ADVANCE PRICING ARRANGEMENT

Program Report 2024

Competent Authority Services Division

International and Large Business Directorate

Compliance Programs Branch

Canada Revenue Agency
Agence du revenu du Canada

Canada

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EXECUTIVE SUMMARY

The Advance Pricing Arrangement (APA) program of the Canada Revenue Agency (CRA) is administered through the CRA's Competent Authority Services Division (CASD), which is part of the International and Large Business Directorate of the Compliance Programs Branch. Canada has a longstanding and successful APA program. Canada is highly respected at the international level for its APA program and collaborates actively with other jurisdictions to identify possible improvements to the APA process.

The APA program is a service offered by the CRA to assist taxpayers in preventing transfer pricing disputes that could otherwise arise in future tax years. The main objective of the program is to provide increased certainty regarding future transfer pricing issues in a manner consistent with the Income Tax Act and guidance from the CRA and the Organization for Economic Co-operation and Development (OECD).

A summary of the key findings presented in this year's report is provided below:

The year 2024 opened with an active case inventory of 90 APAs. In total, 32 new cases were accepted into the program, four applications were withdrawn and one unresolved after the APA applications were accepted by both Competent Authorities and 16 cases were completed, resulting in a closing inventory of 101 active cases in process for 2024.

- The CRA held 25 new pre-file meetings in 2024.
- In 2024, the average time to complete a bilateral APA was 40.8 months.
- The vast majority of cases closed (89.0% since 2020) involve taxpayers seeking an APA on a bilateral or multilateral basis, as opposed to 11.0% of taxpayers seeking an APA on a unilateral basis.
- Cases involving transfers of tangible property made up the largest percentage of APAs in process (53.5%); cases involving intangible property represented 18.8%; intra-group services represented 22.8%; and cases involving financing represented 5.0%.
- In 2024, the CRA's open APA cases involved taxpayers with operations in 23 different industrial sectors.
- The CRA is currently engaged in APA processes involving taxpayers from 23 different jurisdictions.

INTRODUCTION

In line with the priorities of the OECD's Forum on Tax Administration (FTA), one of the overarching goals of the CRA's APA program is to provide taxpayers with an avenue to improve tax certainty and prevent future transfer pricing disputes.

The key objectives of this report include:

- enhancing awareness of the CRA's APA program;
- notifying taxpayers of any changes to the APA program;
- providing an operational status update; and
- identifying issues that may affect the APA program in future years.

Maintaining the approach of previous publications, this year's report continues to emphasize statistical analysis and quantitative data. Of note, however, the CRA recently updated its guidance and policies with respect to the APA program through the release of Information Circular IC 94-4R2, which is an update to Information Circular IC94-4R, International Transfer Pricing: Advance Pricing Arrangements.

BACKGROUND

The APA program is delivered through the CRA's CASD, which is part of the International and Large Business Directorate, in the Compliance Programs Branch.

The Director of CASD is supported by a division of approximately 50 employees structured as follows:

- The Director's Office includes two Senior Economic Advisors and two Senior Technical Advisors;
- Five Transfer Pricing MAP/APA sections consisting of 34 tax and economics specialists, working exclusively on MAP and APA cases concerning resolution of double taxation (attribution/allocation cases);
- One MAP Technical section consisting of nine tax and legal specialists, working exclusively on non-transfer pricing MAP cases (other cases concerning taxation not in accordance with a convention);
- One Program Support section consisting of five employees working on procedural, reporting, monitoring and other program-related functions.

The program is a service offered by the CRA to taxpayers wanting to obtain increased certainty and prevent transfer pricing disputes. An APA is an agreement with respect to the determination of business profits in Canada that flow from cross-border intercompany transfer pricing transactions in a manner consistent with the Income Tax Act, as well as CRA and OECD guidance.

The APA process is based on co-operation and transparency. The APA process differs from the CRA's audit process as its focus is on prospective or future tax years rather than

tax years that have elapsed. In essence, an APA is an arrangement between a taxpayer and a tax administration that sets out a transfer pricing methodology, to be used on a prospective basis, for establishing an arm's length transfer price for the transactions between related parties. Applying the arm's length principle is generally based on a comparison of the prices, or profit margins, that non-arm's length parties use or obtain, with those of arm's length parties engaged in similar transactions.

