

NEXT STEPS – MOU BETWEEN THE COMPETENT AUTHORITIES OF CANADA AND THE UNITED STATES ON THE MUTUAL AGREEMENT PROCEDURE

Canada and US Announce Plan to Implement MOU. The Director General, International Tax Directorate ("Director General"), Canada Customs and Revenue Agency (CCRA), Competent Authority for Canada and the Director - International ("Director - International"), Large & Mid-Size Business (LMSB), Internal Revenue Service (IRS), Competent Authority for the United States announced today a number of developments designed to implement the Memorandum of Understanding (MOU), which was executed on June 3, 2005. These developments are as follows.

Appointment of Representatives. The Director General for CCRA and the Director - International for IRS announce the appointment of personnel to represent Canada and the United States, respectively, in initiating discussions to reach agreement with respect to the items listed on page 4 of the June 3, 2005 MOU. The Director General for CCRA and the Director - International for IRS will supervise the designated personnel in the performance of these functions. Jim Gauvreau, Director, Competent Authority Services Division (CASD) and Bruce Messenger, Chief Economist, CASD, will represent CCRA in the bilateral discussions to pursue preparation of guidelines on substantive issues and execution of two MOUs (Appeals procedure and Notification), while Tim Dehan, Manager, Tax Treaty, and Clark Armitage, Branch Chief, APA Program, will represent the IRS. The two sides agree to begin discussions as soon as possible.

Agenda Priorities for Discussion. Both the agenda and the priorities to be addressed by the appointed representatives for CCRA and the IRS, respectively, appear on page 4 of the MOU executed on June 3, 2005. These items are listed in the order in which they will be addressed: first, to prepare a MOU that will establish a binding procedure to determine the underlying facts and circumstances of a specific case where factual disagreements persist in a MAP case. This procedure will involve the appeals organizations of CCRA and the IRS, respectively. Representatives from both appeals organizations will participate in the development of a process to resolve factual disputes and will also be involved in drafting the language to reflect the bilateral understanding of the two countries.

Second, to create a set of guidelines to resolve cases involving substantive issues that may complicate case resolution. These issues include, but are not limited to, the determination of: (a) an arms length compensation for consignment manufacturing operations; (b) whether a business is integrated to a point where a profits split method is appropriate, and, if so, the relative value of contributions made by related parties toward the generation of profits; (c) the presence of non-routine intangible assets and the determination of an arms length value; (d) whether a permanent establishment (PE) exists and the amount of profit to be attributed to the PE; (e) whether a transaction is properly characterized as a service versus a licensed intangible; (f) the amount of compensation, if any, upon either the closure or relocation of a business and the allocation of

associated closing costs; and (g) appropriate relief where source and residence country's laws are in conflict. These substantive issues will be addressed in the order in which they are listed in the June 3, 2005 MOU.

Third, guidelines will also be developed to identify and remove procedural obstacles that impede or delay the process in resolving double taxation cases.

Fourth, to create a MOU to address a number of issues surrounding the notification.

Transitional Issues. Questions have been raised regarding the manner in which existing MAP cases should be managed if issues presented in the case(s) fall within one of the categories of substantive issues identified for further discussion and negotiation. The Director General for CCRA and Director - International for IRS believe it is important to provide guidance to taxpayers and also their respective organizations regarding the management of such cases during the period while various substantive issues are being addressed in the preparation of issue guidelines. The Director General for CCRA and the Director - International for IRS believe that all MAP cases should be considered by their respective organizations in an effort to reach agreement and resolve the case(s) in a timely manner. Accordingly, notwithstanding that a particular case may present one or more substantive issues that would otherwise be addressed in a set of guidelines as described in the MOU executed on June 3, 2005, each case should be considered presently without delay for purposes of discussion and potential agreement. If agreement cannot be reached after a reasonable period of time involving one or more substantive issues as identified in the June 3, 2005 MOU, then the case shall be held in abeyance pending the execution of the MOU(s) concerning that issue(s). The case would then be resolved according to the guidelines addressing the substantive issues involved.

Execution and Release of MOUs. To provide guidance to taxpayers and their own organizations, the Director General for CCRA and the Director - International for IRS will publicly release each set of guidelines (or MOU) addressing specific procedural or substantive issues once the document has been agreed to and executed.

Frederick R. O'Riordan
Director General
International Tax Directorate
Canada Customs & Revenue Agency

Robert H. Green
Director - International
Large & Mid-Size Business Division
Internal Revenue Service

Date

Date