I. Background [1]

On April 20, 2023, the Commission published an SNPR in the **Federal Register**, proposing to issue a modified safety standard for portable generators under the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089), and seeking written comments. 88 FR 24346. The SNPR seeks to address the unreasonable risk of injury and death associated with acute carbon monoxide (CO) poisoning from portable generators. The proposed rule limits CO emissions from portable generators and requires generators to shut off when specified emission levels are reached. The SNPR is available at: *www.regulations.gov/document/CPSC-2006-0057-0118,* and CPSC staff's briefing package for the SNPR is available at: *www.cpsc.gov/s3fs-public/SupplementalNoticeofProposedRulemakingSNPRSafetyStandardforPortableGenerators.pdf?VersionId=zxwp.NpJj8nNCxLf7CIp3zMVqLB1MrgE.*

II. The Public Hearing

The Administrative Procedure Act (5 U.S.C. 551–562) and section 9 of the CPSA require the Commission to provide interested parties with an opportunity to submit ''written data, views, or arguments'' regarding a proposed rule. 5 U.S.C. 553(c); *see* 15 U.S.C. 2058(d)(2). The SNPR invited such written comments. In addition, section 9 of the CPSA requires the Commission to provide interested parties ''an opportunity for oral presentation of data, views, or arguments.'' 15 U.S.C. 2058(d)(2). The Commission must keep a transcript of such oral presentations. *Id.* The Commission received requests to present and, in accordance with the requirement in section 9 of the CPSA, the Commission is providing a forum for oral presentations concerning the proposed standard for portable generators.

To request the opportunity to make an oral presentation, see the information under the **DATES** and **ADDRESSES** sections of this document. Participants should limit their presentations to approximately 10 minutes, excluding time for questioning by the Commissioners or CPSC staff. To avoid duplicate presentations, groups or participants with substantially similar comments should designate a spokesperson, and the Commission reserves the right to limit presentation times or impose further restrictions, as necessary.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–11983 Filed 6–6–23; 8:45 am]

BILLING CODE 6355–01–P

[1] The Commission voted 4–0 to publish this document.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106228–22]

RIN 1545–BQ61

Malta Personal Retirement Scheme Listed Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would identify transactions that are the same as, or substantially similar to, certain Malta personal retirement scheme transactions as listed transactions, a type of reportable transaction. Material advisors and participants in these listed transactions would be required to file disclosures with the IRS and be subject to penalties for failure to disclose. These proposed regulations would affect participants in these transactions as well as material advisors. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by August 7, 2023. A public hearing on this proposed regulation has been scheduled for September 21, 2023, at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by August 7, 2023. If no outlines are received by August 7, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. EST on September 19, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the public hearing must be received by 5 p.m. EST on September 18, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–106228–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG–106228–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at *https://www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for September 21, 2023, beginning at 10 a.m. EST, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by August 7, 2023. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by August 7, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–106228–22 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–106228–22.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–106228–22 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–106228–22.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–106228–22 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–106228–22. Requests to attend the public hearing must be received by 5 p.m. EST on September 19, 2023.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–106228–22 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–106228–22. Requests to attend the public hearing must be received by 5 p.m. EST on September 19, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by September 18, 2023.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, W. Shawver Adams at (202) 317–5132; concerning submissions of comments or requests for a public hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The additions identify certain transactions that are ''listed transactions'' for the purposes of section 6011. This regulation would also affect reporting requirements under section 6111 and list maintenance requirements under section 6112.

I. Overview of the Reportable Transaction Regime

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary, ''any person made liable for any tax imposed by this title or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.''

On February 28, 2000, the Treasury Department and the IRS issued a series of temporary regulations (TD 8877; TD 8876; TD 8875) and cross-referencing notices of proposed rulemaking (REG–103735–00; REG–110311–00; REG–103736–00) under sections 6011, 6111, and 6112. The temporary regulations and cross-referencing notices of proposed rulemaking were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272; 65 FR 11211, 65 FR 11271) on March 2, 2000 (2000 Temporary Regulations). The 2000 Temporary Regulations were modified several times before March 4, 2003, the date on which the Treasury Department and the IRS, after providing notice and opportunity for public comment and considering the comments received, published final regulations (TD 9046) in the **Federal Register** (68 FR 10161) under sections 6011, 6111, and 6112 (2003 Final Regulations). The 2000 Temporary Regulations and 2003 Final Regulations consistently provided that reportable transactions include listed transactions and that a listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

