

BETWEEN:

JOSE ANTONIO VIRITO REYES,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard virtually on August 18, 2022 at Ottawa, Ontario and on
November 10, 2022 at Ottawa, Ontario

Before: The Honourable Justice Monica Biringer

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Élise Rivest

ORDER

WHEREAS the Respondent brought a motion seeking the following relief:

- Seeking an order quashing the appeals of the Appellant for the 2013, 2014, 2015 and 2016 taxation years¹, under paragraph 55(3)(b) of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”)² on the grounds that a condition precedent to instituting a valid appeal under subsection 169(1) of

¹ The Respondent initially sought to quash the appeal for the 2018 taxation year, but no longer does.

² *Tax Court Of Canada Rules (General Procedure)*, SOR/90-688a [Rules].

the *Income Tax Act* (the “*ITA*”)³ for each of those taxation years has not been met;

- Seeking an order striking the Appellant’s Notice of Appeal as a whole, pursuant to subsection 53(1) of the *Rules*, with leave granted to file an Amended Notice of Appeal within 30 days of the date of the order. In the alternative, the Respondent asks the Court to strike out sections of the Notice of Appeal identified in Appendix A to its submissions (dated September 9, 2022) and order the Appellant to follow Form 21(1)(a) of the *Rules* in filing an Amended Notice of Appeal, and to include the material facts relied on by the Appellant to contest the correctness of the assessments remaining in issue;
- Seeking an extension of time for the Respondent to file its Reply to the Amended Notice of Appeal, to 60 days after the Amended Notice of Appeal is filed and served, or if the motion ordering the Appellant to amend the Notice of Appeal is not granted, to 30 days from the date of an order of the Court; and
- Seeking costs of the motion.

AND UPON hearing from the parties;

AND UPON review of the Notice of Motion filed on January 12, 2022, the Affidavits of Sadruddin Suleman sworn on August 11, 2022 and September 9, 2022, the written submissions of the Appellant and the written submissions of the Respondent, all filed;

AND IN ACCORDANCE with the attached Reasons for Order;

IT IS ORDERED that:

1. The Respondent’s motion to quash is granted in respect of the Appellant’s 2013, 2014, 2015 and 2016 taxation years.
2. The Respondent’s motion to strike certain portions of the Appellant’s Notice of Appeal is granted, in part, as set out in more detail in Appendix A. The Appellant is granted 60 days, from the date of this decision, to file an Amended Notice of Appeal. The Respondent is granted an extension of time to file its Reply to the

³ *Income Tax Act*, RSC 1985, C1 (5th Supp) [*ITA*]; all statutory references are to the *ITA* unless otherwise indicated.

Amended Notice of Appeal, to 60 days after the Amended Notice of Appeal is filed and served; and

3. Costs are awarded to the Respondent, in accordance with the Tariff.

Signed at Toronto, Ontario this 26th day of June 2023.

“Monica Biringer”

Biringer J.

Citation: 2023 TCC 31
Date: 20230626
Docket: 2021-2526(IT)G

BETWEEN:

JOSE ANTONIO VIRITO REYES,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Biringer J.

I. BACKGROUND TO THE MOTION

[1] The Appellant, Jose Antonio Virito Reyes, is a certified public accountant and lawyer, both designations in the Dominican Republic. The Appellant is self-represented. The Appellant immigrated to Canada in 2012 and is a resident of Canada for purposes of the *ITA*. The Appellant has a consulting business which he carries on in Canada and the Dominican Republic, providing services to clients including those in the Dominican Republic.

[2] The appeals filed in this Court are for the Appellant's 2013, 2014, 2015, 2016, 2017 and 2018 taxation years. At issue is the deductibility of various expenses which the Appellant claims were incurred for the purposes of gaining or producing income from his consulting business. These include claims for travel, telecommunication, home office, and other expenses.

[3] The Respondent does not dispute that the appeal for the 2017 taxation year has been properly constituted; the motion is in respect of the other years.

II. THE MOTION

[4] The Respondent⁴ brings a motion:

- Seeking an order quashing the appeals of the Appellant for the 2013, 2014, 2015 and 2016 taxation years⁵, under paragraph 55(3)(b) of the *Rules* on the grounds that a condition precedent to instituting a valid appeal under subsection 169(1) for each of those taxation years has not been met;
- Seeking an order striking the Appellant's Notice of Appeal as a whole, pursuant to subsection 53(1) of the *Rules*, with leave granted to file an Amended Notice of Appeal within 30 days of the date of the order. In the alternative, the Respondent asks the Court to strike out sections of the Notice of Appeal identified in Appendix A to its submissions (dated September 9, 2022) and order the Appellant to follow Form 21(1)(a) of the Rules in filing an Amended Notice of Appeal, and to include the material facts relied on by the Appellant to contest the correctness of the assessments remaining in issue;
- Seeking an extension of time for the Respondent to file its Reply to the Amended Notice of Appeal, to 60 days after the Amended Notice of Appeal is filed and served, or if the motion ordering the Appellant to amend the Notice of Appeal is not granted, to 30 days from the date of an order of the Court; and
- Seeking costs of the motion.

[5] The hearing of this motion commenced on August 18, 2022 and resumed on November 10, 2022, after further written submissions were filed with the Court. Further submissions were received on May 12, 2023.

[6] As a preliminary matter, the Respondent requested that the Court accept the supplementary affidavit of Mr. Sadruddin Suleman filed on September 9, 2022. I do not see a need for an order as the affidavit was served and filed within the time prescribed by section 67 of the Rules.

⁴ The Respondent in the underlying appeals brings this motion. To avoid confusion, I will refer to the parties in accordance with their status in the underlying appeals.

⁵ The Respondent initially sought to quash the appeal for the 2018 taxation year, but no longer does.

III. PRELIMINARY MATTER

[7] I find Mr. Reyes’ position on the motion to be unresponsive to the issues raised by the Respondent. On both hearing dates, I encouraged the Appellant to address the Respondent’s arguments on the alleged failure to timely file notices of objection, the restrictions on appealing certain assessments and the Respondent’s arguments in respect of the motion to strike.

[8] To put the Appellant’s arguments on the motion into context, I note that the Appellant’s position on the underlying appeals is that Canada has no right to tax the income he earns from carrying on consulting activities with clients based in the Dominican Republic. He foreshadows that he will be relying on the provisions of the *Convention between Canada and the Dominican Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* (the “*Canada-DR Tax Treaty*”)⁶ and the *Vienna Convention on the Law of Treaties, Vienna Austria, 1969* (the “*Vienna Convention*”)⁷ in support of his argument that notwithstanding that he is a Canadian resident, for purposes of the *ITA*, he is not liable to tax on his “worldwide income”.

[9] The Appellant’s position on the motion is similar. The Appellant submits, in reliance on the *Canada-DR Tax Treaty* and the *Vienna Convention*, that because this is an “international” tax case, he is exempt from limitation periods and procedural compliance under the provisions of the *ITA*. He also submits that the Canada Revenue Agency (the “CRA”) has violated the *Universal Declaration of Human Rights*.⁸

[10] I encouraged the Appellant not to rely on these conceptual arguments, and to directly address the various detailed arguments put forward by the Respondent. The Appellant chose not to do so in any of his written submissions⁹ or in his oral argument.

⁶ *Convention between Canada and the Dominican Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital*, 6 August 1976, Can TS 1977 No 4 (entered into force 23 September 1977) [*Canada-DR Tax Treaty*].

⁷ *Vienna Convention on the Law of Treaties, Vienna Austria, 1969*, 23 May 1969, UNTS 1155 at 331 (entered into force 27 January 1980) [*Vienna Convention*].

⁸ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

⁹ The Appellant submitted various written arguments to the Court: “Answer to the Motion” received by the Court on January 31, 2022, “Jose Reyes Initial Statement” (received by the Court on August

The Appellant acknowledges that he has not addressed the issues raised by the Respondent since he does not accept the basic premise of the Respondent's position, or as he says, he "disagrees with the system".

IV. ISSUES

Motion to Quash

[11] The Respondent asks this Court to quash the appeals for the Appellant's 2013, 2014, 2015 and 2016 taxation years.¹⁰ The Respondent's submissions differ based on the taxation year. Accordingly, this section is in two parts: the first part addresses the 2013, 2015 and 2016 taxation years and the second part addresses the 2014 (and 2018) taxation years.

V. THE 2013, 2015 AND 2016 TAXATION YEARS

The Parties' Positions

[12] The Respondent submits that subsection 165(1.2) precludes the Appellant from objecting or appealing the reassessments for the 2013, 2015 and 2016 taxation years, because those assessments were issued under subsection 152(4.2).¹¹

[13] The Appellant did not address the Respondent's arguments that relate to the potential impact on his appeal rights of an assessment issued under subsection 152(4.2). The Appellant takes the position that in respect of income earned by him in the Dominican Republic, he is not governed by the procedural rules of the *ITA* for the objection and appeals process, including subsection 152(4.2). I disagree for reasons provided further below. First, I address the Respondent's arguments.

VI. LAW

17, 2022), "Answer" (filed with the Court on September 18, 2022), Jose Reyes Final Statement (filed with the Court on November 9, 2022) and a further submission filed on May 12, 2023.

¹⁰ Respondent's Written Submissions at para 3.

¹¹ Respondent's Written Submissions at para 1(a).

[14] Section 152 sets time limits on the Minister of National Revenue’s (the “Minister’s”) authority to assess and reassess. Pursuant to subsection 152(4), the Minister generally has three years to assess or reassess an individual taxpayer, starting from the date of the original notice of assessment or original notification that no tax is payable (the “normal reassessment period”).¹²

[15] Subsection 152(4.2) allows the Minister to reassess an individual taxpayer after the expiration of the normal reassessment period to determine a refund or reduce an amount payable, upon application by the individual. The Minister’s ability to make a “downward adjustment” under subsection 152(4.2) provides relief to individuals who, for example, become aware after the normal reassessment period that an otherwise valid claim for a deduction or credit was inadvertently not made.

[16] Subsection 152(4.2) reads as follows:

(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 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

...

[Emphasis added.]

[17] Subsection 152(4.2) is discretionary. The Minister “may”, but is not obliged to, issue an assessment under subsection 152(4.2) if the conditions are met.¹³

¹² Subsection 152(4) uses the term “normal reassessment period”, which is defined in subsection 152(3.1). Subsection 152(4) includes exceptions that apply in certain circumstances, including under subsection 152(4)(a) where there is misrepresentation or where a waiver has been filed. None of the exceptions applies; the issue of waiver is addressed later in these reasons.

