

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

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CC:TEGE:EB:EC  
PLR-132518-08

Date:  
December 23, 2008

In Re:

**LEGEND:**

Corporation X =

Corporation Y =

Date 1 =

Date 2 =

Dear :

This letter is in response to a letter dated July 15, 2008, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, Corporation X requested a ruling that the deduction limitation of section 162(m) does not apply to Corporation X or its subsidiary, Corporation Y. The facts, as represented, are as follows.

Corporation X, a foreign corporation, acquired Corporation Y on Date 1. Corporation Y's taxable year ended on Date 2. As a result of the acquisition, Corporation Y's outstanding shares of common stock were converted into American Depositary Shares of Corporation X. One day before the acquisition, Corporation Y filed a Form 15 with the SEC to terminate the registration of its securities under Section 12 of the Securities Exchange Act of 1934 (Exchange Act). In addition, after the acquisition, Corporation X was a foreign private issuer under 17 C.F.R. section 240.3b-4(c) because it is incorporated under the laws of a foreign country 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) One or more 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.

As a foreign private issuer, Corporation X is required to file a Form 20-F with the Securities and Exchange Commission (SEC). Form 20-F does not require disclosure of executive compensation pursuant to the compensation disclosure rules in Item 402(b) of Regulation S-K under the Exchange Act. Accordingly, Company X is not required to file with the SEC a summary compensation table that is described in Item 402 of regulations 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 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) 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 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 Securities and Exchange Commission’s rules relating to executive compensation disclosure under the Exchange

Act are contained in Item 402 of regulations S-K, 17 CRF 229.402. These rules require disclosure of compensation awarded to, earned by, or paid to certain executive officers.

In the notice of proposed rulemaking containing the proposed regulations under section 162(m), the preamble contains the following language concerning the definition 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.’

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

The deduction limitation of section 162(m) does not apply to Corporation X because it is a foreign private issuer, and therefore it is not subject to the executive compensation disclosure rules under the Exchange Act. In addition, the deduction limit of section 162(m) does not apply to Corporation Y for its taxable year ending on Date 2 because as of Date 2 it is not registered or required to be registered under section 12 of the Exchange Act.

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 Corporations X and Y 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,

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