

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

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Date:
April 12, 2022

TY:

Legend

- Company A =
- Company B =
- Company C =
- Company D =
- Company E =
- Company F =
- Year 1 =
- Year 2 =
- Tax Year 1 =
- Tax Year 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- Month 1 =

Dear _____ :

This responds to correspondence dated November 24, 2021, March 21, 2022, and April 11, 2022, submitted by your representatives. The correspondence requests that the Internal Revenue Service (the "Service") grant Company A consent to use the methods described in U.S. Treasury Regulations ("Treas. Reg.") § 1.482-7(d)(3)(iii)(B) and Notice 2005-99, 2005-2 C.B. 1214, for measuring, timing, and identifying employee stock options, restricted shares, and restricted share units for purposes of determining the

amount Company A must include in its cost sharing arrangement (“CSA”) as intangible development costs (“IDCs”) for Tax Year 2 and subsequent tax years (the “Ruling Request”).

The rulings contained in this letter are based upon information and representations submitted by Company A and its representative and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support for the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

FACTS

Company F, a domestic corporation, was incorporated in Year 1. Company A was incorporated in Year 2. In Month 1, Company F, a public company, acquired Company A. Company A is currently a disregarded domestic entity wholly-owned indirectly by Company F through another wholly-owned disregarded domestic entity.

On Date 1, Company A and Company E entered into an arrangement, which they intended would qualify as a CSA within the meaning of Treas. Reg. § 1.482-7(b) (the “Company A CSA”). The Company A CSA was subsequently amended and restated several times, most recently on Date 2, when Company A, Company B, Company C, Company D, and Company F entered into an agreement intended to continue and separately track, among other CSAs, the Company A CSA. Company C was subsequently removed from the Company A CSA. As of Date 3, the controlled participants in the Company A CSA were Company A and Company D, a foreign entity.

At the time of entering into the Company A CSA, Company A was a private company and was required to use the method provided in Treas. Reg. § 1.482-7(d)(3)(iii)(A) (the “default method”) for measurement and timing for including stock-based compensation (“SBC”) in IDCs and the method provided in Treas. Reg. § 1.482-7(d)(3)(ii) (“grant date identification”) for identifying SBC as related to intangible development activity (“IDA”).

For certain tax years prior to Tax Year 1, the controlled participants to the Company A CSA did not include SBC as an IDC under the Company A CSA. Company A has stated that it has corrected this noncompliance with Treas. Reg. § 1.482-7(d)(1)(iii) (*i.e.*, failing to include SBC as IDCs) for all tax years prior to Tax Year 1. Beginning with Tax Year 1 and onwards the controlled participants to the Company A CSA include SBC as IDCs.

Company A filed this request for the Commissioner’s consent to prospectively change the method for measuring and timing of SBC that must be included as IDCs from the default method to the method described in Treas. Reg. § 1.482-7(d)(3)(iii)(B), which was

extended to certain restricted shares and restricted share units by Notice 2005-99 (the “elective method”). Company A also requested consent to prospectively change the method for identifying SBC with the IDA from grant date identification as provided in Treas. Reg. § 1.482-7(d)(3)(ii) to period-by-period identification as provided in Notice 2005-99.

Company A has made the following representations, as stated in its submissions:

1. With regard to the Company A CSA, Company A will remain in compliance with all recordkeeping requirements of Internal Revenue Code of 1986, as amended (the “Code”) and the regulations thereunder, including Treas. Reg. § 1.482-7(k)(2)(ii). Upon request, Company A will timely provide to the Commissioner records kept pursuant to such requirements.
2. The SBC that is the subject of the Ruling Request is Company F’s publicly traded stock within the meaning of Treas. Reg. § 1.482-7(d)(3)(iii)(B)(2).
3. Under the terms of the SBC plan, the service and performance vesting restrictions of the SBC to which this election will apply will not have a substantial effect on the fair value of the SBC under GAAP and will not result in unreasonably long vesting periods within the meaning of Financial Accounting Standards Codification Topic No. 718, “Compensation-Stock Based Compensation,” Financial Accounting Standards Board (rev. 2016) (“ASC 718”).
4. SBC granted prior to the term of the Company A CSA is excluded from IDCs.
5. For all SBC granted before the first day of the first taxable year following receipt of Service’s consent (“Legacy SBC”), all controlled participants to the Company A CSA will continue to use the method of measurement and timing provided in Treas. Reg. § 1.482-7(d)(3)(iii)(A), as well as their existing method for identification, until all Legacy SBC has been exercised or lapsed.
6. If the Commissioner grants consent for Company A to adopt the period-by-period identification method described in Notice 2005-99, and Company A then makes an election to adopt such method, then:
 - a. Any SBC, the fair value of which is not reflected as a charge against income in audited financial statements, will be identified for purposes of Treas. Reg. § 1.482-7 as if the fair value of such compensation were reflected as a charge against income in audited financial statements.

