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TPM-11

Advance Pricing Arrangement(APA)Rollback

October 28, 2008

Please note that although correct at the time of issue, this Transfer Pricing Memorandum has not been updated to reflect subsequent legislative changes since the date of issue. As a result, some information may no longer be valid.

This memorandum does not replace the law found in the *Income Tax Act* (the Act) and its Regulations. It is provided for your reference. As it may not completely address your particular situation, it would be advisable to refer to the Act, any applicable Regulation, and relevant case law. You may also want to contact a tax services office (TSO) of the Canada Revenue Agency (CRA) for more information.

Introduction

The purpose of this transfer pricing memorandum is to convey the policy regarding an advance pricing arrangement (APA) request to cover prior taxation years, sometimes referred to as an APA "rollback".

This memorandum cancels and replaces TPM-10 dated June 29, 2007. This revision clarifies our policy on APA rollbacks with respect to unilateral APA and does not represent a change in policy.

Background

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An APA is an arrangement between a taxpayer and the Canada Revenue Agency (CRA). With an APA, a taxpayer receives the CRA's confirmation of the appropriate transfer pricing methodology (TPM) to apply to specific cross-border non-arm's length transactions for specified taxation years. Many APAs are bilateral in nature, requiring the Canadian competent authority to enter into negotiations with a foreign tax administration to eliminate the potential for double taxation on the transactions covered by the APA. See IC 94-4, *International Transfer Pricing: Advance Pricing Arrangements*, for comprehensive guidance on APAs.

When a taxpayer complies with the terms and conditions of an APA, the CRA will consider that the results of applying the TPMs to the covered transactions generate arm's length results for purposes of section 247 of the Act. With respect to transactions covered by an APA, no penalty will be levied under subsection 247(3) of the Act. The above statements are only valid as long as the APA remains in force.

While the purpose of an APA is to obtain future tax certainty, a taxpayer may request that the APA cover transactions occurring in non-statute-barred taxation years (i.e., a rollback).

Criteria for accepting an APA rollback

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The CRA will usually agree to consider a request to expand the period of an APA to cover transactions in open taxation years where:

- a request for contemporaneous documentation has not been issued by a tax services office (TSO);
- the facts and circumstances are the same;
- the foreign tax administration and the relevant TSO have both agreed to accept the APA rollback request; and
- appropriate waivers, in the form outlined in subparagraph 152(4)(*a*)(ii) of the Act, have been filed.

Effect of APA rollback on the transfer pricing penalty

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Once an APA is in force, the results for the covered transactions occurring within the period specified in the APA will be considered to have satisfied section 247 of the Act. Transactions occurring in taxation years covered by the APA (including any rollback period), will not be subject to a penalty under subsection 247(3) of the Act.

APA rollback – timing of TSO request for contemporaneous documentation

A TSO will not issue a request for contemporaneous documentation for the transactions occurring in a taxation year that is proposed to be covered by an APA rollback where a taxpayer has requested an APA rollback. A taxpayer is considered to have requested an APA rollback once a pre-filing meeting has taken place between the taxpayer and the Competent Authority Services Division (CASD) officials regarding a potential APA rollback. Taxpayers should also clearly indicate in their pre-filing package their intent to request an APA rollback should they decide to pursue an APA. If a taxpayer's request for an APA rollback is not accepted by the CRA, a request for contemporaneous documentation may be issued by the TSO for the transactions formerly proposed to be covered in the APA rollback period. If the TSO has concerns, they should contact CASD prior to issuing the request for contemporaneous documentation to evaluate whether the request should be issued.

APA rollback not available for unilateral APAl

A unilateral APA is only effective for Canadian income tax purposes and does not eliminate the potential for double taxation. Therefore, a foreign tax administration may decide during an audit to select a different TPM, a different profit level indicator, or use different comparables resulting in double taxation. Consequently, the CRA will not entertain an APA rollback when a taxpayer requests a unilateral APA.

Conclusion

A request for an APA rollback can have an impact on double taxation and on transfer pricing penalties. As a result, special considerations associated with an APA rollback have been developed and are presented in this memorandum.

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Important Notices