



Canada Customs
and Revenue Agency

Agence des douanes
et du revenu du Canada

CRA MAP PROGRAM REPORT

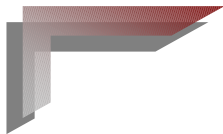
2001 - 2004



Competent Authority Services Division
International Tax Directorate
Compliance Programs Branch

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Executive Summary

This is the first report issued by the CRA on its Mutual Agreement Procedure (MAP) Program. The report provides a summary of the MAP Program for the period 2001 through to 2004.

The report describes the purpose of the MAP Program, its history, and current events that are shaping its future. A great deal of emphasis has also been placed on providing statistics in order to make the MAP Program more transparent as well as to provide some insight as to the types of issues addressed by the CRA and its treaty partners.

The CRA encourages all taxpayers subject to double taxation or taxation not in accordance with a convention to consider whether the MAP Program is an appropriate choice. For more information, please consult Information Circular 71-17R4 *Requests for Competent Authority Consideration Under Mutual Agreement Procedures in Income Tax Conventions* (<http://www.cra-arc.gc.ca/E/pub/tp/ic71-17r4/README.html>) or contact one of the Competent Authority Services Division (CASD) managers.

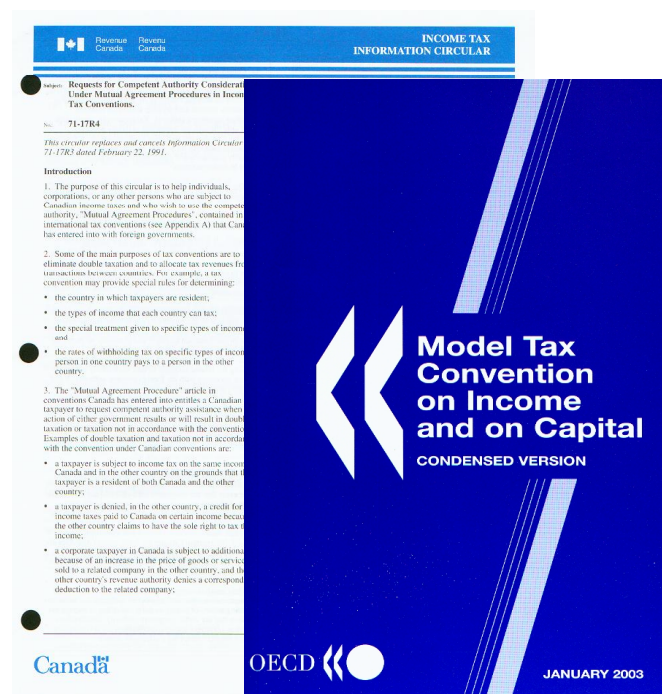
Introduction

The MAP Program is a mandatory program of the CRA that assists taxpayers in resolving cases of double taxation or taxation not in accordance with a convention. In order to be successful, the MAP process requires cooperation from taxpayers to achieve the goal of resolving these cases.

What is the Mutual Agreement Procedure?

The Organization for Economic Co-operation and Development (OECD) *Model Tax Convention on Income and On Capital* recommends the inclusion of a Mutual Agreement Procedure article in bilateral tax conventions. When this article is present, residents in either country may request assistance to resolve a particular taxation issue covered by a convention. In Canada, the delegation of authority for endeavouring to resolve a tax dispute under a tax convention is passed down from the Minister of National Revenue to senior officials within the CRA. These people are referred to as the Competent Authority. A similar delegation usually takes place in our treaty partner countries.

Further guidance from the CRA on MAP may be found in Information Circular 71-17R4 *Requests for Competent Authority Consideration Under Mutual Agreement Procedures in Income Tax Conventions*. (<http://www.cra-arc.gc.ca/E/pub/tp/ic71-17r4/README.html>)



How is a MAP resolution achieved?

- ▶ A Taxpayer seeking a MAP resolution is required to formally request assistance from the Competent Authority of the country in which the taxpayer is resident.
- ▶ CRA issues an acknowledgement letter to the taxpayer.
- ▶ The request is then reviewed by the Competent Authority to determine whether the request is justified under the tax convention.
- ▶ If accepted, CRA issues a letter to the taxpayer and the other country's Competent Authority agreeing to pursue the case (note that some requests may be resolved without the involvement of the other country's Competent Authority).
- ▶ If rejected, CRA advises the taxpayer in writing, giving reasons.
- ▶ If the request results from a Canadian-initiated adjustment, the Canadian Competent Authority ensures that it has the necessary facts (from both the taxpayer and the CRA tax services office (TSO) that generated the adjustment) in order to prepare a position paper.
- ▶ CRA informs the taxpayer of its position and sends a formal position paper to the other country's Competent Authority.
- ▶ The other country reviews the position paper, requests additional information as necessary, and informs the Canadian Competent Authority of its findings.
- ▶ Since the other Competent Authority may not concur with the position of the CRA, it may be necessary to enter into a negotiation.
- ▶ This negotiation usually resolves the taxation issue in question to the satisfaction of the two Competent Authorities.
- ▶ The Competent Authorities exchange correspondence confirming the details of the resolution.
- ▶ CRA sends the details of the resolution to the taxpayer for acceptance or rejection.
- ▶ If rejected, the CRA advises the other Competent Authority, and refers the file back to the TSO where the taxpayer may pursue other domestic recourses, if available.
- ▶ If accepted, the CRA informs the relevant TSO, providing all necessary details of the resolution.
- ▶ The TSO processes the results of the resolution.

What are the benefits of seeking relief through the MAP?

