

## **Information Circular 71-17R4**

### **Requests for Competent Authority Consideration Under Mutual Agreement Procedures in Income Tax Conventions.**

Date: May 12, 1995

Reference:

This Circular replaces and cancels Information Circular 71-17R3 dated February 22, 1991.

#### **Introduction**

1. The purpose of this circular is to help individuals, corporations, or any other persons who are subject to Canadian income taxes and who wish to use the competent authority, "Mutual Agreement Procedures", contained in the international tax conventions (see Appendix A) that Canada has entered into with foreign governments.

2. Some of the main purposes of tax conventions are to eliminate double taxation and to allocate tax revenues from transactions between countries. For example, a tax convention may provide special rules for determining:

- the country in which taxpayers are resident;
- the types of income that each country can tax;
- the special treatment given to specific types of income; and
- the rates of withholding tax on specific types of income a person in one country pays to a person in the other country.

3. The "Mutual Agreement Procedure" article in conventions Canada has entered into entitles a Canadian taxpayer to request competent authority assistance when the action of either government results or will result in double taxation or taxation not in accordance with the convention. Examples of double taxation and taxation not in accordance with the convention under Canadian conventions are:

- a taxpayer is subject to income tax on the same income in Canada and in the other country on the grounds that the taxpayer is a resident of both Canada and the other country;
- a taxpayer is denied, in the other country, a credit for income taxes paid to Canada on certain income because the other country claims to have the sole right to tax that income;
- a corporate taxpayer in Canada is subject to additional tax because of an increase in the price of goods or services sold to a related company in the other country, and the other country's revenue authority denies a corresponding deduction to the related company;
- a taxpayer in Canada subject to Canadian income tax on world income, including income from carrying on a business in another country, is also taxed in that other country on the same income; and
- tax is withheld on a royalty at a rate in excess of the rate stated in the convention.

#### **The commitment of the Canadian competent authority**

4. Tax conventions define the Canadian competent authority as the Minister of National Revenue or the Minister's authorized representative.

5. The officers entrusted with the negotiation of double taxation issues will try to resolve requests to the mutual satisfaction of the Canadian taxpayer, Revenue Canada, the related taxpayer in the other country, and the competent authority of the other government.

6. The officers will take an objective and reasonable approach in trying to resolve the issues within the terms of the particular convention and will keep the Canadian taxpayer informed of the status of the request. The involvement of the taxpayer in the process is essential in order for it to operate effectively.

7. The confidentiality of information taxpayers provide is protected by Section 241 of the Canadian Income Tax Act and the provisions of the particular income tax convention.

### **Requests for competent authority consideration**

8. A Canadian taxpayer can make a request for competent authority consideration when Revenue Canada or the revenue authority of another treaty country either adjusts, or formally proposes to adjust, any transaction to which the Canadian taxpayer is a party, and the adjustment results, or will result, in double taxation or taxation not in accordance with the convention.

9. A request for competent authority consideration made on the basis of a formal proposal will not delay or suspend the normal Canadian reassessment procedure Revenue Canada follows. The two procedures will proceed concurrently and independently.

10. Taxpayers can mail requests to:

Revenue Canada

Director General

International Tax Programs Directorate

Ottawa ON K1A 0L8

11. There is no specific form for the request. A letter, signed by the taxpayer, or other person with the taxpayer consent, should provide the following information:

- (a) the name of the foreign revenue authority involved, the convention article under which the taxpayer is making the request, the name, address and, if possible, the identification number of the foreign taxpayer involved;
- (b) the name, address, and social insurance number, corporation identification, or business number of the Canadian taxpayer;
- (c) the control and business relationship between the Canadian taxpayer and any related foreign taxpayers involved;
- (d) the taxation years or periods involved;
- (e) the specific issue(s) raised by the foreign revenue authority and the related amount(s), each supported by calculations;
- (f) a copy of the competent authority request and all the documents filed, or to be filed, with the foreign competent authority, including copies of any correspondence from the other revenue authority, and copies of any briefs, protests, etc., submitted in response to the action proposed by the other revenue authority (if such copies are in a foreign language, you have to supply English or French translations);
- (g) consent for another person to act on behalf of the Canadian taxpayer;
- (h) any other facts that are relevant; and
- (i) any possible bases on which to resolve the issues.

## **Acceptability of requests**

12. Revenue Canada will notify the Canadian taxpayer as soon as possible if the Canadian competent authority has accepted or rejected the request for competent authority consideration.

13. The Canadian competent authority will try to assist the Canadian taxpayer if:

- (a) there is an income tax convention with the foreign country;
- (b) actual or potential double taxation exists or the taxation is contrary to the convention;
- (c) the request is received within the time limits specified in the particular convention;
- (d) the Canadian taxpayer co-operates with the Canadian competent authority in providing the documentation and information necessary to administer the request;
- (e) the issue is not one that the competent authorities of each country have agreed to reject; and,
- (f) the foreign government agrees to deal with the request.

