

**Revenue Ruling 2008-15,
Situation 4**

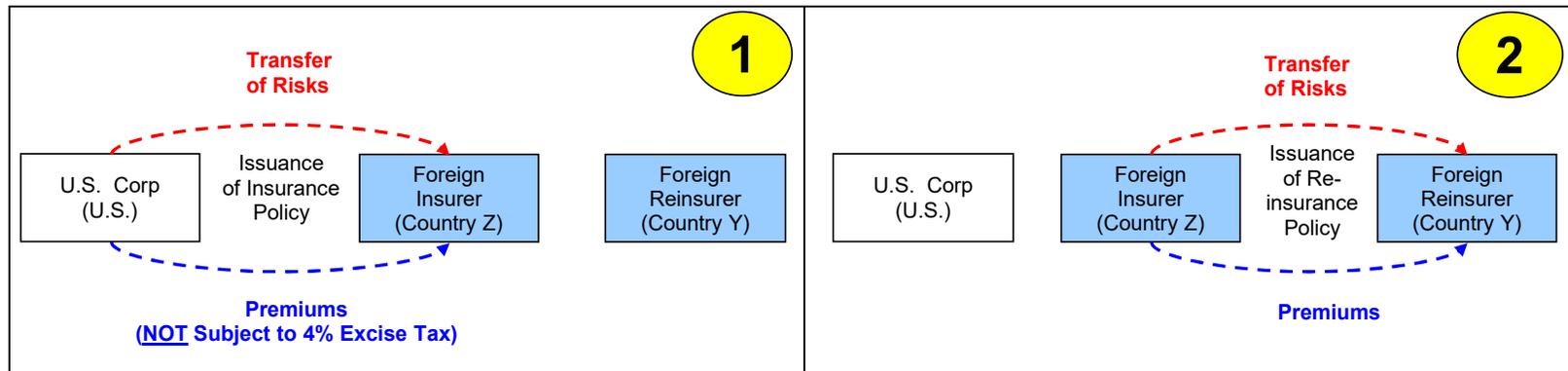
Revoked in Rev. Rul. 2016-3

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

Copyright © 2008 Andrew Mitchel LLC
International Tax Services
www.andrewmitchel.com

Insurance

Reinsurance



Foreign Insurer, a foreign corporation incorporated in Country Z, 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. Foreign Insurer is a resident of Country Z and there is an income tax treaty in force between the United States and Country Z (the "U.S.-Z Treaty") that contains a comprehensive limitation on benefits article. Foreign Insurer satisfies the requirements of the limitation on benefits article in that treaty. Article 2 of the U.S.-Z 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 policies issued by foreign insurers . . . The Business Profits article of the Country Z treaty provides in pertinent part: . . . The United States excise tax on insurance policies issued by foreign insurers shall not be imposed on insurance or reinsurance policies, the premiums on which are the receipts of a business of insurance carried on by an enterprise of Country Z. However, if such policies are entered into as part of a conduit arrangement, the United States may impose excise tax on those policies, unless the premiums in respect of those policies are, or are part of, the income of a permanent establishment that the enterprise of Country Z has in the United States.

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 insurance premiums paid by U.S. Corporation on the policies of casualty insurance issued by Foreign Insurer are exempt from the section 4371(1) excise tax after application of the U.S.-Z Treaty because Foreign Insurer satisfies the requirements of the limitation on benefits provision of the U.S.-Z Treaty and the policies were not entered into as part of a conduit arrangement. However, the premiums paid by Foreign Insurer to Foreign Reinsurer on the policies of reinsurance issued by Foreign Reinsurer 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. The fact that the original insurance premiums paid by U.S. Corporation to Foreign Insurer are exempt from tax after application of the U.S.-Z Treaty does not preclude imposition of the excise tax under section 4371(3) on premiums paid by Foreign Insurer to Foreign Reinsurer. Such reinsurance premiums are paid on policies of reinsurance covering contracts described in and capable of being taxed under section 4371(1).