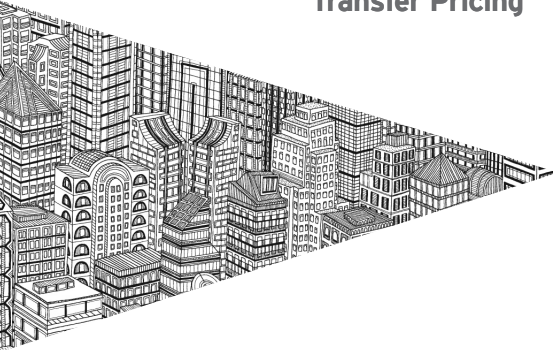


# International Tax Alert

News and views from  
Transfer Pricing



## Highlights from the Canada Revenue Agency 2010-11 *APA Program Report*

### Get the world to go!

You can access corporate income tax rates of over 60 countries for multiple years using your mobile device:

- ▶ Type into your web browser:  
[www.ey.mobi/ITS/rates](http://www.ey.mobi/ITS/rates)

On 21 November 2011, the Canada Revenue Agency (CRA) released its *Advance Pricing Arrangement (APA) Program Report* for the fiscal year ending 31 March 2011 (covering the period from 1 April 2010 to 31 March 2011). The report provides an overview of the operations of the APA program, including statistical analyses of APAs completed and in progress. It also discusses policy changes that may impact the suitability of the program for many taxpayers. Countering the trend from previous years, the program's growth observed over the last several years has receded significantly.

Highlights from the latest report include the following.

### Procedural changes to the APA program

Over the past year, the APA program has undergone several changes that have served to restrict entrance into the program, largely driven by CRA resource constraints. The report includes the first full written statement of these more restrictive policies. Specifically, the report sets out that the CRA is exercising increased due diligence at the pre-filing stage to "reduce the risk of APA cases/transactions being un-negotiable or, with respect to cases with the United States, ending up in arbitration."

The report also confirms that the CRA will not accept cases where there have been "business restructuring transactions" during or before the APA period. Rather, the report suggests that the APA program is best suited to transactions that will likely continue in the future with little change.

While we understand the CRA's resources are limited, these restrictions mark a break from the program's past philosophy of adaptability to most taxpayer circumstances.

In the longer term, we expect many of the transactions that might otherwise have been dealt with through an APA will have to be resolved by the Competent Authority through the Mutual Agreement Procedure process.

These policies would also seem to put the Canadian program out of step with major treaty partners who consider an APA the ideal mechanism to address situations such as business restructuring. Nonetheless, working within these parameters, there will still be taxpayers for whom the APA program will remain the best alternative by which to achieve current and future tax certainty on their transfer pricing.

#### **Number of APAs concluded remains stable**

Sixteen APAs were completed in 2010-11, the same number as fiscal 2009-10 and just shy of the historical high of 17 completed in both 2003-04 and 2004-05.

As in the previous fiscal year, closing inventory for the program remains at the historically high level of 95 cases.

#### **Time to completion increased to 50 months**

Time to completion for cases concluded in the year is 50 months, up slightly from approximately 49 months in last year's report, which itself was up from 42 months in 2008-09. However, it is difficult to truly compare this measure from year to year, since it may be unduly

influenced by outlier cases that have taken an exceptionally long time to complete.

The report also provides a breakdown of the average time in each of the three phases of a bilateral APA. It is interesting to note that, on average, 24.6 months (17 months in 2009-10) is required for the CRA to perform its due diligence, analysis and preparation of the position paper. While this may appear to be a lengthy period, there are a number of reasons this phase requires so much time, including the availability of taxpayers and the CRA team for the purpose of co-ordinating site visits and interviews, delays in taxpayer responses to queries, availability of historical information, and the level of complexity of the transfer pricing issues and/or covered transactions.

The successful negotiation of an APA with a foreign tax administration takes, on average, approximately seven months to complete, down from 10 months in the prior fiscal year. This is a surprisingly short period of time, considering that meetings are typically scheduled on a quarterly or semi-annual basis, depending on the volume of cases that are being discussed with the foreign tax administration.

