

## FINANCE BILL (NO. 2)

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### EXPLANATORY NOTE

*Clause 1* relates to the Short Title and commencement.

*Clause 2* authorises the making of new agreements with the Australian Government relating to the phosphate deposits on Christmas Island. The new agreements will be able to wind up the Christmas Island Phosphate Commission; dispose of existing rights to mine phosphate, stocks of phosphate, and property used in mining phosphate; create rights to purchase phosphate in the future; and terminate or modify existing agreements with the Australian Government relating to the phosphate deposits. The Minister of Finance is authorised to make all payments provided for or required by the new agreements.

*Clause 3* exempts the New Zealand Meat Producers Board from land tax with effect from the commencement of the present financial year.

*Clauses 4 and 5* amend the Trustee Savings Banks Act 1948 so as to empower trustee savings banks, either alone or jointly with others, to invest in premises occupied or intended to be occupied by co-operative savings bank projects, associations representing savings banks, and the savings bank in whose area the premises are situated, or any of them.

*Clause 6* is a validation and empowering provision arising out of a recent legal decision affecting a commonly used method of dealing with the assets of a group of companies created by merger, known as the "pooling" method.

The pooling method has been used most frequently where the shareholders of 2 or more existing companies exchange their shares for shares in a new company formed for the purpose, and those existing companies become subsidiaries of the new company.

It has been an accepted canon of accounting practice that where the pooling method is used, new shares issued in the course of a merger need not be regarded as having been issued at a premium, and accordingly that provisions of the Companies Act 1955 requiring premiums to be held in a share premium account may not apply. This has turned out not to be so; and those provisions have now been held to require any company that, whether in the course of a merger or not, in fact issues shares at a premium, to open a share premium account and retain the aggregate amount of the premiums in it.

Such a requirement has serious implications where any of the existing companies holds undistributed profits, because it may have the effect of capitalising those profits and locking them up in another company in such

a way that they cannot be distributed to shareholders except by procedures analogous to a reduction of capital. And because in the past the directors of some companies and their advisers were not aware of the application of these provisions to their affairs, they have distributed to shareholders money they were required to retain, or have arranged or promised to do so. This may have brought with it the risk of personal liability on their part.

This clause applies only where a new holding company, formed for the purpose, has acquired control of 90 percent or more of the equity share capital of another company by issuing shares in itself to the shareholders of that other company. It has 2 effects.

First, as a stopgap measure intended to be replaced in due course by a substantive amendment to the Companies Act 1955, such new companies issuing shares before 1 January 1983 in the course of a merger will not be required to establish a share premium account, and will be able to distribute dividends received by them out of profits of a subsidiary company made before the merger.

Secondly, where in the past such a new company distributed dividends received by it out of profits of a subsidiary company made before the merger, its actions are validated.

*Clause 7* effects an amendment to the Income Tax Act 1976, made necessary by *clause 6*. It amends section 4 of that Act to include within the definition of the term "dividends" any payments made to shareholders of a company, whether before or after the commencement of the Bill, which relate to premiums on shares that were not paid into a share premium account in the accounts of the company for the accounting year in which the premiums were paid.

*Clause 8* authorises the Government Life Insurance Office to acquire, and from time to time augment, a unique collection of Government Life postage stamps built up by, and at present in the possession of, a retired Government Life Insurance Commissioner. In each case the purchase price must be approved by the Government Insurance Investment Board.

*Clause 9* validates the actions of the New Zealand Apple and Pear Marketing Board in paying to growers almost 63 percent of its trading profit from the 1979-80 season. By law, the amount of a seasonal profit paid to growers must be approved by the Minister of Agriculture, but he may not approve the payment of more than half the profit without the consent of the Minister of Finance. The necessary approval and consent were obtained to pay out 60 percent of the 1979-80 profit, and the Board paid out that proportion of its estimate of what that profit would be; but its estimate was too high, and as a result the amount paid out was a greater proportion of the actual profit.

*Clause 10* repeals 10 statutes that are now spent, and Part II of and the First and Second Schedules to the Finance Act 1980, and saves the validating effect of 2 sections contained in that Part.

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*Right Hon. Mr Muldoon*

**FINANCE (NO. 2)**

**ANALYSIS**

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**A BILL INTITULED**

**An Act to make provision with respect to public finances and other matters**

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

**1. Short Title and commencement**—(1) This Act may be cited as the Finance Act (No. 2) 1981.

(2) Subject to section 3 (2) of this Act, this Act shall come into force on the day on which it receives the Governor-General's assent.

