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Tax Alert — Canada

Highlights from the CRA's 2020 Mutual Agreement Procedure Report

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 4 March 2022, the Canada Revenue Agency (CRA) released its Mutual Agreement Procedure (MAP) Program Report for calendar year ended 31 December 2020. The report provides an overview of the operations of the MAP program, including statistical analyses of cases completed and in progress, covering cases dealing with resolution of double taxation or taxation not in accordance with a bilateral tax treaty.

The report follows a statistical framework standardized by the Organisation for Economic Co-operation and Development (OECD) in 2016.

The following are highlights from the MAP report.

Increased case closures of negotiable cases; pension cases result in high ending inventory

The report indicates that the Canadian Competent Authority completed 74 accepted MAP cases in 2020. This is up from 2019, when 60 cases were closed, but is significantly below 2018, when 126 cases were closed.

Negotiable MAP cases are generally related to transfer pricing issues, with permanent establishment, residency and other issues comprising a small percentage of completed negotiable cases. Non-negotiable cases do not require involvement or negotiation with another competent authority.

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The closing inventory of accepted MAP cases stood at 481 cases at the end of the 2020, up significantly from the 240 cases at the end of 2019. This is largely a result of a significant intake of non-negotiable cases — 395 such cases were accepted, but only 154 were completed in the year. The report indicates that a large number of these cases involve elections by Canadian taxpayers under the *Canada-United States Income Tax Convention* to defer taxation of undistributed accrued pension income.

Percentages of Canadian- and foreign-initiated cases stabilize

The percentage of Canadian-initiated cases completed during 2020 was 81%, which was consistent with 2019 at 80% and 2018 at 77%. Although this high percentage reflects continued high levels of audit coverage by the CRA, it is lower in recent years than it has historically been, where in years past it had tended to fluctuate around 90%. This long-term shift likely reflects the ramping up of transfer pricing audit efforts by other countries. Given the inherent time lag between transfer pricing audits and cases making their way to completion in the MAP resolution process, the higher percentage of foreign-initiated cases reported in the 2018 to 2020 period likely reflects the increased emphasis placed on transfer pricing by many countries starting in the late 2000s and early 2010s.

We expect that these historically high levels of foreign-initiated cases may become the norm in the future.

Timelines

The average time required to complete Attribution/Allocation (i.e., transfer pricing) cases in 2020 was 22.97 months, although cases submitted after 2015 averaged 19.31 months. The average time to complete other (non-transfer pricing) cases was 19.15 months. The average time to completion for Canadian-initiated cases was 25.13 months, while that for foreign-initiated cases was 11.21 months.

Case outcomes

Of the 74 negotiable MAP cases that were resolved in 2020, 48.6% (36 cases) of taxpayers who sought assistance obtained full relief from double taxation, 10.8% (8 cases) obtained unilateral relief, 4.1% (3 cases) were resolved via domestic remedy, and 16.3% (12 cases) were considered under the MAP but did not obtain relief (either the case was denied MAP access, the parties reached agreement that there was no taxation warranting relief, or no agreement to provide relief was reached). In 15 cases, or 20.3%, the request was dismissed — either rejected by the competent authority in the first instance or withdrawn by the taxpayer.

The full relief percentage is roughly in line with overall statistics reported by OECD members in 2020 (51%). Nonetheless, the Canada rate of cases that were considered but did not obtain relief at 16.3% is of concern. This rate was reported at 6.7% in 2019 and at 3.2% in 2018. The increase in these cases underscores the need for taxpayers to pay close attention to the process and technical requirements of the *Income Tax Act* and applicable tax treaties as they move through the dispute resolution process, in order to ensure the highest probabilities of obtaining double tax relief and to fully protect their rights in the event that the MAP does not satisfactorily resolve their issues.

Implications

As the primary dispute resolution mechanism for taxpayers to resolve their international disputes, the continued effectiveness of the Canadian MAP program is of interest to all Canadian taxpayers. Higher rates in 2020 of cases not receiving full relief versus prior years is of concern and may reflect the increasing contentiousness of transfer pricing disputes globally. It may also contribute to Canadian taxpayers choosing domestic dispute resolution avenues more frequently in the future.

Learn more

To view the full Mutual Agreement Procedure Program Report, visit:

Mutual Agreement Procedure - Program report - 2020 - Canada.ca

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