

Canada Revenue Agency issues its 2015 annual report on the Advance Pricing Arrangement program

August 25, 2015

In brief

The Canada Revenue Agency (CRA) recently released its annual report on Canada's Advance Pricing Arrangement (APA) program covering the fiscal period ended March 31, 2015. The APA program is a proactive service offered by the CRA to assist taxpayers in resolving transfer pricing disputes that may arise in future tax years. In particular, the objective of the program is to provide increased certainty with respect to future transfer pricing issues.

In detail

Key statistics

The report provides a statistical analysis of all APA cases managed during the year. The following table includes highlights from the 2014 report:

		Fiscal Year Ending March 31,	
		2014	2015
Pre-file meetings		21	28
Application withdrawals¹		11	7
APA	Active case inventory (opening balance)	99	110
	Accepted	39	22
	Pending ²	9	14
	Withdrawals	3	6
	Completed ³	25	31
	Closing balance	110	94
Completion Time (average time in months)	Bilateral	47.8	48.4
	Unilateral ⁴	46.2	70.8

Additional information

Industry sectors: Over 50% of the cases in process involve companies in the following industry sectors: automobile and other transportation equipment, computers and electronics, chemical and allied industries, petroleum, and food and beverage sectors.

Transaction type: The majority of APAs continue to relate to transfers of tangible property (54% of completed and 56% of in-process cases), followed by intangible property (23% of completed and 22% of in-process cases), intra-group services (21% of completed and in-process cases) and financing (2% of completed and in-process cases).

Transfer pricing methodology: The transactional net margin method (TNMM) continues to be the predominant methodology used in APAs (49% of cases), followed by the profit split method (18% of cases), the cost plus method (14% of cases), the comparable uncontrolled price (CUP) (13% of cases) method and the resale price method (6% of cases). When the TNMM is used, the most common profit level indicator used continues to be the operating margin (used 31% of the time), followed by the total cost plus (12% of the time) and the Berry ratio and return on assets (3% of the time).

Participation by country: Of the in-process bilateral cases, 61% are with the US, a slight increase from 60% in 2013. Canada also has cases with Japan, UK, Australia, South Korea, Switzerland, France, Austria, Singapore, Sweden, Germany, Ireland, the Netherlands, China and Portugal. New additions in 2015 include Denmark and India.

The takeaway

PwC's observations

We are pleased to observe the CRA's continued commitment to the APA program and note the following positive trends in 2015:

- An increase in the number of pre-file meetings held compared to the prior year.
- An increase in the number of APAs completed compared to the prior year.
- A reduction in the closing APA inventory, the lowest in the past five years.
- The CRA's expanding list of participating countries reflects its interest in engaging in APAs with other countries, e.g., Denmark and India are new entrants to the list in 2015.

While recognizing the continuing popularity of the APA program, the CRA also continues to be resource-constrained and appears to be doing its best to balance the increasing mandatory workload of double-tax cases with the discretionary workload of APA cases. The 31 APAs completed in the current year represent the most APAs completed in a single year in the past five years.

We also observe that the number of months spent at the due diligence phase has steadily increased over the past five years to an average of 31.5 months in 2015. This is in part due to a record number of APA cases (30) handled by the CRA during 2015. This increase is also due to the CRA's continued trend of increased activity during the due diligence phase of the APA process. Taxpayers are being asked by the CRA to disclose increasingly more information before acceptance into the program. The CRA hopes that it will admit into the program only those taxpayers that are transparent and open, thereby

eventually reducing the overall time to successfully negotiate bilateral APAs.

The APA program represents an excellent means by which the CRA and taxpayers can achieve mutually agreeable tax certainty in the future. We welcome the CRA's continued openness with the APA program in the face of limited capacity and the uncertainty that is expected to arise from the OECD's BEPS action plan.

Let's talk

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Endnotes

- ¹ In 2015, 1 application withdrawal occurred after the pre-file meeting but before acceptance into the APA program and 6 application withdrawals took place after the CRA received the taxpayers' APA submissions.
- ² The number of applications under consideration for acceptance to the program increased from 9 in 2014 to 14 in 2015.
- ³ Of the 31 APAs completed in 2015, 29 were bilateral/multilateral and 2 were unilateral.
- ⁴ Completion time for two unilateral APAs in 2014 and 2015.

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