Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

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Date:
June 1, 1999

DO: TY:

A	=
B	=
C	=
D	=
Country Y	=
Year E	=
Year F	=
Date G	=
Date H	=
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Dear :

This responds to your letter dated November 18, 1998, as supplemented by letters dated February 2, 1999, and March 24, 1999. You request a ruling that premiums received by A 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 of 1986, as amended.

The ruling contained in this letter is based upon information and representations submitted by, or on behalf of, the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

A was organized under the laws of Switzerland in Year E and has been in business there ever since. A's home office is located within Switzerland. C was incorporated under the laws of Switzerland in Year F. A represents that both A and C are residents of Switzerland under the United States-Switzerland Income Tax Convention (the "Treaty").

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. A asserts that it qualifies for Treaty benefits pursuant to Article 22(1)(e)(ii) because a predominant interest in A is ultimately beneficially owned by C, a Switzerland resident that qualifies for benefits under Article 22(1)(e)(i). Article 22(1)(e)(i) provides that a resident company "whose principal class of shares is primarily and regularly traded on a recognized stock exchange" qualifies for Treaty benefits.

C had a single class of stock consisting of "n" outstanding shares during Year F. Consequently, C meets the "principal class of shares" requirement. C's single class of stock was traded on the Swiss Exchange, which is an exchange located in Switzerland and pursuant to Article 22(7)(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, a 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. section 1.884-5(d)(4)(i)(B) relating to the branch profits provisions.

Treas. Reg. section 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. First, A represents that trades in C's shares were effected in more than de minimis quantities, on at least 60 days during Year F. Additionally, C has only one class of shares and during the period Date G through Date H, C represents that the aggregate number of shares traded was "o" shares, representing "p" percent of the outstanding shares.

Thus, based solely on the information submitted, we conclude that shares of C are primarily and regularly traded on a recognized stock exchange for purposes of Article 22(1)(e)(i). Thus, C may claim Treaty benefits pursuant to Article 22(1)(e)(i).

According to the Technical Explanation, under Article 22(1)(e)(ii), a company will qualify

for Treaty benefits if one or more of the companies described in Article 22(1)(e)(i) are the ultimate beneficial owners of a predominant interest in the company. The Technical Explanation explains that a predominant interest is (1) a direct, or indirect, interest of more than 50 percent of the equity interests in an entity in addition to (2) a direct, or indirect, interest of more than 50 percent of the aggregate business interests of the entity.

A is wholly owned by B, a privately held company. B is owned 57 percent by C and 43 percent by D. C and D also hold "income shares" in B in proportion to their ownership interests. Income shares confer on their holders the right to receive a dividend if and to the extent that dividends are issued. Such shares do not confer on their holders any voting rights or other rights of control, any rights to subscribe to new shares, or any rights to proceeds of liquidation. The income shares enable B to pay different dividends to C and D in order to equalize dividends such that dividends will be paid in proportion to C and D's ownership percentages, if required. In addition, A represents that persons not entitled to Treaty benefits do not hold more than fifty percent of the aggregate business interests in B and do not have the right to receive, directly or indirectly, payments from B that reduce the amount of A's taxable income.

Based solely on the information submitted, we conclude that because no person who is not entitled to Treaty benefits is the ultimate beneficial owner of a direct or indirect interest in more than fifty percent of equity interests in A, and because no person who is not entitled to Treaty benefits is, in the aggregate, the ultimate beneficial owner of a direct, or indirect, interest in more than 50 percent of the aggregate business interests of A, C is the ultimate beneficial owner of a predominant interest in A.

Thus, based on the information submitted by A, it is concluded that C may claim Treaty benefits pursuant to Article 22(1)(e)(i), inasmuch as C is qualified to receive Treaty benefits and C is the ultimate beneficial owner of a predominant interest in A pursuant to Article 22(1)(e)(ii), we conclude that A may claim Treaty benefits pursuant to Article 22(1)(e)(ii) of the Treaty.

Pursuant to paragraph (8)(a) of the enclosed Closing Agreements, the liabilities of A 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 January 1, 1999, the date specified by A. 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 A 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 A

on and after January 1, 1999, as exempt under the Treaty from the Federal excise tax.

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. This ruling does not address the issues of whether A is an insurance company or whether premiums paid to A are deductible under section 162 of the Internal Revenue Code or the tax consequences of any aspect of any transaction or item not discussed or referenced in this letter.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

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

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

cc:

CLOSING AGREEMENT ON FINAL DETERMINATION
COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code

, and
the Commissioner of Internal Revenue make the following closing agreement:

WHEREAS, the business profits article (Article 7 of the United States-Switzerland Income Tax Convention, the "Convention"), exempts insurance or reinsurance premiums paid to a resident of Switzerland from the Federal excise tax imposed by section 4371 et seq. of the Internal Revenue Code of 1986, as amended, (the "Code") only to the extent that the Swiss insurer does not reinsure such risks with a person not entitled to exemption from such tax under the Convention or another convention (Article 2(2)(b) of the Convention) and only if such Swiss insurer or reinsurer qualifies under Article 22 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 Swiss 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 Swiss 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, the Swiss insurer or reinsurer represents that it is and will continue to be eligible for benefits under the Convention; and

WHEREAS, the Swiss insurer or reinsurer (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 eq. 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 Sections 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 with 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 the 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 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) Such returns 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 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 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 sections 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 Switzerland. 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) Taxpayer shall, as security for payment of tax, 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 **US $ 75,000** 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 additional tax due shall have expired, provided that the statement of notice and demand shall have 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 **US $ 75,000,** 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 Convention by publication or otherwise.

(7)(a) This closing agreement shall include, as an attachment hereto, a statement from the Competent Authority of Switzerland, with an English translation, certifying that Taxpayer is a resident of Switzerland as defined in Convention and a statement from Taxpayer, that Taxpayer is not disqualified from receiving benefits under the Convention by reason of Article 22 of the Convention. Taxpayer shall submit such information in its statement as will establish its entitlement to benefits under the Convention.

(b) The statement certifying to the residency of the taxpayer shall be effective for a period of 3 calendar years beginning with the year of receipt. The 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, and to provide an original and one copy of the recertification along with a photocopy of this closing agreement to:

Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224, U.S.A.
Attn: CC:INTL:1

Taxpayer also agrees to promptly notify the Competent Authority of Switzerland 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 **January 1, 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 Ave., N.W.
Washington, DC. 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 return is completed and any additional tax due has been paid, whichever is later.

WHEREAS, the determination 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 determination 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 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 18th day of November, 1998

By _____

By _____

COMMISSIONER OF INTERNAL REVENUE

By _____
Associate Chief Counsel
(International)

By _____
Assistant Commissioner
(International)

5/19/99
(Date)