- b. SBC granted, but not vested during the term of the Company A CSA, must be treated as vesting immediately before expiration or termination of the Company A CSA for purposes of Treas. Reg. § 1.482-7.
7. All controlled participants to the Company A CSA will apply the identification method consistently as required under the principles of Treas. Reg. § 1.482-7(d)(3)(iii)(C).
8. For all SBC issued with respect to publicly traded stock within the meaning of Treas. Reg. § 1.482-7(d)(3)(iii)(B)(2) granted on or after the first day of the first taxable year following receipt of Service's consent that satisfy the following conditions, all controlled participants to the Company A CSA will use the method of measurement and timing provided in Treas. Reg. § 1.482-7(d)(3)(iii)(B)(1) and as expanded by Notice 2005-99:
 - a. Are stock options, non-vested equity shares or non-vested equity share units within the meaning of Statement of Financial Accounting Standards No. 123, "Share-Based Payment," Financial Accounting Standards Board (rev. 2004) ("FAS 123R"); or Share-Based Payments within the meaning of FAS 123R's successor, ASC 718; and
 - b. Are not subject to market conditions or significant post-vesting restrictions within the meaning of ASC 718.

LAW

Measurement and Timing of SBC Related to Intangible Development

Treas. Reg. § 1.482-7(d)(3)(iii)(A) provides the default method for measurement and timing of SBC IDCs as follows:

Except as otherwise provided in this paragraph (d)(3)(iii), the cost attributable to stock-based compensation is equal to the amount allowable to the controlled participant as a deduction for federal income tax purposes with respect to that stock-based compensation (for example, under section 83(h)) and is taken into account as an IDC under this section for the taxable year for which the deduction is allowable.

Treas. Reg. § 1.482-7(d)(3)(iii)(B)(1) provides the alternative elective method for measurement and timing of SBC IDCs with respect to options on publicly traded stock as follows:

With respect to stock-based compensation in the form of options on publicly traded stock, the controlled participants in a CSA may elect to take into account

all IDCs attributable to those stock options in the same amount, and as of the same time, as the fair value of the stock options reflected as a charge against income in audited financial statements or disclosed in footnotes to such financial statements, provided that such statements are prepared in accordance with United States generally accepted accounting principles by or on behalf of the company issuing the publicly traded stock.

Treas. Reg. § 1.482-7(d)(3)(iii)(B)(4) provides for the time and manner of making the election, in relevant part, as follows:

The election described in this paragraph (d)(3)(iii)(B) is made by an explicit reference to the election in the written contract required by paragraph (k)(1) of this section or in a written amendment to the CSA entered into with the consent of the Commissioner pursuant to paragraph (d)(3)(iii)(C) of this section.

Treas. Reg. § 1.482-7(d)(3)(iii)(C) provides, in relevant part:

[I]f controlled participants already have granted stock options that have been or will be taken into account under the general rule of paragraph (d)(3)(iii)(A) of this section, then except in cases specified in the last sentence of paragraph (d)(3)(iii)(B)(4) of this section, the controlled participants may make the election described in paragraph (d)(3)(iii)(B) of this section only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained.

Notice 2005-99¹ extended the elective method to:

[N]onvested equity shares or nonvested equity share units within the meaning of Statement of Financial Accounting Standards No. 123, "Share-Based Payment," Financial Accounting Standards Board (rev. 2004) (SFAS 123R), provided that those shares or share units: (i) constitute or are issued with respect to publicly traded stock within the meaning of § 1.482-7(d)(2)(iii)(B)(2); and (ii) are not subject to market conditions or significant post-vesting restrictions within the meaning of SFAS 123R.²

Such shares and share units are referred to as "restricted shares and share units." An election to apply the elective method to restricted shares or share units is generally made in the time and manner set forth in Treas. Reg. § 1.482-7(d)(3)(iii)(B)(4). However, the consent of the Commissioner is not required to elect the elective method for restricted shares and share units if the election is made by a written amendment to the CSA not later than the latest due date (with regard to extensions) of a Federal

¹ Notice 2005-99 refers to the SBC rules contained in Treas. Reg. § 1.482-7(d)(2) (2003), the materially similar predecessor of the rules in Treas. Reg. § 1.487-7(d)(3) that are applicable to the present case.

