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-C-112341, 112334-98
Date:
December 18, 1998

In Re:

TY:

A or Taxpayer A =
B or Taxpayer B =
X or Country X =
Treaty =
"n" shares =
S Exchange =

Dear :

This responds to your letter of May 22, 1998, as supplemented by your letter of September 24, 1998. You request a ruling that premiums received by Taxpayer A and Taxpayer B on policies of reinsurance of United States risks are exempt from the insurance excise tax imposed by section 4371 of the Internal Revenue Code of 1986.

The Ruling contained in this letter is predicated upon facts and representations submitted by, or on behalf of, Taxpayers A and B and were accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of this request for rulings. Verification may be required as a part of the audit process.

A and B are both incorporated under the laws of Country X, have their home offices located within Country X and have each been in business for more than 75 years. A is the beneficial owner of 100 percent of the shares of B. Both companies represent that they are entitled to benefits under the United States - X Income Tax Convention.

Pursuant to Article 2(b) of the Treaty, the United States excise tax on premiums paid to foreign insurers is a covered tax but only to the extent that the risks covered by such premiums are not reinsured with a person who is not entitled to the benefits of the Treaty or the benefits of another treaty with similar provisions.

Article 22 of the Treaty establishes the limitations that determine whether a resident of one of the contracting states is a person entitled to benefits under the Treaty. Pursuant to Article 22(1)(e)(i), A claims that it is entitled to the benefits of the Treaty as a resident company "whose principal class of shares is primarily and regularly traded on a recognized stock exchange." Under Article 22(1)(e)(ii), B claims that it is entitled to the benefits of the Treaty since it is a resident company whose shares are predominantly owned by a company that qualifies for benefits under Article 22(1)(e)(i) on the basis that the shares of the parent company are primarily and regularly traded on a recognized stock exchange.

A had a single class of stock consisting of "n" outstanding shares during the year 1997. Consequently, A meets the "principal class of shares" requirement. A's single class of stock was traded on S Exchange, which is an exchange located in X and pursuant to Article 22(7)(1)(a)(i) is a recognized stock exchange for purposes of the Treaty. The Treaty does not define the term "regularly traded" but Article 3(2) of the Treaty specifies that in the absence of a Treaty definition, the term is to be interpreted under U.S. domestic law since the United States is the state from which benefits are being sought. Further, under domestic law, the term is understood to have the same meaning it has in Treas. Reg. §1.884-5(d)(4)(i)(B) relating to the branch profits provisions.

Treas. Reg. §1.884-5(d)(4)(i)(B) provides a two prong test to determine whether a stock is "regularly traded:" (1) The shares must trade in more than a *de minimis* amount on at least 60 days during the year, and (2) The aggregate number of shares traded during the year must equal at least 10 percent of the outstanding stock. A has only one class of shares and during 1997, A represents that the aggregate number of shares traded was in excess of 110 percent of the outstanding shares. Additionally, A represents that over 80,000 shares per day were traded on the 60 largest trading days during 1997.

Thus, based on the information submitted by Taxpayer A, the shares of the company are "primarily and regularly traded on a recognized stock exchange" and A is therefore entitled to the benefits of the Treaty. Based on the information submitted on behalf of Taxpayer B, all of the shares of B are beneficially owned by A and inasmuch as A is qualified to receive Treaty benefits, B is also qualified to receive Treaty benefits pursuant to Article 22(1)(e)(ii) of the Treaty.

Pursuant to paragraphs (8)(a) of the enclosed Closing Agreements, the liabilities of both Taxpayers A and B 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 May 22, 1998, the date of Taxpayers' ruling request. The letters of credit required by paragraphs (5)(a) of the respective Closing Agreements, each in the amount of $75,000, must be in effect within 30 days of the date the Agreements are signed on behalf of the Commissioner.

Any person otherwise required to remit the Federal excise tax on foreign insurance or reinsurance policies issued by either A or B pursuant to section 46.4371-1(a) of the Excise Tax Regulations may rely upon a copy of this letter and/or an executed copy of the appropriate Closing Agreement as authority that they may consider premiums paid to you on and after May 22, 1998, as exempt under the United States-X Income Tax Convention from the federal excise tax.

This ruling does not address the issues of whether taxpayer is an insurance company or whether premiums paid to taxpayer are deductible under section 162 of the Internal Revenue Code or any other issue on which there is no explicit holding.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

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

~~cc~~:

Enclosures:
Copy of approved Closing Agreement
Copy for section 6110 purposes