Golden Passports and Pension Plans: Malta's Business of Aiding the Ultra-Wealthy

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Around the world, the richest among us continue to use their wealth and influence to evade the enforcement of both domestic and international laws. Recently, the country of Malta has become a haven for such abusive and exploitative activity, centering around the country's sale of passports and creative uses of its pension plans. The sale of Maltese passports allows the wealthy to launder money and gain European citizenship, while Malta's pension plans allow the wealthy to evade massive domestic tax liability on virtually any type of asset. This Article details how these schemes are structured and the ways in which they are exploited, as well as the monumental harm the schemes cause in the United States and abroad. Additionally, this Article examines the attempts made by the European Union and the United States to eliminate these schemes, showing why the current attempts are insufficient. Lastly, more stringent, long-term solutions are proposed, leveraging existing mechanisms in domestic and international law to finally bring an end to these abusive activities.

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I. INTRODUCTION

In today's social climate, individuals and governments are more aware of the illicit financial activities taking place throughout the world. Thanks to the tireless efforts of domestic and international journalists, individuals in nations across the globe have access to records documenting exactly how the richest participate in pay-for-access schemes and money laundering—most notably through disclosures such as the Panama[2] and Pandora Papers.[3] Despite the widespread knowledge of many of these activities, some of them are permitted to continue on, allowing affluent individuals to circumvent national and international laws and taxation. This article focuses on two such cases by the world's ultra-wealthy, both in the context of a small island nation, Malta. Ultimately, this is an issue of justice. This article proceeds by providing a background on the nation of Malta, its history of struggles with corruption, and the state of the island today, in Part II. Then, in Part III, it details two legal mechanisms in Malta used by the ultra-wealthy to evade taxes and launder money—the so-called "golden passports" and the Maltese pension plan, as well as attempts made by the European Union and United States to address these concerns. Part IV proposes more effective, long-term solutions to eliminate these harmful and unjust tax evasion and money laundering schemes.

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[2] *What Are the Panama Papers?*, N.Y. TIMES (Apr. 4, 2016), https://www.nytimes.com/2016/04/05/world/panama-papers-explainer.html.

[3] Rick Gladstone, *Pandora Papers: A Money Bomb With Political Ripples*, N.Y. TIMES (Oct. 8, 2021), https://www.nytimes.com/2021/10/04/world/pandora-papers.html.

II. THE MALTESE ISLANDS AND THE ULTRA-WEALTHY

Malta is a small island nation located in the middle of the Mediterranean Sea, roughly fifty miles south of Sicily.[4] An archipelago, where three islands are inhabited, Malta is the tenth smallest country in the world and the fourth most densely populated sovereign nation.[5] It has a total area of only about 122 square miles and a total population just over 500,000.[6] Malta earned its independence from the United Kingdom in 1964, became a constitutional republic in 1974, joined the European Union in 2004, and the Eurozone in 2008.[7]

Malta's economy largely centers around the tourism and financial services industries. It boasts a GDP per capita comparable to that of Spain and Italy.[8] Before the COVID-19 pandemic, Malta saw roughly 1.6 million tourists per year—about three times its actual population.[9] Malta is also frequently filmed in Hollywood movies; it served as a filming location for notable works such as "Gladiator," "Troy," and "Game of Thrones."[10] This makes Malta even more appealing as a tourist attraction for avid fans. The financial services sector, however, is where things take a more dubious turn. While Malta has made important and legitimate strides in the development of its financial services sector, the nation has also attracted substantial attention for the benefits it grants to the world's ultra-wealthy and the unsavory elements that have come along with those benefits. The impact of these activities is seen in the surging corruption over the last decade.

This corruption and its accompanied scandals—exposed largely through the tireless efforts of Daphne Caruana Galizia (known by the mononym

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[4] CIA, *The World Factbook, Malta*, (Sept. 22, 2022), https://www.cia.gov/the-world-factbook/countries/malta/ [hereinafter CIA Factbook].

[5] STATISTA, The Smallest Countries in the World As of 2020, By Land Area, https://www.statista.com/statistics/1181994/the-worlds-smallest-countries/ (last visited Nov. 6, 2021).

[6] CIA Factbook, *supra* note 4 (316 square kilometers is equivalent to 122 square miles); NATIONAL STATISTICS OFFICE — MALTA, *News Release*, (July 10, 2020), https://nso.gov.mt/en/News_Releases/Documents/2020/07/News2020_114.pdf.

[7] BRITANNICA, Malta: Modern History, https://www.britannica.com/place/Malta/Modern-history (last visited Nov. 6, 2021).

[8] THE WORLD BANK, GDP per capita (current US$) — European Union, https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=EU&most_recent_value_desc=true (last visited Nov. 6, 2021).

[9] UNWTO, *Tourism Highlights*, 8 (8th ed. 2014).

[10] MOVIE-LOCATIONS, *Gladiator*, http://movie-locations.com/movies/g/Gladiator.php (last visited Nov. 6, 2021); MOVIE-LOCATIONS, *Troy*, http://movie-locations.com//movies/t/Troy-2004.php (last visited Nov. 6, 2021); Stacey Leasca, T*he Ultimate Guide to 'Game of Thrones' Filming Locations Around the World*, TRAVEL+ LEISURE, https://www.travelandleisure.com/culture-design/tv-movies/game-of-thrones-filming-locations (last accessed Nov. 6, 2021).

"Daphne"), a Maltese journalist—are too numerous to list.[11] They do, however, always center around abusing domestic provisions to benefit the world's ultra-wealthy, usually either through laundering money or granting domestic tax benefits to foreign nationals. In particular, one specific controversy captured the attention of all of Europe, and even audiences beyond: Malta's "golden passports." Daphne's investigation into the citizenship schemes, which are discussed at length in Part III.A of this article, yielded enough attention to put her own life in danger.[12] Tragically, Daphne was assassinated by a car bombing in 2017.[13] Her investigations, assassination, and the subsequent coverup directly led to the arrest of Yorgen Fenech, one of Malta's ultra-wealthy residents; the resignation of Joseph Muscat, Malta's then-Prime Minister; and the resignation of Keith Schembri, Muscat's Chief of Staff.[14] Maltese authorities later charged Fenech in connection with the bombing and Schembri with money laundering, fraud, and corruption, all stemming from the golden passports.[15] Malta's government and public officials are no strangers to corruption and scandals. The Panama Papers confirmed what had also previously been reported by Daphne—several high-level government officials set up companies and trusts in Panama and New Zealand in order to evade taxes.[16]

Even in light of the fallout of this scandal and tragic event, Malta's corruption and love affair with the ultra-wealthy has not subsided. According to Transparency International's[17] Corruption Perceptions Index,[18] Malta's perceived corruption has only worsened over the last decade. Though the "golden passports" are now on the radar of European Union officials, Malta recently pivoted to a new abuse of its domestic laws for the benefit of the

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[11] Jon Wertheim, *Inside the Corruption Allegations Plaguing Malta*, 60 MINUTES CBS News (Aug. 16, 2020, 7:06 PM), https://www.cbsnews.com/news/inside-the-corruption-allegations-plaguing-malta-60-minutes-2020-08-16/.

[12] *Id.*

[13] *Id.*

[14] Frances D'Emilio, Ex-top aid to former Maltese PM charged with corruption, AP NEWS (March 21, 2021), https://apnews.com/article/journalists-media-joseph-muscat-malta-crime-df6b7a858097d6bc76e1155b63a1b291.

[15] Matthew Xuereb, *Konrad Mizzi has No Regrets over Acquisition of Company in Panama; PM's Chief also has Panama Company, Say Reports*, TIMES OF MALTA (Feb. 28, 2016), https://timesofmalta.com/articles/view/konrad-mizzi-has-no-regrets-over-acquisition-of-company-in-panama.603936.

[16] Frances D'Emilio, Ex-top Aide to Former Maltese PM Charged with Corruption, AP NEWS (March 21, 2021), https://apnews.com/article/journalists-media-joseph-muscat-malta-crime-df6b7a858097d6bc76e1155b63a1b291.

[17] *Our Story*, TRANSPARENCY INTERNATIONAL, https://www.transparency.org/en/our-story (Transparency International is a nonprofit founded by former members of the World Bank for the purpose of fighting global corruption).

[18] *Corruption Perceptions Index 2020: Frequently Asked Questions*, TRANSPARENCY INTERNATIONAL, https://images.transparencycdn.org/images/2020_CPI_FAQs_ENv2.pdf (The Corruption Perceptions Index is a quantitative study that measures a country's corruption, as perceived by experts and business executives).

foreign ultra-rich—exploiting its pension plans (which are similar to the United States' Roth IRA retirement accounts). These pension plans are discussed at length in Part III.B of this article.[19]

Together, Malta's golden passports and abusive use of its pension plans are allowing the world's ultra-wealthy to launder money, evade taxes, and circumvent both domestic and international laws. This state of affairs is not only unacceptable, but also unjust.

III. GOLDEN PASSPORTS AND MALTESE PENSION PLANS

This section details the creation and the abuse of both the golden passport schemes and the Maltese pension plans. Part III.A.1 explains the damage caused by the sale of golden passports and why they are sought after. Part III.A.2 outlines the attempts made by the European Union to stop this practice, while examining the shortcomings of those attempts. Part III.B.1 explains the structure of the Maltese pension plans and how they are used to evade taxes. Part III.B.2 outlines the changes made by the United States in an attempt to prevent money laundering, while examining their legal weaknesses.

