Internal Revenue Service

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Taxpayer	=
Company A	=
Plan	=
Country A	=
Holding Corp.	=
Date 1	=
Date 2	=
B	=

This letter is a response to a request for a ruling submitted on behalf of Taxpayer. The request concerns whether Plan participants (or their beneficiaries) have income as a result of Company A's guarantee of Taxpayer's obligation under the Plan.

Taxpayer is a domestic company that markets and sells products and services for Holding Corp. Company A is a foreign company, headquartered in Country A, that markets and sells technology solutions for the B industry. Company A is the sole owner of Holding Corp. Holding Corp. is the sole owner of Taxpayer.

Taxpayer adopted the Plan, a non-qualified deferred compensation plan, on Date 1. The Plan, intended to be an unfunded, unsecured deferred compensation plan for a select group of management or highly compensated employees, allows participants to elect to defer bonus compensation. The Plan does not involve a trust for purposes of paying benefits. Deferred amounts are recorded in bookkeeping accounts established on behalf of participants and remain the sole and exclusive property of Taxpayer until they are paid or made available to participants. At the time participants elect to defer compensation, they also must irrevocably choose the date upon which payments from the Plan will begin. Until such time, the deferred amounts remain part of Taxpayer's general assets and available to Taxpayer's creditors.

On Date 2, Taxpayer amended the Plan, adding a new section whereby Company A agrees to guarantee payment of benefits under the Plan. According to this amendment, in the event Taxpayer fails to make payments under the Plan, Company A will make the payments. Taxpayer represents that the guarantee by Company A is intended to be an unfunded and unsecured promise to pay, and that Plan participants and their beneficiaries will continue to have rights only as unsecured general creditors. In all material respects the Plan complies with the Provisions of Rev. Procs. 92-65, 1992-2 C.B. 428, and 71-19, 1971-1 C.B. 698.

Section 83(a) of the Internal Revenue Code provides that the excess (if any) of the fair market value of property transferred in connection with the performance of services over the amount paid (if any) for the property is includible in the gross income of the person who performed the services for the first taxable year in which the property becomes transferable or is not subject to a substantial risk of forfeiture.

Section 1.83-3(e) of the Income Tax Regulations provides that for purposes of section 83 the term "property" includes real and personal property other than money or an unfunded and unsecured promise to pay money or property in the future. Property also includes a beneficial interest in assets (including money) transferred or set aside from claims of the transferor's creditors, for example, in a trust or escrow account.

Section 451(a) of the Code and section 1.451-1(a) of the regulations provide that an item of gross income is includible in gross income for the taxable year in which actually or constructively received by a taxpayer using the cash receipts and disbursements method of accounting. Under section 1.451-2(a) of the regulations, income is constructively received in the taxable year during which it is credited to a taxpayer's account, set apart, or otherwise made available so that the taxpayer may draw on it at any time. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Various revenue rulings have considered the tax consequences of nonqualified deferred compensation arrangements. Rev. Rul. 60-31, Situations 1-3, 1960-1 C.B. 174, holds that a mere promise to pay, not represented by notes or secured in any way, does not constitute receipt of income within the meaning of the cash receipts and disbursements method of accounting. See also Rev. Rul. 69-650, 1969-2 C.B. 106; Rev. Rul. 69-649, 1969-2 C.B. 106.

Under the economic benefit doctrine, an employee has currently includible income from an economic or financial benefit received as compensation, though not in cash form. Economic benefit applies when assets are unconditionally and irrevocably paid into a fund or trust to be used for the employee's sole benefit. Sproull v. Commissioner, 16 T.C. 244 (1951), aff'd per curiam, 194 F.2d 541 (6th Cir. 1952); Rev. Rul. 60-31, Situation 4.

In Berry v. United States, 593 F. Supp. 820 (M.D.N.C. 1984), the court held than an employee of a corporation did not constructively receive deferred compensation guaranteed by the shareholders of the corporation, notwithstanding the facts that the employer corporation was newly formed and engaged in a risky business and that the payments at issue were made by the guarantors.

Based on the information submitted and the representations made, we rule as follows:

1. Benefits payable under the Plan to a participant shall not result in taxable income for the participant or the participants' beneficiaries until the taxable year in which the benefits are paid or otherwise made available.

2. The guarantee by Company A will not cause any portion of the benefits under the Plan to be includible in the gross income of participants or participants' beneficiaries until the taxable year in which an amount is actually distributed or made available to the participant or beneficiary.

3. Amounts payable under the Plan will be includible as compensation in the gross income of the participants or their beneficiaries in the taxable year or years in which the amounts are paid or otherwise made available, whichever is earlier.

Except as specifically ruled on above, no opinion is expressed or implied concerning the tax consequences of any item of any transaction or item discussed above.

This ruling is effective as of the date of this ruling and only if the amendments of March 29, 2004 and June 28, 2004 are ratified by the board of directors. If the Plan is amended, this ruling may not remain in effect.

This ruling is provided only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be cited as precedent. In accordance with the power of attorney on file, a copy of this letter is being sent to your authorized representative. Taxpayer should attach a copy of this ruling to any income tax return to which it is relevant.

Sincerely yours,

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CATE LIVINGSTON FERNANDEZ
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Government Entities)