

Internal Revenue Service

Department of the Treasury

Number: **200332008**

Washington, DC 20224

Release Date: 8/8/2003

Index Number: 4371.00-00; 9114.03-38

Person to Contact:

Telephone Number:

Taxpayer =
Parent =
Corp X = .
Partnership I =
Partnership II = I
Investors =
Date A =
Year B =
Country C =
Country D =
Date E =

Refer Reply To:

CC:INTL:Br1-PLR-100326-02

Date:

February 27, 2003

TY:

Dear :

This responds to your letter of Date A, in which you requested a ruling that premiums received by the Taxpayer on policies of insurance or reinsurance of U.S. risks are exempt from the insurance excise tax imposed by section 4731 of the Internal Revenue Code of 1986, as amended ("Code"), pursuant to the U.S. - Switzerland Income Tax Convention (the "Treaty").

The ruling contained in this letter is 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 foreign stock insurance company that was founded as a professional reinsurance company in Switzerland during Year B. It is a wholly owned subsidiary of Parent, a corporation organized in Country C. Parent is owned by Corp X, a Country D corporation; by U. S. institutional investors; and by Partnership II, a Country D partnership. Partnership I, also a Country D partnership, and Corp X own Partnership II. Partnership I is 99 percent owned by U.S. persons and 1 percent owned by Corp X. Corp X is 100 percent owned by U.S. persons. Taxpayer has neither an office in the United States nor any branches outside of Switzerland. On Date E, the local tax office in Switzerland certified that Taxpayer is a resident of Switzerland for purposes of Swiss income taxes.

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Section 4371 imposes an excise tax on premiums paid on insurance policies issued to U.S. persons and covering risks wholly or partly within the United States, and to foreign persons engaged in a U.S. trade or business and covering risks within the United States. See § 4372(d). Rev. Proc. 92-39, 1992-1 C.B. 860, establishes procedures for entering into a closing agreement to establish an exemption from the § 4371 excise tax when the exemption is claimed under a U.S. income tax treaty.

Article 2(2)(b)(Taxes Covered) includes the § 4371 excise tax within the scope of the Treaty, but contains the following limitation:

The Convention shall, however, apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other convention which provides exemption from these taxes.

Article 7(1)(Business Profits) of the Treaty provides as follows:

The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.

However, paragraph 3 of the Protocol to the Treaty, with reference to Article 7, provides:

The United States tax on insurance premiums paid to foreign insurers shall not be imposed on insurance or reinsurance premiums which are the receipts of a business of insurance carried on by an enterprise of Switzerland, whether or not that business is carried on through a permanent establishment in the United States, except to the extent that the risks covered by such premiums are reinsured with a person not entitled to the benefits of this or any other Convention which provides a similar exemption from U.S. tax.

Article 1 of the Treaty provides that treaty benefits are generally applicable only to persons who are “residents” of one of the Contracting States. As a company that is incorporated in Switzerland, Taxpayer is a Swiss resident subject to Swiss income tax on its worldwide income. The local tax office in Switzerland certified that the Taxpayer is a Swiss resident for Swiss income tax purposes.

In addition to establishing residency in Switzerland, Taxpayer must also satisfy the “Limitation on Benefits” provision in Article 22 of the Treaty in order to be entitled to Treaty benefits. Article 22 of the Treaty sets forth several alternative safe harbors for claiming benefits under the Treaty. Article 22(1)(f) provides that a Swiss resident may qualify for Treaty benefits if it is

[a] company, trust or estate, unless one or more persons who are not entitled to

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the benefits of this Convention under subparagraphs a), b), d), e), of g) are, in the aggregate, the ultimate beneficial owners of a predominant interest in the form of a participation, or otherwise, in such company, trust or estate....

Because U.S. individuals are the ultimate beneficial owners of a predominant interest in Taxpayer, the income earned by the Taxpayer is entitled to Treaty benefits pursuant to Article 22, paragraph 1(f) and paragraph 8 of the Protocol. Taxpayer is therefore entitled to the benefits of paragraph 3 of the Protocol to the Treaty, with respect to Article 7, regarding the excise tax imposed on insurance premiums paid to foreign insurers.

Pursuant to section 3.03 of Rev. Proc. 92-39, Taxpayer has entered into a Closing Agreement with the Commissioner of Internal Revenue. According to paragraph (8)(a) of the Closing Agreement, the liability of the Taxpayer 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 convention, will commence on Date A, the date specified by the Taxpayer. The letter of credit required by paragraph (5)(a) of the 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 the Taxpayer pursuant to § 46.4374-1(a) of the excise tax regulations may rely upon a copy of this letter or an executed copy of the Closing Agreement as authority that they may consider premiums paid to the Taxpayer on and after Date A, as exempt under the Treaty from the federal excise tax.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling does not address the issues of whether the Taxpayer is an insurance company or whether premiums paid to the Taxpayer are deductible under §162 of the Code.

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.

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

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

Sincerely,
W. Edward Williams
Senior Technical Reviewer
Office of the Associate Chief
Counsel (International)

cc: