

24 December 2024

Simberi Gold receives PNG IRC assessment

Simberi Gold Company Pty Ltd (“**Simberi Gold**”), a wholly-owned subsidiary of St Barbara Limited (“**St Barbara**” or the “**Company**”) (ASX: SBM), was notified yesterday that the Papua New Guinea (“**PNG**”) Internal Revenue Commission (“**IRC**”) delivered correspondence to Simberi Gold’s tax agent in PNG containing details of PNG tax assessments (“**IRC Correspondence**”).

The IRC Correspondence contains an assessment of additional taxes, inclusive of a 200% penalty imposition, that amount to PNG Kina (**PGK**) 523 million (equivalent to approximately A\$210 million¹). An amount of PGK 435 million relates to income tax assessed in relation to the calculation of Allowable Capital Expenditure asset values since 2006 and the impact of that on depreciation deduction claims over the years 2017 to 2021. The balance of PGK 88 million relates to a deemed dividend withholding tax, assessed on a debt-to-equity transaction on the re-capitalisation of Simberi Gold in 2018.

St Barbara and Simberi Gold reject the IRC’s arguments that underpin the assessments and are committed to working with the IRC to reconsider this flawed assessment in its final determination. St Barbara confirms the assessment will be appealed within the 60-day appeal period.

Simberi Gold notes that the IRC has reached back, beyond the period of 5 years permitted for amended assessments (being the statutory limitation period), and to do so has attempted to argue that Simberi Gold has been fraudulent in the preparation of the tax returns. St Barbara takes this assertion very seriously and will vigorously defend it. Simberi Gold has utilised reputable tax advisors within PNG throughout the relevant periods, has made full and true disclosures of all material facts and strongly rejects any suggestion of dishonest conduct of any nature whatsoever.

St Barbara believes that the assertions of fraud have been made to inappropriately re-open prior year tax returns.

Managing Director and CEO Andrew Strelein said *“The receipt of this IRC Amended Assessment, backdating changes to 2008 and earlier, just as IRC were closing down its office for Christmas was disappointing – particularly when such positive progress has been made with Mineral Resources Authority and with Kumul Minerals Holdings Limited on the development of the Simberi Sulphides.*

Nonetheless, we hope that with discussion and realisation of the miscalculations on top of the erroneous applications of the law in the IRC Amended Assessments, we can resolve this matter quickly. Simberi Gold will prepare its appeal which must be lodged by 17 February 2025 under the legislative provisions.”

Below we elaborate on the material issues raised in the IRC Correspondence and set out the Company’s position on each issue raised.

Issue 1 – Disallowance of Expenditure Claimed as Short Life Allowable Capital Expenditure Since Inception

The primary area the IRC contests, in the revised assessment, relates to the way in which Simberi Gold claimed depreciation deductions for Allowable Capital Expenditures.

Additionally, the IRC has made errors in calculating the Short Life Allowable Capital Expenditure, by applying their own tax deduction calculations in substitution of those applied by Simberi Gold in the relevant tax returns. Simberi Gold calculates that Simberi Gold is in fact entitled to a small refund under the IRC’s proposed methodology when the calculations are correctly made.

In any event, the methodology is incorrect.

¹ Based on a PGK/AUD exchange rate of 2.49

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The IRC has incorrectly applied Section 155E(5) of Income Tax Act 1959 (“**Tax Act**”) in the calculation of its additional tax assessment. Section 155E(5) states:

“Where, having regard to the information in his possession, the Commissioner General is not satisfied that the estimate made by the taxpayer of the life of production from a particular resource project is a reasonable estimate, the estimated life shall, for the purposes of Subsection (4), be taken to be such period as the Commissioner General thinks reasonable, but not exceeding the divisors set out in Subsection (1).”

