

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:BR1 – PLR-155972-03

Date:

March 26, 2004

TY:

Taxpayer =

Corp X =

Country A =

City B =

Amount =

#1

Amount =

#2

Amount =

#3

Amount =

#4

Ratio 5 =

Ratio 6 =

Ratio 7 =

Ratio 8 =

Dear :

This responds to your letter dated September 16, 2003, in which you requested a ruling and closing agreement that premiums received by Taxpayer on policies of insurance or reinsurance of United States risks are exempt from the insurance excise tax imposed by section 4371 of the Internal Revenue Code of 1986, as amended ("Code"), pursuant to the income tax convention between the United States and the Country A (the "Treaty").

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

The Taxpayer is a reinsurer of primarily property and casualty risks of Corp X and its subsidiaries, as well as of personal lines (property and casualty) policies of Corp X's Country A employees. Taxpayer transacts all business through its office in City B in Country A. Reinsureds are, with few exceptions, Country A insurance companies.

Taxpayer plans to reinsure certain policies with respect to U.S. insureds or risks within the United States. Taxpayer represents that premiums paid with respect to such reinsurance business will be derived in connection with, or incidental to, the Taxpayer's active conduct of its trade or business in Country A.

Taxpayer represents that it is a resident of Country A, having its seat of management in Country A for purposes of the Treaty. Taxpayer further represents that it satisfies the requirements of Article 28(1)(c) of the Treaty, which contains a limitations on benefits provision similar to that which is referenced in Sections 3.08 and 3.09 of Rev. Proc. 92-30, 1992-1 C.B. 860. The revenue procedure provides instructions for establishing exemption from the section 4371 excise tax on insurance premiums paid to a foreign insurer or reinsurer when the exemption is based on the provisions of the U.S.-Germany Convention. Pursuant to section 5 of Rev. Proc. 92-30, the procedures may also be used by insurers or reinsurer claiming benefits under United States Conventions that have similar limitation on benefits and excise tax provisions.

Section 3.06 of [Rev. Proc. 92-39](#), provides that the Internal Revenue Service will consider premiums received by a foreign insurer or reinsurer to be derived in connection with, or incidental to, the active conduct of a trade or business in Germany if for the company's preceding taxable year the average of the following three ratios exceeds 25 percent and each ratio is equal to at least 20 percent:

1. The ratio of the average value that the assets of the insurer or reinsurer used or held for use in the active conduct of a trade or business in Germany during the taxable year bears to the value of all of its assets.

For _____, Taxpayer represents that the value of assets the Taxpayer held in Country A for use in the active conduct of a trade or business was Amount #1 and that all of its assets held worldwide was Amount #1. Therefore, the ratio of assets held for use in Country A to assets worldwide was Ratio 5. This ratio is based on the most conservative representations made by the Taxpayer.

2. The ratio that gross premiums received by the insurer or reinsurer for policies on risks situated in Germany bear to total gross premiums received by the insurer or reinsurer.

Taxpayer represents that gross premiums received by the taxpayer in 2002 on risks in Country A was Amount # 2 and that gross premiums received on worldwide risks was Amount # 3. Therefore, the ratio of gross premiums on risks in Country A to total gross premiums was Ratio 6.

3. The ratio that the insurer or reinsurer's payroll and commission expenses paid to employees and agents for services performed in Germany bears to the insurer or reinsurer's worldwide payroll and commission expenses.

For _____, Taxpayer represents that the taxpayer's payroll and commission expense for services performed in Country A was Amount # 4, all of which was paid to employees and agents for services performed in Country A, resulting in a ratio of Ratio 7.

The average of the three ratios is Ratio 8. Accordingly, the taxpayer satisfies the requirements of Article 28(1)(c) of the Convention.

Pursuant to paragraph 8(a) of the enclosed agreement, Taxpayer's liability for Federal excise tax, as agreed upon, including liability resulting from reinsurance of U.S. risks with persons not entitled to exemption under the Treaty or another Treaty, will commence on _____. The letter of credit required by paragraph 5(a) of the enclosed agreement, in the amount of \$ _____, must be in effect within 30 days of the date the agreement is finally signed on the Commissioner's behalf.

Any person otherwise required to remit the Federal excise tax on foreign insurance or reinsurance policies issued by Taxpayer pursuant to section 46.4371-1(a) of the Excise Tax Regulations may rely upon a copy of this letter and/or a copy of the approved Closing Agreement as authority that they may consider premiums paid to Taxpayer on and after September 16, 2003, as exempt under the Convention from the United States Federal excise tax.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent by any other taxpayer. Furthermore, this ruling does not address the issue of whether Taxpayer is an insurance company or whether premiums paid to Taxpayer are deductible under section 162 of the Code.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
W. Edward Williams
Special Counsel
Office of the Associate Chief Counsel

(International)

Enclosure (1)

cc: