E. Taxation

US Federal Taxation

The following discussion is a summary of the material US federal income tax consequences that are likely to be relevant to US holders in respect of the acquisition, ownership and disposition of our ordinary shares or ADSs. This summary does not purport to address all material tax consequences that may be relevant to a particular US holder. This summary also does not take into account the specific circumstances of particular investors, some of which (such as tax-exempt entities, banks, insurance companies, real estate investment trusts, partnerships and other pass-through entities, investors liable for the US alternative minimum tax, investors that own or are treated as owning 10% or more of Sims' voting shares, investors that hold ordinary shares or ADSs as part of a straddle, hedge, conversion, constructive sale, or other integrated transaction, and investors whose functional currency is not the US dollar) may be subject to special tax rules.

This summary is based on the US Internal Revenue Code of 1986, as amended, or the Code, its legislative history, existing and proposed regulations and published rulings and court decisions, all as currently in effect, as well as the Convention between Australia and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, or the Tax Treaty. These laws are subject to change, possibly on a retroactive basis. This discussion does not address effects of any US state or local tax laws. The specific tax position and circumstances of each holder will determine the applicable US federal, state and local income tax implications for that holder and we recommend each holder consult their own tax advisor concerning the implications of the acquisition, ownership and disposal of ordinary shares or ADSs. This section does not apply to you if you are not a US holder as defined below. US holders also are advised to consult their own tax advisors regarding their eligibility for Tax Treaty benefits in light of their own particular circumstances, especially with regard to the "Limitations of Benefits" provision.

For purposes of this discussion, you are a US holder if you are a beneficial owner of ordinary shares or ADSs and you are:

- a citizen or resident of the US for US federal income tax purposes;
- a corporation, or other entity treated as a corporation for US federal income tax purposes, created or organized under the laws of the US or any state thereof or the District of Columbia;
- an estate whose income is subject to US federal income tax regardless of its source; or
- a trust if a US court can exercise primary supervision over the trust's administration and one or more US persons are authorized to control all substantial decision of the trust.

Generally, a holder of ADSs will be treated as the owner of the underlying ordinary shares represented by those ADSs for US federal income tax purposes.

If a partnership holds ordinary shares or ADSs, the tax treatment of a partner in the partnership generally will depend upon the status of the partner and the activities of the partnership. If a US holder is a partner in a partnership that holds ordinary shares or ADSs, the US holder is urged to consult its own tax advisor regarding the specific tax consequences of acquiring, owning and disposing of ordinary shares or ADSs.

Taxation of dividends

Under the US federal income tax laws, and subject to the discussion below under "Passive foreign investment company," if you are a US holder, you must include in your gross income the gross amount of any dividend paid by us out of our current or accumulated earnings and profits (as determined for US federal income tax purposes). If you are a non-corporate US holder, dividends paid to you in taxable years beginning before January 1, 2013 that constitute qualified dividend income will be taxable to you at a maximum long-term capital gains tax rate of 15% provided that you held the shares for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date and meet other holding period requirements. Otherwise, ordinary income tax rates will apply.

As a general rule, dividends paid by a foreign corporation will not constitute qualified dividend income if such corporation is treated, for the tax year in which the dividend is paid, or the preceding tax year, as a passive foreign investment company, or a PFIC, for US federal income tax purposes. We do not believe that we will be classified as a PFIC for US federal income tax purposes for our current taxable year or that we were classified as a PFIC in a prior taxable year, and therefore dividends we pay with respect to our shares generally will be qualified dividend income. However, see the discussion under “Passive foreign investment company” below. Absent new legislation extending current rates, dividends paid in taxable years beginning on or after January 1, 2013 will be subject to ordinary income tax rates.

You must include any Australian tax withheld from the dividend payment in this gross amount even though you do not in fact receive it. The dividend is ordinary income that you must include in income when you receive the dividend, actually or constructively. The dividend will not be eligible for the dividends-received deduction generally allowed to US corporations in respect of dividends received from other US corporations. The amount of the dividend distribution that you must include in your income as a US holder will be the US dollar value of the Australian dollar payments made, determined at the spot Australian dollar/US dollar rate on the date the dividend distribution is included in your income, regardless of whether the payment is in fact converted into US dollars. Generally, any gain or loss resulting from currency exchange fluctuations during the period from the date you include the dividend payment in income to the date you convert the payment into US dollars will be treated as ordinary income or loss and will not be eligible for the special tax rate applicable to qualified dividend income. The gain or loss generally will be income from sources within the US for foreign tax credit limitation purposes. Distributions in excess of current and accumulated earnings and profits, as determined for US federal income tax purposes, will be treated as a non-taxable return of capital to the extent of your basis in your ordinary shares and thereafter as capital gain.

