

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:

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PLR-154692-04

Date:

December 29, 2004

Company =

US Parent =

Acquiror =

Target =

Countries A and B =

Stock Exchange 1 =

Form Y =

Date C =

Year X =

Year Y =

Dear :

This is in reply to a letter dated October 8, 2004, submitted by your authorized representative, requesting rulings under section 162(m) of the Internal Revenue Code.

Specifically, a ruling is requested that the deduction limit of section 162(m) does not apply to Company, US Parent, Acquiror or their affiliates. The facts, as represented, are as follows.

US Parent and Acquiror are wholly owned subsidiaries (through one or more disregarded foreign entities) of Company, a corporation organized under the laws of Countries A and B. Company shares are traded on Stock Exchange 1.

Company is a “foreign private issuer” under 17 CFR section 240.3b-4(c) because it is incorporated under the laws of Countries A and B and does not fit the following description:

- (1) More than 50 percent of the issuer’s outstanding voting securities are directly or indirectly held of record by residents of the United States; and
- (2) Any of the following apply:
 - (i) The majority of the executive officers or directors are United States citizens or residents;
 - (ii) More than 50 percent of the assets of the issuer are located in the United States; or
 - (iii) The business of the issuer is administered principally in the United States.

Company’s shares are registered under section 12 of the Securities and Exchange Act of 1934 (“Exchange Act”). Company is required to file Form Y with the United States Securities and Exchange Commission (SEC). Because there is no summary compensation table requirement for foreign private issuers that sets out the compensation paid to each employee, the Form Y filed by Company does not contain a summary compensation table described in Item 402(b) of Regulation S-K under the Exchange Act.

US Parent is the United States common parent of an affiliated group of corporations, as defined in section 1504 of the Code (without regard to section 1504(b)). None of Company’s United States subsidiaries, including US Parent, has issued any class of equity securities that is required to be registered under section 12 of the Exchange Act.

On Date C, Company, Acquiror and Target entered into a Merger Agreement. Pursuant to the terms of the Merger Agreement, Target will merge with and into Acquiror, with Acquiror continuing as the surviving corporation and a wholly owned subsidiary (through one or more disregarded foreign entities) of Company. There are executives of Target who are expected to continue to serve as executives of Acquiror.

The merger will occur in Year Y. Target's final separate consolidated tax year will be for the short taxable year ending on the date of the Merger.

Target currently has outstanding common equity interests that are registered under section 12 of the Exchange Act. It has been represented that after the Merger, neither Acquiror nor any of its subsidiaries will have any class of equity securities that is registered or required to be registered under section 12 of the Exchange Act.

It has also been represented that the Merger will occur prior to the deadline for Target's filing with the SEC of a proxy statement or an annual report on Form 10-K for Year X. Thus, Target will not be required to file a proxy statement or an annual report on Form 10-K with the SEC that discloses executive compensation under Item 402 of Regulation S-K for Year X or for the short taxable year that ends with the Merger.

Section 162(a)(1) of the Code allows as a deduction all 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 in the case of 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 the 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 4 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 one of the four highest compensated officers is determined pursuant to the executive compensation disclosure rules under the Exchange Act.

In the notice of proposed rulemaking containing the proposed regulations under section 162(m), the preamble 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 the SEC rules governing executive compensation disclosure under the Exchange Act. Under the regulations, an individual generally is 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 Regulation S-K, 17 CFR 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 the “summary compensation table” and who are also employed on the last day of the taxable year are “covered employees.”

Therefore, based on the facts submitted, we rule as follows:

1. Provided no summary compensation table under Item 402 of Regulation S-K under the Exchange Act is required to be filed by Company, US Parent or Acquiror with the SEC, no employees of Company, US Parent, Acquiror and their subsidiaries are “covered employees” under section 162(m)(3) of the Code because their compensation is not required to be reported to shareholders under the Exchange Act. Therefore, Company, US Parent, Acquiror and their subsidiaries are not subject to the disallowance rules of section 162(m) of the Code.
2. No employees of Target’s affiliated group will be “covered employees” with respect to Year X or the short taxable year ending on the date of the Merger, provided that no summary compensation table under Item 402 of Regulation S-K under the Exchange Act listing Target’s officers is included in any Target proxy statement that is sent to the shareholders and filed by Target with the SEC for Year X or the short taxable year ending on the date of the Merger. Therefore, Target and its subsidiaries are not subject to the disallowance rules of section 162(m) of the Code for Year X or the short taxable year ending on the date of the Merger.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code.

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

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

Sincerely yours,

ROBERT B. MISNER
Senior Technician Reviewer
Executive Compensation Branch
Office of the Division Counsel/Associate Chief
Counsel (Tax Exempt and Government
Entities)

Enclosure:
Copy for 6110 purposes