Revised CRA Policy Heralds Focus On Contemporaneous Transfer Pricing Documentation



CRA released an updated transfer pricing memorandum, TPM-05R, **Requests for Contemporaneous Documentation**, in March, which describes the procedural aspects of transfer pricing documentation requirements in substantially more detail than its predecessor. The new policy document does not contain large substantive changes but its focus on precise rules signifies an increased emphasis on strict adherence to those rules.

For example, the policy discusses at length the three-month deadline for submitting contemporaneous documentation, setting out precisely how to calculate the deadline in various circumstances, which are generally based on anniversary dates, regardless of short or long months. The policy also makes it clear that taxpayers must deliver any required information to CRA, as opposed to merely making it available, and clarifies taxpayers' obligations in the event that requested information has previously been provided to CRA. In the latter case, taxpayers do not need to provide the information again, but must respond within the three-month deadline referencing the information and the CRA official or area to whom it was provided.

One notable change is the addition of the goal of assisting the CRA's Transfer Pricing Review Committee in evaluating taxpayer compliance. Currently, all penalty assessments must be approved by the TPRC so this change may be indicative of a more vigorous penalty review by CRA.

CRA's focus on transfer pricing documentation comes on the heels of the Tax Court decision in *McKesson*, in which Mr. Justice Boyle was critical both of the taxpayer's contemporaneous documentation and of CRA's decision not to impose penalties. In light of this criticism and the detailed new policy in TPM-05R, taxpayers should be vigilant in ensuring compliance with their transfer pricing documentation obligations.

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