



Canada Revenue
Agency

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MUTUAL AGREEMENT PROCEDURE

PROGRAM REPORT

2018

Competent Authority Services Division

International and Large Business Directorate
Compliance Programs Branch
Canada Revenue Agency

canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-services.html

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EXECUTIVE SUMMARY

This is the annual report issued by the Canada Revenue Agency (CRA) on its Mutual Agreement Procedure (MAP) Program. This report provides a summary of the MAP program for the period from January 1, 2018 to December 31, 2018. The publication of this report was delayed to align with the publication of the [2018 MAP statistics](#) by the Organisation for Economic Co-operation and Development (OECD).

This report describes the purpose, history, and current events that are shaping the future of the MAP program. The publication of statistical information makes the MAP program more transparent and provides some insight to the types of issues addressed by the CRA and its treaty partners. A summary of the key findings presented in this calendar year report is provided here:

- The CRA had 176 negotiable MAP cases on January 1, 2018.
- During 2018, the CRA accepted 97 new MAP cases and closed 126 MAP cases.
- The average time to complete a negotiable MAP case was 22.8 months.
- Of the 126 MAP cases closed in 2018, 101 (80.2%) resulted in full relief from double taxation upon negotiation and 8 (6.3%) resulted in unilateral relief granted. In 12 cases (9.5%) either the objection was not justified, withdrawn by the taxpayer or was resolved via a domestic remedy. The remaining 5 cases (4%) were closed with other outcomes.
- Of the 126 cases closed in 2018, 97 (77%) were initiated by Canada and 29 (23%) were initiated by other countries.
- The CRA is currently engaged in negotiable MAP cases involving taxpayers from 26 different jurisdictions. The United States represents the majority of MAP cases at 54%.

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, see 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 \(CASD\)](#).

INTRODUCTION

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

WHAT IS THE MUTUAL AGREEMENT PROCEDURE?

The MAP article in Canada's conventions is a dispute resolution mechanism that allows authorized CRA officials to interact with foreign tax administrations to resolve issues of double taxation and taxation not in accordance with a convention. Under the article, residents in either country may request assistance resolving an issue covered by their convention. In Canada, the Minister of National Revenue authorizes senior CRA officials to try to resolve tax disputes under tax conventions that Canada has with other countries. These senior officials are referred to as the competent authority. A similar authorization usually takes place in Canada's treaty partner countries.

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) in the Compliance Programs Branch of the CRA. The Director of the CASD is an authorized competent authority for Canada and is responsible for cases involving double taxation and taxation not in accordance with a convention, as well as for the overall administration of the MAP program. For information on access to and the use of the MAP, see [Information Circular 71-17](#).

The CASD is responsible for

- The negotiation and resolution of disputes with foreign tax administrations regarding double taxation or taxation not in accordance with a convention under MAP articles of our tax treaties; and
- The negotiation of Advance Pricing Arrangements (APAs) with foreign tax administrations to determine appropriate transfer pricing methodologies for complex cross-border transactions undertaken between related parties.

When a MAP request is received, the request is tracked and assigned to the appropriate team. The lead analyst assigned is responsible for the review, analysis, negotiation and resolution of the MAP case. If needed the analyst may seek support from other areas of the CRA including ILBD's International Tax Division, the Income Tax Rulings and Legislative Policy directorates of the Legislative Policy and Regulatory Affairs Branch, or from legal counsel with the Department of Justice Canada.

Taxpayers may choose to represent themselves or authorize a representative to pursue a MAP request on their behalf. Taxpayers, or their representatives, are involved to the extent that the CRA may ask for more information during a MAP process, and such co-operation is needed to resolve a case.

For more information on barriers to resolving double taxation, how the competent authority achieves resolution through the MAP and benefits of the MAP please see appendix A.

THE MAP PROGRAM IN CANADA

Canada's MAP program dates back to 1942, when it signed its first tax treaty with the United States, which contained a MAP provision. Published taxpayer guidance dates back to 1971, with the release of Information Circular 71-17. This information circular has been revised several times, and the CRA now operates under Information Circular 71-17R5, [Guidance on Competent Authority Assistance Under Canada's Tax Conventions](#).

The number of MAP requests in Canada has grown steadily over the years. The CASD has continued reorganizing and implementing a number of initiatives to improve the quality and timeliness of services to taxpayers. These service improvements include the introduction of case management techniques to ensure that MAP requests are progressing on schedule, as well as ongoing efforts to improve the bilateral process with other tax administrations.

In September 2019 Canada received three 2018 MAP awards from the OECD's Forum on Tax Administration (FTA) including (1) best average time, transfer pricing cases; (2) best cooperation, transfer pricing cases – Canada and United States; and (3) biggest inventory decrease. These three awards, in particular the first one, demonstrate Canada's commitment to the MAP program as noted above.

