

COMPETENT AUTHORITY AGREEMENT

The Competent Authorities of the Federal Republic of Germany and the United States of America hereby enter into the following agreement (the "Agreement") regarding the eligibility of certain pension arrangements for benefits under paragraph 3(b) of Article 10 (Dividends) of the Convention Between the United States of America and Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital and to Certain Other Taxes, together with a related Protocol signed on August 29, 1989, and amended by the Protocol signed on June 1, 2006 (the "Treaty"). The Agreement is entered into under paragraph 3 of Article 25 (Mutual Agreement Procedure) of the Treaty.

It is understood that for purposes of the Agreement, the term "Article" refers to an Article of the Treaty.

Article 10(3)(b) provides that dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a pension fund that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund.

Article 10(11) provides that for purposes of Article 10, the term "pension fund" means any person that: (a) is established under the laws of a Contracting State; (b) is established and maintained in that Contracting State primarily to administer or provide pensions or other similar remuneration, including social security payments, disability pensions and widow's pensions or to earn income for the benefit of one or more of such persons; and (c) is either, in the case of the United States, exempt from tax in the United States with respect to the activities described in subparagraph (b) or, in the case of Germany, a plan the contributions to which are eligible for preferential treatment under the Income Tax Act.

Paragraph 8(b) of the Protocol to the Treaty, as amended by the Protocol signed on June 1, 2006, provides that in the case of Germany, it is understood that Article 10(3)(b) applies to the person treated as the owner of the assets of the pension fund under section 39 of the Fiscal Code, provided the dividends may only be used for providing retirement benefits through such fund.

In order to provide certainty for taxpayers, the competent authorities of Germany and the United States clarify the treatment of a contractual trust arrangement (CTA) established by an employer to hold assets set aside to fund the employer's simple employer sponsored pension plan (SESP). Provided that the SESP meets all of the requirements set out in section 6a of the German Income Tax Act and that the assets of the CTA are treated as owned by the employer under section 39 of the German Fiscal Code, then dividends derived by the CTA are eligible for benefits under Article 10(3)(b), if all other requirements of the Treaty are satisfied. In such a case, the employer that establishes the CTA shall make the claim for benefits under Article 10(3)(b).

The competent authorities of Germany and the United States also clarify that the term “pension fund” within the meaning of Article 10(11) includes the following entities and that dividends derived by such entities are eligible for benefits under Article 10(3)(b), as if the entity is the beneficial owner of the dividends, if all other requirements of the Treaty are satisfied:

- 1) A special German investment fund to which the provisions of the German Investment Act (Investmentgesetz) apply, provided such fund is established exclusively to hold the assets of one or more of the following:
 - a. A pension fund within the meaning of Article 10(11) that is established in Germany, or
 - b. A CTA established by an employer to hold assets set aside to fund the employer’s SESP provided the assets of the CTA are treated as owned by the employer under section 39 of the Fiscal Code.
- 2) A group trust described in IRS Revenue Ruling 81-100, as modified by IRS Revenue Rulings 2004-67 and 2011-1, provided that all of its participants are pension funds within the meaning of Article 10 (11) that are established in the United States.
- 3) A common trust fund (within the meaning of Internal Revenue Code section 584) provided that all of its participants are pension funds within the meaning of Article 10(11) that are established in the United States.

In the case of an entity described in paragraph 1), the investment management company (Kapitalanlagegesellschaft) shall make the claim for benefits under Article 10(3)(b) on behalf of the investment fund. In the case of entities described in paragraphs 2) or 3), the trustee of the group trust or common trust fund, as the case may be, shall make the claim for benefits under Article 10(3)(b) on behalf of the group trust or common trust fund.

Agreed to by the undersigned competent authorities:

Michael Danilack
U.S. Competent Authority

[NAME]
German Competent Authority