Federal Court  Cour fédérale

Date: 20130823

Dockets: T-1504-12
T-1505-12
T-1506-12
T-1508-12
T-1509-12
T-1510-12

Citation: 2013 FC 897

Ottawa, Ontario, August 23, 2013

PRESENT: The Honourable Mr. Justice Roy

T-1504-12

BETWEEN:

YANEV SUISSA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

T-1505-12

BETWEEN:

AVITAL SUISSA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

T-1506-12

BETWEEN:

JUDITH SUISSA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

T-1508-12

BETWEEN:

LIOR SUISSA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

T-1509-12

BETWEEN:

DAVID SUISSA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

T-1510-12

BETWEEN:

EREZ SUISSA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are members of the same family. Their applications are identical and, by order of Mr. Prothonotary Morneau, they were heard during one hearing. Judgment will therefore be identical in all six cases, file T-1504-12 being deemed to be the principal file. I will refer throughout

these reasons to David Suissa as the principal applicant. David and Judith Suissa are the parents of the other applicants.

[2] These are applications for judicial review, pursuant to s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The applications seek to challenge the decision of the Canada Revenue Agency of July 10, 2012, denying relief from interest and penalty imposed on the applicants.

[3] The applicants are non-resident of Canada and they claim that they have no assets in this country.

Facts

[4] The basic facts of this case are not in dispute. Four properties located on the Island of Montréal were registered in the name of Yale Towers Inc., an entity incorporated in Canada. The applicants concede that David Suissa was responsible on behalf of the family for ensuring compliance with Canadian tax requirements.

[5] Three of the four properties were sold in 2007. The fourth property was sold in 2009. All four were sold at a loss.

[6] Section 116 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (ITA) provides that, on the disposition of certain property by non-residents, the Minister of National Revenue may be notified before the disposition and must be notified after the disposition. The applicants do not deny that

they have run afoul of the provision. They take issue though with the penalties that were imposed in each individual file.

[7] The failure to notify the Minister resulted in penalties being imposed in accordance with subsection 162(7) of the ITA. The applicants, in each of these cases, were assessed three penalties of $2500 in respect of the properties disposed of in 2007 and of $2500 for the disposition of the property in 2009.

[8] The applicants sought to avail themselves of the relief made available by subsection 220(3.1) of the ITA. On October 7, 2011, the remedy was denied. Upon reconsideration, the same decision was made on July 10, 2012; the decision was taken that reconsideration was not warranted. This is the decision the applicants wish to see overturned on judicial review. (The text of the provisions is appended hencewith in Schedule l).

Decision under review

[9] The request made on May 3, 2011 to cancel the penalty and interest was denied on October 7, 2011. The reason given was that it did not qualify under guidelines found in Circular IC07-1, Taxpayer Relief Provisions, for cancellations of interest and penalties. A more fulsome reply came from André St-Amand, the Assistant Director of the Audit Division in Montréal, on July 10, 2012.

[10] The reply notes that the relief is available where, through no fault of their own, taxpayers find themselves in extraordinary circumstances, or the penalty or interest is due mainly to the actions of CRA. However, the reply stresses that, in a system of self-assessment as the one

applicable in Canada, the taxpayer is responsible for filing returns that are true, correct and complete. As a result, CRA considers there are no extraordinary circumstances and that neither errors nor delays on the part of CRA would justify granting the relief sought. In the words of Mr. St-Amand, "(A) taxpayer is considered to be responsible for errors made by third parties acting on their behalf for income tax purposes".

Standard of review

[11] The parties are in agreement that the standard of review applicable in the circumstances is reasonableness. It follows that they agree that the applicants have the burden of satisfying the Court, on a balance of probabilities, that the decision rendered is not within a range of possible and acceptable outcomes. The often quoted paragraph 47 of *Dunsmuir v New Brunswick*, 2008 SCC, [2008] 1 SCR 190, is worth repeating:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Arguments

[12] The applicants raise three issues:

(a) Did the CRA err by misapprehending the scope of its discretion authorized by subsection 220(3.1) of the ITA?

