



Canada Revenue
Agency

Agence du revenu
du Canada

MUTUAL AGREEMENT PROCEDURE

PROGRAM REPORT 2012-2013

Competent Authority Services Division
International and Large Business Directorate
Compliance Programs Branch
Canada Revenue Agency



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Executive Summary

This is the tenth annual report issued by the Canada Revenue Agency (CRA) on its Mutual Agreement Procedure (MAP) Program. The report provides a summary of the MAP Program for the period from April 1, 2012 to March 31, 2013.

The report describes the purpose, history, and the current events that are shaping the future of the MAP Program. Emphasis is placed on providing statistical information 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 taxpayers subject to double taxation or taxation not in accordance with an income tax convention to consider the MAP Program.

For more information, please consult the current version of Information Circular 71-17 [Guidance on Competent Authority Assistance Under Canada's Tax Conventions](#) or contact a MAP manager in the Competent Authority Services Division (CASD). Please refer to page 18 for a list of the MAP managers and their telephone numbers.



Introduction

The MAP Program is a mandatory service program provided by the CRA to assist taxpayers with the resolution of cases of double taxation or taxation not in accordance with the provisions of a tax convention. The MAP process requires co-operation from taxpayers to achieve the goal of resolving these cases.

What is the Mutual Agreement Procedure?

The Organisation for Economic Co-operation and Development (OECD) *Model Tax Convention on Income and on Capital* recommends that bilateral tax conventions include a MAP article as a form of dispute resolution mechanism. Pursuant to this article, residents in either country may request assistance to resolve a particular taxation issue covered by a convention. In Canada, the Minister of National Revenue authorizes senior officials within the CRA to endeavour on his behalf to resolve a tax dispute under a tax convention. These senior officials are referred to as the Competent Authority. A similar authorization usually takes place in our treaty partner countries.

Further guidance from the CRA on the MAP may be found in the current version of Information Circular 71-17 [Guidance on Competent Authority Assistance Under Canada's Tax Conventions](#).



How does the Competent Authority achieve resolution through the MAP?

- 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.
- Canada's Competent Authority issues an acknowledgement letter to the taxpayer.
- The request is then reviewed to determine whether the request is justified under the applicable income tax convention.
- If the request is rejected, the Canadian Competent Authority advises the taxpayer and the other Competent Authority in writing, citing reasons. The file is referred back to the tax services office (TSO) where the taxpayer may pursue other domestic recourses, if available.
- If the request is accepted, the Canadian Competent Authority issues a letter to the taxpayer and the other country's Competent Authority agreeing to pursue the case. (Note: Some requests may be resolved without the involvement of the other country's Competent Authority).
- If the request results from a Canadian-initiated adjustment, the Canadian Competent Authority ensures that the necessary facts are available (from both the taxpayer and the TSO that generated the adjustment) in order to prepare a position paper.
- The Canadian Competent Authority informs the taxpayer of its position and sends a formal position paper to the other country's Competent Authority.
- The other country's Competent Authority reviews the position paper, requests additional information, if necessary, and informs the Canadian Competent Authority of its findings.
- When the other Competent Authority does not concur with the position of the Canadian Competent Authority, 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 to confirm the details of the resolution.
- CRA sends the details of the resolution to the taxpayer for acceptance or rejection.
- If the taxpayer accepts, the Canadian Competent Authority informs the relevant TSO (including Appeals, if a Notice of Objection is filed), providing all necessary details of the resolution.
- The TSO processes the results of the resolution.
- If the taxpayer rejects, the taxpayer may pursue other domestic recourses, if available.



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.
- 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.
- After a MAP request has been accepted and all the facts reviewed, the resolution process is strictly between the two tax administrations, eliminating further taxpayer time and expense.
- With the experience of having negotiated hundreds of double tax cases, the CRA's highly skilled staff (accountants or financial analysts, economists and lawyers) is able to prepare a quality position paper and achieve timely case resolution.
- The MAP process provides resolution to one or more audited 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 unfiled tax years (generally up to five future years). Further guidance from the CRA on APAs may be found in the current version of Information Circular 94-4 [*International Transfer Pricing: Advance Pricing Arrangements*](#).
- 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 the improvement of the MAP Program, combined with steadily increasing international audit activity, will result in more taxpayers seeking assistance through the MAP process.



