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# MARK HIGGINS RALLYING (A FIRM) V. THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS — A GUIDE TO MANAGEMENT AND CONTROL

*— S. Sebastian Elawny, Associate with the Calgary office of Fraser Milner Casgrain*

Since the decision of the Supreme Court of Canada in *St. Michael Trust Corp., as Trustee of the Fundy Settlement v. Her Majesty the Queen*,[1] the tax community has been abuzz with the fact that trusts are now subject to the same "central management and control" test applicable to corporations when determining the residence of a trust. In *Mark Higgins Rallying (a firm) v. The Commissioners for Her Majesty's Revenue and Customs*,[2] the First-Tier Tribunal (Tax Chamber) concluded that the "management and control" test applicable to corporations was also applicable to partnerships. That case conducted an excellent analysis of what this phrase really means from a UK context. In a nutshell, the Tribunal concluded that the case law has identified the following principles:

(1) The residence of a company is where the directors meet and transact their business and exercise the powers conferred upon them;

(2) The determination of management and control is a question of fact and, consequently, there is no presumption that management and control will be found where the directors meet;

(3) In considering the facts, it must be determined (a) who was managing the business by making high-level decisions, and (b) where those persons were making such decisions.

## Background

In the *Mark Higgins Rallying* case, Mark Higgins, a motor rally driver, and Roy Dixon, a former rally driver, were both residents of the Isle of Man. Upon discovering Mr. Higgins' immense driving talents, Mr. Dixon saw a business opportunity and agreed to mentor, manage, and sponsor Mr. Higgins' rally career. In addition to being an astute businessman, Mr. Dixon was also a qualified solicitor in the United Kingdom with extensive experience drafting partnership agreements and business contracts.

In 1991, Mr. Dixon and Mr. Higgins entered into a partnership agreement,[3] pursuant to which the two men agreed to combine Mr. Dixon's management and commercial experience with Mr. Higgins' driving skills (the "Partnership"). Mr. Dixon's plan was for Mr. Higgins to compete on the world rally scene and, consequently, the Partnership carried on business throughout the world and not just in the United Kingdom.

In 1993, Mr. Higgins moved his family to the United Kingdom to commence the running of a rally school, while he continued to compete in worldwide rally racing. In 1997, the first year in which the Partnership became profitable, Mr. Higgins and Mr. Dixon agreed

to vary the terms of the partnership agreement with the primary purpose being to change the profit-sharing structure. As a result of the new structure, Mr. Dixon was precluded from receiving any UK sourced income from the Partnership.

Despite Mr. Higgins' move to the United Kingdom, the working basis of the Partnership was always that Mr. Higgins concentrated on fulfilling his passion for driving while Mr. Dixon contributed commercial and management experience. Mr. Dixon reviewed all contracts to determine whether they were appropriate. All major contracts of the Partnership, except for one, were executed outside of the United Kingdom. Due to Mr. Higgins' involvement in rally racing, most opportunities arose through his personal contacts and communications generally occurred by email or telephone. All major decisions were made by Mr. Dixon in the Isle of Man, where he continued to live throughout the life of the Partnership.

For the purposes of UK tax law,[4] a partnership that is managed and controlled outside of the United Kingdom will be treated as a separate person and, therefore, non-UK sourced profits are not taxable in the United Kingdom until they are paid out to a UK resident partner. Conversely, a partnership that is at least partially managed and controlled inside the United Kingdom will not be treated as a separate person, and, therefore, a UK resident partner's non-UK sourced profits are immediately taxable in the United Kingdom at the time they are earned.

The Commissioners for her Majesty's Revenue and Customs ("HMRC") in the United Kingdom took issue with the Partnership, arguing that management and control of the Partnership took place in the United Kingdom, and, therefore, all income earned by Mr. Higgins through the Partnership should be taxed as it arose. In support of its position, HMRC argued that while Mr. Higgins relied on Mr. Dixon at the inception of the Partnership, Mr. Higgins became an established professional able to make business decisions for himself. While Mr. Dixon brought his legal background in reviewing contracts to the table, this was the extent of his contribution to the Partnership. Conversely, the rallying, teaching, and seeking sponsorship opportunities, all of which were carried out by Mr. Higgins, constituted the substantive decision making part of the business. HMRC argued that the place where contracts were signed was irrelevant because the decisions to enter into such contracts were made well before they were signed. HMRC concluded that because the activities of the Partnership were carried on in the United Kingdom by Mr. Higgins, management and control resided, at least partially, in the United Kingdom.

