4), (4.01), (4.2), (4.3), (5) and (9), the normal reassessment period for a taxpayer in respect of a taxation year is

(a) if at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends four years after the earlier of the day of sending of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of sending of an original notification that no tax is payable by the taxpayer for the year; and

(b) in any other case, the period that ends three years after the earlier of the day of sending of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of sending of an original notification that no tax is payable by the taxpayer for the year.

Période normale de nouvelle cotisation

(3.1) Pour l'application des paragraphes (4), (4.01), (4.2), (4.3), (5) et (9), la période normale de nouvelle cotisation applicable à un contribuable pour une année d'imposition s'étend sur les périodes suivantes :

a) quatre ans suivant soit la date d'envoi d'un avis de première cotisation en vertu de la présente partie le concernant pour l'année, soit, si elle est antérieure, la date d'envoi d'une première notification portant qu'aucun impôt n'est payable par lui pour l'année, si, à la fin de l'année, le contribuable est une fiducie de fonds commun de placement ou une société autre qu'une société privée sous contrôle canadien;

b) trois ans suivant celle de ces dates qui est antérieure à l'autre, dans les autres cas.

Determination of deemed overpayment

(3.2) A taxpayer may, during any month, request in writing that the Minister determine the amount deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for a taxation year that arose during the month or any of the 11 preceding

Détermination du paiement en trop réputé

(3.2) Un contribuable peut, au cours d'un mois, demander au ministre, par écrit, de déterminer le montant réputé par le paragraphe 122.61(1) être un paiement en trop, qui se produit au cours de ce mois ou de l'un ou plusieurs des onze mois précédents, au titre des sommes dont il est redevable

months.

Notice of determination

(3.3) On receipt of the request referred to in subsection 152(3.2), the Minister shall, with all due dispatch, determine the amounts deemed by subsection 122.61(1) to be overpayments on account of the taxpayer's liability under this Part that arose during the months in respect of which the request was made or determine that there is no such amount, and shall send a notice of the determination to the taxpayer.

(3.4) and (3.5) [Repealed, 2013, c. 34, s. 309]

Assessment and reassessment

(4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any

en vertu de la présente partie pour une année d'imposition.

Avis de détermination

(3.3) Sur réception de la demande visée au paragraphe (3.2), le ministre, avec diligence, détermine les montants réputés par le paragraphe 122.61(1) être des paiements en trop, qui se produisent au cours des mois indiqués dans la demande, au titre des sommes dont le contribuable est redevable en vertu de la présente partie, ou détermine qu'aucun semblable montant n'existe. Il avise alors le contribuable, par écrit, de sa détermination.

(3.4) et (3.5) [Abrogés, 2013, ch. 34, art. 309]

Cotisation et nouvelle cotisation

(4) Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant l'impôt pour une année d'imposition, ainsi que les intérêts ou les pénalités, qui sont payables par un contribuable en vertu de la présente partie ou donner avis par écrit qu'aucun impôt n'est payable pour l'année à toute personne qui a produit une déclaration de revenu pour une année d'imposition. Pareille cotisation ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans les cas suivants :

a) le contribuable ou la personne produisant la déclaration :

(i) soit a fait une présentation erronée des faits, par négligence,

information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year;

(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and

(i) is required under subsection (6) or (6.1), or would be so required if the taxpayer had claimed an amount by filing the prescribed form referred to in the subsection on or before the day referred to in the subsection,

(ii) is made as a consequence of the assessment or reassessment pursuant to this paragraph or subsection 152(6) of tax payable by another taxpayer,

(iii) is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length,

(iii.1) is made, if the taxpayer is non-resident and carries on a business in Canada, as a consequence of

(A) an allocation by the taxpayer of revenues or expenses as amounts in respect of the Canadian business (other than revenues and expenses that relate solely to the Canadian business, that are recorded in the books of account of the Canadian

inattention ou omission volontaire, ou a commis quelque fraude en produisant la déclaration ou en fournissant quelque renseignement sous le régime de la présente loi,

(ii) soit a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période normale de nouvelle cotisation applicable au contribuable pour l'année;

b) la cotisation est établie avant le jour qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et, selon le cas :

(i) est à établir en vertu du paragraphe (6) ou (6.1), ou le serait si le contribuable avait déduit une somme en présentant le formulaire prescrit visé à ce paragraphe au plus tard le jour mentionné à ce paragraphe,

(ii) est établie par suite de l'établissement, en application du présent paragraphe ou du paragraphe (6), d'une cotisation ou d'une nouvelle cotisation concernant l'impôt payable par un autre contribuable,

(iii) est établie par suite de la conclusion d'une opération entre le contribuable et une personne non résidente avec laquelle il avait un lien de dépendance,

(iii.1) si le contribuable est un non-résident exploitant une entreprise au Canada, est établie par suite :

(A) soit d'une attribution, par le contribuable, de recettes ou de

business, and the documentation in support of which is kept in Canada), or

(B) a notional transaction between the taxpayer and its Canadian business, where the transaction is recognized for the purposes of the computation of an amount under this Act or an applicable tax treaty.