(b) Was the decision of the CRA reasonable?

(c) Did the CRA fail to respect the rules of natural justice by rendering a decision without giving the chance to the applicant to respond and provide more explanations as to the reasons for the refusal of the request for relief of penalties and interest?

[13] Basically, the applicants claim that the decision-maker unduly fettered his discretion in the application of subsection 220(3.1). They note that Circular IC07-1 allows for a departure from the grounds stated by Mr. St-Amand. Indeed, they point to paragraphs 23, 24 and 25 of the Circular as allowing a measure of flexibility that, on its face, was not used by the decision-maker. Paragraphs 23 to 25 of the Circular read as follows:

IC07-1 Taxpayer Relief Provisions	**IC07-1 Dispositions d'allègement pour les contribuables**
Circumstances Where Relief From Penalty and Interest May Be Warranted	***Situations dans lesquelles un allègement des pénalités et des intérêts peut être justifié***
23. The Minister may grant relief from the application of penalty and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement at issue: (a) extraordinary circumstances (b) actions of the CRA (c) inability to pay or financial hardship.	23. Le ministre peut accorder un allègement de l'application des pénalités et des intérêts lorsque les situations suivantes sont présentes et qu'elles justifient l'incapacité du contribuable à s'acquitter de l'obligation ou de l'exigence fiscale en cause : a) circonstances exceptionnelles; b) actions de l'ARC; c) incapacité de payer ou difficultés financières.

24. The Minister may also grant relief if a taxpayer's circumstances do not fall within the situations stated in 23.

Extraordinary Circumstances

25. Penalties and interest may be waived or cancelled in whole or in part where they result from circumstances beyond a taxpayer's control. Extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time, or otherwise complying in 25 has prevented compliance. However, there may be exceptional situations that may give rise to cancelling penalties, in whole or in part. For example, when a business is experiencing extreme financial difficulty, and enforcement of such penalties would jeopardize the continuity of its operations, the jobs of the employees, and the welfare of the community as a whole, consideration may be given to providing relief of the penalties.

24. Le ministre peut également accorder un allègement même si la situation du contribuable ne se trouve pas parmi les situations mentionnées au paragraphe 23.

Circonstances exceptionnelles

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

a) une catastrophe naturelle ou causée par l'homme, telle qu'une inondation ou un incendie;
b) des troubles publics ou l'interruption de services, tels qu'une grève des postes;
c) une maladie grave ou un accident grave;
d) des troubles émotifs sévères ou une souffrance morale grave, tels qu'un décès dans la famille immédiate.

[14] From there, the contention is that the decision-maker did not act reasonably in refusing, given the circumstances of this case, to grant relief. These circumstances are summarized in the following way:

a. the properties were registered under the name of Yale Towers Inc., a Canadian corporation;
b. there was a misunderstanding or miscommunication with the notaries involved in the transactions and the local property manager failed to ensure compliance;
c. the principal applicant was not informed that he had to notify the Minister, such that the lack of notification about the disposition of one property in 2009 could have been averted;
d. capital losses were incurred for each disposition;
e. Judith Suissa had cancer in 2007.

[15] Finally, the applicants contend that there was a lack of procedural fairness in that they were not afforded an opportunity to provide further submissions prior to the decision being made. There was not much written in the applicants' memorandum of fact and law with respect to that argument, and even less so during the hearing. Suffice it to say that the applicants were right not to dwell on that last argument.

[16] The respondent counters that the issue of the cancer suffered by one of the applicants, Judith Suissa, cannot be invoked *ex post facto*. A judicial review is limited to the record before the decision-maker at the time. Here, the matter was never raised.

[17] As for the other grounds that were raised by the applicants, the respondent contends that they merely disclose that the principal applicant relies on third parties, whether they be four different notaries or a property manager, and it is not possible for a tax-payer to rely on the action of third parties in order to escape responsibility. Relying further on the fact that the four dispositions of property resulted in capital losses in the four cases carries little weight.

[18] In the circumstances, the decision of July 12, 2012 is reasonable concludes the respondent.

