



## **PART TWO:**

# ***DETAILED QUALITATIVE FINDINGS***



# *Attitudes Towards International Transfer Pricing*

# INTERNATIONAL TRANSFER PRICING IS AN ISSUE THAT CONTINUES TO GROW IN IMPORTANCE

- The increase in importance is due to a number of factors:
  - »»» Increase in attention by governments looking for revenue generation / protection
  - »»» Increasing global nature of many organizations
  - »»» Number of countries trying to keep up with US Government and OECD guidelines
  - »»» Imposition of penalties / interest by US rulings
  - »»» Increasing need to provide comfort for executives / shareholders in a global environment
  - »»» *“Looking hard for certainty”*

# TRANSFER PRICING IS CONSIDERED BY MOST ORGANIZATIONS AS AN AUDIT / COMPLIANCE MATTER

- Few companies consider transfer pricing as a strategic management tool.
- From a North American point of view, taxes in both Canada and the US are viewed as roughly equal, thus eliminating any advantage that might be gained by shifting profit. *“The Canadian and US tax rates are about the same- there are no great savings”*.
- Some companies say that it would be risky or foolish to try to fool governments by making money on tax matters. Others say that they consider it their duty to pay their fair share of taxes. They don't feel CCRA looks at them in this light.
- There are more important investment decisions than transfer pricing such as labour availability and cost, market proximity, quality of life for employees and availability of raw materials.



***First Contact And Expectations***  
***- Advance Pricing Arrangement Program -***

## CANADA CUSTOMS AND REVENUE AGENCY HAS PROVIDED INFORMATION BUT HAS NOT SOLD THE APA PROGRAM

- Organizations have generally learned about the program from outside tax advisors, CCRA tax circulars, industry publications and conferences.
- CCRA has not taken on an aggressive marketing role of the program.
- The marketing or “participation drivers” are either outside tax advisors or parent companies.

# THE DECISION TO APPLY FOR AN APA

- Usually made by parent company.
- Generally a tough sell for tax executives to convince many of their senior executives to spend money and effort for an APA. Senior executives usually have to be sold as this is generally seen as a compliance issue and most CEO's are more interested in business operations decisions that impact upon revenue or costs.
  - » *“This (recommending an APA) is not a career enhancing move for most tax executives!” In fact, some tax executives go out on a limb by encouraging their companies to enter a complex, time-consuming and expensive process.*
- The case for an APA is made a lot easier with a “bad audit”.

## THE MAIN POSITIVES FOR CONSIDERING THE APA PROGRAM ARE THE AVOIDANCE OF NEGATIVES

- Few companies enter the program to achieve positive benefits.
- Rather they wanted to avoid negative consequences of reassessments (penalties / interest or double taxation).
- However, there is strong agreement that the main benefit of the APA is the positive comfort that is provided by the certainty of treatment and the corresponding lack of unpleasant surprises for management, shareholders and senior tax executives- *“The world is moving in the APA direction in search of certainty”*.



# POSITIVE CONSIDERATIONS OUTWEIGH THE NEGATIVES

## Positive Considerations

- »»» Certainty factor
- »»» Future or past bad audit
- »»» Faster solution than lawsuit or Competent Authority
- »»» Comfort factor
- »»» Avoidance of penalties
- »»» Avoid double taxation
- »»» Reduce future audit costs
- »»» Possible solving of past audit problems

## Negative Considerations

- »»» Time to complete process
- »»» Costs
- »»» Complexity of process
- »»» No guarantee of success
- »»» Disclosure of lots of information to tax authorities that would otherwise not surface in an audit
- »»» Loss of confidentiality of information
- »»» A worry that information obtained during an application could be used against them later if an agreement is not reached



# *Actual Experience with the Advance Pricing Arrangement Program*

## THE MAJORITY HAVE A SOMEWHAT FAVOURABLE OVERALL IMPRESSION OF THE APA PROGRAM

- The favourable impression of the program is generally generated by the achieved or promised results and not by the lengthy approval process that organizations have to go through.
- ▶▶▶ *“It can be an arthritic process to get, but it is worth it”.*
- ▶▶▶ *“I can’t imagine that they (CCRA) get anything done!” “Paralysis by analysis”*
- ▶▶▶ *“There are not a lot of alternatives (to the APA).”*
- ▶▶▶ *“Happy with the way APA is handling our transfer pricing issues at present”*
- ▶▶▶ *“The most intelligent thing (APA’S)that governments have done”*
- ▶▶▶ *“An APA is a little bit better than not knowing the rules”*
- ▶▶▶ *“Anecdotal report that it will be extremely long process”*
- ▶▶▶ *“All countries came into it with same objective- A good answer for everyone”*
- ▶▶▶ *“If we don’t get APA, it will be disastrous for us!”*

