Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:Br1-PLR-108855-99
Date:
February 7, 2000

Re:

DO: TY:

Company A =
Company B =
Country P =
Country Q =
Year X =
N =

Dear :

This responds to your letter dated May 6, 1999, as supplemented by letters dated September 9, and 13, 1999 regarding the taxpayer, Company A. You request a ruling that premiums received by Company A 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 (the "Code").

The ruling contained in this letter is based upon information and representations submitted by, and on behalf of, the taxpayer and accompanied by statements under penalties of perjury executed by appropriate parties. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

Company A, a foreign stock insurance and reinsurance company, was organized under the laws of Country P in Year X and has been in business there ever since. It maintains its registered and principal office in Country P. The taxing authority of Country P has certified that Company A is a resident of Country P for their income tax purposes.

Company A intends to underwrite property and casualty insurance policies and reinsurance policies. Its outstanding stock consists of N registered shares of a single

class, all of which are owned by Company B. Company B, also a reinsurance company, is a resident of Country Q for purposes of the Convention between the United States and Country Q for the avoidance of double taxation ("Country Q Treaty"). Company B has received a ruling from the Service that as a resident of Country Q, it is entitled to the benefits of Country Q Treaty on the basis that its stock is publicly traded on the appropriate stock exchange. Based on this earlier ruling, Company B has also entered into a Federal Excise Tax Closing Agreement with the Service, and the closing agreement is currently in effect.

There is in force a Convention between the United States and Country P for the avoidance of double taxation ("Country P Treaty"). Pursuant to Article 2(b) of this Convention, the Country P Treaty applies to the excise taxes imposed by the Internal Revenue Code on insurance premiums paid to foreign insurers, but only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of this treaty or of any other treaty which provides for similar exemption from these taxes.

Article 22 of the Country P Treaty establishes the limitations that determine whether a resident of one of the contracting states is a person entitled to benefits under the treaty. Company A asserts that it qualifies for the Country P Treaty benefits pursuant to paragraph 6 of Article 22, read with the Revised Memorandum of Understanding (the "RMOU"). Under paragraph 6, a person that is not entitled to the benefits of Country P Treaty pursuant to the provisions of the preceding paragraphs may, nevertheless, be granted the benefits of the treaty if the U.S. Competent Authority so determines.

Under paragraph 7(a) of the RMOU, a company resident in Country P will be granted the benefits of the Country P Treaty under Article 22(6), with respect to the income it derives from the United States if:

> i) the ultimate beneficial owners of 95 percent or more of the aggregate vote and value of all of its shares are seven or fewer persons that are residents of a member state of the European Union ("EU") or of the European Economic Area ("EEA") or a party to the North American Free Trade Agreement ("NAFTA") that meet the requirements of Article 22(3)(b); and
>
> ii) the amount of the expenses (with certain exceptions) deductible from gross income that are paid or payable by the company for its preceding fiscal period to persons that are neither U.S. citizens nor residents of a member state of the EU, or of the EEA or a party to the NAFTA that meet the requirements of Article 22(3)(b) is less than 50 percent of the gross income of the company for that period.

The condition in i) above is met because all of the shares of Company A are owned by Company B, and the latter is a resident of a member state of the EU and meets the three requirements of Article 22(3)(b) as follows.

The first requirement of Article 22(3)(b) is that Company B be a resident of a country with which the United States has a comprehensive income tax convention and be entitled to all the benefits provided by the United States under that convention. Company B is a resident of Country Q, with which the United States has a comprehensive income tax treaty, the Country Q Treaty; and as corroborated by the private letter ruling issued to it, Company B is entitled to all the benefits of that treaty.

The second requirement of Article 22(3)(b) is that Company B, if it were a resident of Country P and the references in Article 22(1) were to Country Q, should qualify for benefits under Article 22(1). A person qualifies for benefits under Article 22(1)(e)(i) if it is a company whose principal class of shares is primarily and regularly traded on a recognized stock exchange. Company B has been recognized by the Service in a Private Letter Ruling as a company whose principal class of shares is primarily and regularly traded on a recognized stock exchange in Country Q. Further, Company A has represented that Company B's principal class of shares continue to be primarily and regularly traded on a recognized stock exchange in Country Q.