A. *Golden Passports: The Back Door to Europe*

1. The Structure and Harm of Golden Passports

At its core, Malta's sale of golden passports is a method by which the ultra-wealthy can acquire both unrestricted access to the European Union ("EU") and launder vast amounts of money. Access to the EU and EU citizenship is a major draw for the wealthiest individuals globally—a draw worth paying millions of dollars to access. For that reason, to properly discuss Malta's golden passport scheme, one must first understand the concept and benefits of obtaining an EU citizenship. First and foremost, while Europeans maintain citizenship in their individual nations, they are also capable of holding citizenship in the EU itself. As a super-national organization, citizenship in the European Union does not alter an individual's own specific national citizenship.[20] Further, in principle, becoming a citizen of the European Union is quite simple—an individual need only be, or become, a citizen of a member state.[21]

The rights and privileges conferred by EU citizenship are vast. These come from the EU's governing documents, three of which will be discussed here—the Charter of the Fundamental Rights of the European Union ("the Charter"), the Treaty on the European Union, and the Treaty on the Functioning of the

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[19] *See infra* Part III.B.

[20] CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION, Article 20(1) ("TFEU").

[21] *Id.*, *EU citizenship*, EUROPEAN UNION https://europa.eu/european-union/about-eu/eu-citizenship_en.

European Union ("TFEU").[22] Though there are some overlaps, the Charter protects more overarching rights, while the TFEU protects more specific rights. The Charter guarantees the right to vote and participate in elections to the European parliament, the right to vote and participate in municipal elections, the right to good administration, the right of access to documents, the right to petition, freedom of movement and of residence, and diplomatic and consular protection.[23] The TFEU guarantees the right to access European governing documents, freedom from discrimination based on nationality, the right to not be discriminated against on other additional factors, the right to freedom of movement, the right to freedom of residence, the right to vote and participate in European elections, the right to vote and participate in municipal elections, the right to consular protection, the right to petition Parliament and the Ombudsman, and certain language rights.[24] Taken together, these two core documents grant European citizens a wide scope of protections.

As mentioned above, gaining European citizenship is a straightforward concept—one can gain European citizenship simply by being or becoming a citizen of a member state. However, in practice, this is often more complicated. For individuals who were not born in a member state and are not descended from parents of a member state, acquiring citizenship is often a long process. Most member states require about five years of residency before an individual may acquire citizenship.[25] Typically, this is also marked by background checks, allowing the member states to use their discretion to determine whether an individual's personal history disqualifies them.[26] Taken together, acquiring European citizenship through a method other than birthright is often a long and arduous task. Given the vast benefits provided by a European citizenship, such an involved citizenship process is no real surprise. That does not mean, however, that the world's ultra-rich are willing to wait or navigate through those standard channels to acquire these benefits.

Malta's golden passport scheme seeks to circumvent this process and provides a far simpler option for high net worth individuals to acquire a European citizenship—buying it. Since 2014, Malta has offered a citizenship-by-investment scheme.[27] While Malta is certainly not the only nation offering

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[22] CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, Articles 39–46 [hereinafter "the Charter"]; CONSOLIDATED VERSION OF THE TREATY ON THE EUROPEAN UNION, art. 4(3) [hereinafter "TEU"]; TFEU, *supra* note 20;

[23] The Charter, *supra* note 22.

[24] TFEU, *supra* note 20, at art. 15, 18, 19, 21–24.

[25] *Country Profiles*, GLOBALCIT GLOBAL CITIZENSHIP OBSERVATORY, https://globalcit.eu/country-profiles/.

[26] *Id.*

[27] *Malta golden passports: 'Loopholes' found in citizenship scheme*, BBC NEWS (Apr. 22, 2021), https://www.bbc.com/news/world-europe-56843409.

this option to potential future residents,[28] Malta's scheme is among the most egregious. High net worth individuals may gain Maltese citizenship through an investment of €600,000 combined with a three-year residency period, or an investment of €750,000 with a twelve-month residency period.[29] These individuals are also required to buy a residential property worth at least €700,000 or sign a five-year rent agreement on certain approved properties, plus donate at least €10,000 to charity.[30] Under this framework, Henley & Partners[31] has stated that Malta has the world's best investment migration process.[32]

There are two immediate reactions to the structure of this scheme. First, the financial benefit Malta derives from the citizenship-by-investment program is clear. Granting citizenship to even a single individual may result in over €1,450,000 flowing into the nation. Considering Malta's GDP (PPP) per capita currently sits at a little over $42,000[33] and the nation's nominal GDP is about $17 billion,[34] simply a non-negligible number of individuals taking advantage of the citizenship-by-investment program represents financial windfall for the small island nation. By mid-2017, only three years after Malta began the program, Malta had already issued more than 2,000 passports through the citizenship investment program,[35] raising about €718 million in the process.[36] Later reports suggested that the citizenship investment program accounted for about €432 million in Malta's 2018 budget alone.[37]

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[28] Bulgaria, Czech Republic, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, and Slovakia all offer some type of citizenship-by-investment program. Luke Hurst, *Buying EU citizenship: What are golden passports and visas and how do they work?*, EURONEWS (Oct. 20, 2020), https://www.euronews.com/2020/10/20/buying-eu-citizenship-what-are-golden-passports-and-visas-and-how-do-they-work.

[29] *Malta golden passports: 'Loopholes' found in citizenship scheme*, *supra* note 27.

[30] *Id.*

[31] Henley & Partners is a global citizenship and residence advisory firm based in London. The firm caters to ultra-wealthy clients and advises them through the citizenship-by-investment process. *See* HENLEY & PARTNERS, https://www.henleyglobal.com.

[32] *Malta golden passports: 'Loopholes' found in citizenship scheme*, *supra* note 27.

[33] *GDP per Capita, PPP (Current International $) – Malta*, WORLD BANK, https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=MT (last visited Oct. 30, 2022).

[34] *Malta*, WORLD BANK, https://data.worldbank.org/country/malta (last visited January 3, 2023)

[35] Matina Stevis-Gridneff & Monika Pronczuk, *E.U. Tells Cyprus and Malta to Abandon 'Golden Passports,'* N.Y. TIMES (Oct. 20, 2020), https://www.nytimes.com/2020/10/20/world/europe/cyprus-malta-golden-passports.html.

[36] *Id.*

[37] Cecilia Rodriguez, *The Price Of A Golden Passport: Malta's Cash-For-Visa Scheme Comes Under Scrutiny*, FORBES (Apr. 22, 2021), https://www.forbes.com/sites/ceciliarodriguez/2021/04/22/the-price-of-a-golden-passport--maltas-cash-for-visa-scheme-comes-under-scrutiny/?sh=708924bb74a6.

The second observation is that, at first glance, the citizenship scheme does not seem egregiously different from residency programs offered in other European nations. If an individual chooses not to pay extra for the accelerated residency timeline, that individual essentially pays about €1,300,000 to Malta and must establish three years of residency—a timeline that is not all that much faster than those of other European nations, *i.e.*, roughly five years, without the investment requirement. However, Malta's residency requirements cannot be taken at face value. While the program states that it requires individuals to maintain residency for either three years or twelve months, depending on the investment, the citizenship investment program does not follow these requirements in practice. Daphne led an investigation into the program, which revealed the average individual that receives residency through the program resides in Malta for just 16 days.[38] Curiously, the now-disgraced former prime minister Joseph Muscat started the program in 2014.[39] In one instance, an individual from the United Arab Emirates spent just 9 hours—all in one day—in Malta before receiving residency.[40] Further, while the citizenship investment program also requires participating individuals to either buy a property over a certain value or rent a pre-approved property over a certain value, the common practices of the program produce results that are completely unhelpful to the people of Malta. Some individuals were able to fulfill this requirement by renting a yacht,[41] or simply by requesting the cheapest option that met the requirements.[42] For these reasons, and as will be discussed in greater detail later in this article, Malta's citizenship investment program is in practice purely a cash-for-citizenship exchange masquerading as a nation-wide investment opportunity.

The troubles with Malta's citizenship investment program do not end there, however. EU officials have also raised serious concerns over the likelihood that Malta's program, and similar programs, are money laundering and tax evasion fronts.[43] Maltese banks have, for years, been involved in money laundering and tax evasion schemes. These same banks are inseparably intertwined in Malta's citizenship-by-investment scheme. For example, in 2018, Maltese authorities seized control of Pilatus Bank due to rampant money laundering and the evasion of sanctions.[44] Pilatus Bank, which held accounts for the now-

[38] *Id.*

[39] *Malta golden passports: 'Loopholes' found in citizenship scheme*, *supra* note 27.

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] Michael Peel, *Brussels cracks down on Cyprus and Malta over 'golden passport'*, FIN. TIMES (Oct. 20, 2020), https://www.ft.com/content/6516dc69-d995-4b84-b321-23951afa713a; *Malta Golden Passports: 'Loopholes' Found in Citizenship Scheme*, *supra* note 27; Stevis-Gridneff & Pronczuk, *supra* note 35; Rodriguez, *supra* note 37.

