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TPM-12

Accelerated Competent Authority Procedure (ACAP)

December 12, 2008

This memorandum does not replace the law found in the *Income Tax Act* (ITA) and its Regulations, or the applicable income tax convention (Convention). It is provided for your reference. As it may not completely address your particular situation, it would be advisable to refer to the ITA, any applicable Regulation, relevant case law, or Convention. You may also want to contact a tax services office (TSO) of the Canada Revenue Agency (CRA) or the Competent Authority Services Division by email at APA-MAP_APA-PAA_APP@cra-arc.gc.ca for more information.

Introduction

The purpose of this transfer pricing memorandum is to provide clarification and guidance on the acceptance of an ACAP request as set out in paragraphs 21 to 23 of the [Information Circular \(IC71-17R5\) - Guidance on Competent Authority Assistance Under Canada's Tax Conventions](#).

Background

As stated in paragraph 21 of IC71-17R5, taxpayers may request assistance for subsequent assessed taxation years on the same issues included in a Mutual Agreement Procedure (MAP) process. This is referred to as the Accelerated Competent Authority Procedure (ACAP).

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Criteria for accepting an ACAP request

An ACAP request generally will be considered for acceptance if all of the following criteria are met:

- an ACAP request is made at the same time as the related MAP request;
- the issues in the ACAP request are the same as those in the MAP request;
- years subsequent to those included in the MAP request and for which the taxpayer has requested ACAP consideration have been filed and initially assessed;
- after consultation between the appropriate tax services office (TSO) and the Competent Authority Services Division, the CRA is satisfied that the facts and circumstances have remained unchanged between the MAP and ACAP taxation years;
- the other Competent Authority agrees to include the ACAP period with the related MAP request; and
- there are no issues involving unusual situations or transactions that would render the application of an ACAP impractical.

The CRA will review the ACAP in accordance with the above criteria. If the ACAP request is not accepted, the taxpayer may make a request for competent authority assistance through the regular MAP process as outlined in IC71-17R5.

Information required for an ACAP request

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If a taxpayer wishes to request an ACAP, the request should be filed simultaneously with the MAP request.

The ACAP request should include the following information:

1. tax years involved;
2. estimated amounts involved in the ACAP request. The amounts should be presented by issues and on an annual basis;
3. a statement indicating:
 - (a) that the issues in the MAP request continue and there has been no change in the facts and circumstances;
 - (b) that the request and acceptance of an ACAP will not preclude or diminish the CRA's right to examine the books and records of the taxpayer, including transactions or issues covered by the ACAP; and
 - (c) the taxpayer will accept the terms of an agreement for MAP and ACAP years, together. Alternatively, the taxpayer will reject the competent authority's settlement for both MAP and ACAP.
4. other information that the CRA's Competent Authority Services Division should be aware of, such as an update of the comparability analysis for a transfer pricing case.

Conclusion

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It is the CRA's position that an ACAP should be reviewed simultaneously with the MAP, and it is not intended to be a carry-forward of the MAP settlement to subsequent years. The main objective of the ACAP is to streamline certain steps in the MAP process such as being able to simultaneously negotiate with the foreign Competent Authority for both MAP and ACAP years. The ACAP does not limit or relieve the taxpayer's rights and obligations under a specific income tax convention or the ITA such as penalty under subsection 247(3).

The CRA will conduct a review of the application of these guidelines after three years with a view to confirming their utility and effectiveness for the CRA and taxpayers. Please send any comments in this regard to:

Competent Authority Services Division
344 Slater Street
5th Floor Canada Building
Ottawa, Ontario
K1A 0L5
Attention: Treaty Specialist

Or email us at: APA-MAP_APA-PAA_APP@cra-arc.gc.ca.

Date

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