Who is involved in the MAP?

The Competent Authority Services Division (CASD), which has responsibility for the MAP Program, is part of the International and Large Business Directorate (ILBD). ILBD is part of the Compliance Programs Branch of the CRA. The Director of CASD is an authorized Competent Authority for Canada who is responsible for matters of double taxation and taxation not in accordance with a convention with respect to specific taxpayers as well as for the overall administration of the MAP Program.

As of March 31, 2013, CASD consisted of fifty six (56) employees, including one (1) director, seven (7) managers, a Chief Economist, a Tax Treaty Specialist who provides special expertise on international issues, and forty six (46) staff. Of the staff, seventeen (17) were assigned to four Mutual Agreement Procedure – Advance Pricing Arrangement (MAP – APA) Sections with primary responsibility for transfer pricing cases, four (4) were assigned to the Mutual Agreement Procedure – Technical Cases Section with primary responsibility for competent authority matters other than transfer pricing, eleven (11) were assigned to the Economic Analysis Section responsible for economic analysis in support of APA cases, eleven (11) were assigned to the Exchange of Information Services, and three (3) were responsible for providing administrative support.

When the CRA receives a MAP request from a taxpayer, the request is entered into our internal tracking system and assigned to one of the four MAP – APA Sections or to the MAP – Technical Cases Section. The MAP case is then assigned to a lead analyst, who is responsible for the review, analysis, negotiation and resolution of the MAP case. Where necessary, the lead analyst may request assistance from the Tax Treaty Specialist, economists, Income Tax Rulings Directorate, Legislative Policy Directorate, or legal counsel from the Department of Justice.

The international auditors at the TSOs also play an important role in the MAP process. Where the MAP case arises from Canadian-initiated audit adjustments, international auditors provide the lead analyst with background information, working papers and the rationale for audit adjustments. Where the MAP case arises from foreign-initiated audit adjustments, the international auditors assist the lead analyst by reviewing these adjustments and providing the analyst with additional information or feedback.

Taxpayers may choose to represent themselves or authorize a representative from the accounting, economic, or legal communities to pursue a MAP request on their behalf. Taxpayers, or their representatives, are involved to the extent that the CRA may request additional information during the MAP process, and such co-operation is usually necessary for resolution of the case.



A Brief History of the MAP Program in Canada

The MAP Program has been in existence dating back to Canada's entry into the first income tax treaty containing the MAP article. Published guidance to taxpayers dates to 1971 with the release of Information Circular 71-17. This information circular has been revised several times and CRA currently operates under IC71-17R5 [Guidance on Competent Authority Assistance Under Canada's Tax Conventions](#), dated January 1, 2005.

The number of MAP requests in Canada has grown dramatically. The Competent Authority Services Division (CASD) has continued reorganizing and implementing a number of initiatives to improve the quality and timeliness of services to taxpayers, including the introduction of case management techniques to ensure that MAP requests proceed on schedule, and ongoing efforts to improve the bilateral process with other tax administrations.

CASD added a fourth MAP – APA Section during the fiscal year 2009-2010 and hired additional economists to address the steady growing MAP and APA caseloads and to respond to the legislative time constraints introduced in December 2008 through the arbitration provision added to the Canada – United States Income Tax Convention.

Current State of the MAP Program in Canada

The Fifth Protocol to the Canada – United States Income Tax Convention (1980), signed on September 21, 2007 by the Minister of Finance on behalf of Canada and by the Secretary of the Treasury on behalf of the United States, was brought into force following ratification by the Parliament of Canada on December 14, 2007 and by the United States Senate on September 23, 2008.

One of the significant benefits to taxpayers in the Fifth Protocol is the introduction of mandatory arbitration for residents of Canada or the United States who face potential double taxation that is not resolved by negotiation between the Canadian and United States competent authorities. For certain issues that the two competent authorities cannot resolve, taxpayers can compel them to refer their dispute to binding arbitration. This procedure is entirely elective for the taxpayer: the new rule is described as "mandatory arbitration" because it is mandatory for the competent authorities. The competent authorities for Canada and United States developed procedures and administrative practices for the implementation of mandatory arbitration. [Memorandum of Understanding Between The Competent Authorities of Canada And The United States of America and Arbitration Board Operating Guidelines – Canada – United States](#)

CASD officials also made several presentations during the fiscal year ended March 31, 2013.

