



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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Dear :

This letter responds to your request for information dated August 09, 2008. In your letter, you requested information regarding the application of paragraph 1(b) of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support) of the U.S.-U.K. income tax treaty (Treaty) to distributions from a pension scheme that would satisfy all the requirements of section 401(a) of the Internal Revenue Code (Code) but for the fact that the trust was not created or organized in the United States and therefore is not exempt under section 501(a) of the Code.

Paragraph 1(o) of Article 3 (General Definitions) of the Treaty states (emphasis added):

For the purposes of this Convention, unless the context otherwise requires:

\* \* \* \*

the term "pension scheme" means any plan, scheme, fund, trust or other arrangement established in a Contracting State which is:

- (i) *generally exempt from income taxation in that State*; and
- (ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

The Exchange of Notes regarding the U.S.-U.K. income tax treaty, between Paul O'Neill, Secretary of the Treasury, and Gordon Brown, Chancellor of the Exchequer, dated July 24, 2001 provides:

With reference to sub-paragraph o) of paragraph 1 of Article 3 (General Definitions):

It is understood that pension schemes shall include the following and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of the Convention:

\* \* \* \*

b) under the law of the United States, qualified plans under section 401(a) of the Internal Revenue Code, individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, individual retirement annuities, section 408(p) accounts, and Roth IRAs under section 408A), section 403(a) qualified annuity plans, and section 403(b) plans.

Paragraph 1(a) of Article 17 of the Treaty provides generally that pensions and other similar remuneration beneficially owned by a resident of a Contracting State shall be taxable only in that State. Paragraph 1(b) of Article 17 provides that notwithstanding paragraph 1(a), the amount of any such pension or remuneration paid from a pension scheme established in the other Contracting State that would be exempt in that other State if the beneficial owner were a resident thereof shall be exempt from taxation in the first-mentioned State. However, paragraph 1(b) of Article 17 applies only to amounts paid from a "pension scheme" as defined in paragraph 1(o) of Article 3, including the requirement that the income of the arrangement be generally exempt from income taxation.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. If you would like a determination concerning your particular set of facts, you may submit a request for a private letter ruling by following the instructions in Revenue Procedure 2008-1, §2.04, 2008-1 I.R.B. 1 (Jan. 7, 2008), which is available on the internet at [http://www.irs.gov/irb/2008-01\\_IRB/ar06.html](http://www.irs.gov/irb/2008-01_IRB/ar06.html).

If you have any additional questions, please contact \_\_\_\_\_ at \_\_\_\_\_

Sincerely,

\_\_\_\_\_  
M Grace Fleeman  
Senior Technical Reviewer, Branch 1  
(International)