- The MAP process is the only mechanism under Canada's network of tax treaties to relieve double taxation or taxation not in accordance with a convention.
- The resolution of double taxation is a service offered by the CRA on a no-fee basis.
- After a MAP request has been accepted, the resolution process is strictly between the two tax administrations, eliminating further taxpayer time and expense.
- The MAP process requires co-operation from the taxpayer and regular communication between the tax administrations. The views of the taxpayer, as presented in the MAP request, are given due consideration.
- With the experience of having negotiated hundreds of double tax cases, the CRA is able to involve highly skilled individuals (auditors, economists and lawyers) in order to prepare a quality position paper and achieve timely case resolution.
- The MAP process provides resolution to one or more completed tax years. If the tax issue concerns transfer pricing, taxpayers may find it appropriate to simultaneously proceed with an advance pricing arrangement (APA) request to cover additional tax years filed and up to five future years.
(<http://www.cra-adrc.gc.ca/tax/nonresidents/apa-program-e.html>.)
- The number of international audits continues to increase in most tax jurisdictions. As international audits increase and the issues become more complex, the MAP process continues to be the most effective and efficient mechanism to resolve international tax disputes.

The CRA continues to actively promote the MAP Program. We expect that CRA's ongoing commitment to Program improvements, combined with steady international audit activity, will result in more taxpayers seeking assistance through the MAP process.





Who is involved in a MAP request?

The International Tax Directorate is part of the Compliance Programs Branch of the CRA. The Competent Authority Services Division (CASD) within the International Tax Directorate has responsibility for the MAP Program. The Director of the CASD is also a delegated Competent Authority for Canada on matters of double taxation and taxation not in accordance with a convention and is responsible for the administration of the MAP Program.

There are currently 45 employees within CASD, 26 of whom work in the three MAP units. Each unit has a manager and 7 employees, comprised of 5 lead analysts and 2 economists. The CASD also has a Tax Treaty Specialist who provides expertise on international tax issues to the MAP area. There is also a Chief Economist in CASD who assumes the role of the APA Coordinator and provides economic leadership and direction to the MAP area where a MAP process involves a double taxation economic issue or there is a MAP process involving an APA.

When a MAP request is received by the CRA, the file is assigned to one of the three MAP units. The request then gets assigned to a lead analyst, who has responsibility for reviewing and resolving the case. If necessary, an economist from the MAP unit may assist the lead analyst in the review process. If the issue involves an unusual or particularly complex issue, the lead analyst may seek assistance from the Division's Tax Treaty Specialist, the Income Tax Rulings Directorate, the Legislative Policy Directorate, or legal counsel from the Department of Justice.

The TSO auditor also plays a very important role in the MAP process. If the request stems from a CRA audit, the TSO auditor will provide the lead analyst with the working papers and rationale for the adjustment.

If the request involves a foreign-initiated adjustment, the TSO may assist the analyst in obtaining additional facts from the Canadian taxpayer and otherwise provide feedback as to the reasonableness of the adjustment.

Taxpayers may choose to represent themselves or authorize a representative from the accounting, economic, and/or legal communities to pursue a MAP request on their behalf.

Taxpayers or their representatives are involved to the extent that the CRA may need additional information during the MAP process, and such co-operation is usually necessary for resolution of the case.

History of the MAP Program in Canada



Some form of a MAP Program has been in existence dating back to the signing of our first tax treaty containing the MAP article. As a minimum, published guidance to taxpayers goes as far back as 1971 with the release of Information Circular 71-17. The Information Circular has been revised a number of times and we are currently operating under IC71-17R4 *Requests for Competent Authority Consideration Under Mutual Agreement Procedures in Income Tax Conventions*, dated May 12, 1995. (<http://www.cra-arc.gc.ca/E/pub/tp/ic71-17r4/README.html>)

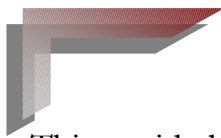
Between 1993 and 1998, the number of MAP requests in Canada grew dramatically. Unfortunately, the area within the International Tax Directorate responsible for the Competent Authority function was under-resourced and could not cope with the rising demand in both the APA and double tax caseload, and the additional function of providing headquarters assistance to TSOs on transfer pricing and double taxation issues.

In late 1998 and early 1999, the CRA hired additional analysts and economists to address the staffing shortage. Although these additional people were in place in 1999, significant training and on-the-job experience was still required.

Since 2000, a number of initiatives have been implemented that have dramatically improved the quality and timeliness of service to taxpayers:

- the introduction of case management techniques (regular internal reporting and internal deadlines) to ensure that MAP requests proceed on schedule;
- the launch of a new information system (CATS – Competent Authority Tracking System);
- new procedures to ensure enhanced communication and co-operation with taxpayers;
- ongoing efforts to improve the bilateral process with other tax administrations; and
- the reorganization within ITD of Competent Authority into two divisions: one division to provide assistance to TSOs, and the other to handle MAP requests.

To expand on the last point, in 2001 the Competent Authority area was split into two separate divisions – Competent Authority Services and International Tax Operations.



This avoided the perceived conflict that could result from the same area providing international tax assistance to the field as well as resolving double taxation cases and APAs. The move also permitted analysts in the new Competent Authority area to focus their efforts solely on resolving double tax cases and APAs.

In late 2001, due to another large increase in APA and double tax requests and the arrival of more staff, the Competent Authority Services Division added a third MAP unit.

Current State of the MAP Program

The CRA is pleased to announce that the year ended March 31, 2004, was another successful year for the Canadian MAP Program. During this period the CRA accepted 239 MAP cases and resolved 233 cases.

In support of the MAP Program CRA officials made many presentations during the fiscal year ended March 31, 2004:



Apr. 2003	– Practitioner’s Outreach Meeting – Toronto
May 2003	– Infonex Conference – Toronto
June 2003	– International Fiscal Association – Washington
Sep. 2003	– Council for International Tax Education – Toronto
Sep. 2003	– Canadian Tax Foundation – Montreal
Oct. 2003	– Atlantic Large Client Meeting – Saint John
Jan. 2004	– APFF Presentation – Montreal

The CRA was also very active in providing more public guidance on the MAP Program during the past year.

