

## US

## KPMG in the US



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## Treaty notifications and MAP access: a small filing with a big impact

**Multinational companies face numerous year-end tasks but should not forget to file the treaty notifications that are required in certain US tax treaties, say senior tax practitioners from KPMG in the US**

In the rush of year end, multinational entities (MNEs) are juggling competing priorities and deadlines. One deadline that can easily get missed relates to the requirement under certain US tax treaties to provide notification to the relevant competent authorities if the company may require competent authority assistance for prior tax years.

If a required treaty notification is not filed, the taxpayer will not be able to benefit from competent authority assistance under the relevant treaty. This is a simple filing that takes little time but can have a significant impact on a multinational company's risk exposure.

### Presentation and notification requirements

Under many US tax treaties, access to competent authority relief via the mutual agreement procedure (MAP) article is limited in some manner by requirements governing the presentation or notification of a competent authority case.

The requirements regarding presentation relate to the period of time in which the taxpayer must file its request for competent authority assistance under the treaty, or if the treaty does not specify a timeframe, under the domestic guidance of the relevant jurisdictions.

Notification requirements, which are less common, require instead that the taxpayer notify a competent authority of the potential need for competent authority assistance within a certain time period to obtain effective competent authority relief under the MAP article of the treaty.

### Notification requirements in US tax treaties

Many US treaties provide that a competent authority resolution may be implemented

notwithstanding domestic limitations, but some treaties condition this procedural override (or access to a MAP in the first place) on a timely treaty notification. (Treaties that lack an override altogether effectively require the taxpayer to file a protective claim for refund – a distinct filing that is sometimes combined with a treaty notification – to implement a MAP outcome.)

Treaty notifications can therefore be a taxpayer's key to MAP access. This is particularly important in cases where an adjustment may not be formally proposed until after the notification period has expired.

The US has 58 treaties covering 66 jurisdictions, but only seven – with Canada, Finland, Jamaica, Mexico, the Netherlands, the Philippines, and Turkey – have such treaty notification or similar requirements. These requirements vary in the length of time permitted for notification and in the starting point for computing the relevant period. As a practical matter, a US taxpayer filing a treaty notification will most often be doing so under the US treaties with Canada, Mexico, or the Netherlands.

Under the treaties with Canada and the Netherlands, the taxpayer must provide notification to the competent authority of the non-adjusting jurisdiction within six years from the end of the taxable year to which the case relates.

Under the US–Mexico treaty, on the other hand, the taxpayer must generally provide notification to the competent authority of the non-adjusting jurisdiction within four and a half years of the due date or date of filing of the tax return in that jurisdiction. While notification requirements are commonly understood as requiring notification only to the competent authority of the jurisdiction that is not proposing an adjustment (since the adjusting jurisdiction is necessarily already aware of the case), the Mexican tax administration has previously taken the position in some cases that it should be notified of Mexican-initiated adjustments.

Because of the nuance in the application of these notification rules, MNEs should check with local advisers regarding local requirements or consider filing notifications in both jurisdictions as a courtesy.

### Treaty notification deadlines

Because most treaties with notification requirements provide that notification filings are due within a specified number of years from the end of the taxable years at issue, these deadlines will typically fall around a taxpayer's year end and thus are liable to be forgotten in the rush of other items requiring year-end attention. Yet

notifications provide an extremely easy way to reduce the risk of double taxation.

The US requirements for treaty notifications are set out in Section 12 of Revenue Procedure 2015-40 (Rev. Proc. 2015-40). A treaty notification typically consists of a simple one-page letter stating that the company may require competent authority assistance for specified years under the relevant treaty and providing basic facts on the entities or transactions potentially at issue.

Treaty notifications submitted to the US competent authority can be provided as part of a MAP request or as part of a dual filing along with a protective claim submitted pursuant to Section 11 of Rev. Proc. 2015-40. For notifications submitted in advance of a MAP request, the US requires annual updates to the notifications, which must be submitted to the US competent authority. These annual notification letters must generally be submitted prior to the tax return filing date in each year following the initial notification until the request for competent authority assistance is filed.

As part of their year-end process, MNEs should consider their potential need for competent authority assistance and evaluate whether there are treaty notification deadlines upcoming.

One trap for the unwary is that in certain jurisdictions, adjustments may, in theory, be issued after the treaty notification deadline has passed, therefore an abundance of caution is necessary in these jurisdictions when there are open transfer pricing or tax audits. Two examples are US–Canada and US–Mexico cases. These letters are simple and easy to file before year end to ensure you do not lose access to competent authority relief.

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