Analysis

[19] The procedural fairness ground can be dealt with quickly. The applicants made submissions in May 2011 and in February 2012; indeed their representative spoke with a CRA official familiar with the case.

[20] The issue is not whether procedural fairness was owed to the applicants. No doubt that such duty is owed. But it has been said that "(I)ts principal purpose is to provide a meaningful opportunity for those interested to bring evidence and arguments that are relevant to the decision to be made to the attention of the decision-maker, and correlatively, to ensure that the decision-maker fairly and impartially consider them" (D.J.M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf updated July 2008 (Toronto: Canvasback, 1998) ch 7:3110). The applicants made their submissions; that does not include a right to have a continuing dialogue.

[21] I believe the issue raised around the illness of one of the applicants can also be dealt with quickly. It was not raised in due course and it is certainly difficult to argue with any success that an issue not before a decision-maker could ever make the decision not reasonable:

> [31] When, as in the present case, a consideration is not squarely presented to a decision-maker, it will be difficult to establish on judicial review that a failure to deal with it in the reasons for decision so deprives the process of "justification, transparency and intelligibility" as to render it unreasonable.
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> (*Telfer v Canada (Revenue Agency)*, 2009 FCA 23 para 31, [2009] FCJ No 71 (QL))

(See also *334156 Alberta Ltd v Canada (Minister of National Revenue – MNR)* 2006 FC 1133, [2006] FCJ No 1430 (QL))

[22] But there is more. The applicants argue that they relied on third parties for compliance. The reliance on the unfortunate illness of one of the applicants not only comes to this Court as an afterthought, well after the challenged decision had been rendered, but there appears to be a measure of incompatibility between the two. Either the principal applicant relied on third parties because, as has been argued, he was an unsophisticated taxpayer, especially in view of the fact that he was a non-resident, or he was distracted during that period. At no time did the principal applicant resile from the third-party responsibility for the tax issues encountered in Canada. Clearly, in my view, he was counting on the experts he had retained and it is that reliance on those experts that is at the heart of his contention that relief ought to be granted. Surely the illness of his wife was an ordeal, but he cannot argue that it was the reason for the notice not having been given, at the same time as he is claiming that he was relying on hired expertise.

[23] There is in the material made available by the applicants a letter sent on April 1, 2011, by counsel for the applicants to the International Tax Services office of the Canada Revenue Agency for the purpose of seeking an extension of time for making a tax return under ss 216(4) of the ITA. One reason raised for the extension is that Judith Suissa suffered from cancer. The applicants did not raise this matter in their attempt to have relief from the penalties imposed, in spite of the fact that the same counsel communicated twice to the Canada Revenue Agency that relief was sought for reasons described in those letters.

[24] The more difficult issue, in my estimation, remains whether the decision to deny any relief was reasonable. Undoubtedly the applicants are right in arguing that the discretion to be exercised by the decision-maker is not to be fettered by Circular IC07-1 (see *Nixon v Canada (Minister of National Revenue –MNR)*, 2008 FC 917, [2008] FCJ No 1146 (QL)). Indeed the Circular makes that point abundantly clear (see paragraph 24 of the Circular).

[25] But the real question is not whether or not the discretion is fettered. It is rather what would make the exercise of discretion reasonable and, in that context, what is the use that can be made of the Circular.

[26] A decision of this Court may be of assistance in considering what role can be played by the Circular. In *Spence v Canada (Revenue Agency)*, 2010 FC 52, [2010] FCJ No. 51 (QL), my colleague Justice O'Keefe described Circular IC07-1 thus:

