

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br1-PLR-163028-01

Date:

May 28, 2002

Taxpayer =

TY:

Dear _____ :

This responds to your letter dated November 14, 2001, 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 \$, 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)