

US Taxation of Foreign Pension Funds

Qualified Foreign Pension Fund Final Regulations? We're still waiting…

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15 June 2022

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Final QFPF Regulations – we're still waiting…

It remains uncertain as to when Treasury may promulgate final regulations under Internal Revenue Code Section 897(l) addressing qualified foreign pension funds ("QFPFs"). In September 2021, Jose Murillo, Treasury's deputy assistant secretary for international tax affairs, indicated that regulations were expected to be released by the end of 2021. It appears likely that the delay is due to resources that Treasury has diverted to the significant legislative proposals from the Biden administration and congressional Democrats.

With Democratic legislative gridlock and the pending midterm elections, it appears unlikely that substantial tax legislation will be passed in 2022. Will this help accelerate the release of final QFPF regulations?



Insightful Comments to Proposed Regulations

In the meantime, constituents from the German pension fund industry have offered insightful public comments to the June 2019 proposed regulations. The comments can be found at: https://www.regulations.gov/docket/IRS-2019-0021/comments. The comments include a recommendation to provide clear definitions of "retirement benefits" and "pension benefits" as well as narrowing the definition of "ancillary benefits" as it relates to certain payments associated with disability or death. In general, many of the comments going back to 2019 focus on conforming the regulations to take into account differences in pension and retirement arrangements that are prevalent in many countries with highly-regulated pension industries.

There is also a recommendation that a pension fund should be able to request a private letter ruling as to its QFPF status. Pension funds have been able to obtain rulings that they are classified as trusts for federal income tax purposes. Considering the materiality of a pension fund's classification from a substantive and reporting perspective, it seems appropriate that a ruling on QFPF classification should also be available.



The Trifecta

Ultimately, a foreign pension fund investing in the US needs to carefully consider and obtain comfort with respect to the *trifecta* of its relevant tax classification, namely:

1. what is it's general classification under US federal income tax law – e.g., complex trust; an entity owned by or an integral part of a foreign governmental; a corporation?
2. is it a QFPF?
3. is it a pension fund under an applicable double tax treaty?

For non-governmental pension arrangements, there is symmetry in classifying a many pension funds as complex trusts, QFPFs and pension funds for treaty purposes since the relevant characteristics from an organizational, regulatory and operational perspective overlap to a great extent.



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