² FAS 123R was amended after the publication of Notice 2005-99 by ASC 718.

income tax return of any controlled participant for the first taxable year beginning after December 8, 2005.

Identifying SBC Related to Intangible Development

Treas. Reg. § 1.482-7(d)(3)(ii) provides the rule for identification of SBC with the IDA (“grant date identification”), in relevant part, as follows:

The determination of whether stock-based compensation is directly identified with, or reasonably allocable to, the IDA is made as of the date that the stock-based compensation is granted. Accordingly, all stock-based compensation that is granted during the term of the CSA and, at date of grant, is directly identified with, or reasonably allocable to, the IDA is included as an IDC under paragraph (d)(1) of this section.

Notice 2005-99 provides that a taxpayer may choose to determine whether SBC measured by the elective method is related to the IDA by analyzing the activities of the employee recipients of the SBC by reference to financial reporting periods, identifying the related compensation on a period-by-period basis (“period-by-period identification”), rather than using grant date identification. Notice 2005-99 further provides:

Taxpayers’ implementation of this identification method based on financial reporting periods must meet four requirements. First, the identification methodology must be applied consistently (under the principles of § 1.482-7(d)(2)(iii)(C)). Second, any stock-based compensation the fair value of which is not reflected as a charge against income in audited financial statements (for example, as in the case of certain stock options the fair value of which was disclosed in footnotes prior to the effective date of SFAS 123R) must be identified for purposes of § 1.482-7 as if the fair value of such compensation were reflected as a charge against income in audited financial statements. Third, as under the grant date identification rule, controlled participants using this identification methodology must exclude stock-based compensation granted prior to the term of the QCSA. Fourth and finally, stock-based compensation granted but not vested during the term of the QCSA must be treated as vesting immediately before expiration or termination of the QCSA for purposes of § 1.482-7. Under this final requirement, if costs attributable to stock-based compensation granted during the term of the QCSA are allocable under U.S. GAAP to reporting periods subsequent to the term of the QCSA, the determination of whether these costs must be taken into account as intangible development costs must be based on the employee’s activities as of the financial reporting period during which the date of the expiration or termination of the QCSA occurs.

Generally, pursuant to Treas. Reg. § 1.482-7(d)(3)(iii)(C) and (B)(4), a change of identification method may be made only by a written amendment to the CSA entered

into with the consent of the Commissioner. However, Notice 2005-99 further provides that the consent of the Commissioner is not required to change from grant date identification to period-by-period identification if such written amendment is “made no later than the latest due date (with regard to extensions) of a Federal income tax return of any controlled participant for the first taxable year beginning after December 8, 2005.”

In applying period-by-period identification, Notice 2005-99 provides:

[A]ctivities within the intangible development area are not necessarily coextensive with those activities classified as “research and development” for financial reporting purposes. Consequently, nothing in this notice should be interpreted as eliminating the requirement to take into account all stock-based compensation costs related to the intangible development area. Controlled participants must identify the stock-based compensation that is related to the intangible development area, notwithstanding that the activities conducted to develop intangibles covered by the QCSA may differ from the activities classified as “research and development” for U.S. GAAP purposes.

ANALYSIS

Based on the facts and representations Company A has made, the Service grants Company A and the other controlled participants prospective consent to change to the elective method and period-by-period identification for SBC covered by Treas. Reg. § 1.482-7(d)(3)(iii)(B) and Notice 2005-99. This consent is effective for 60 days from the date of this letter. Therefore, if Company A chooses to adopt the elective method and period-by-period identification, it must make the written election within 60 days from the date of this letter.

The sole purpose of this private letter ruling is to grant consent for Company A and the other controlled participants to use the elective method and period-by-period identification for purposes of including SBC as an IDC that must be shared under the Company A CSA. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including the Company A CSA, or concerning the validity of any provisions within the Company A CSA.

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.

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,

Robert Z. Kelley
Senior Technical Reviewer, Branch 6
(International)

cc: