



PLR-125702-03

Taxpayer is a corporation registered in Finland and authorized to transact life insurance operations pursuant to the laws of Finland. Taxpayer represents that it is a mutual insurance company that writes all classes of non-life insurance coverage, and that it intends to provide for a profit policies of both insurance and reinsurance to entities which are exempt from or subject to excise tax as imposed under § 4371 of the Code. Taxpayer further represents that it is engaged in an active trade or business in Finland, and that premiums from both insurance and reinsurance are derived in connection with that trade or business.

Section 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. See § 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 § 4371 excise tax when the exemption is claimed under a U.S. income tax treaty. Pursuant to section 5 of Rev. Proc 92-39, the procedures may be used by insurers and reinsurers claiming benefits under the Treaty.

Article 7(1)(Business Profits) of the Treaty provides as follows:

The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries or carried on business in the other Contracting State through a permanent establishment situated therein.

Article 2(1)(b)(Taxes Covered) includes the § 4371 excise tax within the scope of the Treaty, but contains the following limitation:

The Convention shall, however, apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other convention which provides exemption from such taxes.

The limitation on benefits provision in Article 16 of the Treaty provides that a person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under the Treaty to relief from taxation in that other State only if such person meets one of the alternative safe harbors for claiming benefits under the Article. Article 16(1)(c) provides Treaty relief in the case of a resident of Finland that is:

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c) 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 these activities are banking or insurance activities carried on by a bank or insurance company), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business;...

Under section 3.06 of Rev. Proc.92-39, for closing agreement purposes the Internal Revenue Service will consider premiums received by a foreign insurer or reinsurer to be derived in connection with, or incidental to, the active conduct of a trade or business in the country of residence by a taxpayer if for the taxpayer's preceding taxable year the average of the following three ratios exceeds twenty-five percent and each ratio is equal to at least twenty percent:

- 1) The ratio that the average value of the assets of the insurer or reinsurer used or held for use in the active conduct of a trade or business in the residence country during the taxable year bears to the value of all its assets;
- 2) The ratio that gross premiums received by the insurer or reinsurer for policies on risks situated in the residence country bears to total gross premiums received by the insurer or reinsurer; and
- 3) The ratio that the insurer or reinsurer's payroll and commission expense paid to employees and agents for services performed in the country of residence bears to the insurers or reinsurer's worldwide payroll and commission expense.

The Taxpayer represents that it is engaged in an active trade or business in Finland, and that its premiums from both insurance and reinsurance of U.S. risks are derived in connection with that trade or business. In support of this position, Taxpayer supplied the relevant ratios that satisfy the requirements of section 3.06 of Rev. Proc, 92-39. Based on these representations, we conclude that the Taxpayer satisfies the active trade or business test of Article 16(1)(c) and is eligible for benefits under the Treaty.

According to paragraph (8)(a) of the Closing Agreement, the liability of the 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 April 2, 2003. The letter of credit required by paragraph (5)(a) of the Closing Agreement, in the amount of \$ \_\_\_\_\_, must be in effect within 30 days of the date the agreement is signed on behalf of the Commissioner.

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Any person otherwise required to remit the federal excise tax on foreign insurance or reinsurance policies issued by the Taxpayer pursuant to § 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 the Taxpayer on and after April 2, 2003, as exempt under the Treaty from the federal excise tax.

Please refer to section 6 of Rev. Proc. 2003-78, 2003-45 I.R.B. 1, for instructions on how to comply with Paragraph 7(b) of the closing agreement (requiring the taxpayer (i) to obtain a certificate of residency from the tax authorities in its home jurisdiction every three years, and/or (ii) to certify its eligibility for benefits under the relevant treaty on an annual basis). This revenue procedure provides that the requirements of Paragraph 7(b) of your closing agreement will be satisfied if the taxpayer complies with the certification of residency and entitlement to treaty benefits requirement as provided in paragraph 9 of the closing agreement set forth in Appendix A of Rev. Proc. 2003-78. A copy of this revenue procedure is enclosed.

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 the Taxpayer is an insurance company or whether premiums paid to the Taxpayer are deductible under §162 of the 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the Taxpayer's representatives.

Sincerely,

W. Edward Williams  
Special Counsel  
Office of the Associate Chief Counsel  
(International)

Enclosures (2)