

Around the World

Canada

Canada's APA Program

The Canada Revenue Agency has experienced “an unprecedented interest” in the Advance Pricing Arrangement (APA) program over the past several months, a Canadian official told BNA Tax Management Oct. 13.

Responding to criticism that new requirements for submitting APAs are preventing the CRA from accepting difficult cases, Lucie Bergevin, head of the CRA's International and Large Business Directorate, noted current resource constraints at the Agency. She said the CRA “will continue to act responsibly by implementing operational efficiencies, wherever possible, and by balancing APA intake in accordance with existing budget realities.”

Bergevin also said issues such as business restructuring are better addressed through the CRA's audit compliance program. APAs, she said, “are best suited for recurring transactions that will continue into the future with little or no change.”

According to Bergevin, decisions relating to APA intake will necessarily take into consideration that the Mutual Agreement Procedure program is a mandatory service provided under the authority of Canada's income tax conventions, whereas the APA program is a discretionary service for taxpayers who seek a cooperative relationship with the CRA.

The CRA's due diligence requirements for submitting APAs have come under fire from practitioners who blame the new requirements for the CRA's reluctance to accept complex cases—a result they said is inconsistent with the program's core purpose (*20 Transfer Pricing Report* 435, 10/6/11).

Flexibility Urged. Along with limited resources, the agency faces other challenges, including aggressive positions from some taxpayers, Bergevin said.

“Among applicants to the APA program, there are some who utilize more aggressive transfer pricing policies and are sometimes unwilling to compromise on their position,” the official said. “These positions often address complex issues involving critical assumptions relating to the characterization of transactions or the existence of intangibles.” To tackle these issues, Bergevin said the CRA encourages applicants “to retain flexibility and a willingness to consider alternative positions; in our view, these attitudes reflect the spirit of cooperation that is key to a successful APA program.”

Bergevin added that the APA program remains a viable option to a number of taxpayers. “There are a variety of factors that influence the decision by taxpayers to pursue APAs, including the desire for tax certainty, the increasingly complex nature of transactions, changes to the regulatory environment and the safe

harbor that APAs provide in terms of transfer pricing penalty protection,” she said.

Business Restructuring. Practitioners have argued that excluding business restructuring cases from the APA program conflicts not only with the OECD's recent guidance on those cases, but also with the overall policy direction of the OECD's Forum on Tax Administration.

Bergevin, however, said that “specific issues such as business restructuring—which require confirmation of detailed cost information or transfers of functions, risks, assets, and intangibles—are better addressed through our audit compliance program.” She added that the CRA's position on business restructuring and its rationale “have been communicated consistently to affected taxpayers in recent months.”

Overall, Bergevin said, expanding the CRA's due diligence initiatives at the application stage of the APA process “provides taxpayers with an opportunity to demonstrate their willingness to provide information on a timely basis and provides the CRA with the opportunity to assess taxpayers' willingness to cooperate throughout the APA process.”

She added, “We continue to review the APA program, including the acceptance criteria.”

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