As part of the American Jobs Creation Act of 2004 (AJCA), Public Law 108–357, 118 Stat. 1418 (October 22, 2004), Congress added sections 6707A, 6662A, and 6501(c)(10) to the Code and revised sections 6111, 6112, 6707, and 6708 of the Code. *See* sections 811–812 and 814–817 of the ACJA. The AJCA's legislative history explains that Congress incorporated in the statute the method that the Treasury Department and the IRS had been using to identify reportable transactions, and provided incentives, via penalties, to encourage taxpayer compliance with the new disclosure reporting obligations. As the Committee on Ways and Means explained in its report accompanying H.R. 4520, which became the AJCA:

> The Committee believes that the best way to combat tax shelters is to be aware of them. The Treasury Department, using the tools available, issued regulations requiring disclosure of certain transactions and requiring organizers and promoters of tax-engineered transactions to maintain customer lists and make these lists available to the IRS. Nevertheless, the Committee believes that additional legislation is needed to provide the Treasury Department with additional tools to assist its efforts to curtail abusive transactions. Moreover, the Committee believes that a penalty for failing to make the required disclosures, when the imposition of such penalty is not dependent on the tax treatment of the underlying transaction ultimately being sustained, will provide an additional incentive for taxpayers to satisfy their reporting obligations under the new disclosure provisions.

House Report 108–548(I), 108th Cong., 2nd Sess. 2004, 2004 WL 1380512, at 261 (June 16, 2004) (House Report).

In Footnote 232 of the House Report, the Committee on Ways and Means notes that the statutory definitions of ''reportable transaction'' and ''listed transaction'' were intended to incorporate the pre-AJCA regulatory definitions, while providing the Secretary with leeway to make changes to those definitions:

> The provision states that, except as provided in regulations, a listed transaction means a reportable transaction, which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011. For this purpose, it is expected that the definition of ''substantially similar'' will be the definition used in Treas. Reg. sec. 1.6011–4(c)(4). However, the Secretary may modify this definition (as well as the definitions of ''listed transaction'' and ''reportable transactions'') as appropriate.

Id. at 261 n.232.

Section 6707A(c)(1) defines a ''reportable transaction'' as ''any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a

potential for tax avoidance or evasion.'' A ''listed transaction'' is defined by section 6707A(c)(2) as ''a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for the purposes of section 6011.''

Section 6111(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction shall make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary. Section 6111(b)(2) provides that a reportable transaction has the meaning given to such term by section 6707A(c).

Section 6112(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction (as defined in section 6707A(c)) must (whether or not required to file a return under section 6111 with respect to such transaction) maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor and (2) containing such other information as the Secretary may by regulations require.

On August 3, 2007, the Treasury Department and the IRS published final regulations in the **Federal Register** (72 FR 43146, 72 FR 43157, 72 FR 43154) under sections 6011, 6111, and 6112, modifying the rules relating to the disclosure of reportable transactions by participants in reportable transactions under section 6011, the disclosure of reportable transactions by material advisors under section 6111, and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112 in response to the changes in the AJCA.

II. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 1.6011–4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011–4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011–4(e).

Section 1.6011–4(d) and (e) provide that the disclosure statement—Form 8886, *Reportable Transaction Disclosure Statement* (or successor form)—must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Reportable transactions include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Consistent with the definitions previously provided in the 2000 Temporary Regulations and later in the 2003 Final Regulations as promulgated in 2007, § 1.6011–4(b)(2) continues to define a listed transaction as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011–4(c)(4) provides that a transaction is ''substantially similar'' if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011–4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences (including an exclusion from gross income) or a tax strategy described in the published guidance that lists the transaction under § 1.6011–4(b)(2). A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy described in published guidance that lists a transaction under § 1.6011–4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance may also identify types or classes of persons that will not be treated as participants in a listed transaction.

Section 1.6011–4(e)(2)(i) provides that if a transaction becomes a listed transaction after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the listed transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction. The Commissioner may also determine the time for disclosure of listed transactions in the published guidance identifying the transaction.

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For a listed transaction, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case.

Additional penalties may also apply. In general, section 6662A imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer has a requirement to disclose participation in the reportable transaction but does not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction shall not expire before the date that is one year after the earlier of the date the participant discloses the

transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

III. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure To Disclose

Section 301.6111–3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in § 1.6011–4(b), must file a return as described in § 301.6111–3(d) by the date described in § 301.6111–3(e).

Section 301.6111–3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in § 301.6111–3(b)(3) for the material aid, assistance, or advice. Under § 301.6111–3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement,* (or successor form) as provided in § 301.6111–3(d) and (e). Section 301.6111–3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111–3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in § 301.6111–3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Additionally, material advisors must prepare and maintain lists identifying each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction in accordance with § 301.6112–1(b) and furnish such lists to the IRS in accordance with § 301.6112–1(e).