The third requirement is that Company B should, under the Country Q Treaty, be entitled to exemption from the insurance excise tax in the United States at least to the same extent available under the Country P Treaty. As stated before, Company B has been issued a ruling to the effect that the premiums paid to it are exempt from the federal excise tax.

Finally, it is specifically confirmed that Company A also satisfies the special base-erosion test prescribed by condition (ii) of paragraph 7(a) of the RMOU and expects to continue to meet it in future years.

Pursuant to paragraph (8)(a) of the enclosed Closing Agreement, the liabilities of Company A for Federal Excise Tax, as agreed upon, including liabilities resulting from reinsurance of U.S. risks with persons not entitled to exemption under the Treaty or another Convention, will commence May 5, 1999, the date of Company A's ruling request. The letter of credit required by paragraph (5)(a) of this Closing Agreement, in the amount of $75,000, must be in effect within 30 days of the date the Agreement is signed on behalf of the Commissioner.

Any person otherwise required to remit the Federal excise tax on foreign insurance or reinsurance policies issued by Company A pursuant to section 46.4374-1(a) of the Excise Tax Regulations may rely upon a copy of this letter and/or an executed copy of the appropriate Closing Agreement as authority that they may consider premiums paid to Company A on and after May 5, 1999, as exempt under the Country P Treaty from the Federal excise tax.

This ruling is directed only to the taxpayer named above and requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. This

ruling does not address the issues of whether Company A is an insurance company or whether premiums paid to Company A are deductible under section 162 of the Code or the tax consequences of any aspect of any transaction or item not discussed or referenced in this letter.

A copy of this letter must be attached to any income tax return to which it is relevant.

Yours truly,
W. Edward Williams
Senior Technical Reviewer, Branch 1
Associate Chief Counsel (International)

Enclosures:
Copy of approved Closing Agreement
Copy of letter for section 6110 purposes
Copy of Closing Agreement for section 6110

CLOSING AGREEMENT OF FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code,

(EIN applied for) and the Commissioner of Internal Revenue make the following closing agreement:

WHEREAS, the business profits article (Article 7 of the United States-Switzerland Income Tax Convention, (the "Convention")) exempts insurance or reinsurance premiums paid to a resident of Switzerland from the Federal excise tax imposed by section 4371 et seq. of the Internal Revenue Code of 1954, as amended (the "Code") only to the extent that the Swiss insurer or reinsurer does not reinsure such risks with a person not entitled to exemption from such tax under the Convention or another convention (Article 2(l)(b) of the Convention) and only if the insurer or reinsurer qualifies under Article 22 of the Convention;

WHEREAS, section 3.02, of Rev. Proc. 92-39 provides that the person required to remit the tax may consider the premium exempt only if, prior to filing the return for the taxable period, such person has knowledge that the Swiss insurer or reinsurer has in effect a closing agreement to be liable as a United States taxpayer for Federal excise tax due under section 4371 et seq. of the Code on premiums from policies reinsured with reinsurers that are not entitled to exemption from the excise tax under the Convention or any other convention and on premiums paid or accrued when the Swiss insurer or reinsurer did not qualify under the Convention for exemption from the excise tax imposed by section 4371 et seq. of the Code;

WHEREAS, the Swiss insurer or reinsurer represents that it is and will continue to be eligible for benefits under the Convention; and

WHEREAS, the Swiss insurer or reinsurer (hereinafter referred to as "the Taxpayer") wishes to have its policies of insurance or reinsurance considered exempt from tax under the Convention; IT IS HEREBY DETERMINED AND AGREED THAT:

(1) Taxpayer shall, for purposes of this closing agreement, be liable as a United States Taxpayer for the Federal excise tax due under section 4371 et seq. of the Code on premiums from policies reinsured with reinsurers that are not entitled to exemption from the excise tax under the Convention or any other convention and from policies issued or outstanding when Taxpayer did not qualify under the Convention for exemption from the excise tax imposed by section 4371 et seq. of the Code.