¹³ 9027-4218 *Québec Inc. v. Canada (National Revenue)*, 2019 FC 785 at para 52.

[18] An assessment under subsection 152(4.2) is similar to other “fairness” provisions of the *ITA*. If a taxpayer believes that the Minister did not properly exercise its discretion in considering the request for relief under subsection 152(4.2), a second review may be requested and the taxpayer has an opportunity to make additional representations.¹⁴

[19] If the taxpayer disagrees with the discretion exercised in the second review, the taxpayer can apply to the Federal Court for a judicial review of the CRA decision within 30 days of the date of receipt of the second review decision.¹⁵ The Federal Court may not substitute its decision for the CRA’s decision, but may grant judicial review and send the matter back for reconsideration.¹⁶

[20] As with assessments issued under other “fairness” provisions of the *ITA*, pursuant to subsection 165(1.2), a taxpayer cannot object to an assessment made under subsection 152(4.2). Subsection 165(1.2) reads as follows:

(1.2) Notwithstanding subsections (1) and (1.1), no objection may be made by a taxpayer to an assessment made under subsection 118.1(11), 152(4.2), 169(3) or 220(3.1) nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer.

[Emphasis added.]

[21] If a taxpayer cannot object to a reassessment, then the taxpayer cannot appeal to the Tax Court due to subsection 169(1), which reads as follows:

¹⁴ *Ford v. Canada (Attorney General)*, 2015 FC 1057, aff’d 2016 FCA 128; *Abou-Rached v. Canada (Attorney General)*, 2019 FC 750; *Lambert v. Canada (Attorney General)*, 2015 FC 1236 [*Lambert*]. The CRA’s process for second level review is described in Information Circular IC07-1R1, “Taxpayer Relief Provisions” (18 August 2017) at paras 103-104.2.

¹⁵ *Federal Courts Act*, RSC 1985, c F-7, s. 18.1.

¹⁶ *Lanno v. Canada (Customs & Revenue Agency)*, 2005 FCA 153; *Lambert*, *supra* note 15, *Anthony v. Canada Revenue Agency*, 2016 FC 955. The CRA’s explanation of the Federal Court’s powers to grant judicial review is described in Information Circular IC07-1R1, “Taxpayer Relief Provisions” (18 August 2017) at paras 105-108.3.

Where a taxpayer has served a notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

- i) the Minister has confirmed the assessment or reassessed, or
- ii) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day the notice has been sent to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[Emphasis added.]

[22] This Court has consistently held that where a reassessment is issued under subsection 152(4.2), there is no right of appeal to the Tax Court because no valid objection can be filed.¹⁷ In *Groulx*, the Federal Court of Appeal confirmed the decision of this Court quashing the taxpayer's appeal for taxation years for which assessments were issued under subsection 152(4.2) on the basis that "because no valid objections could be made against those reassessments, no appeals against them, under subsection 169(1) were permissible".¹⁸

VII. ANALYSIS

(i) Reassessments Issued Under Subsection 152(4.2)

[23] The reassessments for the 2013, 2015 and 2016 taxation years were issued on October 22, 2020. It therefore becomes essential to determine whether they were issued under subsection 152(4) or 152(4.2).

¹⁷ *Groulx v. The Queen*, 2008 TCC 445, aff'd 2009 FCA 10 [*Groulx FCA*]; *Chou v. The Queen*, 2005 TCC 408; *Letendre v. The Queen*, 2011 TCC 577; *Yaremy v. The Queen*, [2000] 1 CTC 2393 (TCC [Informal Procedure]), [1999] TCJ No 713; *Haggart v. The Queen*, 2003 TCC 925; *Mellish v. The Queen*, 2007 TCC 228.

¹⁸ *Groulx FCA*, *supra* note 18 at para 2.

[24] There are four conditions for a reassessment to be issued under subsection 152(4.2):

1. The reassessment is issued at any time after the end of the normal reassessment period;
2. The reassessment is for the purpose of determining the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under Part I for the year;
3. The taxpayer makes an application for that determination; and
4. The application is made on or before the day that is 10 calendar years after the end of that taxation year.

[25] The first criterion is met. The October 22, 2020 reassessments were issued after the end of the normal reassessment period for all three years. The relevant dates are:

Taxation Year	Date of issuance for the initial notice of assessment	End of the normal reassessment period
2013	October 30, 2014	October 30, 2017
2015	April 25, 2016	April 25, 2019
2016	April 3, 2017	April 3, 2020

[26] The second criterion is met. Notices of reassessment were issued for the 2013, 2015 and 2016 taxation years on October 22, 2020.¹⁹ The reassessments allowed the taxpayer's deduction for certain expenses incurred for the purposes of generating income from his consulting business, and reduced taxes payable under Part I for all three taxation years:

¹⁹ Prior notices of reassessment were issued for the 2013 taxation year on December 11, 2017 and for the 2015 taxation year on May 2, 2016, December 11, 2017 and December 14, 2017.

Taxation Year	Taxes payable pursuant to the notices of assessment (A)	Taxes payable pursuant to the notice of reassessment (B)	Reduction in taxes payable (A less B)
2013	\$353.01 ²⁰	\$224.45 ²¹	\$127.56
2015	\$3,830.14 ²²	\$3,421.62 ²³	\$408.52
2016	\$12,572.32 ²⁴	\$11,454.54 ²⁵	\$1,117.78

[27] The third criterion is met. The Appellant submitted T1 adjustment requests²⁶ with the latest being November 9, 2018 (received by the CRA on November 22, 2018) in respect of expenses incurred for the purposes of generating income in the Dominican Republic in the relevant taxation years.²⁷

[28] The fourth criterion is met. The Appellant applied before the day that is 10 calendar years after the end of the taxation years under appeal. The Appellant's T1

²⁰ Respondent's Written Submissions at para 27(a); Supplementary Affidavit of CRA litigation officer Sadruddin Suleman sworn September 9, 2022 at Exhibit A-2.

²¹ Respondent's Written Submissions at para 27(a); Supplementary Affidavit of CRA litigation officer Sadruddin Suleman sworn September 9, 2022 at Exhibit A-2.

²² Respondent's Written Submissions at para 27(b); Supplementary Affidavit of CRA litigation officer Sadruddin Suleman sworn September 9, 2022 at Exhibit E-2.

²³ Respondent's Written Submissions at para 27(b); Supplementary Affidavit of CRA litigation officer Sadruddin Suleman sworn September 9, 2022 at Exhibit E-2.

²⁴ Respondent's Written Submissions at para 27(c); Affidavit of CRA litigation officer Sadruddin Suleman sworn August 11, 2022 at Exhibit K.

²⁵ Respondent's Written Submissions at para 27(c); Affidavit of CRA litigation officer Sadruddin Suleman sworn August 11, 2022 at Exhibit K.

²⁶ May 5, 2016 (received by the CRA May 10, 2016), June 17, 2016 (received by the CRA June 23, 2016), March 21, 2018, and May 6, 2018 (received by the CRA on May 18, 2018).

²⁷ Respondent's Written Submissions at paras 29, 66 and 80; Supplementary Affidavit of CRA litigation officer Sadruddin Suleman sworn September 9, 2022 at Exhibit K-2; Affidavit of CRA litigation officer Sadruddin Suleman sworn August 11, 2022 at Exhibit L.

adjustment requests (the latest of which was made in 2018) were well within 10 calendar years after the end of the Appellant's 2013, 2015 and 2016 taxation years.

[29] Here, the Appellant was advised, in response to the T1 adjustments submitted:

1. That a review of the determination made in response to the request was available; and
2. That a second review under the "Taxpayer Relief Provisions" was available, but because the reassessments issued in response to the requests were issued under subsection 152(4.2), there was no right of objection.²⁸

As further confirmed in the discussion that follows, I agree that the assessments were issued under subsection 152(4.2).

[30] While the reassessments were issued after the normal reassessment period for each of the years (satisfying the first criterion), I have also considered whether the timing of the T1 adjustment requests which led to the reassessments – submitted to the CRA *before* the normal reassessment period expired for the 2015 and 2016 taxation years – has any bearing on whether the reassessments were issued under subsection 152(4.2) for those years. I have determined that it does not.

[31] The language in subsection 152(4.2) is clear – the relevant event is the time of the Minister's determination – after the normal reassessment period; the section does not take into account when the taxpayer's application was made. I note that when a T1 adjustment request is made close in time to the end of a normal reassessment period, or the Minister takes a long time to reassess, it potentially puts within the Minister's control whether a reassessment is issued under subsection 152(4) or 152(4.2).

[32] A timing issue in respect of whether an assessment was issued under subsection 152(4.2) arose in *DouangChanh*²⁹. In that case, this Court ruled that the Minister did not issue a reassessment pursuant to subsection 152(4.2) when the applicant requested a further reassessment that was issued after the normal reassessment period. The applicant filed a notice of objection to his November 9, 2009 reassessment and, shortly after, submitted a T1 adjustment request, all within the

²⁸ Affidavit of CRA litigation officer Sadruddrin Suleman sworn August 11, 2022 at Exhibits O and P.

²⁹ *DouangChanh v. The Queen*, 2013 TCC 320.

normal reassessment period. The Minister issued a reassessment in response to the T1 adjustment request on October 18, 2011, after the end of the normal reassessment period. The Court concluded that it was “very unlikely that the applicant intended to request a reassessment to be made after the normal reassessment period thereby removing his appeal rights with respect to the [objection to the] charitable donation”³⁰, and treated the October 18, 2011 reassessment as statute barred and the November 9, 2009 reassessment as still valid. Thus, the Court was able to conclude that the applicant validly objected to the November 9, 2009 reassessment preserving his appeal rights before the Court.³¹

[33] The reasoning in *DouangChanh* does not affect the result here. Unlike the applicant in *DouangChanh*, the Appellant did not stand to lose any rights to object by submitting T1 adjustment requests as no objections had been filed at the time those adjustment requests were submitted. Notices of objection for the 2013, 2015 and 2016 taxation years were filed on November 22, 2020.³²

(ii) Submissions on the Applicability of Subparagraph 152(4)(a)(ii)

[34] After the hearing, I requested written submissions from the parties on the following:³³

- a. Whether any of the T1 adjustment requests pertaining to the Appellant’s 2013, 2015 or 2016 taxation years constitutes a “waiver” under subparagraph 152(4)(a)(ii) in respect of any or all of those years; and
- b. If yes,

³⁰ *Ibid*, at para 24.