Subject to certain limitations, the Australian tax withheld in accordance with the Tax Treaty and paid over to Australia will be creditable against your US federal income tax liability. Special rules apply in determining the foreign tax credit limitation with respect to dividends that are subject to the maximum long-term capital gain 15% rate.

Dividends will be income from sources outside the US. Under the foreign tax credit rules, dividends will be “passive” or “general” income for purposes of computing the foreign tax credit.

Taxation of capital gains

Subject to the discussion below under “Passive foreign investment company,” if you are a US holder and you sell or otherwise dispose of your ordinary shares or ADSs, you will recognize a capital gain or loss for US federal income tax purposes equal to the difference between the US dollar value of the amount that you realize and your tax basis, determined in US dollars, in your ordinary shares or ADSs. The capital gain of a non-corporate US holder that is recognized before January 1, 2013 is generally taxed at preferential rates where the holder has a holding period greater than one year. There are limitations on the deductibility of capital losses.

Medicare Tax on Unearned Income

Signed into law March 30, 2012, the Health Care and Education Reconciliation Act provides, among other things, with respect to taxable years beginning after December 31, 2012, that certain US persons, including individuals, estates and trusts, will be subject to an additional 3.8% Medicare tax on “net investment income.” For individuals, the additional Medicare tax applies to the lesser of (i) “net investment income” or (ii) the excess of “modified adjusted gross income” over US$200,000 (US$250,000 if married and filing jointly or US$125,000 if married filing separately). “Net investment income” generally equals the taxpayer’s gross investment income (which includes interest, dividends, annuities, royalties, rents and capital gains) reduced by the deductions that are allocable to such income.

You should consult with your independent tax advisor regarding the implications of the additional Medicare tax resulting from your ownership and disposition of ordinary shares or ADSs.

Passive foreign investment company

Special US federal income tax rules apply to US holders owning shares of a PFIC. We believe that our ordinary shares or ADSs will not be treated as shares of a PFIC for US federal income tax purposes in any prior taxable year or for the current taxable year, but this conclusion is a factual determination made annually and therefore may be subject to change. We will generally be considered a PFIC for any taxable year if either (i) at least 75% of our gross income is passive income (the “Income Test”), or (ii) at least 50% of the value of our assets (based on an average of the quarterly values of the assets during a taxable year) is attributable to assets that produce or are held for the production of passive income (the “Asset Test”). For this purpose, passive income generally includes dividends, interest, royalties, rents (other than royalties and rents derived in the active conduct of a trade or business and not derived from a related person), annuities and gains from assets that produce passive income. We will be treated as owning our proportionate share of the assets and earning our proportionate share of the income of any other corporation in which we own, directly or indirectly, 25% or more (by value) of the stock.

We must make a separate determination each year as to whether we are a PFIC. As a result, it is possible that our PFIC status will change. In particular, our PFIC status under the Asset Test will generally be determined by using the market price of our ordinary shares and ADSs, which is likely to fluctuate over time, to calculate the total value of our assets. Accordingly, fluctuations in the market price of the ordinary shares or ADSs may result in our being a PFIC. If we are classified as a PFIC for any year during which you hold ordinary shares or ADSs, we will generally continue to be treated as a PFIC for all succeeding years during which you hold ordinary shares or ADSs. However, if we cease to be a PFIC under the Income Test and the Asset Test, you may make certain elections, including the “mark-to-market” election as discussed below, to avoid PFIC status on a going-forward basis.

