

Mutual Agreement on U.K. Pension Arrangements

Announcement 2005–30

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Agreement Identifies U.K. Pension Arrangements for Tax Treaty Benefits

IR–2005–44, April 13, 2005

WASHINGTON — The Competent Authorities of the United Kingdom and the United States have reached a mutual agreement on the qualification of certain U.K. pension arrangements for treaty benefits under paragraph 3(b) of Article 10 (Dividends) of the Convention Between the United States of America and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation with Respect to Taxes on Income signed at London on July 24, 2001 (“Treaty”).

The agreement constitutes a Mutual Agreement in accordance with paragraph 3 of Treaty Article 26 (Mutual Agreement Procedure).

The text of the agreement is as follows:

COMPETENT AUTHORITY AGREEMENT

The competent authorities of the United States and the United Kingdom hereby enter into the following agreement (“the Agreement”) regarding the qualification of certain U.K. pension or other retirement arrangements for benefits under paragraph 3(b) of Article 10 (Dividends) of the Convention Between the United States of America and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation with Respect to Taxes on Income signed at London on July 24, 2001 (“the Treaty”). The Agreement is entered into under paragraph 3 of Article 26 (Mutual Agreement Procedure).

It is understood that for the purposes of this Agreement the term “Article” refers to an Article of the Treaty.

Qualification for benefits under Article 10(3)

Paragraph 3(b) of Article 10 of the Treaty provides that dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a pension scheme resident in the other Contracting State, provided that such dividends are not derived from the carrying on of business by the pension scheme.

Pursuant to subparagraphs a) and b) of paragraph 3 of Article 4 (Residence), the term “resident of a Contracting State” includes a pension scheme or a plan, scheme, fund, trust, company or other arrangement established in a Contracting State that is operated exclusively to administer or provide employee benefits and that, by reason of its nature as such, is generally exempt from income taxation in that State.

The term “pension scheme” is defined in Article 3(1)(o) as 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.

Subparagraph 2(e) of Article 23 (Limitation on Benefits) provides, in part, that a person described in Article 4(3)(a) or (b) may claim benefits under the Treaty only if more than half of its beneficiaries, members, or participants are individuals who are residents of either Contracting State.

Occupational pension arrangements in the United Kingdom are generally established through separate trust deeds. Many of these pension schemes, particularly the small and medium-sized schemes pool their investments in various ways. Questions have arisen as to the eligibility for benefits under Article 10(3) of such pooling arrangements.

In order to provide certainty for taxpayers, the competent authorities of the United States and the United Kingdom have agreed that the following types of U.K. arrangements are “pension schemes” as that term is defined in Article 3(1)(o), are treated as the beneficial owners of dividends paid to them by U.S. corporations, and therefore are considered to meet the requirements of Article 10(3)(b):

- a. A U.K. resident unit trust, so long as the following conditions are met:
 - i. The trust deed specifically provides that only pension schemes that are not subject to U.K. capital gains tax or corporation tax may participate in the trust; and
 - ii. Any tax paid by the Trustee of such a trust is deemed to be paid by the unit-holder pension schemes such that the tax is refunded to the pension schemes.