The Partnership took the position that it was wholly managed and controlled outside the United Kingdom because all decision making, partnership meetings, and contracts were made outside of the United Kingdom, and thus Mr. Higgins was only taxable once the Partnership distributed income to him. The Partnership further argued that the occasional act of high-level management performed in the United Kingdom did not affect management and control of the Partnership.

Relying on the UK Court of Appeal's decision in *Padmore v. IRC,*[5] the Partnership argued that the determination of where a partnership is managed and controlled depends on the place where the highest level of decision making takes place and not where the day-to-day business operations are carried out. That case involved a partnership of 110 chartered patent agents that were active as trademark agents, the majority of which were resident in the United Kingdom. The Court of Appeal had no trouble finding, however, that despite the fact that the majority of partners were resident in the United Kingdom, the partnership was managed and controlled in Jersey because the business operations had always been carried on in Jersey, the two general partners were residents of Jersey, general meetings of the partners were held in Jersey four times a year, all policy matters and decisions were dealt with at these meetings, and the Jersey-resident managing partners implemented all of the policy matters and decisions.

## Findings of the Tribunal

Once the Tribunal had concluded that the corporate test for management and control was applicable to partnerships, it was simply a matter of applying the test to the facts.

The corporate test requires a determination of where central management and control is situated by looking to where high-level decisions are made. The Tribunal concluded that while the determination must be made for each disputed tax year, residence of the Partnership will not fluctuate from year to year merely by reason of individual acts of management and control taking place in different territories. Consequently, it is necessary to apply the facts to take a picture as a whole to determine who was managing the Partnership by making high-level decisions and where such decisions were being made.[6]

There is no presumption that a company will be resident where contracts (including important ones) are signed or in

the place where directors meetings are held. While both may be evidence towards where decisions were being made, they are not the determining factors. What is relevant, however, is where the decision making in relation to those contracts and the directors' meetings actually takes place.

Taking a look at the picture as a whole, the Tribunal found that the basis of the formation of the Partnership and the continuing purpose of the Partnership was to combine Mr. Higgins' driving skills with Mr. Dixon's business acumen and expertise. Throughout the existence of the Partnership, Mr. Higgins relied on Mr. Dixon's commercial expertise and did not enter into any significant commercial commitments without referring them to Mr. Dixon for a decision. The Tribunal concluded that management and control of the Partnership in the relevant years was situated wholly outside the United Kingdom because Mr. Dixon, as the commercial brains of the Partnership, made all the high-level decisions of the Partnership from his office in the Isle of Man.

## From a Canadian Perspective

Although *Mark Higgins Rallying* dealt with partnerships, the fact that the corporate test for management and control was appropriate for determining residency makes the case relevant for Canadian tax purposes. The management and control test has been adopted in Canada for determining the residency of both corporations[7] and trusts.[8] The law in Canada has not developed to the same level as that in the United Kingdom and, consequently, little guidance exists for applying the test.[9] In *St. Michael Trust*,[10] the Supreme Court of Canada explained that a fact-based review of central management and control of a corporation (or trust) is determinative, but did not explain how to apply the facts to make the determination. In *Mark Higgins Rallying*, it is clear that it was necessary to take a high-level picture of the operation by determining who was managing the business by making high-level decisions and where those persons were when they made those high-level decisions. Due to the lack of guidance in Canada, it is possible that the Canadian courts could consider this approach in the future.

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*For more insight from the tax practitioners at Fraser Milner Casgrain LLP on the latest developments in tax litigation, visit the firm's Tax Litigation blog at* http://www.canadiantaxlitigation.com/.

**Notes:**

[1] 2012 DTC 5063.

[2] [2011] UKFTT 340 (TC).

[3] While not stated in the case, the facts suggest that the Partnership was formed in the Isle of Man.

[4] As set out in sections 111 and 112 of the *Income and Corporations Taxes Act 1988* (UK).

[5] [1989] STC 493 at 495.

[6] This approach is similar to the Court of Appeal's decision in *De Beers Consolidated Mines Ltd. v. Howe (Surveyor of Taxes)*, 5 TC 198 at 212-213 where that Court concluded that one looks to the place where the high-level decisions are made, as distinct from the place where day-to-day business operations are carried out.

