



Transfer Pricing: Deadlines to Preserve Taxpayer Rights to Request Competent Authority Assistance to Relieve Double Taxation

Global Transfer Pricing Alert 2017-045

Transfer pricing continues to be the top enforcement priority of tax authorities around the world, and one of the major risks for many multinationals. With foreign tax authorities aggressively asserting transfer pricing deficiencies, many taxpayers are receiving proposed adjustments regarding intercompany transactions. For this reason, it is imperative that taxpayers understand the actions required to preserve the right to request competent authority assistance to relieve double taxation. Failure to do so will likely result in double taxation and impact the affected taxpayer's ASC740 calculations.

Competent authority assistance for double taxation is provided under the mutual agreement procedure (MAP) article of the relevant tax treaty. To obtain relief from double taxation, the United States and other countries' competent authorities must be notified of the proposed transfer pricing adjustments, or a request for MAP assistance must be filed, within specified deadlines under many U.S. tax treaties. For example, in the case of an IRS-initiated adjustment, the foreign tax authority may require notification, and, in the case of a foreign-initiated adjustment, the IRS may need to be notified. Failure to make the appropriate filings can result in the IRS or foreign tax authority denying the taxpayer's request for competent authority relief to eliminate double taxation. In addition, taxpayers generally should not sign closing or similar agreements with the tax authorities if they intend to request competent authority assistance, because doing so may limit their ability to obtain relief from double taxation.

In 2016, the IRS received 176 new US competent authority requests, 128 relating to transfer pricing or attribution cases and 48 relating to non-transfer pricing cases.¹ Given the ever-increasing aggressiveness of foreign tax authorities, taxpayers must be vigilant regarding the tax treaty deadlines to protect their right to request competent authority assistance. These tax treaty deadlines can and do differ from domestic statutes of limitations, and taxpayers must take protective actions to keep recourse to competent authority open. The fact that the domestic statute of limitations may still be open for transfer pricing assessments in one or both of the affected countries is not determinative of the availability of competent authority assistance.

Taxpayers who are either subject to a foreign or IRS-initiated tax audit or who have a reasonable expectation that they may be subject to a foreign or IRS-initiated tax audit should review the relevant tax treaty timelines and consider taking all necessary protective measures. Taxpayers do not need to wait until the conclusion of a transfer pricing audit to take such measures.

Failure to notify the IRS (or foreign tax authority) within the specified time frames will likely preclude the taxpayer from seeking competent authority relief from double taxation, and may also give rise to issues regarding the creditability of foreign taxes. See *Procter & Gamble Co. v. U.S.* (S.D. Ohio, Case No. 1:08-cv-00608, defendant's motion for summary judgment granted 7/6/10).

The table below summarizes the notification/filing requirements and applicable time limitations for requesting competent authority assistance between the United States and all of its current tax treaty partners. Some US tax treaties (those with Canada, Finland, Jamaica, Mexico, Netherlands, and Turkey) require notification to the tax authority that did not propose the adjustment within a certain number of years of the taxpayer's tax year-end or the filing of a tax return.

For example, the US-Mexico tax treaty requires notification to the tax authority that did not propose the adjustment within four and a half years from the due date or the date of filing of the taxpayer's tax return in the country whose tax authority did not propose the adjustment, whichever is later. The standard statute of limitations for a tax adjustment in Mexico is five years, which extends past the deadline for notification under the US-Mexico tax treaty. This could potentially lead to situations whereby the taxpayer is not aware of a tax adjustment until after the notification deadline under the US-Mexico tax treaty has passed, which could preclude the taxpayer from seeking competent authority relief from double taxation. To avoid this, taxpayers should consider filing notifications with the IRS Advance Pricing and Mutual Agreement (APMA) program at the onset of any Mexican tax examination, even if they are not

¹ Organization for Economic Cooperation and Development, *Making Dispute Resolution More Effective – MAP Peer Review Report, United States (Stage 1)*, http://www.oecd-ilibrary.org/taxation/making-dispute-resolution-more-effective-map-peer-review-report-united-states-stage-1_9789264282698-en.jsessionid=qnfdgotn1m3m.x-oecd-live-02. Beginning with reporting year 2016, the United States now reports its MAP statistics pursuant to the MAP Statistics Reporting Framework found in *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>. The new reporting framework does not provide for reporting a breakdown of US-initiated adjustments vs. foreign-initiated adjustments in relation to competent authority requests received; therefore, the United States has not reported this information for 2016.

certain that the examination will result in a transfer pricing adjustment.

