

2017 Issue No. 44
28 September 2017

Tax Alert – Canada

OECD releases first batch of peer review reports on Action 14: Canada highlights

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 26 September 2017, the Organisation for Economic Cooperation and Development (OECD) released the first batch of peer review reports relating to the Base Erosion and Profit Shifting (BEPS) minimum standards on Action 14 on improving tax dispute resolution mechanisms implementation by Belgium, Canada, the Netherlands, Switzerland, the United Kingdom and the United States. For a detailed background, please see our [Global Alert](#).

Overview

The reports are divided into four parts, namely (A) preventing disputes; (B) availability and access to Mutual Agreement Procedures (MAPs); (C) resolution of MAP cases; and (D) implementation of MAP agreements. Each of these parts addresses a different component of the OECD's minimum standard.

Overall, the reports conclude that these jurisdictions meet most of the elements of the Action 14 Minimum Standard. In the next stage of the peer review process, each jurisdiction's efforts to address any shortcomings identified in its stage 1 peer review report will be monitored.

Eighteen peers provided input to the Canada peer review report, consisting of countries that represent almost 90% of MAP cases in process by Canada at the end of 2016. Highlights from the Canada report include:



A. Preventing disputes

In Canada, Advance Pricing Arrangement (APA) roll-backs are potentially available where an audit on a filed taxation year has not commenced. The Canadian competent authority generally provides for APA roll-backs upon request. For the years 2015 and 2016, taxpayers requested roll-backs of bilateral APAs in around 75% of the cases where they could be granted (e.g., not renewals of APAs, not unilateral APAs). The Canadian competent authority reported that it provided roll-backs in all cases, except for exceptional circumstances. In 2015, 21 APAs were entered into, 11 of which provided for a roll-back. In 2016, 19 APAs were entered into, 6 of which provided for a roll-back.

Peer review comments noted an instance where a year that was supposed to be accorded roll-back treatment was subject to audit, and was subsequently the subject of a MAP.

B. Availability and access to MAPs

Canada is generally reported to allow broad access to MAPs, including for transfer pricing cases and cases where domestic or treaty anti-abuse are considered by Canada to apply, although in abuse cases Canada may limit discussions to seeking relief from the other competent authority.

The report noted that Canada does not preclude access to MAPs where the taxpayer has reached an audit settlement with the CRA, but the availability of MAPs in this circumstance is not clearly laid out in the published Canadian MAP guidance.

MAP cases submitted that required additional information were not denied access, but taxpayers were afforded opportunities to provide the missing information. One peer comment was made with regard to a case that required in-depth discussion before the Canadian competent authority allowed access, relating to a circumstance where certain information was not provided by the taxpayer to the CRA auditor at the audit stage.

Canada reported that it is in the process of updating its publicly available MAP guidance, currently set out primarily in *Information Circular IC71-17 R5*, [released](#) in 2005.

C. Resolution of MAP cases

Canada generally met the OECD MAP resolution time frame of 24 months from start to finish for a case.¹ Transfer pricing cases were reported generally to take slightly less time to resolve than non-transfer pricing cases. Several peers commented that the Canadian competent authority was responsive and cooperative, although others indicated instances of long delays in waiting for emails or position papers to be issued by the Canadian competent authority of

¹ Case completion statistics were reported for two separate measurement periods - pre-2016 and post-2015. In the latter period, an anomalous result was reported of an average time to resolution of 1.1 months for 35 MAP cases submitted and completed in 2016. We presume this anomaly likely resulted from a unique situation such as a group of related cases submitted to MAP for an audit period subsequent to a preceding audit cycle that had previously been resolved in MAP, where the resolution of these cases was made on the same basis as for the prior cycle.

Canadian-initiated cases. One peer indicated that it was difficult to resolve complex cases with the Canadian competent authority. The Canadian competent authority cited several reasons for delays in completing MAP cases: delays of taxpayers providing additional information requested by the competent authorities during their discussions, complexity of some cases, delays from some treaty partners lacking resources, and difficulties in communication by phone with some treaty partners because of time differences or language.

