IRALERT

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TO: IRA Group Distribution

From: Richard K. Matta rkm@groom.com, Roberta J. Ufford rju@groom.com, David W. Powell dwp@groom.com, Elizabeth T. Dold etd@groom.com, Louis T. Mazawey ltm@groom.com, David N. Levine dnl@groom.com

RE: IRS Informally Rejects an Interpretation of the US-UK Tax Treaty to Permit Rollovers from UK Plans to US Plans or IRAs

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In our last IRA Group conference call, we discussed that some financial advisors had interpreted the US-UK tax treaty ratified in 2003 to permit tax-deferred rollovers from UK qualified-type plans into US qualified plans and IRAs, known as "corresponding pension schemes". The issue arises under some language in Article 18 of the treaty (a pension provision that was first introduced with the US-UK treaty) and the treaty's side letters that can be read literally to permit that. More recently, an opinion by an overseas financial advisor and materials published by Inland Revenue suggested that such a rollover might be permissible. There is no guidance on the issue, so we called our contacts in both Treasury and the IRS who deal with treaty tax issues.

Interestingly, our contact at IRS Chief Counsel - International said that this was about the third time they had gotten this inquiry, and was familiar with both the Inland Revenue materials and the language of the treaty that gave rise to the issue. We were told that it was the informal position of the IRS that the language of Article 18 of the treaty was intended to mean only that transfers from a US plan to another US plan or IRA or from a UK plan to another UK plan would not alter the treaty tax treatment, and was not intended to introduce a new pension portability from the UK to the US or vice versa. Our contact acknowledged that the language was perhaps not clearly drafted and understood how the question arose.

In short, the IRS seems fairly definitive that rollovers from UK pension schemes to US IRAs would be excess IRA contributions, not rollovers, and this is what they have been telling others.

We were also advised that the Service would be willing to entertain a private letter ruling request on the issue. (It would probably have to go to EP as a 402(c) ruling on an actual taxpayer situation, but would be coordinated with CCI.) Presumably, the ruling would be similar to an earlier adverse private letter ruling on rollovers from Canadian plans to US IRAs. So we throw it out to the Group if it would like to obtain a ruling to clarify the issue. Such a ruling would probably cost about $15,000 to $20,000 in fees, and the exorbitant filing fee is currently $9000. We can discuss it on the next call.

Please feel free to direct questions to any of the Groom principals listed above or to IRA@groom.com.