Throughout the years 1998 through to 2016, the Allowable Capital Expenditure deductions were only claimed under Section 155E(1) with no adjustment made under Section 155E(4) to deduct those amounts over a shorter mine life than four years. The IRC Correspondence ignores this fact, that determinations of short or long asset life are made under either Section 155E(1)(a) or alternatively (1)(b) as appropriate.

The IRC Correspondence asserts that the mine life for asset deduction should have included the potential future development of sulphide mineralisation identified at Simberi Gold Mine. St Barbara notes that throughout 2017 to 2021 the sulphide expansion project had not progressed past a pre-feasibility study phase. The expected life of Simberi, as the “particular resource project” for the purposes of application of Section 155E(5), only became relevant from 2017 when depreciation was first accelerated through the operation of Section 155E(4) when the mine life was determined by St Barbara to be 4 years or less based on remaining oxide mine life.

The IRC Correspondence assertion that it is appropriate for the Commissioner General to make a different estimate of “life of production”, which is not accepted by Simberi Gold, must then only be applicable to modify the Allowable Capital Expenditure for which depreciation was accelerated pursuant to Section 155E(4). Reclassification of every single Allowable Capital Expenditure item to be depreciated as a Long Life Addition, as calculated by the IRC, is clearly an incorrect application of Section 155E(5).

Apart from this incorrect application of Section 155E(5), the IRC Correspondence contains several significant errors in its calculation of the purported additional tax:

- The IRC Correspondence removes all depreciation associated with Short Life Additions Allowable Capital Expenditures (under Section 155E(1)(b) from the tax returns from 1998 through to 2005) but then fails to include those Allowable Capital Expenditures items as Long Life Additions under Section 155E(1)(a).
- The IRC Correspondence ignores that the income tax years 2013 to 2015 were tax loss years and the IRC has therefore incorrectly applied depreciation of Allowable Capital Expenditures over those years, rather than carry them forward for deduction against subsequent income tax years.
- The IRC Correspondence has ignored that Simberi commenced production in 2008 and the IRC has applied depreciation of Allowable Capital Expenditures items back to 2006 and 2007 income tax years, before first revenue generation, and this has resulted in a lower available tax deduction over the period considered.
- The IRC Correspondence has ignored that adjustments were made to the tax return for the 2021 income tax return and that the correct total Allowable Capital Expenditures addition should have been corrected for.

St Barbara reiterates that the income tax returns were performed diligently and honestly with reputable advisors, and we strongly refute any basis whatsoever for the IRC to argue fraudulent preparation of income tax returns.

Issue 2 – Return of Capital to St Barbara Limited (Australia) and Nord Pacific Limited (Canada) by Simberi Gold Company Limited (Papua New Guinea)

The IRC Correspondence asserts that Simberi Gold’s 2018 debt-to-equity restructure and its return of capital under PNG Company Act and the Tax Act were incorrectly treated for tax purposes.

The IRC Correspondence attempts to argue that the debt-to-equity restructure and capital return should have been characterised as a dividend, but without any substantiation of that argument. The IRC Correspondence then goes on to assert that dividend withholding tax should have been paid on the dividend.

In 2018 St Barbara Limited agreed to convert a PGK774,800,000 debt owed by Simberi Gold into equity to reduce Simberi Gold’s debt position (and increase capitalisation) to normalise its debt-to-equity position and to reduce the interest expense burden on the then unprofitable Simberi Mine.

It is a fundamental accounting principle that a dividend can only be paid from retained earnings or anticipated current year profits. At the time of the restructure, Simberi Gold had negative retained earnings of PGK 601,678,000 and therefore could not consider the payment of a dividend from retained earnings. Rather a return of capital was utilised to recoup excess funds initially advanced as debt.



The return of capital by Simberi Gold to its shareholder did not exceed the moneys paid up on the shares and so was not a dividend. The distribution was clearly and properly executed as a distribution back to the shareholder of moneys paid up on a share and there were insufficient retained earnings in Simberi Gold at all relevant times from which to pay a dividend from.

Authorised by

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