Following a successful negotiation, an average of 13.7 months is required to draft the APA, obtain agreement on wording with both the foreign tax administration and the taxpayer, followed by signatures from the CRA's Competent Authority Services Division and the taxpayer.

#### **Pre-filing meetings down significantly**

Pre-filing meetings were down significantly to 25 from 31 in 2009-10, the lowest since 2006-07. This includes renewals and new applicants. We believe this reduction is in part a self-selection reaction by taxpayers reacting to the increased scrutiny being applied to restrict entrants to the APA program. This volume nonetheless evidences continued interest in the APA program among taxpayers and their advisors. There were 20 cases accepted into the program in the year, and a further 22 under consideration for acceptance at year end.

#### **Withdrawals remain high**

Of the 25 pre-filing meetings, six taxpayers subsequently withdrew their request to be considered for an APA. Further, four taxpayers who had been accepted into the program withdrew subsequent to acceptance.

According to the report, the pre-acceptance withdrawals were largely due to the taxpayers reconsidering their participation after the pre-filing meeting once they received feedback from the CRA on their proposed transfer pricing methodologies and proposed transactions, and a better understanding of the requirements of the APA program.

The report suggests that the post-acceptance withdrawals were primarily due to changing facts and

circumstances of taxpayers that rendered them unable to meet the requisite conditions of the program.

### **TNMM remains the most prevalent transfer pricing methodology**

Among in-progress APAs, the transactional net margin method (TNMM) is being used in 48% of cases. Among these TNMM cases, operating margin is the most-used profit-level indicator, with 32% of all cases, followed by total cost plus (8%), Berry ratio (5%) and return on assets (3%).

Other methodologies used include profit split (18%), cost plus (14%), comparable uncontrolled price/transaction (12%), and resale price (8%).

The 2010-11 *Advance Pricing Arrangement Program Report*, reflects a program in transition to a much more cautious endeavour on the CRA's part. The APA's popularity in the past stemmed primarily from its status as the only true means to achieve future tax

certainty for taxpayers with significant cross-border transactions while offering penalty protection for rollback years. While this is still true for those taxpayers accepted into the program, certainty will become a more elusive goal for others.

To view the full *Advance Pricing Arrangement Program Report*, go to [cra-arc.gc.ca/tx/nnrdsnts/cmp/p\\_rprt11-eng.pdf](http://cra-arc.gc.ca/tx/nnrdsnts/cmp/p_rprt11-eng.pdf).

For additional information with respect to this Alert, please contact the following:

#### **Ernst & Young LLP, Transfer Pricing, Canada**

▶ Tom Tsiopoulos, <i>Toronto</i>	+1 416 943 3344	tom.tsiopoulos@ca.ey.com
▶ Sean Kruger, <i>Toronto</i>	+1 416 941 1761	sean.kruger@ca.ey.com
▶ Ken Kyriacou, <i>Toronto</i>	+1 416 943 2703	ken.kyriacou@ca.ey.com
▶ Lori Whitfield, <i>Toronto</i>	+1 416 943 7199	lori.whitfield@ca.ey.com
▶ Alfred Zorzi, <i>Quebec and Atlantic Canada</i>	+1 514 874 4365	alfred.zorzi@ca.ey.com
▶ Rene Fleming, <i>Ottawa</i>	+1 613 598 4406	rene.fleming@ca.ey.com
▶ Phil Fortier, <i>Ottawa</i>	+1 613 598 4291	phil.fortier@ca.ey.com
▶ Sandy Goldberg, <i>Ottawa</i>	+1 613 598 4810	sandy.goldberg@ca.ey.com
▶ Paul Mulvihill, <i>Ottawa</i>	+1 613 598 4339	paul.f.mulvihill@ca.ey.com
▶ John Oatway, <i>Ottawa</i>	+1 613 598 4809	john.oatway@ca.ey.com
▶ Fred O'Riordan, <i>Ottawa</i>	+1 613 598 4808	fred.r.oriordan@ca.ey.com
▶ Gary Zed, <i>Ottawa</i>	+1 613 598 4301	gary.zed@ca.ey.com
▶ Lawrence Greer, <i>Prairies</i>	+1 403 206 5031	lawrence.a.greer@ca.ey.com
▶ Greg Noble, <i>Vancouver</i>	+1 604 891 8221	greg.noble@ca.ey.com
▶ Matthew Sambrook, <i>Vancouver</i>	+1 604 899 3559	matthew.sambrook@ca.ey.com