Section 6707(a) provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) $200,000 or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

A material advisor may also be subject to a penalty under section 6708 for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

IV. Malta Personal Retirement Schemes

Under U.S. Federal income tax law, individual savings arrangements are not entitled to tax-favored treatment available for pension or retirement arrangements if they do not meet the requirements for an individual retirement account (IRA) described in section 408 or a Roth IRA described in section 408A. The tax-favored treatment for an IRA or Roth IRA includes the deductibility (in many cases) of contributions to an IRA, tax deferral on the earnings of the IRA or Roth IRA, and exclusion from income for qualified distributions from a Roth IRA. IRAs and Roth IRAs are subject to certain requirements, such as a requirement that an individual's contributions, other than certain rollovers, are restricted to cash and limited by reference to an individual's earned income (including, in the case of spousal IRAs, a spouse's earned income). In addition, a distribution from an IRA (or a distribution from a Roth IRA that is not a qualified distribution) is generally subject to a 10% additional tax if paid before the IRA owner attains age 59½.

Malta's personal retirement schemes were enacted as part of the Retirement Pensions Act of 2011 and implemented by regulations in 2015.[1] They are tax-favored savings arrangements in Malta that allow individuals or their employers to contribute assets to a trust or other investment vehicle for such individuals' benefit. In contrast to U.S. tax-favored individual savings arrangements, there is no requirement that contributions be limited by reference to income earned from employment or self-employment activities, no limitation on contribution amounts, and no restriction on the types of assets (such as securities) that may be contributed. Distributions, which may begin when an individual member is 50 but must start no later than age 75, may be exempt from Maltese income tax if the individual elects to receive initial and additional cash lump sum distributions.

Absent treaty relief, U.S. citizens and U.S. resident aliens who establish a foreign individual retirement trust or other individual retirement arrangement are generally required to take into account the arrangement's income on a current basis, even if there has been no distribution from the arrangement. *See, e.g.,* section 671. Under section 894(a), the Code applies to a taxpayer with due regard to any treaty obligations of the United States. Pursuant to the saving clause in Article 1, paragraph 4, of the Convention Between the Government of the United States of America and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Valetta, August 8, 2008 (''Treaty''), the United States retains its right to tax the income of its citizens and residents (as determined under Article 4 (Resident) of the Treaty) as if there were no Treaty between the United States and Malta. Notwithstanding the saving clause, U.S. citizens and U.S. resident aliens may claim an exemption from U.S. income tax in accordance with the Treaty if they qualify for an exception to the saving

[1] Act No. XVI of 2011, as amended by Act No. XX of 2013, and amended by Act No. XXVI of 2018; Ch. 514 (Retirement Pensions Act). Pension Rules for Personal Retirement Schemes Issued in Terms of the Retirement Pensions Act, 2011, were issued on January 7, 2015, and effective January 1, 2015.

clause provided under paragraph 5 of Article 1.

Articles 17(1)(b) and 18 of the Treaty, are both listed as exceptions to the saving clause. These provisions may permit U.S. citizens and U.S. resident aliens an exemption from U.S. income tax on (1) ''pensions and other similar remuneration'' arising in Malta to the extent such pensions or remuneration would be exempt from tax under Maltese law if the beneficial owner were a resident of Malta (Article 17(1)(b)), and (2) income earned by a ''pension fund'' established in Malta until such income is distributed (Article 18). As explained in Treasury's Technical Explanation to the Treaty, Article 17 applies generally to ''distributions from pensions and other similar remuneration beneficially owned by a resident of a Contracting State in consideration of past employment . . . .'', whereas Article 18 applies to income of a ''pension fund established in the other Contracting State . . . .'' Paragraph (1)(k) of Article 3 of the Treaty defines the term ''pension fund'' for purposes of the Treaty. In the case of Malta, a pension fund is a licensed fund or scheme subject to tax only on income derived from immovable property situated in Malta, and as relevant here, operated principally to ''administer or provide pension or retirement benefits . . . .''

On December 27, 2021, the IRS published in the Internal Revenue Bulletin a Competent Authority Arrangement (the ''CAA'') between the United States and Malta. I.R.B. 2021–52, Ann. 2021–19. In the CAA, the U.S. and Maltese competent authorities agreed that individual retirement arrangements established under Malta's Retirement Pensions Act of 2011 are not considered ''pension funds'' for purpose of relevant provisions of the Treaty. The CAA also confirmed that distributions from these types of arrangements are not ''pensions or other similar remuneration'' in consideration of past employment for purposes of paragraph 1(b) of Article 17. The CAA ''reflects the original intent [of the United States and Malta] regarding the definition of 'pension fund' for purposes of the Treaty.''