³¹ *Ibid*, at paras 25-26.

³² No notice of objection or request for an extension of time to file a notice of objection was filed in response to any of the reassessments issued for the 2013, 2015 and 2016 taxation years prior to the October 22, 2020 reassessments. Notices of objection were filed in response to the October 22, 2020 reassessments on November 22, 2020.

³³ Written submissions were received on May 12, 2023.

- i. Whether, as a result, any of the reassessments for the Appellant's 2013, 2015 and 2016 taxation years is considered issued pursuant to subparagraph 152(4)(a)(ii) and not subsection 152(4.2); and
- ii. The impact on the Respondent's motion seeking an order to quash the appeals for the Appellant's 2013, 2015 and 2016 taxation years, and any relief requested.

[35] Subparagraph 152(4)(a)(ii) allows the Minister to reassess a taxation year beyond the normal reassessment period if the taxpayer has filed a waiver. Subparagraph 152(4)(a)(ii) provides as follows:

152 (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

...

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

[36] The request for submissions provided the Appellant with an additional opportunity to submit why the appeals for the 2013, 2015 and 2016 taxation years might be valid. However, the Appellant did not address any of the substantive issues outlined in the request. Instead, the Appellant accused me of being biased in favour of the Respondent, a claim that is entirely without foundation.

[37] The Respondent submits that none of the Appellant's T1 adjustment requests constitutes a waiver. The Respondent argues that the Appellant did not intend for any of the T1 adjustment requests to act as a waiver and the T1 adjustment requests do not contain the required information to qualify as waivers. The Respondent further submits that the Minister clearly exercised discretion in reassessing the Appellant's 2013, 2015

and 2016 taxation years³⁴ under subsection 152(4.2), and that the Appellant was made aware of this. The Minister did not reassess under subparagraph 152(4)(a)(ii).

[38] This Court and the Federal Court of Appeal considered a similar issue in *Kubbernus*.³⁵ In *Kubbernus* the issue was whether a reassessment was issued under subsection 152(4.2) or paragraph 152(4)(b)(i). The Minister reassessed the taxpayer's 2000 taxation year, allowing for a capital loss carryforward.³⁶ This reassessment was triggered by the taxpayer's application for relief under "Taxpayer Relief" legislation, and stated that the Minister adjusted the taxpayer's tax return under the fairness provisions of the *ITA*, so no notice of objection could be filed.³⁷ Nonetheless, the taxpayer objected to the reassessment and appealed the subsequent notice of confirmation.³⁸ The Respondent filed a motion to strike the taxpayer's appeal on the basis that the appeal was not properly instituted because the reassessment was issued under subsection 152(4.2), and no objection can be made to a subsection 152(4.2) reassessment.³⁹

[39] The taxpayer in *Kubbernus* argued that the reassessment was issued under subparagraph 152(4)(b)(i) and not subsection 152(4.2), so the taxpayer was not prohibited from objecting to the reassessment and appealing to this Court.⁴⁰ Taken together, subparagraph 152(4)(b)(i) and subsection 152(6) extend the permitted reassessment period from three to six years, allowing the Minister to carry back losses to prior taxation years. According to the taxpayer, it was not necessary for the Minister to resort to subsection 152(4.2) to issue the reassessment because the reassessment was issued within six years.⁴¹ Angers J. disagreed with the taxpayer:

³⁴ This is in reference to the concurrent notices of reassessment issued by the Minister on October 22, 2020 as per the Affidavit of CRA litigation officer at Sadruddin Suleman sworn August 11, 2022 at Exhibits A, C and D.

³⁵ *Kubbernus v R*, 2009 TCC 311, aff'd 2010 FCA 50.

³⁶ *Ibid* at para 2.

³⁷ *Ibid* at paras 2, 5.

³⁸ *Ibid* at para 6.

³⁹ *Ibid* at para 7.

⁴⁰ *Ibid* at paras 8, 25.

⁴¹ *Ibid* at para 25.

[30] In addition, the evidence does not disclose that any of the conditions set out in subsection 152(4), which are required in order for the Minister to be able to assess after the normal assessment period, have been met here. No evidence was adduced that would permit me to conclude that the October 2006 reassessment was issued pursuant to subparagraph 152(4)(b)(ii) or subsection 152(6) of the Act. The evidence, on the contrary, supports a finding that the reassessment was made under the "fairness" legislation, and the Minister reassessed for the appellant's 2000 taxation year in accordance with his request. As a consequence, no valid objection may be made; hence, no appeal can be filed before this Court.⁴²

[Emphasis added.]

[40] The Federal Court of Appeal upheld the Tax Court decision.⁴³ Based on the evidence, the only conclusion available to the Tax Court judge was that the reassessment was issued under subsection 152(4.2).⁴⁴

[41] A T1 adjustment request may, in certain circumstances, be considered to constitute a waiver for the purposes of subparagraph 152(4)(a)(ii). For example, this Court in *Remtilla* determined that the T1 adjustment requests filed by the taxpayers constituted waivers, based on a conclusion that the taxpayer intended to file waivers.⁴⁵ However, based on the evidence, that is not the case here. The correspondence from the Appellant reflects a series of T1 downward adjustment requests, initiated by the Appellant. There is no suggestion that the Appellant intended for the relevant taxation years to “remain open”, consistent with a waiver. The responses from the Minister also reflect that the reassessments were issued under subsection 152(4.2). The following is an excerpt of the letter sent by the Minister to the Appellant on October 1, 2020, responding to the Appellant’s T1 adjustment requests for his 2013, 2014, 2015, 2016 and 2017 taxation years under the Taxpayer Relief Provisions:

I am writing in response to your correspondence asking the Canada Revenue Agency (CRA) to adjust income earned in the Dominican Republic and to recognize expenses incurred in the generation of this foreign income in the tax years of 2013, 2014, 2015, 2016 and 2017. As well, we have reviewed the deductions claimed in the 2017 tax

⁴² *Ibid* at para 30.

⁴³ *Kubbernus v. R*, 2010 FCA 50.

⁴⁴ *Ibid* at paras 9-10.

⁴⁵ *Remtilla*, 2015 TCC 200 at paras 1-4, 50.

year, and verified that the correct exchange rate was used at the time of reassessment of the 2013, 2015 and 2016 tax years. As this request relates to statute-barred years, it falls under the purview of Taxpayer Relief Provisions.

As described in Circular IC07-1, the Taxpayer Relief Provisions provide for discretion to issue a refund or reduce the amount owed for any statute barred tax year that ended within ten years before the calendar year when the taxpayer filed the request. To follow the guidelines, please refer to this Information Circular on the Canada Revenue Agency web site at www.canada.ca/en/revenue-agency.⁴⁶

[Emphasis added.]

[42] There is no evidence that a waiver was either requested by the CRA or that the Appellant intended to provide a waiver by submitting the T1 adjustment requests. Rather, the evidence supports the contrary – that the Appellant sought downward adjustments and the Minister exercised its discretion under subsection 152(4.2) when it reassessed the Appellant’s 2013, 2015 and 2016 taxation years. As such, the Appellant is prohibited from appealing the assessments for the 2013, 2015 and 2016 taxation years.

[43] For the foregoing reasons, I have concluded that the Minister issued reassessments on October 22, 2020 for the Appellant’s 2013, 2015, and 2016 taxation years under subsection 152(4.2). Pursuant to subsection 165(1.2), the Appellant is not able to object to those reassessments. As a condition precedent to instituting a valid appeal under subsection 169(1) for each of those taxation years has not been met, the Appellant is prohibited from appealing the assessments. The Respondent’s motion to quash is granted in respect of the appeals for the 2013, 2015 and 2016 taxation years.

VIII. THE 2014 (AND 2018) TAXATION YEARS

A. The Parties’ Positions

[44] The Respondent’s position is that the Appellant did not file a notice of objection or request an extension of time to file a notice of objection for the 2014 taxation year by the deadlines provided under the *ITA*. The Respondent submits that, for the 2018 taxation year, the Appellant did not timely file a notice of objection but did apply to

⁴⁶ Affidavit of CRA litigation officer at Sadruddin Suleman sworn August 11, 2022 at Exhibit O.

the Minister for an extension of time to file an objection within the time required. The Respondent will therefore consent to an application for an extension of time to the Court for the Appellant's 2018 taxation year.

[45] The Appellant did not address the Respondent's arguments with respect to the alleged failure to timely file a notice of objection or request an extension of time to file a notice of objection and the potential impact on appeal rights. The Appellant takes the position that in respect of the income earned by him in the Dominican Republic, he is not governed by the rules of the *ITA* which prescribe limitation periods for filing a notice of objection or a request for an extension of time to file a notice of objection. I disagree for reasons provided further below. First, I address the Respondent's arguments.

B. Law

[46] Pursuant to paragraph 165(1)(a), an individual who objects to an assessment must file a notice of objection on or before the earlier of the following:

1. The day that is one year after the tax-filing due date for the year: the tax-filing due date for individuals who carried on a business in the year is June 15th of the following year;⁴⁷ and
2. The day that is 90 days after the day the notice of assessment was sent: the definition of "assessment" in subsection 248(1) is non-exhaustive, and provides that an "assessment" include a reassessment.

[47] Where a taxpayer has not filed an objection to an assessment or reassessment within the time limits set out in subsection 165(1), the taxpayer can apply for an extension of time to file the objection under a two-step process.

[48] First, pursuant to section 166.1, a taxpayer who wishes to file a notice of objection beyond the normal time limit must apply to the Minister for an extension of time. The section 166.1 application must be made within one year of the expiration of

⁴⁷ *Supra* note 3 at s 150(1)(d).

the time limit for serving a notice of objection. Pursuant to subsection 166.1(7), an extension may only be granted where the taxpayer demonstrates:

- a. That within the time otherwise limited for serving a notice, the taxpayer either was unable to act or to instruct someone to do so, or had a *bona fide* intention to object to the assessment;
- b. That it would be just and equitable to grant the application; and
- c. That the application was made as soon as circumstances permitted.

