Date: 20260703

Docket: T-2545-25

Citation: 2026 FC 895

Toronto, Ontario, July 3, 2026

PRESENT: The Honourable Justice D'Agostino

BETWEEN:

LG ELECTRONICS CANADA INC.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS AND JUDGMENT

I. Overview

[1] This is an application for judicial review of a decision by a delegate of the Minister of National Revenue [the Minister] dated June 23, 2025 [the Decision]. The Decision denied the Applicant's request for relief under subsection 220(3.1) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [ITA], against interest resulting from an advance pricing arrangement [APA]

program. The APA involved a bilateral APA [BAPA] with tax authorities in Canada and South Korea.

[2] The parties agree that the Decision is unreasonable and should be set aside and remitted for redetermination by a different decision-maker with delegated authority. The only issue in this application relates to the appropriate further relief, if any. The Respondent and Applicant disagree over whether the Court should exercise its discretion to: (1) issue directions that determine findings of fact for the different delegated decision-maker; (2) allow the Applicant to provide further submissions within 30 days; and (3) order the redetermination to occur within 30 days from receipt of the Applicant's further submissions.

[3] This application for judicial review is granted on the parties' consent. As explained in more detail below, the Decision will be set aside, and the matter will be referred for redetermination to a different delegated decision-maker, following an opportunity for the Applicant to make further submissions to the CRA within thirty (30) days. My Judgment will not issue the directions contained in Schedule A of the Applicant's record or order that the redetermination take place within 30 days from receiving the Applicant's fresh submissions.

II. Background

[4] The Applicant is LG Electronics Canada, Inc. [LG], a corporation resident in Canada. LG is a distributor within a multinational group of companies focused on developing technology and manufacturing consumer electronics and commercial products. LG's foreign parent company is resident in Korea.

[5] In June 2009, the Applicant applied to the APA program to cover inter-company transactions between LG and its foreign parent company involving the purchase and sale of tangible goods. This application involved an APA with the Minister, and a BAPA with tax authorities in Canada and South Korea.

[6] The BAPA was tentatively completed in December 2015. The APA process was completed in October 2017.

[7] In November 2018, the Minister reassessed the Applicant according to the BAPA and APA.

[8] The Applicant requested interest and penalty relief related to the APA program on February 6, 2017. On March 5, 2019, the Applicant requested interest and penalty relief for alleged errors in processing the Applicant's advance payments made to the CRA.

[9] On August 13, 2019, the Minister denied both requests for relief. Subsequently, the Applicant requested a second review.

[10] On June 23, 2025, the Decision was conveyed to the Applicant. In the Decision, the Minister cancelled the arrears interest that was assessed on the 2012 to 2015 taxation years from December 16, 2016, to June 27, 2018. The Minister refused to grant further relief because of undue delays by the CRA in completing the APA were not identified.

[11] The parties agree that the Decision is unreasonable and should be set aside and remitted to a different delegated decision-maker. The Respondent concedes that the Decision contained

inaccurate findings of fact. However, the parties were unable to agree on the appropriate further relief.

[12] The Applicant requests the following relief at paragraph 56 of its Memorandum of Fact and Law:

> 56. The applicant requests:
>
> (a) an order:
>
> 1) setting aside the Decision;
>
> 2) remitting the matter back to the CRA for reconsideration by a different delegated decision-maker;
>
> 3) for the new delegated decision-maker to proceed on the basis of the correct set of facts as set out in Schedule A;
>
> 4) for the CRA to allow the applicant to make supplementary submissions within 30 days;
>
> 5) for the CRA to redetermine the matter within 30 days of receiving the applicant's submissions;
>
> 6) for costs of this application; and
>
> (b) such further and other relief as counsel may advise and this Court may deem just.

[13] The Applicant requests this Court to issue the draft directions contained in Schedule A of the Applicant's record. The draft directions are included in Appendix "A" and include findings of fact for the different delegated decision-maker to adopt.

[14] The Respondent agrees with the Applicant's requested relief of setting aside the Decision and remitting it for redetermination to a different delegated decision-maker. However, the Respondent contests the issuing of directions and ordering fresh submissions and setting a deadline for the reconsideration by a different delegated decision-maker. Additionally, the Respondent is of the position that costs should not be awarded against it because the Respondent took reasonable steps to shorten the proceeding, including not serving an affidavit or cross-examining the Applicant's affiant.

III. Preliminary Matter

[15] The Respondent preliminarily asks the Court not to exercise its discretion to grant the Applicant's requested relief based on a procedural deficiency. The Respondent argues that the Applicant's notice of application [NOA] did not include a precise statement of relief sought specifying the various remedies they were seeking contrary to Rule 301 of the *Federal Courts Rules*, SOR/98-106 [the Rules] (*Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at para 36; *Boubala v Khwaja*, 2023 FC 658 [*Boubala*] at para 27). The Respondent argues that the Applicant should have amended the NOA according to the Rules to allow the Respondent to capably and comprehensively respond without prejudice, i.e. by filing evidence.

[16] In the Applicant's oral submissions, the Applicant argued that the totality of the NOA supports the relief sought pursuant to Rule 301 such that the Respondent suffered no prejudice. The Applicant submits that this is consistent with the jurisprudence.

[17] The NOA enumerates the following relief sought by the Applicant:

> THE APPLICANT MAKES THIS APPLICATION FOR:
>
> 1. An order:
>
> > (a) setting aside the Minister's Decision;
> >
> > (b) remitting the matter back to the Minister for reconsideration within 30 days in accordance with this Court's directions; and
> >
> > (c) for costs of this application.
>
> 2. Such further and other relief as counsel may advise and this Court may deem just.

[18] I conclude that the directions and deadline were included in the NOA; regardless, my Judgment does not grant this relief sought. I will exercise discretion to consider the request for further submissions, which is captured by the basket clause. I accept that the supplementary submissions (requested at para 56(a)4) of the Applicant's Memorandum of Fact and Law) are "necessarily ancillary to the requested relief in the notice of application" and I am not satisfied that the Respondent would suffer any prejudice resulting from this relief (*Boubala* at para 28 citing *Native Women's Assn. of Canada v Canada*, 1994 CanLII 27 (SCC), [1994] 3 SCR 627 and *SC Prodal 94 SRL v Spirits International B.V.*, 2009 FCA 88 at paras 11–12; *Geophysical*

Service Incorporated v Canada-Newfoundland & Labrador Offshore Petroleum Board, 2024 FC 1616 at paras 13–14).

IV. Issue and Standard of Review

[19] The sole issue in this matter is whether the Court should exercise its discretion to grant the Applicant's requested remedies, namely an order:

A. for the new delegated decision-maker to proceed on the basis of the correct set of facts as set out in Schedule A of the Applicant's record;

B. for the CRA to allow the Applicant to make supplementary submissions within 30 days; and

C. for the CRA to redetermine the matter within 30 days of receiving the Applicant's submissions.

[20] As the issue concerns remedies, there is no applicable standard of review.

V. Analysis

[21] On judicial review, this Court has the discretion to refer a matter back to a decision-maker "with such directions as it considers appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal" pursuant to paragraph 18.1(3)(b) of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*]. The usual remedy is to set aside the decision and remit it for redetermination with the benefit of the reviewing court's reasons "because the legislature has made the administrator, not the reviewing court, the merits-decider" (*Entertainment Software Association v Society of Composers, Authors and Music*

Publishers of Canada, 2020 FCA 100 [*Entertainment Software Association*] at para 99, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 140–141; *Sexsmith v Canada (Attorney General)*, 2021 FCA 111 at para 40).

[22] Remedies on judicial review are discretionary, and on occasion, there are circumstances where a reviewing court may depart from the usual remedy (*Entertainment Software Association* at paras 99–100, citing *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), and *MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2; *Vavilov* at paras 139–142; *Canada (Commissioner of Competition) v. Rogers Communications Inc.*, 2023 FCA 16 at para 11; *Heiltsuk Horizon Maritime Services Ltd. v Atlantic Towing Limited*, 2023 FCA 88 at para 23). Again, this discretion "must be carefully exercised bearing in mind that the administrative decision-maker, not the reviewing court, is the merits-decider" (*Entertainment Software Association* at para 100; see also, *Vavilov* at para 140).

[23] The Applicant asks this Court to exercise this discretion to issue directions containing findings of fact. In its oral submissions, the Applicant highlighted that the Respondent accepts that the Decision contains inaccurate findings of fact at paragraph 15 of the Respondent's Memorandum of Fact and Law. The Applicant filed a "Day Book" (i.e., a compendium) on June 25, 2026, which was used at the hearing to guide the Court through each finding of fact in the draft directions. Additionally, the Applicant emphasized that the directions, further submissions and a specific deadline are necessary to proactively prevent any shortcomings in the reasoning of the subsequent decision and any further delay in the redetermination.

[24] The Respondent argues that the relief sought is not consistent with the scheme of the ITA in which Parliament intended to grant the determination of the merits to the decision-maker nor

is it consistent with the Court’s role on judicial review (*Baxter I.C.I. Corp. v Canada (Attorney General)*, 2025 FC 1816 at para 24; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 23; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 16–19; *Callaghan v Canada (Chief Electoral Officer)*, 2011 FCA 74 at para 124). The Respondent contests the facts in the directions requested by the Applicant. The Respondent argues that they would constrain the decision-maker’s role, and that they are subjective and not apparent from the record.

