

# AUSTRALIAN TAX REVIEW

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## ARTICLES

### **The civil liability of tax advisors – *V A Morfuni SC***

Practitioners are required to give advice on tax-related matters on an ever-increasing basis. In doing so, they expose themselves to civil liability in respect of that advice. This article discusses the exposure of the tax advisor to civil liability in tort, contract and statute in respect of this advice. It also discusses some of the pitfalls unwary practitioners may fall into when giving advice in relation to tax matters and the manner in which such pitfalls may be avoided. .... 131

### **Problems with franking credits flowing through partnerships and trusts: The 2004 amendments and a simpler alternative – *C John Taylor***

The ITAA 1997 provisions dealing with the receipt of franked distributions through partnerships and trusts were amended by the *Tax Laws Amendment (2004 Measures No 2) Act 2004* (Cth). The amendments attempt to overcome technical problems that had previously been identified by commentators. Unfortunately, the way in which some of the amendments are intended to operate is unclear and, on the most plausible construction of them, could produce inappropriate results. This article begins by examining criticisms of the previous provisions, under the ITAA 1936 and ITAA 1997, relating to imputation credits passing through trusts and partnerships. The article then examines the amendments relevant to this area introduced by the *Tax Laws Amendment (2004 Measures No 2) Act 2004* and identifies difficulties in the construction of the amendments, and technical problems that have still not been adequately addressed by the amendments. The article concludes by suggesting how the problems with the provisions identified in the article could be resolved by the use of a simpler approach to the flow of franking credits through partnerships and trusts. .... 154



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