

Tax Controversy and Dispute Resolution Alert

Preventing – Managing – Resolving Tax Audits and Disputes Worldwide

September 8, 2011

*Canadian tax authorities issue
2011 annual report on the
Canadian Mutual Agreement
Procedure (MAP) program*

*A Tax Controversy and
Dispute Resolution
Network Publication*

The Canada Revenue Agency (CRA) recently released its 2011 annual report on the MAP program. The MAP program is a mandatory service program provided by the CRA to assist taxpayers with the resolution of cases of double taxation or taxation not in accordance with the provisions of a tax convention. In addition to discussing how the MAP program functions and the benefits of using the process, the report provides a statistical analysis of MAP cases for the fiscal year ended March 31, 2011. Highlights are as follows.

A total of 743 new cases were accepted during the year (up from 429 in 2010) and 740 were completed (an increase from 420 in 2010).

The CRA categorizes MAP cases as "negotiable" (requiring discussions with another tax administration) or "non-negotiable" (involving only a taxpayer). Statistics for these categories include the following:



Negotiable cases

Negotiable cases accounted for 94 of the total new cases accepted (down from 100 in 2010) and 95 of the total completed cases during the year (up from 78 in 2010).

The average time to complete the Canadian-initiated cases (84) was 32 months, an increase of 9 months from 2010, while the foreign-initiated cases (11) took an average of 20 months to complete, a decrease from 30 months from 2010.

Negotiable cases involving economic double taxation between associated enterprises (transfer pricing) accounted for 80 of the 94 cases accepted during the year (85%) and 74 of the 95 completed cases (78%).

Full relief was granted in 81 (85%) of the completed cases (95% in 2010), no relief was granted in 13 cases (up from 3 cases in 2010) and partial relief was granted in 1 case. Where no relief was granted the primary reasons were a) the request for competent authority assistance was filed outside the time limitation provisions in a specific tax convention; and b) the taxation years were statute-barred under domestic tax rules in the foreign jurisdiction.

The Auto & Other Transportation Equipment industry sector had the highest number of completed cases (11) followed by the Petroleum industry sector (9).

The most common transfer pricing methodology used in completed cases continued to be an application of the transactional net margin method, used in 45% of the completed cases. Cases involving cost allocations accounted for 23% of the completed cases.

Non-negotiable cases

Of the 645 non-negotiable completed cases, 95% pertained to withholding tax issues.

Commentary

In December 2010, pursuant to the Canada-United States Income Tax Convention (1980), taxpayers became eligible to compel the competent authorities to refer cases that have been unresolved for two years to binding arbitration. In an attempt to avoid a situation in which numerous old cases would proceed immediately to arbitration, the competent authorities focused on resolving them. This may account for both the higher number of cases completed this year and the unusually long time it took (i.e., 32 months) to resolve Canadian-initiated cases.

While the competent authorities were able to close out a number of old cases prior to arbitration eligibility, it will be interesting to observe whether at least some of these

cases involved the same issues they were unable to resolve in prior years and if so, how the competent authorities will handle them going forward.

While the number of cases where relief from double taxation has not been granted may seem disturbing, the report indicates that such situations seem to be procedural rather than the result of competent authorities being unable to reach a settlement based on the facts of the case.

Statistics are not provided on the number of cases in closing inventory that result from Canadian-initiated adjustments, but over the past five years, 85% of the completed transfer pricing cases in competent authority were a result of audits by the CRA. This can be viewed as a reflection of the continued increase in Canadian transfer pricing audits and subsequent reassessments by the CRA.

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