> [24] In general, guidelines such as the taxpayer relief provisions are not law, but can be very beneficial to both decision makers and members of the public to the extent that they provide for more organized analysis and reasons and enhance the level of consistency and accountability to the public: see D.J. M. Brown, and J.M. Evans. "Judicial Review of Administrative Action in Canada". Toronto: Canvasback, 1998 (loose-leaf updated July 2008) at p. 12:44. Some statutes in fact confer the authority to formulate legally binding rules or guidelines. Where that is not the case, guidelines can still be considered in the process and can even be determinative, provided the decision maker puts his or her mind to the specific circumstances of the case and does not treat the guidelines as binding (see *Maple Lodge Farms Ltd. v. Canada*, [1982] s S.C.R. 2).
>
> [25] In reality, many discretionary decision makers will be government employees who may be required to follow non-legal rules or guidelines by their employer. However, even if employees face such constraints, the law does not permit the decision maker to treat the guidelines as binding upon the individual requesting relief, in this case, the applicant taxpayer. Most guidelines remedy this

> conundrum and eliminate the possibility that a decision maker would have to choose between disobeying their employer and erring in law. For example, the taxpayer relief provisions contain a statement in their introducing paragraphs which reads:
>
> > 6. These are only guidelines. They are not intended to be exhaustive, and are not meant to restrict the spirit or intent of the legislation. [my emphasis]
>
> [26] This paragraph assures the reader that the guidelines are not law. As we shall see, there are additional provisions within the guidelines that allow for flexibility. Even if the guidelines were elevated to the status of binding law, they would provide for the possibility of relief in the applicant's situation.
>
> (Emphasis in original)

[27] More recently yet, the Supreme Court of Canada provided further guidance as to the use that can be properly made by decision-makers in the context of administrative law decisions of instruments that are not binding in law.

[28] In the case of *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] SCJ No 36, it was the interpretation of the words "national interest" in subsection 34(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 that was an issue. Mr. Agraira was denied relief against a finding of inadmissibility under subsection 34(2) because it was deemed not to be in the national interest to do so.

[29] The Inland Processing Manual: "Refusal of National Security Cases/Processing of National Interest Requests", referred to as the Guidelines, prepared by Citizenship and Immigration Canada, was used in order to help to determine what would be relevant and reasonable in reaching a decision

as to when ministerial relief would be appropriate. Here is how the Court describes the use that can be made of those Guidelines:

> [60] The Guidelines did not constitute a fixed and rigid code. Rather, they contained a set of factors, which appeared to be relevant and reasonable, for the evaluation of applications for ministerial relief. The Minister did not have to apply them formulaically, but they guided the exercise of his discretion and assisted in framing a fair administrative process for such applications. As a result, the Guidelines can be of assistance to the Court in understanding the Minister's implied interpretation of the "national interest"

[30] As the Supreme Court of Canada put it, the Guidelines cannot be applied formulaically, but they guide the exercise of discretion. However, the Guidelines would not appear to exclude other considerations:

> [62] Taking all the above into account, had the Minister expressly provided a definition of the term "national interest" in support of his decision on the merits, it would have been one which related predominantly to national security and public safety, but did not exclude the other important considerations outlined in the Guidelines or any analogous considerations (see Appendix 1 (the relevant portions of the Guidelines)).

[31] Circular IC07-1 would appear to provide the same kind of guidance. It tells taxpayers of important factors that will be taken into account when exercising the discretion afforded by legislation in ss 220(3.1) of the ITA. There may be others, but the decision-maker will be entitled to deference in making his determination of when the discretion is to be exercised.

[32] In making its assessment of the exercise of discretion, the reviewing court will consider the record as a whole. In *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65, [2012] 3 SCR 405, one can read:

> [3] … administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons. For reviewing courts, the issue remains whether the decision, viewed as a whole in the context of the record, is reasonable (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, [2011] 3 S.C.R. 708 [para. 3].

[33] In the case at bar, the record shows that the matter was reviewed carefully before the decision was made on July 10, 2012. Exhibit G to the affidavit of the decision-maker constitutes the analysis made in support of the decision. The arguments raised by the applicants are listed and reviewed. The decision-maker concludes that the applicants have been negligent or careless under a system of self-assessment and that the "taxpayer is considered to be responsible for errors made by third parties acting on their behalf for income tax matters". I find myself incapable to conclude that, in view of the deference owed to the decision-maker, the decision is not reasonable as falling outside a range of possible and acceptable outcomes. The Circular is certainly a factor of significant importance in the decision. But in view of the record that shows that the decision-maker took into account everything that was in front of him, I fail to see how the test of reasonableness is not met.