[7] *British Columbia Electric Railway v. R.*, 2 DTC 692 (1945); *Crossley Carpets (Canada) Ltd. v. MNR*, 67 DTC 522 (1967); and *1143132 Ontario Ltd. v. R.*, 2009 DTC 1312 (T.C.C.).

[8] *St. Michael Trust*, *supra* note 1.

[9] See, for example, *British Columbia Electric Railway*, *Crossley Carpets*, and *1143132 Ontario Ltd.*, *supra* note 7.

[10] *St. Michael Trust* also relied on *De Beers*, *supra* note 6, as authority for corporate residency being based on where management and control is exercised. *St. Michael Trust* did not, however, consider the distinction between where high-level decisions are made as compared to where day-to-day business operations are carried out.

# FOCUS ON CURRENT CASES

"Focus on Current Cases" is to be a regular monthly feature examining recent cases of special interest, coordinated by *John C. Yuan* and *Christopher L.T. Falk* of McCarthy Tétrault LLP. The contributors to this feature are from McCarthy Tétrault LLP, Montreal, Toronto, Calgary, and Vancouver.

## Probate Fees — A New Planning Technique?

***Estate of the Late Gunnar Brosamler v. The Queen*, 2012 DTC 1193 (Tax Court of Canada)**

The cost of obtaining probate can be significant, especially in British Columbia, Ontario, and Nova Scotia, where the amount payable to the province can approach 1.4%, 1.5%, and 1.553%, respectively, of the value of the estate. While various planning techniques have been devised to avoid or limit the need for probate, probate is unavoidable in some cases. Accordingly, practitioners should be interested in the Tax Court of Canada's recent decision in *Brosamler* which suggests that the cost, including professional fees, of obtaining probate may, in some circumstances, be added to the cost for tax purposes of estate assets or treated by the estate as a cost of disposition, thereby materially reducing the effective cost of the grant.

Gunnar Brosamler, a resident of Germany for tax purposes, died in April 2008 owning three rental properties situated in Vancouver, British Columbia with an aggregate fair market value of $6.75 million. The deceased also owned some additional Canadian assets, the nature of which is not specified in the decision.

Pursuant to subsection 70(5) of the *Income Tax Act* (the "Act"), the deceased was deemed for Canadian tax purposes to have disposed of the rental properties immediately before his death for proceeds of disposition equal to their fair market value and his estate was deemed to have acquired the properties at that time at a cost equal thereto. In order to pay the tax arising on the deemed disposition as well as German inheritance tax, the deceased's executrix determined to sell two of the three properties to a third-party purchaser.

The deceased's will was probated in Germany; however, in order for the estate to be able to sell the properties, it was necessary that the conveyance from the deceased to the estate be registered in compliance with the *Land Title Act* (British Columbia) and this could occur only if probate were resealed in British Columbia. The estate added a portion of the probate fees and legal fees incurred to obtain ancillary probate to the adjusted cost base of the properties and elected pursuant to subsection 164(6) to apply capital losses sustained on the sale of the properties by the estate against the deceased's capital gain, which arose as a consequence of the deemed disposition on death. The CRA reduced the adjusted cost base of the properties by the amounts so added. The issue before the Court was whether a portion of the probate fees and legal fees incurred to obtain ancillary probate in British Columbia could be added to the adjusted cost base of the properties or, alternatively, deducted as an outlay or expense incurred for the purpose of disposing of the properties.

Mr. Justice Webb began his analysis by referring to the Federal Court of Appeal's statement in *Stirling* (85 DTC 5199) that the word "cost" means "the price that the taxpayer gave up in order to get the asset; it does not include any expense that he may have incurred in order to put himself in a position to pay that price or to keep the property afterwards". Having regard to this statement, Webb J held that probate and legal fees were incurred to acquire title to the rental properties and could therefore be added to the estate's adjusted cost base. Specifically, he allowed such portion of the total fees that each property's value (for probate purposes) was of the value (for probate purposes) of all of the deceased's BC assets.

According to Webb J, it was irrelevant that the estate may have acquired an interest in the properties under the *Estate Administration Act* (British Columbia) or otherwise. As stated by Webb J:

> [T]he interest in the properties that was sold by the Estate (and which resulted in the capital losses for the purposes of the Act) was not the interest in the property that the Estate acquired under subsection 77(1) of the *Estate Administration Act* (British Columbia) nor was it any interest that the Estate may have acquired from an unregistered conveyance. The interest that was sold by the Estate was an interest in the properties that could be registered under the *Land Title Act* by the purchasers of the properties and to acquire this interest in the properties the Estate had to incur the probate fees and legal fees. This title, that could be transferred to the purchasers and registered by the purchasers under the *Land Title Act*, could only be acquired by the Estate if it complied with the requirements of the *Land Title Act* which were that probate had to be

resealed in British Columbia and the appropriate probate fees had to be paid.

Webb J also held that if the amounts were not added to the adjusted cost base of the properties, they were outlays or expenses incurred by the estate for the purpose of making the dispositions and, as such, were deductible in determining the capital losses sustained by the estate. Whether added to the adjusted cost base or deducted as costs of disposition, the amount of the capital losses would be the same.

The author understands that the Crown has advised that it will not be appealing the decision.

In the author's view, Webb J's decision in *Brosamler* is logical and his proportionate allocation of fees is reasonable, although an argument could be made that since the application for ancillary probate was made to permit a disposition of the rental properties, each rental property ought also to have been allocated a percentage of fees attributable to those assets which otherwise would not have required probate in British Columbia. Indeed, the decision is silent as to the treatment of the balance of the fees, including whether such fees may be added to the cost of these other assets.

Provided *Brosamler* is not limited by subsequent jurisprudence to its particular facts (i.e., where probate has already been obtained in another jurisdiction and resealing is required by statute to effect the sale of the property) and provided further that the relevant statutory provisions are not amended, the decision's influence may be far-reaching. At minimum, the decision invites practitioners to consider whether probate fees and associated professional expenses may be claimed in other circumstances. In *Brosamler*, there was effectively a statutory requirement to obtain ancillary probate in British Columbia in order to effect a sale of the rental properties. Assume instead that Mr. Brosamler had died resident in Ontario where a customary means of reducing probate fees is to draft a primary will to cover assets that, as a practical matter, require probate (e.g., real property registered in the Ontario Land Titles system and public securities) and a secondary will to cover assets that do not require probate (e.g., some private company securities). Assume further that Mr. Brosamler's assets consisted of private and public company securities. If Mr. Brosamler executed a single will, would his estate be permitted to add to the adjusted cost base of the public company securities a portion of the fees? What about the private company shares? Would the nature of the relationship between the executor and the directors of the private company be relevant? Would the fact that Mr. Brosamler could have drafted multiple wills and exempted the private company shares from probate make a difference? What if Mr. Brosamler had drafted multiple wills but probate was required in respect of all wills on account of litigation? These are just some of the many questions, in these examples from an Ontario perspective, that the decision invites; however, what is clear is that if such fees are permitted, practitioners will need to consider how best to make use of the cost bump or deductions and, in so doing, should be mindful of, among other things, the various stop-loss provisions in the Act, the ability to elect out of the subsection 107(2) rollout, and the time period limitations in subsection 164(6).

— *Stefanie Morand*

## Establishing Due Diligence in Subsection 163(1)

***Chan v. The Queen*, 2012 DTC 1171 (Tax Court of Canada)**

In *Chan*, the Tax Court of Canada considered whether a penalty assessed against a taxpayer pursuant to subsection 163(1) of the *Income Tax Act* should be deleted. Subsection 163(1) imposes a 10% penalty on the amount of income that a taxpayer fails to include in income if the taxpayer also failed to include an amount in income in any of the three preceding taxation years. Unlike subsections 162(1) and (2), which apply to a failure to file a return and which impose a penalty calculated as a percentage of tax unpaid, the penalty imposed under subsection 163(1) is a percentage of the amount of income that was not included in the return in the taxation year in issue, regardless of the amount of tax in issue.

*Chan* follows prior cases that have held that subsection 163(1) is a strict liability penalty. The Court cited *Saunders* (2006 DTC 2267) and *Dunlop* (2009 DTC 1124), both Tax Court decisions, which held that a taxpayer would be strictly liable under subsection 163(1), such that the penalty could be imposed even if the taxpayer's failure to include amounts in income were innocent unless the taxpayer could establish due diligence.

