Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200252071**
Release Date: 12/27/2002
Index Numbers: 4371.00-00
9114.03-19

Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:Br1-PLR-121723-02
Date:
September 20, 2002

Taxpayer =

Parent =

Dear :

This is in response to a letter dated January 31, 2002, requesting a ruling that premiums received by Taxpayer on policies of insurance or reinsurance of U.S. risks are exempt from the insurance excise tax imposed by I.R.C. § 4371, pursuant to the United States-Sweden Income Tax Convention ("Treaty"). Additional information was received in a letter dated July 23, 2002. The information submitted for consideration is substantially as set forth below.

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 an insurance company organized in Sweden. Taxpayer is wholly owned by Parent, also organized in Sweden. Parent has only one class of stock and all of Parent's stock is traded on the Stockholm Fondbors, the Stockholm Stock Exchange.

Taxpayer's primary business during 2000 was to accept reinsurance business from Parent. This reinsurance business was derived mainly from risks insured by Parent in Sweden. Taxpayer now wishes to accept reinsurance premium from risks located in the United States.

Taxpayer represents that not more than 50% of its gross income is used, directly or indirectly, to meet liabilities to persons not entitled to benefits under Article 17(1)(a), (b), (e) or (f) of the Treaty. The Swedish Tax Authority has certified that Taxpayer is resident in Sweden within the meaning of the Treaty.

I.R.C. § 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. I.R.C. § 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 excise tax imposed by I.R.C. § 4371 when the exemption is claimed under a U.S. income tax treaty.

Paragraph 8(a) of Article 7 (Business Profits) of the Treaty provides:

> 8. (a) The United States tax on insurance premiums paid to foreign insurers shall not be imposed on insurance and reinsurance premiums which are the receipts of a business of insurance carried on by a resident of Sweden whether or not that business is carried on through a permanent establishment in the United States (but only to the extent that the relevant risk is not reinsured, directly or indirectly, with a person not entitled to relief from such tax).

Under Article 17 (Limitation on benefits) of the Treaty, a person may qualify for benefits if an “ownership test” is met:

* * *

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if such person is:

   (d) a person, other than an individual, if:

      (i) more than 50 percent of the beneficial interest in such person (or in the case of a company more than 50 percent of the number of shares of each class of the company’s shares) is owned, directly or indirectly, by persons entitled to benefits of this Convention under subparagraphs a), b), e) or f) of this paragraph or who are citizens of the United States; and

(ii) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are not entitled to benefits of this Convention under subparagraph a), b), e) or f) of this paragraph and are not citizens of the United States;

Article 17(1)(e), referred to above in subparagraph d), states that a person is entitled to benefits of the Swedish Convention if such a person is a company in whose principal class of shares there is "substantial and regular trading" on a recognized stock exchange.

Article 17(3) defines the term "recognized stock exchange" as

(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934;

(b) the Stockholm Stock Exchange (Stockholms Fondbors); and

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

To satisfy the test under Article 17(1)(e) of the Treaty, there must be "substantial and regular trading" in a company's stock. The term "substantial and regular trading" is not defined in the Treaty, the Senate Foreign Relations Committee Report or the Treasury Department's Technical Explanation of the Treaty. However, the Senate Foreign Relations Committee Report describes Article 17 of the Treaty as being similar to the limitation on benefits provisions in the Code and Regulations relating to the Branch Profits Tax.

Under I.R.C § 884(e)(4)(B)(i), a publicly-traded corporation shall be treated as a qualified resident of a treaty country if -

(i) the stock of such corporation is primarily and regularly traded on an established securities market in such country.

Section 1.884-5(d)(4)(i) of the regulations provides:

> For purposes of this section, stock of a corporation is "regularly traded" on one or more established securities markets in the foreign corporation's country of residence . . . for the taxable year if -
>
> (A) One or more classes of stock of the corporation that, in the aggregate, represent 80 percent or more of the total combined voting power of all classes of stock of such corporation are listed on such market or markets during the taxable year;
>
> (B) With respect to each class relied on to meet the 80 percent requirement of paragraph (d)(4)(i)(A) of this section -
>
> (1) Trades in each such class are effected, other than in de minimis quantities, on such market or markets on at least 60 days during the taxable year . . .; and
>
> (2) The aggregate number of shares of each such class that is traded on such market or markets during the taxable year is at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the number of days in the short taxable year divided by 365).

Taxpayer represents that the trading on the 60 highest trading days of the tax year 2001, 1,152,589,381 of 1,023,542,520 (approximately 112%) shares of Parent stock were traded and 269% of the outstanding stock of Parent was traded during the taxable year.

Taxpayer represents that not more than 50% of its gross income is used, directly or indirectly, to meet liabilities to persons not entitled to benefits under Article 17(1)(a), (b), (e) or (f) of the Treaty.

On the basis of the information submitted by Taxpayer, for purposes of Article 17(1)(e), there was substantial and regular trading in the principal class of shares of Parent which owns all of the stock of Taxpayer. Therefore, Taxpayer satisfies the requirements of the limitation on benefits provisions of Article 17.

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 January 31, 2002, the date specified by 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 Taxpayer pursuant to section 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 January 31, 2002, 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 I.R.C. § 162.

This ruling is directed only to the taxpayer requesting it. I.R.C. § 6110(k)(3) 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
Office of CC:INTL:Br1