One element of procedural delay was identified: the Canadian competent authority noted its practice of waiting for a formal letter from the other competent authority once an agreement was reached before informing the taxpayer. This procedure was indicated to contribute an additional 2.5 months on average to the MAP process. The Canadian competent authority is considering modifying its process to accelerate the date when the taxpayer is informed of the agreement reached.

The Canadian competent authority reported that it considered itself sufficiently resourced to accomplish its mandate, with the ability to hire additional personnel if necessary. It also reported that it keeps treaty partners informed of personnel changes.

D. Implementation of MAP agreements

The Canadian competent authority noted that except for treaties where there is “notwithstanding” language to override Canadian domestic law, it is limited in ability to implement MAP settlements for taxpayers, unless the Canadian statute remains open for adjustment. This limitation may require taxpayers to provide waivers or file notices of objection as applicable. Ensuring the statute remains open is the taxpayer’s responsibility.

Canada notes that the CRA is responsible for processing the MAP agreement in Canada within 30 days of the processing office’s receipt of instructions from the Canadian competent authority, which actively monitors the implementation of MAP agreements. However, Canada acknowledges that a processing centre may not implement the MAP in a timely manner, and the Canadian competent authority may intervene to ensure agreements are implemented.

Next steps

The six jurisdictions assessed in the first batch of the peer review are already working to address deficiencies identified in their respective reports and are moving to Stage 2. In Stage 2 of the peer review process, a jurisdiction’s efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

Assessed jurisdictions shall submit an update report to the OECD’s Forum on Tax Administration (FTA) MAP Forum within one year of the OECD Committee on Fiscal Affairs’ adoption of the Stage 1 Peer Review report.

Implications

The peer review process is a welcome development to improve global consistency and efficiency in resolving tax disputes through the MAP. Notwithstanding the sources - like-minded tax administrations with mature MAP programs - the peer review process has indicated that the Canadian competent authority overall is performing well in its administration of the MAP. Nonetheless, it has identified several areas where improved guidance and process could be implemented. We look forward to implementation of these improvements in Canada.

Learn more

For more information, contact your EY or EY Law advisor or one of the following professionals:

Toronto

Andrew Clarkson

+1 416 943 2146

andrew.clarkson@ca.ey.com

Tara Di Rosa

+1 416 943 2671

tara.dirosa@ca.ey.com

Sean Kruger

+1 416 941 1761

sean.kruger@ca.ey.com

Ken Kyriacou

+1 416 943 2703

ken.kyriacou@ca.ey.com

Tom Tsiopoulos

+1 416 943-3344

tom.tsiopoulos@ca.ey.com

Quebec and Atlantic Canada

Rachel Spencer

+1 514 879 8214

rachel.spencer@ca.ey.com

Wael Tfaily

+ 514 879 6695

wael.tfaily@ca.ey.com

Alfred Zorzi

+1 514 874 4365

alfred.zorzi@ca.ey.com

Ottawa

Rene Fleming

+1 613 598 4406

rene.fleming@ca.ey.com

Paul Mulvihill

+1 613 598 4339

paul.f.mulvihill@ca.ey.com

Tony Wark

+1 613 598 4322

tony.wark@ca.ey.com

Prairies

Lawrence Greer

+1 403 206 5031

lawrence.a.greer@ca.ey.com

Vancouver

Tina Berthaudin

+ 604 891-8207

tina.berthaudin@ca.ey.com

Adrian Tan

+ 604 891 8318

adrian.tan@ca.ey.com

Greg Noble

+1 604 891 8221

greg.noble@ca.ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

About EY's Tax Services

EY's tax professionals across Canada provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We offer a range of tax-saving services backed by in-depth industry knowledge. Our talented people, consistent methodologies and unwavering commitment to quality service help you build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its potential. It's how we make a difference.

For more information, visit ey.com/ca/tax.

About EY Law LLP

EY Law LLP is a national law firm affiliated with EY in Canada, specializing in tax law services, business immigration services and business law services.

For more information, visit eylaw.ca.

About EY Law's Tax Law Services

EY Law has one of the largest practices dedicated to tax planning and tax controversy in the country. EY Law has experience in all areas of tax, including corporate tax, human capital, international tax, transaction tax, sales tax, customs and excise.

For more information, visit <http://www.eylaw.ca/taxlaw>

© 2017 Ernst & Young LLP. All Rights Reserved.

A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.