(2)(a) Returns of Federal excise tax due under and pursuant to this closing agreement and sections 4371 et seq. of the Code shall be made by Taxpayer, or by Taxpayer's authorized

representative on Taxpayer's behalf, by filing Form 720, Quarterly Federal Excise Tax Return, for each return period covered by this closing agreement.

(b) If Taxpayer reinsures, in whole or in part, a policy of insurance or reinsurance with any person(s) not entitled to exemption from the excise tax under the Convention or any other convention or if Taxpayer issues or has outstanding a policy or policies when the Taxpayer did not qualify under the Convention for exemption from the excise tax imposed by section 4371 et seq. of the Code, the tax reportable on the return, Form 720, shall be computed on the basis of the percentage of such policy reinsured or on the basis of the premium accrued or received during the time period when Taxpayer did not qualify for exemption under the Convention. For purposes of the preceding sentence, Taxpayer may consider a reinsurer to be entitled to exemption from the excise tax under the Convention or another convention if the reinsurer is a party to a closing agreement with the Internal Revenue Service under this Convention or another convention, or the reinsurer provides evidence that it is a resident of the United States or of a country with which the United States has in effect a convention that waives the excise tax without an explicit "anti-conduit" 'clause.

(c) Forms 720 shall be filed with the Director, Internal Revenue Service Center, Philadelphia, Pennsylvania 19255, U.S.A.

(d) Taxpayer, or Taxpayer's authorized representative, shall make the required Federal tax deposits of the Federal excise tax in such manner and at such times as are prescribed by regulations and explained in the instructions for Form 720.

(3) Taxpayer agrees that, for purposes of determining its Federal excise tax liability pursuant to this closing agreement and for purposes of verifying Taxpayer's entitlement to benefits under the Convention, Taxpayer will maintain for a period of 6 years from the end of each taxable period to which this closing agreement applies accounts and records of items of insurance and reinsurance that will be made available upon written request by the Internal Revenue Service at the place mutually agreed upon by the Service and Taxpayer. Taxpayer will also maintain for 6 years and make available for inspection records to establish eligibility for Convention benefits. Taxpayer will be allowed 60 days, or other period of time determined as reasonable by the Assistant Commissioner (International), within which to make available its accounts and records.

(4) If it is determined that there is an underpayment in respect of any excise tax determined to be due pursuant to this closing agreement and sections 4371 et seq. of the Code, the Internal Revenue Service shall issue a statement of notice and demand for the tax due plus any interest and applicable penalties. Notice of any underpayment shall be sent to the Taxpayer at the name and address shown on the Form 720, if a Form 720 was filed for the period for which an underpayment is determined by the Internal Revenue Service, or otherwise to the Taxpayer's registered address in Switzerland. Payment of all additional amounts due shall be made in accordance with the terms specified in the statement of notice and demand. Collection of such amounts not paid per notice and demand shall be in accordance with paragraph 5 hereof.

(5)(a) As security for payment of tax, taxpayer shall cause an irrevocable letter of credit

to be issued by a United States bank that is a member of the Federal Reserve System or by a United States branch or agency of a foreign bank that is on the National Association of Commissioners list of banks from which letters of credit may be accepted, in favor of the Internal Revenue Service in the amount of $ 75,000.00 or such amount as may from time to time be mutually agreed upon by Taxpayer and the Service. Such letter of credit must be in effect within 30 days of the date that the closing agreement is signed for the Commissioner of Internal Revenue.

(b) The Service may issue a statement of notice and demand with respect to

(i) Any tax shown on a Form 720 (original or amended, or substitute for return) that is not paid with such return; or

(ii) Any proposed additional excise tax liability sustained by the Internal Revenue Service Regional Director of Appeals having jurisdiction over such matter, if the time for filing a protest of such proposed liability has expired, provided that the statement of notice and demand has been issued as provided in paragraph 4 hereof.