[49] Second, pursuant to section 166.2, if the CRA refuses the application under section 166.1, or if 90 days have elapsed following service of the application and the CRA has not notified the taxpayer of the decision, the taxpayer may apply to this Court for an extension of time to file a notice of objection. Paragraph 166.2(5)(a) requires that the original application under section 166.1 was made within one year after the expiration of the statutory time limit for serving a notice of objection or making a request.

C. Analysis

(1) The 2014 taxation year

[50] The Appellant was initially assessed for the 2014 taxation year on June 26, 2015. The Minister reassessed the Appellant for the 2014 taxation year by notice dated December 11, 2017. The deadline for the Appellant to serve on the Minister a notice of objection to the latter reassessment, pursuant to subparagraph 165(1)(a)(ii), was March 12, 2018 (determined as the later of the date that is one year after the Appellant's filing due date for the 2014 taxation year – being June 15, 2016⁴⁸ – and 90 days after

⁴⁸ The Respondent takes the position that as it has not conducted discovery, it has not determined whether the Appellant's filing deadline for the taxation years was April 30 or June 15. June 15 is the filing deadline where the Appellant carries on a business. As the Minister assessed the Appellant to allow various expenses in computing income of a business, I have based my analysis on the premise that the filing deadline was June 15. In any event, whether the deadline was April 30 or June 15, it does not affect my conclusions that:

1. The Appellant did not object on a timely basis or file an extension request on a timely basis for the 2014 taxation year; and

the day of sending the December 11, 2017 notice of reassessment – being March 12, 2018). Based on the affidavits of Sadruddin Suleman, I have determined that the Appellant did not file a notice of objection on or before March 12, 2018. The Appellant filed a notice of objection dated November 22, 2020, which was outside the limitation period.

[51] The time limit for the Appellant to serve an application with the Minister for an extension of time to object to the notice of assessment dated December 11, 2017, expired on March 12, 2019 pursuant to paragraph 166.1(7)(a). The Appellant sent a letter to the CRA dated December 6, 2020 applying for an extension of time to object to the 2014 taxation year, which was received by the CRA on December 14, 2020. The extension request was not filed within the time prescribed by paragraph 166.1(7)(a).

[52] As the Appellant has not met the criterion set out in paragraph 166.2(5)(a) – that the application for an extension of time be made within one year of the time otherwise limited by subsection 165(1) - this Court does not have jurisdiction to grant an extension of time to file a notice of objection under section 166.2.

[53] In *Bormann*⁴⁹, the Federal Court of Appeal confirmed this Court’s decision to quash appeals for taxation years with respect to which the appellant had not served a notice of objection or applied to the Minister to extend the time to file a notice of objection. The Court summarized the following well established principles:

[3] Section 169(1) of the *Income Tax Act* obliges a taxpayer to serve Notice of Objection in order to appeal an assessment. In other words, service of a Notice is a condition precedent to the institution of an appeal.

...

[5] Once it is clear that no application for an extension of time was made, the law is clear that there is no jurisdiction in the Tax Court to further extend the time for equitable reasons.⁵⁰

-
2. The Appellant did not object on a timely basis but did file an extension request on a timely basis for the 2018 taxation year.

⁴⁹ *Bormann v. The Queen*, 2006 FCA 83.

⁵⁰ *Ibid* at paras 3, 5.

[54] As a condition precedent to instituting a valid appeal under subsection 169(1) for the 2014 taxation year has not been met (a valid notice of objection has not been filed), the Respondent's motion to quash is granted in respect of the appeal for the 2014 taxation year.

(2) The 2018 taxation year

[55] The Appellant was initially assessed for the 2018 taxation year on August 19, 2019. The Minister reassessed by notice dated September 12, 2019. The deadline for the Appellant to serve on the Minister a notice of objection pursuant to subparagraph 165(1)(a)(ii) was June 17, 2020 (being the later of one year from the filing deadline of June 17, 2019⁵¹ and 90 days after the notice of reassessment, this latter date being December 11, 2019). Based on the affidavits of Sadruddin Suleman and the Appellant's submissions, I have determined that the Appellant filed a notice of objection on November 22, 2020, after the June 17, 2020 deadline.⁵²

[56] The time limit for the Appellant to serve an application on the Minister for an extension of time to object pursuant to paragraph 166.1(7)(a) expired on June 17, 2021. The Appellant sent a letter dated December 6, 2020 (received by the CRA on December 14, 2020) applying for an extension of time to object to the 2018 taxation year. The Minister has not yet made a decision with respect to that application.

[57] The Respondent acknowledges that the Appellant made an application to the Minister for an extension of time to object within the time limit, for his 2018 taxation year. If the Appellant makes an application to the Court for an extension of time to object, the Respondent is prepared to consent to the application on the grounds that it would meet the requirements in section 166.2.

⁵¹ Because June 15, 2019 was a holiday, section 26 of the *Interpretation Act* (RSC 1985 c 1-21) extends the filing deadline for the Appellant's notice of objection for the 2018 taxation year to June 17, 2019. Section 26 of the *Interpretation Act* states that "Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday."

⁵² The Appellant filed a notice of objection for the 2018 taxation year on November 22, 2020 (Notice of Appeal at Exhibit 22).

[58] The Appellant may apply to this Court for an extension of time to object to the September 12, 2019 reassessment for the 2018 taxation year.

(3) The Appellant’s “overarching” arguments, applicable to the 2013, 2014, 2015, and 2016 taxation years

[59] As already noted, the Appellant takes the position that in respect of income earned by him from business carried on in the Dominican Republic, he is not governed by the procedural rules of the *ITA* for the objection and appeals process. I disagree. I have considered the Appellant’s arguments but they do not affect the outcome in this motion.

[60] The starting point, which the Appellant acknowledges, is that he is a resident of Canada for purposes of the *ITA*. Division I of the *ITA*, which deals with Returns, Assessments, Payment and Appeals (sections 150-168.1) and Division J of the *ITA*, which deals with Appeals to the Tax Court of Canada and the Federal Court of Appeal (sections 169-180), apply to all taxpayers under the *ITA*. A “taxpayer” is defined in section 248 to include “any person whether or not liable to pay tax”. Regardless of the Appellant’s arguments to be made in the underlying appeals that he is not liable to tax under the *ITA* on income from certain sources, he is a taxpayer for purposes of the *ITA* and is subject to the rules for compliance, assessments and appeals as provided in Divisions I and J of the *ITA*.

[61] The Appellant correctly states certain basic principles with respect to Canada’s tax treaties. Canada has concluded the *Canada-DR Tax Treaty* with the Dominican Republic. Canada is party to the *Vienna Convention*, which influences the interpretation and application of tax treaties.⁵³ Article 26 of the *Vienna Convention* provides that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”. Article 27 provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. As a party to the *Canada-DR Tax Treaty*, Canada agrees to abide by the provisions and to perform its obligations thereunder in good faith.

⁵³ Canada assented to the *Vienna Convention* on October 14, 1970. The *Vienna Convention* entered into force in Canada on January 27, 1980.

[62] As a general rule, Canada adheres to the principle that a treaty prevails over domestic law to the extent of any inconsistency between them.⁵⁴ The Appellant argues that since neither the *Canada-DR Tax Treaty* nor the *Vienna Convention* prescribes any limitation periods or other procedural rules with respect to Canadian income tax, there is an inconsistency that must be resolved in favour of reliance on the *Canada-DR Tax Treaty* and the *Vienna Convention*. The Appellant argues that because the underlying appeal is “international” – involving income earned in the Dominican Republic – the provisions of the *ITA* that address tax administration and enforcement do not apply, but the provisions of the *Canada-DR Tax Treaty* and the *Vienna Convention* do. The end result, according to the Appellant’s arguments, appears to be that there are no procedural rules or limitation periods applicable to his current dispute with the CRA.

[63] The Appellant relies on the Supreme Court of Canada’s decision in *Zingre*⁵⁵ for the proposition that Canada may not rely on the provisions of domestic law for “non-compliance” with the provisions of a treaty. *Zingre* is not relevant here. The case dealt with whether an order allowing commission evidence should be granted in connection with Swiss nationals resident in Switzerland and charged with criminal offences in Canada. The relevant treaty was an Anglo-Swiss Treaty of 1880.

[64] More fundamentally, there is no “inconsistency” between the procedural rules in the *ITA* on the one hand and the *Canada-DR Tax Treaty* and the *Vienna Convention* on the other hand; there is no “non-compliance” with the international agreements. There is only one set of procedural rules applicable to the administration and enforcement of Canadian federal income taxes, which is in the *ITA*. There are no parallel rules in the *Canada-DR Tax Treaty* or *Vienna Convention*⁵⁶. This does not

⁵⁴ Jinyan Li, Arthur Cockfield & J. Scott Wilkie, *International Taxation in Canada*, 3rd ed (Markham: LexisNexis, 2014) at 43.

⁵⁵ *Zingre v. The Queen et al*, [1981] 2 SCR 392.

⁵⁶ The stated purpose of the *Canada-DR Tax Treaty* is to avoid double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital. The treaty acknowledges that each country imposes tax, and each country agrees to cooperate in order to avoid taxation not in accordance with the treaty. The *Canada-DR Tax Treaty* accepts that each country adheres to its own set of rules for the administration and enforcement of its domestic laws concerning taxes, but agrees to exchange information as is necessary for the carrying out of the provisions of the treaty and the domestic laws concerning taxes covered by the treaty. See Article XXVI of the *Canada-DR Treaty* regarding Exchange of Information.

mean there is an inconsistency or non-compliance. Just the opposite; there is no possible inconsistency or non-compliance. The *Canada-DR Treaty* and the *Vienna Convention* do not function as the Appellant argues; the argument is without merit.

[65] The Appellant also argues that the CRA dealings with the Appellant constitutes an abuse of Articles 1, 2 and 7 of the *Universal Declaration of Human Rights*.⁵⁷ More particularly, the Appellant's allegation appears primarily based on a concern that non-lawyers employed by the CRA came to legal conclusions on the Appellant's tax position and on the CRA's delay of process. As addressed below in the context of the Respondent's motion to strike, complaints about the conduct of the CRA are not within the jurisdiction of this Court and are not relevant to the motion before me.

[66] In summary, I do not accept these "overarching" arguments made by the Appellant. Regardless of the arguments to be made as to why he is entitled to relief in the underlying appeals, the Appellant must comply with the statutory limitation periods and other procedural requirements under the *ITA* to file an objection and commence an appeal in this Court. The Appellant's arguments do not affect my decision to grant the Respondent's motion to quash the appeals for the 2013, 2014, 2015 and 2016 taxation years.

