

2024 Issue No. 13
6 March 2024

Tax Alert – Canada

CRA releases revised Information Circular on Advance Pricing Arrangements

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 22 February 2024, the Canada Revenue Agency (CRA) released Information Circular IC94-4R2, *International Transfer Pricing: Advance Pricing Arrangements (APAs)*, which cancels and replaces Information Circular 94-4R, issued on 16 March 2001, and Information Circular 94-4RSR (Special Release), issued on 18 March 2005.

Among other items, the new Information Circular updates the CRA's guidance on the acceptance and processing of APAs, including guidance on the following topics:

- ▶ Prefiling meetings;
- ▶ Processing APA requests;
- ▶ Information requirements;
- ▶ Legal effect of an APA; and
- ▶ Administering an APA.

In this Tax Alert, we highlight some of the more substantive changes included in new IC94-4R2.

The revised Information Circular converts the prior guidance to an updated electronic format, but also includes some revisions related to procedures and policies, largely to update the guidance to reflect how the Canadian APA program has been operating over the past decade. More specifically, we noted the following observations with respect to IC94-4R2:

- ▶ **Prefiling meetings** - The CRA will continue to place a strong reliance on the information provided in the “prefiling” stage of the APA submission, which is used to secure a prefiling meeting with Competent Authority Services Division (CASD) representatives. The new Information Circular includes a comprehensive list of typical prefiling package contents. The guidance reinforces existing well-established practices and highlights the CRA’s ability to request additional information from taxpayers throughout the APA process.
- ▶ **Suitability of APA requests** - While five benefits of the APA program are listed in paragraph 13 of IC94-4R2, the CRA also lists, in paragraph 42, 16 possible reasons why a taxpayer or the proposed covered transactions may not be suitable for an APA after a complete prefiling package is provided. In addition, in paragraph 15, the CRA lists five reasons why it may decide not to continue with an accepted APA. This comparison is consistent with observations by the broader tax community that the CRA appears to have become more restrictive in its acceptance of cases into the APA program in recent years.
- ▶ **Acceptance of certain transactions** - A draft version of the Information Circular, which was provided for limited stakeholder feedback last summer, contained two examples that have been removed from the list (in paragraph 42 of IC94-4R2) of example reasons why the CRA may decide that a taxpayer is not suitable for the APA program. More specifically, the CRA has removed from the list of examples transactions that have yet to commence and transactions where the CASD disagrees with the existing or proposed transfer pricing method. The CRA did not indicate why these were removed, but it is our understanding that the CRA is currently conducting APAs for transactions in both categories.
- ▶ **Renewing an APA** - The new Information Circular indicates that APA renewals should be “generally more streamlined and less onerous than the initial process” but cautions taxpayers that the completion timelines are dependent on a number of factors. However, in our experience, renewing an APA may present challenges if contentious issues are identified, particularly if the original APA had similar issues, or if the key facts and circumstances of the APA have changed from the original request. In these cases, the timelines for renewals have generally not improved significantly.

The demand for APAs by Canadian taxpayers remains high, given that the alternative is often a complex transfer pricing audit with onerous collections elements, followed by further domestic recourse involving an appeal with the CRA or the courts, and potentially a request for relief of double taxation under a tax convention. The conclusion of an APA, while not quick or easy, provides tax certainty over a number of years generally in a shorter time than a single audit and recourse cycle, without the upfront adverse cash flow implications.

Learn more

For further details, refer to the updated CRA guidance, which is available on the [CRA website](#).

For more information, please contact your EY or EY Law advisor or one of the following professionals:

Toronto

Marlon Alfred

+1 416 932 5151 | marlon.alfred@ca.ey.com

Andrew Clarkson

+1 416 943 2146 | andrew.clarkson@ca.ey.com

Tara Di Rosa

+1 416 943 2671 | tara.dirosa@ca.ey.com

Matthew Sambrook

+1 416 943 2080 | matthew.sambrook@ca.ey.com

Caton Walker

+1 416 943 5240 | caton.walker@ca.ey.com

Andrei Tarassov

+1 416 943 2546 | andrei.tarassov@ca.ey.com

Mariam Imnaishvili

+1 416 941 7795 | mariam.imnaishvili@ca.ey.com

Ottawa

Rene Fleming

+1 613 598 4406 | rene.fleming@ca.ey.com

Paul Mulvihill

+1 613 598 4339 | paul.f.mulvihill@ca.ey.com

Tony Wark

+1 613 598 4322 | tony.wark@ca.ey.com

Kevin O'Reilley

+1 613 598 4892 | kevin.oreilley@ca.ey.com

Quebec and Atlantic Canada

Wael Tfaily

+1 514 879 6695 | wael.tfaily@ca.ey.com

Alfred Zorzi

+1 514 874 4365 | alfred.zorzi@ca.ey.com

Hélène Vaudrin

+1 514 874 4661 | helene.vaudrin@ca.ey.com

British Columbia

Tina Berthaudin

+1 604 891 8207 | tina.berthaudin@ca.ey.com

Greg Noble

+1 604 891 8221 | greg.noble@ca.ey.com

Adrian Tan

+1 604 891 8318 | adrian.tan@ca.ey.com

Prairies

Andreas Ottosson

+1 403 592 9966 | andreas.ottosson@ca.ey.com

EY Law

Daniel Sandler

+1 416 943 4434 | daniel.sandler@ca.ey.com

Angelo Nikolakakis

+1 514 879 2862 | angelo.nikolakakis@ca.ey.com

David Robertson

+1 403 206 5474 | david.d.robertson@ca.ey.com

Roger Taylor

+1 613 598 4315 | roger.taylor@ca.ey.com

EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation is available via ey.com/privacy. For more information about our organization, please visit ey.com.

About EY's Tax Services

EY's tax professionals across Canada provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We offer a range of tax-saving services backed by in-depth industry knowledge. Our talented people, consistent methodologies and unwavering commitment to quality service help you build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its potential. It's how we make a difference.

For more information, visit ey.com/ca/tax.

About EY Law LLP

EY Law LLP is a national law firm affiliated with EY in Canada, specializing in tax law services, business immigration services and business law services.

For more information, visit eylaw.ca.

About EY Law's Tax Law Services

EY Law has one of the largest practices dedicated to tax planning and tax controversy in the country. EY Law has experience in all areas of tax, including corporate tax, human capital, international tax, transaction tax, sales tax, customs and excise.

For more information, visit <http://www.eylaw.ca/taxlaw>

© 2024 Ernst & Young LLP. All Rights Reserved.

A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

ey.com/ca