



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

Global Transfer Pricing Alert 2016-035

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.

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 adjustments, or a request for MAP assistance must be filed, within specified deadlines under many US 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 2015, 78 percent of new US competent authority requests received related to foreign-initiated adjustments.¹ Given the ever-increasing aggressiveness of foreign tax authorities, taxpayers must be vigilant regarding the treaty deadlines to protect their right to request competent authority assistance. These 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 tax audit or who have a reasonable expectation that they may be subject to a foreign tax audit should review the relevant 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 treaty partners. Some U.S. 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. In addition to the original notification, the IRS requires annual notification updates. The recently issued updates to the IRS competent authority procedures – Rev. Proc. 2015-40 – changed the due date for such updates beginning in 2016. The new due date for notification updates is 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 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 Treaty |
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| 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. |

¹ Internal Revenue Service, Large Business and International Division, Competent Authority Statistics, April 27, 2016. Last year, 224 out of 289 of requests received in 2015 for the Advance Pricing and Mutual Agreement (APMA) Program and Treaty Assistance and Interpretation Team (TAIT), combined, related to foreign-initiated adjustments.

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| 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. |

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| 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 Article 9 of the Treaty, the resident in each country should ensure that the competent authority of the other country has been notified 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. Please note that the statute of limitations for a tax adjustment may extend past the due date for notification under the U.S.-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. |

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| 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 laws" to implement the mutual agreement. |

Contacts

Kerwin Chung
kechung@deloitte.com

Dave Varley
dvarley@deloitte.com

Kirsti Longley
kilongley@deloitte.com

Darrin Litsky
dlitsky@deloitte.com

Jamie Hawes
jhawes@deloitte.com

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