(iv) is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country,

(v) is made as a consequence of a reduction under subsection 66(12.73) of an amount purported to be renounced under section 66,

(vi) is made in order to give effect to the application of subsection 118.1(15) or 118.1(16), or

(vii) is made to give effect to the application of any of sections 94, 94.1 and 94.2;

(b.1) an information return described in subsection 237.1(7) or 237.3(2) that is required to be filed in respect of a deduction or claim made by the taxpayer in relation to a tax shelter, or in respect of a tax benefit (as defined in subsection 245(1)) to the taxpayer from an avoidance transaction (as defined in subsection 245(3)), is not filed as and when required, and the assessment, reassessment or additional assessment is made before the day that is three years after the day on

dépenses au titre de montants relatifs à l'entreprise canadienne (sauf des recettes et des dépenses se rapportant uniquement à l'entreprise canadienne qui sont inscrits dans les documents comptables de celle-ci et étayés de documents conservés au Canada),

(B) soit d'une opération théorique entre le contribuable et son entreprise canadienne, qui est reconnue aux fins du calcul d'un montant en vertu de la présente loi ou d'un traité fiscal applicable,

(iv) est établie par suite d'un paiement supplémentaire ou d'un remboursement d'impôt sur le revenu ou sur les bénéfices effectué au gouvernement d'un pays étranger, ou d'un état, d'une province ou autre subdivision politique d'un tel pays, ou par ce gouvernement,

(v) est établie par suite d'une réduction, opérée en application du paragraphe 66(12.73), d'un montant auquel il a été censément renoncé en vertu de l'article 66,

(vi) est établie en vue de l'application des paragraphes 118.1(15) ou (16),

(vii) est établie en vue de l'application des articles 94, 94.1 ou 94.2;

b.1) la déclaration de renseignements visée aux paragraphes 237.1(7) ou 237.3(2) qui doit être produite au titre d'une déduction ou d'une demande du contribuable relative à

which the information return is filed;

(b.2) the assessment, reassessment or additional assessment is made before the day that is three years after the end of the normal reassessment period for the taxpayer in respect of the year and if

(i) the taxpayer, or a partnership of which the taxpayer is a member, has failed to file for the year a prescribed form as and when required under subsection 233.3(3) or to report on the prescribed form the information required in respect of a specified foreign property (as defined in subsection 233.3(1)) held by the taxpayer at any time during the year, and

(ii) the taxpayer has failed to report, in the return of income for the year, an amount in respect of a specified foreign property that is required to be included in computing the taxpayer's income for the year;

(c) the taxpayer or person filing the return of income has filed with the Minister a waiver in prescribed form within the additional three-year period referred to in paragraph (b) or (b.1);

(c.1) the taxpayer or person filing the return of income has filed with the Minister a waiver in prescribed form within the additional three-year period referred to in paragraph (b.2); or

(d) as a consequence of a change in the allocation of the taxpayer's taxable income earned in a province as determined under the law of a

un abri fiscal, ou au titre d'un avantage fiscal, au sens du paragraphe 245(1), du contribuable découlant d'une opération d'évitement, au sens du paragraphe 245(3), n'est pas produite selon les modalités et dans les délais prévus, et la cotisation, la nouvelle cotisation ou la cotisation supplémentaire est établie avant la date qui suit de trois ans la date à laquelle la déclaration est produite;

b.2) la cotisation, la nouvelle cotisation ou la cotisation supplémentaire est établie avant la date qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et, à la fois :

(i) le contribuable, ou une société de personnes dont il est un associé, a omis de produire pour l'année le formulaire prescrit selon les modalités et dans le délai prévus au paragraphe 233.3(3) ou d'indiquer dans ce formulaire les renseignements exigés relativement à un bien étranger déterminé, au sens du paragraphe 233.3(1), qu'il détient au cours de l'année,

(ii) le contribuable a omis d'indiquer, dans la déclaration de revenu pour l'année, une somme relative à un bien étranger déterminé qui est à inclure dans le calcul de son revenu pour l'année;

c) le contribuable ou la personne produisant la déclaration de revenu a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période additionnelle de trois ans

province that provides rules similar to those prescribed for the purposes of section 124, an assessment, reassessment or additional assessment of tax for a taxation year payable by a corporation under a law of a province that imposes on the corporation a tax similar to the tax imposed under this Part (in this paragraph referred to as a "provincial reassessment") is made, and as a consequence of the provincial reassessment, an assessment, reassessment or additional assessment is made on or before the day that is one year after the later of

(i) the day on which the Minister is advised of the provincial reassessment, and

(ii) the day that is 90 days after the day of sending of a notice of the provincial reassessment.

mentionnée aux alinéas b) ou b.1);

c.1) le contribuable ou la personne produisant la déclaration de revenu a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période additionnelle de trois ans mentionnée à l'alinéa b.2);

d) par suite d'un changement intervenu dans l'attribution du revenu imposable du contribuable gagné dans une province, déterminé selon la législation d'une province qui prévoit des règles semblables à celles établies par règlement pour l'application de l'article 124, une cotisation, une nouvelle cotisation ou une cotisation supplémentaire (appelée « nouvelle cotisation provinciale » au présent alinéa) est établie à l'égard de l'impôt à payer par une société pour une année d'imposition en vertu d'une loi provinciale aux termes de laquelle la société est assujettie à un impôt semblable à celui prévu par la présente partie et, par suite de la nouvelle cotisation provinciale, une cotisation, une nouvelle cotisation ou une cotisation supplémentaire est établie au plus tard le jour qui suit d'une année le dernier en date des jours suivants :

(i) le jour où le ministre est avisé de la nouvelle cotisation provinciale,

(ii) le quatre-vingt-dixième jour suivant la date d'envoi de l'avis de la nouvelle cotisation provinciale.

Extended period assessment

(4.01) Notwithstanding subsections

Période de cotisation prolongée

(4.01) Malgré les paragraphes (4) et

(4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(a), (b), (b.1) or (c) applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(a) where paragraph 152(4)(a) applies to the assessment, reassessment or additional assessment,

(i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, or

(ii) a matter specified in a waiver filed with the Minister in respect of the year; and

(b) if paragraph (4)(b), (b.1) or (c) applies to the assessment, reassessment or additional assessment,

(i) the assessment, reassessment or additional assessment to which subparagraph 152(4)(b)(i) applies,

(ii) the assessment or reassessment referred to in subparagraph 152(4)(b)(ii),

(iii) the transaction referred to in subparagraph 152(4)(b)(iii),

(iv) the payment or reimbursement referred to in subparagraph

(5), la cotisation, la nouvelle cotisation ou la cotisation supplémentaire à laquelle s'appliquent les alinéas (4)a), b), b.1) ou c) relativement à un contribuable pour une année d'imposition ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans la mesure où il est raisonnable de considérer qu'elle se rapporte à l'un des éléments suivants :

a) en cas d'application de l'alinéa (4)a):