In addition to the income tax consequences associated with a U.S. taxpayer's transactions with or interest in a Malta personal retirement scheme, information reporting requirements also apply. Section 6048 generally requires annual information reporting of a U.S. person's transfers of money or other property to, ownership of, and distributions from, foreign trusts. Section 6677 imposes penalties on a U.S. person for failing to comply with section 6048. *See* also Notice 97–34, 1997–1 C.B. 422. Under section 6048(d)(4), the Secretary may suspend or modify any requirement under section 6048 if the United States has no significant tax interest in obtaining the required information. The Treasury Department and the IRS have previously issued guidance providing that reporting is not required under section 6048(a), (b), and (c) for certain U.S. citizen and resident individuals with respect to their transactions with, and ownership of, certain tax-favored foreign retirement trusts and certain tax-favored foreign nonretirement savings trusts, as described in Revenue Procedure 2020–17, 2020–12 I.R.B. 539. Malta personal retirement schemes are not eligible for this relief from section 6048 reporting because contributions to these arrangements are not limited to income earned from the performance of services, subject to a certain annual or lifetime limit, or subject to a limit based on a percentage of the participant's earned income. *See* Section 5.03 of Rev. Proc. 2020–17. Section 6048 information reporting is provided on Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts,* and Form 3520–A, *Annual Information Return of Foreign Trust With a U.S. Owner (Under section 6048(b)*).

Section 6038D may also apply to a U.S. person's interest in a Malta personal retirement scheme. Under section 6038D, a specified person, which includes a U.S. citizen or resident alien, must report any interest in a specified foreign financial asset provided that the aggregate value of all such assets exceeds certain thresholds. *See* § 1.6038D–2(a). Section 6038D(d) imposes a penalty for failing to comply. Section 6038D information reporting is provided on Form 8938, *Statement of Specified Foreign Financial Assets.* A specified person who is required to report information under section 6038D on Form 8938 may also be required to report similar identifying information under section 6048 on Form 3520 or Form 3520–A.

V. Tax Avoidance Transactions Using Malta Personal Retirement Schemes

The Treasury Department and the IRS are aware of transactions in which a U.S. citizen or a U.S. resident alien misconstrues the pension provisions of the Treaty to claim an exemption from U.S. income tax on earnings in and distributions from personal retirement schemes established under the laws of Malta. E.g., IR–2022–113. Typically, the transaction is intended to permanently avoid U.S. tax on (1) the built-in-gain of appreciated property transferred to personal retirement schemes established in Malta, (2) income earned by and accumulated in such schemes, and/or (3) distributions from such schemes. The U.S. individuals who participate in these transactions generally lack any connection to Malta other than their participation in these arrangements. These individuals also may fail to comply with their U.S. information reporting requirements, including under section 6048.

In this transaction, the taxpayer (Taxpayer A), a U.S. citizen or a U.S. resident alien, establishes a personal retirement scheme under Malta's Retirement Pension Act of 2011. In Year 1, Taxpayer A transfers cash, appreciated property (annuities, securities, digital assets, partnership interests, etc.), or a combination thereof, to the scheme without recognizing gain on the transfer under section 684(b). In Year 2 or later, Taxpayer A takes the position on a U.S. income tax return that the income earned by the scheme (including gain on the sale or other disposition of appreciated property initially transferred to the scheme) is exempt from U.S. tax under Articles 18 and 1(5)(a) of the Treaty because the scheme is a ''pension fund'' for purposes of the Treaty. In Year 3 or later, Taxpayer A receives a distribution from the scheme and takes the position on a U.S. income tax return that such distributions are exempt from U.S. tax by reason of Articles 17(1)(b) and 1(5)(a) of the Treaty. Additionally, Taxpayer A may not comply with U.S. information reporting requirements related to these transactions, including under section 6048.

The taxpayer's positions in these transactions are incorrect. First, the Treaty benefits claimed with respect to personal retirement schemes established in Malta are not available because these schemes are not ''pension funds,'' and their distributions are not ''pensions or other similar remuneration,'' as explained in the CAA. Second, under Article 3(2) of the Treaty, the undefined terms ''pension'' and ''retirement'' are interpreted according to the tax law of the United States, which is the country that is applying the Treaty.[2] Under U.S. law applicable to individual retirement

[2] Treasury's Technical Explanation to Article 3(2) of the Treaty states:

Paragraph 2 provides that in the application of the Convention, any term used but not defined in the Convention will have the meaning that it has under the law of the Contracting State whose tax is being applied, unless the context requires otherwise, or the competent authorities have agreed on a different meaning pursuant to Article 25 (Mutual Agreement Procedure).

