

FINANCE (NO. 2) BILL

EXPLANATORY NOTE

This Bill introduces a scheme to encourage companies to give employees a stake in their industry and to assist them to acquire that stake, as announced in the Budget.

Clause 1 relates to the Short Title.

Land and Income Tax

Clause 3 amends the Land and Income Tax Act 1954.

Subclause (1) inserts a new section 129CH in that Act to provide for a deduction of notional interest in respect of loans made to employees under an employee share purchase scheme which complies with the conditions set out in subsection (3) of that section.

Subsection (1) of that section is the interpretation section.

Subsection (2) of that section provides that where financial assistance is provided to an employee by way of an interest free loan to enable him to purchase or subscribe to any shares under an employee share purchase scheme, the employing company (as defined) shall be allowed a deduction of an amount equal to the interest that would have been payable if—

- (a) the company had borrowed an amount equal to the amount of the loan at 10 percent per annum; and
- (b) Repayments made by the employee in respect of his loan had been repayments made by the company in respect of the amount so borrowed; and
- (c) The interest had been calculated with monthly rests.

No deduction is to be allowed in respect of any period of a loan in excess of 5 years.

Subsection (3) of that section provides that, in order that any scheme may be approved under the section as an employee share purchase scheme, the Commissioner is to be satisfied that the scheme complies with the provisions of this subsection. These provisions are:

- (a) Shares are to be made available to employees at a price not exceeding the market price;
- (b) The shares that any employee may purchase are to be so limited that the amount of the consideration for any shares acquired by him at any date does not, when added to the amount of the consideration for any other shares acquired by him within 3 years before that date, exceed \$1,560:

- (c) Every employee of any class (i.e., full-time permanent, part-time, or seasonal) is to be eligible to participate in the scheme on the same basis as any other member of that class:
- (d) Any minimum period of service which may be required before an employee becomes eligible to participate in the scheme shall not exceed 3 years or an accumulative period that is equivalent to 3 years service:
- (e) All loans made under the scheme to any employee for the purchase of or subscription to any shares shall be free of interest and all other charges:
- (f) Where any loan is to be of a minimum amount, that amount shall not exceed \$624:
- (g) Repayments of the loan are to be made by regular equal instalments at intervals of not more than 1 month over a period of not less than 3 years or more than 5 years, but any employee may elect to repay all or any part of a loan prior to the due date:
- (h) During the restrictive period (as defined in subsection (1)) the shares are to be held by the trustee of the scheme on behalf of the employee but the employee shall not be able to assign or charge those shares. All dividends received by the trustee during the restrictive period are to be paid to the employee:
- (i) At the end of the restrictive period—
 - (i) Where the restrictive period ends otherwise than on cessation of employment, the shares are to be transferred to the employee or, at the option of the employee, are to be purchased by the trustee at the market price:
 - (ii) Where the restrictive period ends due to the death of the employee, the shares are to be transferred to the trustee of the deceased employee's estate or, at the option of the trustee of the estate, are to be purchased by the trustee of the scheme at the market price, subject, in either case, to the repayment of all loans outstanding in respect of those shares:
 - (iii) Where the restrictive period ends due to cessation of the employment of the employee due to sickness, accident, or redundancy, the shares are to be transferred to the former employee or, at the option of the employee, are to be purchased by the trustee at the market price, subject, in either case, to the repayment of all loans outstanding in respect of those shares:
 - (iv) Where the restrictive period ends due to the cessation of the employment of the employee otherwise than due to sickness, accident, redundancy, or death, the trustee is to purchase the shares at the market price at the date of cessation, subject to the repayment of all loans outstanding in respect of those shares:
 - (v) The purchase price payable for the shares by the trustee is not to exceed the price for which those shares were purchased or subscribed for by the employee:
- (j) Any employee may withdraw from the scheme after giving 3 months notice on the same terms as if he had ceased employment at the date of the withdrawal and subparagraphs (iv) and (v) of paragraph (i) above applied.

(k) In cases of hardship the trustee, with the consent of the employee, is to have a discretion to vary the terms on which any loans have been made to the employee, and to allow the employee to withdraw from the scheme forthwith on the same basis as if he had ceased to be employed otherwise than due to sickness, accident, redundancy, or death.

Subclause (2) amends section 88c of that Act to exempt from income tax any benefit received by any employee in respect of any shares acquired under an employee share purchase scheme.

Subclause (3) amends section 153B of that Act to make it clear that an employee share purchase scheme is not a unit trust for the purposes of that section.

Unit Trusts

Clause 5 makes it clear that an employee share purchase scheme is not a unit trust for the purposes of the Unit Trusts Act 1960.

Perpetuities

Clause 7 ensures that the rule against perpetuities is not to apply to the trusts of an employee share purchase scheme.

