

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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PLR-105245-05

Date:

June 08, 2005

Company A =

Company B =

Company C =

Country D =

Stock Exchange 1 =

Stock Exchange 2 =

Form Y =

Form Z =

Dear:-----

This is in response to a letter dated January 26, 2005, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code. The facts, as represented, are as follows.

Company A is a wholly owned subsidiary of Company B, which is a wholly owned subsidiary of Company C. Company C is incorporated under the laws of Country D. Company B is the United States common parent of several United States corporations, including Company A. Company B and its United States subsidiaries are members of Company C's affiliated group, as defined in section 1504 of the Code (without regard to

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section 1504(b)). It has been represented that no United States subsidiary in Company C's affiliated group, including Company B and Company A, is a "publicly held corporation" under section 162(m)(2) of the Code.

Company C's common stock is traded primarily on Stock Exchange 1 and Stock Exchange 2. Company C is a "foreign private issuer" under 17 C.F.R. section 240.3b-4(c) because it is incorporated under the laws of Country D and does not meet the following definition:

(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 C files annual reports on Form Y with the United States Securities and Exchange Commission (SEC). Company C also files current reports on Form Z with the SEC. Company C is not subject to the summary compensation table requirement under Item 402 of Regulation S-K under the Securities Exchange Act of 1934 (Exchange Act). Accordingly, no report filed by Company C with the SEC contains a summary compensation table that is described in, or required by, Item 402 of Regulation S-K under the Exchange Act.

Pursuant to Country D laws, Company C is required to prepare a summary compensation table that is similar to, but not identical to, the table described in Item 402 of Regulation S-K. This summary compensation table included the chief executive officer of Company A as one of the highest paid executive officers. Company C included this summary compensation table in its most recent proxy statement delivered to its shareholders and filed with Country D authorities. Company C included the proxy statement with its most recent Form Y filing.

Section 162(a)(1) of the Code 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.

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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.

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 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 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.”

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

No employees of Company A, Company B, Company C and their United States subsidiaries 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, Company B, Company C and their United States subsidiaries are not subject to the disallowance rule of section 162(m)(1) of the Code. This ruling does not apply to any member of Company C's affiliated group that is required to file a summary compensation table under Item 402 of Regulation S-K under the Exchange Act or such member's subsidiaries.

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 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 representative.

Sincerely yours,

WILLIAM C. SCHMIDT
Senior Counsel
Executive Compensation Branch
Office of the Division Counsel/Associate
Chief Counsel (Tax Exempt
and Government Entities)

Enclosure:
Copy for 6110 purposes