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IRS "Dirty Dozen" List Includes "Potentially" Abusive Use of U.S.-Malta Tax Treaty in Pension Plans

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The Internal Revenue Service (IRS) has placed certain Malta-based pension plan arrangements on its annual "Dirty Dozen" list of "tax scams." In its recent news release, the IRS warns that it is evaluating the validity of such arrangements and may challenge the tax treatment of Maltese pension plan contributions and distributions. IR-2021-144 (July 1, 2021).

The types of pension arrangements that have attracted IRS attention involve a U.S. citizen or resident who contributes appreciated assets to a Maltese pension plan, sells the assets within the plan, and receives a distribution of proceeds relating to the asset sales from the plan. Relying on an interpretation of the U.S.-Malta Income Tax Treaty, U.S. citizens and residents, and their advisors, take the position that the transactions – both the realized gain and distributions – are not subject to tax.

Participants in Maltese pension plans should be aware that the IRS is scrutinizing tax positions and treaty interpretations related to these plans. In our experience, the appearance of an arrangement on the "Dirty Dozen" leads to increased IRS activity, and participants in Maltese pension plans should prepare to defend their tax reporting positions.

Caplin & Drysdale has broad experience evaluating the technical merits of complex tax treaty issues and representing clients involved in aggressive IRS attacks. Our team of former IRS attorneys is well-equipped to combine two critical skill sets, (1) substantive international tax and tax treaty analysis and (2) procedural defense of transactions identified on the annual "dirty dozen" list or reportable transactions, both of which are subject to coordinated IRS examinations. Please contact the authors with any questions:

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