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## **Prop. Reg. 1.6011-12**

### **Malta Personal Retirement Scheme Listed Transaction**

(a) Malta personal retirement scheme listed transaction. Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b)(1) of this section are identified as listed transactions for purposes of § 1.6011-4(b)(2), except as provided in paragraph (b)(2) of this section. A transaction is not substantially similar unless it involves a retirement arrangement established in Malta and the taxpayer takes a Federal income tax return position based on the income tax treaty between the United States and Malta.

(b) Malta personal retirement scheme transaction.

(1) Transaction description. A transaction is described in this paragraph (b)(1) if:

(i) A U.S. citizen or U.S. resident alien, directly or indirectly-

(A) Transfers (within the meaning of § 1.679-3 or § 1.684-2) cash or other property to a personal retirement scheme established under Malta's Retirement Pension Act of 2011 (a "Malta personal retirement scheme"), or

(B) Receives a distribution from a Malta personal retirement scheme, and

(ii) A U.S. citizen or U.S. resident alien described in paragraph (b)(1)(i) of this section takes a position on a U.S. Federal income tax return that-

(A) Income earned or gain realized by the Malta personal retirement scheme is not includible on a current basis in income for U.S. Federal income tax purposes by reason of the income tax treaty between the United States and Malta, or

(B) A distribution received from the Malta personal retirement scheme attributable to earnings or gains that have not been included in income for U.S. Federal income tax purposes is exempt from U.S. taxation by reason of the income tax treaty between the United States and Malta.

(2) Exception. If a U.S. citizen or U.S. resident alien described in paragraph (b)(1) of this section takes a position described in paragraph (b)(1)(ii) of this section on a U.S. Federal income tax return filed before June 6, 2023, such U.S. citizen or U.S. resident alien will not be treated as participating in a listed transaction under this section for the taxable year to which the U.S. Federal income tax return relates provided that-

(i) Such U.S. citizen or U.S. resident alien (the transferor) established the Malta personal retirement scheme with a transfer (or rollover) of a pension or other retirement arrangement established in a country other than Malta or the United States, and in compliance with the tax laws of such country;

(ii) The transferor was, when such pension or retirement arrangement was established and such rollover occurred, a resident of the other country under that country's tax law, including under Article 4 (Residency) of such country's income tax treaty with the United States, if applicable; and

(iii) The transferor's contributions to such pension or retirement arrangement consisted solely of cash in an amount that bears a relationship to the transferor's income earned from the performance of personal services.

The preceding sentence does not apply, however, to any U.S. citizen or U.S. resident alien who take a position described in paragraph (b)(1)(ii) of this section on a U.S. Federal income tax return filed on or after June 6, 2023.

(3)Applicability date.

(i) In general. This section identifies transactions that are the same as, or substantially similar to, the transaction described in paragraph (b)(1) of this section, except as provided in paragraph (b)(2) of this section, as listed transactions for purposes of §1.6011-4(b)(2) and sections 6111 and 6112 effective [DATE OF PUBLICATION OF THE FINAL REGULATIONS IN THE FEDERAL REGISTER].

(ii) Obligations of participants with respect to prior periods. Pursuant to §1.6011-4(d) and (e), taxpayers who have filed a tax return (including an amended return) reflecting their participation in these transactions prior to [DATE OF PUBLICATION OF THE FINAL REGULATIONS IN THE FEDERAL REGISTER], who have not otherwise finalized a settlement agreement with the Internal Revenue Service with respect to the transaction, must disclose the transactions as provided in § 1.6011-4(d) and (e) provided that the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the transaction has not ended on or before [DATE OF PUBLICATION OF THE FINAL REGULATIONS IN THE FEDERAL REGISTER].

(iii) Obligations of material advisors with respect to prior periods. Material advisors defined in §301.6111-3(b) of this chapter who have previously made a tax statement with respect to a transaction described in paragraph (b)(1) of this section, except as provided in paragraph (b)(2) of this section, have disclosure and list maintenance obligations as described in §§301.6111-3 and 301.6112-1 of this chapter, respectively. Notwithstanding § 301.6111-3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date that is six years before the date the regulations are published as final regulations in the Federal Register.