An APA process is started by a Canadian taxpayer through contact with the CASD. For more information on the CRA's APA program, see Information Circular 94-4R2, International Transfer Pricing: Advance Pricing Arrangements (APAs). This information circular was updated on February 22, 2024. The update clarifies guidance and existing processes and policies on the CRA's advance pricing arrangement (APA) program in order to better equip taxpayers who want to apply for an APA with the CRA. The new information circular also updates guidelines to be consistent with work on the OECD's BEPS Action 14 (making dispute resolution mechanisms more effective) and publications of the OECD's Forum on Tax Administration, such as the Bilateral Advance Pricing Arrangement Manual (BAPAM), published on September 28, 2022, and the Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements (MoMA), published on February 1, 2023.

APA PROGRAM: 2024

The following section provides an operational overview of the APA program, along with current trends and issues.

Applications to the program

A taxpayer interested in obtaining an APA must first send a pre-file package to the Director of the CASD to request an APA pre-file meeting. As much as possible, the pre-file package should include all the information listed in paragraph 28 of Information Circular 94-4R2, International Transfer Pricing: Advance Pricing Arrangements (APAs). The CASD will review the package and will contact the taxpayer to either request more information or, if the information is complete, to schedule a pre-file meeting.

A pre-file meeting, which takes place between a taxpayer and the CRA, provides an opportunity for the taxpayer to learn more about the APA program and for the CRA to get clarification on the taxpayer's business, industry, and the transaction(s) to be covered under the request (covered transactions). The main objective of the meeting is to explore the suitability of the taxpayer and the proposed covered transaction(s) for the APA program.

After considering the nature of the request, the availability of information, and the taxpayer's willingness to address potential issues identified during or after the pre-file meeting, a decision is made as to whether or not the taxpayer will be accepted into the next stage of the APA process. A taxpayer invited to continue in the process has to prepare a detailed APA submission outlining the specifics of the covered transaction(s), including a detailed transfer pricing analysis and all pertinent information necessary for

the CRA to review and complete its own transfer pricing analysis. After the CRA has received and reviewed the taxpayer's APA submission for completeness, a decision is made to accept or reject the taxpayer's request for an APA.

Although a taxpayer's acceptance into the APA program is not determined at the pre-file stage, the number of pre-file meetings held in a given period can provide a preliminary forecast of future years' inventory. It can also be used to gauge the current level of interest in the CRA's APA program. In 2024, the CRA held a total of 25 pre-file meetings.

Withdrawals from the APA process can occur during the application stage (application withdrawals) or after an application has been accepted by the CRA (APA withdrawals). By definition, 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 transaction(s) are not well suited for the APA program. In contrast, an APA withdrawal occurs when the taxpayer decides to withdraw from the APA process after having been accepted into the program. For example, this can occur when the taxpayer rejects the bilateral APA reached between the CRA and the foreign competent authority. There is no obligation for the competent authorities to restart BAPA discussions if the terms were not acceptable to the taxpayer.

To maintain transparency in the program and to ensure applicants can meet the requirements of an APA, the CRA ensures that taxpayers have the necessary feedback on their proposed transfer pricing methodologies and covered transactions. Based on this feedback, a taxpayer may decide not to pursue an APA, while in other cases, the CRA may decide that it would not be appropriate to accept or pursue an APA with a taxpayer. If the CRA declines an APA request, or chooses not to continue in the APA process, taxpayers are provided with an explanation of the CRA's decision.

As an example, the CRA may decline an APA request when the central issue involves a matter that is before the courts. However, in most cases, taxpayers are given an opportunity to make further representations on any outstanding issues that may prevent their acceptance into the program.

APAs are best suited for current transactions that will likely continue into the future with little to no change, and where the underlying assumptions that form the basis of an APA transfer pricing methodology do not change during the immediate pre-APA period or the APA period itself. Transactions involving one-time events, such as corporate restructurings of a significant nature, are generally outside of the scope of the APA program. Apart from a refusal by the CRA, other reasons why a taxpayer may not pursue an APA may include financial constraints, significant changes in operations such as a business restructuring, and/or changes in personnel.