IX. THE MOTION TO STRIKE

⁵⁷ On December 10, 1948, Canada voted to adopt the *Universal Declaration of Human Rights*. Within Canada, the *Universal Declaration of Human Rights* has played a seminal role in the development of human rights law, including the enactment of the *Canadian Bill of Rights* in 1960, and the *Canadian Charter of Rights and Freedoms*, proclaimed in 1982 (see William A. Schabas, "Canada and the Adoption of the Universal Declaration of Human Rights" (1998) 43:2 McGill, L J 403). However, as clarified by the Federal Court in *Canada (Minister of National Revenue) v. MacIver*, 2002 FCT 877, citing *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817:

[5] ...

(c) The *Universal Declaration of Human Rights, 1948* ... does not have the force of law such that it could be used to strike down the application of the impugned provisions of the *Income Tax Act*. International treaties and conventions are not part of Canadian law unless they have been implemented by statute. Such a document is only used as an aid to interpreting domestic law.

[Emphasis in original.]

[67] I have granted the Respondent's motion to quash the appeals for the 2013, 2014, 2015 and 2016 taxation years. The Respondent does not contest that the appeal for the 2017 taxation year has been properly constituted and the Respondent indicates that it will agree to a request for an extension to file a notice of objection for the 2018 taxation year, in order that the appeal for that year may be properly constituted. The result is that the motion to strike remains relevant only for the 2017 and 2018 taxation years.

A. The Parties' Positions

[68] The Respondent submits that the Appellant's Notice of Appeal, or sections thereof, should be struck (with leave to file an Amended Notice of Appeal). The Respondent submits that if left unamended, the Notice of Appeal would otherwise prejudice or delay the hearing as various sections are not relevant to the determination before the Court. The position is based on the following grounds:

1. The Appellant has not met a condition precedent to instituting his appeal;
2. The section pleads evidence and/or describes the content of the evidence pleaded;
3. The section relates to impugning CRA behavior;
4. The section raises an invalid *Charter*⁵⁸ argument; and
5. The section pleads law and arguments rather than material facts under the section labelled "material facts relied on".

[69] The Appellant's response is that the Notice of Appeal will not prejudice or delay the hearing, but rather it is the Appellant who has already suffered prejudice and delay in its dealings with the CRA. The Appellant relies on *Jordan*⁵⁹ to support the argument about prejudice arising from delay and cites the time periods for the CRA responses in various dealings with the Appellant as giving rise to that prejudice. As I explain in further detail below, the conduct of the CRA is not within the jurisdiction of this Court.

⁵⁸ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

⁵⁹ *R v. Jordan*, 2016 SCC 27.

The sole issue which the Court will decide at a hearing of the underlying appeals is the correctness of the assessments.

B. The Law

[70] The relevant provisions of the Rules are section 48 and subsections 53(1) and 53(3), which provide as follows:

48. Every notice of appeal shall be in Form 21(1)(a), (d), (e) or (f).

...

53. Striking out a Pleading or other Document.

(1) The Court may, on its own initiative or on application by a party, strike out or expunge all or part of a pleading or other document with or without leave to amend, on the ground that the pleading or other document:

- (a) may prejudice or delay the fair hearing of the appeal;
- (b) is scandalous, frivolous or vexatious;
- (c) is an abuse of the process of the Court; or
- (d) discloses no reasonable grounds for appeal or opposing the appeal.

...

(3) On application by the respondent, the Court may quash an appeal if

- (a) the Court has no jurisdiction over the subject matter of the appeal;
- (b) a condition precedent to instituting an appeal has not been met; or
- (c) the appellant is without legal capacity to commence or continue the proceeding.

[71] The requirements of Form 21(1)(a) include the following:

FORM 21(1)(a)

[...]

- (c) Relate the material facts relied on,
- (d) Specify the issues to be decided,
- (e) Refer to the statutory provisions relied on,
- (f) Set forth the reasons the appellant intends to rely on,
- (g) Indicate the relief sought, and
- (h) Date of notice.

[72] The following principles apply to a motion under subsection 53(1) of the Rules:

1. To strike out a pleading or part of a pleading, it must be plain and obvious that the position has no reasonable prospect of success.⁶⁰
2. In a motion to strike out a pleading, the burden to show it is plain and obvious that the pleading has no prospect of success rests on the Applicant.⁶¹
3. Unless the facts are manifestly incapable of being proven, the facts as stated in the notice of appeal must be taken as true.⁶² The respondent cannot attack the notice of appeal to challenge assertions of fact.⁶³

⁶⁰ *Nevsun Resources Ltd v. Araya*, 2020 SCC 5 at para 64 [*Nevsun*]; *R v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17 [*Imperial Tobacco*]; *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para 15 [*Odhavji Estate*].

⁶¹ *Heron v. R.*, 2017 TCC 71 at para 11, aff'd 2017 FCA 229; *Husky Oil Operations Limited v. The Queen*, 2019 TCC 136 at para 16.

⁶² *Nevsun*, *supra* note 60 at para 64, citing *Imperial Tobacco*, *supra* note 60 at para 22; *Operation Dismantle v. The Queen*, [1985] 1 SCR 441 at 455, 18 DLR (4th) 481.

⁶³ *Nevsun*, *supra* note 60 at para 64; *Imperial Tobacco*, *supra* note 60 at para 22; *Odhavji Estate*, *supra* note 60 at para 15; *Sentinel Hill Productions (1999) Corporation v. R.*, 2007 TCC 742 at para 4(a) [*Sentinel Hill Productions*].

4. A motion judge should avoid usurping the function of the trial judge in making determinations of fact or relevancy. Such matters should be left to the trial judge who hears the evidence.⁶⁴
5. The test to grant a motion to strike is stringent, and the power to strike out a pleading must be exercised with great care.⁶⁵ The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.⁶⁶

[73] I have concluded that various sections of the Notice of Appeal should be struck, with leave to file an Amended Notice of Appeal. The conclusions reached on the grounds raised by the Respondent are summarized below. The details are in Appendix A, under the column “Relief Granted and Reasons”.

(a) Ground #1: Strike if a condition precedent is not met

[74] A condition precedent to instituting an appeal has not been met for the 2013, 2014, 2015 and 2016 taxation years. All references to those taxation years in the Notice of Appeal shall be struck.

(b) Ground #2: Strike if pleading evidence

[75] In *Beima*, the Federal Court of Appeal affirmed this Court’s decision to strike 97 pages of affidavits from the taxpayer’s notice of appeal, on the basis that “[E]vidence is to be introduced at the hearing of the appeal and not as part of the notice of appeal.”⁶⁷ All evidence in the Notice of Appeal, including all references to the Exhibits and the Exhibits themselves, shall be struck. The relevance and admissibility of the evidence will be determined at the hearing of the underlying appeals.

[76] Many passages from the Notice of Appeal (and the Exhibits) which I order to be struck contain descriptions of the correspondence between the Appellant and the Respondent in respect of the underlying issues in the appeal. To the extent that the

⁶⁴ *Sentinel Hill Productions*, *supra* note 63 at para 4(c).

⁶⁵ *Imperial Tobacco*, *supra* note 60 at para 21.

⁶⁶ *Ibid*; *Odhavji Estate*, *supra* note 60 at para 15.

⁶⁷ *Beima v. The Queen*, 2016 FCA 205 at para 17.

correspondence contains facts and legal argument on which the Appellant relies, they may be included in an Amended Notice of Appeal.

(c) Ground #3: Strike if pleadings allege CRA misconduct

[77] The sections that pertain to complaints about the conduct of CRA officers shall be struck, pursuant to paragraph 53(2)(a) of the Rules, as CRA conduct is irrelevant to this Court's mandate. This Court does not have jurisdiction to set aside an assessment on the grounds of CRA misconduct. The Federal Court of Appeal in *JP Morgan Asset Management (Canada) Inc.* stated:

[83] The Tax Court does not have jurisdiction on an appeal to set aside an assessment on the basis of reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness: *Ereiser v. Canada*, 2013 FCA, at paragraph 38; *Roitman, supra* at paragraph 21; *Main Rehabilitation Co. Ltd., supra* at paragraph 6; *Bolton v. Canada*, [1996] 3 C.T.C. 3, 96 D.T.C. 6413 (Fed. C.A.) ... If an assessment is correct on the facts and the law, the taxpayer is liable for the tax.⁶⁸

[78] In *Johnson*, the Federal Court of Appeal affirmed this Court's decision to strike paragraphs from a notice of appeal relating to the following:

1. The administrative act of the Minister setting up a GST account;
2. Collection actions of the CRA and of the Minister;
3. The amount of time the Minister took to address the Appellant's notice of objection; and
4. Purported abuse of process with respect to the issuance of a notice of assessment.⁶⁹

[79] The basis for the Federal Court of Appeal's decision was:

[4] The issue for the Tax Court of Canada in this case will be to determine whether each assessment issued under the Act and that is under appeal to that Court properly

⁶⁸ *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 20 at para 83.

⁶⁹ *Johnson v. The Queen*, 2015 FCA 52 at para 5.

reflects the correct amount of net tax owing pursuant to that Act by the person who was assessed. The motivation of the Minister in issuing such assessments or any collection action taken by the Minister in relation to such assessments is not relevant to this inquiry.⁷⁰

[80] The Appellant argues that striking sections of the Notice of Appeal that deal with CRA behaviour will effectively deny him the opportunity to argue that Canada is acting “in bad faith” and contrary to Article 26 of the *Vienna Convention*. Article 26 of the *Vienna Convention* requires that every treaty in force is binding upon the parties to it and must be performed by it in good faith. I disagree. The Appellant is entitled to argue reliance on the provisions of the *Canada-DR Tax Treaty* and the *Vienna Convention* in respect of the underlying issues in the appeals, but not with reference to allegations of CRA behaviour or delay of process.

[81] Similarly, the Appellant’s allegations that CRA conduct has infringed the *Charter of the United Nations* and the *United Nations Universal Declaration of Human Rights* or, for allegedly providing legal advice, constituted “misrepresentations” under the *Criminal Code*⁷¹ are outside the jurisdiction of the Tax Court of Canada and are ordered struck.

