

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:EC
PLR-142745-05
Date:
December 01, 2005

Company A =

Company B =

Company C =

Individual D =

Stock Exchanges 1 and 2 =

Country E =

F% =

Form G =

Form H =

Date 1 =

Date 2 =

Dear :

This is in response to a letter dated August 10, 2005, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal

Revenue Code. Specifically, a ruling is requested that the deduction limitation of section 162(m) does not apply to Company A.

Company A represents that it is an indirect wholly owned subsidiary of Company B and that Company A is the United States parent of an affiliated group of corporations which file a consolidated federal income tax return. Company A represents that Company A and its affiliated subsidiaries are not publicly held corporations within the meaning of section 162(m)(2) and that it does not have any securities filing requirements with the Securities Exchange Commission (SEC).

Company C, and other entities controlled by Individual D (a citizen of Country E), collectively own F% of the outstanding common shares of Company B. The remaining common shares of Company B are publicly traded on Stock Exchanges 1 and 2. Company A represents that Company B is a publicly held corporation within the meaning of section 162(m)(1) and that Company B is a foreign private issuer under 17 C.F.R. section 240-3b-4(c).

On Date 1, Company B filed an annual report on Form G with the SEC. Company B did not provide a summary compensation table described in Item 402(b) of Regulation S-K under the Securities Exchange Act of 1934 (the Exchange Act) as part of Form G or as part of any exhibit attached thereto. Company A represents that on Date 2 Company B furnished to the SEC Form H, which contained a summary compensation table but not a summary compensation table described in Item 402(b) of Regulation S-K under the Exchange Act.

Company A pays United States taxes and deducts compensation paid to various individuals, including its highest paid employees.

Section 162(a)(1) allows a deduction for all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) provides that for any publicly held corporation, no deduction shall be allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year exceeds \$1,000,000.

Section 162(m)(2) defines publicly held corporation as any corporation issuing any class of common equity securities required to be registered under section 12 of the Exchange Act.

Under section 1.162-27(c)(1)(ii) of the Income Tax Regulations, a publicly held corporation includes an affiliated group of corporations, as defined in section 1504 (determined without regard to section 1504(b)).

Section 162(m)(3) defines covered employee as any employee of the taxpayer if, as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such capacity, or the total compensation of such employee for the taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the four highest compensated officers for the taxable year (other than the chief executive officer).

Under section 1.162-27(c)(2)(ii) of the regulations, whether an individual is the chief executive officer or an officer is determined pursuant to the executive compensation disclosure rules under the Exchange Act.

The preamble to the proposed regulations under section 162(m) contains the following language concerning the identification of covered employee:

The regulations clarify which employees are “covered employees” for purposes of section 162(m). The legislative history to section 162(m) provides that “covered employees” are defined by reference to SEC rules governing executive compensation disclosure under the Exchange Act. Under the regulations, an individual is generally a “covered employee” if the individual’s compensation is reported on the “summary compensation table” under the SEC’s executive compensation disclosure rules, as set forth in Item 402 of regulations S-K, 17, C.F.R. 229.402, under the Exchange Act. However, the regulations specifically provide that, in order to be a “covered employee” for section 162(m) purposes, an individual must be employed as an executive officer on the last day of the taxable year. Thus, only those employees who appear on a “summary compensation table” and who are also employed on the last day of the taxable year are “covered employees.” 58 Fed. Reg. 66,310 (Dec. 20, 1993).

Based on the facts submitted and provided no summary compensation table under Item 402 of Regulations S-K under the Exchange Act is required to be filed by Company A or Company B, we rule as follows:

No employees of Company A are covered employees under section 162(m)(3) because their compensation is not required to be reported to shareholders under the Exchange Act. Therefore, Company A is not subject to the disallowance rule of section 162(m)(1) of the Code. This ruling does not apply to any member of Company A’s affiliated group that is required to file a summary compensation table under Item 402 of Regulations S-K under the Exchange Act or such member’s subsidiaries.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William C. Schmidt
Senior Counsel, Executive Compensation Branch
(Tax Exempt & Government Entities)

cc: Copy for 6110 purposes