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## Taxpayer subject to double tax - key takeaways from *TeleTech Canada* decision

**June 19, 2013**

On May 29, 2013, the Federal Court of Canada issued its decision on the *TeleTech Canada Inc.* (*TeleTech Canada*) case. The case focuses on the availability of double tax relief under articles IX and XXVI of the Canada-United States Income Tax Convention (the treaty). Specifically, the case highlights the complex nature of the competent authority (CA) process and the actions that taxpayers are required to take to protect themselves from double taxation. The key takeaways from this decision include:

### 1. The Canada Revenue Agency (CRA) applies strict criteria in determining eligibility for double tax relief

TeleTech Canada and its US parent company, TeleTech Holdings Inc. (TeleTech US), underwent a corporate restructuring in 2000. TeleTech Canada subsequently determined that certain internal accounting mistakes were made following the restructuring such that income was over-reported for Canadian taxation purposes and under-reported for US taxation purposes. Consequently, in May 2004 the company filed amended tax returns in the United States for the 2000-2002 taxation years and requested a downward income adjustment from the CRA. After having received no response from the CRA, in May 2006, TeleTech Canada withdrew its adjustment request and instead filed a CA request in Canada; TeleTech US filed a corresponding CA request in the United States.

In November 2006, the CRA rejected the CA request on the basis that "one of the prerequisites that must exist to request competent authority consideration is an action by one or both governments that will result … in taxation not in accordance with the [treaty]." In this case, the CRA noted that the "only actions that [have] been taken have been initiated by TeleTech Canada and TeleTech US".

### 2. It is important to adhere to the deadlines for requesting double tax relief

The Internal Revenue Service (IRS) eventually audited the amended tax returns for 2001 and 2002 and in July 2008 made adjustments to further increase the income of TeleTech US for those years. Shortly following this assessment, TeleTech US submitted another request to the IRS for CA assistance but TeleTech Canada did not submit a second CA request to the CRA until 18 months later in December 2009. In June 2011, the CRA rejected TeleTech Canada's second CA request because it had not received notification of the US initiated adjustment within the six-year period provided under Articles IX or XXVI of the treaty and, in addition, TeleTech Canada's tax returns for 2001 and 2002 were statute-barred. It should be noted that even if the CRA CA request had been filed immediately after the IRS assessment, it was already too late to seek double tax relief with respect to 2001 but not 2002.

### 3. Judicial review may be possible if pursued on a timely basis

Justice Mactavish noted that TeleTech Canada had not sought judicial review of either of the two rejection letters from the CRA. TeleTech Canada did, however, seek judicial review of "the continuing refusal of the CRA to provide relief from double taxation" and an order of *mandamus* compelling the CRA to provide relief from double taxation and to submit the case for arbitration. Based on prior case law, Justice Mactavish ruled that judicial review can only be requested with respect to "a decision or order" within a 30-day time limit from the date of the decision. In the judge's opinion, TeleTech Canada had not met either of these requirements. In addition, she noted that the court will not generally make an order of *mandamus* to compel a decision maker to make a particular decision where the decision making power is discretionary in nature (as is the case with the granting of CA relief per paragraph 64 of Information Circular 71-17R5). Further, she noted that it is evident that TeleTech Canada did not meet a number of the preconditions for arbitration.

### 4. Correcting errors may increase risk

Taxpayers who believe that their historic transfer pricing was inappropriate face a significant dilemma. If errors are left uncorrected, potential penalty and interest costs can continue to mount in the event of an adjustment upon audit. However, as highlighted in this case, if the taxpayer attempts to correct the errors, there is risk of falling into a double tax situation.

The process of seeking double tax relief is complex and requires careful attention to procedural requirements and deadlines. As evidenced in *TeleTech Canada*, failure to comply with technical requirements can have adverse consequences.

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