(i) une présentation erronée des faits par le contribuable ou par la personne ayant produit la déclaration de revenu de celui-ci pour l'année, effectuée par négligence, inattention ou omission volontaire ou attribuable à quelque fraude commise par le contribuable ou cette personne lors de la production de la déclaration ou de la communication de quelque renseignement sous le régime de la présente loi,

(ii) une question précisée dans une renonciation présentée au ministre pour l'année;

b) en cas d'application des alinéas (4)b), b.1) ou c) :

(i) la cotisation, la nouvelle cotisation ou la cotisation supplémentaire à laquelle s'applique le sous-alinéa(4)b)(i),

(ii) la cotisation ou la nouvelle cotisation visée au sous-alinéa (4)b)(ii),

(iii) l'opération visée au sous-

152(4)(b)(iv),

(v) the reduction referred to in subparagraph 152(4)(b)(v),

(vi) the application referred to in subparagraph 152(4)(b)(vi), or

(vii) the deduction, claim or tax benefit referred to in paragraph (4)(b.1).

alinéa (4)a)(iii),

(iv) le paiement ou le remboursement visé au sous-alinéa (4)b)(iv),

(v) la réduction visée au sous-alinéa (4)b)(v),

(vi) l'application visée au sous-alinéa (4)b)(vi),

(vii) la déduction, la demande ou l'avantage fiscal visé à l'alinéa (4)b.1).

If waiver revoked

(4.1) If the Minister would, but for this subsection, be entitled to reassess, make an additional assessment or assess tax, interest or penalties by virtue only of the filing of a waiver under subparagraph (4)(a)(ii) or paragraph (4)(c) or (c.1), the Minister may not make such a reassessment, additional assessment or assessment after the day that is six months after the date on which a notice of revocation of the waiver in prescribed form is filed.

Révocation de la renonciation

(4.1) Dans le cas où le ministre aurait, en l'absence du présent paragraphe, le droit d'établir une nouvelle cotisation, une cotisation supplémentaire ou une cotisation concernant l'impôt, les intérêts et les pénalités en vertu seulement de la présentation d'une renonciation selon le sous-alinéa (4)a)(ii) ou les alinéas (4)c) ou c.1), le ministre ne peut établir une telle nouvelle cotisation, cotisation supplémentaire ou cotisation concernant l'impôt, les intérêts ou les pénalités plus de six mois après la date de présentation, selon le formulaire prescrit, de l'avis de révocation de la renonciation.

Reassessment with taxpayer's consent

(4.2) Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining — at any time after the end of the normal reassessment period, of a taxpayer who is an individual (other than a trust) or a graduated rate estate, in respect of a taxation year — the amount of any refund to which the taxpayer is entitled at that time for the year, or a

Nouvelle cotisation et nouvelle détermination

(4.2) Malgré les paragraphes (4), (4.1) et (5), pour déterminer, à un moment donné après la fin de la période normale de nouvelle cotisation applicable à un contribuable — particulier (sauf une fiducie) ou succession assujettie à l'imposition à taux progressifs — pour une année d'imposition, le remboursement

reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is 10 calendar years after the end of that taxation year,

(a) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and

(b) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 122.8(2) or (3), 122.9(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

auquel le contribuable a droit à ce moment pour l'année ou la réduction d'un montant payable par le contribuable pour l'année en vertu de la présente partie, le ministre peut, si le contribuable demande pareille détermination au plus tard le jour qui suit de dix années civiles la fin de cette année d'imposition, à la fois :

a) établir de nouvelles cotisations concernant l'impôt, les intérêts ou les pénalités payables par le contribuable pour l'année en vertu de la présente partie;

b) déterminer de nouveau l'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3), 122.51(2), 122.7(2) ou (3), 122.8(2) ou (3), 122.9(2), 127.1(1), 127.41(3) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année ou qui est réputé, par le paragraphe 122.61(1), être un paiement en trop au titre des sommes dont le contribuable est redevable en vertu de la présente partie pour l'année.

Consequential assessment

(4.3) Notwithstanding subsections (4), (4.1) and (5), if the result of an assessment or a decision on an appeal is to change a particular balance of a taxpayer for a particular taxation year, the Minister may, or if the taxpayer so requests in writing, shall, before the later of the expiration of the normal reassessment period in respect of a subsequent taxation year and the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the particular year, reassess

Cotisation corrélative

(4.3) Malgré les paragraphes (4), (4.1) et (5), lorsqu'une cotisation ou une décision d'appel a pour effet de modifier un solde donné applicable à un contribuable pour une année d'imposition donnée, le ministre peut ou, si le contribuable en fait la demande par écrit, doit, avant le dernier en date du jour d'expiration de la période normale de nouvelle cotisation pour une année d'imposition subséquente et de la fin du jour qui suit d'un an l'extinction ou la détermination de tous les droits

the tax, interest or penalties payable by the taxpayer, redetermine an amount deemed to have been paid or to have been an overpayment by the taxpayer or modify the amount of a refund or other amount payable to the taxpayer, under this Part in respect of the subsequent taxation year, but only to the extent that the reassessment, redetermination or modification can reasonably be considered to relate to the change in the particular balance of the taxpayer for the particular year.

d'opposition ou d'appel relatifs à l'année donnée, établir une nouvelle cotisation à l'égard de l'impôt, des intérêts ou des pénalités payables par le contribuable, déterminer de nouveau un montant réputé avoir été payé, ou payé en trop, par lui ou modifier le montant d'un remboursement ou une autre somme qui lui est payable, en vertu de la présente partie pour l'année subséquente, mais seulement dans la mesure où il est raisonnable de considérer que la nouvelle cotisation, la nouvelle détermination ou la modification se rapporte à la modification du solde donné applicable au contribuable pour l'année donnée.

