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2023 Annual Report on the Directions for Avoiding Complicity in Mistreatment by Foreign Entities (Commissioner of the Canada Revenue Agency)

Introduction

This report by the Commissioner of the Canada Revenue Agency (CRA) is presented to the Minister of National Revenue in accordance with subsection 7(1) of the *Avoiding Complicity in Mistreatment by Foreign Entities Act*¹.

Under this subsection, the CRA commissioner must prepare an annual report on the implementation of the *Directions for Avoiding Complicity in Mistreatment by Foreign Entities (Commissioner of the Canada Revenue Agency)*² during the previous calendar year.

The Directions were issued by the Governor-General-in-Council on September 4, 2019.

This fifth annual report describes the implementation of the Directions from January 1, 2023, to December 31, 2023, and includes:

- an overview of the types of information that the CRA shared with its information exchange partners related to foreign entities;
- an overview of the areas of the CRA impacted by the Directions;
- a description of the CRA activities that support compliance with the Directions;
- the number and details of, if any, substantial risk cases that required the Commissioner to determine whether to disclose, request or authorize the use of information; and,
- the details of, if any, restrictions on arrangements due to concerns of mistreatment.

CRA Information-Sharing Practices and Arrangements Involving Foreign Entities

Overview of Information-Sharing Practices and Arrangements

¹ S.C. 2019, c. 13, s. 49.1, in force July 13, 2019, per SI/2019-71.

² PC Number 2019-1309 – See [Orders in Council Directions to the Commissioner of the Canada Revenue Agency: Avoiding Complicity in Mistreatment by Foreign Entities](#).

The CRA’s mission is to, “administer tax, benefits, and related programs, and ensure compliance on behalf of governments across Canada, thereby contributing to the ongoing economic and social well-being of Canadians.”³

In this capacity, the CRA exchanges information for various purposes with domestic⁴ and international partners. Through its administration of Canada’s network of tax treaties, the CRA is involved in a variety of tax information exchange agreements and international tax conventions (collectively referred to as **international agreements** in this report).

Internationally, the exchange of information (EOI) with foreign tax administrations can be divided into two broad groups:

- **Specific exchange of information** – Under its international agreements, the CRA facilitates incoming and outgoing EOIs about specific taxpayers, on a case-by-case basis. These exchanges can be related to a specific request for information or completed on a spontaneous basis. Examples of spontaneous exchanges include the Exchange of Tax Rulings⁵, information exchanged by jurisdictions with no or nominal tax jurisdictions⁶, and information on data leaks, such as the Panama, Paradise and Pandora papers.
- **Automatic bulk exchange of information** – The CRA sends, receives and uses significant amounts of bulk data related to taxpayers, including non-residents. For example, the CRA is committed to sending large bulk data each year to its partners under these agreements:
 - *Intergovernmental Agreement for the Enhanced Exchange of Tax Information* (IGA), related to the U.S. *Foreign Account Tax Compliance Act*; and,
 - *Common Reporting Standard (CRS) Multilateral Competent Authority Agreement* (CRS MCAA)⁷.

Similarly, the CRA receives bulk data from the United States Internal Revenue Service under the IGA and from its CRS exchange partners under the CRS MCAA.

The CRA also automatically exchanges other forms of bulk information with its treaty partners, including:

- country by country (CbC) reporting⁸ information; and,

³ “Mission, vision, and values,” updated 2023–06–06, <https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/mission-vision-values.html>.

⁴ Domestic information-sharing practices are not described at length here, as they generally are not subject to the requirements of the Act and Directions.

⁵ Chapter 5 of the [BEPS Action 5: 2015 Final Report - OECD \(oecd-library.org\)](https://www.oecd.org/BEPS/Action5-2015-Final-Report/).

⁶ [Substantial Activities in No or Only Nominal Tax Jurisdictions - OECD \(oecd.org\)](https://www.oecd.org/BEPS/Action5-2015-Final-Report/).

⁷ [Common Reporting Standard \(CRS\) - OECD \(oecd.org\)](https://www.oecd.org/BEPS/Action5-2015-Final-Report/).

⁸ The *Income Tax Act* sets out Canada's rules on CbC reporting. The CbC report is a form that multinational enterprise groups are required to complete and file annually to provide information on their global operations in each tax jurisdiction where they do business.