# “CERTAINTY OF TREATMENT” IS MOST LIKED ABOUT THE APA PROGRAM

## LIKES ABOUT THE APA PROGRAM

- ✓ Certainty of treatment by tax authorities (Major benefit)
- ✓ Comfort provided to board and shareholders
- ✓ Reaches agreement on future and past
- ✓ Avoids double taxation and penalties and interest charges
- ✓ Reduces cost of future audit defenses
- ✓ Better and cleaner process than audit, litigation or CA
- ✓ Meets strategic needs for global growth
- ✓ Assists us in determining the profitability of each part of business
- ✓ Has improved overall relationships with tax authorities
- ✓ Minimizes tax exposure

# THE MAJOR DISLIKE OF THE APA PROGRAM IS THE TIME REQUIRED FOR APPROVAL

## DISLIKES OF APA PROGRAM

- x Lengthy approval process
- x Costs incurred (little mention of CCRA invoiced costs)
- x No guarantees at the end of the day
- x Revolving CCRA staff on file / Inexperienced CCRA staff
- x Attitude toward companies as being cheaters
- x Lack of leadership on CCRA team/ *“reluctant to pull trigger”*
- x Possibility of rolling back into past years
- x The use of secret comparables
- x Level of detail requested
- x Revealing too much
- x Lack of feedback during the approval process
- x Left out of the government to government sessions

# REASONS ATTRIBUTED FOR DELAYS IN APPROVAL

- Lack of CCRA staff (Some say this is improving recently)
- Turnover of CCRA staff
- Mindset of CCRA staff (Trying to make the right / precise decision rather than obtain a good answer for everyone)
- No overall detailed time-lines established
- Appears to be no accountability on the government end
- Unwillingness or inability to make a decision at CCRA
- Lack of trained CCRA staff(business issues)
- *“Relationship between IRS and CCRA fell apart”*
- *“Expected governments to assist more”*
- General communications problems
- Not being present at government to government meetings. *“We know our business better than they do. Not being there to answer questions cost us another 3 months”*

# THERE IS STRONG AGREEMENT ON SOME APA POSITIONING STATEMENTS

The APA process takes much too long to complete → This receives almost unanimous agreement from all respondents

One of the main benefits is the “certainty of treatment” provided → This is seen as the major benefit of the program

The APA is geared primarily to the elimination of double taxation

The APA program provides complete confidentiality of my company’s information → Some comment upon recent IRS ruling that was overturned regarding publication of APA approvals

# THERE IS SPLIT OPINION ON MANY BENEFITS STATEMENTS

The APA is not an adversarial approach for resolving transfer pricing issues

→ By definition it is an adversarial relationship. Adversarial between IRS and CCRA. Taxpayers feel on the defensive despite this being a voluntary process.

The APA process is much too expensive relative to the benefits provided

→ Too much detail requested. Costly to obtain.

The APA provides my organization with a discipline by providing a forum to present our arguments.

The on-going reporting requirements greatly diminish the value of the APA program for us

→ Will not accept electronic copies. Want too quickly.

The APA staff operate in a supportive fashion for my organization

→ No resolution. Keep asking for information. Don't see role as being one of support.



# THERE IS GOOD AGREEMENT ON OTHER ASPECTS OF THE APA

The APA is not just an enhancement or tool to help organizations meet the requirements of section 247

One of the benefits of the APA is the assistance that the process provides in meeting the requirements of section 247

The APA program provides a good forum for taxpayers to deal with transfer pricing issues in a cooperative manner

→ A number do not see the process as being cooperative, either between themselves and government or between governments.