If we are a PFIC for any taxable year during which you hold ordinary shares or ADSs, you will be subject to special tax rules with respect to (i) any “excess distribution” that you receive and (ii) any gain you realize from a sale or other disposition (including a pledge) of the ordinary shares or ADSs, unless you make a “mark-to-market” election. Excess distributions are generally defined as distributions you receive in a taxable year that are greater than 125% of the average annual distributions you received during the shorter of the three preceding taxable years or your holding period for the ordinary shares or ADSs. Under these special tax rules: (i) the excess distribution or gain will be allocated ratably over your holding period for the ordinary shares or ADSs, (ii) the amount allocated to the current taxable year, and any taxable year prior to the first taxable year in which we were a PFIC, will be treated as ordinary income, and (iii) the amount allocated to each other year will be subject to the highest tax rate in effect for that year and the interest charge generally applicable to underpayments of tax will be imposed on the resulting tax attributable to each such year. The entire amount of any gain realized upon the sale or other disposition will be treated as an excess distribution made in the year of sale or other disposition and as a consequence will be treated as ordinary income and, to the extent allocated to years prior to the year of sale or disposition with respect to which we were a PFIC, will be subject to the interest charge described above. The tax liability for amounts allocated to years prior to the year of disposition or “excess distribution” cannot be offset by any net operating losses for such years, and gains (but not losses) realized on the sale of the ordinary shares or ADSs cannot be treated as capital, even if you hold the ordinary shares or ADSs as capital assets.

Alternatively, a US holder of “marketable stock” (as defined below) in a PFIC may make a mark-to-market election for such stock of a PFIC to elect out of the tax treatment discussed above. If you make a mark-to-market election for the ordinary shares or ADSs, you will include in income each year an amount equal to the excess, if any, of the fair market value of the ordinary shares or ADSs as of the close of your taxable year over your adjusted basis in such ordinary shares or ADSs. You are allowed a deduction for the excess, if any, of the adjusted basis of the ordinary shares or ADSs over their fair market value as of the close of the taxable year. However, deductions are allowable only to the extent of any net mark-to-market gains on the ordinary shares or ADSs included in your income for prior taxable years. Amounts included in your income under a mark-to-market election, as well as gain on the actual sale or other disposition of the ordinary shares or ADSs, are treated as ordinary income. Ordinary loss treatment also applies to the deductible portion of any mark-to-market loss on the ordinary shares or ADSs, as well as to any loss realized on the actual sale or disposition of the ordinary shares or ADSs, to the extent that the amount of such loss does not exceed the net mark-to-market gains previously included for such ordinary shares or ADSs. Your basis in the ordinary shares or ADSs will be adjusted to reflect any such income or loss amounts. If you make a valid mark-to-market election, the tax rules that apply to distributions by corporations which are not PFICs would apply to distributions by us, except that the lower applicable capital gains rate for qualified dividend income discussed above under “Taxation of dividends” would not apply.

The mark-to-market election is available only for “marketable stock,” which is generally stock that is traded on a qualified exchange or other market. We have listed our ordinary shares and ADSs on the New York Stock Exchange. We believe that the New York Stock Exchange will constitute a qualified exchange or other market for this purpose. However, no assurances can be provided that our ordinary shares and ADSs will continue to trade on the New York Stock Exchange or that they will be regularly traded for this purpose.

If a non-US corporation is a PFIC, a holder of shares in that corporation may elect out of the general PFIC rules discussed above by making a qualified electing fund, or QEF, election to include its pro rata share of the corporation’s income on a current basis. You may make a QEF election with respect to us only if we agree to furnish you annually with certain tax information. However, if you hold ordinary shares or ADSs in any year in which we are a PFIC, you will be required to file Internal Revenue Service Form 8621 regarding distributions you receive on the ordinary shares or ADSs, and any gain realized on the disposition of the ordinary shares or ADSs.

The rules applicable to owning shares of a PFIC are complex, and each US holder should consult with its own tax advisor regarding the consequences of investing in a PFIC.

Information reporting and backup withholding

Dividend payments with respect to ordinary shares or ADSs and proceeds from the sale, exchange or redemption of ordinary shares or ADSs may be subject to information reporting to the Internal Revenue Service and possible US backup withholding at a current rate of 28%, unless the conditions of an applicable exception are satisfied. Backup withholding will not apply to a US holder who furnishes a correct taxpayer identification number and makes any other required certification or who is otherwise exempt from backup withholding. US holders who are required to establish their exempt status generally must provide such certification on Internal Revenue Service Form W-9. US holders should consult their tax advisors regarding the application of the US information reporting and backup withholding rules.