This filing requirement is part of a global initiative by the Organisation for Economic Co-operation and Development (OECD)/G20 to enhance transparency for tax administrations.

Canada exchanges these reports with its international partners. The exchange of CbC information helps the CRA to better risk assess multinationals for tax compliance.

- information on various types of income paid to non-residents, such as income from immovable property, business profits, employment, dividends, interest, royalties, pension, government service, capital gains paid to individuals or corporations, and income earned by artists and athletes (information on the acquisition and/or disposition of real property by non-residents).

The CRA has many domestic and international agreements and obligations for information sharing. They are complex and involve a substantial amount of information. However, due to the CRA's mandate as a tax administration and its network of agreements, the risk of mistreatment is proactively mitigated through well-established standards and procedures. These include strict confidentiality requirements and limits on how the information is used (for example, only for tax administration) that are embedded within its information-sharing agreements.

In addition, regular peer reviews through the Global Forum on Transparency and Exchange of Information for Tax Purposes help ensure compliance with international standards and confidentiality.

Information Exchange Advisory Section

In 2021, the CRA set up the Information Exchange and Advisory Section (IEAS), which is a dedicated team in the Compliance Programs Branch. The IEAS is responsible for the overall implementation of the Act and Directions. This includes:

- conducting risk ratings and assessments at the jurisdiction, partner (that is, tax administrations) and case levels;
- advising CRA officials who engage in EOI;
- developing and regularly updating the framework for consulting with CRA senior management and other government departments and agencies, as well as the related policies, procedures and other guidance;
- serving as the secretariat for CRA governance structures that support implementation of the Act and Directions;
- consulting with other government departments and agencies, including participation in the Information-Sharing Coordination Group (ISCG), which is an interdepartmental forum led by Public Safety Canada;
- preparing annual and other reporting required under the Act and the Directions; and,
- providing awareness and training sessions.

Exchange of Information Sections

The CRA's Exchange of Information sections are part of the Compliance Programs Branch (CPB). They support the CRA's efforts to combat tax avoidance and evasion by managing the exchange of taxpayer information with foreign tax administrations in accordance with Canada's international agreements.

These agreements provide for the sharing of tax-related information for both civil and criminal tax law purposes, and they impose strict confidentiality requirements and limits on how the exchanged information is used.

Except for the EOI activities under the *Mutual Legal Assistance Treaty* (MLAT) undertaken by the Criminal Investigations Program (CIP), all of the CRA's EOI activities pursuant to international agreements are streamlined through a designated competent authority for each party.

Information is shared under Canada's international agreements on the condition that it will be used only for assessing or collecting the taxes covered by the agreements. The CRA is under no obligation to provide information to a foreign jurisdiction if there are:

- indications that the data will not be kept confidential;
- no assurances the information will be used solely for taxation purposes;
- indications of corruption or bribery; or
- other administrative practices that raise concerns about the misuse of the information.

The EOI sections also support and collaborate with CRA officials who rely on shared information for international and domestic compliance.

International Relations and Treaties Office

The International Relations and Treaties Office (IRTO), in the CRA's Legislative Policy and Regulatory Affairs Branch, acts as the competent authority in resolving interpretative issues about Canada's international agreements. It also assists the Department of Finance Canada in negotiating these agreements and developing treaty policy.

IRTO is also responsible, in collaboration with other stakeholders, for negotiating bilateral competent authority agreements for EOI under international agreements and for selecting exchange partners under the MCAAs for the CRS, CbC and digital platform reporting.

IRTO also works in partnership with various CRA program areas and the Department of Finance Canada on a range of international tax co-operation and policy issues. Examples include work on standards for automatic EOI, updates to the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention and the OECD/G20 project to address the tax challenges related to the digitalization of the economy.

Criminal Investigations Program

The CRA's Criminal Investigations Program (CIP) in the Compliance Programs Branch investigates significant cases of tax evasion, fraud and other serious violations of tax laws, including cases with an international element. The CIP works closely with the Royal Canadian Mounted Police, provincial and local police, and other law enforcement agencies on tax cases to maintain the integrity of the tax system. The CIP also shares knowledge and expertise with domestic and international partners, including through the Joint Chiefs of Global Tax Enforcement, known as the J5⁹. The CIP's intelligence-gathering capabilities enhance its ability to identify and address global tax evasion. To obtain foreign evidence, the CIP uses well-codified channels, such as making requests under the MLAT, and it engages the EOI sections.

