

FROM: Head of Taxation EXTN: 5228
DATE: 30 December 2004 REF: Y3476
SUBJECT: **US FEDERAL EXCISE TAX: REINSURANCE CEDED**
SUBJECT AREA(S): US FET: REINSURANCE CEDED BY SYNDICATES AND MEMBERS
ATTACHMENTS: Specimen letter and copy of US tax form W8-BEN

ACTION POINTS: **Underwriters and brokers to review reinsurers' FET status**
DEADLINE(S): Immediate

1. Introduction

1.1 This bulletin reminds underwriters and brokers that, with effect from 1 January 2005, US dollar reinsurance premiums that are ceded to a UK resident company should be treated as FET protected only if:

(a) the reinsurer shows that it has a Closing Agreement with the IRS; or

(b) the reinsurer provides written confirmation that it is entitled to the relevant benefits of the US-UK double taxation treaty.

1.2 Market bulletin Y3200 of 5 December 2003 gave information on this and also included details of a transitional procedure for 2004 calendar year only under which UK companies could elect to continue under the old US-UK treaty for that year. You should note that this transitional period expires on 31 December 2004.

2. Detail

2.1 Lloyd's Taxation Department maintains a list of UK resident insurers that have provided evidence that they are FET protected. This is for the purpose of dealing with reinsurance ceded to those companies by Lloyd's syndicates and members. The list can be found under the FET section at www.lloyds.com/taxation.

2.2 UK companies that took advantage of the transitional election for 2004 calendar year are separately identified on the list. You should note that these elections cease to have effect from 1 January 2005. For syndicate reinsurances this means that any premiums ceded that are allocated a LORS signing number and date on or after 1 January 2005 are not covered by the election.

2.3 The following information needs to be obtained and provided to Lloyd's Taxation Department (see paragraph 5.1 below) where appropriate for a UK resident company to be treated as FET protected for these purposes.

Closing Agreement

- 2.4 If a reinsurer chooses to have a Closing Agreement with the US Internal Revenue Service (IRS) we require the Closing Agreement to be entered into before we treat the reinsurer as FET protected. A company that has applied, or that intends to apply, for an Agreement should be treated as unprotected until the Agreement is concluded with the IRS.
- 2.5 A copy of the Closing Agreement should be forwarded to Lloyd's Taxation Department. Please note that companies that are shown on Lloyd's webpages as having a Closing Agreement have already provided this information to us.

Confirmation of Entitlement to Treaty Benefits

- 2.6 A UK reinsurer that does not have a Closing Agreement with the IRS may nonetheless be treated as FET protected if it provides written confirmation that it is entitled to the relevant benefits of the US-UK double taxation treaty.
- 2.7 This confirmation should consist of the following two items:
 - (a) a signed letter from the company; and
 - (b) a signed and completed US tax form W-8BEN.

A specimen letter of confirmation and a blank copy of form W-8BEN are in the annex to this bulletin. Further forms can be downloaded from the IRS website at www.irs.gov/pub/irs-pdf/fw8ben.pdf.

- 2.8 This documentation should be forwarded to Lloyd's Taxation Department. Any companies that are shown on Lloyd's webpages as having provided confirmation have already provided documentation to us.

3. Financial implications

- 3.1 Underwriters and brokers are advised to review their proposed reinsurance programmes to ensure that their reinsurers' FET status is clear.
- 3.2 As Lloyd's reinsurances are audited by the IRS, a failure to review reinsurers' status could result in an FET liability for the ceding syndicate or member. This liability would be about 1% of the US dollar reinsurance premium that is ceded to an unprotected reinsurer and relates to US situs risks.
- 3.3 Please note that provision of the documentation referred to above, and the inclusion of a reinsurer on Lloyd's Taxation webpages, does not guarantee that the reinsurer will be accepted by the IRS as being FET protected. Where no Closing Agreement is in place underwriters may therefore also want to consider whether to seek an undertaking from the reinsurer that it will meet any FET and related interest or penalties if the IRS subsequently determines that any FET is due on the ceded premium.

4. Lloyd's Underwriters' FET status

- 4.1 Underwriters and brokers should note that Lloyd's Underwriters have a Closing Agreement with the IRS and should therefore be treated as FET protected on US situs risks that they accept.

5. Address to send information on FET protected reinsurers

- 5.1 Please send the documentation specified in section 2 above relating to any UK companies that should be added to the lists of FET protected reinsurers (i.e. because of a Closing Agreement or because of a Confirmation of Eligibility) to Roger Ramage at the following address:

Roger Ramage
Lloyd's Taxation Department
One Lime Street
London EC3M 7HA

- 5.2 Once we have checked the information we will add the reinsurer to the appropriate list of FET protected insurers on Lloyd's Taxation webpages. Please note, however, that this does not of itself guarantee that the IRS will accept the FET status (see paragraph 3.3 above), and that where there is no Closing Agreement underwriters may want to seek the reinsurer's agreement to meet any FET due.

6. Readership and Contact Details

- 6.1 This bulletin is being sent to all managing agents and Lloyd's brokers for the guidance of those concerned with the placing of Lloyd's syndicate reinsurances. It is also being sent to Lloyd's direct corporate members for the guidance of those concerned with member level reinsurances.

- 6.2 If you have any queries please contact:

Roger Ramage tel: 020 7327 6852 e: roger.e.ramage@lloyds.com or
Maureen McLeod tel: 020 7327 6860 e: maureen.c.mcleod@lloyds.com.

David Clissitt
Head of Taxation

ANNEX

SPECIMEN LETTER CONFIRMING ELIGIBILITY FOR FET TREATY BENEFITS

[Company Letter Headed Paper]

Mr Roger Ramage
Lloyd's Taxation Department
One Lime Street
London EC3M 7HA

US FEDERAL EXCISE TAX: ENTITLEMENT TO TREATY BENEFITS

The double taxation treaty entered into between the United States and the United Kingdom provides certain benefits, including a waiver of the US federal excise tax (FET) on insurance and reinsurance policies issued by UK insurers. In order to obtain the benefits of this treaty, including the FET waiver in Article 7(5), a UK company must be a "resident of the United Kingdom" as defined in Article 4(1) and must satisfy at least one of the limitation on benefits provisions of Article 23 of the treaty.

I confirm that [Name of Company] is a resident of the UK as defined in Article 4(1) and that it satisfies the requirements of the limitation on benefits provision of Article 23 of the treaty. I enclose a completed form W-8BEN to this effect.

In the event that the IRS alleges that [Name of Company] is not entitled to the benefits of the double taxation treaty, [Name of Company] agrees to provide you with documents and/or other information necessary to prove that [Name of Company] is entitled to the benefits of the treaty, including the FET waiver in Article 7(5).

Yours sincerely,