[25] The Respondent argues that the affidavits of Maria Cherkasova of August 15, 2025, and October 17, 2025, submitted by the Applicant [collectively, the Affidavits] do not satisfy the jurisprudence which requires evidence to demonstrate that the specific relief is warranted (see *Vavilov* at para 142 for relevant elements). The Respondent highlights that the Affidavits do not provide evidence of what is quick, reasonable and timely. Additionally, the Respondent argues that the Applicant should not be granted a “second kick at the can” (*Lloyd v Canada Revenue Agency*, 2017 PSLREB 33 at para 23).

[26] I find no basis to depart from the usual remedy in the matter at hand, except to allow the Applicant an opportunity to provide further submissions within thirty (30) days. This relief is granted based on the passage of time and to address the concerns that the Applicant became aware of following receipt of the Certified Tribunal Record (*Kiver v Canada (Citizenship and Immigration)*, 2025 FC 819 at para 19; *Domb v Canada*, 2026 FC 7 at para 31).

[27] I appreciate that it has been a long process, but the circumstances cannot be characterized as an endless merry-go-round of judicial reviews and subsequent reconsiderations (*Fournier v Canada (Attorney General)*, 2024 FC 859 at para 44; *Vavilov* at para 142). Nor, in my view, is

this an exceptional situation where I should exercise my discretion to issue directions that make determinations of findings of fact or dictate how the decision-maker should deal with evidence, bearing in mind that this is the role of the decision-maker (*Entertainment Software Association* at para 100; *Vavilov* at paras 139-142; *Labrosse v Canada (Attorney General),* 2022 FC 1792 at para 41). Further, the Applicant has not submitted clear evidence and jurisprudence supporting the deadline for redetermination (*Bashir v Canada (Citizenship and Immigration)*, 2023 FC 71 at para 21).

[28] In my view, the concerns of the Applicant are adequately addressed while preserving the distinct roles of the decision-maker and the reviewing court through allowing fresh submissions, and a redetermination with the benefit of the Court’s reasons (*Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48 at para 25; *Vavilov* at paras 129–140).

VI. Conclusion

[29] Based on the reasons above, my Judgment will set aside the Decision and remit this matter for redetermination to another delegated decision-maker, after the Applicant provides further submissions within thirty (30) days, and no later than August 4, 2026. I do not find it appropriate or necessary to issue directions that make determinations of fact, or to set a deadline for redetermination.

[30] No costs are awarded.

JUDGMENT in T-2545-25

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted, the Decision is set aside, and the matter is returned to another delegate of the Minister for redetermination, following the Applicant's further submissions to be provided within thirty (30) days, and no later than August 4, 2026.

2. No costs are awarded.

"Giuseppina D'Agostino"

Judge

APPENDIX “A”

Draft directions included in Schedule A of the Applicant’s record

1. LG pursued a BAPA with the CRA to be proactive in its tax obligations.

2. The Transactions (in respect of which the BAPA was pursued) are routine and non-complex from a transfer pricing perspective.

3. On June 29, 2009, KPMG filed LG’s BAPA request with the CRA.

4. On September 9, 2009, the CRA accepted LG into the APA program.

5. On October 31, 2017, the CRA provided LG with a fully executed copy of the APA.

6. On November 9, 2018, the CRA issued reassessments to LG for additional income taxes and interest payable resulting from the BAPA process.

7. During the BAPA process, LG requested and was granted one extension of about 90 days. LG otherwise met all deadlines and provided information to CRA on a timely basis, as and when required.

8. The BAPA process was entirely controlled by the competent authorities of Canada and Korea.

    a. The Korean tax authority is a third party, and any delays by it are extraordinary circumstances beyond LG’s control.

    b. Circumstances beyond LG’s control resulted in LG not knowing what adjustments to income taxes payable would be required as a result of the completion of the BAPA process.

    c. Interest that became payable as a result of the BAPA request was not controllable by LG.

9. LG:

a. has a history of compliance with its tax obligations;

b. did not knowingly allow a balance to exist on which arrears interest accrued;

c. exercised reasonable care and has not been negligent or careless in conducting its affairs under Canada's self-assessing tax system; and

d. acted quickly to remit any tax payable resulting from the BAPA process.

10. IC94-4R was in effect from March 16, 2001 to February 21, 2024, and is the relevant CRA policy.

FEDERAL COURT

SOLICITORS OF RECORD

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