PRIVATE WEALTH SOLUTIONS
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The 1291 Ohio Pension Plan for Americans (1291OPP)

A SOLUTION FOR WEALTHY INDIVIDUALS

Factsheet:
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The 1291OPP is a pension plan under Malta law, specially tailored for American Citizens or Residents. While the plan is governed by Maltese law, the U.S. / Malta double tax treaty (signed in 2010), proves to be very effective and makes Maltese pension plans very attractive to American members. The plan allows investors to make unlimited contributions - also contributions in kind – and to grow the funds virtually without exposure to Maltese or U.S. taxation.
When the member reaches age 50, withdrawals can start. Payments can be structured as tax-free lump sum payments or as taxable annual income payments.

Lump Sum Payments:

According to Malta pension law a first tax-free lump sum payment of up to 30% of the value of the pension can be made at the age of 50. The next lump sum payment is possible after year four and every year thereafter. The amount that can be withdrawn is calculated as follows:

First, the amount which is needed to finance a life income equal to the national minimal minimum wage in the country where the client lives must be calculated. This amount is deducted 'earmarked separately' from the overall pension plan value and 50% of the balance can be paid out as an additional lump sum.

Income Payments:

Income payments can be received any time after age 50 and can be deferred until the member has reached age 75. Then payments must start. Such payments are taxable in Malta but subject to the terms of any tax treaty with the country in which the member pays taxes. Where such a treaty affords taxing rights in the member's country there will be no Maltese withholding tax.

Plan details:

Pension Administrator:	TMF
Pension Adviser:	1291 Group Ltd.
Eligible Member:	U.S. tax payer
Minimum contribution:	USD 5 Mil (cash or in kind)
Custodian bank:	can be chosen (licensed and reputable institution)
Asset Manager:	can be chosen (licensed and reputable firm)
Time to setup:	approx. 2 months
Costs:	depending on amounts, type of contribution etc.

Q & A

Why are contributions made to the 1291OPP not taxable in the U.S?

Under U.S. law and from a U.S. federal tax point of view, the 1291OPP is classified as a foreign grantor trust and therefore contributions made are ignored from a tax point of view and should not trigger any adverse tax consequences from a U.S. tax perspective. There seems to be almost no restriction with respect to the type of asset. This may also include real estate, PFICs etc. Of course, a legal opinion for each case is recommended.

Why are the funds growing tax-free within the 1291OPP?

In order for members to benefit from the double tax treaty, the pension must qualify as a resident of Malta under the treaty and also satisfy the Limitation on Benefits (LOB) article of the treaty.

Article 4, par 2 of the treaty provides that a pension fund established in either country (U.S. or Malta) is a "resident" for purpose of the treaty, despite that all or part of the gains of a pension may be exempt from the domestic laws of the relevant country.

Under article 22(2)(e) the pension satisfies the LOB provisions as long as 75% of the members of the pension are residents of either country (U.S. or Malta). 'Resident' in U.S. terms means citizen or permanent resident.

According to article 18 of the treaty, income earned by a Maltese pension fund cannot be taxed by the U.S. until distributions are made (incl. income, PFICs etc.), provided, the member claims treaty benefits using Form 8833.

Why are lump sum payments received tax-free?

Article 17(1)(b) of the treaty provides that distributions from a pension, arising and being tax exempt in one country, must also be exempt from tax in the other country (see also U.S. Treasury's explanation to the treaty: "a distribution from a Roth IRA to a resident of Malta would be exempt from tax in Malta to the same extent the distribution would be exempt in the U.S.").

Therefore: all lump sum payments that are made tax-free under Malta law (incl. initial 30% etc.) are fully tax-free also in the U.S., provided the member timely and properly claims treaty benefits by using form 8833.

Why are periodic payments taxable?

Periodic payments are taxable in Malta and therefore taxable under Section 72 in the U.S. when received by an U.S. resident member.

Why does the "Savings Clause" in the treaty not override the tax-free payout?

The U.S. "Savings Clause" under which the U.S. reserves the right under its income tax treaties to tax citizens and residents as though the treaty did not exist.

BUT: article 1(5) of the treaty provides that article 17(1)(b) and 18 are explicitly excepted from the "Savings Clause" (found at article 1(4)). Hence, the savings clause should not apply to the pension.

What happens if a member dies prior to receiving all funds?

If a member dies before receiving all the pension benefits, the value of his or her pension fund will be fully included in the member's U.S. estate from an estate tax point of view under Section 2036. Where resident in another country, tax advice should also be sought.