arrangements, Malta personal retirement schemes are neither ''pensions'' nor do they provide ''retirement benefits'' for purposes of the Treaty. Maltese law does not condition the tax benefits it provides for these arrangements upon reasonably analogous requirements of U.S. law. Those requirements include that an individual's contributions to an individual retirement arrangement (other than qualified rollovers from a pension or retirement arrangement that is tax-favored under the same country's laws) must be made in cash and must be based on income earned from employment or self-employment activities. *See* sections 219, 408, and 408A. Third, in appropriate fact patterns, the transaction viewed as a whole may be disregarded under relevant judicial doctrines, including the step-transaction doctrine, the substance-over-form doctrine, and the assignment of income doctrine, in order to give effect to the general purpose of the Treaty to mitigate double taxation but not improperly create instances of non-taxation, especially in cases in which the person establishing the retirement arrangement has no other connection to the treaty jurisdiction.

VI. Purpose of Proposed Regulation

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction* v. *United States,* 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007–83, 2007–2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA), 5 U.S.C. 551–559 because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit concluded that Congress did not clearly express an intent to override the notice-and-comment procedures required by section 553 of the APA when it enacted the AJCA. *Id.* at 1148. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. *See Mann Construction, Inc.* v. *United States,* 539 F.Supp.3d 745, 763 (E.D. Mich. 2021).

Relying on the Sixth Circuit's analysis in *Mann Construction,* three district courts and the Tax Court have concluded that IRS notices identifying listed transactions were improperly issued because they were issued without following the APA's notice and comment procedures. *See Green Rock, LLC* v. *IRS,* 2023 WL 1478444 (N.D. AL., February 2, 2023) (Notice 2017–10); *GBX Associates, LLC,* v. *United States,* 1:22cv401 (N.D. Ohio, Nov. 14, 2022) (same); *Green Valley Investors, LLC, et al.* v. *Commissioner,* 159 T.C. No. 5 (Nov. 9, 2022) (same); *see also CIC Services, LLC* v. *IRS,* 2022 WL 985619 (E.D. Tenn. March 21, 2022), as modified by 2022 WL 2078036 (E.D. Tenn. June 2, 2022) (Notice 2016–66, identifying a transaction of interest).

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the subsequent decisions that have applied that reasoning to find other IRS notices invalid and are continuing to defend the validity of notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to avoid any confusion and ensure consistent enforcement of the tax laws throughout the nation, the Treasury Department and the IRS are issuing these proposed regulations to identify certain transactions involving Malta pension plans as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations, including section 6707A and § 1.6011–4(b)(2).

The Treasury Department and the IRS believe that transactions involving a Malta personal retirement scheme described in the proposed regulations, and substantially similar transactions involving a retirement arrangement established in Malta, unless specifically excepted, are tax avoidance transactions and should be identified as listed transactions for purposes of § 1.6011–4 and sections 6111 and 6112. Under the proposed regulations, participants involved in such transactions and their material advisors would need to comply with the information reporting and collection requirements under § 1.6011–4 and sections 6111 and 6112. Failure to do so could result in penalties as described in sections II and III of the Background section of this preamble.

Explanation of Provisions

I. Malta Personal Retirement Scheme Transaction

Proposed § 1.6011–12(a) provides that, except as provided in proposed § 1.6011–12(b)(2), a transaction that is the same as, or substantially similar to, a Malta personal retirement scheme transaction (described in proposed § 1.6011–12(b)(1)) is a listed transaction for purposes of § 1.6011–4 and sections 6111 and 6112. A transaction is a Malta personal retirement scheme transaction as described in proposed § 1.6011–12(b)(1) if a U.S. citizen or a U.S. resident alien directly or indirectly (1) transfers (within the meaning of § 1.679–3 or § 1.684–2) cash or other property to, or receives a distribution from, a personal retirement scheme established under Malta's Retirement Pension Act of 2011 (a ''Malta personal retirement scheme''), and (2) takes the position on a U.S. Federal income tax return that (a) income earned or gain realized by the Malta personal retirement scheme is not includible in income on a current basis for U.S. Federal income tax purposes by reason of the Treaty, or (b) a distribution from a Malta personal retirement scheme attributable to earnings or gains of the scheme that have not been included in income for U.S. Federal income tax purposes is exempt from U.S. taxation by reason of the Treaty. Proposed § 1.6011–12(b)(1). Indirect transfers include transfers to a Malta personal retirement scheme by any person (intermediary) to whom a U.S. person transfers property if such transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of United States tax. *See, e.g.,* § 1.679–3(c).