Definition of balance

(4.4) For the purpose of subsection 152(4.3), a *balance* of a taxpayer for a taxation year is the income, taxable income, taxable income earned in Canada or any loss of the taxpayer for the year, or the tax or other amount payable by, any amount refundable to, or any amount deemed to have been paid or to have been an overpayment by, the taxpayer for the year.

Sens de solde

(4.4) Pour l'application du paragraphe (4.3), le solde applicable à un contribuable pour une année d'imposition correspond au revenu, au revenu imposable, au revenu imposable gagné au Canada ou à une perte du contribuable pour l'année, à l'impôt ou autre montant payable par lui pour l'année, à un montant qui lui est remboursable pour l'année ou à un montant réputé avoir été payé, ou payé en trop, par lui pour l'année.

Limitation on assessments

(5) There shall not be included in computing the income of a taxpayer for a taxation year, for the purpose of an assessment, reassessment or additional assessment made under this Part after the taxpayer's normal reassessment period in respect of the year, any amount that was not included in computing the taxpayer's income for the purpose of an

Limite de la cotisation

(5) N'est pas à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition en vue de l'établissement, après la période normale de nouvelle cotisation qui lui est applicable pour l'année, d'une cotisation, d'une nouvelle cotisation ou d'une cotisation supplémentaire en vertu de la présente partie le montant qui n'a pas été inclus dans le calcul de

assessment, reassessment or additional assessment made under this Part before the end of the period.

son revenu en vue de l'établissement, avant la fin de cette période, d'une cotisation, d'une nouvelle cotisation ou d'une cotisation supplémentaire en vertu de cette partie.

Reassessment where certain deductions claimed

Nouvelle cotisation en cas de nouvelles déductions

(6) Where a taxpayer has filed for a particular taxation year the return of income required by section 150 and an amount is subsequently claimed by the taxpayer or on the taxpayer's behalf for the year as

(6) Lorsqu'un contribuable a produit la déclaration de revenu exigée par l'article 150 pour une année d'imposition et que, par la suite, une somme est demandée pour l'année par lui ou pour son compte à titre de :

(a) a deduction under paragraph 3(e) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, by virtue of the taxpayer's death in a subsequent taxation year and the consequent application of section 71 of that Act in respect of an allowable capital loss for the year,

a) déduction, en application de l'alinéa 3e) de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts revisés du Canada de 1952, résultant de son décès au cours d'une année d'imposition ultérieure ayant entraîné l'application de l'article 71 de la même loi relativement à une perte en capital déductible pour l'année;

(b) a deduction under section 41 in respect of the taxpayer's listed-personal-property loss for a subsequent taxation year,

b) déduction d'un montant en vertu de l'article 41 relativement à sa perte relative à des biens meubles déterminés pour une année d'imposition ultérieure;

(b.1) a deduction under paragraph 60(i) in respect of a premium (within the meaning assigned by subsection 146(1)) paid in a subsequent taxation year under a registered retirement savings plan where the premium is deductible by reason of subsection 146(6.1),

b.1) déduction, en application de l'alinéa 60i), relativement à une prime, au sens du paragraphe 146(1), versée au cours d'une année d'imposition ultérieure dans le cadre d'un régime enregistré d'épargne-retraite et déductible en application du paragraphe 146(6.1);

(c) a deduction under section 118.1 in respect of a gift made in a subsequent taxation year or under section 111 in respect of a loss for a subsequent taxation year,

c) déduction, en application de l'article 118.1, relativement à un don fait au cours d'une année d'imposition ultérieure ou, en application de l'article 111,

(c.1) [Repealed, 2013, c. 34, s. 309]

(d) a deduction under subsection

127(5) in respect of property acquired or an expenditure made in a subsequent taxation year,

(e) [Repealed, 2013, c. 34, s. 309]

(f) a deduction under section 125.3 in respect of an unused Part I.3 tax credit (within the meaning assigned by subsection 125.3(3)) for a subsequent taxation year,

(f.1) a deduction under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(f.2) a deduction under subsection 128.1(8) as a result of a disposition in a subsequent taxation year,

(f.3) a deduction (including for the purposes of this subsection a reduction of an amount otherwise required to be included in computing a taxpayer's income) under subsection 146(8.9) or (8.92), 146.3(6.2) or (6.3) or 147.5(14) or (19),

(g) a deduction under subsection 147.2(4) because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year, or

(h) a deduction by virtue of an election for a subsequent taxation year under paragraph 164(6)(c) or 164(6)(d) by the taxpayer's legal representative,

by filing with the Minister, on or before the day on or before which the

relativement à une perte subie pour une année d'imposition ultérieure;

c.1) [Abrogé, 2013, ch. 34, art. 309]

d) déduction, en application du paragraphe 127(5), relativement à des biens acquis ou des dépenses faites au cours d'une année d'imposition ultérieure;

e) [Abrogé, 2013, ch. 34, art. 309]

f) déduction, en application de l'article 125.3, au titre d'un crédit d'impôt de la partie I.3 inutilisé, au sens du paragraphe 125.3(3), pour une année d'imposition ultérieure;

f.1) déduction, en application du paragraphe 126(2), relativement à la fraction inutilisée du crédit pour impôt étranger (au sens du paragraphe 126(7)) ou, en application des paragraphes 126(2.21) ou (2.22), relativement aux impôts étrangers payés, pour une année d'imposition ultérieure;

f.2) déduction, en application du paragraphe 128.1(8), par suite d'une disposition effectuée au cours d'une année d'imposition ultérieure;

f.3) déduction en application des paragraphes 146(8.9) ou (8.92), 146.3(6.2) ou (6.3) ou 147.5(14) ou (19) (y compris, pour l'application du présent paragraphe, toute réduction d'une somme à inclure par ailleurs dans le calcul du revenu d'un contribuable);

g) déduction, en application du paragraphe 147.2(4), du fait que le paragraphe 147.2(6) s'applique par suite du décès du contribuable au cours de l'année d'imposition

taxpayer is, or would be if a tax under this Part were payable by the taxpayer for that subsequent taxation year, required by section 150 to file a return of income for that subsequent taxation year, a prescribed form amending the return, the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the deduction claimed.

subséquente;

h) déduction à cause d'un choix pour une année d'imposition ultérieure effectué par son représentant légal en vertu de l'alinéa 164(6)c) ou d),

en présentant au ministre, au plus tard le jour où le contribuable est tenu, ou le serait s'il était tenu de payer de l'impôt en vertu de la présente partie pour cette année d'imposition ultérieure, de produire en vertu de l'article 150 une déclaration de revenu pour cette année d'imposition ultérieure, un formulaire prescrit modifiant la déclaration, le ministre doit fixer de nouveau l'impôt du contribuable pour toute année d'imposition pertinente (autre qu'une année d'imposition antérieure à l'année donnée) afin de tenir compte de la déduction demandée.