(c) If, after the conditions in paragraph 5(b) hereof have been met, the tax, interest, and any applicable penalties, are not paid in accordance with the terms of the statement of notice and demand, collection of such amounts will be made by resorting to such letter of credit, to the extent thereof, before any levy or proceeding in court for collection is instituted against Taxpayer.

(d) If such letter of credit is drawn upon, it must be reinstated to $ 75,000.00 within 60 days after the date drawn upon.

(6)(a) Solely by reason of the execution by Taxpayer and the Commissioner of this closing agreement, any person otherwise required to remit the federal excise tax on foreign insurance or reinsurance premiums pursuant to section 46.4374-1(a) of the Excise Tax Regulations may consider premiums paid to Taxpayer after the effective date of this agreement as exempt under the Convention from the Federal excise tax.

(b) Taxpayer agrees that the Commissioner or his or her authorized delegate, may disclose Taxpayer's name as an insurer or reinsurer that qualifies for exemption from the excise tax under the Convention by publication or otherwise.

(7)(a) This closing agreement shall include, as an attachment hereto, a statement from the Competent Authority of Switzerland certifying that Taxpayer is a resident of Switzerland as defined in the Convention and a statement from the Taxpayer that Taxpayer is not disqualified from receiving benefits under the Convention by reason of Article 22 of the Convention. Taxpayer shall submit such information in its statement as will establish its entitlement to benefits under the Convention.

(b) The statement from the Competent Authority of Switzerland certifying that Taxpayer

is a resident of Switzerland shall be effective for a period of 3 calendar years beginning with the year of receipt. Taxpayer agrees to renew the certificate of residency every three years, and its own certification of eligibility for benefits under the Convention every year, on or before the expiration date of the original certificate. Taxpayer agrees to provide an original and one copy of the recertification along with a photocopy of this closing agreement to:

Internal Revenue Service
1111 Constitution Ave. N.W.
Washington, D.C. 20224, U.S.A.
Attn: CC:INTL:1

Taxpayer also agrees to notify the Competent Authority of Switzerland and the Internal Revenue Service of any change that results in its disqualification from receiving Treaty benefits.

(8)(a) This closing agreement shall be effective May 5, 1999. This agreement shall thereafter continue in effect unless terminated as provided in subparagraph (b) of this paragraph.

(b) This agreement may be terminated by either Taxpayer or the Commissioner by giving the other written notice of the notifying party's intent to terminate. The decision to terminate is solely at the discretion of the party giving such notice. This agreement shall be terminated on the last day of the return period immediately following the return period within which the written notice of termination is given.

(c) Taxpayer hereby agrees to file a return, Form 720, marked "Final Return" for the taxable period within which this agreement terminates pursuant to paragraph (8)(b) hereof and to furnish a duplicated of such "Final Return" to:

Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224, U.S.A.
Attn: CC:INTL:1

(d) Taxpayer agrees that the letter of credit issued pursuant to paragraph 5 hereof shall remain in effect for a period of not less than 60 days after the "Final Return," has been filed in accordance with subparagraph (c) hereof, or until the examination of Taxpayer's returns is completed and any additional tax due has been paid, whichever is later.

WHEREAS, the determination set forth above are hereby agreed to by said taxpayer:

NOW THIS CLOSING AGREEMENT WITNESSETH, that the said taxpayer and said Commissioner of Internal Revenue hereby mutually agree that the determinations set forth shall be final and conclusive, subject, however, to reopening in the event of fraud, malfeasance, or misrepresentation of material fact, and provided that any change or modification of applicable statutes or tax conventions will render this agreement ineffective to the extent that it is dependent upon such statutes or tax conventions.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in triplicate.
Signed this (Date) day of (Month), (Year) By Title

Commissioner of Internal Revenue:
Associate Chief Counsel (International)
(Date): 2/1/00

Assistant Commissioner (International)
(Date): 2/2/00

Company:
By:
President and Chief Executive Officer
(Date): 22/4/99