

MEMORANDUM TO CLIENTS

RE: List of Corresponding Plans for US-Belgium Tax Treaty Purposes Announced

Under the US-Belgium Tax Convention signed in 2006, special tax rules are extended to contributions to and distributions from certain types of pension plans established in one State that are deemed to generally correspond to pension plans recognized for tax purposes in the other State. As the US Treasury currently interprets it, this does not, however, extend to treating such corresponding plans as equivalent so as to allow nontaxable transfers between the plans. On April 9, 2010, the US Treasury announced a Competent Authority Agreement naming the corresponding plans between the US and Belgium. The agreement was signed by the US on January 14, 2010.

There is little surprise in the list of US corresponding plans, which includes:

1. A qualified plan under section 401(a) of the Internal Revenue Code (including a Code section 401(k) arrangement);
2. An IRA, including an IRA that is part of a simplified employee pension (SEP) plan under 408(k) or a SIMPLE IRA under section 408(p), and a Roth IRA;
3. A Code section 403(a) qualified annuity plan;
4. A Code section 403(b) plan,
5. A Code section 457(b) plan (apparently whether sponsored by a governmental employer or a tax-exempt employer): and
6. The Thrift Savings Plan under Code section 7701(j) for federal employees.

The corresponding Belgian pension plans are:

1. A qualified complementary retirement benefit arrangement for purposes of Article 52, 3°, b of the 1992 Income Tax Code (ITC, or Code des Impôts sur les revenus 1992),
2. A qualified complementary retirement benefit arrangement for purposes of Article 52, 7° bis of the ITC;
3. A qualified complementary retirement benefit arrangement for purposes of Article 59 of the ITC;
4. A qualified complementary retirement benefit arrangement for purposes of Article 145-1, 1° of the ITC; and
5. A qualified complementary retirement benefit arrangement for purposes of Article 145-3 of the ITC.

The Agreement further states that the listing above is not exclusive. Any US or Belgian pension plan of a type not mentioned above, including any type of plan established pursuant to legislation enacted after the date of the Agreement, or any participant in a type of plan not mentioned above, may ask the competent authority of the other Contracting State for a determination that the plan generally corresponds to a pension plan recognized for tax purposes in that other State. Thus, the agreement affords flexibility to potentially cover other plans that may have been overlooked, or that might be added by future legislation.

It is worth keeping in mind that, for US taxpayers participating in those corresponding Belgian pension plans, under the US-Belgium tax treaty, certain tax benefits, including exclusion from income, are available only if the contributions or accruals under the corresponding plan do not exceed the lesser of the US limits for contributions to or benefits accrued under a US corresponding pension plan or the amount of the contributions or benefits that qualify for tax relief in Belgium

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