(d) Ground #4: Pleading Charter arguments

[82] Like all courts, this Court has certain powers where a person's rights and freedoms under the *Charter* have been infringed, but those powers must be exercised within the jurisdiction that Parliament has conferred on the Court.⁷²

[83] Here, the Appellant’s *Charter* argument relates to his alleged treatment by the CRA. The Appellant argues that his equality rights under subsection 15(1) have been infringed because:

1. He is not being treated “equally” to the CRA employees with whom he has had dealings. More specifically, he argues that this Court should not allow CRA employees, who are not lawyers, to provide legal advice. The

⁷⁰ *Ibid* at para 4; also citing *Main Rehabilitation Co v. The Queen*, 2004 FCA 403 at para 8.

⁷¹ *Criminal Code*, RSC 1985, c C-46.

⁷² For example see *O'Neill Motors Limited v. The Queen*, 96 DTC 1486 aff'd 98 DTC 6424 (FCA); *Brooks v. The Queen*, 2019 TCC 47 at para 28 rev'g in part on other grounds.

Appellant submits that if non-CRA employees did the same, they would be committing misrepresentation, and facing criminal charges; and

2. He is being discriminated against by the CRA because of his Dominican citizenship.

[84] There is no merit to the Appellant's argument under subsection 15(1) of the *Charter* that CRA employees are providing "legal advice" to taxpayers. It is yet another variation of the Appellant's argument impugning the CRA's behaviour, which I have already found to be outside the jurisdiction of this Court. Passages relating to this argument are to be struck from the Appellant's Notice of Appeal.

[85] The Appellant alleges that he is being discriminated against because of his Dominican citizenship, but provides no detail. This too appears to be a complaint about CRA process and on this basis should be struck from the Notice of Appeal. If the Appellant has a legal argument regarding discrimination pertaining to the underlying issues in the appeals, that legal argument may be included in an Amended Notice of Appeal.

(e) Ground #5: Compliance with Form 21(1)(a)

[86] Section 48 of the Rules requires every notice of appeal to be in Form 21(1)(a), (d), (e), or (f). Form 21(1)(a) requires the notice of appeal to include the material facts, issues, statutory provisions and reasons relied on and relief sought. This is not just a formality, but a requirement so that the issues are properly defined for discovery and trial.⁷³ The Appellant must delineate between material facts relied on and the law and argument sections in an Amended Notice of Appeal.

X. CONCLUSIONS

[87] The Respondent's motion to quash is granted in respect of the Appellant's 2013, 2014, 2015 and 2016 taxation years.

⁷³ *Metrobec Inc v. The Queen*, 2018 TCC 115 at paras 57-60, citing *Kondur v. The Queen*, 2015 TCC 318 at paras 17-19, *Strother v. The Queen*, 2011 TCC 251.

[88] The Respondent's motion to strike certain portions of the Appellant's Notice of Appeal is granted, in part, as set out in more detail in Appendix A. The Appellant is granted 60 days, from the date of this decision, to file an Amended Notice of Appeal. The Respondent is granted an extension of time to file its Reply to the Amended Notice of Appeal, to 60 days after the Amended Notice of Appeal is filed and served.

XI. COSTS

[89] Costs are awarded to the Respondent, in accordance with the Tariff.

Signed at Toronto, Ontario, this 26th day of June 2023.

"Monica Biringer"

Biringer J.

APPENDIX A

Excerpts of the Notice of Appeal (reproduced from the Respondent’s written submissions⁷⁴)	Relief Sought and Grounds (reproduced from Respondent’s written submissions⁷⁵)	Relief Granted and Reasons
<p>Page 1, paragraph (b)3: The period of the appeal is from <u>January 1st, 2013 to December 31st, 2018.</u></p>	<p>Strike the reference to the all taxation years, with the exception of the 2017 and 2018 taxation years (January 1 to December 31, 2017) on the basis that the appeals for the 2013, 2014, 2015 and 2016 taxation years should be quashed.</p>	<p>The relief requested is granted. The Appellant has not met a condition precedent for instituting an appeal for the 2013, 2014, 2015 and 2016 taxation years.</p>
<p>Page 2, paragraph (c)3: The Appellant files income tax in the Dominican Republic since he is available to do it. A letter dated June 17, 2016, was submitted by The Appellant to the Respondent <u>presenting the Letter of Income Certification of the years 2013, 2014 and 2015 from the Dirección General de Impuestos Intemos (tax authority of the Dominican Republic) indicating the clients of the Appellant, the year, the amount paid to the</u></p>	<p>Strike the underlined portion of the paragraph starting with “presenting the Letter” and ending with “each year” on the basis that this section pleads evidence and describes the content of the evidence pleaded. The Respondent request that the Appellant pleads the underlying material facts, if any, rather than the evidence that the Appellant intends to use to prove the material facts.</p>	<p>The relief requested is granted. 1. The underlined portion of paragraph (c)3 pleads evidence with respect to Dominican Republic withholding tax on amounts paid to the Appellant. 2. Exhibit #4 is evidence.</p>

⁷⁴ Respondent’s Written Submissions, Appendix A.

⁷⁵ Respondent’s Written Submissions, Appendix A.

<p><u>Appellant, and the withholding tax of each year. Exhibit # 4</u></p>	<p>Strike the reference to “Exhibit #4” on the basis that all exhibits attached to the Notice of Appeal should be struck on the grounds that pleadings, including a notice of appeal, “are to state material facts and not the evidence by which such facts would be proven”. Any reference to these exhibits throughout the Notice of Appeal should also be struck.</p>	
<p>Page 2, paragraph (c)6: On March 21, 2018, the Appellant submitted a letter of Request for Reassessment of al T-1 2013, 2014, 2015, 2016, and 2017. The request was made based on the Convention supra (1). <u>Exhibit # 5</u></p>	<p>Strike the reference to “Exhibit #5” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. Exhibit #5 is evidence.</p>
<p>Page 2, paragraph (c)7: On May 6, 2018, the Appellant submitted a letter of “Request for Reassessment of al T-1 2013, 2014, 2015, 2016, and 2017 to include expenses related to the Dominican Republic Income file and other requests”. The request was made based on the Convention supra (1). <u>Exhibit # 6</u></p>	<p>Strike the reference to “Exhibit #6” based on the ground #2 submitted for the excerpt #2 above</p>	<p>The relief requested is granted. Exhibit #6 is evidence.</p>

<p>Page 2, paragraph (c)8: On August 1, 2018, The Respondent's representative Mr. Yvan Bouchard, Director Sudbury 'fax Centre sent a letter to the Appellant recognizing the reception of a request for reassessment from the Appellant from the years 2013 to 2014 only. <u>Exhibit # 7</u></p>	<p>Strike the reference to "Exhibit #7" based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. Exhibit #7 is evidence.</p>
<p>Page 2, paragraph (c)9: <u>On December 6, 2018, The Appellant received a Notice of Collection from The Respondent, requesting the payment of CAD\$7,410.44.</u> <u>Exhibit #8</u></p>	<p>Strike the entire paragraph as it relates to collection actions taken by CRA, which are not relevant to determining the correctness of the reassessments at issue in the present appeals. Strike the reference to "Exhibit #8" based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested (to strike the entire paragraph) is granted. The collection actions of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court's jurisdiction.</p>
<p>Page 3, paragraph (c)10: On December 18, 2018. The Appellant replied to the letter receipt from The Respondent, indicating the following: <u>"As part of my objection to the Notice of Assessment of my 2017 T-1 filing, please be advised that on May 6, 2018, I have submitted to your office in Sudbury a request for reassessment for all my personal tax filing from</u></p>	<p>Strike the underlined portion of the paragraph starting with "indicating the following" and ending with "purposes for the CRA" as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above. Strike the reference to "Exhibit #9" based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. 1. The text is an extract of Exhibit #9, which is evidence. 2. The reference to Exhibit #9 should be struck as Exhibit #9 is evidence.</p>

<p><u>2013 to 2017 because a significant part of my incomes come from my practice within the Dominican Republic as Certified Public Accountant (CPA) and Lawyer, and the expenses related to that income had never been considered for tax purposes for the CRA." Exhibit # 9"</u></p>		
<p>Page 3, paragraph (c)11: On February 11, 2019, The Appellant sent a letter signed by Van Anh Nguyen, Audit Division, Tax Services Office: Toronto West - Thunder Bay TSO, Canada Revenue Agency, to The Respondent <u>where The Appellant specifically indicated what part of the Convention#1, supra The Appellant was referring to when applied for a reassessment. Exhibit # 10</u></p>	<p>Strike the underlined portion of the paragraph starting with “where The Appellant” ending with “reassessment” as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above. Strike the reference to “Exhibit #9” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. 1. The underlined text describes the content of Exhibit #10, which is evidence. 2. The reference to Exhibit #10 should be struck as Exhibit #10 is evidence.</p>
<p>Page 3, paragraph (c)12: On June 28, 2019. The Respondent sent a letter to The Appellant where it notifies The Appellant that it was in the process of reviewing The Appellant's tax return as “Re: Taxpayer Relief-2013-2014” taxation years. <u>Exhibit # 11</u></p>	<p>Strike the reference to “Exhibit #11” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. Exhibit #11 is evidence.</p>

<p>Pages 3-4, paragraph (c)13: On August 6, 2019, The Appellant responded to The Respondent submitting all documents required <u>and indicating on Section 4, second paragraph how much The Appellant has requested to be taken as a home office, and on. the third paragraph how the home office space which is the basis for the Appellant in the other State (Canada) impact the amount of income from the income originating State (The Dominican Republic) will affect the total income that should be considered for Canada to calculate The Appellant taxable income, based on Chapter III, Taxation on Income, Article XIV – Independent Professional Services, Paragraph a) of the Convention, supra (1). Exhibit #12</u></p>	<p>Strike the underlined portion of the paragraph starting with “and indicating” and ending by “supra (1)” as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above. Strike the reference to “Exhibit #12” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. 1. The underlined text describes the content of Exhibit #12, which is evidence. However, to the extent that the underlined text reflects legal argument on which the Appellant still relies, the legal argument may be included in an Amended Notice of Appeal. 2. The reference to Exhibit #12 should be struck as Exhibit #12 is evidence.</p>
<p>Page 4, paragraph (c)14: On August 13, 2019, The Appellant submitted to the Respondent an updated letter of the request for a reassessment of all T-1 2013-2017 <u>with an updated net taxable income calculation based on The Appellant</u></p>	<p>Strike the underlined portion of the paragraph starting with “with an updated” and ending with “supra (1)” as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. 1. The underlined text describes the content of Exhibit #13, which is evidence. However, to the extent that the underlined text reflects legal argument on which</p>