## **Responsibilities of the Canadian taxpayer**

14. Canadian taxpayers have the responsibility not to unilaterally make claims for corresponding deductions for foreign revenue authority adjustments in either their current Canadian income tax returns or by filing amended income tax returns, without first seeking assistance from the Canadian competent authority. Taxpayers can obtain such relief only through the competent authority process. Revenue Canada staff will refer such cases to the Canadian competent authority for review. Failure to seek competent authority assistance will cause delays in the process and may result in double taxation.

15. The competent authority process is a no-fee service to taxpayers. Revenue Canada expects taxpayers, in return for the benefits available under the conventions, to co-operate with the Canadian competent authority by providing information when requested.

16. The onus is on taxpayers to keep the Canadian competent authority informed of all material changes in the information or documentation previously submitted as part of, or in connection with, the request, as well as new information or documentation relevant to the issues under consideration.

17. Taxpayers are responsible for ensuring that the taxation years affected by the request do not become statute-barred. If the particular convention is not explicit in this regard, the status of the Canadian taxpayer would usually be protected by filing waivers in prescribed form pursuant to subparagraph 152(4)(a)(ii) of the Income Tax Act, and by advising the related taxpayer to take such timely action as may be necessary with the foreign revenue authority. Valid waivers permit Revenue Canada to reassess a return to provide relief or otherwise amend a Canadian assessment as a result of competent authority negotiation for years that would otherwise be legally barred from being assessed. Taxpayers can obtain prescribed forms for waivers at any Revenue Canada tax services office. Taxpayers are also responsible for keeping their relevant provincial income tax returns open (see also paragraph 42).

18. With respect to Canadian assessments, taxpayers may also wish to protect their rights of appeal to Canadian courts in the event that the competent authorities do not resolve the issues. Although in most cases the competent authorities reach agreement and relieve double taxation or taxation not in accordance with the convention, there is no appeal procedure under the conventions when agreement cannot be reached. Information Circular 80-7, Objections And Appeals, deals in detail with the appeal process (see also paragraphs 35, 36, and 37).

Taxpayers can obtain prescribed forms and instructions from any Revenue Canada tax services office.

19. The Canadian competent authority has not entered into any agreements with other competent authorities to defer any assessing action, or to stop or defer collection of income tax on cases that are under competent authority consideration. Canadian taxpayers requesting consideration on collection matters should contact the Collections Branch.

### **Notification of reassessments pursuant to Article IX, “Related Persons”, of the Canada-U.S. Income Tax Convention (1980)**

20. Generally, this convention applies to taxpayers' taxation years which start on or after January 1, 1985.

21. Article IX places time frames on the Canadian and U.S. revenue authorities for raising adjustments or proposing adjustments which may create double taxation. It also provides time frames exempting the revenue authorities from providing relief for such adjustments.

22. When one country makes or proposes to make an adjustment, the competent authority of the other country will make a corresponding adjustment to the income, loss, or tax of the related taxpayer if:

- it agrees with the adjustment; and
- it has been notified of the adjustment within six years of the end of the taxation year to which the adjustment relates.

23. Any of the related persons or the relevant competent authority can make the required notification. Such notification must be made in writing and provide sufficient details regarding the adjustment to ensure that the competent authority from whom relief is sought can determine the nature of the adjustment and the taxation years involved. If a taxpayer fails to notify the relevant competent authority within the time frame provided by the convention, there is no requirement for the revenue authority which proposed the adjustment to withdraw the adjustment.

24. In this regard, the revenue authority which proposed the adjustment will only withdraw its adjustment if it did not propose the adjustment to its taxpayer within five and one-half years from the end of the taxation year to which the adjustment relates, and the other competent authority has not been notified (as referred to in paragraphs 22 and 23) of the adjustment within six years from the end of the taxation year to which the adjustment relates.

25. The preceding limitations on proposed adjustments will not apply in the case of fraud, wilful default, neglect, or gross negligence by the taxpayer.

26. The Canadian competent authority will not usually grant a Canadian taxpayer relief for any foreign adjustment if it has not received notification of the adjustment within the six-year period.

27. However, the proposed amendments to Article IX contained in a new protocol, when enacted, will:

- allow the competent authorities to consider cases when they did not receive notification within six years from the end of the taxable year to which the adjustment relates, as long as the year is not otherwise barred by statute; and

- even if the competent authority did not receive notification within the six year limit, and have not agreed to otherwise consider the case, the revenue authority making or proposing the adjustment may still provide relief from double taxation when appropriate.

28. When there is double taxation involving a country other than the United States, taxpayers should consult the appropriate convention to determine the relevant notification procedures and time limits.

### **Competent authority settlements**

29. Competent authority settlements are not precedents for reassessments relating to subsequent years for either the taxpayer or Revenue Canada. This is because such settlements take into consideration not only the facts of the particular taxpayer, but also the difference in the provisions of the tax law in each country. The settlement's ultimate purpose is to avoid double taxation for the taxpayer and to make a proper division of tax revenues between the countries. A taxpayer cannot accept a settlement on only some issues or taxation years involved, since concessions may have been made by both countries to produce the agreement.