⁹ Formed in 2018, the J5 includes the heads of tax crime and senior officials from the Australian Criminal Intelligence Commission and Australian Taxation Office, the CRA, the Dutch Fiscal Intelligence and Investigation Service, HM Revenue & Customs, and IRS Criminal Investigation.

Implementation of the Directions

The CRA is responsible for determining the level of risk associated with the disclosure of information to, or requests or use of information from, a foreign entity, mainly foreign tax administrations, and applying mitigating measures where appropriate.

Interdepartmental Coordination

The CRA is an active participant in the ISCG, the forum led by Public Safety Canada. ISCG members work to ensure the Directions are appropriately implemented consistently across all implicated federal departments and agencies. The CRA endeavours to assess the risk of mistreatment consistent with other ISCG participants and within the larger international framework of the Government of Canada.

The three primary objectives of the ISCG are to:

- establish best practices;
- share information among its membership; and,
- coordinate the development of policy documents and responses for interdepartmental issues.

Updating Policies and Procedures Related to the Directions

While the CRA has a longstanding historical practice of considering human rights conditions and the risk of mistreatment (in consultation with Global Affairs Canada and other federal departments and agencies where appropriate) in the course of conducting its EOI activities, the CRA has made modifications to its operational policies and procedures to strengthen compliance with the Directions since they were issued. The CRA also promotes the use of continuous improvement principles and practices in its workloads and as such these policies and procedures remain evergreen, and are adapted as needed on an ongoing basis.

To supplement its *Policy and Operational Guidelines on Implementing the Directions to the Commissioner of the Canada Revenue Agency for Avoiding Complicity in Mistreatment by Foreign Entities*, the CRA has finalized its procedures with an effective date of January 1, 2024. Together the documents codify and formalize the processes and procedures that have been in place since 2019, when the Directions were issued. Both documents will be reviewed and updated regularly (for example, as the CRA incorporates any new best practices that are identified in the course of its participation in the ISCG, through internal and external reviews or in response to any amendments to the Act or the Directions).

Mistreatment Risk Assessment

The CRA conducts country-level assessments, known as jurisdiction risk ratings (JRRs), using a standardized methodology, including input from other Government of Canada partners, to assess the human rights records and related risks of its information exchange partners. The results allow CRA senior management to make informed decisions on whether to disclose information to, or request or use information from, an exchange partner.

In 2023, the CRA also introduced partner risk ratings (PRRs) which look at the risks, or lack thereof, associated with each specific tax administration the CRA has an EOI relationship with.

JRRs and PRRs are incorporated into the CRA's mistreatment risk assessments (MRAs), which are prepared for each EOI.

All EOI activities, including those that fall under the CIP, go through an MRA prepared at the working level by the IEAS team.

If an MRA relates to a higher-risk country, the appropriate CRA senior management will review and approve the completed MRA before information can be disclosed to, or requested or used from, an exchange partner. The level of approval authority depends on the level of risk assessed. An MRA can be escalated to a higher approval authority, if necessary, and a denial may happen at any level. All MRAs elevated to the commissioner must be reported to the minister of national revenue, the National Security and Intelligence Review Agency, and the National Security and Intelligence Committee of Parliamentarians in accordance with the Act and Directions.

The CRA uses **standing authorities** for low-risk EOIs. An example of a low-risk EOI is one where the nature of the data or the intended exchange partners are inherently low-risk and do not meet the threshold for substantial risk under the Act. These standing authorities allow the IEAS to process a low-risk EOI more efficiently, instead of requiring a case-by-case review. The standing authorities are reviewed at least once a year.

Awareness and Training

The CRA provides training to employees who regularly conduct information-sharing activities, or whose responsibilities bring them into information-sharing scenarios. The training is tailored to the employee's particular roles and responsibilities and so it is appropriate for the particular level of risk. Awareness of the Directions is a standard component of most EOI activities and consultations.

Additional awareness and training activities are provided to CRA employees as needed when new issues arise.

Activity Report – January 1, 2023, to December 31, 2023

Between January 1, 2023, and December 31, 2023, there were no CRA information exchanges that generated a substantial risk of mistreatment requiring a referral to the Commissioner in accordance with the Order-in-Council Directions.

Bob Hamilton

Commissioner of the Canada Revenue Agency