In September 2003, draft IC71-17R5 (<http://www.cca-adrc.gc.ca/tax/nonresidents/draftic-e.html>) was released for public consultation. Many practitioners and taxpayers provided valuable comments, which we are taking into consideration. We expect to release the final IC71-17R5 by March 31, 2005.


On June 18, 2004, the CRA released MAP Operational Guidance that was developed in cooperation with other members of the Pacific Association of Tax Administrators (PATA). The purpose of this document is to facilitate and support resolution of MAP cases among PATA members (Australia, Canada, Japan, and the United States) as well as to ensure consistent and timely treatment of such cases. (<http://www.cca-adrc.gc.ca/tax/nonresidents/map-e.html>)

Timelines

Where a case involves negotiations with another tax administration, every effort is made to resolve the double taxation issue as expeditiously as possible. As already mentioned Canada is a member of PATA, which has released MAP operational guidance for its members regarding the MAP process. Following are various stages and targeted timeframes, which CRA and countries that are members of PATA will try to adhere to:

Stage	Action	Target Time Frame
Initiation of MAP request by taxpayer / preparation of position paper	Acknowledgement to taxpayer and request for additional information if submission is incomplete	Within 30 days after receipt of a complete request from taxpayer
	Letter to foreign tax administration advising of the request and that CRA will be sending details of its position once the adjustments are reviewed	Within 30 days after receipt of a complete request from taxpayer
	Review of information received from field and preparation and submission of position paper to foreign tax authority	Within 6 months after receipt of a complete request from taxpayer
Evaluation by other country	Foreign tax authority's response to CRA position paper	Within 6 months from submission of a position paper
Negotiations with the other country and conclusion of a mutual agreement	Face-to-face meetings and/or exchange of correspondence or phone conversations as required to reach a mutual agreement	Within 24 months after receipt of a complete request from taxpayer





While the overall target for completion to resolve a case is twenty-four months, there are many factors beyond CRA's control, which may result in the target not being met. Factors include the cooperation and timely receipt of information from the taxpayer, the complexity of the issue, the time the other country requires to review and respond to a position, and the willingness of both tax administrations to adopt reasonable negotiating positions.

CRA has recently, for the 2003-2004 period, instituted a management tracking system to measure performance with respect to achieving the overall timeframes of issuing a position paper within six months of receipt of a complete request, and concluding an agreement within twenty-four months. The system is intended to measure, for example, the average time to issue letters, develop a position paper, negotiate a case, and conclude a case. CRA did not release data for the current fiscal year since CRA must first verify the accuracy of any bilateral statistical data prior to release, and the timing of this report did not allow for this review to take place.

Resolution of Double Taxation

The CRA strives to achieve and maintain effective dispute resolution procedures with all of its treaty partners. This requires that both tax administrations endeavour to resolve cases in an equitable and timely fashion. While existing procedures generally are adequate to totally resolve most disputes, nonetheless agreements cannot be reached on all cases.

Reasons for only partial relief being obtained include:

- where timely notification is not provided and/or a year is statute-barred or becomes statute-barred during negotiations in either jurisdiction, relief may not be possible;
- refusal of another tax administration to provide full relief of a Canadian-initiated adjustment that has been settled in Canadian Appeals;
- inability of another tax administration to vary an adjustment due to a domestic rule;
- two administrations cannot agree on the interpretation of an issue involving the treaty or a bilateral advance pricing arrangement (BAPA); and
- a foreign adjustment that is not recognized for Canadian tax purposes such as a notional charge, or a Canadian adjustment not recognized by a foreign tax administration.



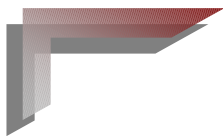
Reasons for no relief being obtained include:

- no response from another tax administration to Canada's request for a MAP;
- residency issues where the administrations cannot agree on how to apply the tie-breaker rules;
- refusal of a taxpayer to provide information requested by one or both tax administrations; and
- permanent establishment issues where the tax administrations cannot agree on what constitutes a permanent establishment.

Commencing in fiscal year 2003-2004, our improved management tracking system has allowed us to track cases where there has not been full relief from double taxation. Of the 233 cases resolved in 2004, 105 cases were categorized as negotiable, which means that discussions with another tax administration were required to resolve an issue. Of the 105 cases negotiated with other tax administrations, 3% resulted in no relief being provided (3 cases), and 5% resulted in partial relief being realized (5 cases). In summary, 92% of taxpayers who sought assistance obtained full relief from double taxation (97 cases).

Reasons for partial relief were related to statute-barred and notification problems (1 case), the inability of another tax administration to vary its adjustment due to domestic rules (2 cases), an irresolvable treaty interpretation issue (1 case), and an irresolvable disagreement over the application of a BAPA (1 case).

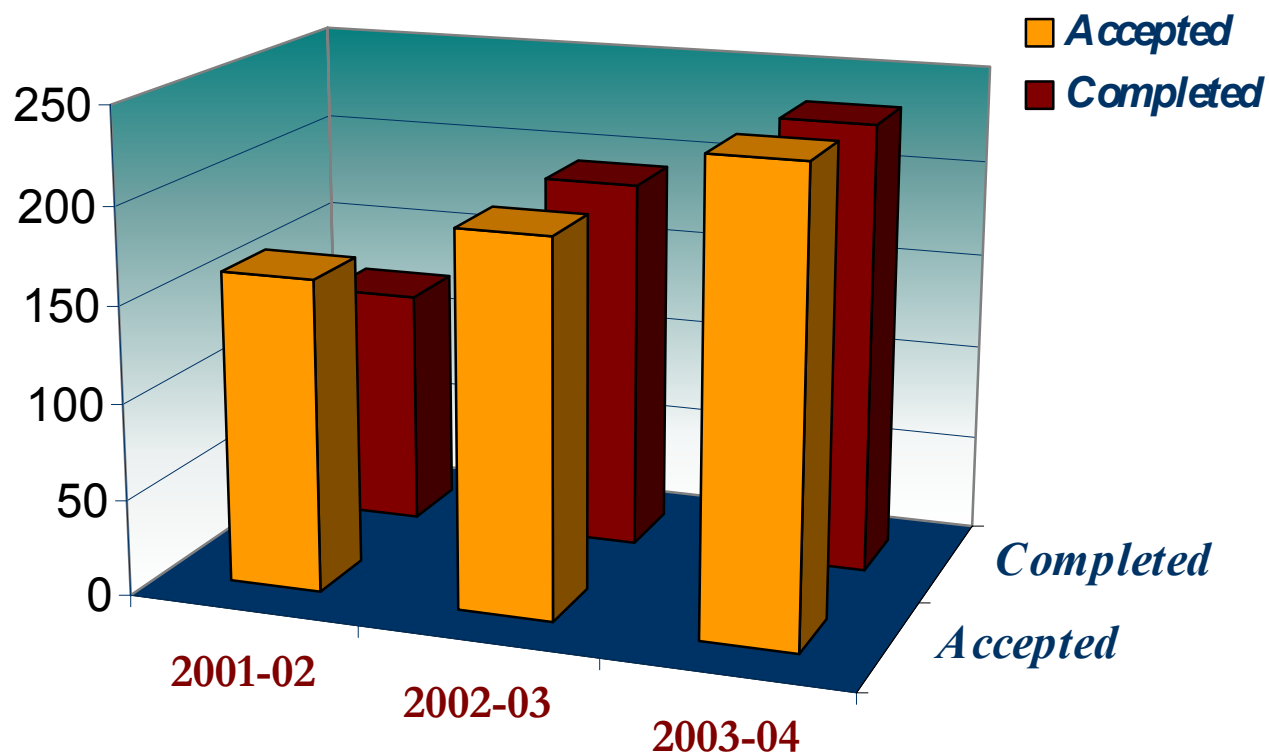
Reasons for no relief included a residency issue that could not be resolved (1 case), a foreign-initiated adjustment not recognized for Canadian tax purposes (1 case), and a case in which no response was received from the other tax administration (1 case).



Program Statistics

As shown in the following table, the CRA's MAP Program had its busiest year ever in 2003-04.

Fiscal Year	Opening Inventory	Accepted	Completed	Ending Inventory
2001-02	151	162	123	190
2002-03	190	194	193	191
2003-04	191	239	233	197
Total		595	549	



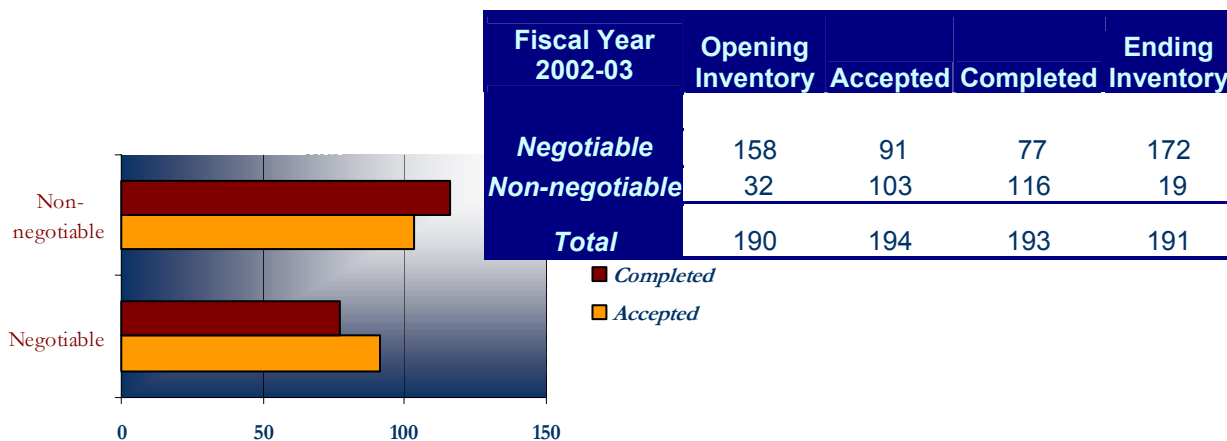
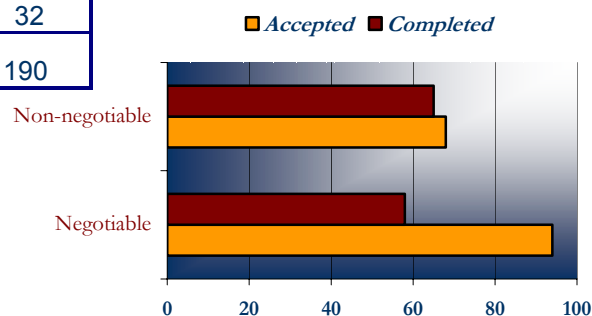
MAP by Type

The following tables show the distribution of MAP requests by type – negotiable and non-negotiable – by year for the period 2001-2004.

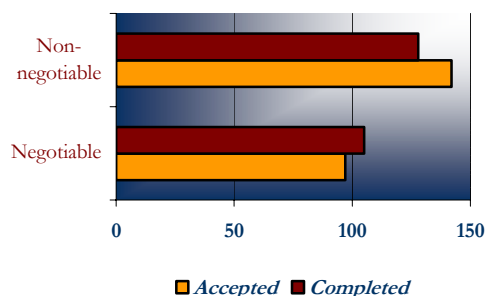
Negotiable cases involve a request requiring discussions with another tax administration in order to resolve a treaty issue.