Timeline - General



Where a case involves negotiations with another tax administration, every effort is made to resolve the double taxation issue as expeditiously as possible.

The following table contains various stages and targeted timeframes, to which CRA endeavours to, adhere:

<i>Stage</i>	<i>Action</i>	<i>Target Time Frame</i>
Initiation of MAP request by taxpayer and preparation of position paper for foreign tax administration	Acknowledgement to taxpayer and request for additional information if submission is incomplete	Within 30 days after receipt of a complete MAP request from taxpayer
	Letter to foreign tax administration advising of the request and that CRA will send details of its position once the adjustments have been reviewed	Within 30 days after receipt of a complete MAP request from taxpayer
	Review of information received from field and preparation and submission of position paper to other competent authority	Within 6 months after receipt of a complete MAP request from taxpayer
Evaluation by other competent authority	Other competent authority's response to CRA position paper	Within 6 months from submission of a position paper
Negotiations with other competent authority 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 MAP request from taxpayer



Timeline - Targets

<i>Stage</i>	<i>Target Time</i>
Initiation/ Acceptance	1 month
Preparation of position paper	5 months
Foreign tax administration evaluation	6 months
Negotiation/ resolution of MAP	12 months

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 co-operation and timely receipt of information from the taxpayer, the complexity of the issue, the time that the other competent authority requires to review and respond to a position paper, and the willingness of both competent authorities to adopt reasonable negotiating positions.

The CRA has 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. This report includes statistics on the average time to complete negotiable cases (please refer to the following page).

In addition, the CRA enhanced its management system to monitor timelines introduced by the binding arbitration process under the Canada – United States Income Tax Convention.

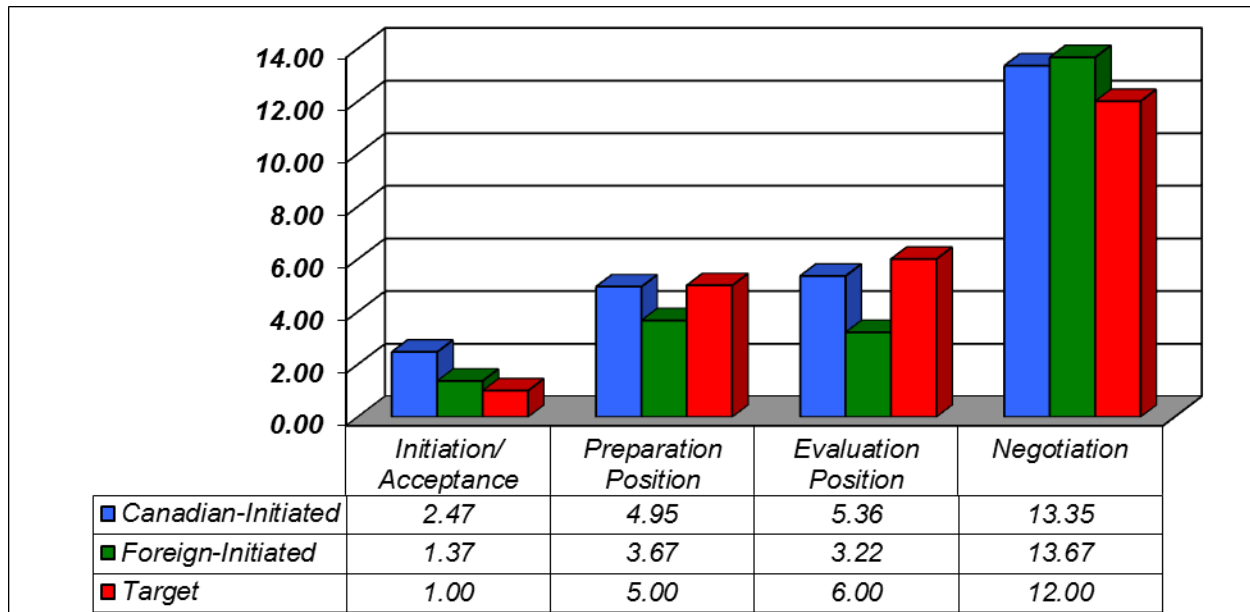


Timeline – Negotiable MAP Case Completions

The average times for completion of MAP negotiable cases in the last five fiscal years (in months):