<p><u>second request of “Fixed Base Regularly Available for the Appellant” that was determined by The Appellant as 10.32% instead of 15% that originally has requested to the Respondent and always based on the Convention, supra (1). Exhibit # 13</u></p>	<p>Strike the reference to “Exhibit #13” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>the Appellant still relies, the legal argument may be included in an Amended Notice of Appeal. 2. The reference to Exhibit #13 should be struck as Exhibit #13 is evidence.</p>
<p>Page 4, paragraph (c)15: On September 5, 2019, The Respondent’s representative Ms. Van Anh Nguyen, Audit Division, Tax Services Office: Toronto West-Thunder Bay sent a request letter related to the 2015, 2016 and 2017 taxation years, in which she asked the Appellant to file a Form T2125 for all related years <u>Exhibit # 14</u></p>	<p>Strike the reference to “Exhibit #14” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. Exhibit #14 is evidence.</p>
<p>Page 4, paragraph (c)16: <u>On September 16, 2019, The Appellant submitted to the Respondent (CRA Service Complaints / National Intake Centre) Appeals Division, indicating that the Appellant met the requirement of the Convention #1 supra, in Article XIV, Section I, subsection a) and therefore the “fixed base regularly for Jose Reyes is his home-office space”. In addition,</u></p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers, which is not relevant to determining the correctness of the reassessments at issue in the present appeals. Strike the reference to “Exhibit #15” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested (to strike the entire paragraph) is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction. However, to the extent that the underlined text</p>

<p><u>the Appellant refer to the Article 33 Interpretation of treaties authenticated in two or more languages. Exhibit # 15</u></p>		<p>reflects legal argument on which the Appellant still relies, the legal argument may be included in an Amended Notice of Appeal.</p>
<p>Pages 4-5, paragraph (c)17: <u>On October 9, 2019, The Respondent’s representative, Andrew Paufekat, Service Compliant office, Service Complaints Program, Kitchener office, sent a letter to the Appellant indicating “After reviewing your correspondence, I concluded that the issue is not within the Canada Revenue Agency’s (CRA’s) mandate. The application of tax treaties does not relate to a service issue; the application of tax treaties relates to tax policy and program legislation.” The officer in the Appellant opinion does not understand international law and how its related to a country like Canada. Exhibit #16.</u></p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above. Strike the underlined portion of the paragraph starting with “indicating” and ending by “legislation” as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above. Strike the reference to “Exhibit #16” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested (to strike the entire paragraph) is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction.</p>
<p>Page 5, paragraph (c)18: On October 21, 2019, The Appellant responded to the letter from The Respondent's representative Ms. Van Anh Nguyen, Audit Division, Tax Services Office:</p>	<p>Strike the underlined portion of the paragraph starting with “indicating” and ending by “law of treaties” as the Appellant is pleading evidence and pursuant to the ground #1</p>	<p>The relief requested is granted. 1. The underlined text describes the content of Exhibit #17, which is evidence. However, to the extent that the</p>

<p>Toronto West - Thunder Bay, <u>indicating to her among other things that when applying an international law (Convention#1, supra) a taxpayer must not file a Form T2125 for the taxation years of which the Appellant is claiming, because it violates the Convention#1, supra, and the United Nations “Vienna Convention of the Law of the Treaties”</u>, therefore, the Appellant submitted the rest of the documentation requested, but not the Forms T2125. <u>Exhibit # 17.</u></p>	<p>submitted for the excerpt #2 above. Strike the reference to “Exhibit #17” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>underlined text reflects legal argument on which the Appellant still relies, the legal argument may be included in an Amended Notice of Appeal. 2. The reference to Exhibit #17 should be struck as Exhibit #17 is evidence.</p>
<p>Page 5, paragraph (c)19: <u>During 2019 and 2020 The Appellant requested several complaint divisions of the Respondent and all of them ignored that the basis of my requests was that based.</u></p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.</p>	<p>The relief requested is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction.</p>
<p>Pages 5-6, paragraph (c)(20): During 2019 and 2020 The Appellant received calls from the Respondent (audit department) where he was requested to complete and submit a CRA Form T-2125 Statement of Business,</p>	<p>Strike the underlined portion of the paragraph as the Appellant is pleading law and arguments rather than material facts.</p>	<p>The relief requested is granted. The underlined text describes calls between the Respondent and the Appellant, which is evidence.</p>

<p>Professional, Commission, Fanning, and Fishing Income for each year from 2013 until 2018, <u>which The Appellant denied because its violate the United Nations “Vienna Convention of the Law of the Treaties” done in Vienna, Austria on 23 May 1969, and ratified by Canada, on October 14, 1970, in its Article 26 “Pacta sun servanda”, Article 27 Internal Law and observance of treaties”, and Article 31 “General Rule of interpretation”. In addition, there is a doctrine that indicates the following: “No one is obliged to do what the law does not command” and in this case, the law is not the Income Tax Act (ITA) of Canada but the Convention#1, supra.</u></p>		<p>However, to the extent that the underlined text reflects legal argument on which the Appellant still relies, the legal argument may be included in an Amended Notice of Appeal.</p>
<p>Page 6, paragraph (c)(21): <u>On January 9, 2020, The Appellant filed a complaint to the Service Complaints Program regarding The Appellant's claim that The Respondent never applied the “Chapter II I Taxation on Income, Article XIV, Independent Personal Services, Section I, Subsection a) of the</u></p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above. Strike the reference to “Exhibit #18” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested (to strike the entire paragraph) is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction.</p>

<p><u>Convention#1, supra.</u> <u>Exhibit #18.</u></p>		
<p>Page 6, paragraph (c)(22): <u>On January 16, 2020, The Respondent’s representative Mr. Salvatore Pace, Service Compliant officer. Service Complaints Program, Kitchener /Waterloo Centre of Expertise sent a letter to the Appellant indicating “I am responding to your service related complaint received on January 9, 2020. Your file has been assigned to me for review. Exhibit # 18.</u></p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above. Strike the underlined portion of the paragraph starting with “indicating” and ending by “for review” as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above. Strike the reference to “Exhibit #18” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested (to strike the entire paragraph) is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction.</p>
<p>Pages 6-7, paragraph (c)(23): <u>On February’ 6, 2020, The Respondent sent a letter to The Appellant responding to the Appellant complaints, where it indicates the abovementioned (paragraph 16) article of the Convention#1, supra; but did not state whether the Appellant met the requirements of the Convention#1, supra; instead The Respondent’s</u></p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above. Strike the entire paragraph as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above. Strike the entire paragraph as the Appellant is</p>	<p>The relief requested (to strike the entire paragraph) is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction. However, to the extent that the underlined text reflects legal argument</p>

<p><u>representative refers to the Article XXIII Elimination of Double Taxation of the Convention#1, supra, which does not indicate that the elimination of the Article XIV if The Respondent uses the Article XXIII. In addition, this specific letter indicates that The Appellant should file a T4002 Self-Employed Business Professional, Commission, Farming, and Fishing Income, and the T-2125 Statement of Business, Professional, Commission, Farming, and Fishing Income for The Appellant's income in the Dominican Republic, referring to the Income Tax of Canada (ITA The Appellant denied because its violate the United Nations "Vienna Convention of the Law of the Treaties" done in Vienna, Austria on 23 May 1969, and ratified by Canada, on October 14, 1970, in its Article 26 "Pacta sun servanda", Article 27 Internal Law and observance of treaties", and Article 31 "General Rule of interpretation". This case is even worst, because as far as</u></p>	<p>pleading law and arguments rather than material facts Strike the reference to "Exhibit #19" based on the ground #2 submitted for the excerpt #2 above.</p>	<p>pertaining to the substantive underlying issues in the appeals and not the alleged conduct of the CRA, and on which the Appellant still relies, that legal argument may be included in an Amended Notice of Appeal.</p>
--	---	--

<p><u>The Appellant knows, Mr. Salvatore Pace, Service Complaint Office who signed the letter on behalf of The Respondent, is not a lawyer, therefore he is providing legal services within The Respondent organization to taxpayers, without being a lawyer, in the opinion of The Appellant is called misrepresentation. Therefore, based on the “Fruit of the Poison Tree” doctrine², all correspondent signed by Mr Pace on behalf of The Respondent must be “Null” in full, and not be considered in any way in this case. In addition, there is a doctrine that indicates the following: “No one is obliged to do what the law does not command” and in this case, the applicable law is not the Income Tax Act (ITA) of Canada, but the Convention^{#1}, supra. Exhibit # 19.</u></p>		
<p>Pages 7-8, paragraph (c)(24): On February 18, 2020, The Appellant responded to The Respondent letter signed by Mr. Pace where The Appellant <u>indicated the above mentioned Article</u></p>	<p>Strike the underlined portion of the paragraph starting with “indicated” and ending by “Contracting state” as the Appellant is pleading evidence and pursuant to</p>	<p>The relief requested is granted. 1. The first part of the underlined text from “indicated” to “Contracting State” describes the content of</p>

<p><u>XIV of the Convention#1, supra, and highlighted in the second page, section 2) F), Article XIV, Section 1, a: second line “if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State”. The reason why ‘file Respondent has never recognized that The Appellant met the criteria in Article XIV, Section 1, a) of the Convention#1, supra is that it will admit that the Respondent has violated the Convention #1, supra, in this specific section of it to discriminate against Dominican citizens. Consequently, The Respondent is violating the United Nations “The Vienna Convention of the Law of the Treaties, Vienna, Austria, 1969, as well as The Appellant's Universal Declarations of Human Rights in Its Articles 1, 2, and 7. and the Canadian</u></p>	<p>the ground #1 submitted for the excerpt #2 above. Strike the underlined portion of the paragraph starting with “the reason” and ending with “freedom” as the Appellant is pleading law and arguments rather than material facts. Strike the reference to “Exhibit #20” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>Exhibit #20, which is evidence. 2. The second part of the underlined text from “The reason why” to “Canadian Charter of Rights and Freedoms” appears to reflect complaints about the conduct of the CRA which are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction. The wording of this section suggests an argument under the <i>Charter</i> on the basis of discrimination based on Dominican citizenship, but this is not at all clear as no reasons are provided. If the underlined text does reflect legal argument regarding discrimination pertaining to the substantive underlying issues in the appeals and not the alleged conduct of the CRA, that legal argument may be included in an Amended Notice of Appeal.</p>
--	--	---

