

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

In Re:

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Date: September 20, 2010

LEGEND:

Corporation A =
Corporation B =
Corporation C =
Country D =
Stock Exchange 1 =

Dear _____ :

This letter is in response to a letter dated March 22, 2010, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, you request a ruling that the deduction limitation of section 162(m) does not apply to Corporation A. The facts, as represented, are as follows.

Corporation A is a wholly owned subsidiary of Corporation B, which is a wholly owned subsidiary of Corporation C. Corporations B and C are incorporated under the laws of Country D. Corporation A and its United States subsidiaries are members of Corporation C's affiliated group, as defined in section 1504 of the Code (without regard to section 1504(b)). Corporation A has no class of securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act).

Corporation C's shares are traded primarily on Stock Exchange 1 and the New York Stock Exchange through American Depositary Receipts. Corporation C's securities are required to be registered and are registered with the United States Securities and Exchange Commission (SEC) pursuant to section 12(b) of the Exchange Act. Corporation C is a "foreign private issuer" (FPI) under 17 C.F.R. 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.

Corporation C files annual reports on Form 20-F with the SEC. Item 6 of Form 20-F requires a FPI to provide the amount of compensation (including stock-based compensation) paid by it (and its subsidiaries) to its directors and members of its administrative, supervisory or management bodies for services provided to the company in any capacity. Disclosure of compensation is required on an individual basis unless individual disclosure is not required in the FPI's home country and is not otherwise publicly disclosed by the FPI.

As a FPI, Corporation C is not required to file a summary compensation table under Item 402 of Regulation S-K under the Exchange Act. Accordingly, Corporation C does not file reports with the SEC containing a summary compensation table that is described in, or required by, Item 402 of Regulation S-K under the Exchange Act. However, Corporation C is required to report certain executive compensation by individual under Country D's securities laws, including the compensation of persons serving on its executive board. Corporation C includes this information with its annual Form 20-F 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.

Section 162(m)(1) of the Code 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 million.

Section 162(m)(2) of the Code defines publicly held corporation to mean any corporation issuing any class of common equity securities required to be registered under section 12 of the Exchange Act. Section 1.162-27(c)(1)(i) of the Income Tax Regulations provides that whether a corporation is publicly held is determined based solely on whether, as of the last day of its taxable year, the corporation is subject to the reporting obligations of section 12 of the Exchange Act. Section 1.162-27(c)(1)(ii)

provides that 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) of the Code defines “covered employee” as any employee of the employer if (A) as of the close of the taxable year, such employee is the chief executive officer of the employer or is an individual acting in such capacity, or (B) 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).

Section 1.162-27(c)(2)(ii) generally provides that whether an individual is a “covered employee” for purposes of section 162(m) is determined pursuant to the executive compensation disclosure rules under the Exchange Act. The SEC rules relating to executive compensation disclosure under the Exchange Act are contained in Item 402 of regulations S-K, 17 CFR 229.402. These rules require disclosure of compensation paid to certain executive officers.

Section 229.402(a) of Item 402 of regulations S-K, 17 CFR 229.402, provides that a FPI will be deemed to comply with the executive compensation disclosure rules if it provides the information required by Item 6 of Form 20-F, with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

Effective for taxable years ending on or after December 15, 2006, the term “covered employee” for purposes of section 162(m) means any employee of the taxpayer if, as of the close of the taxable year, such employee is the principal executive officer (within the meaning of the disclosure rules) of the taxpayer or an individual acting in such a capacity, or if the total compensation of such employee for that taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the three highest compensated officers for the taxable year (other than the principal executive officer or the principal financial officer). Notice 2007-49, 2007-1 CB 1429. The deduction limitation under § 162(m) applies to an individual whose compensation is required to be reported to shareholders under the executive compensation disclosure rules of the Exchange Act because the individual is either the chief executive officer or one of the three other highest compensated officers. Id.; Treas. Reg. § 1.162-27(c)(6), Example (1). If such individual's compensation is not required to be disclosed pursuant to such rules as a result of the individual being the chief executive officer or one of the three other most highly-compensated officers, then such individual's compensation is not subject to the deduction limitation of § 162(m). Id.

Therefore, based solely on the facts presented, we rule as follows:

Corporation A is not required to disclose to the SEC the executive compensation of its employees on the basis of the position of the employee as the principal executive officer or as an individual acting in such a capacity, or on the basis that the total compensation paid to the employee being among the three highest compensated officers for the taxable year. Accordingly, Corporation A does not have any covered employees and the deduction limitation of section 162(m) does not apply to the compensation of any employee of Corporation A, unless such compensation is required to be disclosed pursuant to the executive compensation disclosure rules under the Exchange Act, except as required by section 229.402(a) of Item 402 of regulations S-K, 17 CFR 229.402.

Except as expressly provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts 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.

A copy of this letter should 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 Corporation A 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,

John B. Richards
Senior Technician Reviewer
Executive Compensation Branch
Office of Division Counsel /
Associate Chief Counsel /
Tax Exempt & Government Entities