[44] Stephanie Kirchgaessner & Juliette Garside, *Authorities Seize Control of Bank at Center of Malta Corruption Scandal*, THE GUARDIAN (Mar. 22, 2018), https://www.theguardian.com/world/2018/mar/21/iranian-banker-malta-corruption-scandal-money-laundering-charges.

disgraced former Prime Minister Joseph Muscat as well as members of the Azerbaijani ruling family, was the subject of another investigation by Daphne.[45] The move came in response to the arrest and indictment of the bank's owner, Ali Sadr, in the United States.[46] Maltese authorities then removed Sadr as a director of the bank, stripped him of his voting rights on the board, and froze accounts for all customers, executives, and shareholders.[47] According to the Maltese authorities, Sadr and Pilatus Bank allegedly transferred $115 million from Venezuela to Iranian individuals, violating a swathe of sanctions and anti-money laundering laws.[48] Pilatus Bank was previously the target of an investigation by the Maltese government, which found that the bank was involved in the "'glaring, possibly deliberate disregard'" of various anti-money laundering laws.[49] Pilatus was also attempting to sue Daphne for defamation at the time of her murder.[50]

Similarly, in 2019, the European Central Bank ("ECB") raised serious concerns about the Bank of Valletta, Malta's largest bank, in an official report.[51] According to the ECB, the Bank of Valletta, over the course of several years, did not address or detect risks in thousands of payments.[52] The ECB suggested these "'severe shortcomings'" may have permitted money laundering or other criminal activities to slip through Malta's financial sector without notice.[53] The ECB began to warn the Bank of Valletta of these shortcomings as early as 2015, but the bank failed to take any remedial measures.[54] In the 2019 report, the ECB not only suggested that the Bank of Valletta strengthen its financial risk controls, but even went as far as to call into question whether the bank's executives were fit for their positions.[55]

The corruption at these banks is tied closely to the tax evasion and money laundering activities of certain ultra-wealthy individuals outside of the EU. The ECB report, for example, stated that when individuals seeking a passport through the citizenship investment program opened accounts at the Bank of Valletta, the bank registered the individuals as Maltese citizens, rather than

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[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] Kirchgaessner & Garside, *supra* note 44.

[50] *Id.*

[51] Francesco Guarascio, *Exclusive: ECB Flags Failings in Dirty-money Screening at Malta's Top Bank*, REUTERS (Nov. 20, 2019) https://www.reuters.com/article/us-malta-bank-of-valletta-ecb-exclusive/exclusive-ecb-flags-failings-in-dirty-money-screening-at-maltas-top-bank-idUSKBN1XU28A.

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

foreign nationals.[56] This decision is of great benefit to those individuals, as other banks in the EU will evaluate the individuals as having reduced risk profiles when the individuals are Maltese citizens rather than foreign nationals. While the ECB found that the Bank of Valletta's 2018 risk-reduction strategy centered around investigating a backlog of 13,000 suspicious payments, the ECB's 2019 report concluded that the Bank of Valletta's number of high-risk foreign customers had risen in the interim, and the Bank of Valletta oftentimes was not in possession of any information regarding the origin of the foreign national's wealth.[57] Further, the 2019 ECB report found that the Bank of Valletta did not have an internal unit for identifying bribery and corruption among foreign nationals and did not maintain a running record of foreign nationals who had payments stopped due to money laundering flags.[58] In an unsurprising coincidence, the directors of Pilatus Bank and Ali Sadr himself maintained accounts at the Bank of Valletta, and the Bank of Valletta kept "scant details" regarding the source of their wealth.[59] Recently, the global financial watchdog Financial Action Task Force[60] found Malta's financial sector so dubious that it added Malta to its "grey list" of nations that lack serious shields against money laundering, alongside Haiti, the Philippines, South Sudan, Syria, Myanmar, and Panama.[61] Malta is the first EU member to earn this unfortunate distinction.[62]

Taken in sum, it is easy to see why Malta is sometimes labeled the "backdoor"[63] to Europe and seen by the EU as such a risk priority because of its citizenship investment program. Individuals from outside the EU are able to gain EU citizenship without even spending a full day in Malta.[64] So long as the individual is rich enough, they may simply buy their way into EU citizenship without any issue nor a second thought. Then, due to their association with Malta and the nation's dubious financial sector, these

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[56] Francesco Guarascio, *Exclusive: ECB Flags Failings in Dirty-money Screening at Malta's Top Bank*, REUTERS (Nov. 20, 2019) https://www.reuters.com/article/us-malta-bank-of-valletta-ecb-exclusive/exclusive-ecb-flags-failings-in-dirty-money-screening-at-maltas-top-bank-idUSKBN1XU28A.

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] The Financial Action Task Force is a global money laundering watchdog established pursuant to the 1989 G-7 Summit in Paris. The task force investigates money laundering around the world and develops standards to combat money laundering practices. *History of the FATF*, FIN. ACTION TASK FORCE, https://www.fatf-gafi.org/about/historyofthefatf/ (last visited Oct. 3, 2022).

[61] Anisha Kohli, *On the Decline Since Panama Papers, Malta Punished for Dirty Money Reputation*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (July 8, 2021), https://www.icij.org/inside-icij/2021/07/on-the-decline-since-panama-papers-malta-punished-for-dirty-money-reputation/.

[62] *Id.*

[63] *See, e.g.*, Monte Reel, *Why the EU Is Furious with Malta*, (Sept. 11, 2018) https://www.bloomberg.com/news/features/2018-09-11/why-the-eu-is-furious-with-malta; Rodriguez, *supra* note 37.

[64] Rodriguez, *supra* note 37.

individuals are able to launder money through Malta's banks. As described in the ECB's 2019 report, foreign nationals, particularly those associated with Malta's citizenship-by-investment program, are not subject to the proper checks and controls by the Bank of Valletta, among other banks.[65] These laundered funds may be used to bring dirty money into the EU for personal use, or to pay the exorbitant fees associated with the citizenship investment program. Due to this reality, Malta itself may be taking payments from laundered money.

At the end of the twelve-month waiting period and with EU citizenship attained, the individual has free rein to operate within the EU. The EU citizen's right to freedom of movement guarantees that the individuals will be able to access markets and other individuals throughout the EU, a problem that is further bolstered by the fact that Malta is part of the Schengen Area.[66] EU officials have rightfully flagged this situation as a massive security risk. Individuals are able to gain access to the EU's markets and bring laundered money into the EU's financial ecosystem simply because they are wealthy enough to pay Malta for the benefit.

2. Attempts by the European Union to Address the Issue Fall Flat

Malta's money laundering and golden passport scheme has been in the crosshairs of the European Commission[67] ("the Commission") since October 2020.[68] On October 20, 2020, the Commission announced it was beginning infringement actions against Cyprus and Malta regarding their golden passport schemes.[69] Infringement proceedings in the EU can be quite lengthy and involve multiple steps.[70] In general, proceedings essentially amount to the Commission telling the member states in question that they are in violation of EU law, entreating them to correct the problem, and if the Commission feels that the member states have not adequately addressed the Commission's

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[65] Guarascio, *supra* note 51.

[66] Directorate-General for Migration and Home Affairs, *The Schengen Visa*, EUR. COMM'N, https://ec.europa.eu/home-affairs/what-we-do/schengen-borders-and-visa/schengen-visa_en (last visited Oct. 3, 2022) (listing Malta as a part of the Schengen area).

[67] The European Commission is akin to the executive branch of the European Union, but with the additional power to propose legislation. Directorate-General for Communication, *European Commission*, EUR. UNION, https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/european-commission_en (last visited Oct. 3, 2022).

[68] Reuters Staff, *EU Takes Legal Action Against 'Golden Passport' Schemes in Cyprus, Malta*, REUTERS (Oct. 20, 2020, 5:47 AM), https://www.reuters.com/article/us-eu-citizenship-cyprus-malta/eu-takes-legal-action-against-golden-passport-schemes-in-cyprus-malta-idUSKBN2751DR.

[69] European Commission, *Investor Citizenship Schemes: European Commission Opens Infringements Against Cyprus and Malta for "Selling" EU Citizenship*, EUR. COMM'N (Oct. 20, 2020), https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925 [hereinafter "*Investor Citizenship Schemes*"].

[70] Directorate-General for Communication, *Infringement Procedure*, EUR. COMM'N, https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en (last visited Oct. 3, 2022) [hereinafter "*Infringement Procedure*"].

concerns, ends with the Commission referring the matter to the European Court of Justice ("the ECJ").[71]

More specifically, the Commission informed Malta that it believes Malta's citizenship-by-investment scheme violates EU law, singling out Article 4(3) of the TEU and Article 20 of the TFEU.[72] The scheme confers Maltese citizenship, and therefore European citizenship, to individuals without a genuine link to Malta.[73] The Commission then informed Malta it had two months to reply.[74] In response, Malta's Finance Minister, Edward Scicluna, stated that Malta would "introduce tighter vetting of applicants" but would not end the program.[75] Malta's Prime Minister, Robert Abela, followed those comments with a statement that Malta would defend the citizenship-by-investment schemes before the EU infringement actions.[76] This prompted the EU MEPs,[77] in a debate with the EU Justice Commissioner Didier Reynders, to highlight the risks of golden passport schemes, naming money laundering, tax evasion, corruption, and erosion of common values as the main consequences of selling EU citizenships.[78]

The infringement process did not produce a positive result for the EU. Malta reportedly took 67 days to respond to the EU's first letter regarding the citizenship-by-investment scheme,[79] and the two parties exchanged over two dozen letters on the topic.[80] Eight months later, on June 9, 2021, the EU issued another formal letter to Malta on the topic.[81] This letter, though slightly more detailed, essentially reiterated the contents of the first letter. In the opinion of the Commission, Malta's golden passport scheme is a violation of Article 4(3) of the TEU and Article 20 of the TFEU.[82] In this letter, the Commission took an additional step, stating that the European Court of Justice has ruled on multiple occasions that "acquisition of the nationality of a Member State must

[71] *Id.*

[72] *Investor Citizenship Schemes*, *supra* note 69.