<p><u>Charter of Rights and Freedom. Exhibit # 20.</u></p>		<p>3. The reference to Exhibit #20 should be struck as Exhibit #20 is evidence.</p>
<p>Page 8, paragraph (c)(25): On October 1, 2020, The Respondent submitted a letter signed by Ray Halvorsen, Manager, Audit Division, Tax Sendees Office, Toronto West-Thunder Bay related to the audit of the taxation years 2013, 2014, 2015, 2016, and 2017, where he <u>indicates among other things, in Section 1. Expenses Incurred for the Generation of Foreign Income, Subsection 1.1 Home Office Expenses, in an Excel spreadsheet that the Appellant “Portion Claimed” was 10.33% of the Home Office Expenses and that The Respondent “Portion Allowed” was 6.28% of the Home Office Expenses, therefore The Respondent indicated how much The Appellant has as a fixed base regularly available to him in the other Contracting State (Canada) for the purpose of performing his activities. The appropriate</u></p>	<p>Strike the portion of the paragraph starting with “indicates” and ending with “his activities” as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above. Strike the portion of the paragraph starting with “The appropriate interpretation” and ending with “since 1976” as the Appellant is pleading law and arguments rather than material facts. Strike the reference to “Exhibit #21” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted in part.</p> <ol style="list-style-type: none"> 1. The first part of the underlined text from “indicates” to “his activities” describes the content of Exhibit #21, which is evidence and should be struck. 2. The second part of the underlined text from “The appropriate interpretation” to “since 1976” reflects legal argument that relates to the underlying substantive issues in the appeals. It may be included in an Amended Notice of Appeal 3. The reference to Exhibit #21 should be struck as Exhibit #21 is evidence.

<p><u>interpretation as can be supported based on “The Vienna Convention of the Law of the Treaties, Vienna, Austria, 1969, and the Convention#1, supra is that the Original State (the Dominican Republic) is the state where the income had been originated, which initiate the legal discussion and that the other Contracting State (Canada), is the State that collects taxes based on the Original State income tax declaration of The Appellant, and has nothing to do with a taxpayer being resident or not of any of these States, because if the Appellant does not file income in the Original State (the Dominican Republic), the Other State (Canada) could never claim taxes from the Appellant, as of the Convention#1, supra is in place since 1976. Exhibit #21</u></p>		
<p>Page 9, paragraph (c)26: On November 22, 2020, The Appellant submitted a “Notice of Objection for the tax years 2013, 2014, 2015, 2016, 2017, and 2018”. <u>Exhibit #22</u></p>	<p>Strike the reference to “Exhibit #22” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. Exhibit #22 is evidence.</p>

<p>Page 9, paragraph (c)27: On November 26, 2020, The Respondent submitted a response letter to The Appellant related to his Notice of Objection dated November 22, 2020, indicating that for the years 2014 and 2018, The Appellant did not file a Notice of Objection within the statutory timeframe dictated by the Income Tax Act. <u>The Convention, supra (1) is an international law on which The Appellant from the beginning based his claims, and therefore should be respected as indicated in the United Nations “The Vienna Convention of the Law of the Treaties, Vienna, Austria, 1969”, in its Article 27 “Internal Law and Observance of the Treaty” that “a party may not invoke the provision of its internal law as justification for its failure to perform a treaty, and therefore, as the Convention#1, supra does not indicate statutes of limitation, The Respondent must accept any claims from the Appellant related to the Convention#1, supra at any given time. Exhibit #22</u></p>	<p>Strike the portion of the paragraph starting with “The Convention” and ending with “given time” as the Appellant is pleading law and arguments rather than material facts. Strike the reference to “Exhibit #22” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The entire paragraph should be struck. The content of this paragraph has been addressed on this motion and is no longer relevant to the underlying appeals.</p>
--	--	--

<p>Pages 9-10, paragraph (c)(28): “On December 6, 2020, The Appellant filed to The Respondent (Chief of Appeals) Case No. GB2032 7015 7160 a response to the reviewed performed by the Respondent of the Notice of Objection of the years 2013, 2014, 2015, 2016, 2017, and 2018, <u>which indicates, among other things, the articles of The United Nations “The Vienna Convention of the Law of the Treaties, Vienna, Austria, 1969 that had been violated by The Respondent representatives, the Charter of the United Nations that had been violated, including that The Respondent has acted in bad faith, and that The Respondent has violated the United Nations ~ Universal Declarations of Human Rights in its Articles 1, 2, and 7, in The Appellant case specifically, and The Appellant constitutional right of being treated fairly by The Respondent. Exhibit #23”.</u></p>	<p>Strike the underlined portion of the paragraph as the Appellant is pleading law and arguments rather than material facts. Strike the underlined portion of the paragraph as it supports an invalid Charter argument made before the Court that should be struck. As stated in <i>St- Laurent</i>, “the Tax Court of Canada is not the appropriate forum in which to sanction a Charter breach or contest an assessment based on other grounds not rooted in the Act.” The argument raised and relief sought as a breach of the Appellant’s constitutional rights is based on the conduct of CRA officer and is not a valid ground to contest the reassessments contested in these appeals under the Act. Strike the reference to “Exhibit #23” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The entire paragraph should be struck. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction.</p>
<p>Pages 10-11, paragraph (c)(29)</p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA</p>	<p>The relief requested is granted.</p>

	<p>tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.</p> <p>Strike the entire paragraph as the Appellant is pleading law and arguments rather than material facts.</p> <p>Strike the reference to “Exhibit #24” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction.</p>
<p>Page 11, paragraph (c)(30)</p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.</p> <p>Strike the entire paragraph as the Appellant is pleading law and arguments rather than material facts.</p> <p>Strike the reference to “Exhibit #25” based on the ground #2 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted.</p> <p>Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction.</p>
<p>Page 12, paragraph (c)(32)</p>	<p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.</p>	<p>The relief requested is granted.</p> <p>Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue</p>

	<p>Strike the entire paragraph as the Appellant is pleading law and arguments rather than material facts.</p>	<p>and are therefore not within this Court’s jurisdiction.</p>
<p>Pages 12-19 starting at “Notwithstanding the misrepresentation” on p. 12 and</p>	<p>Strike the entire section as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above.</p> <p>Strike the entire section as the Appellant is pleading law and arguments rather than material facts.</p> <p>Strike the entire paragraph as it relates to complaints about the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.</p> <p>Strike the portions of this section, including paragraph (i) at p. 15, that supports an invalid Charter argument and pursuant to the ground #2, submitted for the excerpt #25 above.</p> <p>If any material facts are pleaded within this section of the Notice of Appeal, the Respondent should not have to parse through this section to identify them through a section of the Notice of</p>	<p>The relief requested is granted in part.</p> <p>The following paragraphs are ordered struck on the basis that complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court’s jurisdiction:</p> <p>Page 15, paragraph B i; strike from “and because” to the end of the paragraph;</p> <p>Page 17, paragraph C iii;</p> <p>Page 17, paragraph D i; and</p> <p>Page 19, paragraph E i, strike “intentionally and carelessly”</p> <p>The Appellant must comply with the requirements of Form 21 of the Rules in filing an Amended Notice of Appeal.</p>

	<p>Appeal that is unorganized and filed with improperly plead excerpts. The Respondent request that the Court orders to the Appellant to extract the material facts from this section, if any, and to number in a consecutive manner the paragraphs of his (Amended) Notice of Appeal to facilitate the reference to each paragraph. Strike the reference to all exhibits based on the ground #2 submitted for the excerpt #2 above.</p>	
<p>Pages 20-21, paragraph(d)(1)</p>	<p>Strike the entire paragraph as it requests relief based on an invalid Charter and constitutional argument pursuant to the ground #2, submitted for the excerpt #25 above.</p>	<p>The relief requested is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court's jurisdiction.</p>
<p>Page 21, paragraphs (d)(2) to (d)(5)</p>	<p>Strike the entire paragraphs as they requests relief related to the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.</p>	<p>The relief requested is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the</p>

		reassessments at issue and are therefore not within this Court's jurisdiction.
Page 22, paragraph (d)(8)	Strike the entire paragraph as it requests relief based on an invalid Charter and constitutional argument pursuant to the ground #2, submitted for the excerpt #25 above Strike the entire paragraphs as they requests relief related to the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.	The relief requested is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court's jurisdiction.
Page 23, paragraph (e)(1)	Strike the entire paragraph as it requests relief based on an invalid Charter and constitutional argument pursuant to the ground #2, submitted for the excerpt #25 above. Strike the entire paragraphs as they requests relief related to the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.	The relief requested is granted. Complaints about the conduct of the CRA are not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court's jurisdiction.
Page 25, paragraph (g)(1)	Strike the entire paragraph as it requests relief based on an invalid Charter and constitutional argument	The relief requested is granted. Complaints about the conduct of the CRA are

	<p>pursuant to the ground #2, submitted for the excerpt #25 above.</p> <p>Strike the entire paragraphs as they requests relief related to the conduct of CRA tax officers and pursuant to the ground #1 submitted for the excerpt #13 above.</p>	<p>not relevant to determining the correctness of the reassessments at issue and are therefore not within this Court's jurisdiction.</p>
<p>Pages 26-28, paragraph (i) List of Exhibits and all exhibits attached to the remaining pages of the Notice of Appeal</p>	<p>Strike the entire section as the Appellant is pleading evidence and pursuant to the ground #1 submitted for the excerpt #2 above.</p>	<p>The relief requested is granted. All Exhibits are evidence.</p>

CITATION: 2023 TCC 31

COURT FILE NO.: 2021-2526(IT)G

STYLE OF CAUSE: Jose Antonio Virito Reyes v. His Majesty
The King

PLACE OF VIRTUAL HEARING: Ottawa, Ontario

DATE OF HEARING: August 18, 2022 and November 10, 2022

REASONS FOR ORDER BY: The Honourable Justice Monica Biringer

DATE OF ORDER: June 26, 2023

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Élise Rivest

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm: n/a

For the Respondent:

Shalene Curtis-Micallef
Deputy Attorney General of Canada
Ottawa, Canada