Inland Revenue
Te Tari Taake

Determination S11: St Lukes Group Limited – Mandatory Conversion Convertible Notes

This determination may be cited as "Determination S11: St Lukes Group Limited – Mandatory Conversion Convertible Notes".

1. Explanation (which does not form part of the determination)

(1) This determination relates to the extension of the mandatory conversion convertible notes ("the Notes") issued by St Lukes Group Limited ("the Issuer") pursuant to the Trust Deed dated 15 November 1993 (as amended).

(2) The Notes are financial arrangements in which the holder of a Note provides money to the Issuer, and the debt is discharged at a future date by the issue of shares in the Issuer. Interest is payable for the period between the issue of the Note and conversion into shares. Such payments are called Coupon Interest Payments.

(3) This determination details which amounts are to be regarded as solely attributable to an excepted financial arrangement. The Coupon Interest Payments and amounts attributed to these payments by this determination are not solely attributable to an excepted financial arrangement and are therefore to be included as income or expenditure for the purposes of calculating accrual income or expenditure. All other amounts are solely attributed to an excepted financial arrangement.

(4) The Notes are convertible into shares which are excepted financial arrangements. Section EH 2 of the Act provides that income deemed to be derived or the expenditure deemed to be incurred by a person in respect of a financial arrangement under the qualified accrual rules shall not include any amount solely attributable to such an excepted financial arrangement that is part of a wider financial arrangement.

2. Reference

This determination is made pursuant to section 90(1)(g) of the Tax Administration Act 1994.

3. Scope of Determination

(1) This determination applies to the Notes issued by the Issuer on the terms set out below and pursuant to the Trust Deed.

(2) This determination applies to Coupon Interest Payments made after 1 April 1999.

(3) The terms of the Notes are:

(a) The principal amount of the Notes is in no circumstances to be paid in cash, and all redemptions of the Notes are to be effected by conversion into Shares at the ratio of one Share for each Note, subject to clause 5 of the Trust Deed;

(b) Coupon Interest Payments are payable at regular intervals of six months;

(c) Coupon Interest Payments for the period commencing on the issue of the Notes and ending on 31 March 1999 are of equal amount (except for any payment for a part period because of the issue date or conversion date of the Notes, but calculated at the same rate as other Coupon Interest Payments) and set at a rate yielding 8.7% per annum;

(d) Coupon Interest Payments for the period commencing 1 April 1999 and ending on maturity of the Notes are of equal amount, (except for any payment for a part period because of the issue date or conversion date of the Notes, but calculated at the same rate as other Coupon Interest Payments) and set at a rate yielding 8.22% per annum, on the market value of the Notes at the time on 10 February 1999 when the rate was set.

(4) The Notes are not part of another financial arrangement.

(5) This determination applies only to:

(i) a holder who acquires Notes after 1 April 1999; and
(ii) the Issuer and a holder if that person has, prior to 1 April 1999, in respect of the Notes, included the amount of any Coupon Interest Payments in calculating income or expenditure under the accruals rules contained in Part EH of the Act and treated any income, gain or loss, or expenditure, or consideration receivable or payable, in relation to the Notes, other than the Coupon Interest Payments, as solely attributable to an excepted financial arrangement.

(6) This determination shall not apply to any Shares allocated to any holder pursuant to clause 5.3 of the Trust Deed in lieu of interest accrued but suspended.

4. Principle

(1) The Notes have both debt and equity components. They can be regarded alternatively as:

(a) a loan to the Issuer with repayment in Shares (the debt component); or

(b) a forward purchase of the Shares.

(2) The accruals rules are not intended to deal with equity, and therefore classify a share as an excepted financial arrangement.

(3) As the Notes have this dual character, when calculating income/expenditure in relation to a Note it is first necessary to separate the debt and equity components of the Note.

(4) This determination specifies that the Coupon Interest Payments relate to the loan (debt component), so as to require their inclusion for calculation of income or expenditure and the base price adjustment under the accruals rules contained in part EH of the Act.

(5) This determination specifies that any income, gain or loss, or expenditure, or consideration receivable by the holder and payable by the issuer, in relation to the Notes, other than the Coupon Interest Payments and amounts attributed to those Coupon Interest Payments, is solely attributable to an excepted financial arrangement.

