

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br1-PLR-101117-01

Date:

March 2, 2001

Legend

Taxpayer =

Dear :

This responds to your letter dated August 3, 2000, in which you requested a ruling and closing agreement that premiums received by 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 Income Tax Convention between the United States and the Government of Ireland ("Convention").

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

Taxpayer, a reinsurance company that is a resident of Ireland, represents that it is engaged in an active trade or business in Ireland and that the premium income it receives from U.S. insureds, none of whom are related to Taxpayer, is derived in connection with, or is incidental to, that trade or business. Therefore, Taxpayer contends that it qualifies for benefits under Article 23(3) of the Convention.

Article 23(3)(a) of the Convention provides that a person who is not a "qualified person" under paragraph (2) may nevertheless qualify for benefits under the Convention

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 to the trade or

business in the first-mentioned State, provided that, where such item of income 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 the activity.

Paragraph 9(b)(i) of the Protocol to the Convention states that whether a resident is engaged in the active conduct of a trade or business will be determined on the basis of an analysis of all relevant facts and circumstances but that

[i]n any case, . . .

(B) 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.

Taxpayer meets the requirements of Article 23(3)(a) of the Convention and paragraph 9(b)(i) of the Protocol.

Further, to be entitled to benefits under the Convention, the item of income derived from the other State must be “connected with or incidental to the trade or business in the first-mentioned State. . . .” Pursuant to Article 23(3)(b)(ii) of the Convention, an item of income meets this requirement if the activity “[t]hat 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” other State. The receipt of insurance and reinsurance premiums from the United States is “complementary” to Taxpayer’s insurance business in Ireland. Thus, Taxpayer qualifies for benefits under Article 23(3)(b) of the Convention with respect to reinsurance premiums it receives from persons in the United States.

Pursuant to paragraph 8(a) of the enclosed 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 _____ The letter of credit required by paragraph 5(a) of the enclosed 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 _____, as exempt under the Convention from the United States 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. Furthermore, no opinion is expressed on the issue of whether Taxpayer is an insurance company or whether premiums paid to Taxpayer are deductible under section 162 of the Internal Revenue 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 by any other taxpayer.

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 Associate Chief Counsel
(International)

Enclosure (1)

CLOSING AGREEMENT OF FINAL
DETERMINATION COVERING
SPECIFIC MATTERS

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

, EIN , an Irish reinsurance company (referred to herein as " "), and the Commissioner of Internal Revenue ("the Commissioner") make the following closing agreement:

WHEREAS, the business profits article (Article 7 of the United States-Ireland Income Tax Convention (the "Convention")) exempts insurance or reinsurance premiums paid to a resident of Ireland from the Federal excise tax imposed by section 4371 et seq. of the Code but only to the extent that the Irish insurer or reinsurer does not reinsure such risks with a person not entitled to exemption from such tax under the Convention or another convention (Article 2(1)(a) of the Convention) and only if the insurer or reinsurer qualifies under Article 23 of the Convention;

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

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

WHEREAS, _____ (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 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 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 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 Assistant Commissioner (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 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 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 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.

(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 in 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 recertification 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 benefits.

(8)(a) This closing agreement shall be effective December 27, 1999. 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.

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 _____ 1999.

By_____

Title_____

Commissioner of Internal Revenue

By_____

Associate Chief Counsel
(International)

By_____

Assistant Commissioner
(International)

(Date)