Reassessment if amount under subsection 91(1) is reduced

(6.1) If

(a) a taxpayer has filed for a particular taxation year the return of income required by section 150,

(b) the amount included in computing the taxpayer's income for the particular year under subsection 91(1) is subsequently reduced because of a reduction in the foreign accrual property income of a foreign affiliate of the taxpayer for a taxation year (referred to in this paragraph as the "claim year") of the affiliate that ends in the particular year, if

(i) the reduction is

(A) attributable to a foreign

Nouvelle cotisation en cas de réduction d'une somme incluse en application du paragraphe 91(1)

(6.1) Le ministre établit une nouvelle cotisation dans le cas où les conditions ci-après sont réunies :

a) un contribuable a produit, pour une année d'imposition donnée, la déclaration de revenu exigée par l'article 150;

b) la somme incluse, en application du paragraphe 91(1), dans le calcul de son revenu pour l'année donnée est ultérieurement réduite en raison d'une réduction du revenu étranger accumulé, tiré de biens d'une de ses sociétés étrangères affiliées pour une année d'imposition de celle-ci (appelée « année de la demande » au présent alinéa) se terminant dans

accrual property loss (within the meaning assigned by subsection 5903(3) of the *Income Tax Regulations*) of the affiliate for a taxation year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(B) included in the description of F in the definition *foreign accrual property income* in subsection 95(1) in respect of the affiliate for the claim year, or

(ii) the reduction is

(A) attributable to a foreign accrual capital loss (within the meaning assigned by subsection 5903.1(3) of the *Income Tax Regulations*) of the affiliate for a taxation year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(B) included in the description of F.1 in the definition *foreign accrual property income* in subsection 95(1) in respect of the affiliate for the claim year, and

(c) the taxpayer has filed with the Minister, on or before the filing-due date for that subsequent taxation year, a prescribed form amending the return,

the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular year) in order to take into account the reduction in the amount included under subsection 91(1) in computing the income of the taxpayer for the particular year.

l'année donnée, si, selon le cas :

(i) la réduction est, à la fois :

(A) attribuable à une perte étrangère accumulée, relative à des biens, au sens du paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*, de la société affiliée pour une année d'imposition de celle-ci se terminant dans une année d'imposition ultérieure du contribuable,

(B) comprise dans la valeur de l'élément F de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens*, au paragraphe 95(1), relativement à la société affiliée pour l'année de la demande,

(ii) la réduction est, à la fois :

(A) attribuable à une perte en capital étrangère accumulée, au sens du paragraphe 5903.1(3) du *Règlement de l'impôt sur le revenu*, de la société affiliée pour une année d'imposition de celle-ci se terminant dans une année d'imposition ultérieure du contribuable,

(B) comprise dans la valeur de l'élément F.1 de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens*, au paragraphe 95(1), relativement à la société affiliée pour l'année de la demande;

c) le contribuable a présenté au ministre, au plus tard à la date d'échéance de production qui lui est applicable pour cette année

d'imposition ultérieure, un formulaire prescrit modifiant la déclaration.

La nouvelle cotisation porte sur l'impôt du contribuable pour toute année d'imposition pertinente (sauf les années d'imposition antérieures à l'année donnée) et a pour objet de tenir compte de la réduction de la somme incluse, en application du paragraphe 91(1), dans le calcul du revenu du contribuable pour l'année donnée.

Extended reassessment period

(6.2) The Minister shall reassess a taxpayer's tax for a particular taxation year, in order to take into account the application of paragraph (d) of the definition *excluded property* in subsection 142.2(1), or the application of subsection 142.6(1.6), in respect of property held by the taxpayer, if

(a) the taxpayer has filed for the particular taxation year the return of income required by section 150; and

(b) the taxpayer files with the Minister a prescribed form amending the return, on or before the filing-due date for the taxpayer's taxation year that

(i) if the filing is in respect of paragraph (d) of that definition *excluded property*, includes the acquisition of control time referred to in that paragraph, and

(ii) if the filing is in respect of subsection 142.6(1.6), immediately follows the particular taxation year.

Période de nouvelle cotisation prolongée

(6.2) Le ministre établit une nouvelle cotisation concernant l'impôt d'un contribuable pour une année d'imposition donnée pour tenir compte de l'application de l'alinéa d) de la définition de *bien exclu* au paragraphe 142.2(1), ou de l'application du paragraphe 142.6(1.6), relativement aux biens détenus par le contribuable si les conditions suivantes sont réunies :

a) le contribuable a produit pour l'année donnée la déclaration de revenu qu'il est tenu de produire en application de l'article 150;

b) le contribuable présente au ministre un formulaire prescrit modifiant la déclaration, au plus tard à la date d'échéance de production qui lui est applicable pour celle des années d'imposition suivantes qui est applicable :

(i) si le formulaire est produit à l'égard de l'alinéa d) de cette définition de *bien exclu*, l'année d'imposition du contribuable qui

comprend le moment de l’acquisition du contrôle visé à cet alinéa,

(ii) si le formulaire est produit à l’égard du paragraphe 142.6(1.6), l’année d’imposition du contribuable qui suit l’année donnée.

