



Canadian Tax & Legal Alert

The Canada Revenue Agency releases updated Information Circular 94-4R2, *International Transfer Pricing: Advance Pricing Arrangements (APAs)*

March 22, 2024

On February 22, 2024, the Canada Revenue Agency (CRA) released Information Circular 94-4R2¹ (IC94-4R2 or IC), which provides detailed guidance on Advance Pricing Arrangements (APAs). This latest IC reflects the many updates and changes to Canada's APA policies that have been made since the original version was issued in 2001.

An APA is an agreement between a taxpayer and one or more tax authorities to establish the price of a transaction in the future, typically five years. APAs provide an opportunity for taxpayers with international transactions to obtain tax certainty for those transactions. The release of IC94-4R2 largely codifies many of the CRA's current practices and policies with respect to APAs.

¹ [Information Circular 94-4R2](#), "International Transfer Pricing: Advance Pricing Arrangements (APAs)," February 22, 2024.

Key updates

In addition to clarifying terminology and policies, the revised IC addresses several notable items, most of which have been part of the CRA's APA policy for several years, including:

Information about APAs

- A description of the benefits of entering into an APA, including tax certainty, reduced audit risk, a more collaborative approach, rollback to non-statute-barred taxation years, etc.;
- An overview of the CRA's expectation about taxpayer co-operation and reasons why the CRA may withdraw from the APA process;

Prefiling package

- Some minor wording changes to the information that is required in an APA prefiling package;
- Additional details on the information that the CRA expects the taxpayer to provide which now includes a complete prefiling package before the CRA will even consider scheduling a prefiling meeting;

Acceptance of an APA request

- A detailed list of reasons why the CRA may decline to accept an APA request, some of which are:
 - The CRA views the proposal to be part of, or relate to, a tax avoidance or Base Erosion and Profits Sharing (BEPS) strategy;
 - The taxpayer chooses to exclude certain transactions that the CRA wants included;
 - Legal contracts are not aligned with the taxpayer's conduct;
 - The taxpayer is seeking a permanent establishment (PE) determination under one of Canada's treaties;
 - The transaction involves a business restructuring;

Conditions letter

- The CRA has replaced the former "APA acceptance letter" with an "APA conditions letter;"
- The conditions letter outlines the conditions under which the CRA will accept the APA submission and may include specific requests for additional analysis or information to be included in the APA submission;

Other changes

- The user fee is now eliminated (it has not been charged for a number of years and is no longer in the IC);
- The arbitration provision is now noted in the IC for Canada-US APAs;
- There is a new section that specifically discusses issues related to a unilateral APA request;
- The IC now includes the APA process for small businesses, and cancels and replaces Information Circular 94-4RSR (Special Release).²

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Related links:

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² [Information Circular 94-4RSR](#), "Special Release - Advance Pricing Arrangements for Small Businesses," March 18, 2005.

Following consultations with various stakeholders, the new IC introduces a number of changes, with a particular focus on the **prefiling stage**. By ensuring a more complete information package at the outset of the APA process, the CRA believes that it will be better able to determine, early in the process, whether the proposed transactions are suitable for the APA program. With respect to **Canada-US transactions** that will be covered by an APA, the CRA must be cognizant of the commencement date of the APA as such transactions may become subject to arbitration.

The IC set out the CRA's expectations for taxpayer co-operation and a number of reasons why the CRA may decide not to proceed with the APA process. The **reasons for rejecting an APA** are now clearly stated in the IC, although the CRA has been rejecting APAs for these same reasons for several years.

In addition to requiring additional information during the prefiling stage, the CRA may request specific information be provided in the APA submission with a failure to comply potentially resulting in the rejection of the submission. Previously, the CRA would send an acceptance letter (which included an APA fee for potential travel costs), however the CRA policy in recent years, and codified in the new IC, is for the CRA to send a **conditions letter**. This letter outlines the various conditions that must be met (i.e., information that must be provided in the submission in order for the CRA to proceed with the APA process). The conditions letter includes the wording "the CRA agrees to consider your APA request upon the following conditions" which more clearly aligns with the CRA's view that the APA can not be accepted unless the conditions listed are agreed to. Many of the conditions are similar to those contained in the former APA acceptance letter.

The IC also updates the current language and policies regarding the various APA steps from submission through negotiations and final acceptance by the taxpayer. There is more detail on the **renewal process and unilateral APAs, and the small business APA** is now incorporated directly into the IC, rather than being a special release. **Most, if not all, of the policies discussed in the IC were implemented a number of years ago with the IC catching up to the policies that are already in place.**

Conclusion

The revised IC provides welcome clarification of the many policy changes that have been made since the original release of IC94-4R with respect to requesting and obtaining an APA, as well as additional details about the various steps in the APA process. The IC provides taxpayers with a better understanding of the benefits of an APA, the CRA's expectations regarding the information it requires, and the reasons why the CRA may reject an APA submission.

The APA program continues to be a key compliance management tool for both the CRA and taxpayers. The updated IC provides additional guidance and taxpayers seeking to obtain tax certainty in a collaborative manner can continue to use the CRA's APA program with confidence that reasonable outcomes are achievable.

How can Deloitte help you?

Deloitte's Transfer Pricing professionals can help you understand how these policy changes and updates may impact your business. If you have questions on any of the above, please reach out to your Deloitte advisor or any of the individuals noted on this alert.



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