

Internal Revenue Service

Department of the Treasury

Number: **200321013**
Release Date: 5/23/2003
Index Number: 9114.03-19

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:BR1-PLR-156970-02

Date:

February 18, 2203

TY:

Legend

Taxpayer =

Date A =

Date B =

X =

Y =

Dear . :

This responds to your letter dated September 30, 2002, in which you requested a ruling and closing agreement that premiums received by Taxpayer on policies of insurance or reinsurance of U.S. risks are exempt from the insurance excise tax imposed by § 4371 of the Internal Revenue Code of 1986, as amended ("Code"), pursuant to the United States-Ireland Income Tax Convention ("Treaty").

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

Taxpayer is a reinsurance company that was organized in Ireland on Date A. It is a wholly owned subsidiary of X, a insurance company. Y, a publicly traded corporation, owns more than 50% of the stock of X.

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

PLR-156970-02

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

The 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.

Article 2(1)(a) (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 Federal 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.

Paragraph 2 of the Protocol Amending the 1997 Tax Convention with Ireland ("Protocol") to the Treaty requires that an Irish insurance company be subject to the generally applicable Irish tax on such companies, as follows:

For the purposes of paragraph 1, it is understood that this Convention shall not apply to the Federal Excise Taxes imposed on insurance premiums paid to foreign insurers where such premiums are not subject to the generally applicable tax imposed on insurance corporations in the Contracting State in which such insurers are resident.

The limitation on benefits provision in Article 23 of the Treaty sets forth several alternative safe harbors for claiming benefits under the Treaty. Article 23(3)(a) provides that a person who is not a "qualified person" under paragraph (2) of Article 23 nevertheless may qualify for benefits under the Treaty

with respect to an item of income derived from the other State, if:

i) such resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless such business is carried out by a bank or insurance company acting in the ordinary course of its business), and

ii) the item of income is connected with or incidental

PLR-156970-02

to the trade or business in the first-mentioned State, provided that, where such item is connected with a trade or business in the first-mentioned State and such resident has an ownership interest in the activity in the other State that generated the income, the trade or business is substantial in relation to that activity.

Paragraph 9(b)(i)(B) of the Protocol states that:

an insurance company will be considered to be engaged in the active conduct of a trade or business if its gross income consists primarily of insurance or reinsurance premiums and investment income attributable to such premiums.

Article 23(3)(b)(i) of the Treaty provides that an item of income is connected with a trade or business:

if the activity in the other State that generated the item of income is a line of business that forms a part of or is complementary to the trade or business conducted in the first-mentioned State by the income recipient.

Taxpayer represents that it is a resident of Ireland and is subject to the generally applicable Irish tax imposed on Irish insurance companies. Taxpayer states that all of its gross income will consist of premiums and investment earnings attributable to such premiums. The premium income it receives from U.S. insured is generated by an activity that forms a "part of" its trade or business in Ireland, according to Taxpayer. Taxpayer does not expect to receive premiums from only one U.S. company. In 2001, Taxpayer received the majority of its premium income from policies written on risks located outside of Ireland and the United States. Further, Taxpayer represents that the following decisions are made by employees in its office in Ireland: decisions regarding whether to reinsure a risk, computations and decisions regarding the pricing of a reinsurance policy, the decision as to whether any risk reinsured by Taxpayer should be reinsured with another reinsurer, and decisions regarding the investment of premiums.

Based on these representations, we conclude that Taxpayer satisfies the active trade or business test of Article 23(3) and is eligible for benefits under the Treaty.

According to paragraph (8)(a) of the Closing Agreement, the liability of 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 B. The letter of credit required by paragraph (5)(a) of the Closing Agreement, in the amount of \$, must be in effect within 30 days of the date the agreement is signed on behalf of the Commissioner.

PLR-156970-02

Any person otherwise required to remit the federal excise tax on foreign insurance or reinsurance policies issued by 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 Taxpayer on and after Date B, 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 Taxpayer is an insurance company or whether premiums paid to 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

Sincerely,

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

cc:

Under section 7121 of the Internal Revenue Code of 1986, as amended ("the Code"),

(the "Taxpayer" or "____"), and the Commissioner of Internal Revenue ("the Commissioner") make the following closing agreement:

WHEREAS, section 3.02 of Rev. Proc. 92-39 provides that the person required to remit the tax may consider the premium exempt if, prior to filing the return for the taxable period, such person has knowledge that the Irish insurer or reinsurer has in effect a closing agreement to be liable as a United States

PLR-156970-02

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 Irish 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, Taxpayer represents that it is, and will continue to be, eligible for benefits under the Convention; and

WHEREAS, 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 for 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,

PLR-156970-02

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

PLR-156970-02

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 (but in no event less than 60 days) determined as reasonable by the Director, 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 section 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

PLR-156970-02

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 Ireland. 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 Insurance Commissioners list of banks from which letters of credit may be accepted, in favor of the Internal Revenue Service in the amount of \$ 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, 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

PLR-156970-02

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 \$ 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 the 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 Treaty by publication or otherwise.

PLR-156970-02

(7)(a) This closing agreement shall include, as an attachment hereto, a statement from the local tax office with which the insurer or reinsurer files its Irish tax returns certifying that Taxpayer is a resident of Ireland as defined in the Convention and a statement from Taxpayer that the Taxpayer is not disqualified from receiving benefits under the Convention by reason of Article 23 of the Convention. Taxpayer shall submit such information on its statement as will establish its entitlement to benefits under the Convention.

(b) The statement from the local tax office in Ireland 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 re-certification along with a photocopy of this closing agreement to:

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

Taxpayer also agrees to promptly notify the Competent Authority of Ireland and the Internal Revenue Service of any change that may result in its disqualification from receiving Treaty

PLR-156970-02

benefits.

(8)(a) This closing agreement shall be effective January 1, 2003. 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 duplicate of such "Final Return" to:

Internal Revenue Service
1111 Constitution Avenue, 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.

PLR-156970-02

WHEREAS, the determinations 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 __ day of _____ 2002.

By _____

PLR-156970-02

Title_____

Commissioner of Internal Revenue

By_____
Associate Chief Counsel (International)
By_____
Director

(International)