



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

OFFICE OF THE CHIEF COUNSEL

November 30, 2015

Number: **2015-0045**
Release Date: 12/24/2015

CC:INTL:B01
GENIN-137208-15

UIL: 9114.03-55

Dear _____ :

This letter responds to your request for information dated September 01, 2015, concerning the U.S.-Portugal income tax treaty¹ and the taxation of U.S. social security benefits paid to U.S. citizens who live part of the year in the United States and part of the year in Portugal.

Paragraph 1(b) of Article 20 (Pensions, Annuities, Alimony, and Child Support) of the Treaty provides that "*social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States may be taxed in the first-mentioned State.*" Thus, the United States may tax U.S. social security benefits paid to either (i) a resident of Portugal or (ii) a U.S. citizen. If the individual is not a resident of Portugal, then Portugal may not tax the benefits.

If the individual who receives the U.S. social security benefits is a resident of Portugal who is also a U.S. citizen, then both countries may tax the benefits. The United States would retain primary right to tax the benefits. Portugal would be required to alleviate double taxation by allowing a deduction against its tax for the tax paid to the United States.

In order to apply paragraph 1(b) of Article 20, it is necessary to determine the individual's residence for purposes of the Treaty under Article 4 (Residence). If an individual would be a dual resident – i.e., a resident of the United States under U.S. law and a resident of Portugal under Portuguese law – it would be necessary to apply a

¹ Convention Between the Government of the United States of America and the Government of the Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol (together, the Treaty), effective on January 1, 1996.

series of tie-breaker rules to determine the individual's residence for purposes of the Treaty.

The relevant provisions of Article 4 read as follows:

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature. However, this term does not include any person that is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

(b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

The "competent authorities" that are mentioned in subparagraph (d) of the tie-breaker rules are government officials in each country that are charged with administering the provisions of the Treaty and with attempting to resolve any doubts or difficulties that may arise in interpreting its provisions. In the case of the United States, the competent authority is the Deputy Commissioner (International) in the Large Business and International Division of the Internal Revenue Service.

This information 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 have any additional questions, please contact our office at
toll-free call).

(not a

Sincerely,

By: _____
M. Grace Fleeman
Senior Technical Reviewer, Branch 1
Office of the Associate Chief Counsel
(International)