

- (a) All amounts payable are denominated in New Zealand dollars; and
- (b) The person becomes a party to the Convertible Note after the day on which this determination is made; and
- (c) At the date upon which the Convertible Note is acquired in relation to the holder or issued in relation to the issuer—
- (i) The Cash Redemption Amount; and
 - (ii) The acquisition price and, where the acquisition price is to be paid by instalments, the amount of instalments and instalment payment dates; and
 - (iii) Coupon Interest Payment dates; and
 - (iv) The Exercise Date—
- in relation to the Convertible Note are known not later than the first balance date after the Convertible Note was issued or acquired as the case may be; and
- (d) The holder (and not the issuer) of the Convertible Note may elect whether the liability of the issuer is to be discharged by the issue or delivery of shares or by payment of the Cash Redemption Amount; and
- (e) The option to acquire shares is not detachable.

4. *Principle*—(1) An optional conversion Convertible Note is a hybrid financial arrangement which has a debt and an equity component. The equity component is an option to acquire or to sell shares. Options to acquire or sell shares are excepted financial arrangements.

(2) This determination sets out the method for determining the part of the acquisition price and the part of the consideration receivable by the holder or payable by the issuer that is attributable to the excepted financial arrangement. These amounts, if any, are not taken into account in any calculations to determine income derived or expenditure incurred or the base price adjustment under sections 64B to 64M of The Act.

(3) The effect of this determination is that the holder and issuer of the Convertible Note are taxed as if the Convertible Note were a bond, issued at a price which excludes an amount paid or received for the option to convert to shares, and redeemable at the Cash Redemption Amount with Coupon Interest Payments throughout the term of the note if applicable.

(4) It is assumed that a person will not forgo a cash payment where the value of the alternative is less than the amount of the cash payment; and in particular a person will elect to receive cash rather than shares unless the value of the shares is greater than the amount of the cash payment available, in which case the excess is attributed to the excepted financial arrangement.

(5) It is assumed that a person will not suffer a net loss in order to give any other person the right to create a claim over the first-mentioned person; and in particular a company will not pay any person to take up a call option on the company for the company shares.

5. *Interpretation*—(1) In this determination, unless the context otherwise requires—

Words and expressions used shall have the same meaning as in The Act, except that, where there is a conflict between the meaning of an expression in sections 64B to 64M of The Act and the meaning of the expression elsewhere in The Act, the expression shall have the same meaning as in the said sections 64B to 64M:

“Acceptable Present Value Calculation Method” means Method A of Determination G10B: Present Value Calculation Methods, or an alternative method producing not materially different results:

“The Act” means the Income Tax Act 1976:

“Cash Redemption Amount” in respect of a Convertible Note means the consideration that, according to the terms of the

Convertible Note, the holder of the Convertible Note may elect to:

- (a) Receive in substitution for issue or delivery of shares; or
- (b) Surrender the right to receive in consideration for the issue or delivery of shares:

“Convertible Note” means any debenture, bond certificate, document, note, or writing issued or given by a person:

- (a) Evidencing, acknowledging, creating, or relating to a loan to the person or any money subscribed to the person or any other liability of the person, whether or not there is a charge over the undertaking or any of the assets or the person securing the whole or any part of the amount in respect of which the person has issued or given the note; and
- (b) 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 at the option of holder of the Convertible Note—
 - (i) To be redeemed by payment of the Cash Redemption Amount; or
 - (ii) To be converted into, or to be redeemed or paid by the issue or delivery of, shares in the capital of any company—

and includes any subsidiary or collateral agreement fixing the amount of coupon payment required to be made under the Convertible Note:

“Coupon Interest Payment” or “Coupon Interest Payments” in respect of a Convertible Note means any amount or amounts payable on the note by the note issuer to the note holder other than the Cash Redemption Amount:

“Exercise Date” in respect of a Convertible Note means the date when the holder of the Convertible Note may elect to receive payment of the Cash Redemption Amount:

“Redemption Date” in respect of a Convertible Note means the date on which the Convertible Note is converted, redeemed or paid:

“Specified Rate” at any date shall be calculated pursuant to Determination G23: Specified Rate:

“Term Of The Convertible Note” is the period from the issue, in the case of an issuer, or acquisition, in the case of a holder, until the Exercise Date.

(2) Any reference in this determination to another determination made by the Commissioner shall be construed as referring to any fresh determination made by the Commissioner to vary, rescind, restrict or extend that determination.

(3) For convenience, words and phrases defined in this determination are indicated by initial capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

6. *Method*—(1) The amount of the core acquisition price of a Convertible Note attributable to the option to buy or sell shares, which is an excepted financial arrangement, is:

$$y - s$$

where—

y is the core acquisition price of the Convertible Note determined in accordance with section 64BA (1) (d) of The Act; and

s is the present value of the cashflows in respect of the Convertible Note and the person:

Provided that the amount so calculated shall not be less than zero.

(2) For the purpose of determining the present value of the cashflows in respect of a Convertible Note and a person as required by subclause (1)—