Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number

Refer Reply to
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Date:
January 16, 2002

Taxpayer =
Holding Company =
Parent =
Date A =
Number B =

Dear

This responds to your letter dated October 5, 2001, in which you requested a ruling that premiums received by Taxpayer on policies of insurance or reinsurance of U.S. risks are exempt from the insurance excise tax imposed by § 4371 of the Internal Revenue Code of 1986, as amended (the "Code"), pursuant to the United States-Ireland Income Tax Convention (the "Treaty").

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. Although this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

The Taxpayer is an insurance and reinsurance company that was organized in Ireland on Date A. It is a wholly owned subsidiary of Holding Company, an Irish holding company. All of the stock of Holding Company is owned by Parent, a Bermuda holding company. Parent is owned by Number B individual U.S. residents. Taxpayer's day-to-day operations are conducted by an unrelated insurance management company.

Section 4371 imposes an excise tax on premiums paid on insurance policies issued by foreign insurers or reinsurers of risks located in the United States. 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. 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 on business in the other Contracting State through a permanent establishment situated therein.

Article 2(1)(a)(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 Federal 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 these taxes.

Paragraph 2 of the Protocol to the Treaty requires that an Irish insurance company be subject to the generally applicable Irish tax on such companies, as follows:

> For the purposes of paragraph 1, it is understood that this Convention shall not apply to the Federal Excise Taxes imposed on insurance premiums paid to foreign insurers where such premiums are not subject to the generally applicable tax imposed on insurance corporations in the Contracting State in which such insurers are resident.

To qualify for treaty benefits, a taxpayer must satisfy one of the requirements of Article 23 (Limitation on Benefits). Article 23(3)(a) provides that a person who is not a "qualified person" under paragraph (2) of Article 23 nevertheless may qualify for benefits under the Treaty

> 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 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 that activity.

Paragraph 9(b)(i)(B) of the Protocol to the Treaty states that

> 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.

Article 23(3)(b)(i) of the Treaty provides that an item of income is connected with a trade or business

> if the activity in the other State that 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 first-mentioned State by the income recipient.

The Taxpayer represents that it is a resident of Ireland and is subject to the generally applicable Irish tax imposed on Irish insurance companies. The Taxpayer states that all of its income will consist of premiums and investment earnings attributable to such premiums. The premium income it expects to receive from U.S. insureds, none of whom is related to the Taxpayer, is a "part of" its trade or business in Ireland, according to the Taxpayer. Based on the representations made, we conclude that the Taxpayer satisfies the active trade or business test of Article 23(3) and is eligible for benefits under the Treaty.

According to paragraph (8)(a) of the Closing Agreement, the liability of 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 October 8, 2001, the date specified by Taxpayer. 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 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 Taxpayer on and after October 8, 2001, as exempt under the Treaty from the 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. This ruling does not address the issues of whether Taxpayer is an insurance company or whether premiums paid to 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.

Sincerely yours,
EDWARD WILLIAMS
Senior Technical Reviewer, Branch 1
Office of Associate Chief Counsel
(International)