

AUSTRALIAN TAX REVIEW

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EDITORIAL

A sense of perspective	201
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ARTICLES

Carried interest: The taxation of private equity fund managers' remuneration – Yee Ben Chaung

In recent years, the escalation in private equity driven public to private transactions has captured the imagination of the business world. Against this backdrop, it was inevitable that the private equity industry would come to the attention of corporate regulators and give rise to new and controversial regulatory issues. Indeed, the high profile nature of private equity transactions and the somewhat novel character of the private equity business combined to bring greater focus to many legal issues that had previously been overlooked. This article explores some of the issues that arise in relation to the payment of carried interest to private equity fund managers, issues which became highly prominent in the United States, but which to date, have not been given substantive consideration in Australia.	203
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A detailed assessment of the potential for a successful negligence claim against the Commissioner of Taxation – John Bevacqua

Negligence has never been successfully claimed against the Commissioner of Taxation in Australia. Very few writers in the field of taxpayer rights have ventured to affirm that a successful claim is a real prospect. Curiously, though, there is no judicial or academic comment suggesting the impossibility of such a claim in this country. This article identifies and examines the substantial legal hurdles faced by a taxpayer seeking to bring a viable negligence action against the Commissioner. The first of these hurdles is the partial immunity from suit in negligence enjoyed by the Commissioner. This includes both the immunity applicable to the Commissioner as a statutory authority per se as well as the extended immunity from suit in negligence of the Commissioner as evidenced by relevant case law. Part I of this article addresses this issue. Part II looks at the particular challenges of formulating such a negligence action even in cases in which outright immunity from suit might not be afforded to the Commissioner. These particular challenges relate to the application of the current judicially favoured “incremental” approach to resolving novel negligence actions. The outcome of this analysis is an identification of the limited circumstances in which a viable potential cause of action in negligence might be raised by an aggrieved taxpayer against the Commissioner.	241
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VOLUME 37 – 2008

Table of Authors	263
Table of Cases	265
Index	273

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