[73] *Id.*

[74] *Id.*

[75] Reuters Staff, *supra* note 68.

[76] Stevis-Gridneff & Pronczuk, *supra* note 35.

[77] MEPs are Members of European Parliament, representatives of member states directly elected to represent citizens in the European Parliament. *Members of the European Parliament*, EUR. PARLIAMENT, https://www.europarl.europa.eu/meps/en/home (last visited Oct. 3, 2022).

[78] *Member States Must Stop Selling EU Passports Immediately, MEPs Demand*, EUR. PARLIAMENT (Oct. 10, 2020), https://www.europarl.europa.eu/news/en/press-room/20201016IPR89564/member-states-must-stop-selling-eu-passports-immediately-meps-demand.

[79] Nikolaj Nielsen, *'Golden Passports': Malta Takes 67 Days to Respond to EU*, EUOBSERVER (Nov. 24, 2020), https://euobserver.com/justice/150162.

[80] *Id.*

[81] *June Infringement Package: Key Decisions*, EUR. COMM'N (June 9, 2021), https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_2743.

[82] *Id.*

do so having '*due regard to EU law*.'"[83] The Commission ended the letter by stating that if Malta did not comply with the Commission's understanding of EU law within two months, the Commission may refer the matter to the European Court of Justice.[84] Despite these warnings, Malta chose not to comply with the Commission's requests. Malta has, however, suspended Russian and Belarusian applications in light of Russia's invasion of Ukraine.[85] On April 6, 2022, the Commission sent Malta a reasoned opinion, asking Malta to end or seriously reform its citizenship-by-investment scheme.[86] In the reasoned opinion, the Commission stated that if Malta did not comply within two months, the Commission may refer the matter to the European Court of Justice.[87]

On September 29, 2022, the EU finally referred Malta to the Court of Justice of the European Union.[88] Though this saga has dragged on for over two years, the EU still has not taken any concrete steps to address the fact that Malta is selling European citizenship and allowing the ultra-wealthy to launder money while purchasing that citizenship. While the European Commission has sent a formal letter and a reasoned opinion to Malta on this issue, these letters ultimately cannot force Malta to change course. Until the EU begins to use economic pressure or the European Court of Justice issues an opinion, Malta will continue to sell EU citizenship.

B. *The Maltese Pension Plan*

1. Structure and Harms of the Maltese Pension Plans

Unfortunately, golden passports are not the only method by which Malta is attempting to help the ultra-wealthy launder money for the nation's own benefit. Another current controversy surrounds the Maltese pension plans. Thanks to a 2011 tax treaty signed between the United States and Malta, US residents are able to take advantage of these special plans to hide assets from tax liability.[89] Described as a "'supercharged cross-border Roth IRA,'" the Treasury Department likely never intended to create the interaction between

[83] *Id.*

[84] *Id.*

[85] *'Golden Passport' Schemes: Commission Proceeds with Infringement Case Against MALTA*, EUR. COMM'N (Apr 6, 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2068.

[86] *Id.*

[87] *Id.*

[88] *Investor Citizenship scheme: Commission refers MALTA to the Court of Justice,* EUR. COMM'N (Sept. 29, 2022), https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5422.

[89] 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, https://home.treasury.gov/system/files/131/Treaty-Malta-8-8-2008.pdf [hereinafter *Convention*].

US residents and these plans.[90] Experts have suggested that it is "'unlikely this outcome was intended,'" and the IRS has already begun to voice its displeasure, suggesting it may take future action against these plans to ensure they cannot be used as tax havens.[91]

What benefit, then, are high net worth individuals receiving from these plans that make them so attractive, even in the face of potential future litigation from the IRS? The answer is stunning: the Maltese pension plans can shield nearly any type of asset from substantial tax liability, regardless of the current income level of the individual. Since the plan is often described in relation to the United States's own Roth IRA, it is perhaps most effective to explain the benefits the plan confers to individuals compared to those of a standard Roth IRA.

Roth IRAs are individual retirement accounts first established in 1997[92] and named after former U.S. Senator William Roth. The primary benefit of Roth IRAs is the tax-free withdrawal of funds from the account if certain conditions are met.[93] However, it does carry a number of restrictions and conditions. Contributions to Roth IRAs must be done in cash[94] and cannot exceed $6,500 per year for an individual filer.[95] Further, Roth IRAs are only available to tax filers who are under a certain income threshold.[96] Contributions to Roth IRAs are made in post-tax dollars.[97] Later, when the individual would like to retrieve their savings from the account, they are able to do so without paying any taxes or additional fees, so long as they are over the age of 59.5 and the Roth IRA account has been open for at least five years.[98]

When these rules are followed, Roth IRAs are a fantastic method for Americans to save for retirement. An individual contributes post-tax dollars to their Roth IRA, the money in the IRA appreciates over time due to being invested after contribution, and then the individual may retrieve the money from the IRA without additional taxes or penalties, so long as the retirement conditions are met. In total, the creation of Roth IRAs has been a boon to the American working and middle classes. The wealthy, however, are not able to take advantage of these provisions due to the income limits. This is the perceived problem that the Maltese pension plans aim to solve.

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[90] Laura Saunders, *Quirks in a U.S. Treaty With Malta Turn Into a Tax Play*, THE WALL ST. J. (Aug. 20, 2021, 5:30 AM), https://www.wsj.com/articles/taxes-malta-pension-plan-11629418826.

[91] *Id.*

[92] I.R.C. § 408A.

[93] *Id.*

[94] *Id.*

[95] *Retirement Topics – IRA Contribution Limits*, INTERNAL REVENUE SERV., https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits (last visited Jan. 3, 2023) (explaining IRA contribution limits for individuals).

[96] I.R.C. § 408A.

[97] *Id*.

[98] *Id*.

Although the use of these pension plans by America's ultra-wealthy became popular only recently, the option became available to them as early as 2011, when the United States and Malta signed the U.S.-Malta Income Tax Treaty ("The Treaty").[99] The Treaty states that pension funds that are established in either Malta or the United States are "residents" for the purposes of the Treaty and that a resident pension satisfies the Treaty's limitation of benefits provision[100] so long as 75% or more of the beneficiaries, members, or participants in the pension are individual residents of either Malta or the United States.[101] In other words, so long as a pension is formed in Malta and 75 percent or more of the beneficiaries are individuals who are residents of the United States or Malta, the pension plan will be eligible for benefits under the Treaty. This is critical, as the Treaty contains mechanisms that allow residents of the United States to benefit from Maltese tax provisions.[102] Article 18 of the Treaty states that the United States cannot tax any income earned by the Maltese pension fund until a distribution is made from that fund to a resident of the United States.[103] Further, Article 17(1)(b) states that pension distributions that arise in one of the party countries and would not be taxed by that country cannot be taxed by the other country.[104] Taken together, the United States cannot tax distributions from Maltese pension funds before distributions are made to residents of the United States *and* cannot tax the distributions after the distributions are made if Malta would not tax them. Effectively, the pension plans create a tax-free bubble for most of the funds involved with the account.

Malta, as it turns out, allows for substantial distributions from these pension plans without taxation. Individuals may receive an initial lump-sum distribution from the pension fund, valued at up to 30% of the fund, without tax liability.[105] Individuals may also receive additional annual lump-sum distributions after a three-year waiting period without triggering tax liability,[106] so long as a jurisdiction-variable minimum amount is left in the fund after the distributions.[107] The annual distributions can be as large as 50%

[99] Convention, *supra* note 89.

[100] *Id*. art. 22.

[101] *Id*. art. 22(2)(e).

[102] *See generally Id.* (containing various provisions to prevent taxation in the United States on certain Maltese assets).

[103] *Id.* at art. 18.

[104] *Id.* at art. 17(1)(b).

[105] K. Eli Akhavan, *Malta Pension Plan "Moving" Real Estate and other Assets Offshore to Lower Taxes*, CKR LAW; Bilzin Sumberg, *The Malta Pension Plan – A Supercharged, Cross-Border Roth IRA*, LEXOLOGY, https://www.lexology.com/library/detail.aspx?g=22c07b8e-5905-475c-91fc-fbfd45e0eb8c.

[106] Akhavan, *supra* note 105; Sumberg, *supra* note 105.

[107] Akhavan, *supra* note 105; Sumberg, *supra* note 105.

of the remaining fund value.[108] Distributions from these funds can start as early as age 50.[109]

In addition to the favorable tax positions, the Maltese pension plan also offers another critical benefit to the ultra-wealthy: almost any type of asset may be contributed to the fund. Maltese pension plans can receive contributions of stock in privately and publicly traded companies, partnership interests, LLC interests, and even real estate.[110] These provisions allow the ultra-wealthy to reap serious tax benefits, more favorable than those available to the working and middle classes through a Roth IRA, by a cross-border mechanism that the Treasury Department did not intend to create when the two nations negotiated the Treaty. The Maltese pension plans are just the latest avenue for America's richest to avoid paying taxes that they otherwise would, if subject to the tax provisions of the United States. Compare the provisions of the Maltese pension plan to those available to everyday Americans through a Roth IRA:

	Roth IRA	**Maltese Pension Plan**
Annual Income Limit for Contributor[111]	Begins to phase out at $138,000 for single filer, $218,000 for married filing jointly	None
Asset Contribution Limitation	Cash only	None
Contribution Limitation[112]	$6,500 per year ($7,500 for ages 50+)	None
		30% of fund value for initial distribution,

[108] Akhavan, *supra* note 105; Sumberg, *supra* note 105.