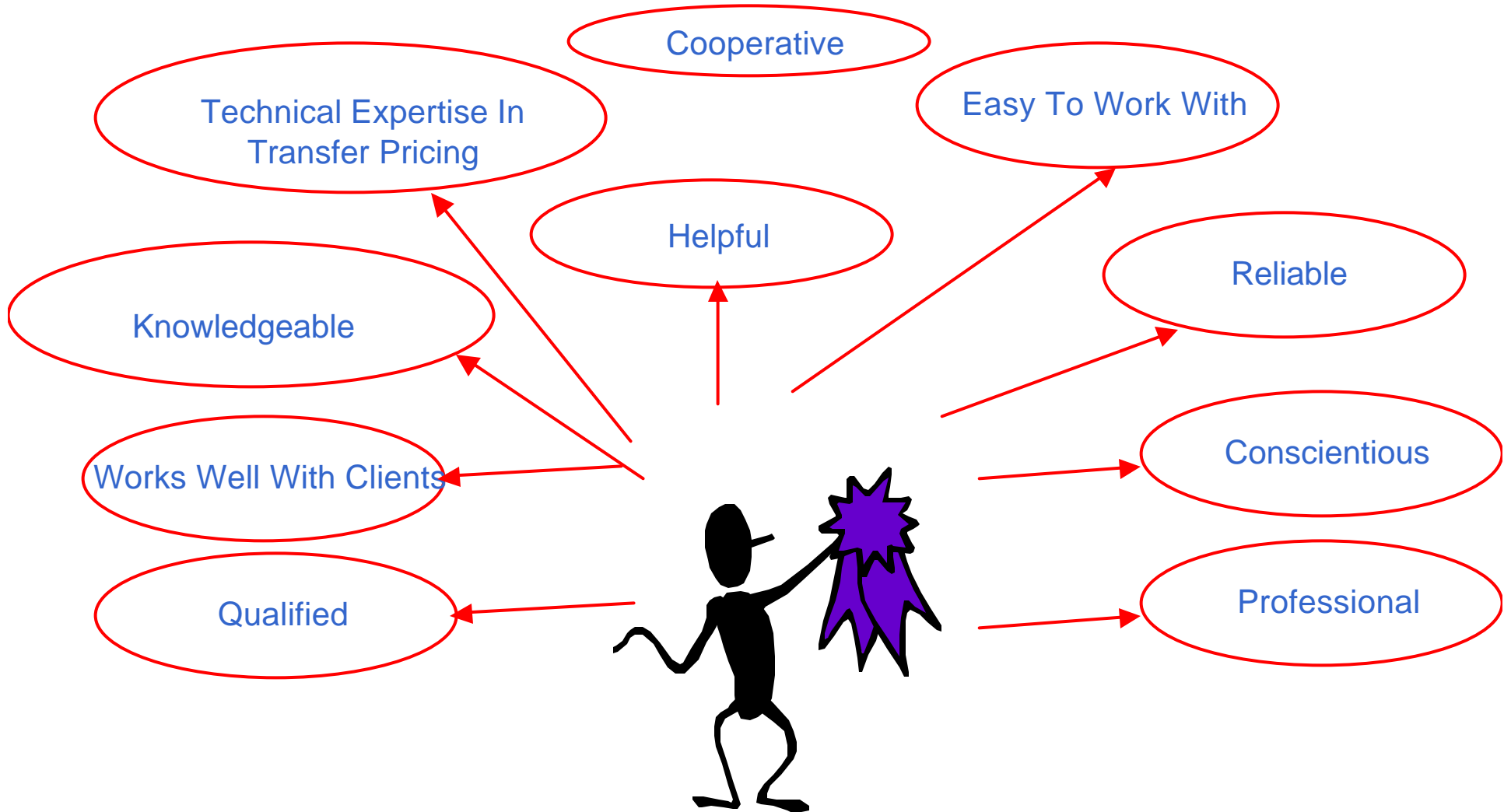
## DESPITE THE ONLY “SOMEWHAT FAVOURABLE” RATINGS, THE APA IMPROVES THE OVERALL IMPRESSION OF CCRA

- Despite the operational difficulties and delays in approvals, clients and tax advisors generally say that the APA improves their overall impression of CCRA
- Clients and outside tax advisors like the proactive nature of this program
- *“It is a signal of the willingness of the government to become more competitive globally”*



