

Internal Revenue Service

Department of the Treasury

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Date:

April 17, 2001

Company A =

Country B =

Stock Exchange 1 =

Date X =

This is in response to a letter dated January 12, 2001, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code. Specifically, a ruling was requested that the deduction limitation of section 162(m) of the Code does not apply to Company A and its affiliates.

Company A, a publicly held corporation, is incorporated in Country B. On Date X, Company A's stock was listed on Stock Exchange 1. Some of Company A's subsidiaries are United States corporations. None of Company A's United States subsidiaries is a "publicly held corporation" under section 162(m)(2) of the Code.

Company A is a "foreign private issuer" under 17 C.F.R. section 240.3b-4(c) and as such, will file Form 20-F 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 20-F filed by Company A does not contain a summary compensation table described in Item 402(b) of Regulation S-K under the Securities Exchange Act of 1934 (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

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business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

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 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 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) purpose, 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

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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 under Item 402 of Regulation S-K under the Exchange Act is required to be filed by Company A with the Securities and Exchange Commission, no employees of Company A’s affiliated group 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 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. 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,

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

Enclosure:

Copy for 6110 purposes