

**Internal Revenue Service**

Department of the Treasury

Index Number: 162.36-02

Washington, DC 20224

Number: **200021050**  
Release Date: 5/26/2000

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Refer Reply To:  
CC:EBEO:Br.4-PLR-119077-99  
Date:  
February 29, 2000

Company A =

Company B =

Countries =

Stock Exchange C =

Stock Exchange D =

Date E =

This is in response to your letter dated December 2, 1999, submitted on behalf of Company A, requesting a ruling under section 162(m) of the Internal Revenue Code. Specifically, the ruling requested is that the deduction limitation of section 162(m) of the Code does not apply to Company A and its United States subsidiaries.

Company A is an indirect subsidiary of Company B, a corporation under the laws of Countries. Company A is the United States parent of numerous United States businesses and is the highest employer in Company B's United States corporate chain. Each of Company B's United States subsidiaries is a member of Company B's affiliated group, as defined in section 1504 of the Code (without regard to section 1504(b)). Under this structure, Company A and its United States subsidiaries pay United States taxes and deduct compensation paid to various individuals who are among the highest paid employees.

Company B's common stock is traded on Stock Exchange C and American Depositary Shares (ADSs), representing an interest in a certain number of Company B common stock traded on Stock Exchange C, are traded on Stock Exchange D. Company B filed a Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act), on Date E. Company B is a "foreign private issuer" under 17 C.F.R. section 240.3b-4(c) because it is incorporated under the laws of Countries and does not fit the following description:

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(1) More than 50 percent of its outstanding voting securities are held of record either directly or through voting trust certificates or ADSs by United States residents; and

(2) Any two 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 its assets are located in the United States; or

(iii) its business is administered principally in the United States.

Because there is no summary compensation table requirement for foreign private issuers that sets out the compensation paid to each employee, the Form 20-F filed by Company B does not contain a summary compensation table described in Item 402(b) of Regulation S-K under the Exchange Act.

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 \$1,000,000.

Section 162(m)(2) of the Code 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.

Section 162(m)(3) of the Code defines “covered employee” as any employee of the corporation 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 Income Tax 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) of the Code, the preamble contains the following language concerning the

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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 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 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 outlined above and assuming no summary compensation table is required to be filed by Company A or Company B with the Securities Exchange Commission, no employees of Company B’s affiliated group 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 A and its United States subsidiaries are not subject to the disallowance rule of section 162(m)(1) 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. Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the above-described transaction under any other provisions of the Code.

Robert Misner  
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Office of the Associate Chief Counsel  
(Employee Benefits and Exempt Organizations)

Enclosure: Copy for 6110 purposes