Reassessment for section 119 credit

(6.3) If a taxpayer has filed for a particular taxation year the return of income required by section 150 and an amount is subsequently claimed by the taxpayer, or on the taxpayer’s behalf, for the particular year as a deduction under section 119 in respect of a disposition in a subsequent taxation year, and the taxpayer files with the Minister a prescribed form amending the return on or before the filing-due date of the taxpayer for the subsequent taxation year, the Minister shall reassess the taxpayer’s tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the deduction claimed.

Nouvelle cotisation — crédit prévu à l’article 119

(6.3) Lorsqu’un contribuable a produit, pour une année d’imposition donnée, la déclaration de revenu exigée par l’article 150, que, par la suite, une somme est demandée pour cette année par lui ou pour son compte à titre de déduction, en application de l’article 119, relativement à une disposition effectuée au cours d’une année d’imposition ultérieure et que le contribuable présente au ministre un formulaire prescrit modifiant la déclaration au plus tard à la date d’échéance de production qui lui est applicable pour l’année ultérieure, le ministre établit une nouvelle cotisation concernant l’impôt du contribuable pour toute année d’imposition pertinente, sauf celles antérieures à l’année donnée, pour tenir compte de la déduction demandée.

Assessment not dependent on return or information

(7) The Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

Cotisation indépendante de la déclaration ou des renseignements fournis

(7) Le ministre n’est pas lié par les déclarations ou renseignements fournis par un contribuable ou de sa part et, lors de l’établissement d’une cotisation, il peut, indépendamment de la déclaration ou des renseignements ainsi fournis ou de l’absence de déclaration, fixer l’impôt à payer en

vertu de la présente partie.

Assessment deemed valid and binding

(8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

Présomption de validité de la cotisation

(8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

Alternative basis for assessment

(9) The Minister may advance an alternative argument in support of an assessment at any time after the normal reassessment period unless, on an appeal under this Act

(a) there is relevant evidence that the taxpayer is no longer able to adduce without the leave of the court; and

(b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

Nouvel argument à l'appui d'une cotisation

(9) Le ministre peut avancer un nouvel argument à l'appui d'une cotisation après l'expiration de la période normale de nouvelle cotisation, sauf si, sur appel interjeté en vertu de la présente loi :

a) d'une part, il existe des éléments de preuve que le contribuable n'est plus en mesure de produire sans l'autorisation du tribunal;

b) d'autre part, il ne convient pas que le tribunal ordonne la production des éléments de preuve dans les circonstances.

Tax deemed not assessed

(10) Notwithstanding any other provision of this section, an amount of tax is deemed, for the purpose of any agreement entered into by or on behalf of the Government of Canada under section 7 of the *Federal-Provincial Fiscal Arrangements Act*, not to have been assessed under this Act until

Cotisation réputée ne pas avoir été établie

(10) Malgré les autres dispositions du présent article, un montant d'impôt est réputé, pour l'application de tout accord conclu par le gouvernement du Canada, ou pour son compte, en vertu de l'article 7 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces*,

(a) the end of the period during which the security is accepted by the Minister, if adequate security for the tax is accepted by the Minister under subsection 220(4.5) or (4.6); or

(b) the amount is collected by the Minister, if information relevant to the assessment of the amount was provided to the Canada Revenue Agency under a contract entered into by a person under a program administered by the Canada Revenue Agency to obtain information relating to tax non-compliance.

ne pas avoir fait l'objet d'une cotisation en vertu de la présente loi jusqu'à ce que, selon le cas :

a) la période au cours de laquelle la garantie est acceptée par le ministre prenne fin, dans le cas où une garantie suffisante pour l'impôt est acceptée par le ministre aux termes des paragraphes 220(4.5) ou (4.6);

b) le montant soit perçu par le ministre, dans le cas où des renseignements relatifs à la cotisation établie à l'égard du montant ont été fournis à l'Agence du revenu du Canada aux termes d'un contrat conclu par une personne dans le cadre d'un programme administré par l'Agence du revenu du Canada qui permet d'obtenir des renseignements concernant l'inobservation fiscale.

Irregularities

166 An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.

Irrégularités

166 Une cotisation ne peut être annulée ni modifiée lors d'un appel uniquement par suite d'irrégularité, de vice de forme, d'omission ou d'erreur de la part de qui que ce soit dans l'observation d'une disposition simplement directrice de la présente loi.

Appendix B

1997

152(4) Assessment and reassessment. Subject to subsection (5), the Minister may at any time assess tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, and may

(*a*) at any time, if the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year,

(*b*) before the day that is 3 years after the expiration of the normal reassessment period for the taxpayer in respect of the year, if

(i) an assessment or reassessment of the tax of the taxpayer was required pursuant to subsection (6) or would have been required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein,

(ii) there is reason, as a consequence of the assessment or reassessment of another taxpayer's

1997

152(4) Cotisation et nouvelle cotisation. Sous réserve du paragraphe (5), le ministre peut, à un moment donné, fixer l'impôt pour une année d'imposition, ainsi que les intérêts ou pénalités payables en vertu de la présente partie par un contribuable, ou donner avis par écrit, à toute personne qui a produit une déclaration de revenu pour une année d'imposition, qu'aucun impôt n'est payable pour l'année, et peut, selon les circonstances, établir des nouvelles cotisations, des cotisations supplémentaires ou des cotisations concernant l'impôt, les intérêts ou les pénalités en vertu de la présente partie :

a) à un moment donné, si le contribuable ou la personne produisant la déclaration :

(i) soit a fait une présentation erronée des faits, par négligence, inattention ou omission volontaire, ou a commis quelque fraude en produisant la déclaration ou en fournissant quelque renseignement sous le régime de la présente loi,

(ii) soit a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période normale de nouvelle cotisation applicable au contribuable pour l'année;

b) avant le jour qui est trois ans après la fin de la période normale de nouvelle cotisation applicable au

tax pursuant to this paragraph or subsection (6), to assess or reassess the taxpayer's tax for any relevant taxation year,