[34] The applicants rely on *Société Angelo Colatosti Inc. v Canada (Attorney General)*, 2012 FC 124, [2012] FCJ 140 (QL), and particularly paragraph 30 which reads:

> [30] Subsection 220(3.1) of the ITA gives the Minister discretion. Although the Minister's delegate may rely on principles set out in an information circular or in guidelines, such policy statements cannot and should not limit the Minister's discretion. In this case, the Assistant Director's decision said nothing about subsection 220(3.1) of the ITA and simply stated the three circumstances provided in the Information Circular. Thus, he seems to have limited his review to the circumstances provided in the Information Circular. However, even paragraph 35 of the Information Circular states that the Minister has residual discretion to grant relief when the request is based on a third party's error in "extraordinary situations". In this case, the applicant not only relied on a third party's error; it relied on an entire

> set of circumstances that would explain and warrant its request for relief and the Assistant Director did not address these circumstances in his decision. Therefore, in the decision, nothing was indicated that allowed us to see whether the Assistant Director reviewed the circumstances relied on by the applicant in support of its request. If, however, this analysis was done, I find that the Assistant Director's decision did not provide sufficient reasons to understand its basis; we know absolutely nothing about why he found that the circumstances relied on were not extraordinary.

The difference between paragraph 30 and the case at hand is, of course, that here every argument put forward by the applicants was considered.

[35] I cannot find any evidence that the decision-maker fettered his discretion. The arguments advanced on behalf of the applicants were examined and I cannot see how it can be said that the discretion was fettered where arguments are addressed. It cannot be that a refusal to exercise discretion in any given case would be confirmation that discretion was fettered. The discretion could be considered to be fettered if a decision-maker refused to consider arguments because they do not fit neatly within the four corners of the Circular. I have not been able to find evidence of such an approach in this case.

[36] The applicants had the burden of convincing the Court that the imposition of the penalties was not reasonable in the circumstances of the case. That burden has not been discharged in view of the deference owed the decision-maker.

[37] Once it is established that the discretion found in ss 220(3.1) of the ITA has not been exercised inappropriately, penalties are imposed by operation of law. Subsection 162(7) provides

for the penalty: as a result, a penalty of $2500 is imposed for each property subject to s. 116 of the ITA, for a total of $10,000 per applicant.

[38] The Court is seized with six different applications for judicial review with respect to six decisions made. In each case, the applicant seeks relief on the basis of an aggregate of factors that is claimed to amount to an unreasonable decision. As I have endeavoured to show, each applicant fails because it has not been shown that, in each case, the decision does not meet the *Dunsmuir* test.

[39] I am sympathetic to the plight of the Suissa family in this matter. Because they each have an interest in the properties sold, they are imposed a penalty of $10,000 each (plus interest), instead of a grand total of $10,000 had there been only one owner. As I have indicated that is as a result of ss 162(7) of the ITA which provides for the penalty to be imposed and which comes to $2500 by disposition. The Taxpayer Relief Decision Report in support of the decision of July 10, 2012, suggests clearly that the Suissa family found the penalty to be excessive in the aggregate.

[40] I, too, find the penalty quite severe in the circumstances. The lack of diligence of the principal applicant translates into penalties for five other members of the same family. Had there been even more members of the family with a small interest in the property, it would appear that they would have been imposed the same penalty. There does not appear to be a form of proportionality in the imposition of the penalties.

