

**FROM:** Head of Taxation  
**LOCATION:** 86/441  
**EXTENSION:** 5228  
**DATE:** 5 December 2003  
**REFERENCE:** Y3200  
**SUBJECT:** **U.S. FEDERAL EXCISE TAX – REINSURANCE  
CEDED BY SYNDICATES AND MEMBERS**  
**ATTACHMENT:** None  
**ACTION POINTS:** **US dollar denominated premiums ceded to UK  
reinsurers will no longer be FET “protected” simply  
because the reinsurer is UK resident**  
**DEADLINE:** 1 January 2004

*1 Introduction*

- 1.1 The last market bulletin on US Federal Excise Tax (Y3151 of 30 September 2003) promised a further bulletin when the FET arrangements under the new US-UK double taxation treaty were known. These have now been published, and the position for UK resident reinsurers will change with effect from 1 January 2004.
- 1.2 This bulletin deals with the FET exposure on reinsurance ceded by a Lloyd's syndicate or member to a UK reinsurer or retrocessionnaire, and supersedes all previous bulletins with regard to such reinsurances with effect from 1 January 2004.
- 1.3 For US dollar premiums that are allocated a LORS signing number and date on or after 1 January 2004, the list of UK resident insurers included in market bulletin Y3151 cannot be used to determine whether FET is due. From that date onwards underwriters and brokers should either satisfy themselves by other means that FET will not be due or should ensure that the pricing takes account of the potential FET liability.
- 1.4 Underwriters and brokers are advised to review their proposed reinsurance programmes with their reinsurers to ensure that the reinsurers' FET status is clear. It may also be necessary to review any electronic systems used to determine FET status. As Lloyd's reinsurances are subject to audit by the US Internal Revenue Service, failure to do this could result in a FET liability for the ceding syndicate or member.

## 2. *Detail*

- 2.1 On 10 October 2003 the IRS issued a new Revenue Procedure setting out how UK insurers and reinsurers are to be treated for FET purposes following the changed FET provision in the new US-UK double taxation treaty (Rev. Proc. 2003-78). From 1 January 2004 onwards, UK residence will no longer be a sufficient condition on its own to ensure that an insurer or reinsurer is “protected” for FET purposes so far as the cedant is concerned.
- 2.2 The Revenue Procedure set out how UK insurers and reinsurers can obtain a Closing Agreement with the IRS, following which they may be regarded as FET protected. However, although a number of UK resident insurers are understood to be taking steps towards obtaining Closing Agreements at the date of this bulletin we do not know of any that has yet gone through the procedure.
- 2.3 For US dollar premiums ceded to a UK resident company that are allocated a LORS signing number and date on or after 1 January 2004, Lloyd’s syndicates should treat any premium ceded as FET “protected” only if:
- (a) the reinsurer shows that it has a Closing Agreement with the IRS; or
  - (b) for the period from 1 January 2004 to 31 December 2004 only, the reinsurer gives written confirmation that it has elected that the “old” US-UK double taxation treaty should continue to apply to it for another year for all purposes; or
  - (c) the reinsurer provides written confirmation that it is entitled to all the benefits of the new US-UK double taxation treaty. (This may be an unusual method of confirming that the reinsurer is protected, as the most practical way of doing this will probably be to obtain a Closing Agreement.)
- 2.4 With regard to each of the methods shown above, please note the following:
- (a) Closing Agreements – we will require the Agreement to be entered into before treating a reinsurer as protected. A company that has applied, or that intends to apply, for a Closing Agreement should be treated as unprotected until the Agreement is concluded with the IRS.
  - (b) Confirmation of election to continue to apply old US-UK treaty – this confirmation must be given in a letter from the company. An email or oral confirmation is not sufficient.
  - (c) Confirmation that the reinsurer qualifies for all the benefits of the treaty – again, this confirmation must be given in a letter from the company. An email or oral confirmation is not sufficient.

This information should be passed on to Roger Ramage in Taxation Department (see paragraph 2.7 below).

- 2.5 Reinsurances ceded by Lloyd's members otherwise than by syndicate reinsurances follow the same principles, although they do not go through the LORS system.
- 2.6 As noted earlier, reinsurance ceded by Lloyd's syndicates and members is subject to audit by the IRS. Failure to obtain one of the items specified at 2.3 (a), (b) or (c) above on a reinsurance of US situs risks to a UK resident reinsurer may result in a FET liability of about 1% of the amount of the US dollar reinsurance premium that relates to US situs risks.
- 2.7 It is intended that Lloyd's Taxation Department will in due course compile a list of UK insurers and reinsurers that have Closing Agreements or otherwise have provided evidence that they meet one of the conditions in paragraph 2.3. Underwriters and brokers are therefore requested to advise Roger Ramage (see contact details below) if a UK company provides evidence that it has obtained a Closing Agreement or has elected to be covered by the "old" UK-US treaty for another year.
- 2.8 It is understood that the ABI and the IUA, who are encouraging those of their members who need to obtain Closing Agreements, also hope to provide lists of insurers and reinsurers who have obtained Closing Agreements on their own websites in due course.
- 2.9 Brokers should note that Lloyd's Underwriters do have a Closing Agreement with the IRS and may therefore be treated as FET protected on US situs risks that they accept. If needed, further information about the FET arrangements for Lloyd's Underwriters can be obtained from Roger Ramage.
- 2.10 The IRS Rev. Proc. 2003-78 of 10 October 2003 can be found at the following address: <http://www.ustreas.gov/press/releases/reports/revproc200378.htm>.

### 3. *Readership and contact details*

- 3.1 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 corporate members and their tax advisers for the guidance of those concerned with member level reinsurances.
- 3.2 If you have any queries on it, could you please contact:

Maureen McLeod tel: 020 7327 6860 or email: [maureen.c.mcleod@lloyds.com](mailto:maureen.c.mcleod@lloyds.com) ; or  
 Roger Ramage tel: 020 7327 6852 or email: [roger.e.ramage@lloyds.com](mailto:roger.e.ramage@lloyds.com) .

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