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Davies Secures Judgment Quashing Discretionary Decisions by the Minister of National Revenue

Acting for Onex Corporation and related entities (Onex), Davies secured a favourable judgment from the Federal Court. The Court granted Onex's application for judicial review and set aside two discretionary decisions made by the Canada Revenue Agency (CRA) on behalf of the Minister of National Revenue. These decisions had denied Onex's requests for discretionary relief under the so-called "Fairness Package" provisions in the *Income Tax Act* (the ITA) in connection with certain amendments to the ITA's complex foreign accrual property income regime, also known as FAPI.

The Federal Court found the CRA's decisions to be unreasonable, essentially because they failed to consider the remedial nature of the "Fairness Package" rules invoked by Onex. The Court held that these rules "grant the Minister broad discretion to provide relief from the harsh effects of the ITA." The Court also noted that the Minister did not take into account the potential impact and relevant factors of Onex's situation. These factors included that:

- a. there was no evidence that Onex's request represented retroactive tax planning, instead,
- b. Onex had intended to achieve the same tax result as the Amendments based on their reliance on the CRA's administrative guidance,
- c. Onex's history of tax compliance, and
- d. its prompt remedial action.

This decision is important as it provides the Minister – but also all taxpayers – with guidance on the reasonable decision-making process when a relief is sought under the "Fairness Package." It also emphasizes the extensive scope of the Minister's discretion under the Fairness Package in light of their remedial nature which, prior to this judgment, had been the subject of a narrower interpretation by the Minister.

The Davies litigation team was formed by: Léon H. Moubayed (Public Law); and Élisabeth Robichaud and Luca Teolis (Tax Disputes), and collaborated with Christopher Anderson (Tax).

Learn more about Davies' Public Law and Tax Dispute practices.