Payments to non-US holders of distributions on, or proceeds from the disposition of, ordinary shares are generally exempt from information reporting and backup withholding. However, a non-US holder may be required to establish that exemption by providing certification of non-US status on an appropriate Internal Revenue Service Form W-8.

Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against your US federal income tax liability, and you may obtain a refund of any excess amounts withheld under the backup withholding rules by timely filing the appropriate claim for refund with the Internal Revenue Service and furnishing any required information.

Certain US holders who are individuals may be required to report information relating to their ownership of securities issued by non-US companies on Internal Revenue Service Form 8938. US holders should consult their tax advisors regarding their reporting obligations on Internal Revenue Service Form 8938, if any, with respect to their investment in ordinary shares or ADSs.

Commonwealth of Australia Taxation

The following discussion is a summary of the principal Australian taxation implications that are likely to be relevant to a US holder of the acquisition, ownership and disposition of ordinary shares or ADSs. The statements concerning Australian taxation set out below are based on the laws in force at the date of this annual report and the Tax Treaty, which is subject to change, possibly retrospectively.

This summary also does not take into account the specific circumstances of particular US holders, some of which (such as tax-exempt entities, banks, insurance companies, real estate investment trusts, partnerships and other pass-through entities) may be subject to special tax rules. The discussion below does not take into account US holders that have made a choice to use a functional currency. Except as otherwise indicated, the following discussion applies to a US holder that is an individual.

The discussion is intended only as a descriptive summary and does not purport to be a complete analysis of all the potential Australian tax implications of the acquisition, ownership and disposition of ordinary shares or ADSs. The specific tax position and circumstances of each holder will determine the applicable Australian income tax implications for that holder. We recommend each holder consult their own tax adviser concerning the overall tax consequences of the acquisition, ownership and disposition of ADS or ordinary shares in their particular circumstances.

The Australian tax rules may require that amounts denominated in a foreign (i.e., non-Australian) currency be translated into Australian dollars for the purposes of applying the Australian tax rules. The Australian tax rules prescribe certain methods for undertaking this translation. Accordingly, in the discussion below, any amounts denominated in a foreign currency may need to be translated into Australian dollars in accordance with those specific rules.

Taxation of dividends

The dividend imputation system of company tax relieves double taxation on dividends paid by Australian resident corporations. Under the Australian dividend imputation system, companies are required to identify dividends paid as either franked or unfranked. In general terms, franked dividends are those paid out of profits that have borne Australian corporate tax, while unfranked dividends are paid out of untaxed profits. The Australian corporate tax rate is 30%. Australian corporate tax paid at the corporate level is imputed (or allocated) to shareholders by means of franking credits, which may be allocated to dividends paid by the company to the shareholder. Such dividends are termed "franked dividends."

The extent to which a company can frank a dividend depends upon, in part, the credit balance in its franking account. Credits to this account can arise in a number of ways, including when a company pays company tax or receives franked dividends from another company. Accordingly, a dividend paid to a shareholder may be wholly or partly franked or wholly unfranked.

When an Australian resident individual shareholder receives a franked dividend, the shareholder may receive a tax offset to the extent of the franking credits, which can be offset against the Australian income tax payable by the shareholder. Certain Australian resident shareholder may be eligible for a refund of excess franking credits.

Fully franked dividends paid to non-resident shareholders generally are exempt from Australian dividend withholding tax. Dividends that are not fully franked dividends generally are subject to withholding tax on the unfranked portion except to the extent that the dividend is declared to be “conduit foreign income” (in essence income and gains that have a foreign source from an Australian perspective which may include dividends received from non-Australian subsidiaries).

Dividends paid to non-resident shareholders that are not fully franked are subject to dividend withholding tax at the rate of 30% (unless reduced by a double tax treaty) to the extent they are unfranked and not paid out of conduit foreign income. In the case of residents of the US, the rate may be reduced to 15% under the Tax Treaty, provided the shares are not effectively connected with a permanent establishment or a fixed base of a non-resident in Australia through which the non-resident carries on business in Australia or provides independent personal services. Where a US company holds directly at least 10% of the voting interest in the company paying the dividend, the withholding tax rate may be reduced to 5%. This rate may be reduced to 0% in certain circumstances for certain US companies holding at least 80% of the voting shares.

