

Coalition Senators' Dissenting Report

**Senator Alan Eggleston (Deputy Chair),
Senator Barnaby Joyce, Senator David Bushby**

OVERVIEW

Schedule 1

The McNeil case, in its briefest summary, stated that unexercised rights were income for tax purposes. Generally, one would expect it to be capital and if you make a profit or loss after holding and selling the rights, held for a prescribed period, you would get the benefits under Capital Gains Tax legislation. The McNeil Case meant that a rights issue was assessable on issue date as income, and as such would be taxed at and above the highest bracket that your income was in.

The effect of premiums paid out of share dividend accounts was also clouded after the McNeil case, as was the position of derivatives such as options. In conclusion there was a widespread belief that the process of the act, as generally understood and planned for, had been changed by the High Court. It was believed by all sectors that this went against the intent of the legislation and needed to be remedied.

The Coalition Senators however, do query how the financial impact of “nil”, as stated on page three of the revised explanatory memorandum, could be so when we are returning to the tax advantageous position of “capital”, revenue which, because of the McNeil case, would have been assessed as “income”. The EM’s statement that the McNeil case “would seriously affect the capital markets” because of the changed assessment of options seems to be counter intuitive if the decision was one of nil financial impact, that is people were not reacting to the tax consequences.

RECOMMENDATION

It is the belief of the Coalition Senators that this situation is in need of remedy and the purpose of the act is to return the legislation to its original intent so should be supported.

Schedule 2

In brief the KAP Motors Case implied that overpayment of GST does not need to be reimbursed to the customer before you can claim it back from the Commissioner of Taxation. The KAP Motors case also brought an uncertainty as to the four year time limit a taxpayer has to finalise their tax position in regard to changes to their tax liability.

The purpose of the Schedule 2 is to circumvent the effect of the KAP Motors Case and take the legislation back to its initial intent.

Apart from some drafting errors there is no real reason for there not to be a return to the legislation's original intent. Other issues such as a code for refunds are away and apart from the purpose of this schedule.

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