[109] Akhavan, *supra* note 105; Sumberg, *supra* note 105.

[110] Akhavan, *supra* note 105; Sumberg, *supra* note 105.

[111] The annual income limit is the point at which the contribution limit begins to phase out. Individuals earning an annual income over the income limit will have a lower contribution limit until the ability to contribute completely phases out. Numbers accurate through 2023.

[112] The contribution limitation is the maximum amount an individual may contribute per year. Numbers accurate through 2023.

Distribution Limitation[113]	None	50% of fund value for additional annual distributions. Minimum value must be maintained.

The Maltese pension plan offers the ultra-wealthy benefits that the Roth IRA cannot match for the working and middle classes. With no upper income limit on who can contribute, no limitation on what type of assets can be contributed, and no limit on the value of assets that can be contributed, Maltese pension plans can create a massive tax haven virtually overnight. In contrast, the Roth IRA has a phase-out point, can only be filled with cash contributions, and must accrue value over the lifetime of the contributor(s) due to the annual contribution limitation. In sum, this unintended treaty mechanism has created a tax haven for the ultra-wealthy, stronger than the existing retirement tax-advantaged mechanisms in place to aid the working and middle classes in saving for retirement.

Consider the following example. A high-net-worth individual is holding a large amount of stock that has greatly appreciated since it was originally acquired. The stock has a current market value of about $100 million and a tax basis[114] of about $20 million. Under normal circumstances, if the individual liquidated their holdings in this stock, they would be subject to a 20% capital gains rate and an additional 3.8% net-investment surtax for a total tax liability of 23.8% on the sale. That results in a total tax bill of a little over $19 million from the transaction. However, with the benefit of a Maltese pension plan, the individual can liquidate their holdings at a fraction of the cost. Maltese pension plans are able to receive contributions of assets with untaxed appreciation. The individual can contribute the stock to the pension plan without being taxed and, at a later date, liquidate their position. The appreciated value is, therefore, unable to be taxed before or after the contribution. Assuming the individual is at least 50 years of age when they want to start making distributions from the pension fund, they will be able to receive a distribution of 30% of the fund's value—30 million dollars—tax free. From there, they will be able to make annual distributions of 50% of the fund's remaining value tax-free, so long as the fund retains a value over the minimal threshold—here, about $1 million. In other words, assuming the individual keeps $1 million in the fund to meet the minimum threshold requirement, they will be able to eventually withdraw $99 million from the fund tax-free. Through this mechanism, the individual

[113] The distribution limitation is the maximum amount an individual may receive from the plan per year, assuming the individual has met all distribution requires (*e.g.*, minimum retirement age).

[114] Tax basis is the point at which tax liability is calculated. It is the "amount of [] capital investment in property for tax purposes." *Topic No. 703 Basis of Assets*, IRS, https://www.irs.gov/taxtopics/tc703 (last visited Oct. 30, 2022).

essentially spends $1 million to avoid a $19 million tax bill—a net gain of 18 million dollars.

The existence of such a tax evasion scheme should be seen as unacceptable. Created unintentionally and aiding only those with the wealth and institutional knowledge to take advantage of it, this cross-border supercharged Roth IRA is, at its core, just another way that the ultra-wealthy attempt to avoid paying taxes.

2. Attempts by the IRS to Correct the Issue are Inadequate

The IRS is well aware of the abusive use of Maltese pension plans and is actively involved in looking for potential solutions. In July 2021, the IRS included a warning regarding the use of Maltese pension plans at the end of its list of "Dirty Dozen" tax scams.[115] The warning stated that "[s]ome U.S. citizens and residents are relying on an interpretation" of the Treaty that allows them to receive distributions without tax consequences.[116] Labelling this behavior as "potentially abusive," the warning continues on by stating that "[t]he IRS is evaluating the issue to determine the validity of these arrangements."[117] However, the IRS went beyond simply warning potential abusers that future changes would be coming to this arrangement - the IRS and Malta entered into a Competent Authorities Arrangement[118] to clarify the text of the Treaty.[119] On December 21, 2021, the IRS announced that it entered into an agreement with the government of Malta to "confirm[] their understanding" of the Treaty.[120] Article 3 of the Treaty defines "pension funds," and includes in the definition a requirement that the fund be administered for the provision of pension or retirement benefits.[121] The complete text of the Treaty's definition is as follows:

> k) the term "pension fund" means any person established in a Contracting State that is:

[115] *IRS Wraps up its 2021 "Dirty Dozen" Scams List with Warning about Promoted Abusive Arrangements*, IRS (July 1, 2021), https://www.irs.gov/newsroom/irs-wraps-up-its-2021-dirty-dozen-scams-list-with-warning-about-promoted-abusive-arrangements.

[116] *Id.*

[117] *Id.*

[118] Competent Authority Arrangements are administrative agreements between the United States and the other treaty partner. In other words, agreements between the executive branch and the treaty partner, not amendments to the Treaty itself and not ratified by the Senate. Treaties themselves must be ratified by two-thirds of the Senate. U.S. CONST. art. II, § 2.

[119] *Competent Authority Arrangement*, https://www.irs.gov/pub/irs-utl/malta-competent-authority-arrangement-pension-funds.pdf [hereinafter *CAA*].

[120] *United States, Malta Sign a Competent Authority Arrangement (CAA) Confirming Pension Fund Meaning*, IRS (Dec. 21, 2021), https://www.irs.gov/newsroom/united-states-malta-sign-a-competent-authority-arrangement-caa-confirming-pension-fund-meaning.

[121] Convention, *supra* note 89, at art. 3(k)(i-ii).

> i) in the case of pension funds established in the United States, generally exempt from income taxation, and in the case of pension funds established in Malta, a licensed fund or scheme subject to tax only on income derived from immovable property situated in Malta; and
>
> ii) operated principally either:
>
> A) to administer or provide pension or retirement benefits; or
>
> B) to earn income for the benefit of one or more persons meeting the requirements of subparagraph i) and clause A) of this subparagraph.[122]

The original text of the Treaty leaves this definition quite vague, which is the root problem allowing the Maltese pension plans to be abused by the ultra-wealthy. The Competent Authorities Arrangement interprets this definition to prevent funds that allow for the contribution of non-cash assets or do not include a contribution limitation based on an individual's earnings from qualifying for benefits under the Treaty.[123]

At first glance, this is an effective solution to the core problem—Maltese pension plans are being used for purposes that are ostensibly not related to retirement planning, but are rather used for tax evasion purposes. Unfortunately, this solution is insufficient for two reasons—the authority behind the agreement and the text of the agreement itself. First, Competent Authority Arrangements are bilateral, clarifying or interpreting treaty provisions.[124] The IRS has entered into a great number of Competent Authority Arrangements with foreign nations to clarify or interpret existing tax treaties.[125] Many of these agreements, though, are regarding the obligations of the two governments under these treaties.[126]

Though the IRS publicly refers to the Competent Authority Arrangement with Malta as the two governments "confirming their understanding of the meaning of pension fund for the purposes of [the Treaty],"[127] and that "this Arrangement reflects the original intent of the Contracting States regarding the definition of 'pension fund' for the purposes of the Treaty,"[128] it is unclear whether this is truly a "confirmation" of prior-existing understanding or what is effectively an amendment to the text of the Treaty. Further, the government's intent when it signed the Treaty does not mean that the text of

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[122] Convention, *supra* note 89, at art. 3(1)(k).

[123] *CAA*, *supra* note 120.

[124] *Competent Authority Arrangements*, IRS, https://www.irs.gov/individuals/international-taxpayers/competent-authority-arrangements.

[125] *Id.*

[126] *See generally Id.* (detailing competent authority arrangements signed between the IRS and various other nations).

[127] *CAA*, *supra* note 120.

[128] *Id.*

the Treaty actually reflects that understanding. The fact that the IRS allowed the Maltese pension plan tax evasion schemes to exist for roughly 10 years and that individuals used them without repercussions suggests, at the very least, that this is a new interpretation of the Treaty's text rather than a simple confirmation of what the IRS always thought the Treaty proscribed. The text of the Treaty does allow for the parties to come to mutual understandings regarding "conflicting application" of the Treaty in regard to "particular items of income" and "the meaning of any term used in the [Treaty],"[129] though there is still a legally cognizable difference between resolving conflicting interpretations and effectively adding new provisions to the Treaty. Therein lies the core of the first problem—if the Competent Authorities Arrangement is merely an interpretation of the existing language, the agreement is a legally permissible move by the executive branch. However, if the agreement amounts to effectively amending the Treaty, the move is unconstitutional, as the amendment to the Treaty has not been ratified by two-thirds of the Senate.

The IRS's original technical explanation of this definition does not do much to flesh out these provisions, instead opting to specifically list which tax mechanisms existing under U.S. law qualify for the definition—a list that includes things such as Roth IRAs and 401(k) plans.[130] Notably absent from the technical explanation, though, is a list of what tax mechanisms exist under Maltese law that qualify under the Treaty's definition of pension plans.[131] While one could argue that the abuse of Maltese pension plans do not fit squarely with the types of U.S. plans detailed under the IRS's original technical explanation, one could also argue that the explanation's silence on Maltese tax counterparts is an omission that opens the door to tax mechanisms unlike those that exist under U.S. law. Ultimately, until U.S. courts have a chance to rule on the permissibility of the Competent Authorities Arrangement, it is an open question as to whether it has the power to address the problem in this manner.