In the case of residents of the US that have a permanent establishment or fixed base in Australia and the shares in respect of which the dividends are paid are attributable to that permanent establishment or fixed base, the dividends may not be subject to dividend withholding tax. Rather, such dividends may be taxed on a net assessment basis in Australia and, where the dividends are franked, entitlement to a tax offset against Australian income tax payable by the shareholder may arise to the extent of the franking credits.

In certain circumstances a shareholder may not be entitled to the benefit of franking credits (i.e. may not claim a tax offset). The application of these rules may depend upon, in part, the shareholder’s own circumstances, including the period for which the shares are held and the extent to which the shareholder is ‘at risk’ in relation to their shareholding. Shareholders will need to obtain their own advice in relation to these rules.

We will send shareholders statements indicating the extent to which dividends are franked or paid out of conduit foreign income, and the amount of tax (if any) withheld.

A US holder of ordinary shares (who is also not a tax resident of Australia and who does not hold ordinary shares through a permanent establishment in Australia) with no other Australian taxable income is not required to file an Australian tax return.

Gain or loss on disposition of shares

The Australian income tax treatment in respect of the disposition of shares will depend on whether the investor holds the shares on capital or revenue account. This will be a question of fact (as opposed to a bright line holding period test) and each investor will need to consider its own circumstances.

Capital Account

Under existing law, a resident of the US disposing of shares in an Australian company held on capital account may be free from tax in Australia except where, generally speaking:

(a) the shares have been used at any time in carrying on business through a permanent establishment in Australia; or

(b) the shareholder and its associates hold (or have held the shares for a 12 month period during the last 24 months) an interest of 10% or more in the issued capital of the company and more than 50% of the market value of the company's assets relate to Australian real property.

If either of the above exceptions apply, tax may be assessed in Australia as follows:

(i) Individual Investor

Tax generally is payable on 50% of any capital gains (without adjustment for inflation indexation) on the disposal of shares acquired after 11:45 a.m. on September 21, 1999, and held for at least 12 months. For shares considered to be acquired for Australian tax purposes at or before 11:45 a.m. on September 21, 1999, individuals will be able to choose between the following alternatives:

- taxed on any capital gain after allowing for cost base indexation up to September 30, 1999, (essentially when indexation ceased) where the shares have been held for at least 12 months (i.e., the difference between the disposal price and the original cost indexed for inflation over the period to September 30, 1999); or
- taxed on 50% of the actual capital gain (without adjustment for inflation indexation and after taking into account any offsetting capital losses). On May 8, 2012, the Treasurer of Australia announced that the Government of Australia would remove eligibility for the 50% discount for non-residents on capital gains accrued after 7.30 p.m. on May 8, 2012. The announcement indicates that the 50% discount may continue to be available for capital gains accrued prior to this time if the non-resident chooses to obtain a market valuation of the relevant assets at May 8, 2012. No legislation has been enacted yet to give effect to these announced changes. The scope of these changes will depend upon the form of any legislation enacted

Normal rates of income tax would apply to capital gains so calculated.

Capital losses are not subject to indexation; they are available as deductions, but only to offset capital gains. Depending upon which of the above alternatives are chosen, capital losses may be offset against capital gains indexed to September 30, 1999, or the full nominal capital gain before the 50% reduction. Excess capital losses can be carried forward indefinitely for offset against future capital gains.

(ii) Corporate Investor

Capital gains tax is payable on any capital gains made (without adjustment for inflation indexation) on the disposal of shares considered to be acquired for Australian tax purposes after 11:45am on September 21, 1999. For shares acquired at or before 11:45 a.m. on September 21, 1999, a corporate investor will be taxed on any capital gain after allowing for indexation of the cost base (i.e., the difference between the disposal price and the original cost indexed for inflation over the period). The 50% discount is not applicable for corporate investors. The corporate tax rate is currently 30%.

Excess capital losses can only be offset against future capital gain where certain loss recoupment tests are satisfied. There may be other special rules which apply to the taxation of capital gains for other types of entities.