Non-negotiable cases involve agreements and issues between Canada's Competent Authority and a taxpayer, and do not involve another tax administration.

Fiscal Year 2001-02	Opening Inventory	Accepted	Completed	Ending Inventory
Negotiable	122	94	58	158
Non-negotiable	29	68	65	32
Total	151	162	123	190



Fiscal Year 2003-04	Opening Inventory	Accepted	Completed	Ending Inventory
Negotiable	172	97	105	164
Non-negotiable	19	142	128	33
Total	191	239	233	197



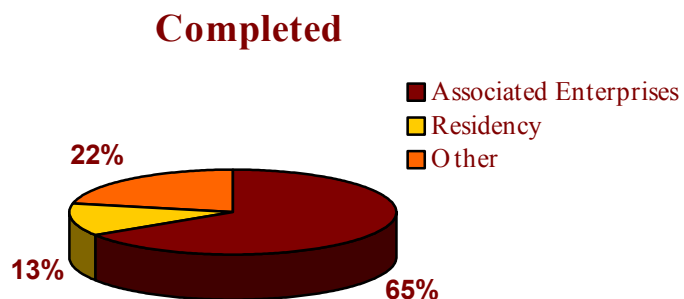
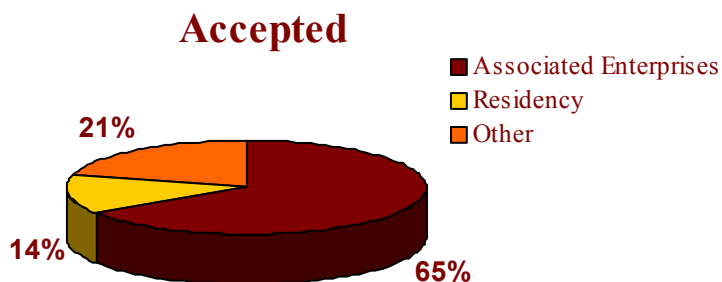
MAP Negotiable Cases by Category

For the 3 Year Period April 1, 2001, to March 31, 2004

The following table provides a breakdown by category for negotiable cases for the three-year period 2001-2004:

Fiscal Year 2001-2004	Opening Inventory	Accepted	Completed	Ending Inventory
<i>Associated Enterprises</i>	83	185	158	110
<i>Residency</i>	11	39	30	20
<i>Other</i>	28	58	52	34
<i>Total</i>	122	282	240	164

As can be seen from the above table, the majority of negotiable MAP cases involve economic double taxation between associated enterprises. The category "other" includes any request involving taxation contrary to a convention where a mutual agreement procedure is required to resolve the issue.



MAP Negotiable Completed Cases

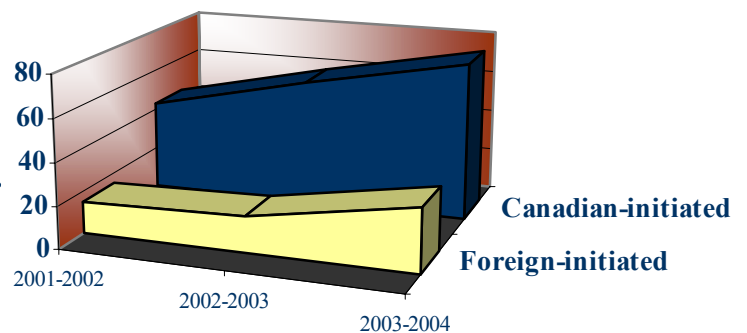
Foreign-initiated and Canadian-initiated

The following tables provide a breakdown for completed negotiable cases and also indicate whether cases were the result of a foreign-initiated or Canadian-initiated adjustment:

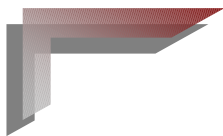
Fiscal Year 2001-2002	Completed
Canadian-initiated	43
Foreign-initiated	15
Total	58

Fiscal Year 2002-2003	Completed
Canadian-initiated	60
Foreign-initiated	17
Total	77

Fiscal Year 2003-2004	Completed
Canadian-initiated	75
Foreign-initiated	30
Total	105



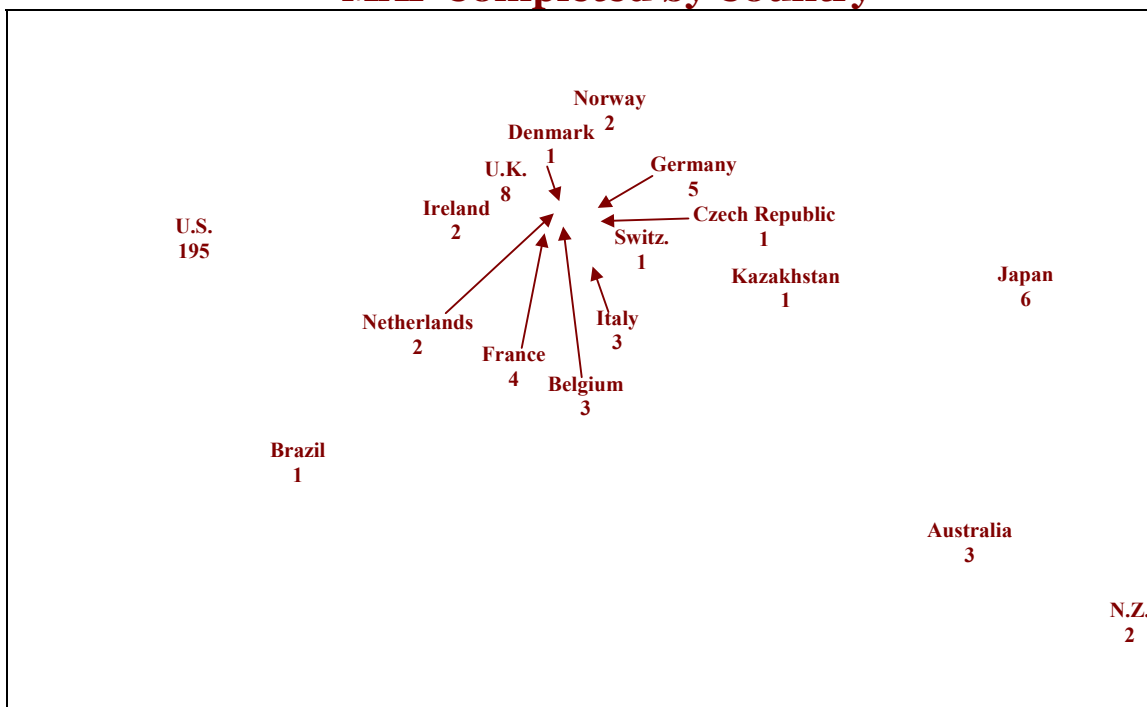
The incremental increase in cases completed for both foreign- and Canadian-initiated files from 2002 through 2004 (58, 77, and 105) is attributable to an increase in resources to handle cases and improved time case management techniques.