[41] However, the Court is limited by the fact that the cumulative effect is, as a matter of law, not before it. Each applicant argued that the penalty was too high because of the circumstances that

were presented at the time. Indeed, each application for relief was examined on that basis. In each of the six cases before the Court, taken individually, the discretion was applied reasonably. The decision-maker was reasonably of the view that the circumstances invoked by the applicant in each case were sufficient in view of the lack of diligence. The obligation is on the shoulder of a taxpayer; it cannot be transferred onto the shoulders of third parties if the ITA is to be enforced. The respondent argued that the case of *Stemijon Investments Ltd et al v Canada (Attorney General)*, 2011 FCA 299, 2011 DTC 5169, is dispositive of the issue. Paragraph 51 was quoted:

> [51] The appellants also argued that it is unfair for the Minister to levy six separate, sizeable penalties against the six appellants when there was really only one mistake made by their one common representative. The appellants contended that the penalties should be substantially reduced for that reason. This argument, smacking of a plea for a "volume discount," has no merit. Each of the appellants is a separate legal entity and a separate taxpayer, potentially subject to penalties and interest for its own non-compliance. Each is capable of independent decision-making concerning the forms that are to be filed. Each, accepting the risk, chose instead to have a representative look after the filings. That risk materialized: their representative made a conscious decision not to file the forms, a decision made without reasonable excuse or justification, as explained above. Granting relief under subsection 220(3.1) on the basis of this argument would be an unreasonable exercise of discretion.

The difference between *Stemijon* and the case at bar is that the other five taxpayers are not all capable of making their own decisions, each accepting the risk. I would not call the attempt made by the Suissa family a plea for "volume discount" because of that difference between the two sets of circumstances.

[42] As I have tried to explain in these reasons, the decision-maker made six different decisions which, in view of the full record before the Court and that was in support of the decisions (not *ex post facto*), were reasonable in each individual case, and that considered all of the circumstances,

including of course ensuring that the law is enforced, thus not fettering the discretion that exists at law. In other words, I am satisfied that, as a matter of law, the decision-maker considered the matter without fettering the discretion in each individual case and that, in each case, the decision was reasonable. The issue is not so much individual cases as the accumulation of the six decisions on one family.

[43] There are six individual decisions before the Court, each of which is reasonable on its own terms. The penalties in each decision are provided by law: no relief is afforded. The accumulation of penalties in one single family is not a matter that is before this Court. It is rather the six individual decisions that are before the Court.

[44] I find myself in general agreement with the tenor of the comments made by Justice Jorré of the Tax Court of Canada, in *Lipson v Canada*, 2012 TCC 20 at paras 35 to 42, [2012] TCJ No 13. Although these paragraphs are in the nature of observations they make the point that "(S)uch penalties seem unduly higher in the circumstances know to me and it is hard to imagine how such high penalties enhance compliance with the Act" (para 37).

[45] But there remains the fact that penalties are imposed on each of the six members of one single family who evidently did not have a say in the matter. And all of this because they have an interest in the properties sold, at a loss. Despite the conclusion reached as a matter of law in each of the six applications for judicial review taken individually, I would urge the respondent to consider providing some relief, through remission or otherwise, given the particular circumstances of this case. It would seem excessive to impose penalties, which although reasonable on an individualized

basis, end up penalising unduly, in my view, a family by operation of law. There exist mechanisms in our law to allow for a more perspicacious enforcement of penalties. The circumstances of this case may command themselves to the use of those tools.

JUDGMENT

THIS COURT'S JUDGMENT is that the six applications for judicial review in the cases T-1504-12, T-1505-12, T-1506-12, T-1508-12, T-1509-12 and T-1510-12 are dismissed. There will be no order for costs.

"Yvan Roy"

Judge

Schedule 1

Federal Courts Act, RSC 1985 c F-7

Application for judicial review	Demande de contrôle judiciaire
18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.	**18.1** (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.
Time limitation	Délai de presentation
(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.	(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.
…	[…]

Income Tax Act, RSC 1985, c 1 (5th Supp.)

DIVISION D	SECTION D
TAXABLE INCOME EARNED IN CANADA BY NONRESIDENTS	REVENU IMPOSABLE GAGNÉ AU CANADA PAR DES NON-RÉSIDENTS
Disposition by non-resident person of certain property	Disposition par une personne non-résidente
116. (1) If a non-resident person proposes to dispose of any taxable Canadian property (other than property described in subsection	**116.** (1) La personne non-résidente qui se propose de disposer d'un bien canadien imposable, sauf un bien visé au paragraphe

(5.2) and excluded property) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

(*a*) the name and address of the person to whom he proposes to dispose of the property (in this section referred to as the "proposed purchaser");

(*b*) a description of the property sufficient to identify it;

(*c*) the estimated amount of the proceeds of disposition to be received by the non-resident person for the property; and

(*d*) the amount of the adjusted cost base to the non-resident person of the property at the time of the sending of the notice.