Recent developments

On August 29, 2019, Canada ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI modifies many of Canada's tax treaties, and may affect treaty time limits and other MAP-related treaty provisions. A common change is an increase in the amount of time to submit a request for MAP assistance from two years to three. The MLI also introduces mandatory binding arbitration to resolve certain classes of MAP disputes into some treaties.

Negotiations to update the tax treaty between Canada and Brazil were held in November 2018. Negotiations with Germany, Switzerland and the Republic of San Marino are ongoing.

Canada remains an active member of the OECD's FTA MAP Forum and participant in its [peer review process](#). Canada provided detailed peer input to other jurisdictions in the framework of their peer review and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Canada also provided peer input on best practices for other jurisdictions. On August 13, 2019, the OECD published Canada's

(Stage 2) report: [Making Dispute Resolution More Effective – MAP Peer Review Report, Canada.](#)

The Canada Revenue Agency is working on updating its MAP and APA guidance and will issue an updated version of Information Circular 71-17R5, [Guidance on Competent Authority Assistance Under Canada's Tax Conventions](#) and Information Circular 94-4R, [International Transfer Pricing: Advance Pricing Arrangements](#).

TIMELINE: GENERAL

When a MAP case involves negotiation with another tax administration (negotiable case), every effort is made to resolve the tax issue as quickly as possible.

The target for resolving a MAP case (including non-negotiable cases) is 24 months; however, there are many factors beyond the CRA's control, which may result in this target not being met. Factors include the co-operation and timely receipt of information from the taxpayer, the complexity of an issue, the time that the other competent authority needs to review and respond to a position paper, and the willingness of both competent authorities to adopt reasonable negotiating positions.

The CRA's in-house management system allows CASD management and staff to monitor the status of MAP cases and report statistics on a number of performance measures, including the average time taken to:

- issue letters after a request is received;
- develop a position paper; and
- negotiate and conclude a case.

The CRA continues to enhance its management system to be in line with the [MAP statistic reporting framework](#) ("framework") and to fulfill its commitment to resolve MAP cases in a timely, efficient and effective manner.

Timeline: negotiable MAP case completions

Beginning in 2016, MAP reporting has been done for calendar years instead of fiscal years. This is in line with the framework for reporting purposes. This report shows previous fiscal year data for comparative purposes, presented on a fiscal year basis, and it shows the 2016, 2017 and 2018 data by calendar year.

As a result of requirements under the framework, MAP results were categorized as either pre-2016 (cases with a start date prior to January 1, 2016) or post-2015 (cases with a start date after December 31, 2015). The framework requires time reporting by the following stages:

Start to end: Time elapsed between the start date and the end date.

Received to start: Time from receipt of a request until the start date.

Start to position paper: Time between the start date and the date position papers were sent by the CRA or received from a treaty partner.

Position paper to end: Time between the date position papers were sent by the CRA (or received from a treaty partner) and the end date.

Under the framework, the start date is generally expected to be five weeks or less from the receipt of a taxpayer's MAP request. The end date is the date of an official communication (typically in the form of a letter) from the competent authority to advise the taxpayer of the outcome of their request or in the case of a withdrawal, the date the competent authority receives the withdrawal.

MAP RESULTS¹

The OECD publishes the [MAP statistics](#) on an annual basis and further breaks the MAP caseload down by jurisdiction. Specific to [Canada](#), at the start of the period there were 176 pending MAP cases and at the end of the period there were 147 cases. During this period, 97 cases were started and 126 cases were closed.

Of the 126 MAP cases closed during 2018, 43 had a start date before 2016 and 83 after 2015. To calculate the average time taken to resolve pre-2016 MAP cases, the date of filing of the MAP request was used as the start date, and, the date of the closing letter sent to the taxpayer was considered the end date.

Table 1: 2018 MAP cases (pre-2016 and post-2015) closed and average time to complete

	<i>Starting inventory</i>	<i>Cases started</i>	<i>Cases closed</i>	<i>2018 ending inventory</i>	<i>Average time to complete in months</i>
<i>Attribution / Allocation²</i>	141	75	102	114	24.6
<i>Pre-2016</i>	50	0	35	15	42.5
<i>Post-2015</i>	91	75	67	99	15.2
<i>Other</i>	35	22	24	33	15.5
<i>Pre-2016</i>	16	0	8	8	27.9
<i>Post-2015</i>	19	22	16	25	9.3
<i>Total</i>	176	97	126	147	22.8

¹ Please consult the OECD's 2018 MAP breakdown for [Canada](#) for more details.

² Attribution / Allocation MAP cases are considered negotiable cases.

Of the 126 MAP cases closed in 2018, 101 cases (80.2%) resulted in full relief from double taxation upon negotiation, 8 cases (6.3%) resulted in unilateral relief granted, and the remaining cases were closed with other outcomes. The following table shows the outcomes and percentages for each category of closed cases and further breaks down the data to show the number of cases closed pre-2016 and post-2015.