How can I become a member of the 1291OPP?

The 1291OPP is open to all U.S. tax payers, no matter if they are living in the U.S. or abroad. An application must be signed. This can be done in or outside the U.S.

Why is it called "the 1291 Ohio Pension Plan"?

The SS Ohio was an oil tanker, built for the Texas Oil Company. She was requisitioned by the allied forces to re-supply the island fortress of Malta during the World War II. The tanker played a fundamental role in operation *Pedestal*, which was one of the fiercest and most heavily contested of the Malta convoys, in August 1942. Although *Ohio* reached Malta successfully, she was so badly damaged that she had to be effectively scuttled in order to offload her cargo and never sailed again. The tanker is fondly remembered in Malta, where to this day she is considered to be the savior of the beleaguered island.

Does the 1291OPP also work for other countries?

Basically yes. The taxation, however, may be different in each country.

Other interesting countries may be: Switzerland, Mexico, Colombia, Brazil, Hong Kong, Singapore, Malaysia etc. Separate information is available.

Can you please describe the payout rules by giving an example?

Member age at setup:	45
Contribution made:	USD 100 million
Pension value at age 50:	USD 120 million
First payment possible:	30% of USD 120 million: USD 40 million
In year four:	Amount which is needed to finance a life income which guarantees the minimal wage in the country where the client lives, must be calculated. e.g. this is USD 1 million; meanwhile the remaining USD 80m have grown to USD 95m: USD 95m - USD 1m = 94m; 50% of USD 94m → USD 47m can be paid out in year 5.

Thereafter, each following year an additional lump sum payment can be made, following the same calculation.

What if someone did not draw during the first 6 years? Can he now draw 80% at once?

No. The payment schedule starts with the first payment, be it at the age of 50 or 70.

Can we add life cover (term life or VUL)?

Single premium VUL should be possible. However, tax consequences must be considered.

What are the fees?

The fees depend on the size and complexity of the investments made into the 1291OPP. There is a setup-fee and an ongoing administration fee. Also, we recommend a legal opinion for each specific case.

Is there a separate trust for each plan?

There is a segregated account within the master trust. There is no co-mingling of funds.

Are these assets segregated and safe in the event of bankruptcy of another member account or trustee?

Yes, in both cases.

What happens with withholding tax on dividends from investments within the plan? Are there any?

The Malta treaty allows the deduction of 50% on U.S. withholding tax for U.S. situs investments.

Does the pension trust pay tax in Malta?

No, unless Maltese situs assets are held.

Who can get loans? What about mortgages or promissory notes?

Leverage for investment purposes within the plan is ok and a mortgage is possible up to 50% of the purchase valuation. No loan can be made to connected parties.

Malta investment diversification rules: how are they defined?

They are not defined. In fact, a single stock pre-IPO etc. is fine and common sense should be used. Important is, that the risk profile is in line with the investment strategy.

What if someone wants to bring in one huge sum of appreciated shares, by when does he need to liquidate to diversify.

There is no rule. The investment strategy must match the risk profile. Each case needs to be discussed separately. It is important for the pension trustee to understand the situation.

What if the stock is or becomes illiquid (pre-IPO and then no IPO happens)?

Payments can be made by transferring single shares 'in – specie'.

Fresh cash may be required though to cover the fees.

What if not enough money is left for the desired income payments (how to assure)?

No negative effect from a tax point of view, provided the plan did comply when lump sum payment were made. The client would just receive smaller payments.

Must an asset manager be licensed?

Yes, in the country where it operates. However, no additional SEC license is required.

Could the client manage the money himself?

Only if the member qualifies under the definition of a professional investor.

Custodian bank: Can it be anywhere in the world?

Yes, as long as it is a reputable and well-regulated jurisdiction and the bank is of good quality.

Who are the auditors of the pension?

A local Maltese company.

How can the client make sure that you will not change the investments?

The trustee must have the power to change strategy or investments. Naturally, he will only do so in the event of an emergency (e.g. asset manager consistently underperforms and client cannot be reached for a decision or if investments need to be liquidated for liquidity and client is not reachable).

Safety: Is there any insurance for fraud?

Yes, the TMF Group is the pension administrator. The group has fraud insurance and will cover a loss. The TMF Group has 7'500 employees.

Which investments are (not) allowed?

There are no real restrictions. In case of doubt or exotic ideas, the investments should be discussed with the trustees and a separate assessment should be made.

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