

MEMO# 14594

April 2, 2002

IRS GUIDANCE PERMITTING DEFERRAL OF US TAX ON ACCRUED CANADIAN RETIREMENT PLAN INCOME UNDER US-CANADA INCOME TAX TREATY

[14594] April 2, 2002 TO: INTERNATIONAL COMMITTEE No. 23-02 PENSION COMMITTEE No. 11-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 20-02 TAX COMMITTEE No. 11-02 RE: IRS GUIDANCE PERMITTING DEFERRAL OF US TAX ON ACCRUED CANADIAN RETIREMENT PLAN INCOME UNDER US-CANADA INCOME TAX TREATY The Internal Revenue Service ("IRS" or "Service") has issued Revenue Procedure 2002-23 which provides guidance for applying Article XVIII(7) of the US-Canada Income Tax Treaty (the "treaty"). Under Article XVIII(7) of the treaty, individual beneficiaries of certain Canadian retirement plans may elect to defer US tax on income accrued within the plans until it is distributed to them.¹ The attached revenue procedure provides rules for making such an election and is effective for taxable years ending on or after December 31, 2001.² Eligible Retirement Plans and Beneficiaries Revenue Procedure 2002-23 applies to an individual who would, in the absence of an election under Article XVIII(7) of the treaty, be subject to US tax on income accrued in one of the following Canadian retirement plans (an "eligible plan"): (1) a registered retirement savings plan ("RRSP"); (2) a registered retirement income fund ("RRIF"); (3) a registered pension plan; or (4) a deferred profit sharing plan. The revenue procedure applies regardless of whether the individual was a resident of Canada at the time contributions were made to an eligible plan.³ Election Procedures To make the election, beneficiaries of an eligible plan must attach to their timely filed (including extensions) US federal tax return for the current year a statement that includes the following information: (1) a statement that the taxpayer is claiming the benefit of Article XVIII(7), which was added to the treaty by a Protocol signed on March 17, 1995, expanded and replaced Article XXIX(5). ² For taxable years ending before December 31, 2001 and beginning on or after January 1, 1996, taxpayers may elect to apply the attached revenue procedure or Revenue Procedure 89-45 (1989-2 C.B. 596) which provided guidance for applying former Article XXIX(5) of the treaty. ³ The revenue procedure applies only to income accrued in an eligible plan and not to any contributions to the plan. ² XVIII(7) of the treaty under Revenue Procedure 2002-23; (2) the name of the trustee of the plan and the plan account number, if any; and (3) the balance in the plan at the beginning of the current year.⁴ Beneficiaries must attach a similar statement to their timely filed (including extensions) US federal tax return for each subsequent year, until the taxable year in which a final distribution is made from the plan (or from any transferee plan, as described below). Once an election is made under Revenue Procedure 2002-23, it only may be revoked with the consent of the Service. If an individual makes a tax-free rollover under Canadian law from an eligible plan subject

to a deferral election (the “transferor plan”) to another eligible plan (the “transferee plan”), the previous election carries over to the transferee plan. Beneficiaries of the transferee plan must attach to their US federal tax return for the tax year of the transfer a statement that includes the following information: (1) a statement that the taxpayer is claiming the benefit of Article XVIII(7) of the treaty under Revenue Procedure 2002-23; (2) the name of the trustee of the transferee plan and the plan account number, if any; (3) the name of the trustee of the transferor plan and the plan account number, if any; (4) the total amount of income accrued in the transferor plan on which US tax was deferred under either Article XVIII(7) or former Article XXIX(5); and (5) the initial balance in the transferee plan. Beneficiaries of a transferee plan must attach a copy of the required statement for the transferor plan, as described above, and a copy of the required statement for the transferee plan to their timely filed (including extensions) US federal tax return for each year subsequent to the transfer year, until the tax year in which a final distribution is made from the transferee plan. Deanna J. Flores Associate Counsel Attachment Attachment (in .pdf format) 4 An individual who is a beneficiary of more than one eligible plan must make a separate election and file a separate statement for each plan.