For example, assume in Year 1 Taxpayer A, a U.S. citizen or a U.S. resident alien directly or indirectly transfers cash and appreciated property to a Malta personal retirement scheme. In Year 2 the Malta personal retirement scheme sells Taxpayer A's contributed property at a gain. On a U.S. income tax return for Year 2, Taxpayer A does not include the gain realized by the scheme, because, according to Taxpayer A, such gain is exempt from U.S. taxation under Articles 18 and 1(5)(a) of the Treaty. Taxpayer A has engaged in a Malta personal retirement scheme transaction as described in proposed § 1.6011–12(b)(1). Unless the exception described in proposed § 1.6011–12(b)(2) applies, the transaction is a listed transaction for purposes of § 1.6011–4 and sections 6111 and 6112. Taxpayer A and any material advisor with respect to the listed transaction are therefore subject to the information reporting and collection of information requirements under § 1.6011–4 and sections 6111 and 6112, respectively, as described in sections I through III of the Background section of this preamble. Taxpayer A must also comply with U.S. information reporting requirements including, for example, requirements under section 6048.

Under § 1.6011–4(c)(3)(i)(E), Taxpayer A is a participant in a listed transaction for each year in which Taxpayer A's tax return reflects tax consequences or a tax strategy of a Malta personal retirement scheme transaction as described in proposed § 1.6011–12(b)(1). Thus, continuing with the example in the preceding paragraph, if Taxpayer A

receives a distribution from the Malta personal retirement scheme in Year 3, but does not include the distribution in income under Articles 17(1)(b) and 1(5)(a) of the Treaty, Taxpayer A will have participated in a Malta personal retirement scheme transaction as described in proposed § 1.6011–12(b)(1) in each of Year 2 and Year 3.

A transaction is not substantially similar to a Malta personal retirement scheme transaction unless it involves the Treaty and a retirement arrangement established in Malta. The Treasury Department and the IRS are aware that taxpayers may attempt to use transactions similar to the Malta personal retirement scheme transaction in other jurisdictions to achieve a similar tax avoidance outcome. The Treasury Department and the IRS are therefore considering whether transactions similar to the Malta personal retirement scheme transaction replicated in other jurisdictions should also be identified as listed transactions and request comments on this matter.

II. Exception

The Treasury Department and the IRS are aware that the United Kingdom allows tax-deferred transfers from its pension or retirement schemes to certain ''qualified recognised overseas pension schemes'' (or QROPS), including Malta personal retirement schemes. The Treasury Department and the IRS believe that certain U.S. individuals who may have transferred their foreign pension or retirement arrangements to Malta personal retirement schemes in accordance with foreign law and claimed an exemption from U.S. income tax for earnings in or distributions from such schemes on U.S. Federal income tax returns filed before the date these proposed regulations are published in the **Federal Register** should not be treated as participating in a listed transaction described in proposed § 1.6011–12(b)(1) provided certain requirements are met. Accordingly, proposed § 1.6011–12(b)(2) provides that if a U.S. citizen or resident alien described in proposed § 1.6011–12(b)(1)(i) takes a position described in proposed § 1.6011–12(b)(1)(ii) on a U.S. Federal income tax return filed before June 6, 2023, such U.S. citizen or U.S. resident alien will not be treated as participating in a listed transaction for the taxable year to which the U.S. Federal income tax return relates provided that (1) such U.S. citizen or U.S. resident alien (the transferor) established the Malta personal retirement scheme with a transfer (or rollover) of a pension or other retirement arrangement established in a country other than Malta or the United States (for example, a pension scheme established in the United Kingdom), and in compliance with the tax laws of such country, (2) the transferor was, when such pension or retirement arrangement was established and such rollover occurred, a resident of the other country under that country's tax law, including under Article 4 (Residency) of such country's income tax treaty with the United States, if applicable (for example, a tax resident of the United Kingdom), and (3) the transferor's contributions to such pension or retirement arrangement consisted solely of cash in an amount that bears a relationship to the transferor's income earned from the performance of personal services. This exception does not apply to a U.S. citizen or U.S. resident alien who takes a position described in proposed § 1.6011–12(b)(1)(ii) on a U.S. Federal income tax return filed on or after June 6, 2023, when U.S. citizens or U.S. resident aliens who own foreign pension or retirement arrangements and their material advisors are on notice that the Treasury Department and the IRS have proposed identifying Malta personal retirement scheme transactions as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112.

For example, assume Taxpayer B, a U.S. citizen, was a resident of Country Y when Taxpayer B established a Country Y pension plan in compliance with Country Y's laws. Taxpayer B made cash contributions from wages to the Country Y pension plan. Taxpayer B, while a U.S. citizen and resident of Country Y, transferred the Country Y pension plan to a Malta personal retirement scheme in accordance with Country Y tax law. In Year 1, Taxpayer B's Malta personal retirement scheme earned income. On Taxpayer B's Year 1 U.S. Federal income tax return, which is filed before June 6, 2023, Taxpayer B took a position described in proposed § 1.6011–12(b)(1)(ii). Under proposed § 1.6011–12(b)(2), Taxpayer B would not be treated as participating in a listed transaction with respect to such year.

