

Guidance Regarding Election Under Section 953d

Rev. Proc. 2003-47

SECTION 1. PURPOSE AND SCOPE

This revenue procedure provides new procedural rules regarding the election under section 953(d) of the Internal Revenue Code of 1986 (the “Code”), under which certain foreign insurance companies may elect to be treated as domestic corporations for U.S. tax purposes. These new procedural rules reflect changes in the administration of the election. This revenue procedure replaces the procedural rules for making an election under section 953(d) contained in Section II of Notice 89-79, 1989-2 C.B. 392.

SECTION 2. BACKGROUND

In 1989, the Internal Revenue Service published Notice 89-79, which provides substantive and procedural rules regarding the election under section 953(d). Section 953(d) allows a controlled foreign corporation engaged in the insurance business to elect to be treated as a U.S. corporation for U.S. tax purposes. A controlled foreign corporation that makes this election will be subject to tax in the United States on its worldwide income but will not be subject to the branch profits tax or the branch-level interest tax imposed by section 884. Further, the excise tax imposed under section 4371 on policies issued by foreign insurers will not apply.

SECTION 3. SUMMARY OF CHANGES

Changes in the administration of the election under section 953(d) have made it necessary to issue new procedural rules. Specifically, this revenue procedure provides a new mailing address for section 953(d) elections and takes into account the replacement of Form 2848-D by Form 8821 (“*Tax Information Authorization*”) to designate an authorized representative to receive confidential tax information on behalf of the corporation that makes a section 953(d) election (“electing corporation”). Additionally, this revenue procedure sets forth specific procedures regarding the satisfaction of the Office and Asset Tests (discussed below), including procedures for taking into account the office and assets of a U.S. affiliate. Finally, this revenue procedure requires that the electing corporation, or its U.S. affiliate, provide a calculation demonstrating that the requirements of the Asset Test are met.

SECTION 4. PROCEDURAL RULES

.01 Electing Corporation Is Subject to U.S. Tax Rules.

Determination of Tax Due and Timely Filing of Returns. An electing corporation must determine the tax due on its income as if it were a domestic corporation subject to part I or part II of subchapter L. The electing corporation must timely file the U.S. tax return that is due when the election becomes effective and must timely pay any U.S. taxes due (including estimated payments).

.02 Termination or Revocation of Section 953(d) Election.

(1) Once approved, the election generally remains effective for each subsequent taxable year in which the requirements of this revenue procedure and section 953(d) are satisfied unless revoked by the electing corporation with the consent of the Commissioner. However, if the electing corporation fails to timely file a return, pay the tax due as stated on the return, or comply with any other requirement for making the election contained in this revenue procedure and section 953(d), the Commissioner, in his discretion, may terminate the election as of the beginning of the taxable year after the taxable year with respect to which the failure occurs. If an

election is terminated or revoked, the foreign corporation and its successors will be barred from making another election under section 953(d) without the consent of the Commissioner.

(2) Termination or revocation of the election may cause the U.S. shareholders of the foreign corporation to be liable for subpart F inclusions for taxable years in which the election no longer is in effect. It will also cause the corporation to be considered a foreign person for purposes of the excise tax under section 4371 on premiums for insurance or reinsurance issued by the foreign corporation. Funds obtained by the Internal Revenue Service under the letter of credit (described later in this revenue procedure) may be applied to the taxes due from the foreign corporation. If a corporation's section 953(d) election ceases to apply for any subsequent taxable year, for purposes of section 367 the corporation will be treated as a domestic corporation transferring (as of the first day of the subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

.03 *Prior Elections under Section 953(c)(3)(C).*

A corporation that has an election in effect under section 953(c)(3)(C) to treat related person insurance income as income effectively connected with a U.S. trade or business may revoke that election and make the election under section 953(d) without requesting the consent of the Commissioner. Any such corporation must state in its section 953(d) election statement that it revokes its election under section 953(c)(3)(C), effective as of the date its election under section 953(d) commences.

.04 *Procedures for Making an Election.*

(1) *Election statement.* The process of making a section 953(d) election must be initiated by filing an original election statement, an example of which is provided in Appendix A. The electing corporation must attach to its election statement a complete list of all U.S. shareholders (within the meaning of section 953(c)(1)(A)) of the electing corporation as of a date no more than 90 days prior to the date the election statement is mailed. The list must

include the name, address, and tax identification number of, and ownership percentage for, each U.S. shareholder. The electing corporation must agree to file an updated list containing the information prescribed as of the last day of each taxable year. The updated list will be filed with the U.S. tax return reporting the income earned by the electing corporation for each taxable year the election is in effect. The electing corporation must also attach to its election statement a Form 2848 (*"Power of Attorney and Declaration of Representative"*) or Form 8821 (*"Tax Information Authorization"*) designating a U.S. representative authorized to receive confidential tax information, including any notice of deficiency, on behalf of the electing corporation. In the election statement, the electing corporation must agree to produce its books and records, or a true and accurate copy thereof, in the United States upon request of the Internal Revenue Service.