#### **Couzin Taylor LLP, International Tax Services, Canada**

▶ David Robertson, <i>Prairies</i>	+1 403 206 5474	david.d.robertson@ca.ey.com
▶ Daniel Sandler, <i>Toronto</i>	+1 416 943 4434	daniel.sandler@ca.ey.com
▶ Louis Tassé, <i>Quebec</i>	+1 514 879 8070	louis.tasse@ca.ey.com
▶ Roger Taylor, <i>Ottawa</i>	+1 613 598 4313	roger.taylor@ca.ey.com

## Transfer Pricing

- ▶ **Global Transfer Pricing**, Germany  
Thomas Borstell, +49 211 9352 10601
- ▶ **Americas**, United States  
Bob Ackerman, +1 202 327 5944  
Purvez Captain, +1 713 750 8341
- ▶ **EMEA**, Germany  
Oliver Wehnert, +49 211 9352 10627
- ▶ **Asia Pacific**, Shanghai  
Luis Coronado, +86 21 2228 3366
- ▶ **Japan**, Tokyo  
Kai Hielscher, +49 89 14331 16711
- ▶ **Global Markets**, United Kingdom  
John Hobster, +44 207 951 6438
- ▶ **TESCM**, Amsterdam  
Victor Bartels, +31 88 4071378
- ▶ **Global Financial Services TP**, London  
Stephen Labrum, +44 20 7951 5603