## PART I

## SUBSTANTIVE PROVISIONS

**2. Christmas Island phosphates**—(1) The Minister of Foreign Affairs may, on behalf of the Government of New Zealand, enter into agreements with the Government of Australia providing for or relating to all or any of the following matters: 5

- (a) The winding-up of the Christmas Island Phosphate Commission, set up pursuant to an agreement made under section 2 of the Finance Act (No. 2) 1948, the disposal of its assets, and the settlement of any or all of its outstanding liabilities: 10
- (b) The disposal of any right to mine phosphate on Christmas Island vested in the Government of New Zealand, the Government of Australia, or both of them: 15
- (c) The disposal of any property employed, directly or indirectly, in the mining of phosphate on Christmas Island or the storage or distribution of any phosphate mined there, and vested in the Government of New Zealand, the Government of Australia, or both of them: 20
- (d) Any rights to purchase supplies of phosphate mined on Christmas Island:
- (e) The termination or modification of any existing agreement made under section 2 of the Finance Act (No. 2) 1948. 25

(2) The Minister of Finance may, on behalf of Her Majesty the Queen, from the Consolidated Account or the Loans Account, out of money appropriated by Parliament for the purpose, make any payments provided for or required by any agreement made under subsection (1) of this section. 30

(3) The following enactments are hereby repealed:

- (a) Section 2 of the Finance Act (No. 2) 1948:
- (b) Section 2 of the Finance Act 1957: 35
- (c) The Finance Act 1966.

**3. New Zealand Meat Producers Board to be exempt from land tax**—(1) The New Zealand Meat Producers Board established by section 2 (1) of the Meat Export Control Act 1921–22 shall be exempt from land tax. 40

(2) Subsection (1) of this section shall be deemed to have come into force on the 1st day of April 1981.

**4. Sections to be read with Trustee Savings Banks Act 1948**—This section and section 5 of this Act shall be read together with and deemed part of the Trustee Savings Banks Act 1948\* (in that section referred to as the principal Act).

5 **5. Power to invest money**—The principal Act is hereby amended by adding to section 24 (as substituted by section 4 of the Trustee Savings Banks Amendment Act 1979) the following subsection:

10 “(9) Notwithstanding anything in the foregoing provisions of this section, but subject to sections 5 (1) and 5A (2) of this Act, any savings bank or savings banks may, with the consent of the Minister, given upon and subject to such terms and conditions (if any) as he thinks fit, purchase or otherwise acquire, or improve, any land or buildings, or erect any build-  
15 ings, for the purpose of providing premises to be occupied, wholly or partly, by all or any of the following:

“(a) Co-operative projects undertaken or to be undertaken by any 2 or more savings banks:

20 “(b) Associations and organisations (whether incorporated or not) representing the interests of savings banks:

“(c) The savings bank in whose area of operations the premises or proposed premises are or are to be situated.”

25 **6. Premiums on shares issued in respect of mergers**—(1) In this section,—

“The Act” means the Companies Act 1955:

“Company” means a company within the meaning of the Act:

30 “Equity share capital”, in relation to any company, means its issued capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution:

35 “Holding company” means a company formed for the purpose (among others) of acquiring control of 2 or more other companies:

“Merged company”, in relation to any holding company, means a company—

\*Reprinted 1973, Vol. 2, p. 1663  
Amendments: 1975, No. 23; 1976, No. 27; 1977, No. 23; 1977, No. 180;  
1978, No. 129; 1979, No. 30

(a) For the purpose (among others) of acquiring control of which that holding company was formed; and

(b) Control of 90 percent or more of the equity share capital of which has, before the 1st day of January 1983, been acquired by that holding company under a scheme sanctioned by the High Court pursuant to section 205 of the Act involving the issue to members or former members of the merged company of shares in the holding company.

(2) For the purposes of subsection (1) of this section, a company shall be deemed to have acquired control of 90 percent or more of the equity share capital of any other company if it and any of its subsidiary companies (within the meaning of the Act) together hold 90 percent or more of the equity share capital of that other company.

(3) Except to the extent that the transfer of any amount into a share premium account is, or was,—

(a) A term of the arrangement sanctioned by the High Court under which shares in the merged company are acquired by a holding company; or

(b) A condition subject to which the sanction of the High Court to that arrangement was obtained; or

(c) A condition subject to which the holding company so issued any shares,—

section 64 (1) of the Act shall not apply, and shall be deemed never to have applied, to the amount or value of the premium on any share in a holding company issued by that holding company to a shareholder or former shareholder of a merged company pursuant to that arrangement.

(4) Notwithstanding section 64 (1) of, and paragraph 16 (5) of the Eighth Schedule to, the Act, but subject to subsection (3) of this section, to the extent that any amount received by a holding company by way of dividend paid by a merged company has been paid by that merged company out of profits made by it before it became a merged company in relation to that holding company, that amount shall be available for distribution to the shareholders of the holding company.

