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Reference: Request for information concerning the U.S. income tax treaties with Malta and the United Kingdom

Dear \_\_\_\_\_ :

This letter responds to your recent request for information concerning the application of the U.S.-Malta income tax treaty (the Malta Treaty)<sup>1</sup> and the U.S.-U.K. income tax treaty (the U.K. Treaty)<sup>2</sup> to certain transfers between pension funds.

Transfers from one Malta pension fund to another Malta pension fund

Article 18 (Pension Funds) of the Malta Treaty provides that

Where an individual who is a resident of one of the States is a member or beneficiary of, or participant in, a pension fund that is a resident of the other

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<sup>1</sup> 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 at Valletta, August 8, 2008.

<sup>2</sup> Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, signed at London, July 24, 2001, as amended by Protocol, signed at Washington, July 19, 2002.

State, income earned by the pension fund may be taxed as income of that individual only when, and, subject to the provisions of paragraph 1 of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support), to the extent that, it is paid to, or for the benefit of, that individual from the pension fund (and not transferred to another pension fund in that other State).

Paragraph 1(k) of Article 3 (General Definitions) of the Malta Treaty defines a “pension fund” for purposes of the Malta Treaty as 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.

If an individual is a resident of the United States under Article 4 (Resident) of the Malta Treaty and a member or beneficiary of, or participant in, a pension fund established in Malta, then a transfer of income earned by that pension fund to another pension fund established in Malta would not be taxed currently as income of the individual provided that each pension fund qualifies as a “pension fund” within the meaning of Article 3(1)(k) of the Malta Treaty.

#### Transfers from a U.K. pension scheme to a third-country pension scheme

Paragraph 1 of Article 18 (Pension Schemes) of the U.K. Treaty provides that:

Where an individual who is a resident of a Contracting State is a member or beneficiary of, or participant in, a pension scheme established in the other Contracting State, income earned by the pension scheme may be taxed as income of that individual only when, and, subject to paragraphs 1 and 2 of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support) of this Convention, to the extent that, it is paid to, or for the benefit of, that individual from the pension scheme (and not transferred to another pension scheme).

Paragraph 1(o) of Article 3 (General Definitions) of the U.K. Treaty defines the term “pension scheme” as:

[A]ny 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.

(Emphasis added).

If an individual is a resident of the United States under Article 4 (Residence) of the U.K. Treaty and a member or beneficiary of, or participant in, a pension scheme established in the United Kingdom, then a transfer of income earned by that pension scheme to another pension scheme established in the United Kingdom would not be taxed currently as income of the individual provided that each pension scheme qualifies as a “pension scheme” within the meaning of Article 3(1)(o) of the U.K. Treaty.

However, a pension scheme established in a third country, e.g., Malta, would not be a pension scheme within the meaning of Article 3(1)(o) of the U.K. treaty because it is not established in one of the two Contracting States (the United Kingdom and the United States). Therefore, if the transfer were to a pension scheme established in a third country, instead of to another pension scheme established in the United Kingdom, the transfer could be treated as a distribution that would be subject to taxation as income of the individual under paragraphs 1 and 2 of Article 17 of the U.K. Treaty.

#### Effect of U.S. citizenship or “green card” holder status

U.S. citizens and lawful permanent residents (“green card holders”) are generally subject to U.S. income tax on their worldwide income without regard to where they reside. If a U.S. citizen or green card holder is a resident of the United States under the residence article of either the U.K. Treaty or the Malta Treaty, as the case may be, at the time of a transfer from one pension scheme to another pension scheme, then the rules described above apply. If, however, the U.S. citizen or green card holder is not a resident of the United States under the residence article of the applicable treaty at the time of the transfer, then Article 18 of the Malta Treaty or Article 18(1) of the U.K. Treaty would not apply.

#### Information reporting with respect to foreign pension schemes

Section 6048 of the Internal Revenue Code generally requires U.S. persons who make transfers to or receive distributions from foreign trusts to report certain information on Form 3520 (Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts). U.S. persons who are treated as owners of foreign trusts under

the grantor trust rules (§§671-679) also are required to file Form 3520 and to ensure that the foreign trust files Form 3520-A (Annual Information Return of Foreign Trust With a US Owner). As a general rule, these reporting requirements apply to any foreign pension scheme that is classified as a trust for U.S. tax purposes.

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. See Rev. Proc. 2011-1, §2.04, 2011-1 IRB 7 (Jan. 3, 2011).

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

Sincerely,

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