Fiscal Year	2008 – 09	2009 –10	2010 – 11	2011 – 12	2012 –13
Canadian-initiated	28.14	22.73	32.16	31.46	26.13
Foreign-initiated	37.71	30.53	20.39	20.01	21.93
Target	24.00	24.00	24.00	24.00	24.00

The chart below shows the average time (in months) to complete at various stages for the 2012-2013 fiscal year:





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 are, in general, adequate to provide full relief from double taxation in most disputes, nonetheless agreements cannot be reached on all cases.

Some examples which may result in partial relief or no relief of double taxation:

- where timely notification is not provided and/or a taxation 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 through the Canadian domestic tax appeals process;
- inability of another tax administration to vary an adjustment due to its domestic taxation rules;
- the Canadian and foreign administrations cannot agree on the interpretation of an issue involving the treaty or a bilateral advance pricing arrangement (BAPA);
- 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;
- no response from another tax administration to Canada's request for a MAP;
- residency issues where the Canadian and foreign 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.



MAP Result

Our management tracking system allows us to track cases where there has not been full relief from double taxation. Of the 2,091 MAP cases that were resolved in fiscal year 2012-2013, 114 cases were categorized as negotiable, which means that bilateral negotiations with another tax administration were required to resolve an issue. Of the 114 cases negotiated with other tax administrations, 92% (105 cases) of taxpayers who sought assistance obtained full relief from double taxation, 2% (2 cases) obtained partial relief and 6% (7 cases) did not obtain relief.

Reasons for partial relief or no relief from double taxation for MAP cases were:

Case with Partial Relief	Case with No Relief	Reasons
0	1	Request for competent authority assistance filed outside the time limitation provisions in a specific tax convention.
1	0	Request for refund of withholding tax filed outside the time limitation provisions in a specific tax convention and the Canadian Income Tax Act.
1	1	Taxpayer concurred with the Appeals Branch decision and the other competent authority not able to grant the correlative relief.
0	2	Issue of the request not covered under a specific income tax convention.
0	2	The taxpayer was uncooperative or unable in providing the required information to the competent authority.
0	1	Request for competent authority assistance was not addressed to the competent authority of which the person is a resident.
2	7	Total



Program Statistics

The tables below provide the number of the cases accepted and completed for the fiscal years 2008-2009 through 2012–2013.

MAP Cases Accepted–Completed–Outstanding

<i>Fiscal Year</i>	<i>Beginning Inventory</i>	<i>Accepted</i>	<i>Completed</i>	<i>Ending Inventory</i>
2012 – 2013	312	2,094	2,091	315
2011 – 2012	254	968(*)	910	312
2010 – 2011	243	751	740	254
2009 – 2010	234	429	420	243
2008 – 2009	193	347	306	234

(*)The number of accepted cases was restated to reflect a cancellation of a case opened by error in 2011-2012 fiscal year.

MAP CASES by Type

The following tables reflect the acceptance and completion of MAP requests by type – negotiable and non-negotiable – and by year for the period 2008–2013.

Negotiable cases require bilateral negotiations with another tax administration to resolve double taxation or taxation not in accordance with an income tax convention.

Non-negotiable cases are resolved by an agreement between Canada’s Competent Authority and specific taxpayers, and do not involve another tax administration.

Acceptance and Completion of MAP Cases: Negotiable and Non-Negotiable

<i>Fiscal Year</i>	<i>Negotiable Accepted</i>	<i>Negotiable Completed</i>	<i>Non-negotiable Accepted</i>	<i>Non-negotiable Completed</i>	<i>Total Accepted</i>	<i>Total Completed</i>
2011–2012	127	114	1,967	1,977	2,094	2,091
2011–2012	87	97	881(*)	813	968	910
2010–2011	102	95	649	645	751	740
2009–2010	100	78	333	342	433	420
2008–2009	130	83	217	223	347	306

(*) The number of cases accepted related to “non-negotiable” was restated to reflect a cancellation of a case opened by error in 2011-2012 fiscal year.