(5) Nothing in this section shall derogate from section 153 of the Act.

**7. Amendments to Income Tax Act 1976 consequential on section 6**—(1) Section 4 of the Income Tax Act 1976\* is hereby amended—

- 5 (a) By inserting in subsection (1), before the words “credited to any share premium account”, the word “either”:
- 10 (b) By inserting in subsection (1), after the words “the 30th day of July 1976”, the words “or arising from payments or other transactions (including take-overs and mergers) whenever effected and not credited to a share premium account in the accounts of the company for the accounting year (being the accounts adopted at the annual general meeting of the company for that year) in which those last-mentioned payments or other transactions (such
- 15 payments or other transactions being hereinafter referred to in this section as specified payments) were effected”:
- 20 (c) By inserting in subsection (5) (b), after the words “or a capital gain”, the words “(not arising from specified payments)”.
- (2) Section 4 of the Income Tax Act 1976 (as amended by subsection (1) of this section) shall apply to all dividends (within the meaning of that section), whether paid or distributed before or after the commencement of this Act.

**8. Authorising Government Life Insurance Office to purchase stamp collection**—(1) Subject to subsections (2) and (3) of this section, the Government Life Insurance Commissioner may expend from the Government Life Insurance

30 Account,—

- (a) Such sum (not exceeding \$95,000) as he thinks fit in the purchase of the postage stamp collection (and related materials) of George Robertson of Upper Hutt:
- 35 (b) From time to time, such sums as he thinks fit in purchasing postage stamps that are—
- (i) New Zealand stamps related to the Government Life Insurance Office; and

\*1976, No. 65

Amendments: 1977, No. 29; 1977, No. 81; 1978, No. 28; 1979, No. 18; 1979, No. 138; 1980, No. 28; 1980, No. 69

(ii) Having regard to the date of their issue, their face value, their condition, their overprinting (if any), and any flaws, defects, or variations in their printing or perforation, not represented, or inadequately represented, in the collection referred to in paragraph (a) of this subsection (as augmented by stamps previously purchased under this paragraph). 5

(2) The Government Life Insurance Commissioner shall not purchase any stamps or materials under the authority of subsection (1) of this section unless the Government Insurance Investment Board has by resolution approved the amount of the purchase price. 10

(3) All stamps purchased under the authority of subsection (1) of this section shall be deemed to be investments of the Government Life Insurance Office. 15

## PART II

### VALIDATION, REPEALS, AND SAVINGS

**9. New Zealand Apple and Pear Marketing Board: Validating excessive distribution of profit**—The actions of the New Zealand Apple and Pear Marketing Board in distributing to the growers from whom it purchased apples and pears during the year that ended with the 30th day of November 1980 part of the profit made by that Board during that year are hereby deemed to have been as valid and effectual as if the Minister of Agriculture had, with the consent of the Minister of Finance, approved the distribution as aforesaid of up to 63 percent of that profit. 20 25

**10. Repeals and savings**—(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) The repeal of the Finance Act 1976 by subsection (1) of this section shall not entitle any person to a refund of any money paid in respect of the issue of an exhibitor's licence under the Cinematograph Films Act 1961 or any enactment specified in the Second Schedule to that Act. 30

(3) The repeal of sections 6 and 7 of the Finance Act 1980 by subsection (1) of this section shall not affect the validity of any action validated by either of those sections, and shall not entitle any person to a refund of any money paid under the Freshwater Fisheries Regulations 1951 or the Music Teachers Registration Regulations 1966. 35 40



SCHEDULE

Section 10 (1)

ENACTMENTS REPEALED

- 1927, No. 24—The War Disabilities Removal Act 1927.  
1928, No. 50—The Engineers Registration Amendment Act 1928.  
(R.S. Vol. 6, p. 351.)  
1930, No. 38—The Disabled Soldiers Civil Re-establishment Act 1930.  
(R.S. Vol. 2, p. 331.)  
1935, No. 39—The Maori Purposes Act 1935.  
1942, No. 15—The Maori Purposes Act 1942. (1957 Reprint, Vol. 9,  
p. 46.)  
1950, No. 98—The Maori Purposes Act 1950. (1957 Reprint, Vol. 9,  
p. 57.)  
1961, No. 83—The Guardianship of Infants Amendment Act 1961.  
1969, No. 77—The Factories Amendment Act 1969. (R.S. Vol. 2,  
p. 444.)  
1976, No. 24—The Finance Act 1976. (R.S. Vol. 2, p. 543.)  
1976, No. 74—The Annual Holidays Amendment Act 1976.  
1980, No. 47—The Finance Act 1980: Part II and the First and  
Second Schedules.