A completed election statement, together with attachments, should be filed with: Internal Revenue Service, 7850 SW 6th Court, Stop 5780, Plantation, FL 33324. The election statement must be signed by a duly authorized officer of the electing corporation, within the meaning of section 6062. When the electing corporation files its annual income tax return for the first year for which the election is made, Form 1120PC (*"U.S. Property and Casualty Insurance Company Income Tax Return"*) or Form 1120L (*"U.S. Life Insurance Company Income Tax Return"*), it must attach a copy of this election statement (without attachments). The return is filed with the Internal Revenue Service, Philadelphia Submission Processing Center, Philadelphia, Pennsylvania 19255-0012, unless the electing corporation is part of a consolidated group that files elsewhere.

(2) *Election Due Date and Election Effective Date.* For an election to be effective for a taxable year, the original election statement must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. When approved, the election is effective as of the first day of the first taxable year (including a short taxable year) for which it is made.

(3) *Closing Agreement and Letter of Credit.*

(a) To complete the election, an electing corporation that does not satisfy the Office and Asset Tests set forth below, either directly or through a U.S. affiliate, must enter into a closing agreement and provide a letter of credit to secure payment of taxes due, if any, from the electing corporation. Such an electing corporation first must file an election statement indicating that it does not satisfy the Office and Asset Tests by completing the third alternative paragraph six in the election statement in Appendix A. After filing the election statement, the electing corporation (or its designated representative) will be provided with instructions for completing the election process and will be notified when it must submit a letter of credit. The corporation's election will not be approved until a sufficient letter of credit has been provided. The letter of credit must be in an amount equal to 10% of the electing corporation's gross income (as this term is defined below), but not less than \$75,000 and not greater than \$10,000,000. The electing corporation may be required to provide evidence to support the computation of the amount of security.

(b) For purposes of this revenue procedure, the term "gross income" means "life insurance gross income" as defined in section 803, or "gross income" as defined in section 832(b)(1) (with the phrase "gross premiums written less return premiums and premiums paid for reinsurance" substituted for the term "underwriting income" where that term appears in section 832(b)(1)(A)).

(4) *Office and Asset Tests for Electing Corporation or U.S. Affiliate.*

(a) A closing agreement and letter of credit will not be required if the electing corporation: (1) maintains an office or other fixed place of business in the United States ("Office Test"); and (2) owns assets that are physically located in the United States with an adjusted basis equal to 10% of its gross income for the base year, as defined below ("Asset Test"). An Asset Calculation Sheet is provided in Appendix B.

(b) In addition, if as a result of the section 953(d) election, the electing corporation is a member of a consolidated group within the meaning of Treas. Reg. § 1.1502-1(h), the electing corporation may satisfy the Office and Asset Tests

based on the office and assets of a U.S. corporation that is a member of the consolidated group (“U.S. Affiliate”). An electing corporation will satisfy the Asset Test based on the assets of the U.S. Affiliate if the U.S. Affiliate owns assets that are physically located in the United States with an adjusted basis equal to 10% of the electing corporation's gross income for the base year, as defined below.

(c) The “base year” is the taxable year immediately before the taxable year for which the election is first made. However, if the electing corporation did not receive gross income in such prior taxable year, the base year is the first year of the election. If the first year is not a full taxable year, gross income is determined on an annualized basis. If, in any taxable year subsequent to the base year, the electing corporation's gross income is more than 120% of the gross income for the base year, such subsequent taxable year is treated as the new base year and the electing corporation must satisfy the Asset Test with respect to the new base year based on its assets, or based on the assets of the U.S. Affiliate pursuant to section 4.04(4)(b) and (e) of this revenue procedure. If the electing corporation does not satisfy the Asset Test with respect to the new base year, the electing corporation must provide an amended election statement indicating that it no longer satisfies the Asset Test and must enter into a closing agreement and provide a letter of credit to maintain its election.

(d) To satisfy the Asset Test, a corporation may include an asset only to the extent

that any claim of the U.S. government with respect to the asset, which may arise from the failure of the corporation to pay any tax imposed by the Internal Revenue Code, is not subordinated to the claims of any other creditor. Intangible personal property will qualify as an asset physically located in the United States only if the income from that property is income from sources within the United States, within the meaning of section 861, and the evidence of ownership of such property is physically present in the United States.

(e) If the electing corporation chooses to satisfy the Office and Asset Tests based on the office and assets of a U.S. Affiliate, the U.S. Affiliate must enter into a closing agreement with the Internal Revenue Service to agree that, in the event of termination or revocation of the electing corporation's section 953(d) election, the U.S. Affiliate will be liable for excise tax imposed under section 4371 (up to a stated amount) that remains unpaid after the electing corporation has been issued a statement of notice and demand for such tax. Information regarding the preparation of this closing agreement will be sent to the electing corporation after it has filed an election statement.

(5) Approval of Election.