In setting out the criteria required for the taxpayer to establish due diligence, the Court relied on *Les Résidences Majeau Inc*. (2010 GTC 1030), a decision of the Federal Court of Appeal, which held that a due diligence defence could be established if the defendant either made a reasonable mistake of fact or took "reasonable precautions to avoid the event leading to imposition of the penalty". Reasonable mistake of fact, while assessed objectively, contains a subjective element. Not only must the individual relying on a due diligence defence not have known about the

omission, but the taxpayer's lack of knowledge must have been reasonable. Further, the Court held that since subsection 163(1) requires that the taxpayer have failed to include income in two years out of four, to avoid the subsection 163(1) penalty the taxpayer needed only to establish a due diligence defence in respect of one omission.

In *Chan*, the taxpayer failed to include amounts of income in both her 2007 and 2008 tax returns. In 2007, the taxpayer failed to include in her return $1,156 of income consisting of taxable dividends ($145), other income ($1,010), and capital gains on a T3 slip ($1). At the time the taxpayer filed her 2007 return, in early April 2008, her financial institution had not sent all of her T3 and T5 information slips. The financial institution did not send the necessary T3 and T5 slips in accordance with the prescribed deadlines; in filing her return, the taxpayer had assumed that she had all the information slips to accurately report her income. Given these facts, Webb J found it reasonable that the taxpayer had mistakenly believed she had all of the T3 and T4 investment income slips from her financial institution when she filed her tax return.

In 2008, the taxpayer failed to include in income amounts totalling $5,226, which comprised taxable dividends ($2,075), interest ($2,555), other income ($560), and other dividend income ($89), less foreign tax paid ($52). Again, due to an error by the same financial institution, the T3 and T5 information slips relied on by the taxpayer did not accurately report all of her income. The judge found this failure to be unreasonable for two reasons. First, it represented a significant amount of her investment income. The judge compared the amount of unreported income and reported income, and calculated the percentage of unreported income broken down as follows: taxable dividends (41%), interest and investment income (15%), other income (19%), and ineligible dividend (67%). While the missing income constituted less than 5% of the taxpayer's total income, the judge reasoned that the taxpayer should have noticed the missing income, as it constituted a significant percentage of her investment income. Second, the judge opined that a reasonable person, having knowledge of the financial institution's history of failing to timely send an information slip, would have taken steps to check that all of her income was reported on the information slips provided by the financial institution. However, since the judge found that the taxpayer made a reasonable mistake of fact in her failure to report an amount of income in one of the taxation years in question, the judge allowed the taxpayer's appeal and referred the matter back to the Minister for reassessment without the imposition of the subsection 163(1) penalty.

In addition to setting out the due diligence test and determining whether the taxpayer was able to establish due diligence, the Court commented on the calculation of the penalty under subsection 163(1) as a percentage of unreported income. The judge emphasized that the penalty under subsection 163(1) is to be calculated as 10% of the "amount required to be included in computing the person's income," and that in this respect, the Minister appears to have made an error. In calculating the penalty, the Minister deducted from the unreported income an amount of foreign tax paid. However, under section 126, the foreign tax payable is deducted from the amount of taxes payable in a taxation year. The judge also highlighted a peculiarity of determining a penalty based on a percentage of income. If an individual taxpayer did not report taxable dividends received, then the penalty would be higher than if the individual taxpayer failed to report non-dividend income, such as interest income, notwithstanding that dividends are taxed on a more favourable basis than is interest income. Pursuant to subsection 82(1), taxable dividends received by an individual are included in income after a gross up of either 25% of the dividend, if the dividend is a non-eligible dividend, or 45% of the dividend, if the dividend is an eligible dividend. Since the penalty under subsection 163(1) is calculated as a percentage of the unreported income, the penalty under subsection 163(1) could be as much as 45% higher for an individual taxpayer who does not report eligible dividends than for a taxpayer who fails to report the same amount of interest income.

Although the taxpayer was ultimately successful in her appeal, the *Chan* case demonstrates that the due diligence defence is not an easy one to make. The judge's finding that the 2007 omission was a reasonable mistake of fact, while the 2008 omission was unreasonable is instructive. The financial institution's delay sending to the taxpayer all of her 2007 T3 and T5 information slips, according to the Court, should have alerted the taxpayer that there may have been additional information slips outstanding at the time the taxpayer filed her return for 2008. In other words, mere reliance on a third party, even a financial institution, is not likely to be sufficient to establish due diligence, especially where there is a known history of that third party making a similar error. However, since subsection 163(2) requires a failure to include income in two out of four consecutive years, the taxpayer needed only to establish that she made a reasonable mistake in one of the two omissions, not both. The taxpayer essentially made the same mistake twice, and yet avoided the 10% penalty.

