

## COMPETENT AUTHORITY ARRANGEMENT

The competent authorities of the United States of America and the Republic of Malta enter into the following arrangement (Arrangement) regarding the definition of the term “pension fund” under the Convention between the Government of the United States of America and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on August 8, 2008, and entered into effect on January 1, 2011 (Treaty). This Arrangement is entered into under paragraph 3 of Article 25 (Mutual Agreement Procedure) of the Treaty.

It has come to the attention of the competent authorities that U.S. citizens and residents are establishing personal retirement schemes in Malta under the Retirement Pensions Act of 2011 with no limitation based on earnings from employment or self-employment, and are making contributions to these schemes in forms other than cash (e.g., securities). Questions have arisen in the United States about whether these personal retirement schemes are “pension funds” for purposes of applying the Treaty.

The term “pension fund” is defined in paragraph 1(k) of Article 3 (General Definitions) and is relevant for the application of Articles 1 (General Scope), 4 (Resident), 10 (Dividends), 17 (Pensions, Social Security, Annuities, Alimony, and Child Support), 18 (Pension Funds), and 22 (Limitation on Benefits) of the Treaty. Paragraph 1(k) of Article 3 of the Treaty states in relevant part that a pension fund means:

any person established in a Contracting State that is:

i) in the case of pension funds established in the United States, generally exempt from income taxation, and in the case of pension funds established in Malta, a licensed fund or scheme subject to tax only on income derived from immovable property situated in Malta; and

ii) operated principally either:

A) to administer or provide pension or retirement benefits; or

B) to earn income for the benefit of one or more persons meeting the requirements of subparagraph i) and clause A) of this subparagraph.

Under paragraph 3 of Article 25 of the Treaty, the competent authorities may resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Treaty.

The competent authorities confirm that a fund, scheme or arrangement established in a Contracting State that, except in the case of a qualified rollover from a pension fund established in the same Contracting State,

- (a) is allowed to accept contributions from a participant in a form other than cash, or
- (b) does not limit contributions by reference to earned income from personal services (including self-employment) of the participant or the participant's spouse,

is not operated principally to administer or provide pension or retirement benefits within the meaning of paragraph 1(k) of Article 3 of the Treaty, and is therefore not a "pension fund". The competent authorities therefore also confirm that distributions from this type of fund, scheme or arrangement are not "pensions or other similar remuneration" in consideration of past employment for purposes of paragraph 1(b) of Article 17 of the Treaty. This type of fund, scheme, or arrangement includes a personal retirement scheme established in Malta under the Retirement Pensions Act of 2011.

Accordingly, U.S. citizens and residents may not claim benefits under paragraph 1(b) of Article 17 and Article 18 of the Treaty with respect to the type of fund, scheme or arrangement described in the paragraph immediately above, including a personal retirement scheme established in Malta under the Retirement Pensions Act of 2011. Additionally, these funds, schemes or arrangements may not apply paragraph 2(e) of Article 22 of the Treaty to be treated as a qualified resident and may not claim the benefits of paragraph 3 of Article 10 of the Treaty.

The competent authorities confirm that the interpretation in this Arrangement reflects the original intent of the Contracting States regarding the definition of "pension fund" for purposes of the Treaty.

Any fund, scheme or arrangement, or any participant thereof, established in Malta that is not described in this Arrangement, including any fund, scheme or arrangement established pursuant to Maltese legislation enacted after the date of signature of this Arrangement, may present its case to the U.S. or Maltese competent authority under Article 25 of the Treaty to determine whether the fund, scheme or arrangement qualifies as a "pension fund" within the meaning of paragraph 1(k) of Article 3 of the Treaty. Any such determination will be made only by the mutual agreement of the competent authorities.

The competent authorities will notify each other of any material changes in their respective legislation concerning retirement or pension benefits that is enacted after the date of signature of this Arrangement, provided that such changes may impact this Arrangement. In that event, the competent authorities will discuss whether such legislative changes warrant an update to this Arrangement.