

Tax memo

Canadian tax updates



TCDR alert: CRA issues 2012 annual report on the Canadian Mutual Agreement Procedure (MAP)

Provides an overview of the findings in the CRA's annual report on the Canadian Mutual Agreement (MAP) program.

November 19, 2012

The Canada Revenue Agency (CRA) recently released its 2012 annual report on the Canadian Mutual Agreement Procedure (MAP) program – the CRA's mandatory service program designed to help taxpayers resolve cases of:

- double taxation; or
- taxation not in accordance with the provisions of a tax convention.

The CRA's report provides statistics on the performance of the MAP program, and discusses how the program functions and the benefits of using the process.

This *Tax memo* provides an overview of the report's findings. It will help you evaluate how well the MAP procedures work.

Key statistics

The table summarizes key statistics for the fiscal years ended March 31, 2011, and March 31, 2012. (Cases are "negotiable" if they require discussions with another tax administration and "non-negotiable" if they involve only a taxpayer.)

		Fiscal year ending March 31		
		2011	2012	
All cases	Accepted	751 ¹	969	
	Completed	740	910	
Negotiable cases	Accepted (% of total)	102 ¹ (14%)	87 (9%)	
	Completed (% of total)	95 (13%)	97 (11%)	
	Average time to complete	Canadian-initiated	32 months	31 months ²
		Foreign-initiated	20 months	20 months ²
	Full relief granted	85%	92%	
	Partial relief	1%	2%	
	Double taxation resulted	14%	6%	
Non-negotiable cases	Accepted (% of total)	649 (86%)	882 (91%)	
	Completed (% of total)	645 (87%)	813 (89%)	

1. The number of accepted cases in 2011 was 751 instead of 743, as reported in the 2011 annual report, due to the CRA's change in the reporting status from "protective filing" to "request accepted." The same change also increased the number of accepted negotiable cases in 2011, to 102 from 94.

2. For the year ending March 31, 2012, there were 89 Canadian-initiated cases and 8 foreign-initiated cases.

Additional information on negotiable and non-negotiable cases follows.

Negotiable cases

- **Average time to complete** – Time reductions were significant in the CRA’s preparation of position papers on Canadian-initiated adjustments and its evaluation of foreign-initiated positions.
- **No relief granted** – When no relief was granted, the primary reason was that the request for assistance was filed outside the time limits in a specific tax convention and Canada’s *Income Tax Act*.
- **Industry sectors** – Industry sectors with the highest number of completed cases were:
 - Computer and Electronics - 14
 - Construction Equipment and Materials - 10
 - Auto and Other Transportation Equipment - 8
- **Transfer pricing** –
 - Negotiable cases involving economic double taxation between associated enterprises (transfer pricing) accounted for 98% of accepted cases and 90% of completed cases.
 - The most common transfer pricing methodology used in completed cases continued to be an application of the transactional net margin method (TNMM), used in 40% of the completed cases (down from 45% in 2011). The profit split method was applied in three completed cases (up from zero in 2011). Cases in which a transfer pricing methodology was generally not applicable (e.g., cost allocations) accounted for 27% of the completed cases (up from 23% in 2011).

Non-negotiable cases

- **Withholding tax** – Non-negotiable cases involving withholding tax refund requests accounted for 67% of the accepted cases (95% in 2011) and 73% of the completed cases (95% in 2011).
- **New category** – Of significance, a new category of non-negotiable cases was identified

in this report, relating to elections under the Canada-U.S. tax convention for tax deferrals of undistributed accrued pension income; these accounted for 30% of the accepted cases and 24% of the completed cases.

PwC observations

While the overall target for completion (i.e., to resolve a case) is 24 months, the number of cases in which relief from double taxation has not been granted is still relatively high. However, the report does indicate that these situations seem to be procedural rather than a result of competent authorities being unable to reach a settlement based on the facts of the case.

Since December 2010, pursuant to the Canada-United States Income Tax Convention (1980), taxpayers have been able to compel the competent authorities to refer cases that have been unresolved after two years to binding arbitration. We believe that to avoid having taxpayers do so, there is pressure within the CRA to resolve cases. While the competent authorities were able to close out a number of old cases before they became eligible for arbitration, the report makes no comment on whether any cases have proceeded to arbitration or the outcome of these proceedings.

We observe from the list of employees assigned to the MAP-APA (Advance Pricing Arrangement) group that the CRA added three economists, all of whom are assigned to the APA program. As well, the 2012 annual report confirms Sue Murray’s role as the new Director of the Competent Authority Services Division, which is responsible for the MAP program.

No statistics are provided on the number of remaining cases that are a result of Canadian-initiated adjustments. However, over the past five years, 86% of the completed negotiable cases were a result of CRA audits. Also, CRA-initiated audit adjustments have increased by 112% over the last five years. This can be viewed as a reflection of the continued increase in Canadian transfer pricing audits that result in subsequent reassessments by the CRA.

Need more help?

For more information, please contact any of the following members of our Tax Controversy and Dispute Resolution (TCDR) network:¹

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