INTERNAL REVENUE SERVICE

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Company A =

Company B =

Country C =

Stock Exchange D =

Stock Exchange E =

Date F =

This is in reply to a letter dated November 15, 2000, and subsequent correspondence, submitted on behalf of Company A by its authorized representative requesting a ruling concerning whether section 162(m) of the Internal Revenue Code will apply to options issued when Company A was a private company.

Company A is a limited liability company and is an indirectly wholly-owned subsidiary of Company B and is a member of Company B's affiliated group within the meaning of section 1504 of the Code, without regard to section 1504(b). Company B is organized and governed by the laws of Country C and its common stock is traded on Stock Exchange D and its American Depositary Receipts are traded on Stock Exchange E. Company B is subject to section 12 of the Securities Exchange Act of 1934 (the Exchange Act) and qualifies as a "foreign private issuer" within the meaning of Rule 3b-4 under the Exchange Act. Company B complies with section 12 of the Exchange Act by making the appropriate filings required with respect to a foreign private issuer under sections 13 and 15(d) of the Exchange Act. It has been represented that as a foreign private issuer, Company B is not subject to the proxy compensation disclosure requirements under the Exchange Act and is not subject to section 162(m) of the Code.

Company A pays taxes and deducts compensation paid to various individuals who are performing services in the United States.

Company A anticipates being converted into a corporation taxable under subchapter C of the Code and become publicly held in connection with an initial public offering.

Company A's stock option plan was adopted on Date F and is intended to provide incentives to attract and retain highly competent persons as officers and key employees of Company A and certain of its affiliates by providing them the opportunity to acquire shares of Company A. The plan is administered by the compensation committee of Company A's board of directors, whose members may not qualify as outside directors within the meaning of section 1.162-27(e)(3) of the Income Tax Regulations.

Section 162(a)(1) of the Code allows as a deduction all 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 in the case of any publicly held corporation, no deduction is allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of the 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).

Section 162(m)(4) of the Code defines "applicable employee remuneration", with respect to any covered employee for any taxable year, generally as the aggregate amount allowable as a deduction for the taxable year (determined without regard to section 162(m)) for remuneration for services performed by the employee (whether or not during the taxable year). However, pursuant to section 162(m)(4), the term does not include remuneration payable solely on account of the attainment of one or more performance goals, but only if--

> (i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised of 2 or more outside directors,
>
> (ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote before the payment of the

remuneration, and

(iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and any other material terms were in fact satisfied.

Section 1.162-27(e)(1) of the regulations provides that the deduction limitation of section 162(m) does not apply to qualified performance-based compensation. Qualified performance-based compensation is compensation that meets all of the requirements of paragraphs (2) through (5) of section 1.162-27(e).

Section 1.162-27(e)(2)(vi) of the regulations provides, in part, that compensation attributable to a stock option is deemed to satisfy the requirements of section 1.162-27(e)(2) if the grant is made by the compensation committee; the plan under which the option is granted states the maximum number of shares with respect to which options may be granted during a specified period to any employee; and the amount of compensation the employee could receive is based solely on an increase in the value of the stock after the date of the grant. Thus, any compensation paid pursuant to a stock option grant with an exercise price of less than the fair market value of the stock at the date of the grant would not be performance-based compensation under section 1.162-27(e)(2).

Section 1.162-27(f)(1) of the regulations provides that, in the case of a corporation that was not a publicly held corporation and then becomes a publicly held corporation, the deduction limit does not apply to any remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held. However, in the case of such corporation that becomes publicly held in connection with an initial public offering, this relief applies only to the extent that the prospectus accompanying the initial public offering disclosed information concerning those plans or agreements that satisfied all applicable securities laws then in effect. In accordance with section 1.162-27(c)(1)(ii) of the regulations, a corporation that is a member of an affiliated group that includes a publicly held corporation is considered publicly held and, therefore, cannot rely on paragraph (f)(1).

Section 1.162-27(f)(2) of the regulations provides that paragraph (f)(1) may be relied upon until the earliest of one of the four following events: (i) the expiration of the plan or agreement; (ii) the material modification of the plan or agreement, within the meaning of section 1.162-27(h)(1)(iii) of the regulations; (iii) the issuance of all employer stock and other compensation that has been allocated under the plan; or (iv) the first meeting of the shareholders at which directors are to be elected that occurs after the close of the third calendar year in which the initial public offering occurs or, in the case of a privately held corporation that becomes publicly held without an initial public offering, the first calendar year following the calendar year in which the corporation becomes publicly held.

Because the Company B affiliated group was not subject to section 162(m) of the Code, Company A is entitled to the transition relief afforded in section 1.162-27(f)(1). Therefore, based on the facts as outlined above, we rule that in the event Company A becomes publicly held in connection with an initial public offering, the deduction limit of section 162(m) will not apply to any options granted to its (or its affiliates') employees pursuant to the plan prior to the earliest to occur of the four events specified in section 1.162-27(f)(2) of the regulations after the initial public offering (including any options granted pursuant to the plan prior to the initial public offering).

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(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 transaction described above under any other provisions of the Code.

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

Enclosure:
Copy for section 6110 purposes