Estate and Gift Duties

Clause 9 exempts from gift duty any issue or sale of shares to an employee under an employee share purchase scheme.

Stamp and Cheque Duties

Clause 11 exempts from stamp duty all transfers of shares between the trustee of an employee share purchase scheme and an employee or the trustee, executor, or administrator of a deceased employee.

Hon. Mr Rowling

FINANCE (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to make provision with respect to public finance and other matters

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same,
as follows:

1. Short Title—This Act may be cited as the Finance Act (No. 2) 1973.

Land and Income Tax

2. Sections to be read with Land and Income Tax Act 1954—This section and the next succeeding section shall be read together with and deemed part of the Land and Income Tax Act 1954* (in that section referred to as the principal Act). 5

*Reprinted 1972, Vol. 3, p. 1813

3. Deduction of notional interest on loans made to employees under an employee share purchase scheme—(1) The principal Act is hereby amended by inserting, after section 129CG (as inserted by section 23 of the Land and Income Tax Amendment Act (No. 2) 1972), the following section: 10

“129CH. (1) For the purposes of this section—

“‘Employee’ means any person (not being a company, a local or public authority, or an unincorporated body of persons) employed by any company, but does not include any person where that person and any other person or persons are associated persons and hold, in the aggregate, 10 percent or more of the issued capital of that company: 15

“‘Employee share purchase scheme’ means a scheme approved for the time being by the Commissioner for the purposes of this section: 20

“‘Employing company’, in relation to any employee, means the company by which that employee is employed: 25

“Provided that, for the purposes of subsection (2) of this section, in any case where that company is included in a group of companies and the shares issued to or purchased by the employee under the employee share purchase scheme are not shares of that company but are the shares of another company included in that group of companies, that other company shall be the employing company in relation to that employee instead of that first-mentioned company: 30 35

“‘Restrictive period’, in relation to any shares purchased or subscribed for by an employee under an employee share purchase scheme means the shorter of—

“(a) The period of 3 years commencing with the date of that purchase or subscription by that employee or the period of repayment of any loan made to the employee under the scheme in respect 40

of that purchase or subscription, whichever is the longer:

5 “(b) The period commencing with the date of that purchase or subscription by that employee and ending with the date on which the employee ceased to be employed by the employing company:

10 “Provided that an employee of any employing company, being a company included in a group of companies, shall, in any case where he transfers or is transferred to another company included in that group of companies, be deemed not to have ceased his employment with that employing company, and shall be deemed to continue in the employment of that employing company so long as he continues to be employed by any company included in that group of companies:

15 “‘Shares’, in relation to any company the shares of which are made available for purchase or subscription by any employee under any employee share purchase scheme, means fully paid ordinary shares in the capital of that company, being shares which rank equally for all purposes with all existing ordinary voting shares of that company and which have the same designation as those existing shares:

20 “‘Trustee of the scheme’ or ‘trustee’ means any person or group of persons appointed to administer an employee share purchase scheme of an employing company and to hold any shares, purchased or subscribed for by an employee under that scheme, on trust for that employee during the restrictive period in relation to those shares.

25 “(2) Notwithstanding anything in this Act, where in any income year there has been provided, or there has continued to be provided, under any employee share purchase
35 scheme, financial assistance, whether directly or indirectly, by means of an interest free loan to any employee, there shall be allowed in calculating the assessable income derived by the employing company in that income year a deduction of an amount equal to the amount of interest that would have
40 been payable by the employing company for that income year if—

45 “(a) An amount equal to the amount of the loan to that employee had been borrowed by the employing company at the rate of 10 percent per annum; and

“(b) Repayments made by that employee in respect of his loan had been repayments made by the employing company in respect of the amount so borrowed; and

“(c) The interest had been calculated with monthly rests: 5

“Provided that no such deduction shall be allowed in relation to any loan for any period commencing 5 years or more after the date of the loan.

“(3) The Commissioner shall approve as an employee share purchase scheme, for the purposes of this section, any scheme submitted for approval by any company, the shares of which are, under that scheme, available for purchase or subscription by employees of that company or, where that company is included in a group of companies, by employees of any company included in that group of companies, where he is satisfied that the scheme provides that— 10 15

“(a) Those shares shall be made available for purchase or subscription at a price not exceeding the market price of those shares at the date of such purchase or subscription: 20

“(b) The acquisition of those shares by any employee shall be so limited that the amount of the consideration for any shares acquired by him under the scheme at any date does not, when added to the amount of the consideration for any other shares acquired by him under that scheme or any similar scheme within the period of 3 years ending with that date, exceed \$1,560: 25