Table 2: 2018 MAP cases (pre-2016 and post-2015) closed by outcome

Category of cases	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Denied MAP access or Any other outcome	Total
Attribution/ allocation	0	3	7	0	90	1	0	0	1	102
Pre-2016	0	2	0	0	33	0	0	0	0	35
Post-2015	0	1	7	0	57	1	0	0	1	67
Other	4	4	1	1	11	0	1	0	2	24
Pre-2016	1	1	0	1	5	0	0	0	0	8
Post-2015	3	3	1	0	6	0	1	0	2	16
Total	4	7	8	1	101	1	1	0	3	126
Percentage	3.2	5.5	6.3	0.8	80.2	0.8	0.8	0	2.4	100

According to the framework, an attribution/allocation case is a MAP case where the request relates to the attribution of profits to a permanent establishment or the determination of profits between associated enterprises. This is also known as a transfer pricing MAP case.

Any MAP case that is not defined as an attribution/allocation MAP case is defined as **other**. This may include requests involving juridical double taxation. This is taxation contrary to a convention where either the mutual agreement procedure is required to resolve an issue (for example the taxation of pension and annuities or other income) or a permanent establishment determination is required.

Negotiable MAP cases completed: Canadian-initiated and foreign-initiated

In 2018, the majority of the cases closed (77%) were initiated by Canada, which has been the trend over the past several years. Overall in 2018 it took an average of 22.8 months to resolve a MAP case. Canadian-initiated cases took 21.9 months and foreign-initiated cases 25.8 months. The following table shows a breakdown of completed cases resulting from Canadian-initiated and foreign-initiated audit adjustments and further breaks down the data to show the number of cases for both pre-2016 and post-2015.

Table 3: Negotiable MAP cases completed: Canadian-initiated and foreign-initiated

Category of cases	Total	CDN initiated	%	Foreign initiated	%	Average time (in months) to complete Canadian cases	Average time (in months) to complete foreign cases	Weighted average
Pre-2016	43	32	74%	11	26%	40.2	39.6	39.8
MAP	35	26	74%	9	26%	42.7	43.3	42.5
Other	8	6	75%	2	25%	29.5	22.9	27.9
Post-2015	83	65	78%	18	22%	12.4	14.2	12.8
MAP	67	56	84%	11	16%	14.0	21.3	15.2
Other	16	9	56%	7	44%	10.8	7.4	9.3
Total	126	97	77%	29	23%	21.9	25.8	22.8

PROGRAM STATISTICS

The table below shows the number of cases, including non-negotiable cases that were accepted and completed for the 2014 to 2018 period.

Table 4: Total MAP cases accepted, completed and outstanding

Period	Beginning inventory	Accepted	Completed	Ending
2018	583	415	732	266
2017	570	331	318	583
2016	563	288	281	570
2015–2016*	521	339	288	572
2014–2015	344	347	170	521

*Unpublished statistics for the 2015-2016 fiscal year are shown for comparison purposes.

MAP cases by type

The following table shows the acceptance and completion of MAP cases by type (negotiable and non-negotiable) and by year, for the period 2014 to 2018.

Negotiable cases generally require negotiations between Canada's competent authority and 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 taxpayers. These cases do not involve another tax administration.

Table 5: Acceptance and completion of MAP cases

Period	Negotiable		Non-negotiable		Total Accepted	
	Negotiable Accepted	Negotiable Completed	Non-Negotiable Accepted	Non-Negotiable Completed	Total Accepted	Total Completed
2018	97	126	318	606 ³	415	732
2017	93	141	238	177	331	318
2016	124	160	164	121	288	281
2015 - 2016*	98	100	241	188	339	288
2014 - 2015	130	115	217	55	347	170

*Unpublished statistics for the 2015-2016 fiscal year are shown for comparison purposes.

³ This number is reflective of an increase in staff and a push to close off aging files.

Non-negotiable MAP cases by category

Table 6: Non-negotiable 2018 MAP cases by category

2018	Opening inventory	Accepted	Completed	Ending Inventory
Pensions	366	252	531	87
Gains	18	30	40	8
Other	23	36	35	24
Total	407	318	606	119

The **Pensions** category involves elections under the Canada – United States convention on taxing income and capital to defer the taxing of undistributed accrued pension income.

The **Gains** category includes deferred-gains agreements for all treaties and the application of the transitional rule in the Canada-United States convention on taxing income and capital.

The **Other** category generally includes matters relating to estate rollovers, United States “S” corporations, and other issues.