Beyond the Competent Authorities Arrangement's constitutional permissibility, there exists a second weakness to the IRS's strategy—even if the agreement is constitutionally permissible, the new understanding does not fully address the abuse of the Maltese pension plans. Recall that the agreement's new understanding states that tax schemes allowing for the contribution of non-cash assets or for contributions without a limitation tied to the earned income of the contributor do not qualify as "pension funds" under the Treaty.[132] This clarified definition strongly addresses one major component

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[129] Convention, *supra* note 89, art. 25(3)(c).

[130] *Department of Treasury Technical Explanation 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 Valletta on August 8, 2008,* 11–12, https://home.treasury.gov/system/files/131/Treaty-Malta-TE-8-8-2008.pdf [hereinafter *Technical Explanation*]. It should be noted that although the two nations signed the Treaty in 2008, it did not become effective until 2011.

[131] *Id.*

[132] CAA, *supra* note 120.

of abusing the pension plans—the contribution of non-cash assets.[133] By eliminating the ability to use the plans in this manner, the ultra-wealthy will no longer be able to avoid taxation on appreciated assets or contribute other non-liquid assets, such as real estate. The importance of this move should not be understated—it is a critical move to stop abuse.

However, the second part of the clarified definition does not go far enough and allows for new, similar schemes to emerge. The second part of the definition only states that the contributions must be limited by some reference to the earned income of the contributor—it does not provide any details on how stringent these limitations must be.[134] Recall that under domestic U.S. law, Roth IRAs begin to phase out at $138,000 for single filers and only allow a maximum annual contribution of $6,500 before the age of 50.[135] For individuals at the beginning of the phase out point, this amounts to a maximum contribution of a little under 5% of their gross income annually, and limits participation in the tax advantaged fund to the working and middle classes. Without any included guidance on what is a sufficient reference to earned income, the Competent Authority Arrangement essentially allows *any* reference to earned income to suffice under its text. Conceivably, Malta could create a new pension fund structure that does not allow for the contribution of non-cash assets, but *does* allow individuals with very, very high annual incomes to contribute, or to contribute very high percentages of their annual incomes.

The IRS attempts to solve this problem with a paragraph tucked into the end of the Competent Authority Arrangement, which states that any Maltese fund, scheme, or arrangement established after the date of the Competent Authority Arrangement must "present its case" to U.S. and Maltese authorities as to whether it should fall under the definition of a "pension fund" for the purposes of the Treaty, with the determination being made only by mutual agreement of the parties.[136] However, this detail carries the same potential issue as the arrangement itself—there is no such provision located in the text of the Treaty, which suggests that this detail may be an amendment rather than a clarification.[137] The Treaty states "any question arising as to the interpretation or application" of the Treaty or "whether a taxation measure is within the scope" of the Treaty is to be determined by mutual agreement.[138] However, in practice, the existing Treaty language operates as essentially the opposite of the text in the Competent Authorities Arrangement. Whereas the

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[133] *Id.*

[134] *Id.*

[135] *Retirement Topics – IRA Contribution Limits*, IRS, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits (last visited Oct. 30, 2022); *Amount of Roth IRA Contributions That You Can Make for 2033*, IRS, https://www.irs.gov/retirement-plans/amount-of-roth-ira-contributions-that-you-can-make-for-2023 (last visited Oct. 30, 2022).

[136] CAA, *supra* note 120.

[137] *See generally* Convention, *supra* note 89.

[138] Convention, *supra* note 89, at art. 1(2)(a)(i).

Competent Authorities Arrangement disallows all future Maltese pension funds from qualifying for Treaty benefits until the fund receives approval from both parties, the text of the Treaty itself allows for funds to qualify for Treaty protection until *disallowed* by mutual agreement of the parties. This is strongly evidenced by the fact that the ultra-wealthy were able to abuse the Maltese pension funds for a decade before the IRS and the Maltese government recently promulgated this arrangement. It is unclear whether the new approval mechanism is a permissible interpretation of the existing text. For these two important reasons, further changes will be needed to ensure that the world's wealthiest cannot continue to use Malta's pension plans for tax evasion purposes.

IV. PREVENTING SYSTEMIC ABUSE BY THE WORLD'S ULTRA-WEALTHY

While criticizing and bringing attention to broken systems is an important part of spurring change, recommending real solutions is equally important. Part IV.A offers feasible, structural solutions to the golden passport's schemes and Part IV.B offers more effective solutions to the tax evasion issues endemic in the Maltese pension plans.

A. The EU and Golden Passports

Though the EU is well aware of the security risks posed by Malta's citizenship-by-investment scheme, the EU has thus far been unable to prevent Malta from continuing the program. As detailed above, over the last two years, the EU has begun to warn Malta that unless corrective action is taken domestically, the EU will be forced to either legislatively or judicially correct the problem itself.[139] However, a true solution is yet to materialize. This section will discuss potential future actions the EU can take to squash golden passports from threatening European security in the future and to eliminate the possibility of using such schemes for money laundering.

If the EU will ever truly solve this pressing abuse of citizenship provisions, it must take economic steps to pressure Malta or the ECJ must publish an opinion on the matter. It is important to note that even if the ECJ rules against a member state in judicial proceedings, the member state does not automatically face consequences for noncompliance.[140] If a member state chooses not to comply with an ECJ ruling, the Commission must refer the matter to the ECJ *again* before the ECJ can impose penalties.[141] For this reason, it is imperative that the ECJ enter a ruling as soon as possible—corresponding with the member state, referring the matter to the ECJ, waiting for compliance, and then referring the matter to the ECJ a second time on the issue of financial penalties for noncompliance is quite a long process. If the ECJ chooses to penalize a member state, it may impose a lump sum financial

[139] *See supra* Part III.A.2.

[140] *Infringement Procedure*, *supra* note 70.

[141] *Id.*

penalty or daily penalty for continued noncompliance.[142] It is clear from the actions of Malta's government and the statements of Finance Minister Scicluna and Prime Minister Abela that Malta will not give up its golden passport scheme willingly. The selling of citizenship is simply too lucrative of a proposition—one that has generated substantial wealth for the small nation. The Commission must refer the matter to the ECJ immediately and the ECJ must work to force Malta to stop acting as a tax evasion mechanism for the world's ultra-wealthy.

Unfortunately, actions by the ECJ alone may not be sufficient to permanently prevent Malta, and other nations, from allowing the ultra-wealthy to launder money and move it into European markets. As noted above, the Commission's legal argument to Malta centers around a violation of Article 4(3) of the TEU, with additional references to Article 20 of the TFEU.[143] Neither of these provisions squarely disallows Malta's actions. Article 4(3) of the TEU states that "[p]ursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties."[144] Article 20 of the TFEU is a restatement of the rights of citizens of the EU.[145] In other words, the Commission's argument is not one of a textual breach of Treaty obligations, but an implication that Malta's actions run afoul of the intention behind the Treaties. Because of this, it is unclear how the ECJ will rule on the matter. Although the Commission, member states, and individual MEPs all appear to agree that Malta's money laundering and citizenship-for-sale schemes are unjust and great dangers to the health of the EU and should not be allowed, the legal mechanisms for preventing such schemes appear to be lacking.

Additionally, one must also remember that Malta is reaping substantial financial rewards from the sale of golden passports. Malta had already sold over 2,000 passports and raised over €700 million by mid-2017.[146] Its 2018 budget allotted over €400 million from the golden passport scheme.[147] Now, years later, it is unclear how much money Malta has generated from the ultra-wealthy. If the ECJ imposes financial penalties on Malta for noncompliance with the Commission's views on golden passports, the fine must be large enough to offset the enormous gains Malta is generating from the scheme. Fines smaller than the revenue from the golden passports will cut into the scheme's profitability, but will not make the schemes monetarily unworthwhile to Malta. Such a move, however, is unlikely. At the end of 2019, there were 98

[142] *Id.*

[143] *Investor Citizenship Schemes*, *supra* note 69.

[144] TEU, *supra* note 22, at art. 4(3).

[145] TFEU, *supra* note 20, at art. 20.

[146] Stevis-Gridneff & Pronczuk, *supra* note 35.

[147] Rodriguez, *supra* note 37.

ECJ judgments that were left unimplemented by member states.[148] In contrast, the Commission requested the ECJ impose fines in just 2 cases in 2019.[149] This ratio is quite similar to the ratio of unimplemented judgments to recommended fines from previous years.[150] From 2000 to 2020, the ECJ ordered fines in response to just 37 infringement cases.[151] The total combined lump sum penalties from those cases amounted to only €336.75 million.[152] As discussed above, that figure is lower than the value that golden passports brought to Malta in 2018 alone. In October of 2021, the ECJ shocked the world by imposing a €1 million fine per day on Poland for noncompliance with a previous ECJ ruling.[153] Even this fine, noteworthy for its uncommonly large size, only amounts to €365 million per year. Malta's revenue generation from the golden passports is simply too large for ECJ fines alone to solve.

