

Canada's APA program shows continued progress

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In brief

The Advance Pricing Arrangement (APA) program of the Canada Revenue Agency (CRA) is administered through the CRA's Competent Authority Services Division (CASD) in Ottawa. The CRA offers the APA program to assist taxpayers who are seeking prospective certainty with respect to cross-border related-party transactions.

The CASD recently released its annual report on Canada's APA program covering the year ended December 31, 2018 (the report).

For 2018, the APA program reported fewer APA closures than the 10-year high reported last year. Nonetheless, APA productivity remains at the upper bound of case closures reported from 2013 to 2017, and the CRA was able to maintain a reasonable level of inventory — reporting only a marginal increase in active cases despite a relatively high intake. In addition, the APA program again showed improvements in overall case completion times, with less time taken in the negotiation and post-negotiation phases of the APA process.

In detail

| Key Statistics | Year Ending December 31 | |
|----------------------------------------------------|-------------------------|------|
| | 2017 | 2018 |
| Pre-file meetings | 24 | 31 |
| Application withdrawals¹ | 2 | 3 |
| Applications pending² | 23 | 19 |
| APA | | |
| Active case inventory (opening balance) | 90 | 67 |
| Accepted | 16 | 32 |
| Withdrawals ³ | 3 | 3 |
| Completed ⁴ | 36 | 25 |
| Closing balance | 67 | 71 |
| Completion Time (average time in months) | | |
| Bilateral/Multilateral | 48.5 | 44.0 |
| Unilateral | 12.5 | 17.8 |

Additional information

APA type: Canada's APA program continues to be heavily weighted to bilateral/multilateral cases, representing nearly 91% of workload in both the current year and since 2013–2104.

Industry sectors: Over half (56%) of the cases in process involve companies in the following industry sectors: petroleum (24%), automobile and other transportation equipment (16%), and health (16%). The following four sectors each accounted for 8% of APAs: food and beverage, computer and electronics, metals and minerals, and retail trade.

Transaction type: The majority of APAs continue to relate to transfers of tangible property (60% of completed and 39.4% of in-process cases), followed by intangible property (20% of completed and 32.4% of in-process cases), intra-group services (20% of completed and 21.1% of in-process cases), and financing (5% of in-process cases).

Participation by country: Of the in-process bilateral cases, 54% are with the United States. Canada also reported cases with Australia, Chile, China, France, Germany, India, Ireland, Japan, Korea, the Netherlands, New Zealand, Sweden, Switzerland, and the UK.

PwC observations

We note the following APA-related trends in 2018:

- Continued strong interest from corporate taxpayers in the program, as evidenced by year-over-year increases in both the number of pre-file meetings held and APAs accepted compared to 2017. The number of pre-file meetings held for this year is among the highest in the past 10

years. We also note that the CRA's intake into the APA program was relatively high this year: twice that of 2017 and among the highest in the past 10 years.

- A relatively low closing APA inventory of 71 cases — slightly higher than the 67 cases in inventory at the end of 2017 (the lowest since the 2008–2009 report), but still significantly lower than the closing inventories between 2013 and 2016 (i.e., 90 cases and above). We understand this was achieved notwithstanding that, as in 2017, resources continued to be directed to the completion of mandatory workload related to double tax cases and efforts related to the International Compliance Assurance Program (ICAP) and other initiatives of the Organisation for Economic Co-operation and Development (OECD).
- While specific percentages were not reported in the 2013–2014 and 2014–2015 APA annual reports, there appears to have been a steady decline in the proportion of Canadian APA workload involving the Canada-US Income Tax Convention and greater diversification of the APA workload involving Canada's other income tax conventions.
- As in prior years, taxpayers should continue to be careful in relying on this year's completion timelines for unilateral APAs (UAPAs). The small number of concluded cases, year-over-year variability in UAPA completion timelines, and our knowledge of in-process cases would suggest that UAPA applicants might experience completion timelines that differ

from that suggested by this year's report.

- We observe that the CRA has been able to maintain last year's lower reported number of months spent at the due diligence phase while improving timelines over last year for the negotiation and post-negotiation phases for bi/multilateral APAs. Overall, the average time to complete an APA decreased from 48.5 months in 2017 to 44.0 months in 2018.
- From an organizational perspective, there has been a slight realignment of the CASD structure. There are now only three managers responsible for APA and Mutual Agreement Procedure (MAP) cases, whereas historically there were four.

Looking to the future, we see the following:

- Since 2010, the CRA has expressed its desire to increase transparency and reduce uncertainty for taxpayers through up-front efforts during the APA process. We have seen improved predictability in the nature and extent of information required by the CRA; this may be indicative of sustainable improvements in the due diligence phase of the APA process. The overall reduction in case closure times and noted reduction in time required to complete the other aspects of the APA process are welcome improvements and consistent with the CRA's efforts to seek feedback, strengthen the APA program, and capture efficiencies for taxpayers.
- While the 2018 MAP report has not yet been published, based on 2017

MAP inventory levels and 2018 APA inventory levels, it appears that overall inventory levels may be coming down, meaning that all things being equal, the CASD may be able to direct more resources to current and new applications.

The takeaway

For taxpayers, the potential availability of increased CASD resources per case as well as the potential for improved predictability in respect of due diligence could mean shortened

timelines and strengthened resources necessary for supporting the conclusion of an APA.

The high level of cases progressing from the pre-acceptance to acceptance phase of the APA process also may indicate improved efficiencies on the CRA's part in respect of the intake process; this may result in lower resource intensity and greater certainty for taxpayers considering applying for an APA. If this faster turnover can be sustained, taxpayers also may expect a higher

likelihood of achieving prospective certainty.

The APA program continues to be an excellent means by which the CRA and Canadian 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 uncertain impact on taxpayers resulting from the OECD's base erosion and profit shifting (BEPS) action plan and specific initiatives of various countries.

Endnotes

1. An application withdrawal occurs when a taxpayer formally engages the CRA in an APA pre-file meeting but either chooses not to pursue an APA or is informed by the CRA that the proposed covered transactions are not well suited for the APA program.
2. Pending applications are under consideration for acceptance to the program — i.e., a pre-file meeting has occurred between the CRA and a taxpayer, but the taxpayer has not yet provided an APA submission.
3. An APA withdrawal occurs where a taxpayer has provided a detailed APA submission but either is unable to continue in the APA process or is informed by the CRA that it is not suited for the APA program.
4. Of the 25 completed APAs in 2018, the majority (23) were bilateral agreements with foreign tax administrations; one was a multilateral agreement; and one was a unilateral agreement.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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