When the section 953(d) election is approved, a stamped copy of the election statement and, if applicable, the executed closing agreement will be returned to the electing corporation. If an insured or broker receives a copy of the stamped election statement, he will no longer be liable under section 4374 with respect to

the excise tax imposed under section 4371. The exemption from the excise tax is effective as of the first day of the first taxable year for which the election is made. Any excise taxes that have been paid for periods for which the election is effective may be refunded to the person who remitted the taxes. A refund of excise tax (including statutory interest) may be obtained by filing a claim on Form 720 (“*Quarterly Federal Excise Tax Return*”) or Form 843 (“*Claim for Refund and Request for Abatement*”).

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 89–79, 1989–2 C.B. 392, Section II, Procedural Rules, is modified and superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Alexandra K. Helou of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Ms. Helou at (202) 622–3840 (not a toll-free number). For further information concerning the processing of an election under section 953(d), contact Technical Services Group Manager in Plantation, FL, at (954) 423–7344 (not a toll-free number).

APPENDIX A

The election statement must set forth the following information, which may be provided in the following format:

FOREIGN INSURANCE COMPANY ELECTION UNDER SECTION 953(d)

(1)

(Name, address, principal place of business, if different, tax identification number, and place of incorporation of the electing corporation) hereby elects to be treated as a domestic corporation for U.S. tax purposes. [The electing corporation may obtain a tax identification number by filing a Form SS–4 (“*Application for Employer Identification Number*”) with the Philadelphia Submission Processing Center.]

- (2) *(Name of electing corporation)* waives all benefits to *(Name of electing corporation)* granted by the United States under any treaty.
- (3) *(Name of electing corporation)* agrees, (for all years in which this election is in effect), to timely file a U.S. income tax return and timely remit the income tax due on its income, determined as if *(Name of electing corporation)* were a domestic corporation subject to part I or part II of subchapter L, and the additional tax imposed under section 953(d)(6).
- (4) Attached to this election statement is a complete list of all U.S. shareholders (within the meaning of section 953(c)(1)(A)) of *(Name of electing corporation)* as of a date no more than 90 days prior to the date this election statement is mailed. The list includes the name, address, and tax identification number of, and ownership percentage for, each U.S. shareholder. *(Name of electing corporation)* agrees to file an updated list containing the information prescribed in this paragraph determined as of the last day of each taxable year. This updated list will be filed with the U.S. tax return reporting the income earned by the electing corporation for each taxable year the election is in effect.
- (5) Attached to this election statement is the Form 2848 (“*Power of Attorney and Declaration of Representative*”) or Form 8821 (“*Tax Information Authorization*”) designating a U.S. resident authorized to receive confidential tax information, including any notice of deficiency, on behalf of *(Name of electing corporation)*. *(Name of electing corporation)* agrees to produce its books and records, or a true and accurate copy thereof, in the United States upon request of the Internal Revenue Service.
- (6) *(Name of electing corporation)* maintains an office or other fixed place of business in the United States located at _____ and owns assets which are physically located in the United States with an adjusted basis equal to 10% of the base year's gross income of *(Name of electing corporation)* (“Office and Asset Tests”). Attached is the Asset Calculation Sheet [see Appendix B].

or

- (6) *(Name of electing corporation)* is a member of a consolidated group within the meaning of Treas. Reg. § 1.1502-1(h). *(Name of electing corporation)* satisfies the Office and Asset Tests based on the office and assets of *(Name of U.S. Affiliate)* (a member of the consolidated group). *(Name of U.S. Affiliate)* maintains an office or fixed place of business in the United States located at _____ and owns assets that are physically located in the United States with an adjusted basis equal to 10% of *(Name of electing corporation)*'s gross income for the base year. Attached are: 1) a copy of the Form 1122 (“*Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*”) in which the electing corporation consented to be included in the consolidated return, if such form was filed for the electing corporation; 2) a copy of the most recent Form 851 (“*Affiliations Schedule*”) filed by the consolidated group; 3) copies of the supporting statements attached to the most recent consolidated return, showing gross and taxable income and beginning and ending balance sheets with respect to the U.S. Affiliate upon whose office and assets the electing corporation will rely to satisfy the Office and Asset Tests; and 4) the Asset Calculation Sheet [see Appendix B].

or

- (6) *(Name of electing corporation)* agrees to provide security for the payment of any amounts due under the Code. The security will be in an amount and upon such terms as stated in a closing agreement to be executed between the Internal Revenue Service and *(Name of electing corporation)*. Attached is the power of attorney, Form 2848, for the person authorized to execute a closing agreement on behalf of *(Name of electing corporation)*.
- (7) This election shall be effective as of the first day of the electing corporation's taxable year (including a short taxable year) commencing _____. The undersigned declares under penalty of perjury that the statements contained in this election and accompanying documents are true and complete to the best of his/her knowledge and belief.

Date

(Title)

(Name of corporation)

APPENDIX B

Asset Calculation Sheet

Taxable year upon which this calculation is based:

Is this calculation based upon full year actual or annualized figures?

(See Section 4.04(4)(c) of this revenue procedure)

Gross Premiums

Less return premiums and
premiums paid for reinsurance

(

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Investment income

Total gross income of electing corporation

10% of gross income of electing corporation

Total assets of (electing corporation or U.S. Affiliate)
held in the United States