In order to correct the problem at its core, to end golden passports schemes, and to prevent the ultra-wealthy from laundering money in such programs, the EU must adopt comprehensive legislative changes to address the issue. These legislative initiatives must include provisions addressing golden passport schemes directly, the possibility of money laundering, and tangible penalties for participation in such activities. As such, this article proposes the following measures: an EU-wide quota system for citizenship-by-investment grants, comprehensive regulation of citizenship-by-investment programs, and an EU-wide tax on investments made under citizenship-by-investment programs. Each of these proposals will be addressed in turn.

1. Union-Wide Limitations on Golden Passports

First, an EU-wide quota system on the number of individuals permitted to obtain European citizenship through citizenship-by-investment schemes provides the EU wide latitude to limit the number of individuals entering the EU through this mechanism. This is likely to be the most controversial of proposals, because it is the most intrusive into the domestic affairs of member states. A core element of the EU is the idea that the EU does not determine how a member state assesses its own citizenship standards. In other words, the EU does not tell member states who is allowed to be a citizen of that member state. This proposal, while important, admittedly runs close to the line of such a standard. The key distinction, however, is that the citizenship-by-

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[148] EUROPEAN STABILITY INITIATIVE, *A 5 Billion Euro Penalty to Save the Rule of Law: How Infringement Penalties Are Set* 3 (2021), https://esiweb.org/pdf/ESI%20-%205%20billion%20or%20How%20penalties%20are%20set%20-%205%20August%202021.pdf.

[149] *Id.*

[150] *Id.* at 9.

[151] *Id.*

[152] *Id.*

[153] Alan Charlish, et al., *EU Court Fines Poland 1 mln Euros Per Day in Rule of Law Row*, REUTERS (Oct. 27, 2021, 8:28 AM), https://www.reuters.com/world/europe/eu-top-court-orders-poland-pay-1-million-euros-day-rule-law-row-2021-10-27/.

investment schemes are only available to the world's ultra-wealthy. Even if they were eliminated, the member states' citizenship would still be available to such individuals through standard immigration and citizenship methods. A citizenship-by-investment quota does not prevent member states from determining who will be a citizen of that member state—it simply limits one financial instrument available to the member states. Critically, the implementation of a citizenship-by-investment EU-wide quota would allow the EU to slowly phase out the practice altogether. Though some MEPs have called for a phasing out of citizenship-by-investment schemes by 2025,[154] instead allowing citizenship-by-investment to be slowly phased out, in combination with the other proposals outlined below, by 2030 would allow dependent member states, such as Malta, to prepare their finances for the substantial loss of revenue. With citizenship-by-investment schemes phased out altogether, the issue is entirely eliminated.

Further, such a quota would be permissible under EU law pursuant to Article 21(2) of the TEU and Article 79(2) of the TFEU. Article 21(2) authorizes the EU to "define and pursue common policies and actions" for a wide variety of aims, including "safeguard[ing] its values, fundamental interests, security, independence, and integrity." [155] The threat of laundered money entering the EU common market fits squarely within this aim. Article 79(2) authorizes the EU to adopt measures regulating "the conditions of entry and residence," within the context of immigration policy. [156] The regulation of grants of citizenship through citizenship-by-investment schemes seemingly fits perfectly within that grant of power. Thus, under Article 21(2) of the TEU and Article 79(2) of the TFEU, the EU has the power to regulate these programs.

2. Introducing Regulatory Frameworks

Second, the EU must establish a comprehensive regulatory framework governing the administration of citizenship-by-investment programs by member states. Ideally, this regulatory framework would require EU-wide background checks on applicants, further regulation of banking intermediaries, personal physical residence requirements, and additional limitations on qualifying investments. This regulatory proposal cuts to the core of the advantages the ultra-wealthy gain through citizenship-by-investment programs. By mandating background checks, the EU ensures that individuals who are already wanted for tax evasion or money laundering in other nations are immediately disqualified from the process. Such individuals have, in the past, paid off other member states administering citizenship-by-investment schemes to ensure they were granted citizenship, despite the clear red flags in

[154] DRAFT REPORT with proposals to the Commission on citizenship and residence by investment schemes, 12 EUR. PARL. DOC. (2021/2026 (INL)) (2021), [hereinafter Report on Citizenship and Residence].

[155] TEU, *supra* note 22, art. 21(2).

[156] TFEU, *supra* note 20, art. 79(2).

their background.[157] Making the background checks EU-wide ensures that other member states are aware of any flagged individuals entering the EU.

Further regulation of banking intermediaries limits the possibility of laundered money entering the EU through questionable or even complicit banking practices. As noted previously, Malta's banking sector is rife with corruption and has been warned by the EU on several occasions that banks are very likely allowing laundered funds in the EU due to poor oversight practices.[158] Greater transparency requirements and reporting requirements for banks receiving funds from individuals participating in citizenship-by-investment schemes would help prevent laundered money from entering the EU unnoticed. If the participating banks must disclose all such transactions, laundering would require failing to report or filing false reports—actions that would warrant serious sanctions on those individuals' banks and, possibly, their directors.

Personal physical residence requirements are another common-sense and straightforward reform, though one that is much needed. To prevent future situations in which individuals spend a single day on Malta and receive citizenship,[159] the EU may require citizenship-by-investment programs to periodically check on the physical residence of the applicant to ensure that they are actually physically present in the member state during the statutorily required residency period. Part of the appeal of Malta's golden passport system is the fact that in many cases the individual simply pays the required payments and spends a minimal amount of time in the nation.[160] Forcing the ultra-wealthy to actually reside in Malta during the entire residency period that is laid out in Maltese law destroys some of the convenience and appeal of the scheme.

Additionally, physical residence in Malta creates benefits for the citizens of Malta that constructive residence alone cannot create. When the individual commits to physical residence, the individual creates contacts, both economic and personal, with those around them. Constructive residence alone means the individual will not buy food from the local grocer, spend money at local restaurants, shop at the corner stores, and so forth. Only real, physical residence requires such contacts from the individual. When constructive residence alone is sufficient, only a very small number of Maltese citizens will ever directly, tangibly benefit from it. Physical residence spreads the individual's influence much wider, impacting the local economy more acutely. Though these local purchases may seem small in isolation, across the entire citizenship-by-investment scheme, they quickly add up. Recall that Malta had issued over 2,000 golden passports by mid-2017, with the number surely much

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[157] *Most Cyprus Passports Issued in Investment Scheme Were 'Illegal'*, AL JAZEERA (Apr. 16, 2021), https://www.aljazeera.com/news/2021/4/16/half-of-cyprus-passports-in-cash-scheme-were-illegal-inquiry.

[158] *See supra* Part III.A.1.

[159] *See supra* notes 38–42 and accompanying text.

[160] *See supra* notes 38–42 and accompanying text.

higher by the present date.[161] Injecting over 2,000 high-net-worth individuals into local economies, all eager to spend their wealth, and the tangible benefit will be noticeable in a nation as small as Malta, which only has about 500,000 total residents.

Lastly, more stringent requirements on what investments qualify under citizenship-by-investment schemes is critical to ensure that the ultra-wealthy are actually investing in the member nations rather than simply pushing a large value of money around, or outright laundering money. Recall that some of the individuals participating in such schemes bought minimally qualifying real estate only to sell it immediately after the passport was acquired, or fulfilled residency requirements by buying a luxury yacht.[162] Such actions make a mockery of an already ridiculous scheme—these are not investments at all, the individuals are simply making their money illiquid for a period before liquidating it again. Requiring investments under citizenship-by-investment schemes to benefit the member nations ensures that the money spent in these programs does, in fact, result in investment. In other words, it would guarantee some true benefit is derived from these programs, if they must exist at all. This can be accomplished by disqualifying investments in real estate, investment accounts, trusts, certain luxury items, and government bonds. All such assets can be acquired and liquidated at a later date, and should not qualify as true investments.

These regulations, when combined, provide a strong framework to stop abuse of the citizenship-by-investment schemes and would directly address the major concerns surrounding Malta's golden passports. Greater transparency in regard to the individuals and their money, and ensuring the individuals actually abide by the rules of the program, can help prevent money laundering, tax evasion, and provide some tangible benefit to the EU through true investments. Authority for promulgating such regulations derives from Articles 79(2) and 80 of the TFEU. As discussed in regard to the first proposal in this section, Article 79(2) authorizes the EU to adopt measures regulating "the conditions of entry and residence," within the context of immigration policy.[163] The regulation of grants of citizenship through citizenship-by-investment schemes seemingly fits perfectly within that grant of power. This is particularly true when it amounts to ensuring member states enforce their own laws in regard to conditions of entry and residence. Article 80 states that the policies of the EU are to be governed by the "principle of solidarity and fair sharing of responsibility, including its financial implications."[164] Transparency and reporting requirements fit squarely within the understanding of Article 80, by ensuring fair sharing of financial responsibility and the prevention of illegal financial transactions through such sharing and transparency.

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[161] Stevis-Gridneff & Pronczuk, *supra* note 35.

[162] *See supra* notes 41–42 and accompanying text.

[163] TFEU, *supra* note 20, art. 79(2).

[164] *Id.* at art. 80.