(iii) there is reason, as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length, to assess or reassess the taxpayer's tax for any relevant taxation year, or

(iv) there is reason, as a consequence of an additional payment or reimbursement of any income or profits tax to or by the government of a country other than Canada, to assess or reassess the taxpayer's tax for any relevant taxation year, and

(c) within the normal reassessment period for the taxpayer in respect of the year, in any other case, reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require, except that a reassessment, an additional assessment or an assessment may be made under paragraph (*b*) after the normal reassessment period for the taxpayer in respect of the year only to the extent that it may reasonably be regarded as relating to

(*d*) the assessment or reassessment referred to in subparagraph (*b*)(i) or (ii),

(*e*) the transaction referred to in subparagraph (*b*)(iii), or

(*f*) the additional payment or reimbursement referred to in

contribuable pour l'année, lorsque, selon le cas :

(i) une cotisation ou une nouvelle cotisation concernant l'impôt du contribuable a été exigée conformément au paragraphe (6), ou l'aurait été si le contribuable avait déduit un montant en présentant le formulaire prescrit visé à ce paragraphe au plus tard le jour qui y est mentionné,

(ii) il y a lieu, par suite de l'établissement de la cotisation ou de la nouvelle cotisation concernant l'impôt d'un autre contribuable conformément au présent alinéa ou au paragraphe (6), d'établir une cotisation ou une nouvelle cotisation concernant l'impôt du contribuable pour toute année d'imposition pertinente,

(iii) il y a lieu, par suite d'une opération à laquelle le contribuable et une personne non-résidente avec laquelle il a un lien de dépendance sont parties, d'établir une cotisation ou une nouvelle cotisation concernant l'impôt du contribuable pour toute année d'imposition pertinente,

(iv) il y a lieu, par suite d'un paiement supplémentaire ou d'un remboursement d'impôt sur le revenu ou sur les bénéfices au gouvernement d'un pays étranger ou par suite d'un tel paiement ou d'un tel remboursement par ce gouvernement, d'établir une cotisation ou une nouvelle cotisation concernant l'impôt du contribuable pour toute année d'imposition pertinente;

subparagraph (*b*)(iv).

c) au cours de la période normale de nouvelle cotisation applicable au contribuable pour l'année, dans les autres cas;

toutefois, une nouvelle cotisation, une cotisation supplémentaire ou une cotisation peut être établie en application de l'alinéa *b*) après la période normale de nouvelle cotisation applicable au contribuable pour l'année seulement s'il est raisonnable de la considérer comme se rapportant à la cotisation ou nouvelle cotisation visée au sous-alinéa *b*)(i) ou (ii), à l'opération visée au sous-alinéa *b*)(iii) ou au paiement supplémentaire ou remboursement visé au sous-alinéa *b*)(iv).

1997

152(5) Limitation on assessments. There shall not be included in computing the income of a taxpayer for a taxation year, for the purposes of any reassessment, additional assessment or assessment of tax, interest or penalties under this Part that is made after the normal reassessment period for the taxpayer in respect of the year, any amount

(*a*) that was not included in computing the taxpayer's income for the purposes of an assessment of tax under this Part made before the end of the normal reassessment period for the taxpayer;

(*b*) in respect of which the taxpayer establishes that the failure so to include it did not result from any misrepresentation that is attributable to negligence, carelessness or wilful default or from any fraud in filing a return of the taxpayer's income or

1997

152(5) Limite de la cotisation. N'est pas à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition, en vue de l'établissement, après la période normale de nouvelle cotisation applicable au contribuable pour l'année, d'une nouvelle cotisation, d'une cotisation supplémentaire ou d'une cotisation concernant l'impôt, les intérêts ou les pénalités en vertu de la présente partie, tout montant :

a) qui n'a pas été inclus dans le calcul de son revenu, en vue d'une cotisation d'impôt payable en vertu de la présente partie, établie avant la fin de la période normale de nouvelle cotisation qui lui est applicable;

b) dont l'omission ne résulte pas, à charge pour le contribuable de l'établir, d'une présentation erronée des faits par négligence, inattention

supplying any information under this Act; and

(*c*) where any waiver has been filed by the taxpayer with the Minister, in the form and within the time referred to in subsection (4), with respect to a taxation year to which the reassessment, additional assessment or assessment of tax, interest or penalties, as the case may be, relates, that the taxpayer establishes cannot reasonably be regarded as relating to a matter specified in the waiver.

ou omission volontaire, ni d'une fraude commise en produisant sa déclaration de revenu ou en fournissant tout renseignement en vertu de la présente loi;

c) que, lorsque le contribuable a présenté au ministre une renonciation quelconque, selon le formulaire prescrit et dans le délai visé au paragraphe (4), relativement à une année d'imposition sur laquelle porte la nouvelle cotisation, la cotisation supplémentaire ou la cotisation concernant l'impôt, les intérêts ou les pénalités, il n'est pas raisonnable de considérer, à charge pour le contribuable de l'établir, comme se rapportant à une question spécifiée dans la renonciation.

2006

152(4) Assessment and reassessment. The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(*a*) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any

2006

152(4) Cotisation et nouvelle cotisation. Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant l'impôt pour une année d'imposition, ainsi que les intérêts ou les pénalités, qui sont payables par un contribuable en vertu de la présente partie ou donner avis par écrit qu'aucun impôt n'est payable pour l'année à toute personne qui a produit une déclaration de revenu pour une année d'imposition. Pareille cotisation ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans les cas suivants :

a) le contribuable ou la personne produisant la déclaration :

(i) soit a fait une présentation erronée des faits, par négligence,

information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year; or

(*b*) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and

(i) is required pursuant to subsection (6) or would be so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein,

(ii) is made as a consequence of the assessment or reassessment pursuant to this paragraph or subsection (6) of tax payable by another taxpayer,

(iii) is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length,

(iii.1) is made, if the taxpayer is non-resident and carries on a business in Canada, as a consequence of