“(c) Every full-time permanent employee shall be eligible to participate in the scheme on an equal basis with every other full-time permanent employee, and, where the scheme is to be applicable to part-time employees and to seasonal employees, every part-time employee shall be eligible to participate therein on an equal basis with every other part-time employee, and every seasonal employee shall be eligible to participate therein on an equal basis with every other seasonal employee: 30 35

“(d) Any minimum period of service which may be required before a full-time permanent employee becomes eligible to participate in the scheme shall not exceed 3 years and in the case of other employees shall not exceed an accumulative period that is the equivalent of 3 years full-time service: 40

“(e) All loans made under the scheme to any employee for the purchase of or subscription for any shares shall be free of all interest and other charges:

5 “(f) Where it is a requirement that any loan made under the scheme to any employee shall be of a minimum amount, that minimum amount shall not exceed \$624:

10 “(g) The repayment by any employee of any loan made in accordance with paragraph (e) of this subsection shall be by regular equal instalments at intervals of not more than 1 month over a period of not less than 3 years and not more than 5 years from the date of that loan:

15 “Provided that any employee may elect to repay all or any part of that loan prior to the due date for such repayment:

20 “(h) Subject to paragraphs (j) and (k) of this subsection, during the restrictive period, in relation to any shares and to any employee, the following conditions shall apply—

“(i) Those shares shall be held on trust for the employee by the trustee of the scheme; and

25 “(ii) Any employee, for whom such shares are held on trust, shall be precluded from assigning, charging, alienating, or otherwise disposing of all or any of his rights in respect of those shares, or of any interest therein; and

30 “(iii) The trustee shall be required to pay all dividends received in respect of any shares held on trust for any employee directly to that employee, and those dividends shall, for the purposes of this Act, be deemed to be dividends derived by that employee, and shall not be appropriated in or towards repayment of any loan or loans referred to in paragraph (e) of this subsection:

35 “(i) At the end of the restrictive period in relation to any shares, the following provisions shall apply—

40 “(i) In any case where that restrictive period ends otherwise than on the cessation of employment of any employee, those shares shall be transferred to that employee by the trustee or, at the option of the employee, shall be purchased by the trustee from that employee at the market price at the date of that purchase by the trustee:

“(ii) In any case where that restrictive period ends on the cessation of employment due to the death of any employee, any shares which were held on trust for that deceased employee by the trustee of the scheme shall be transferred to the trustee of that deceased employee’s estate or, at the option of the trustee of the deceased employee’s estate, shall be purchased by the trustee of the scheme at the market price at the date of that purchase by the trustee of the scheme, subject, in either case, to repayment of all loans outstanding in respect of those shares: 5 10

“(iii) In any case where that restrictive period ends on the cessation of employment due to an accident to, or the sickness or redundancy of, any employee, any shares which were held on trust for that former employee by the trustee shall be transferred to that former employee or, at the option of the former employee, shall be purchased by the trustee at the market price at the date of that purchase by the trustee, subject, in either case, to repayment of all loans outstanding in respect of those shares: 15 20

“(iv) In any case where that restrictive period ends on the cessation of employment of any employee in any circumstances other than circumstances to which subparagraph (ii) or subparagraph (iii) of this paragraph applies, the trustee shall not transfer to that former employee any shares which he was holding on trust for that former employee, but shall be required to purchase those shares from that former employee at the market price at the date of that cessation, subject to the repayment of all loans outstanding in respect of those shares: 25 30 35

“(v) In no case shall the purchase price payable by the trustee for any shares exceed the price for which those shares were purchased or subscribed for by the employee: 40

5 “(j) Any employee shall be entitled to withdraw from the scheme after the expiry of 3 months after the date on which he gives notice to the trustee of his intention to do so, on the same terms as if he had ceased to be an employee at the date of his withdrawal from the scheme and the provisions of subparagraphs (iv) and (v) of paragraph (i) of this subsection applied:

10 “(k) Where the trustee is satisfied that any employee of that company who is a participant in the scheme has suffered such loss or is in such circumstances that his continued participation in the scheme on the terms then current has entailed or would entail serious hardship, the trustee shall, with the consent of the employee, have a discretion—

15 “(i) To vary the terms of the repayment of any loan made to the employee under the scheme:

20 “(ii) To allow the employee to withdraw from the scheme forthwith on the same terms as if he had ceased to be an employee and the provisions of subparagraphs (iv) and (v) of paragraph (i) of this section applied.

“(4) For the purposes of this section, associated persons or persons associated with each other are—

25 “(a) Any 2 persons who are relatives; or

“(b) Any company and any person (other than a company) where that person and any relative or relatives of that person hold, in the aggregate, 25 percent or more of the paid-up capital of that company; or

30 “(c) A partnership and any person where that person is a partner in that partnership; or

“(d) A partnership and any person, where that person and any partner in that partnership are, in accordance with the foregoing provisions of this definition, associated persons.

