5. *Definitions*—In this determination, unless the context otherwise requires—

(a) Expressions used have the same meanings as in the Income Tax Act 1976, and where an expression is given a particular meaning for the purposes of sections 64B to 64M or 211 of that Act, the expression shall have that meaning in this determination:

(b) "Market-value buy-back obligation on the trust manager", in relation to a unit trust, means an undertaking by or an obligation upon the trust manager that—

(i) Is recorded in the trust deed or in a prospectus issued to promote the sale of interests in the unit trust; and

(ii) Binds the trust manager to purchase, at a price that reflects the market-value of the net assets of the trustees, interests in the unit trust offered to the trust manager for purchase:

(c) "Publicly-available unit trust" means a unit trust the interests in which may be freely traded without seeking the approval of any person, other than a person charged by statute with the regulation of offers of securities generally to the public or the regulation of trading in securities generally:

(d) "Security" has the meaning given in section 2 of the Securities Act 1978:

(e) "Trust manager", in relation to a unit trust, means a person—

(i) Charged with the management of the affairs of the unit trust, or some part of those affairs; and

(ii) Recognised in the trust deed as having that responsibility:

(f) "Trust deed", in relation to a unit trust, means the deed creating the trusts upon which the trustees hold the assets of the unit trust:

6. *Method*—Where—

(a) A person holds an interest in a publicly-available unit trust in relation to which there is a market-value buy-back obligation on the trust manager; and

(b) There is no other arrangement that includes the interest and the market-value buy-back obligation on the trust manager,—

in calculating the assessable income of the person in any income year—

(c) Any gain or loss on the sale or disposal of the interest is attributable to the interest; and

(d) The acquisition price of the interest is attributable to the interest; and

(e) The consideration receivable by the person in relation to the interest, including—

(i) any consideration that is a dividend; and

(ii) any consideration that is received or receivable on the sale or disposal of the interest,—

is attributable to the interest.

7. *Example*—Each unit trust deed that has a repurchase option will, by virtue of section 16 (2) of the Unit Trusts Act 1960, also contain a mechanism for calculating a minimum repurchase price. For the purposes of this determination it will suffice to use the mechanism specified in the respective trust deeds.

Such a mechanism should allow the trust manager to arrive at a figure for net asset value (less any administrative costs) which would be divided by the number of units so as to arrive at a repurchase price per unit.

Examples of suitable mechanisms are contained in the trust deeds for the New Zealand Rural Property Trust dated the 30th day of January 1987 and the Qtron Share Portfolio Trust dated the 26th day of July 1985.

This determination is signed by me on the 30th day of July 1987.

J. SIMCOCK, Commissioner of Inland Revenue.

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Mandatory Conversion Convertible Notes

DETERMINATION G5: This determination may be cited as "Determination G5: Mandatory Conversion Convertible Notes".

1. *Explanation* (which does not form part of the determination). A mandatory conversion convertible note is a financial instrument which is redeemable only in company shares. Coupon interest may be payable on the note for the period between issue and redemption.

This determination details the manner in which income derived and expenditure incurred in respect of a mandatory conversion convertible note is to be calculated. It also prescribes the method for calculating the part of the income or expenditure that is attributable to an excepted financial arrangement.

2. *Reference*—This determination is made pursuant to paragraphs (b) and (e) of section 64E (1) of the Income Tax Act 1976.

3. *Scope of Determination*—Except where its application is specifically excluded in another determination, this determination applies to every mandatory conversion convertible note where—

(a) Conversion is at a predetermined ratio into shares of a company; and

(b) Coupon interest payments, if any, are payable at regular intervals of not more than 12 months and are either of equal amount or are set in relation to a market interest rate indicator; and

(c) The market value of the underlying shares at the date of issue of the note is not less than eighty percent of the acquisition price of the note on that date; and

(d) The note is not part of another financial arrangement.

4. *Principle*—A mandatory conversion convertible note is a hybrid of debt and equity. It can be regarded alternatively as a loan with repayment in shares or as a forward purchase of shares. As a share is an excepted financial arrangement (section 64B of the Act) it is necessary to arbitrarily separate the debt and equity components of the note.

This determination treats all amounts in respect of a note other than the coupon interest payments as relating to the underlying shares. Income and expenditure in respect of the note is calculated by pro rata daily apportionment of the coupon interest payments to income years.

Changes in market conditions may impact on the value of a note on a secondary market. Due to the difficulty in accurately attributing the effects of such market changes between the debt and equity components of the note it is assumed that any changes in value on a secondary market are due to the equity component.

5. *Interpretation*—In this determination, unless the context otherwise requires—

(a) Expressions used, except the expression "income year", have the same meanings as in section 2 and section 64B of the Income Tax Act 1976:

(b) "Coupon interest payment" means any amount payable on the note by the note issuer to the note holder other than payments relating to the redemption or conversion of the note:

(c) "Income year" means—

(i) Where a taxpayer furnishes a return of income under section 15 of the Income Tax Act 1976 for an accounting year ending with a balance date other than the 31st day of March, the period of 12 months ending on that balance date; or

(ii) In respect of any other person, the year in which the income has been derived by the person:

(d) "Mandatory conversion convertible note", or "note", means any debenture, bond, certificate, document, note, or writing issued or given by a company—

(i) Evidencing, acknowledging, creating, or relating to a loan to the company or any money subscribed to the company or any other liability of the company, whether or not there is a charge over the undertaking or any of the assets of the company securing the whole or any part of the amount in respect of which the company has issued or given the note; and

(ii) Providing, pursuant to a trust deed or otherwise, and whether exclusively or not, for that amount, with or without interest thereon and whether at par or otherwise, to be converted into, or to be redeemed or paid by the issue of, shares or stock in the capital of a company, where the conversion, redemption, or payment by the issue of shares or stock is mandatory.

(e) "Underlying shares", in relation to a note, means the shares or stock into which the note is convertible, or in which it may be redeemed or paid.

6. *Method*—

(1) The part of a mandatory conversion convertible note that is attributable to the underlying shares shall be—

(a) In respect of income, gain or loss, or expenditure, and also in respect of consideration receivable by the holder or payable by the issuer: all amounts other than coupon interest payments;

(b) In respect of the acquisition price: the acquisition price of the note.