MAP Negotiable Completed Cases by Country

2001-2004	Completed
<i>Australia</i>	3
<i>Belgium</i>	3
<i>Brazil</i>	1
<i>Czech Republic</i>	1
<i>Denmark</i>	1
<i>France</i>	4
<i>Germany</i>	5
<i>Ireland</i>	2
<i>Italy</i>	3
<i>Japan</i>	6
<i>Kazakhstan</i>	1
<i>Netherlands</i>	2
<i>New Zealand</i>	2
<i>Norway</i>	2
<i>Switzerland</i>	1
<i>United Kingdom</i>	8
<i>United States</i>	195
<i>Total</i>	240

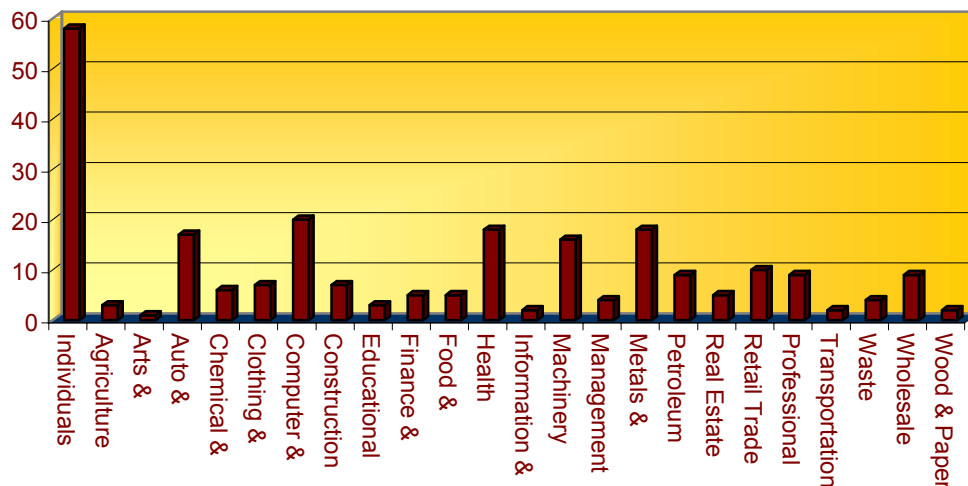
MAP Completed by Country



MAP Negotiable Completed Cases by Industry

Fiscal Year	Completed
2001-2004	
<i>Individuals</i>	58
<i>Agriculture</i>	3
<i>Arts & Entertainment</i>	1
<i>Auto & Transportation</i>	17
<i>Chemical & Allied Industries</i>	6
<i>Clothing & Textile</i>	7
<i>Computer & Electronics</i>	20
<i>Construction</i>	7
<i>Educational Services</i>	3
<i>Finance & Insurance</i>	5
<i>Food & Beverage</i>	5
<i>Health</i>	18
<i>Information & Publishing</i>	2
<i>Machinery</i>	16
<i>Management & Administration</i>	4
<i>Metals & Minerals</i>	18
<i>Petroleum</i>	9
<i>Real Estate</i>	5
<i>Retail Trade</i>	10
<i>Professional Services</i>	9
<i>Transportation & Warehousing</i>	2
<i>Waste Management</i>	4
<i>Wholesale</i>	9
<i>Wood & Paper</i>	2
Total	240

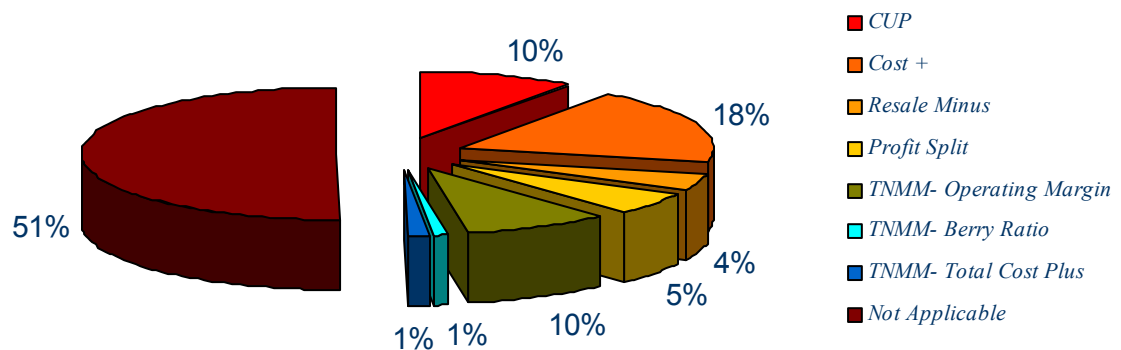
The requests from individuals generally involve issues involving taxation contrary to a convention, which may require a negotiation under a mutual agreement procedure.