35 “(5) For the purposes of paragraph (b) of subsection (4) of this section—

40 “(a) Paid-up capital of one company held by another company shall be deemed to be held by the shareholders in the last-mentioned company:

“(b) Where a nominee of any person holds any paid-up capital of a company that paid-up capital shall be deemed to be held by that person, and for this purpose the term ‘nominee’ means any other

person who may be required to exercise his voting power in relation to the company in accordance with the direction of that person, or who holds shares directly or indirectly on behalf of that person, and includes any relative of that person and any trustee for that relative.” 5

(2) Section 88c of the principal Act (as inserted by section 14 (1) of the Land and Income Tax Amendment Act (No. 2) 1968) is hereby amended by adding to subsection (3) the following proviso: 10

“Provided further that in any case where the benefit arises under any employee share purchase scheme (within the meaning of section 129CH of this Act) the value of that benefit shall be nil.”

(3) Section 153B of the principal Act (as inserted by section 20 (1) of the Land and Income Tax Amendment Act 1960) is hereby amended by adding to the definition of the expression “unit trust” in subsection (1) the following paragraph: 15

“(i) Any employee share purchase scheme (within the meaning of section 129CH of this Act).” 20

(4) This section shall apply with respect to the tax on income derived in the income year that commenced on the 1st day of April 1973 and in every subsequent year.

Unit Trusts

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4. Sections to be read with Unit Trusts Act 1960—This section and the next succeeding section shall be read together with and deemed part of the Unit Trusts Act 1960* (in that section referred to as the principal Act).

*1960, No. 99

Amendment: 1972, No. 110

5. Definition of the expression “unit trust”—(1) Section 2 of the principal Act is hereby amended by omitting from paragraph (f) of the definition of the expression “unit trust” in subsection (1) the words “Land and Income Tax Act 1954”, and substituting the words “Land and Income Tax Act 1954; or”. 30 35

(2) The said section 2 is hereby further amended by adding to the said definition of the expression “unit trust” in subsection (1) the following paragraph:

“(g) Any employee share purchase scheme (within the meaning of section 129CH of the Land and Income Tax Act 1954).” 40

Perpetuities

6. Sections to be read with Perpetuities Act 1964—This section and the next succeeding section shall be read together with and deemed part of the Perpetuities Act 1964* (in that 5 section referred to as the principal Act).

*1964, No. 47

7. Rule against perpetuities not to apply in certain cases—Section 19 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

10 “(1A) The rule against perpetuities shall not apply to the trusts of an employee share purchase scheme (within the meaning of section 129CH of the Land and Income Tax Act 1954).”

Estate and Gift Duties

8. Sections to be read with Estate and Gift Duties Act 15 1968—This section and the next succeeding section shall be read together with and deemed part of the Estate and Gift Duties Act 1968* (in that section referred to as the principal Act).

*1968, No. 35

Amendments: 1969, No. 26; 1970, No. 23; 1971, No. 26; 1972, No. 25

9. Exemptions for certain dispositions by employers— 20 (1) Section 75 of the principal Act is hereby amended by inserting, before the words “The following classes of payments”, the expression “(1)”, and by adding, as subsection (2), the following subsection:

25 “(2) Any issue or sale of shares under an employee share purchase scheme (within the meaning of section 129CH of the Land and Income Tax Act 1954) made by a company or by the trustee of the scheme to any employee, to the extent that it is a gift, shall not constitute a dutiable gift.”

30 (2) Section 91 of the principal Act is hereby consequentially amended by repealing paragraph (k), and substituting the following paragraph:

“(k) Paragraphs (b) and (c) of subsection (1) of section 75 of this Act.”

Stamp and Cheque Duties

35 10. Sections to be read with Stamp and Cheque Duties Act 1971—This section and the next succeeding section shall be

read together with and deemed part of the Stamp and Cheque Duties Act 1971* (in that section referred to as the principal Act).

*1971, No. 51

Amendment: 1972, No. 6

11. No stamp duty payable on instruments of conveyance to certain persons—(1) Section 13 of the principal Act is hereby amended by omitting from paragraph (i) of subsection (1) the words “electric power board”, and substituting the words “electric power board; or”.

(2) The said section 13 is hereby further amended by adding to subsection (1) the following paragraph:

“(j) Any employee or the trustee, executor, or administrator of any deceased employee’s estate from the trustee of any employee share purchase scheme (within the meaning of section 129CH of the Land and Income Tax Act 1954) or to the trustee of the scheme from the employee or the trustee, executor, or administrator of the deceased employee’s estate.”