Subpart A.—Tax Conventions and Other Related Items

French Social Security Agreement

Notice 2001–41

The following is a copy of the News Release issued by the Director, International (U.S. Competent Authority) on May 31, 2001 (IR–2001–54).

U.S. AND FRANCE AGREE ON TAXATION OF FRENCH SOCIAL SECURITY

Washington — The Competent Authorities of the United States and France reached a mutual agreement on the tax treatment of contributions to, and distributions from, the French social security regime (Basic Plan and Complementary Plans). The agreement clarifies the application of Article 18 of the Convention between the Government of the United States of America and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital (the “Treaty”), signed on August 31, 1994, and entered into force on December 30, 1995.

BACKGROUND

Subparagraph (a) of Article 18(1) of the Treaty provides that, except as provided in subparagraph (b), distributions from private pension and other retirement arrangements derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State. Subparagraph (b) provides that pensions and other payments made under the social security legislation of a Contracting State to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

Article 18(2) of the Treaty applies when determining the taxable income of an individual who renders personal services and who is a resident of a Contracting State, but not a national of that State. Contributions paid by, or on behalf of, such individual to a pension or other retirement arrangement that is established, maintained, and recognized for tax purposes in the other Contracting State shall be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension or other retirement arrangement that is established, maintained, and recognized for tax purposes in that first-mentioned State. However, the competent authority of the first-mentioned State must agree that the pension or other retirement arrangement generally corresponds to a pension or other retirement arrangement recognized for tax purposes by that State.

Questions have arisen concerning the treatment of contributions to, and distributions from, the French social security regime (Basic Plan and Complementary Plans) by, and to, individuals residing in the United States.

The United States and France have agreed that until the applicable language in the Treaty is amended or terminated, the Treaty will be applied as follows.

TREATMENT OF CONTRIBUTIONS

For purposes of Article 18(2), the French social security regime does not generally correspond to a pension or other retirement arrangement that is recognized for tax purposes by the United States. Accordingly, both mandatory and voluntary contributions to the French social security regime (Basic Plan and Complementary Plans) by individuals who are resident in the United States are not deductible or excludible for purposes of determining the individuals’ taxable income in the United States.

TREATMENT OF DISTRIBUTIONS

Under Article 18(1)(b), distributions from the French social security regime (Basic Plan and Complementary Plans) to individuals who are residents of the United States are taxable only by France and not by the United States, regardless of whether contributions to the Plans were made on a voluntary or mandatory basis.

WAIVER OF DISCLOSURE REQUIREMENT

Section 6114(a) of the Internal Revenue Code requires that taxpayers taking the position that a U.S. treaty overrules a general U.S. tax principle of law must disclose such position on a return of tax or, if no return of tax is required to be filed, as the Internal Revenue Service may prescribe. However, pursuant to Treas. Reg. Sec. 301.6114–1(c)(1)(iii), the reporting requirement is waived with regard to taxpayers taking the position that a U.S. treaty reduces or modifies the taxation of income derived from public or private pensions or social security. Accordingly, taxpayers claiming exemption for French social security benefits pursuant to Article 18(1)(b) of the Treaty are not required to disclose this position on their income tax return for the year in which the distributions are received.

EFFECTIVE DATE

The mutual agreement is applicable to tax years beginning on or after January 1, 1996. Pursuant to Article 26(1) of the Treaty, an individual who paid U.S. income tax on distributions from the French social security regime (Basic Plan and Complementary Plans) for one or more tax years beginning on or after January 1, 1996, may request a refund of such tax within three years of the date of this news release provided such individual was a resident of the United States during each year for which a refund is requested. Individuals who took the position for purposes of determining their taxable income in the United States that mandatory or voluntary contributions to the French social security regime (Basic Plan and Complementary Plans) were deductible or excludible, should file amended returns for all tax years beginning on or after January 1, 1996, for which the statute of limitations on assessment and collection has not expired as of the date of this news release (generally calendar years 1998, 1999, and 2000).

CONTACT INFORMATION

For further information or assistance regarding the U.S. income tax treatment of social security pensions received from France, please contact David Kosterlitz, IRS Large & Mid-size Business, International, Tax Treaty, ((202) 874-1550 (not a toll-free number)). For information or assistance regarding the French tax treatment of social security pensions received from France, please contact Christiane Marechal, Fiscal Attache, French Embassy, ((202) 944-6390 (not a toll-free number)). In France, please contact Centre des Impots des Non-Residents, 9, Rue d’Uzes, 75094, Paris Cedex 02.