# *Assessment Of APA Program Personnel*

# STRENGTHS OF PERFORMANCE OF APA PROGRAM PERSONNEL



***Strengths to Leverage and Build On***

# WEAKER ASPECTS OF THE PERFORMANCE OF APA PROGRAM PERSONNEL

Not Able To Think Out Of The Box

Inflexible

Bureaucratic

Not Adaptable

Not forward thinking

Not Willing To Go The Extra Mile

Not Customer Oriented

Not Willing To Give And Take

Not Open To Different Viewpoints

Lack of understanding of business  
and business processes



*Areas Where Improvements Can Be Made*



# *Scope Of APA Program*

# THERE IS LITTLE ENTHUSIASM FOR INCREASING THE SCOPE OF THE CURRENT APA PROGRAM

- There is a sense that CCRA should get its house in order prior to increasing the scope of the APA program.
- Adding customs issues and examining documentation do not generate much interest for many organizations and do not appear to be relevant to many of these companies. Permanent establishment issues could be of some interest, again provided the timing issue has been first dealt with.



# *Suggested Changes To APA Program*



# INCREASED STAFFING AND TRAINING ARE KEY SUGGESTIONS FOR CHANGE

## Increased Staffing

- »»» Required to significantly reduce approvals time
- »»» There is a sense that this has been improving in recent months
- »»» Add good managers with ability to make decisions and improve empowerment
- »»» In short term hire outside consultants to address backlog and to provide training to new recruits
- »»» Hire staff with international experience and an understanding of business

## Increase Training

- »»» Provide industry specific education to APA staff. Especially need to address the new knowledge-based industries
- »»» Consider structuring into industry specialist groups
- »»» Continue joint meetings and training with IRS

# A CHANGE OF MINDSET AND IMPROVED COMMUNICATIONS ARE ALSO NEEDED

## Change Of Mindset

- »»» Strive for close solution not exact price
- »»» Need to look at individual decisions in national interest- there could be potential loss of economic investment with a poor and inflexible APA program
- »»» Not an audit process- that comes later- looking for acceptable solution
- »»» Enter application process without conveying attitude that all companies are cheaters

## Improved Communications

- »»» Establish a more formal communications process for each application. Establish regular reporting as to progress, people changes, meetings, etc.
- »»» Clarify role of CCRA staff at start of project
- »»» Be clear with reactions to company submissions- if a problem or disagreement - communicate that reaction
- »»» Include companies in government to government meetings as source of information

# THERE IS A NEED TO FORMALIZE / INSTITUTIONALIZE THE PROCESS MORE

## Formalize The Process More

- »»» Develop common information request lists with other governments
- »»» Establish detailed timelines by activity at the start of the project. Report on progress towards meeting these schedules
- »»» Increase accountability for meeting deadlines by relating to incentives, bonuses, promotions of APA staff
- »»» Streamline and reduce annual reporting requirements
- »»» Standardize requests for information
- »»» Rethink intensive documentation process
- »»» Generally institutionalize the process with rules, guidelines, case plans, etc.
- »»» Reduce compulsion to have “site” visits

# MISCELLANEOUS

- Little disagreement with the team approach employed for this program.
- There is an understanding that different backgrounds are required to review the methodology.
- Comments are made that regardless of team makeup, somebody has to be in charge and be willing to make decisions.
- Some do comment that having to have all team members at meetings can cause delays in scheduling meetings.

# VIEWS OF US OUTSIDE TAX ADVISORS

- Views are similar to clients on most issues. (This is a demonstration of the closeness of this community).
- Some express view that CCRA has “a chip on the shoulder attitude towards the US”.
- Support the use of the APA to help smaller companies whereas Canadian tax advisors do not. *“CCRA has not shown the same consideration for smaller companies as the IRS has” (This could be reflective of different definitions for medium sized companies in the two countries).*
- *Perceive problems for Canada if APA program is not favourably viewed.*
- *Some increasingly see Canada as an aggressive tax jurisdiction.*

# VIEWS OF CANADIAN OUTSIDE TAX ADVISORS

- Views are also very similar to clients.
- Do not see APA as being of value to medium sized organizations.
- They seem to have a lack of understanding of the benefits of an APA with a number suggesting that CCRA, outside advisors and the companies all share in these benefits.