To: The Honorable Charles Rangel, Chairman, House Committee on Ways and Means
The Honorable Dave Camp, US House of Representatives
The Honorable Richard Neal, Chairman, Subcommittee on Select Revenue Measures House Committee on Ways and Means

Committee on Ways and Means
US House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515

The Honorable Max Baucus, Chairman, Senate Committee on Finance
The Honorable Charles Grassley, Ranking Member, Ranking Member Senate Committee on Finance

Finance Committee
US Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510-6200

Our reference: MU 8297

Subject: **Discriminatory Reinsurance Tax Proposals**

Brussels, 18 December 2008

Dear Representative Rangel, Representative Camp, Representative Neal, Senator Baucus and Senator Grassley,

The CEA, the European insurance and reinsurance federation, is writing to respectfully express its strong opposition to H.R. 6969 and the related Senate Finance Committee "staff draft" concerning international reinsurance transactions. These proposals impose a punitive, discriminatory "tax" on global insurance and reinsurance companies, and we believe they will have grave implications for the international reinsurance market.

The CEA, which is based in Brussels, represents all types of insurance and reinsurance undertakings, including pan-European companies, monoliners and mutuals, through its 33 members, the national insurance associations.

The CEA would like to express its opposition to the proposals for the following reasons:

Role of foreign-based reinsurance in the US economy

Reinsurance is used for economic reasons, i.e. as a necessary tool for risk management and for increasing underwriting capacity. It is used to distribute risk among sources of capital to increase risk and geographical diversification and capital efficiency. Whether with an independent third party or an affiliate, reinsurance is clearly not designed for tax avoidance.

When comparing the transfer of risk in a reinsurance transaction with a payment of earnings via an interest payment or licensing fee, the proposals ignore the fact that the payment of premium is not just the transfer of income and potential profits, but also claims and losses. It also ignores the fact that the corresponding release of reserve liability results in US income. Significant compensation was paid by foreign reinsurers for losses from catastrophes such as the World Trade Center attack and Hurricanes Katrina and Ike.

The US market needs capacity from foreign insurance and reinsurance markets. Experience has shown foreign reinsurance to be beneficial to the US economy. Reinsurance Association of America (RAA) data on offshore reinsurance in the US market for 2007 – in particular on affiliated offshore reinsurers – show that European (re)insurers often suffered heavy losses from reinsurance business in the US.

The proposals, by imposing a punitive tax regime on US insurance companies that reinsure their risks with affiliated foreign companies, violate the principle of a level playing field for all US insurers and reinsurers. Indeed, the proposals would increase costs to domestic carriers, reduce competition and, as a result, boost US market prices.

Against the backdrop of the current economic crisis, these proposals would not save or create a single extra US job but rather would increase the price of insurance for US consumers. In particular, this legislation would severely restrict access to and the free flow of global capital – a scarce resource.

International taxation principles in force

The proposals deviate from the non-discrimination principle and lead to double taxation. Indeed, the non-deductibility of reinsurance premiums would constitute a clear violation of the US Double Tax Treaties. Further, the violation of international business principles would be inconsistent with decades of US tax and trade policy. As a result, affected countries might retaliate with tax laws aimed at US companies.

US has adequate tools already in force to deal with income shifting

Reinsurance is fundamentally different from "earnings stripping" – as it is based on risk transfer that, in the event of a loss to a US insurer, would lead to a transfer of that loss to the foreign reinsuring affiliate.

The proposals would violate the long-term tradition of US tax policy and OECD transfer pricing principles, which assumes the arm's-length standard for related-party cross-border transactions. Existing US tax law provides sufficient opportunity to challenge the deductibility of reinsurance fees in cases where the respective conditions are not at arm's length or not in line with other US rules. In this context, the proposals are shown not to be necessary.

The European tax jurisdictions represented by the CEA

The average tax burden within the European Union EU amounts to approximately 25%, and in the largest EU reinsurance markets the rate is even higher. Therefore a general, imprecise and inaccurate reference to "affiliated non-taxed reinsurance premium" as the target of the Draft Proposal, even when ceded to a reinsurance company resident in the EU, could and would be regarded as disproportionate and unjustified

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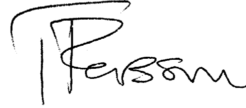
The CEA remains at your disposal and looks forward to assisting the Committees and staff with all questions related to the issues mentioned above, as well as any other questions that arise in the course of discussion.

Yours sincerely,



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