In 2024, there were 7 withdrawals from the APA process: 3 of these withdrawals occurred during the application stage while 4 withdrawals and one unresolved occurred after the application had been accepted into the program. From an efficiency standpoint, the withdrawal of an APA during the application stage instead of

during the post acceptance stage can represent a significant savings of resources for both taxpayers and tax administrations.

On December 31, 2024, 35 applications were under consideration for acceptance to the program (that is, instances where a pre-file meeting has occurred between the CRA and a taxpayer, but a taxpayer had yet to provide the APA submission or the CRA had yet to respond to the submission).

Program inventory

In 2024, 32 new cases were accepted into the program. These new cases are in addition to those cases already reflected as part of inventory from acceptances issued in years past. Outgoing cases, which includes APAs completed and withdrawn from the program, totaled 21cases. Closing inventory at the end of 2024 was 101 cases.

Table 1: Program Inventory

Period	Pre-file meetings	Application withdrawals	Applications pending	Opening APA inventory	APAs accepted	APAs completed	APAs unresolved	APA withdrawals	Closing APA inventory	Change in inventory from previous period
2024	25	3	33	90	32	16	1	4	101	11
2023	30	4	43	89	26	23	0	2	90	1
2022	26	6	43	70[1]	29	10	0	0	89	19
2021	30	0	52	69	6	9	0	0	66	-3
2020	20	0	28	65	19	15	0	0	69	4

Intergovernmental Status

In 2024, 16 APAs were completed, 13 of which were bilateral agreements with foreign tax administrations and three were unilateral. This demonstrates a consistent trend whereby the majority of APAs have been bilateral or multilateral APAs involving at least one other foreign tax administration. It can reasonably be concluded that the CRA and applicants to the APA program continue to be focused on bilateral (or multilateral) arrangements to eliminate double taxation and secure the highest degree of tax certainty.

[1] Correction to the number of opening 2022 APA balance. Four open APAs were not included in the closing balance in 2021.

Completion times

Factors that determine the length of time required to complete an APA include:

- the scope and complexity of a case (as opposed to the size of the covered transaction(s) or the companies involved),
- a taxpayer's level of co-operation,
- the availability of necessary and reliable information.

The small number of cases used to calculate the CRA's APA completion time statistics may lead to a higher variability in the figures presented below, which may lead to distortions resulting from the presence of extreme outliers.

After a case has been accepted into the program, the process that ensues generally requires a substantial investment of time and resources from all stakeholders. Bringing an APA from start to finish is broken down into three distinct stages including:

- **due diligence;**
- **negotiations; and**
- **post-negotiations stage.**

The **due diligence** stage begins once a candidate is accepted into the program and finishes with the completion of a position paper outlining the CRA's views on the covered transaction(s). Due diligence includes reviewing materials presented by the taxpayer, and may include undertaking site visits, conducting functional interviews, and issuing additional queries and/or information requests to permit the CRA to review the APA submission and complete a thorough financial and transfer pricing analysis. It concludes with the formalization of a position for competent authority negotiations.

In the **negotiations stage** (for bilateral and multilateral APAs only), the CRA engages in government-to-government negotiations with the corresponding foreign tax administration to establish an agreement on the approach and transfer pricing methodology to be used for the APA term. This can often require more analysis, research, and fact-finding to help resolve differences between the CRA's and a foreign tax administration's transfer pricing positions.

The **post-negotiations stage** pertains to the documentation and signing of a bilateral/ multilateral understanding between the CRA and a foreign tax administration, and similarly the signing of a corresponding domestic APA between the CRA and the Canadian taxpayer. Depending on the complexity of the transfer pricing methodology agreed to during negotiations, as well as the other examples listed below, the time needed to finalize an APA can vary from case to case.

Focusing on the 13 bilateral APAs closed in 2024, it took an average of 18.9 months to complete the due diligence stage. An additional 14.3 months were needed for negotiations with the corresponding foreign tax administration. And finally, 7.6 months were needed to draft and finalize the bilateral APA agreements. Overall, for cases completed in 2024, it took an average of 40.8 months to move from acceptance to

completion. The sum of the completion times for the due diligence, negotiations, and post-negotiations stages does not represent the active time within the control of the CRA that is spent to complete an APA. That is because the statistics for completion times include delays beyond the control of the CRA. As an example, cases may have been put on hold while the CRA awaited additional information, the taxpayer reconsidered the APA application, or the CRA awaited position papers from the other tax administrations before starting negotiations.

