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# Tax Alert – Canada

## CRA releases revised Information Circular on Mutual Agreement Procedures

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 1 June 2021, the Canada Revenue Agency (CRA) released Information Circular IC71-17R6 *Competent Authority Assistance under Canada's Tax Conventions*, replacing and cancelling Information Circular IC71-17R5, issued 1 January 2005.

Among other items, the new Information Circular (IC) includes significant changes from the CRA's prior guidance or confirms its known positions on the following topics:

- ▶ Mutual Agreement Procedure (MAP) filing procedures
- ▶ Timing of Accelerated Competent Authority Procedure (ACAP) requests
- ▶ Downward transfer pricing adjustment MAP requests
- ▶ Collections procedures
- ▶ Status of audit-level settlements

The revised IC includes some revisions to existing policies and provides clarification for some key issues, including:

**Filing procedures:** The new IC clarifies that a valid MAP request can be made by one party filing requests with both competent authorities that satisfy the administrative requirements of both jurisdictions. In practice, EY finds that this is the most efficient way to make MAP requests and ensures that both competent authorities receive the same information at the same time.

**Requirement for Part XIII information:** The new IC includes a requirement to specify whether Part XIII withholding tax relief is requested in transfer pricing cases (in contrast to situations where a Part XIII issue is the primary basis for a MAP request) and discusses the nature of the relief that may be granted in such circumstances. This inclusion is helpful as the Part XIII implications of transfer pricing adjustments can be unclear and are often not considered until the competent authorities reach the post-settlement stage of their negotiations. Requiring taxpayers to address these implications upon filing a MAP request should improve clarity and certainty at the MAP settlement stage.

**Increased ACAP flexibility:** An ACAP request allows the competent authorities to address filed years beyond those already in dispute if the same transactions under dispute continue into future years. Under the prior guidance, a request to ACAP an issue was required to be submitted at the time of filing the MAP request for the years in dispute. Under the revised IC, taxpayers may now request ACAP after the time of submission, as long as the competent authorities have not concluded their negotiations. This additional flexibility is a welcome development and should allow taxpayers to obtain greater certainty for their transfer pricing over a greater number of years once they are engaged in the MAP process.

**Downward adjustment eligibility requirements:** Taxpayers seeking to make a downward income adjustment to correct their reported transfer pricing after filing their return must seek the concurrence of the CRA to do so. Where the counterparty to a transaction resides in a jurisdiction that is covered by one of Canada's tax conventions, taxpayers may request MAP relief and the resolution of potential double taxation related to the proposed downward adjustment and the corresponding upward adjustment in the other jurisdiction. The new IC codifies the conditions under which the Canadian competent authority will accept a downward transfer pricing adjustment request into a MAP for negotiation with a treaty partner. Certain elements of this guidance had previously been published by the CRA in a less formal manner, but this inclusion in the new IC seems appropriate and is more informative.

**MAP timelines:** The new IC includes information on targeted timelines for completion of certain steps in the MAP process, which is in line with Organisation for Economic Co-operation and Development initiatives to improve international tax dispute resolution. These timelines were previously included in MAP annual reports, but the inclusion here is helpful. In practice, the targeted timelines may not be met due to a variety of circumstances, some of which are out of the control of the Canadian competent authority.

**Tax avoidance cases:** The new IC removes any doubt as to whether the Canadian competent authority would consider negotiating cases where reassessments rely upon anti-avoidance provisions of the *Income Tax Act* (Canada) (including the general anti-avoidance rule in section 245 and the transfer pricing recharacterization provision in paragraph 247(2)(b))

with the statement that they will not do so. This position unfortunately removes the opportunity for the CRA to consider representations by its treaty partners on the arm's length nature of certain transfer pricing arrangements that may have afforded the Canadian competent authority discretion to provide a more effective avenue of dispute resolution for Canadian taxpayers in some cases.

**Removal of collections guidance:** The new IC removes guidance specific to the collection of amounts in dispute that are being handled through the MAP and provides only an updated reference to the CRA's Tax Collections Policies Information Circular that does not specifically address MAP cases. The removal of this MAP-specific guidance is unfortunate, as it leaves taxpayers without specific guidance on the application of CRA Collections' policies in these circumstances and produces uncertainty as to what the policy actually is and whether the previously stated policy has been rescinded or changed.

**Status of audit-level settlements:** The new IC includes a clarifying statement to the effect that an audit settlement reached with a Tax Services Office does not affect a taxpayer's right to seek relief from the Canadian competent authority for taxation not in accordance with a tax convention, or prevent the Canadian competent authority from varying such a settlement.

**US Treaty - Residence of LLCs; Attribution of Profits to Permanent Establishments; MAP Arbitration:** The revised IC also addresses several developments regarding the application of the Canada-US Income Tax Convention that have arisen since the previous IC was published. Inclusion of these items enhances the completeness of the new circular by consolidating previously available guidance.

## Learn more

For further details, refer to the updated CRA guidance, which is available on the CRA website at [Competent Authority Assistance under Canada's Tax Conventions - Canada.ca](https://www.cra.ca/competent-authority-assistance-under-canada-s-tax-conventions).

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