In addition to the original notification, the IRS requires annual notification updates until a complete competent authority request has been filed. Under Rev. Proc. 2015-40, the annual notification must be submitted following the close of each taxable year ending after the taxable year in which the taxpayer submitted the treaty notification, but no later than the date on which the taxpayer timely files a tax return for such taxable year.

Taxpayers should consult with their tax advisors to evaluate the relevant provisions of the applicable tax treaty and their specific application to the taxpayer's facts and circumstances.

The contact persons listed below can assist you in preparing the required notifications and updates.

U.S. Treaty Partner	Notification/Action Deadline per Tax Treaty
Australia	The case must be presented within three years from the first notification of the tax authority action giving rise to taxation not in accordance with the provisions of the treaty.
Austria	No deadline.
Bangladesh	No deadline.
Barbados	No deadline.
Belgium	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Bulgaria	No deadline.
Canada	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within six years from the end of the taxable year to which the case relates.
China	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Cyprus	No deadline.
Czech Republic	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Denmark	No deadline.
Egypt	No deadline.
Estonia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Finland	The competent authority of the country that has been requested to provide a refund must have received notification within six years from the end of the taxable year to which the case relates.
France	The case must be presented within three years of the notification of the action resulting in

	taxation not in accordance with the provisions of the treaty.
Germany	The case must be presented within four years from the notification of the assessment giving rise to double taxation or to taxation not in accordance with the provisions of the treaty.
Greece	No deadline.
Hungary	No deadline.
Iceland	No deadline.
India	The case must be presented within three years of the date of receipt of notice of the action that gives rise to taxation not in accordance with the treaty.
Indonesia	The case must be presented within three years of the first notification of the action giving rise to taxation not in accordance with the provisions of the treaty. Where a combination of decisions or actions taken in both countries results in taxation not in accordance with the provisions of the treaty, the three-year period begins to run only from the first notification of the most recent action or decision.
Ireland	No deadline.
Israel	No deadline.
Italy	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Jamaica	The taxpayer or the competent authority of the United States must give notice within the time limits established by the domestic law of Jamaica to the competent authority of Jamaica that there may be a claim for tax adjustments.
Japan	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Kazakhstan	No deadline.
Korea	No deadline.
Latvia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Lithuania	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Luxembourg	No deadline.
Malta	No deadline.
Mexico	When a resident of one country presents his case to the competent authority of that country, the competent authority of the other country must have been notified of the case within four and a half years from the due date or the date of filing of the return in that other country, whichever is later. In any case arising under any article other than Article 9 (Transfer Pricing) of the treaty, it may be prudent to notify each country within four and a half years from the due date or the date of filing of the

	return in that other country, whichever is later. As discussed previously, the statute of limitations for a tax adjustment may extend past the due date for notification under the US-Mexico tax treaty. Taxpayers should consider filing notifications with the IRS APMA program at the onset of any Mexican tax examination.
Morocco	No deadline.
Netherlands	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within six years from the end of the taxable year to which the case relates.
New Zealand	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Norway	No deadline.
Pakistan	No deadline.
Philippines	No general notification deadline, but there is a filing deadline with respect to the Philippines. The claim for refund or credit must be filed in the Philippines no later than two years from the close of the taxable year in which the United States imposed tax is paid, and such claim for refund or credit must be filed within five years from the close of the taxable year in issue.
Poland	No deadline.
Portugal	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Romania	No deadline.
Russia	No deadline.
Slovakia	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Slovenia	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
South Africa	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty (or in the case of tax collected at source, within three years from the date of collection).
Spain	The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Sri Lanka	No deadline.
Sweden	No deadline.
Switzerland	No notification deadline in Treaty; however, a formal request for competent authority assistance must be made within ten years after the final assessment of Swiss or U.S. taxes, as applicable.

Thailand	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.
Trinidad and Tobago	No deadline.
Tunisia	No deadline.
Turkey	The competent authority of the country that did not propose the adjustment must receive notification that such a case exists within five years from the end of the taxable year to which the case relates.
Ukraine	No deadline.
United Kingdom	The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.
Venezuela	No deadline; however, the statute of limitations must be "interrupted in accordance with the steps designated by domestic law" to implement the mutual agreement.

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