MAP Negotiable Completed Cases by Transfer Pricing Method

Fiscal Year 2001-2004	Completed
<i>CUP</i>	24
<i>Cost +</i>	44
<i>Resale Minus</i>	10
<i>Profit Split</i>	13
<i>TNMM- Operating Margin</i>	23
<i>TNMM- Berry Ratio</i>	2
<i>TNMM- Total Cost Plus</i>	3
<i>Not Applicable</i>	121
Total	240

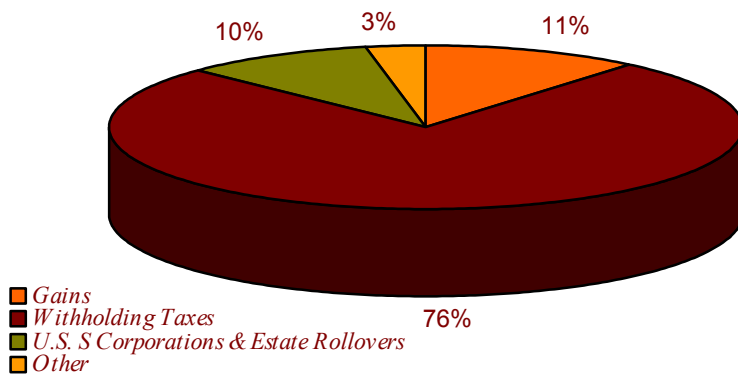
A transfer pricing methodology is generally not applicable when the case involves an issue of taxation contrary to a convention or an issue involves an allocation of costs between related parties.



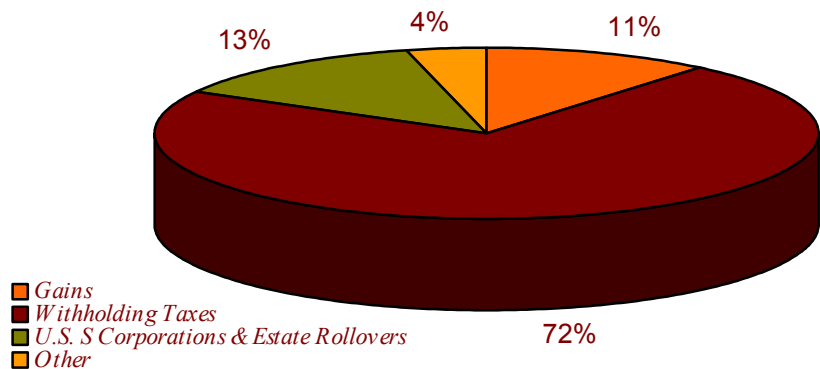
MAP Non-Negotiable Cases by Category

Fiscal Year				
2001-2004	Opening Inventory	Accepted	Completed	Ending Inventory
<i>Gains</i>	7	35	34	8
<i>Withholding Taxes</i>	4	239	223	20
<i>U.S. S Corporations & Estate Rollovers</i>	16	29	40	5
<i>Other</i>	2	10	12	0
<i>Total</i>	29	313	309	33

Accepted



Completed



The category "gains" includes deferred gains agreements for all treaties and the application of the transitional rule contained in the Canada-U.S. treaty.

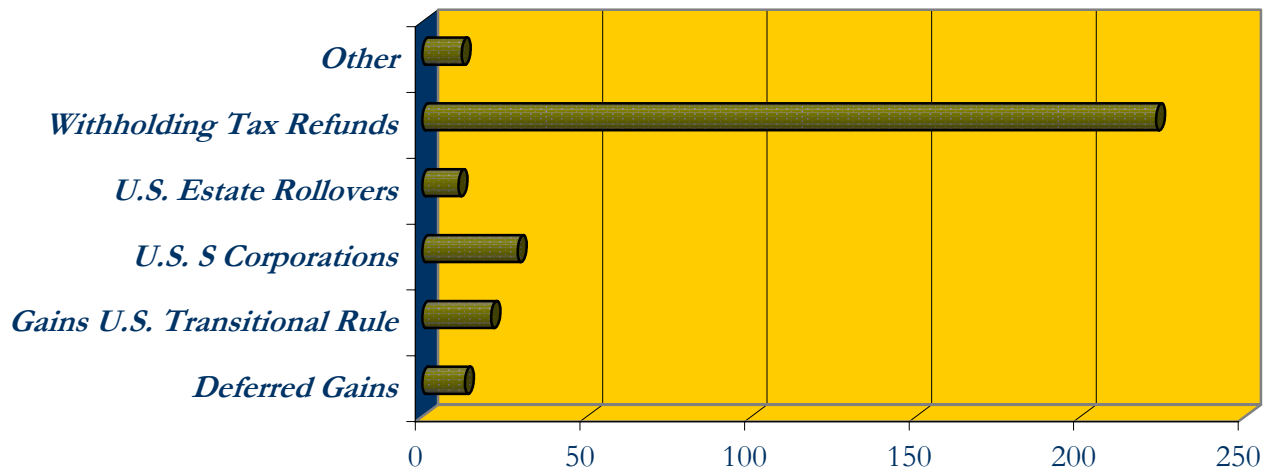
The category "withholding taxes" generally involves the refund of withholding taxes that have been withheld in excess of a particular treaty rate.

The "other" category generally involves assistance and advice given to taxpayers and other areas of the CRA.

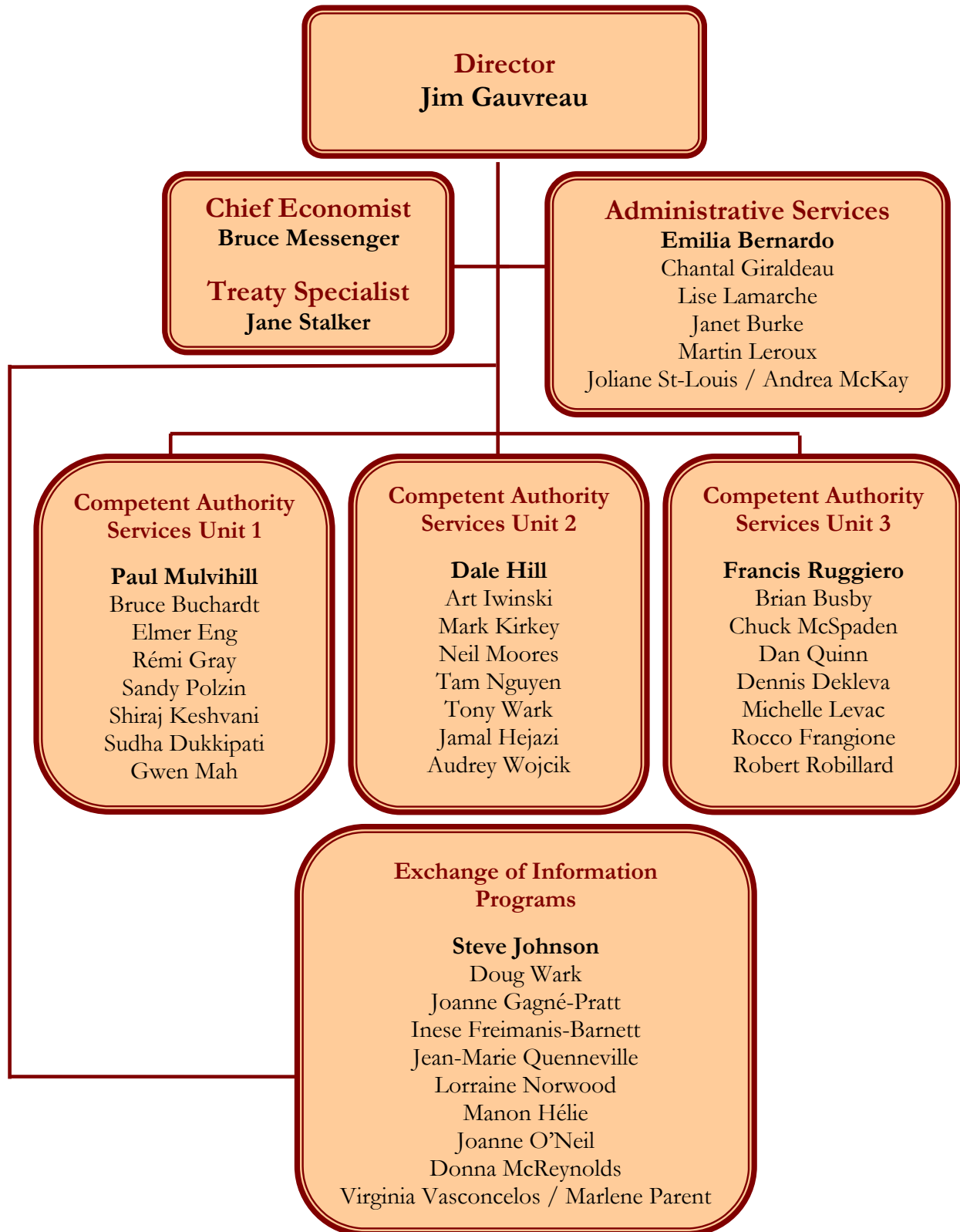
MAP Non-Negotiable Completed Cases by Category

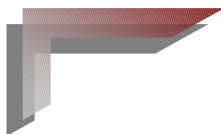
Fiscal Year 2001-2004	Completed
<i>Deferred Gains</i>	13
<i>Gains U.S. Transitional Rule</i>	21
<i>U.S. S Corporations</i>	29
<i>U.S. Estate Rollovers</i>	11
<i>Withholding Tax Refunds</i>	223
<i>Other</i>	12
Total	309

The above chart identifies more clearly the number of cases involving agreements where gains, U.S. S corporations, and U.S. estate rollover requests are involved.



Competent Authority Services Division Organizational Chart





MAP/APA Contacts

Competent Authority Services Division

Director	
Gauvreau, Jim	941-7812
Chief Economist	
Messenger, Bruce	941-7801
Treaty Specialist	
Stalker, Jane	941-2778
Special Projects Officer	
Bernardo, Emilia	957-7281
Admin. Assistant	
Giraldeau, Chantal	941-2768
Lamarche, Lise	941-2655
Burke, Janet	941-2687
Leroux, Martin	941-2778
St-Louis, Joliane	948-7718
McKay, Andrea	948-7719

Competent Authority Services - Unit I


Manager	
Mulvihill, Paul	957-8859
Buchardt, Bruce	941-2844
Dukkipati, Sudha	941-2794
Eng, Elmer	941-2785
Gray, Rémi	941-2775
Keshvani, Shiraj	941-2793
Mah, Gwen	948-3429
Polzin, Sandy	941-2801

Competent Authority Services - Unit II

Manager	
Hill, Dale	941-7813
Hejazi, Jamal	941-2836
Iwinski, Art	941-2843
Kirkey, Mark	941-2842
Moore, Neil	941-2840
Nguyen, Tam	941-2829
Wark, Tony	941-2841
Wojcik, Audrey	941-2803

Competent Authority Services - Unit III

Manager	
Ruggiero, Francis	941-2638
Busby, Brian	941-2838
Dekleva, Dennis	941-2789
Frangione, Rocco	952-3495
Levac, Michelle	941-2802
McSpaden, Chuck	941-2777
Quinn, Dan	941-2708
Robillard, Robert	957-1610



If you have any comments, feedback or questions about this report or the services of the Competent Authority Services Division, telephone (613) 941-2768, email us at MAP-APA.PAA-APP@ccra-adrc.gc.ca, or write to us at the following address:

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