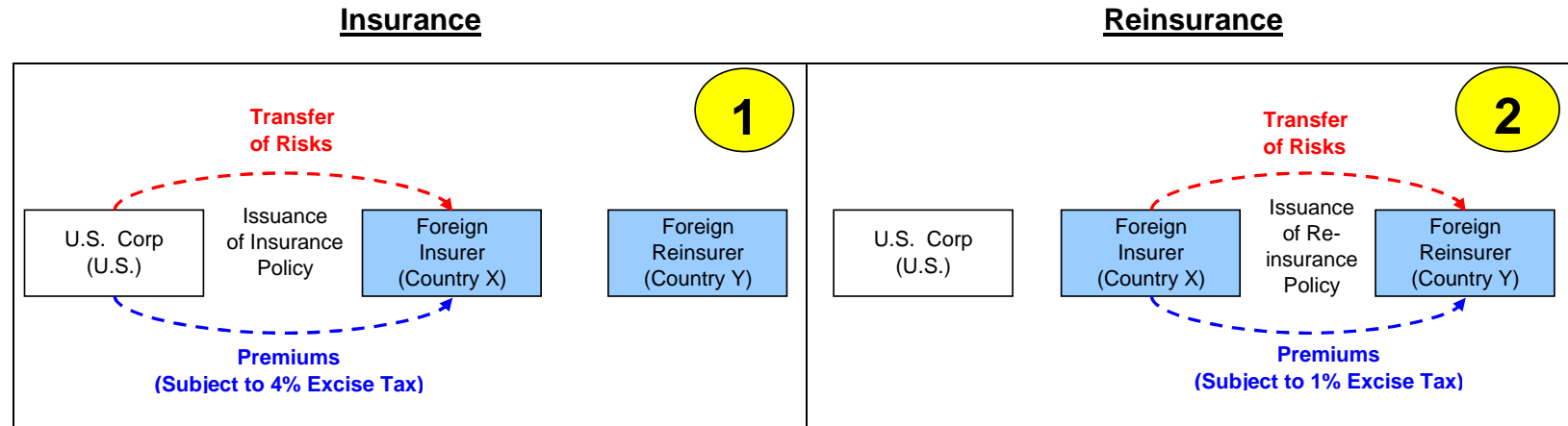


**Section 4371 Excise Tax on Outbound
Insurance & Foreign-to-Foreign Reinsurance**



Foreign Insurer, a foreign corporation incorporated in Country X, issues policies of casualty insurance to U.S. Corporation, a domestic corporation, with respect to hazards, risks, losses, or liabilities wholly or partly within the United States. Foreign Insurer is not engaged in a trade or business in the United States. There is an income tax treaty in force between the United States and Country X (the "U.S.-X Treaty"). Foreign Insurer is a resident of Country X for purposes of the U.S.-X Treaty and satisfies the requirements of the limitation on benefits article in that treaty. Article 2 of the U.S.-X Treaty provides, in pertinent part:

The existing taxes to which this Convention shall apply are: . . . In the case of the United States: . . . the Federal excise taxes imposed on insurance premiums paid to foreign insurers . . . 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 . . .

Foreign Insurer enters into a reinsurance agreement with Foreign Reinsurer, a foreign corporation incorporated in Country Y, whereby Foreign Reinsurer agrees to indemnify Foreign Insurer against all or part of the loss that Foreign Insurer may sustain under the policies it has issued to U.S. Corporation. Foreign Reinsurer is not engaged in a trade or business in the U.S. Country Y has an income tax treaty with the U.S. that does not exempt insurance premiums from the excise taxes imposed by section 4371.

Section 4371 imposes an excise tax on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer. Section 4371(1) imposes such excise tax at the rate of 4 cents on each dollar, or fractional part thereof, of the premium paid on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372(d). Section 4371(2) imposes such excise tax at the rate of 1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of life, sickness, or accident insurance, or annuity contract. Section 4371(3) imposes such excise tax at the rate of 1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2) of section 4371. Section 4372(a), for purposes of Section 4371, defines the term "foreign insurer or reinsurer" as an insurer or reinsurer who is a nonresident alien individual, or a foreign partnership, or a foreign corporation. Section 4372(d)(1) defines the term "insured" to include a domestic corporation or partnership, or an individual resident of the United States, that is insured against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States. The premiums paid by U.S. Corporation on the policies of casualty insurance issued by Foreign Insurer would generally be exempt from the section 4371(1) excise tax under the U.S.-X Treaty. However, the U.S.-X Treaty also provides that such premiums are not exempt to the extent that the risks covered by such premiums are reinsured with a foreign reinsurer not entitled to the benefits of a treaty that provides an exemption from insurance excise taxes. Therefore, because the risks are reinsured with Foreign Reinsurer, who is not entitled to the benefits of a treaty that provides an exemption from insurance excise taxes, the insurance premiums received by Foreign Insurer from U.S. Corporation are subject to the four-percent excise tax as of the date the reinsurance premiums are paid by Foreign Insurer to Foreign Reinsurer. In addition, premiums paid by Foreign Insurer to Foreign Reinsurer on the policies of reinsurance covering contracts described in section 4371(1) are subject to the one-percent excise tax imposed by section 4371(3), because Foreign Reinsurer is a resident of Country Y, which has an income tax treaty with the United States that does not exempt insurance premiums from the excise taxes imposed by section 4371