Negotiable MAP Cases by Category

The following tables provide a breakdown by category for negotiable cases for the fiscal year 2012–2013:

<i>Category Fiscal Year 2012–2013</i>	<i>Opening Inventory</i>	<i>Accepted</i>	<i>Completed</i>	<i>Ending Inventory</i>
<i>Associated Enterprises</i>	200	107	98	209
<i>Residency and Permanent Establishment</i>	14	15	10	19
<i>Other</i>	8	5	6	7
<i>Total</i>	222	127	114	235

As reflected in the tables, the majority of negotiable MAP cases involve the resolution of economic double taxation between associated enterprises. The category "Other" includes any request involving juridical double taxation or taxation contrary to a convention where the mutual agreement procedure is required to resolve the issue, such as the taxation of pension and annuities or other income.

Negotiable MAP Cases Completions: Foreign-initiated and Canadian-initiated

The following tables provide a breakdown of completion rates for cases resulting from foreign-initiated or Canadian-initiated audit adjustments:

<i>Fiscal Year</i>	<i>Foreign – initiated Audit Adjustments</i>	<i>Canadian – initiated Audit Adjustments</i>	<i>Total</i>
<i>2012 – 2013</i>	9	105	114
<i>2011 – 2012</i>	8	89	97
<i>2010 – 2011</i>	11	84	95
<i>2009 – 2010</i>	15	63	78
<i>2008 – 2009</i>	14	69	83



Negotiable MAP Cases Completions by Industry and for Individuals

Fiscal Year 2012–2013 Industry Sector and Individuals	MAP Negotiable Case Completions
Agricultural	6
Arts and Entertainment	1
Auto and Other Transportation Equipment	10
Chemical and Allied Industries	12
Clothing and Textile	3
Computer and Electronics	8
Construction Equipment and Materials	8
E-Commerce	1
Finance and Insurance	4
Food and Beverage	4
Health	7
Machinery	4
Management and Administrative Services	4
Metals and Minerals	4
Petroleum	4
Real Estate, Rental and Leasing	1
Retail Trade	4
Technical and Professional Services	2
Utilities	3
Wholesale Trade	1
Wood and Paper	14
Individuals	9
Total	114

Note: Requests from individuals generally involve issues related to taxation contrary to a convention rather than a specific industry.



Negotiable MAP Cases Completions by Transfer Pricing Methodology

<i>Fiscal Year 2012–2013 Transfer Pricing Methodology</i>	<i>MAP Negotiable Case Completions</i>
<i>Comparable Uncontrolled Price (CUP)</i>	15
<i>Cost Plus</i>	21
<i>Resale</i>	10
<i>Profit Split</i>	2
<i>Transactional Net Margin Method (TNMM) — Berry Ratio</i>	4
<i>Transactional Net Margin Method (TNMM) — Operating Margin</i>	29
<i>Transactional Net Margin Method (TNMM) — Return on Assets</i>	3
<i>Transactional Net Margin Method (TNMM) — Total Cost Plus</i>	8
<i>(*) Not Applicable</i>	22
<i>Total</i>	114

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

For further information concerning transfer pricing methodologies, refer to the current version of Information Circular 87-2, [International Transfer Pricing](#).



Non-Negotiable MAP Cases by Category

<i>Fiscal Year 2012-2013 Category</i>	<i>Opening Inventory</i>	<i>Accepted</i>	<i>Completed</i>	<i>Ending Inventory</i>
<i>Withholding Taxes</i>	1	1,823	1,824	0
<i>Pensions</i>	75	106	114	67
<i>Gains</i>	6	19	23	2
<i>U.S "S" Corporation and Estate Rollovers</i>	8	8	10	6
<i>Other</i>	0	11	6	5
<i>Total</i>	90	1,967	1,977	80

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

The "Pensions" category involves elections under the Canada – United States Tax Convention (1980) to defer taxation of undistributed accrued pension income.

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

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



Contacts – MAP and APA Programs

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How to Contact Us

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