Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:Br1-PLR-116231-99

Re:

Date:
August 23, 2000

Company A =

Company B =
City C =
Percentage D =
Percentage E =

Dear Sirs:

This responds to your letter dated August 6, 1999, as supplemented by your letter dated February 2, 2000, in which you requested a ruling and closing agreement that premiums received by Company A ("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 pursuant to the United States - France Income Tax Convention (the "Convention").

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements 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.

Company A, a foreign stock insurance and reinsurance company operates almost exclusively in France. Company A represents that it has no United States office or agents that are engaged in the business of reinsurance, and, therefore, has no income which is effectively connected with a U.S. trade or business. The taxing authority of France has certified that Company A is a resident of France for their income tax purposes.

Company A underwrites property and casualty reinsurance policies. Company A is owned by Company B. Company B owns Percentage D of Company A, directly, and owns Percentage E, directly and indirectly. Company B is a resident of France for purposes of the Convention. Additionally, Company B has one principal class of stock which is listed on the City C stock exchange.

Article 2, paragraph 1(a) of the Convention provides that the Convention 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 30 of the Convention establishes the limitations that determine whether a resident of one of the contracting states is a person entitled to benefits under the Convention. Company A asserts that it qualifies for benefits under the Convention pursuant to paragraph 1(c)(ii) of Article 30. Under paragraph 1(c)(ii) a company is eligible for benefits under the Convention if more than 50 percent of the aggregate vote and value of its shares are owned, directly or indirectly, by any combination of companies that are resident in either Contracting State. Under this subparagraph, the resident companies must have their principal classes of shares listed, and regularly and substantially traded on a recognized exchange.

Article 30, paragraph 6 of the Convention defines “directly and indirectly” and "recognized securities exchange". Article 30, paragraphs 6(a) and (e) state:

> 6. The following definitions shall apply for purposes of this Article:
>
> (a) The reference in subparagraphs (c)(ii) and (c)(iii) of paragraph 1 to shares that are owned “directly and indirectly” shall mean that all companies in the chain of ownership must be residents of a Contracting State or of a member state of the European Union, as defined in subparagraph (d) of paragraph 6.
>
> *** * ***
>
> (e) The term "recognized securities exchange" as used in paragraph 1 means:
>
> * * *
>
> (ii) the French stock exchanges controlled by the “Commission des operations de bourse” ....

Since Company B owns directly and indirectly Percentage E of Company A, taxpayer satisfies the requirement that it be owned more than 50 percent by a publicly traded corporation resident in France. Further, since Company B’s principal class of stock is listed on the City C stock exchange, taxpayer satisfies the requirement that Company B’s stock be listed on a recognized exchange.

Additionally, taxpayer has provided data which substantiates that trades in Company B's principal class of stock are effected on the City C stock exchange other than in de minimis quantities during every month, and the aggregate number of shares of that class traded on the exchange during the previous taxable year is at least 10% of the average number of shares outstanding in that class during the taxable year. As a result, taxpayer satisfies the requirement that its stock be regularly and substantially traded on a recognized exchange. Accordingly, the taxpayer satisfies the requirements of Article 30, paragraph 1(c)(ii) of the Convention.

Pursuant to paragraph 8(a) of the attached 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 Convention or another Convention, will commence on January 1, 2000. The letter of credit required by paragraph 5(a) of the attached agreement, in the amount of $75,000, 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 January 1, 2000, 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. 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
Senior Technical Reviewer, Branch 1
Office of the Associate Chief Counsel
(International)

Attachment (1)

cc:

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code,
and the Commissioner of Internal Revenue make the following closing agreement:

WHEREAS, the business profits article (Article 7 of the United States-France Income Tax Convention (the "Convention") exempts insurance or reinsurance premiums paid to a resident of France (Article 2(1)(A) of the Convention) only if the insurer or reinsurer qualifies under Article 30 of the Convention from the Federal excise tax imposed by section 4371 et seq. of the Internal Revenue Code of 1986, as amended, (the "Code") only to the extent that the French insurer or reinsurer does not reinsure such risks with a person not entitled to exemption from such tax under the Convention or another;

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

WHEREAS, the French 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 the 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 section 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 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 ("IRS" or the "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 six years from the end of each taxable period to which this closing agreement applies accounts and records to items of insurance and reinsurance that will be made available upon written request by the IRS at the place mutually agreed upon by the Service and Taxpayer. Taxpayer will also maintain for six 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 it 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 IRS 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 IRS, or otherwise to the Taxpayer's registered address in France. 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 IRS in the amount of $75,000 (if appropriate) 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 from the Commissioner of Internal Revenue.

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

(i) Any tax shown on 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 Revue 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 (if appropriate) 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 local tax office with which the insurer or reinsurer files its French tax returns, with an English translation, certifying that Taxpayer is a resident of France as defined in the Convention and a statement from Taxpayer, with an English translation, that taxpayer is not disqualified from receiving benefits under the Convention by reason of Article 30 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 local tax office shall be effective for a period of three calendar years beginning with the year of receipt with which the insurer or reinsurer files its French tax return. 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 France and the IRS of any change that may result in its disqualification from receiving Treaty benefits.

8. (a) This closing agreement shall be effective for the taxable period immediately following the taxable period within which the agreement is signed by the Commissioner. This agreement shall thereafter continue in effect unless terminated as provided in subparagraph (b) of this paragraph. For purposes of this closing agreement, "taxable period" shall be defined as "taxable quarter."

(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

(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 return 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 Convention.

IN WITNESS WHEREOF, the above parties have subscribed their names to those present, in triplicate.

Signed this 21st day of July 2000

By

Title

By
For Commissioner of Internal Revenue

By
Acting Associate Chief Counsel (International)

Dated this 17th day of August, 2000