5. Interpretation

In this determination, unless the context otherwise requires:

(1) Expressions used have the same meaning as in section OB 1 of the Income Tax Act 1994.

(a) "the Act" means the Income Tax Act 1994;

(b) "Coupon Interest Payment" means any amount payable on the Notes by the Issuer to the holders of the Notes other than payments relating to the redemption or conversion of the Notes;

(c) "the Issuer" means St Lukes Group Limited;

(d) "the Notes" means the mandatory convertible notes of the Issuer constituted in November 1993 pursuant to the Trust Deed and offered pursuant to prospectuses dated 15 November 1993 and 22 August 1997;

(e) "the Shares" means the ordinary shares in the Issuer into which the Notes will convert according to the terms of the Trust Deed;

(f) "the Trust Deed" means the trust deed dated 15 November 1993 between the Issuer, and the New Zealand Guardian Trust Company Limited and Guardian Trust Australia Limited as trustees (as amended).

(2) 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) Amounts solely attributable to an excepted financial arrangement consist of:

(a) all income, gain or loss, or expenditure, and also any other consideration receivable or payable, except:

(i) Coupon Interest Payments;

(ii) amounts attributed to Coupon Interest Payments as described in clause 6(3).

(2) In respect of the acquisition price of a holder, the amounts to be included when calculating income/expenditure are those attributed to Coupon Interest Payments as set out in clause 6(4).

(3) If a Note is sold part way through an interest period, then it is necessary to apportion the Coupon Interest Payment between the seller and the purchaser. The seller is allocated interest, on a daily straight line basis, that accrues before the date of sale.

(4) The portion of the sale price thus attributed to accrued interest and allocated to the seller is, in turn, treated as the purchaser's acquisition price of the financial arrangement. If the purchaser later receives the Coupon Interest Payment for the sale period, then this portion attributed to accrued interest may be immediately offset against the amount received when calculating the amount of income derived from the financial arrangement in that year.

7. Example

This example illustrates the application of the method (set out in the determination) for determining the amounts attributable to both the debt and equity components of the Notes issued by the Issuer.

The example proceeds on the basis that a non cash basis holder subscribes for 100 Notes on the original issue date for $1.00 per Note. The holder does not acquire any further Notes. The holder continues to hold the Notes until maturity on 1 April 2004, at which point the Notes will convert into shares in the Issuer, on the basis of one share for one Note. The example assumes that the share price on 1 April 2004 is $2.00, that the coupon payments for the period to 1 April 1999 are 8.7 cents per Note per annum, and that the coupon payments for the period from 2 April 1999 to 1 April 2004 are 13.9 cents per Note per annum.

The holder and Issuer in terms of clause 3(5) of this determination have taken into account as income and expenditure respectively, under the accruals rules, the following amounts:

31/3/94	$2.598 (part period 13 Dec 93 to 31 March 1994 (109 days) @ 8.7 being 2.59808)
31/3/95	$8.70

31/3/96	$8.70
31/3/97	$8.70
31/3/98	$8.70
31/3/99	$8.70

This determination specifies that for the period 1 April 1999 to 1 April 2004 only the following amounts of interest paid are attributable to the debt part of the instrument so as to require inclusion in the calculation of income for the holder under the accruals rules:

31/3/2000	$13.90
31/3/2001	$13.90
31/3/2002	$13.90
31/3/2003	$13.90
31/3/2004	$13.90

This determination, in relation to the same 100 Notes, specifies that for the same period only the following amounts of interest paid are attributable to the debt part of the instrument so as to require inclusion in the calculation of expenditure for the Issuer under the accrual rules:

31/3/2000	$13.90
31/3/2001	$13.90
31/3/2002	$13.90
31/3/2003	$13.90
31/3/2004	$13.90

Accordingly the base price adjustment upon maturity in 1 April 2004 for the holder is:

a – (b + c) where;

“a” is $115.598 (all coupon interest payments received)

“b” is $0 (the acquisition price)

“c” is $115.598 (the value of all coupon interest payments received)

The result is $0

This determination is signed by me on the 10th day of February 1999.

JOHN MORA
Assistant General Manager (Adjudication & Rulings)