Participation by foreign jurisdiction

The CRA is currently engaged in negotiable MAP cases involving taxpayers from 26 jurisdictions: Argentina, Australia, Austria, Belgium, China, Colombia, Finland, France, Germany, India, Indonesia, Kazakhstan, Korea, Kuwait, Luxembourg, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Romania, Spain, Sweden, Switzerland, the United Kingdom, and the United States. The breakdown of negotiable MAPs by country continues to reflect the significant flow of goods and services exchanged between Canada and the United States, representing 54% of MAP cases.

Participation by sector

The closed MAP cases cover a wide variety of sectors including: agriculture, auto and other transportation equipment, chemical and allied products, clothing and textiles, construction equipment and materials, computer, finance, food and beverage, health including pharmaceuticals, machinery, management, metals and minerals, petroleum, retail trade, technical/scientific and professional services, T1 personal tax, wholesale trade, wood and paper, and utilities.

HOW TO CONTACT THE CASD

If you have comments or questions about this report or the services offered by the Competent Authority Services Division, please contact the division:

- by phone: consult the [CASD webpage](#) for CASD managers' phone numbers;
- by fax: 613-990-7370;
- by email: CPCANMAPG@cra-arc.gc.ca;
- by post or courier:

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APPENDIX A

Barriers to resolving double taxation

The CRA maintains effective dispute resolution procedures with all of its treaty partners where ever possible. This requires that tax administrations try to resolve cases in a timely, effective, and efficient manner. Although existing procedures generally work to provide full relief from double taxation, sometimes an agreement cannot be reached on a case.

Examples of situations for which there may be partial relief or no relief of double taxation:

- when not enough notification is given, or a tax year is statute-barred or becomes statute-barred during negotiations in either jurisdiction;
- refusal of another tax administration to give 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 tax rules;
- the Canadian and foreign administrations cannot agree on the interpretation of an issue involving the treaty or a bilateral advance pricing arrangement;
- 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 received from another tax administration with respect 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; or
- refusal of a taxpayer to provide information requested by one or both tax administrations.

How does the Canadian competent authority achieve resolution through the MAP?

- A taxpayer who seeks a MAP resolution generally has to formally request assistance from the competent authority of the country in which the taxpayer is resident.
- After a taxpayer's request is submitted, the competent authority of the country in which the taxpayer submitted the request issues an acknowledgement letter to the taxpayer.
- A request submitted to the Canadian competent authority is reviewed to determine whether it is justified under the applicable income tax convention.
- If the request is rejected by the Canadian competent authority, the taxpayer and the other country's competent authority are advised in writing, citing reasons.
- If the request is accepted by the Canadian competent authority, a letter is issued 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 makes sure that the necessary facts are available (from both the taxpayer and the tax services office (TSO) that generated the adjustment) in order to prepare a position paper.
- For Canadian-initiated adjustments, the Canadian competent authority sends a formal position paper to the other country's competent authority.
- The other country's competent authority reviews the position paper, asks for more information if necessary, and advises the Canadian competent authority of its findings.
- If the other country's competent authority does not agree with the position of the Canadian competent authority, it may be necessary to negotiate the case.
- Negotiation usually resolves the tax issue in question to the satisfaction of the two competent authorities.
- The competent authorities exchange correspondence to confirm the details of a resolution.
- The CRA sends the details of the resolution to the taxpayer for acceptance or rejection.
- If the taxpayer accepts the resolution, the Canadian competent authority advises the TSO (and the Appeals Branch, if an objection was filed), providing all necessary details of the resolution.
- The TSO or Appeals processes the results of the resolution.
- If the taxpayer rejects the resolution, the taxpayer may pursue any other domestic recourses.

Benefits of 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 or taxation not in accordance with a convention is a service offered by the CRA at no charge to the taxpayer.
- The MAP process requires co-operation from the taxpayer and regular communication between tax administrations. The views of the taxpayer, as presented in a 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, requires no further taxpayer time and expense.
- With the experience of having negotiated hundreds of double tax cases, the CRA's highly skilled staff (accountants, financial analysts, economists and lawyers) are able to prepare a quality position paper and achieve timely case resolution.
- The MAP process can resolve matters for one or more audited tax years. In addition, taxpayers may ask for an accelerated competent authority procedure (ACAP). This procedure is intended to provide assistance for subsequent assessed tax years on the same issues included in a MAP. Advice on ACAPs may be found in the CRA's Information Circular, [71-17, Guidance on Competent Authority Assistance Under Canada's Tax Conventions](#), and its Transfer Pricing Memorandum 12, [Accelerated Competent Authority Procedure \(ACAP\)](#).
- If a tax issue concerns transfer pricing, taxpayers may find it appropriate to ask for an APA to cover future tax years (generally up to five 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](#).
- As the number of 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 is committed to making taxpayers aware of the MAP program. The CRA expects that its commitment to the improvement of the program, combined with steadily increasing international audit activity, will result in more taxpayers seeking assistance through the MAP process.