Table 2: Completion Times

Period	Type	Number of Cases	Due Diligence (Months)	Negotiations (Months)	Post-Negotiations (Months)	Average Time: Acceptance to Completion (Months)	Median Time: Acceptance to Completion (Months)
2024	Bilateral/Multilateral	13	18.9	14.3	7.6	40.8	40.8
2023	Bilateral/Multilateral	23	17.3	11.6	10.0	38.9	41.6
2022	Bilateral/Multilateral	8	16.5	10.3	10.3	37.0	33.8
2021	Bilateral/Multilateral	8	25.0	16.2	8.2	49.4	48.0
2020	Bilateral/Multilateral	13	17.8	9.2	9.9	36.9	34.4
Weighted Average		**65**	**18.6**	**12.1**	**9.3**	**39.9**	**39.8**
2024	Unilateral	3	14.3	18.8	3.7	36.8	24.2
2023	Unilateral	0	0	0	0	0	0
2022	Unilateral	2	14.2	29.2	29.2	72.7	72.7
2021	Unilateral	1	0.2	0	0.0	0.2	0.2
2020	Unilateral	2	15.3	0	7.6	22.9	22.9
Weighted Average		**8**	**12.8**	**14.7**	**10.6**	**38.0**	**33.0**

Categories of transactions

The categories of intercompany transactions can broadly be classified into four groups, the transfer of tangible property, the transfer of rights associated with intangible property, intra-group services and financing. The greatest percentage of APAs continues to be for the cross-border transfer of tangible property. As of December 31, 2024, the breakdown of APAs in progress was:

- 53.5% for transfers of tangible property;
- 18.8% for intangible property; and
- 22.8% for intra-group services;
- 5.0% for financing arrangements.

Table 3: Transaction Type

	Completed	% of total	In progress	% of total	Total	% of total
Tangible Property	7	43.7 %	54	53.5%	56	47.9%
Intangible Property	5	31.2%	19	18.8%	27	23.1%
Intra-Group Services	3	18.8%	23	22.8%	28	24.9%
Financing	1	6.3%	5	5.0%	6	5.1%
Total	**16**	**100.0%**	**101**	**100.0%**	**117**	**100.0%**

Participation by industrial sector

The CRA's APA program covers a diverse array of industrial sectors. In 2024, more than half of open APA cases involved taxpayers with operations in the following sectors: automobile and other transportation equipment; chemical and allied industries; computer and electronics; construction equipment and materials; food and beverage; health; retail trade; technical, scientific and professional services; and wholesale trade.

Other sectors covered include aerospace; arts and entertainment; agricultural; clothing and textiles; e-commerce; finance and insurance; information and publishing services; machinery; metals and minerals; petroleum; transportation and warehousing services; utilities and finally wood and paper.

Participation by foreign jurisdiction

The CRA is currently engaged in bilateral or multilateral APA processes involving taxpayers from 23 different jurisdictions: Austria, Belgium, China, Denmark, France, Germany, Hong Kong, India, Ireland, Israel, Italy, Japan, Korea, Luxemburg, Malaysia, Mexico, Netherlands, Puerto Rico, Singapore, Sweden, Switzerland, the United Kingdom and the United States. The breakdown of bilateral and multilateral APAs by country continues to reflect the significant flow of goods and services exchanged between Canada and the United States, representing 52.5% of APA cases.

CONCLUSION

Since its inception in 1990, the APA program has become a key compliance tool for the CRA, while fostering a collaborative and co-operative relationship between taxpayers and other tax administrations and offering a vehicle to improve tax certainty. It demonstrates that communication, transparency and compromise permit mutually agreeable resolution of complex transfer pricing issues on a proactive basis. The program provides an opportunity for taxpayers to openly discuss the challenges they face in trying to comply with the tax laws of multiple jurisdictions. Prospective tax certainty provided through the program helps to reduce barriers to trade and contributes to the free flow of capital.

HOW TO CONTACT THE CASD

If you have comments or questions about this report or the services offered by the Competent Authority Services Division, please contact the division:

- by phone: consult the CASD webpage for CASD managers' phone numbers;
- by email: CPMAPAPAG@cra-arc.gc.ca (do not send confidential information)
- by post or courier:

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