30. If a taxpayer is not satisfied with a settlement negotiated by the competent authorities, the taxpayer can reject the settlement, in which event the competent authorities will consider the issue closed, and will advise the taxpayer accordingly. In these circumstances, taxpayers still have the right to proceed, assuming they have filed valid notices of objection, through the appeal process, to the courts on the technical aspect(s) of the adjustment.

### **Interest payable and penalties on Canadian income taxes**

31. The conventions Canada has entered into do not cover interest and penalties on any Canadian (federal) income taxes payable on reassessments resulting from a request for competent authority consideration. The Canadian competent authority does not have the power to waive any portions of the interest or penalties resulting from such reassessments.

32. It is the general practice of the Canadian competent authority not to recommend the waiving of interest under subsection 220(3.1) of the Canadian Income Tax Act for reassessments involving competent authority issues. Most treaty partners usually will pay their taxpayers' interest on refunds of income taxes.

### **The repayment of funds and Part XIII tax**

33. The Canadian competent authority has a reciprocal arrangement with the U.S. competent authority which permits the original recipient taxpayer to repay excess amounts, paid for the intercompany transfer of goods and services which are the subject of a competent authority request, to the original payer company free of any withholding taxes.

34. The appropriate competent authority will allow its taxpayers relief in the taxation year they made the payment, for any loss that resulted from the difference in the currency exchange rates between the date the original transaction took place and the date of repayment. Also, when a foreign taxpayer agrees to repay such excess funds to a related Canadian taxpayer, the Canadian competent authority, as part of the competent authority settlement under the Mutual Agreement Procedures' article of the convention, may authorise the refund of any Part XIII tax which may have been assessed as a deemed dividend, or as an appropriation, to the foreign taxpayer.

## **Tax appeals pertaining to reassessments initiated by Revenue Canada**

35. It is Canadian policy that if a taxpayer proceeds with either a notice of objection or an appeal to a court on a double taxation issue while the competent authority negotiations are in progress, these negotiations will be terminated.

36. However, the taxpayer can later resubmit the issue for competent authority consideration when double taxation or taxation not in accordance with the convention remains following an appeal settlement or a Canadian court decision. The Canadian competent authority will then supply the other competent authority with the details of, and rationale for, the outcome of the appeal settlement or court decision. However, the Canadian competent authority cannot alter these decisions. Any relief for the double taxation or the taxation not in accordance with the convention will be possible only in the other country at the discretion of its competent authority.

37. A taxpayer can make a competent authority request regarding one issue on a reassessment, and independently pursue another issue with the Appeals Branch.

## **Tax appeals in foreign countries**

38. The Canadian competent authority is not bound by a decision given by a foreign court or a foreign appeals settlement. The granting of any relief to the Canadian taxpayer will depend on the individual merits and circumstances of each situation.

## **Provincial income tax considerations**

39. "Agreeing" provinces are those provinces that rely on Revenue Canada to collect incomes taxes under the relevant federal-provincial collection agreements, and any competent authority negotiations or settlements will apply automatically for provincial purposes. The agreeing provinces are Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, Saskatchewan, and British Columbia for individuals and corporations, and Ontario and Alberta for individuals.

40. In the case of non-agreeing provinces, that is Quebec for individual taxpayers, and Quebec, Ontario, and Alberta for corporations, the various bilateral conventions theoretically have no application for provincial purposes. Although, in practice, provincial revenue authorities have historically accepted competent authority settlements, there is no obligation, real or implied, for them to do so.

41. An exception is Alberta, where the Alberta Corporate Income Tax Act provides that when a convention is inconsistent with the federal Act, and it prevails to the extent of that inconsistency, it shall also prevail to the same extent for purposes of the Alberta Corporate Income Tax Act.

42. If a waiver has been filed under Subsection 152(4) of the federal Income Tax Act, such a waiver is also valid for the purposes of the Ontario Corporation Tax Act. This is true also for Alberta since that province's Corporate Income Tax Act automatically keeps a return open for 12 months following the date of reassessment under the federal Income Tax Act. In Quebec, however, it is necessary to file waivers in accordance with the relevant provincial legislation.

43. The comments in this circular reflect provincial legislation in force at the time of publication. There may have been changes since that time. Taxpayers are urged to consult with the respective provincial revenue authorities of the non-agreeing provinces.

## Conclusion

44. If you have any comments about this circular, please write to:

Revenue Canada

Director General

International Tax Programs Directorate

Ottawa ON K1A 0L8

Appendix A

Countries that have tax treaties with Canada: (January 1, 1995)

Australia	Malaysia
Austria	Malta
Bangladesh	Mexico
Barbados	Morocco
Belgium	The Netherlands
Brazil	New Zealand
Cameroon	Norway
Cyprus	Pakistan
Czech & Slovakia Federal Republic	Papua New Guinea
Denmark	People's Republic of China
Dominican Republic	Philippines
Egypt	Poland
Finland	Romania
France	Singapore
Federal Republic of Germany	Spain
Guyana	Sri Lanka
India	Sweden
Indonesia	Switzerland
Ireland	Thailand
Israel	Trinidad and Tobago
Italy	Tunisia

Ivory Coast

Jamaica

Japan

Kenya

Republic of Korea

Luxembourg

United Kingdom

United States

U.S.S.R.

Zambia