▶ <b>Argentina</b>	Carlos Casanovas	+54 11 4318 1619
▶ <b>Albania</b>	Alexandros Karakitis	+355 4 24 19 574
▶ <b>Australia</b>	Paul Balkus	+612 9248 4952
▶ <b>Austria</b>	Andreas Stefaner	+43 1 211 70 1041
▶ <b>Belgium</b>	Herwig Joosten	+32 02 774 9349
▶ <b>Brazil</b>	Gil Mendes	+55 11 2112 5466
▶ <b>Bulgaria</b>	Laszlo Szaka	+359 2 8177 141
▶ <b>Canada</b>	Sean Kruger	+1 416 941 1761
▶ <b>Chile</b>	Osiel Gonzales	+56 26 761 141
▶ <b>China</b>	Jessica Tien	+86 21 22282115
▶ <b>Colombia</b>	Gustavo Pardo	+1571 651 2210
▶ <b>Costa Rica</b>	Rafael Sayagues	+1 212 773 4761
▶ <b>Croatia</b>	Denes Szabo	+36 1 451 8209
▶ <b>Czech Republic</b>	Libor Frýzek	+420 225 335 310
▶ <b>Denmark</b>	Thomas Bjerre	+45 3 587 2901
▶ <b>Ecuador</b>	Javier Salazar	+1 593 2 255 5553
▶ <b>Egypt</b>	Seema Sharma	+1 214 969 8077
▶ <b>Estonia</b>	Ranno Tingas	+372 611 4578
▶ <b>Finland</b>	Kennet Pettersson	+358 40 556 1181
▶ <b>France</b>	Franck Berger	+33 4 78 63 17 10
▶ <b>Germany</b>	Oliver Wehnert	+49 211 9352 10627
▶ <b>Greece</b>	Aggelos Benos	+30 210 288 6 024
▶ <b>Hong Kong</b>	Patrick Cheung	+852 2846 9905
▶ <b>Hungary</b>	Zoltan Liptak	+36 1 451 8638
▶ <b>India</b>	Vijay Iyer	+91 98 1049 5203
▶ <b>India (TPC)</b>	Puja Ramasubban	+91 80 6608 6895
▶ <b>Indonesia</b>	Carlo Navarro	+62 21 5289 5000
▶ <b>Ireland</b>	Dan McSwiney	+353 1 221 2094
▶ <b>Israel</b>	Lior Harary-Nitzan	+972 3 623 2749
▶ <b>Italy</b>	Davide Bergami	+39 02 851 4409
▶ <b>Japan</b>	Kai Hielscher	+81 3 3506 1356
▶ <b>Kazakhstan</b>	Roman Yurtayev	+87 727 258 5960
▶ <b>Korea</b>	Rap Choi	+82 2 3770 1001
▶ <b>Latvia</b>	Ilona Butane	+371 704 3836
▶ <b>Lithuania</b>	Leonas Lingis	+370 5 274 2279
▶ <b>Luxembourg</b>	Paul Leyder	+352 42 124 7240
▶ <b>Malaysia</b>	Janice Wong	+6 03 7495 8223
▶ <b>Mexico</b>	Jorge Castellon	+52 81 81521829
▶ <b>Netherlands</b>	Danny Oosterhoff	+31 88 40 71007
▶ <b>New Zealand</b>	Mark Loveday	+64 9 300 7085
▶ <b>Norway</b>	Marius Leivestad	+47 24 00 23 86
▶ <b>Peru</b>	Marcial Garcia	+151 1 411 4424
▶ <b>Phillippines</b>	Romulo Danao	+63 2 894 8392
▶ <b>Poland</b>	Aneta Blazejewska-Gaczynska	+48 22 557 8996
▶ <b>Portugal</b>	Paulo Mendonca	+351 21 791 2045
▶ <b>Romania</b>	Alexander Milcev	+402 1402 4000
▶ <b>Russia</b>	Evgenia Veter	+7 495 660 4880
▶ <b>Singapore</b>	Luis Coronado	+65 6309 8826
▶ <b>Slovak Republic</b>	Gunter Oszwald	+421 2 333 39610
▶ <b>Slovenia</b>	Denes Szabo	+36 1 451 8209
▶ <b>South Africa</b>	Karen Miller	+27 21 443 0200
▶ <b>Spain</b>	Ramón Palacín Sotillos	+34 915 727 485
▶ <b>Sweden</b>	Mikael Hall	+46 8 520 592 35
▶ <b>Switzerland</b>	Edvard Rinck	+41 58 286 4250
▶ <b>Taiwan</b>	George Chou	+86 21 2228 8888
▶ <b>Thailand</b>	Anthony Loh	+662 264 0777
▶ <b>Turkey</b>	Alper Yilmaz	+90 212 368 53 60
▶ <b>United Arab Emirates</b>	Seema Sharma	+1 214 969 8077
▶ <b>United Kingdom</b>	Tim Steel	+44 20 7951 1149
▶ <b>United States</b>	Bob Ackerman Purvez Captain	+1 202 327 5944 +1 713 750 8341
▶ <b>Venezuela</b>	Jose A. Velazquez	+58 212 905 66 59
▶ <b>Vietnam</b>	Nitin Jain	+84 8 832 45252

Ernst & Young

Assurance | Tax | Transactions | Advisory

### About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 152,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Ernst & Young refers to the global organization of 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. For more information about our organization, please visit [www.ey.com](http://www.ey.com).

### About Transfer Pricing/TESCM

We bring you a global perspective on transfer pricing and tax effective supply chain management (TESCM), based on our long-standing experience of what really works. We help you configure your supply chain effectively and design and implement sustainable transfer pricing policies. Our multi-skilled teams support you in implementing proactive, pragmatic and integrated strategies that address tax risks and help your business achieve its potential. It's how Ernst & Young makes a difference.

[www.ey.com](http://www.ey.com)

© 2011 EYGM Limited.  
All Rights Reserved.

EYG no. CM2580

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.