A U.S. citizen or U.S. resident alien who is described in proposed § 1.6011–12(b)(2), however, may be subject to U.S. income tax as a result of the transfer from a pension or retirement arrangement established in a country other than Malta to a Malta personal retirement scheme, as well as U.S. information reporting requirements under, for example, section 6048(a) and (c). *See* IRS INFO 2011–0096 (Dec. 30, 2011). U.S. citizens and U.S. residents who are described in proposed § 1.6011–12(b)(2) are subject to U.S. income tax on income earned and gain realized by their Malta personal retirement schemes, as described in section IV of the Background section of this preamble.

III. Effect of Transaction Becoming a Listed Transaction

Participants required to disclose these transactions under § 1.6011–4 who fail to do so would be subject to penalties under section 6707A. Participants required to disclose these transactions under § 1.6011–4 who fail to do so would also be subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so would be subject to the penalty under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) would be subject to the penalty under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the section 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, and the section 6677 penalty for the failure to timely report certain transactions with, and ownership of, foreign trusts.

Taxpayers who have filed a tax return (including an amended return (or Administrative Adjustment Request (AAR) for certain partnerships)) reflecting their participation in these transactions before [DATE THE FINAL REGULATIONS ARE PUBLISHED IN THE **FEDERAL REGISTER**] (the finalization date) and who have not otherwise finalized a settlement agreement with the IRS with respect to the transaction must disclose the transactions as provided in § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax, including any applicable extensions, for any taxable year in which the taxpayer participated in the transaction has not ended on or before the finalization date. Proposed § 1.6011–12(b)(3); *see also* § 1.6011–4(e)(2)(i). Thus, for example, taxpayers who participated in a Malta personal retirement scheme transaction before the finalization date, but did not comply with their foreign trust information reporting requirements under section 6048 with respect to such transaction, have an open period of limitations for assessments under section 6501(c)(8) and therefore must file a disclosure statement with OTSA within 90 calendar days after the date

on which the transaction becomes a listed transaction.

In addition, material advisers have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors are required to disclose only if they have made a tax statement on or after the date that is six years before the date the regulations are published as final regulations in the **Federal Register**.

The Treasury Department and the IRS recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the types of transactions described in these proposed regulations. Because the IRS will take the position that taxpayers are not entitled to the purported tax benefits of the listed transactions described in the proposed regulations, taxpayers should consider filing amended returns to ensure that their transactions are disclosed properly.

Proposed Applicability Date

Proposed § 1.6011–12 would identify certain Malta personal retirement scheme transactions described in proposed § 1.6011–12(b)(1), except as described in proposed § 1.6011–12(b)(2), as listed transactions effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), has determined that this proposed rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866, as amended. Therefore, OIRA has not reviewed this proposed rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and April 11, 2018, Memorandum of Agreement between the Treasury Department and the OMB.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

The estimated number of taxpayers impacted by these proposed regulations ranges between 50 to 150 per year. No burden on these taxpayers would be imposed by these proposed regulations. Instead, the collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that has been reviewed and approved by the OMB in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–1800 and 1545–0865. Thus, the burden estimates for the Forms 8886 and 8918 will be adjusted to reflect the taxpayers impacted by these regulations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

III. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (''RFA'') requires the agency ''to prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' *See* 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. *See* 5 U.S.C. 601(3) through (6).

The Treasury Department and the IRS do not expect that the proposed regulations will have a significant economic impact on a substantial number of small entities within the meaning of sections 601(3) through (6) of the RFA. The Malta personal retirement scheme transaction described in proposed § 1.6011–12 only applies to U.S. citizens and U.S. resident individuals, and not entities. Therefore, with respect to its impact on participants, proposed § 1.6011–12 will not impact small entities.

The Treasury Department and the IRS do not have information about which entities engage in the advising of this transaction, and therefore cannot accurately estimate the impact of proposed § 1.6011–12 on material advisors that are small entities. However, the Treasury Department and the IRS do not expect proposed § 1.6011–12 to impact a substantial number of small entities that may advise on this transaction. As explained in section III of the Background section of this preamble, participants in these transactions generally have no connection to Malta other than their participation in a Malta personal retirement scheme primarily to avoid U.S. tax, and to avoid detection, they may not comply with their U.S. information reporting requirements. This tax-avoidance motive of potential clients who are U.S. persons, combined with the necessary familiarity with, and access to, Malta's pension system and tax law in order to facilitate the Malta personal retirement scheme transaction, means that it is unlikely for a substantial number of small entities to engage in advising on these transactions. The Treasury Department and the IRS request comments from the public on the number of small entities that may be impacted and whether that impact will be economically significant.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, the proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S.

Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal authors of these regulations are Lara Banjanin and Tracy Villecco of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.6011–12 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011 * * *

* * * * *

■ **Par. 2.** Section 1.6011–12 is added to read as follows:

§ 1.6011–12 Malta Personal Retirement Scheme Listed Transaction.

(a) *Malta personal retirement scheme listed transaction.* Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b)(1) of this section are identified as listed transactions for purposes of § 1.6011–4(b)(2), except as provided in paragraph (b)(2) of this section. A transaction is not substantially similar unless it involves a retirement arrangement established in Malta and the taxpayer takes a Federal income tax return position based on the income tax treaty between the United States and Malta.

(b) *Malta personal retirement scheme transaction*—(1) *Transaction description.* A transaction is described in this paragraph (b)(1) if:

(i) A U.S. citizen or U.S. resident alien, directly or indirectly—

(A) Transfers (within the meaning of § 1.679–3 or § 1.684–2) cash or other property to a personal retirement scheme established under Malta's Retirement Pension Act of 2011 (a ''Malta personal retirement scheme''), or

(B) Receives a distribution from a Malta personal retirement scheme, and

(ii) A U.S. citizen or U.S. resident alien described in paragraph (b)(1)(i) of this section takes a position on a U.S. Federal income tax return that—

(A) Income earned or gain realized by the Malta personal retirement scheme is not includible on a current basis in income for U.S. Federal income tax purposes by reason of the income tax treaty between the United States and Malta, or

(B) A distribution received from the Malta personal retirement scheme attributable to earnings or gains that have not been included in income for U.S. Federal income tax purposes is exempt from U.S. taxation by reason of the income tax treaty between the United States and Malta.

(2) *Exception.* If a U.S. citizen or U.S. resident alien described in paragraph (b)(1) of this section takes a position described in paragraph (b)(1)(ii) of this section on a U.S. Federal income tax return filed before June 6, 2023, such U.S. citizen or U.S. resident alien will not be treated as participating in a listed transaction under this section for the taxable year to which the U.S. Federal income tax return relates provided that—

(i) Such U.S. citizen or U.S. resident alien (the transferor) established the Malta personal retirement scheme with a transfer (or rollover) of a pension or other retirement arrangement established in a country other than Malta or the United States, and in compliance with the tax laws of such country;

(ii) The transferor was, when such pension or retirement arrangement was established and such rollover occurred, a resident of the other country under that country's tax law, including under Article 4 (Residency) of such country's income tax treaty with the United States, if applicable; and

(iii) The transferor's contributions to such pension or retirement arrangement consisted solely of cash in an amount that bears a relationship to the transferor's income earned from the performance of personal services.

The preceding sentence does not apply, however, to any U.S. citizen or U.S. resident alien who take a position described in paragraph (b)(1)(ii) of this section on a U.S. Federal income tax return filed on or after June 6, 2023.

(3) *Applicability date*—(i) *In general.* This section identifies transactions that are the same as, or substantially similar to, the transaction described in paragraph (b)(1) of this section, except as provided in paragraph (b)(2) of this section, as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112 effective [DATE OF PUBLICATION OF THE FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

(ii) *Obligations of participants with respect to prior periods.* Pursuant to § 1.6011–4(d) and (e), taxpayers who have filed a tax return (including an amended return) reflecting their participation in these transactions prior to [DATE OF PUBLICATION OF THE FINAL REGULATIONS IN THE **FEDERAL REGISTER**], who have not otherwise finalized a settlement agreement with the Internal Revenue Service with respect to the transaction, must disclose the transactions as provided in § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the transaction has not ended on or before [DATE OF PUBLICATION OF THE FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

(iii) *Obligations of material advisors with respect to prior periods.* Material advisors defined in § 301.6111–3(b) of this chapter who have previously made a tax statement with respect to a transaction described in paragraph (b)(1) of this section, except as provided in paragraph (b)(2) of this section, have disclosure and list maintenance obligations as described in §§ 301.6111–3 and 301.6112–1 of this chapter, respectively. Notwithstanding § 301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date that is six years before the date the regulations are published as final regulations in the **Federal Register**.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–11861 Filed 6–6–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number: USCG–2023–0308]

RIN 1625–AA08

Special Local Regulation; Henderson Bay, Henderson Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent special local regulation for certain waters of