3. Taxing the Investments

Third, the EU should establish an EU-wide tax on investments made under citizenship-by-investment schemes. While the previously detailed regulations attack the money laundering and fair-play incentives for individuals participating in citizenship-by-investment schemes, a simple tax on investments made under citizenship-by-investment schemes attacks the interest of member states in participating in such programs. As discussed above, financial penalties alone are unlikely to dissuade Malta from continuing its golden passport program. However, financial penalties combined with substantial EU regulation are far more likely to make the arrangement unworthy of the effort of continuing the program and responding to the constant pressure from other member states. Some MEPs have suggested a 50% tax on all investments made under citizenship-by-investment programs.[165] Such a tax effectively punishes member states for participating in the citizenship-by-investment programs. A loss of 50% of all investment revenue substantially and meaningfully decreases the maximum possible benefit nations like Malta can derive from selling golden passports. Support for such a regulation comes from Article 311 of the TFEU, which states that "[t]he Union shall provide itself with the means necessary to attain its objectives and carry through its policies."[166] In other words, Article 311 authorizes the EU to create "own resources" from which it may derive value to fund itself.[167] The details surrounding "own resources" is beyond the scope of this article. It is only necessary to state here that classifying golden passports as an "own resource" would allow the EU to generate revenue from the practice at the expense of the nations that utilize citizenship-by-investment programs.

4. Summing the Changes

Taken together, these proposed legislative changes effectively eliminate Malta's golden passports and the rampant abuse of them by the ultra-wealthy. While these changes are more involved and require a more arduous pathway to promulgation, they will ultimately be far more effective in solving the problem, a problem recognized by virtually everyone other than the member states in question, than simply having the Commission refer the matter to the ECJ for financial penalties. Lasting change is not always easy, but it is always necessary. Lasting change in this area will require legislative changes, such as those laid out in the article. Whether the EU decides to take the initiative and stamp out the ability of the ultra-wealthy to abuse the golden passport schemes for money laundering and tax evasion remains to be seen. Until such a change is made, however, the ultra-wealthy will continue to abuse these provisions and local economies will continue to fail to see direct benefits.

[165] Report on Citizenship and Residence, *supra* note 155, at 9.

[166] TFEU, *supra* note 20, art. 311.

[167] *Id.*

B. Rejecting the Maltese Pension Plan Tax Haven

Moving from issues implicating the EU to issues implicating the United States, the United States cannot sit idly by while the U.S.-Malta Income Tax Treaty ("The Treaty") allows high net worth individuals to abuse Maltese pension plans, avoiding millions in tax liability. While the pension plans themselves are the core mechanism by which individuals avoid this liability, the United States has no power nor right to influence domestic Maltese decision-making. Individuals are only able to take advantage of these Maltese provisions due to the operation of the joint Treaty. For that reason, solutions to this tax evasion scheme start and end with the text and interpretation of the Treaty. This sub-section proposes two distinct pathways by which the United States can rectify this issue: amendment of the Treaty and administrative solutions. Each possibility will be addressed in turn.

1. Interpretive Remedies

As discussed earlier in this Article,[168] the IRS entered into a Competent Authorities Agreement with the government of Malta in an attempt to correct abuse of the Maltese pension plans. This strategy, however, is not airtight. The Competent Authorities Agreement may be unconstitutional due to the possibility that it goes beyond confirming a permissible interpretation of the Treaty, and the Agreement itself does not go far enough to ensure future Maltese pension schemes cannot be abused under the text of the Treaty. With that being stated, if the abuse is to be solved without amending the Treaty itself, the safest way to do so would be to include further income-based limitations within the text of the Competent Authority Arrangement's clarified definition. Recall that major aspects of abuse of the pension plans are the ability to contribute any type of asset, any amount of assets, by individuals of any income level. The first problem is solved by limiting contributions to cash, but the other problems still remain. Consider instead the hypothetical provisions below:

> The competent authorities confirm that a fund, scheme, or arrangement established in a Contracting State that, except in the case of a qualified rollover from a pension fund established in the same Contracting State,
>
> (a) is allowed to accept contributions from a participant in a form other than cash, or
>
> (b) is allowed to accept contributions from a participant with an annual income in excess of $150,000, or
>
> (c) is allowed to accept contributions from a participant in excess of $10,000 per year,

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[168] *See supra* notes 118–20 and accompanying text.

> (d) unless such fund was established pursuant to U.S. legislation enacted prior to the date of signature of this arrangement,
>
> is not operated principally to administer or provide pension or retirement benefits within the meaning of paragraph 1(k) of Article 3 of the Treaty, and is therefore not a "pension fund."

These changes are a far more aggressive solution, disallowing any scheme that permits contributions by those over a set income level or allows for contributions over a set minimum from benefiting from the provisions of the Treaty. Additionally, subsection (d) of the proposal prevents these new details from interfering with any financial mechanisms that are pre-existing under U.S. law. While some 401(k) funds or other accounts may allow for individuals with higher income levels to contribute or allow for individuals to make larger contributions, these funds will not be impacted by this language. The language of the proposal will, however, substantially limit Malta's ability to pass future tax haven legislation to benefit the ultra-wealthy, as these hard limits prevent any large-scale tax evasion.

2. Treaty Amendments

As discussed previously, it is unclear whether the Competent Authorities Arrangement will be found constitutionally permissible in U.S. courts. The only way to ensure the tax evasion capabilities of the Maltese pension funds are squashed is to amend the text of the Treaty itself, rather than try to clarify or re-interpret the text to address tax evasion techniques that have arisen over the last decade. While amending the Treaty is a more politically difficult solution—it will require the consent of two-thirds of the Senate—it is the solution most likely to actually solve the tax evasion issue presented by the Maltese pension funds. First, unlike the Competent Authorities Arrangement, there will be no question as to the legal permissibility of the change—parties to treaties have the right to amend them, and the treaties are controlling U.S. law once ratified by the Senate. Second, amending the text of the Treaty with strong, focused limitations on qualifying pension funds prevents existing and future pension schemes from taking advantage of the vague, broad definitions currently utilized by the Treaty.

As an initial option, the U.S. and Malta can amend the Treaty to include similar provisions to those discussed in the previous section of this paper, adding those provisions to the Treaty's definition of "pension funds." Consider the following example:

> k) the term "pension fund" means any person established in a Contracting State that is:
>
> i) in the case of pension funds established in the United States, generally exempt from income taxation, and in the case of pension funds established in Malta, a licensed fund or scheme, that does not allow contributions of non-cash assets, subject to

> tax only on income derived from immovable property situated in Malta; and
>
> ii) operated principally either:
>
> A) to administer or provide pension or retirement benefits; or
>
> B) to earn income for the benefit of one or more persons meeting the requirements of subparagraph i) and clause A) of this subparagraph.
>
> (l) In the case of pension funds established in Malta after the ratification of the Convention, the term "pension fund" means only such licensed funds or schemes that do not accept contributions from participants with an annual income in excess of $150,000 and do not accept contributions from participants in excess of $10,000 per year, and meet the requirements of paragraph 1(k) of this article. Funds or schemes established in Malta after the ratification of the Convention may be included in the definition of "pension fund" without meeting the requirements of this paragraph pursuant to a determination made only by the mutual agreement of the competent authorities under Article 25 of the Convention.

This solution attacks the problem on several fronts, while still allowing the parties the possibility of allowing appropriate exceptions in the future. Adding the bolded language to subparagraph (k)(i) eliminates the existing Maltese pension funds from protection under the Treaty, due to the fact that such funds allow for the contribution of non-cash assets. New subparagraph (l) adds further requirements for Maltese pension funds established after the new ratification of the Treaty, preventing any future attempted circumvention of the Treaty's intent. Limiting future qualifying pension funds to those that allow contributors only under $150,000 and contributions under $10,000 enacts strict anti-tax-haven requirements that cannot be abused by the ultra-wealthy. Limiting these additional provisions to only future funds allows existing Maltese pension funds that are not being used for tax evasion purposes to continue operating as normal. Lastly, because the new requirements on future Maltese pension funds are so strict, the proposed language of subparagraph (l) allows for future Maltese funds to qualify for Treaty benefits if both parties agree. This allows Malta to create new, creative pension plans that can still qualify for Treaty benefits if the IRS first verifies that those new funds will not be used for tax evasion purposes.

In sum, the only way to guarantee an end to the current abuse of the Maltese pension plans by the ultra-wealthy and to prevent the creation of future, similar tax evasion schemes arising due to this Treaty, the Treaty itself must be amended. Although this process may be arduous—requiring consent of the Senate—it will yield the greatest results. The current definition of "pension funds" is simply too broad and open-ended, allowing any number of creative tax evasion schemes to crop up. While the IRS's attempt to rectify the issue through the Competent Authorities Arrangement is an admirable and helpful start, the arrangement carries with it serious questions of constitutionality and effectiveness. A full rewriting of the Treaty subsection in question cuts straight to the root of the problem, eliminating it and all similarly possible tax evasion alternatives.

V. CONCLUSION

Although creating long-term solutions to the golden passports and Maltese pension plans will be an arduous task, they are necessary. These schemes are fraught with tax evasion and money laundering concerns, allowing the world's wealthiest to avoid the laws of their own nations, as well as international laws to protect the accumulation of their own wealth, and use that wealth to access advantages that are not only unavailable to others, but were never meant to be created at all. This article proposes long-term, foundational solutions to both the golden passports and the Maltese pension plans. Whether the European Union and the United States opt to take more permanent action, rather than performative and possibly ineffective measures, is yet to be seen. One thing is sure, however. True justice requires governments to have earned the faith of their citizens and for citizens to believe in the effectiveness of their laws. So long as the world's wealthiest are able to use their wealth to circumvent laws and thwart government actions for their own benefit, we will be unable to reach this ideal.