— *Jeremy Ho, Articling Student*

# RECENT CASES

## NHL hockey player could not deduct agent's cost as legal expense incurred to establish right to salary

The taxpayer was a professional hockey player for the Florida Panthers of the NHL. He was represented by a sports agent corporation called MFIVE SPORTS in his negotiations with the Florida Panthers. He deducted his agent's fees in the amount of $2,927.64 from his employment income for 2008. The Minister disallowed the deduction claimed as a non-deductible expense. The taxpayer's primary argument in the appeal was that his agent's fees were deductible under paragraph 8(1)(*b*) as an amount paid on account of legal expenses incurred to collect or establish a right to salary.

The taxpayer's appeal was dismissed. There was no indication that MFIVE SPORTS was authorized to practise law, and therefore, was not providing legal services to which a claim for legal expenses could be made out. Even if it were authorized to provide legal services, its services were rendered to negotiate the taxpayer's contract and not to establish a right to a salary, as no right existed before the signing of that contract.

¶48,164, *Caruso*, 2012 DTC 1200

## Corporate taxpayer denied rectification order to replace a dividend with a reduction in capital to prevent application of thin capitalization rules

At a time when it was indebted to a corporate non-resident ("Sildel"), the corporate taxpayer paid a dividend of $136 million (the "Dividend") to the corporate defendant. After subsequently realizing that the Dividend would unfavourably alter its various capital accounts and its retained earnings account ratios for purposes of the thin capitalization rules in subsection 18(4), thus preventing it from deducting the interest paid on its loans from Sildel, the taxpayer applied to the Quebec Superior Court for an order, by way of rectification, declaring the Dividend void *ab initio,* and replacing it with a corresponding payment of $136 million effecting a reduction in its capital in favour of the defendant. This would enable it to deduct the interest on its loans from Sildel.

The taxpayer's application was dismissed. An order declaring the Dividend void *ab initio* could not be made without an order restoring the parties to their original position before the Dividend was declared, which was not what the taxpayer wanted. Replacing the Dividend with a reduction in capital involved two separate transactions, and doing this for tax reasons would amount to an unacceptable attempt to rewrite the documentation in order to change the tax history that was not legitimate.

¶48,166, *Mac's Convenience Stores Inc.*, 2012 DTC 5118

## Application for judicial review of Minister's decision to reassess not bereft of any chance of success

The Minister assessed the taxpayer for Part XIII tax in respect of fees paid to a related non-resident corporation. The taxpayer applied to the Federal Court for judicial review of the decision to assess, contending that it was contrary to the Canada Revenue Agency's own policies, and that the Minister's discretion was therefore improperly exercised. The Minister applied to strike out the application on the grounds that the issues were within the sole jurisdiction of the Tax Court of Canada.

The Minister's application was dismissed. The Court found that the Minister's decision to apparently depart from policies was not otherwise reviewable, and was therefore subject to judicial review. The taxpayer sought only judicial review of the decision to assess. No attack on the assessments was in play. Striking out an application for judicial review is an extraordinary remedy that will only be granted in exceptional cases. There was no doubt that there were significant and controversial issues between the parties, which engaged the discretion of the Minister. These issues were not bereft of any chance of success.

¶48,167, *JP Morgan Asset Management (Canada)*, 2012 DTC 5120

## Applicants made voluntary disclosure of tax liability; Minister's decision to deny benefits under program unreasonable

The taxpayers filed a consolidated application under subsection 18.1(1) of the *Federal Courts Act* for judicial review of the Minister's decision to refuse a waiver of interest and penalties they owed because of late-filed tax returns. The Minister argued that the taxpayers' disclosure was not voluntary because of enforcement actions against a related corporation.

The taxpayers' application was allowed with costs. An audit was conducted against an unrelated corporation, since the principal applicant was only a director of that corporation. The taxpayers also did not have knowledge of the audit prior to filing their request for voluntary disclosure. The Canada Revenue Agency did not give the taxpayers the benefit of the doubt, as required by the guidelines to be followed in these types of matters. The officer's decision was, therefore, unreasonable and must be set aside.

¶48,168, *Worsfold*, 2012 DTC 5121

**TAX NOTES**

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