(5.2) et un bien exclu, peut envoyer au ministre au préalable un avis contenant les renseignements suivants :

a) les nom et adresse de la personne en faveur de laquelle elle se propose de disposer de ce bien (appelée l'« acheteur éventuel » au présent article);

b) une description du bien permettant de le reconnaître;

c) le montant estimatif du produit de disposition qu'elle recevra pour ce bien;

d) le montant du prix de base rajusté du bien, pour elle, au moment de l'envoi de l'avis au ministre.

Certificate in respect of proposed disposition

(2) Where a non-resident person who has sent to the Minister a notice under subsection 116(1) in respect of a proposed disposition of any property has

(*a*) paid to the Receiver General, as or on account of tax under this Part payable by the non-resident person for the year, 25% of the amount, if any, by which the estimated amount set out in the notice in accordance with paragraph 116(1)(*c*) exceeds the amount set out in the notice in accordance with paragraph 116(1)(*d*), or

(*b*) furnished the Minister with security acceptable to the Minister in respect of the proposed disposition of the property, the Minister shall forthwith issue to the nonresident person and the proposed purchaser a certificate in prescribed form in respect of the proposed disposition, fixing therein an amount (in this section referred to as the "certificate limit") equal to the estimated amount set out in the notice in accordance with paragraph 116(1) (*c*).

Certificat relatif à une disposition éventuelle

(2) Lorsqu'une personne non-résidente qui, en vertu du paragraphe (1), a envoyé un avis au ministre concernant la disposition éventuelle d'un bien quelconque, a :

a) soit payé au receveur général, au titre de l'impôt payable par cette personne pour l'année en vertu de la présente partie, 25 % de l'excédent éventuel du montant estimatif mentionné dans l'avis conformément à l'alinéa (1)*c*) sur le montant mentionné dans l'avis conformément à l'alinéa (1)*d*);

b) soit fourni au ministre une garantie acceptable par ce dernier concernant la disposition éventuelle du bien,

le ministre délivre sans délai à la personne non-résidente ainsi qu'à l'acheteur éventuel un certificat selon le formulaire prescrit, en ce qui concerne la disposition éventuelle, y fixant un montant (appelé la « limite prévue par le certificat » au présent article) égal au montant estimatif mentionné dans l'avis conformément à l'alinéa (1)*c*).

Notice to Minister

(3) Every non-resident person who in a taxation year disposes of any taxable Canadian property of that person (other than property described in subsection 116(5.2) and excluded property) shall, not later than 10 days after the disposition, send to the Minister, by registered mail, a notice setting out

(*a*) the name and address of the person to whom the non-resident person disposed of the property (in this section referred to as the "purchaser"),

(*b*) a description of the property sufficient to identify it, and

(*c*) a statement of the proceeds of disposition of the property and the amount of its adjusted cost base to the non-resident person immediately before the disposition,

unless the non-resident person has, at any time before the disposition, sent to the Minister a notice under subsection 116(1) in respect of any proposed disposition of that property and

(*d*) the purchaser was the proposed purchaser referred to in that notice,

(*e*) the estimated amount set out in that notice in accordance with paragraph 116(1)(*c*) is equal to or greater than the proceeds of disposition of the property, and

(*f*) the amount set out in that notice in accordance with paragraph 116(1)(*d*) does not exceed the adjusted cost base to the non-resident person of the property immediately before the disposition.

