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June 4, 1990

No. 447

BULLETIN TO ALL MEMBERS:

RE: Federal Excise Tax on Insurance Premiums - I.R.S. Waives Reporting Requirements for U.S. and Foreign Brokers and Insureds.

On May 31, 1990, the I.R.S. released Notice 90-40 announcing significant amendments to the reporting requirements imposed by the March 12, 1990 Regulations issued under Section 6114 of the Internal Revenue Code. These reporting requirements, insofar as they related to the Federal Excise Tax (the "FET"), were summarized in Surplus Line Association Bulletin No. 445 dated April 23, 1990. The May 31 amendments waive these reporting requirements for FET for U.S. and foreign brokers and U.S. insureds. Only non-U.S. insurers and reinsurers must comply with the Section 6114 FET reporting requirements as newly modified by Notice 90-40. A copy of Notice 90-40 is attached for your reference.

Please be advised that the waiver announced in Notice 90-40 does not affect the continuing obligation of U.S. and foreign brokers and U.S. insureds to collect and remit the FET where required. Should you have questions concerning your responsibilities relating to FET, we suggest that you consult with your tax counsel or contact the I.R.S. directly.

Very truly yours,

A. D. Freeman, Jr.

A. D. Freeman, Jr.
Manager

ADF:mfq

encl.



TAXATION, BUDGET AND ACCOUNTING

International Taxes

IRS WAIVES REPORTING FOR CERTAIN INSURERS TAKING TREATY-BASED POSITIONS

The Internal Revenue Service announced May 30 in an advance copy of Notice 90-40 that it will waive, under certain circumstances, the requirement that foreign insurers report that a treaty exempts the taxpayer from the excise tax imposed under Internal Revenue Code Section 4371.

The waiver was one of certain additional rules that IRS said it will incorporate into existing final regulations (TD 8292) under Section 6114 governing the disclosure of treaty-based return positions. The regulations, issued in March (50 DER G-3, L-1, 3/14/90), require taxpayers to report to IRS their reliance on a treaty that overrides or modifies an internal revenue law.

The notice also added a rule stating that premiums on casualty insurance and indemnity bonds, life insurance, sickness and accident policies, and annuity contracts, or reinsurance may be treated as a single payment or income item for certain reporting purposes.

The notice will be published in Internal Revenue Bulletin No. 90-26, dated June 25, 1990.

The text of Notice 90-40 follows:

Part III

Administrative, Procedural, and Miscellaneous

Revisions to §301.6114-1(c)(7) and (d)

Notice 90-40

The Internal Revenue Service today announced that certain additional rules will be incorporated in section 301.6114-1(c)(7) and (d) of the final regulations under section 6114 of the Internal Revenue Code. These regulations relate to the requirement that any taxpayer who takes a position that a treaty of the United States overrules, or otherwise modifies, an internal revenue law of the United States must disclose such position. The existing final regulations were published in the Federal Register for Wednesday, March 14, 1990, at 54 FR 9438.

Pursuant to section 6114(b) of the Code, with respect to policies issued by foreign insurers, reporting that a treaty exempts the taxpayer from the excise tax imposed by section 4371 will be waived under section 6114 for both—

- (1) An insured, as defined in section 4372(d), and
- (2) A U.S. or foreign broker of insurance risks.

This reporting will not be waived, however, in the case of a foreign insurer or reinsurer, as defined in section 4372(a). Therefore, subject to the conditions of section 301.6114-1(c)(7) of the regulations, these foreign insurers and reinsurers must report under section 6114.

For purposes of reporting under section 301.6114-1(d)(4) of the regulations, all premiums on—

(1) Casualty insurance and indemnity bonds (subject to section 4371(1)),

(2) Life insurance, sickness and accident policies, and annuity contracts (subject to section 4371(2)), or

(3) Reinsurance (subject to section 4371(3)), paid by above described insureds with respect to each of the foregoing categories may be treated as a single payment or income item within that category.

For reports with respect to payments of insurance made during calendar years 1988, 1989 and 1990, such reports may disclose, under section 301.6114-1(d)(4)(i), for each of the three categories set forth above, the total amount of premiums derived by a foreign insurer or reinsurer in U.S. dollars (even if a portion of these premiums relate to risks that are not U.S. situs). As is the general rule, reasonable estimates of the amounts required to be disclosed will satisfy these reporting requirements. Foreign insurers and reinsurers must report for calendar years 1988 and 1989 no later than August 15, 1990.

The foregoing rules, when incorporated in final regulations, will apply to taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988.

This document serves as an "administrative pronouncement" as that term is used in section 1.6661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

EFFECT ON OTHER DOCUMENTS

Sections 301.6114-1(c)(7) and 301.6114-1(d) will be modified.

DRAFTING INFORMATION

Questions concerning this Notice may be directed to its principal author, David Bergkuist, Office of Associate Chief Counsel (International), either by writing to CC:INTL:Br4, Room 4567, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, or by calling (202) 566-6442 (not a toll free number).

U.S. Budget

CONGRESS LOOKS AT TAKING TRUST FUNDS OUT OF BUDGET CALCULATION PROCESS

While talks between Congress and the White House on the fiscal 1991 budget are in preliminary stages, one item negotiators have discussed is the possibility of excluding the Social Security trust fund from budget calculations, congressional aides involved in the talks told BNA May 30.

Negotiators are considering leaving the trust fund, which is currently in surplus, out of Gramm-Rudman-Hollings deficit calculations. Since this would increase the size of the budget deficit, under this scenario the current Gramm-Rudman-Hollings targets would be extended out for at least two more years, one aide said. Gramm-Rudman-Hollings is currently set to expire after fiscal 1993.