(A) an allocation by the taxpayer of revenues or expenses as amounts in respect of the Canadian business (other than revenues and expenses that relate solely to the Canadian business, that are recorded in the books of

inattention ou omission volontaire, ou a commis quelque fraude en produisant la déclaration ou en fournissant quelque renseignement sous le régime de la présente loi,

(ii) soit a présenté au ministre une renonciation selon le formulaire prescrit, au cours de la période normale de nouvelle cotisation applicable au contribuable pour l'année;

b) la cotisation est établie avant le jour qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et, selon le cas :

(i) est à établir en conformité au paragraphe (6) ou le serait si le contribuable avait déduit un montant en présentant le formulaire prescrit visé à ce paragraphe au plus tard le jour qui y est mentionné,

(ii) est établie par suite de l'établissement, en application du présent paragraphe ou du paragraphe (6), d'une cotisation ou d'une nouvelle cotisation concernant l'impôt payable par un autre contribuable,

(iii) est établie par suite de la conclusion d'une opération entre le contribuable et une personne non résidente avec laquelle il avait un lien de dépendance,

(iii.1) si le contribuable est un non-résident exploitant une entreprise au Canada, est établie par suite :

(A) soit d'une attribution, par le contribuable, de recettes ou de

account of the Canadian business, and the documentation in support of which is kept in Canada), or

(B) a notional transaction between the taxpayer and its Canadian business, where the transaction is recognized for the purposes of the computation of an amount under this Act or an applicable tax treaty,

(iv) is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country,

(v) is made as a consequence of a reduction under subsection 66(12.73) of an amount purported to be renounced under section 66, or

(vi) is made in order to give effect to the application of subsection 118.1(15) or (16).

dépenses au titre de montants relatifs à l'entreprise canadienne (sauf des recettes et des dépenses se rapportant uniquement à l'entreprise canadienne qui sont inscrits dans les documents comptables de celle-ci et étayés de documents conservés au Canada),

(B) soit d'une opération théorique entre le contribuable et son entreprise canadienne, qui est reconnue aux fins du calcul d'un montant en vertu de la présente loi ou d'un traité fiscal applicable,

(iv) est établie par suite d'un paiement supplémentaire ou d'un remboursement d'impôt sur le revenu ou sur les bénéfices effectué au gouvernement d'un pays étranger ou d'un état, d'une province ou autre subdivision politique d'un tel pays, ou par ce gouvernement,

(v) est établie par suite d'une réduction, opérée en application du paragraphe 66(12.73), d'un montant auquel il a été censément renoncé en vertu de l'article 66,

(vi) est établie en vue de l'application des paragraphes 118.1(15) ou (16).

2006

152(4.01) Assessment to which par. 152(4)(*a*) or (*b*) applies. Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(*a*) or (*b*) applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(*a*) where paragraph (4)(*a*) applies to the assessment, reassessment or additional assessment,

(i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, or

(ii) a matter specified in waiver filed with the Minister in respect of the year; and

(*b*) where paragraph (4)(*b*) applies to the assessment, reassessment or additional assessment,

(i) the assessment, reassessment or additional assessment to which subparagraph (4)(*b*)(i) applies,

(ii) the assessment or reassessment referred to in subparagraph (4)(*b*)(ii),

(iii) the transaction referred to in subparagraph (4)(*b*)(iii),

2006

152(4.01) Cotisation à laquelle s'appliquent les alinéas 152(4)*a*) ou *b*). Malgré les paragraphes (4) et (5), la cotisation, la nouvelle cotisation ou la cotisation supplémentaire à laquelle s'appliquent les alinéas (4)*a*) ou *b*) relativement à un contribuable pour une année d'imposition ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans la mesure où il est raisonnable de considérer qu'elle se rapporte à l'un des éléments suivants :

a) en cas d'application de l'alinéa (4)*a*) :

(i) une présentation erronée des faits par le contribuable ou par la personne ayant produit la déclaration de revenu de celui-ci pour l'année, effectuée par négligence, inattention ou omission volontaire ou attribuable à quelque fraude commise par le contribuable ou cette personne lors de la production de la déclaration ou de la communication de quelque renseignement sous le régime de la présente loi,

(ii) une question précisée dans une renonciation présentée au ministre pour l'année;

b) en cas d'application de l'alinéa (4)*b*) :

(i) la cotisation, la nouvelle cotisation ou la cotisation supplémentaire à laquelle s'applique le sous-alinéa (4)*b*)(i),

(ii) la cotisation ou la nouvelle

(iv) the payment or reimbursement referred to in subparagraph (4)(*b*)(iv),

(v) the reduction referred to in subparagraph (4)(*b*)(v), or

(vi) the application referred to in subparagraph (4)(*b*)(vi).

cotisation visée au sous-alinéa (4)*b*)(ii),

(iii) l'opération visée au sous-alinéa (4)*a*)(iii),

(iv) le paiement ou le remboursement visé au sous-alinéa (4)*b*)(iv),

(v) la réduction visée au sous-alinéa (4)*b*)(v),

(vi) l'application visée au sous-alinéa (4)*b*)(vi).

2006

152(5) Limitation on assessments. There shall not be included in computing the income of a taxpayer for a taxation year, for the purpose of an assessment, reassessment or additional assessment made under this Part after the taxpayer's normal reassessment period in respect of the year, any amount that was not included in computing the taxpayer's income for the purpose of an assessment, reassessment or additional assessment made under this Part before the end of the period.

2006

152(5) Limite de la cotisation. N'est pas à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition en vue de l'établissement, après la période normale de nouvelle cotisation qui lui est applicable pour l'année, d'une cotisation, d'une nouvelle cotisation ou d'une cotisation supplémentaire en vertu de la présente partie le montant qui n'a pas été inclus dans le calcul de son revenu en vue de l'établissement, avant la fin de cette période, d'une cotisation, d'une nouvelle cotisation ou d'une cotisation supplémentaire en vertu de cette partie.

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