…

DIVISION I

RETURNS, ASSESSMENTS, PAYMENT AND APPEALS

…

Avis au ministre

(3) La personne non-résidente qui dispose de son bien canadien imposable, sauf un bien visé au paragraphe (5.2) et un bien exclu, au cours d'une année d'imposition est tenue d'envoyer au ministre, dans les dix jours suivant la disposition, sous pli recommandé, un avis contenant les renseignements suivants :

a) les nom et adresse de la personne en faveur de qui elle a disposé du bien (appelée l' « acheteur » au présent article);

b) une description du bien permettant de le reconnaître;

c) un état indiquant le produit de disposition du bien ainsi que le montant du prix de base rajusté du bien, pour elle, immédiatement avant la disposition,

sauf si la personne non-résidente a envoyé au ministre, à un moment donné avant la disposition, et conformément au paragraphe (1), un avis concernant toute disposition éventuelle de ce bien, et si, à la fois :

d) l'acheteur est l'acheteur éventuel mentionné dans cet avis;

e) le montant estimatif mentionné dans cet avis conformément à l'alinéa (1)*c*) est égal ou supérieur au produit de disposition du bien;

f) le montant mentionné dans cet avis conformément à l'alinéa (1)*d*) ne dépasse pas le prix de base rajusté du bien, pour la personne non-résidente, immédiatement avant la disposition.

[…]

SECTION I

DÉCLARATIONS, COTISATIONS, PAIEMENT ET APPELS

[…]

Penalties

Failure to file return of income

162. (1) Every person who fails to file a return of income for a taxation year as and when required by subsection 150(1) is liable to a penalty equal to the total of

…

Failure to comply

(7) Every person (other than a registered charity) or partnership who fails

(*a*) to file an information return as and when required by this Act or the regulations, or

(*b*) to comply with a duty or obligation imposed by this Act or the regulations

is liable in respect of each such failure, except where another provision of this Act (other than subsection 162(10) or 162(10.1) or 163(2.22)) sets out a penalty for the failure, to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

…

Pénalités

Défaut de déclaration de revenue

162. (1) Toute personne qui ne produit pas de déclaration de revenu pour une année d'imposition selon les modalités et dans le délai prévus au paragraphe 150(1) est passible d'une pénalité égale au total des montants suivants :

[…]

Inobservation d'un règlement

(7) Toute personne (sauf un organisme de bienfaisance enregistré) ou société de personnes qui ne remplit pas une déclaration de renseignements selon les modalités et dans le délai prévus par la présente loi ou le *Règlement de l'impôt sur le revenu* ou qui ne se conforme pas à une obligation imposée par la présente loi ou ce règlement est passible, pour chaque défaut – sauf si une autre disposition de la présente loi (sauf les paragraphes (10) et (10.1) et 163(2.22)) prévoit une pénalité pour le défaut – d'une pénalité égale, sans être inférieure à 100 $, au produit de la multiplication de 25 $ par le nombre de jours, jusqu'à concurrence de 100, où le défaut persiste.

[…]

PART XV

ADMINISTRATION AND ENFORCEMENT

ADMINISTRATION

Minister's duty

220. (1) The Minister shall administer and

PARTIE XV

APPLICATION ET EXÉCUTION

APPLICATION

Fonctions du ministre

220. (1) Le ministre assure l'application et

enforce this Act and the Commissioner of Revenue may exercise all the powers and perform the duties of the Minister under this Act.

l'exécution de la présente loi. Le commissaire du revenu peut exercer les pouvoirs et fonctions conférés au ministre en vertu de la présente loi.

…

[…]

Waiver of penalty or interest

Renonciation aux pénalités et aux intérêts

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

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

…

[…]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-1504-12, T-1505-12, T-1506-12, T-1508-12, T-1509-12, T-1510-12
STYLE OF CAUSE:	Yanev Suissa v. Attorney General of Canada Avital Suissa v. Attorney General of Canada Judith Suissa v. Attorney General of Canada Lior Suissa v. Attorney General of Canada David Suissa v. Attorney General of Canada Erez Suissa v. Attorney General of Canada
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	June 11, 2013
REASONS FOR JUDGMENT: AND JUDGMENT	ROY J.
DATED:	August 23, 2013

APPEARANCES:

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