



November 29, 2004

CRA Releases Four Important Transfer Pricing Documents

On November 17 and 29, 2004, the Canada Revenue Agency (CRA) made available on its website four important documents with respect to transfer pricing:

1. The CRA APA Program Report 2003-2004

<http://www.cra-arc.gc.ca/tax/nonresidents/apa-program-e.pdf>

This is the update from the previous report which covered the 1993-2003 period. Highlights of the report: from April 2003 to March 2004, the CRA held 23 pre-filing meetings, accepted 17 taxpayers into the APA Program, and completed 17 APAs. The average time to complete APAs is also substantially reduced.

2. The CRA MAP Program Report 2001-2004

http://www.cra-arc.gc.ca/tax/nonresidents/business/map_report-e.pdf

This is the first report from the CRA with respect to its mutual agreement procedure. It contains a number of statistics meant to render the program more transparent. For instance, in 2003-2004, 233 cases were resolved and, of those 233 cases, 105 were resolved by negotiations. Of the 105 negotiated cases, in 92% of cases, taxpayers obtained full relief from double taxation. Of the cases where full relief was not obtained, the reasons for this range from statute-barred and notification problems to irresolvable treaty interpretation issues.

3. The Competent Authority Services Division - Field Strategy

http://www.cra-arc.gc.ca/tax/nonresidents/business/strategy_march04-e.pdf

This document is dated March 23, 2004 and is meant to put in place formal policies with respect to the working relationship between the auditors in the various Tax Services Offices (TSOs) and the staff in the competent authority services division (CASD). Its main features are to outline the roles and responsibilities of field auditors with respect to the competent authority process. For instance, field auditors will be asked to improve the quality of audit documentation prepared to support an adjustment because, *inter alia*, the IRS has been critical in the past of situations where the CASD, as part of the competent authority process, has had to redo part of the audit and/or functional and economic analysis underlying adjustments. The document indicates that the Canadian competent authority is inclined to agree with the position that, if the audit documentation cannot support the transfer pricing adjustment without additional economic support, then the adjustment should be vacated.

4. TPM-05 Contemporaneous Documentation

<http://www.cra-arc.gc.ca/tax/nonresidents/business/tpm05-e.html>

This document is dated October 13, 2004. Its stated objectives are: "to create a consistent approach to transfer pricing audits amongst the TSOs ; to facilitate the audit process with regards to transfer pricing; and to increase transfer pricing compliance." Its directive is clear: "Effective immediately, requests for contemporaneous documentation must be issued at the initial taxpayer contact stage in all cases where there are transactions or arrangements between a taxpayer and a non-resident person with whom the taxpayer does not deal at arm's length. If the auditors were not aware of these transactions at the initial taxpayer contact stage, they must issue requests for contemporaneous documentation when they first identify the existence of such transactions." TPM-05 adds that no extensions can be granted to the three

month period provided for in paragraph 247(4)(c) within which the taxpayer must provide the contemporaneous documentation to the CRA. TPM-05 includes an example of a letter-request and of a query sheet that should be used by CRA auditors to request the contemporaneous documentation.

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