

### Timely Tax Returns Should be a Top Priority

By Maralynne A. Monteith

The recent decision of the Federal Court in *Rosenberg Estate v. Canada (National Revenue)*, 2011 FC 445, provides a cautionary reminder that every effort should be made to ensure that tax returns are filed on time.

The case arose out of a request for the Federal Court to review the decision of the Canada Revenue Agency not to provide relief in respect of a penalty which was imposed for the late filing of the deceased's terminal income tax return.

This was not a simple estate. The deceased died intestate. The court appointed a liquidator. There were disputes between the heirs. There was an undeclared offshore bank account that ultimately resulted in a voluntary disclosure.

The liquidator had instructed the deceased's accountant to prepare and file the terminal return and quickly sent in a payment on account of the tax that might be owing. For whatever reason, the accountant failed to file the return and a new accountant was retained, resulting in the terminal return being filed in September rather than by the end of April when it was required to be filed. Significant late filing penalties were assessed.

Among various applications to the CRA to provide relief from interest and penalties, the liquidator was unsuccessful in obtaining relief for the late filing penalty imposed in respect of the terminal return.

One could understand why the liquidator might be distracted with all the complexities. It was clear that neither the liquidator nor the accountant had sufficient information to determine accurately the amount of tax owing by the time the terminal return was due. Further, the liquidator had to deal with all the complications of an intestacy and disputes between the heirs.

In upholding the reasonableness of the tax authority's decision not to relieve the penalty, the Federal Court made two significant findings:

- The mere fact that the terminal tax return may not be complete and correct should not prevent it from being filed on time with a letter explaining that the tax has been estimated in the absence of all the information required to calculate the tax accurately.
- The disputes between the heirs did not constitute extraordinary circumstances sufficient to justify cancellation of the late filing penalty.

Notwithstanding disputes or incomplete information, being vigilant to ensure that tax returns are filed on time must be a top priority for all persons engaged in estate administration.

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Maralynne is a senior tax practitioner with a diverse practice founded on her in-depth experience in both income tax and commodity tax matters servicing domestic and international clients. Maralynne has a broad-based tax practice in the areas of income and commodity taxes, both federal and provincial, including domestic and international taxation, GST, financing, transfer pricing and other cross-border issues, both corporate and personal and both in-bound and out-bound Canada. She is an active member of our Corporate, Employment, Mediation, and Estates, Trusts and Charities practices.

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