

Client Alert

Update: Process for refund of stamp duty paid in NSW

Clients were previously informed of the opportunity for a refund of stamp duty paid to the NSW Office of State Revenue (NSW OSR) on general insurance effected prior to 20 June 2006 with unauthorised foreign insurers and Lloyd's underwriters¹, following the outcome of the NSW Supreme Court decision of *Qantas Airways Ltd v Chief Commissioner of State Revenue* [2008] NSWSC 1049.

This alert provides a brief overview of the refund process eligible clients should follow in order to obtain their refund.

We refer you to our earlier client alerts available on the Marsh website at www.marsh.com.au/stampdutyrefund.php for additional information on the stamp duty refund opportunity. All correspondence between Marsh and the various offices of state revenue can also be found here.

Refund process

NSW OSR has indicated that it will honour Marsh's application to reserve our clients' reassessment rights, for the period of 5 years prior to 19 December 2008, the date on which Marsh lodged the application for reassessment to the NSW OSR on behalf of clients. Section 9 of the *Taxation Administration Act 1996* (NSW) prevents the Chief Commissioner of State Revenue from making a reassessment of a tax liability more than five years after the initial assessment of liability. The opportunity for refunds thus spans a period from 19 December 2003 through to 20 June 2006.

Marsh is currently seeking clarity on whether the refund opportunity is limited to stamp duty paid prior to 20 June 2006 (the date on which the provisions that were the subject of the Qantas case were amended) or if it extends to stamp duty paid after that date on general insurance policies effected prior to 20 June 2006. We note the NSW OSR's view, according to the Q&As on their website, is that the refund only applies to duty paid prior to 20 June 2006.

Any further update on this matter will be posted in the stamp duty refund section of our website.

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¹ An insurer that was not registered or authorised under the *Insurance Act 1973 (Cth)* for the purposes of the relevant NSW stamp duties legislation.

Application form

Applications for refunds must be made using the form provided by the NSW OSR, *Request for Refund of Duty on Insurance taken out with Non-Registered / Unauthorised Insurers*, which is available for download at www.osr.nsw.gov.au.

The form can be lodged with the Chief Commissioner of State Revenue, Office of State Revenue, GPO Box 4042, Sydney, NSW 2001 and marked to the attention of John Renshaw, Manager Returns. Any enquiries can be made by calling 1300 139 817 or via email at returns@osr.nsw.gov.au.

The NSW OSR has advised that they will be ready to accept refund applications from 1 November.

Information provided by insurance intermediaries

Part B of the application form requires claimants to provide details of the insurance policies for which a refund is being requested. Alternatively, NSW OSR has agreed to accept a form, providing the same information, from insurance intermediaries in lieu of completion of Part B. It is the responsibility of the relevant policyholder to carry out the refund application, however, Marsh can assist clients by providing (where possible) the required documentation for our clients to lodge with the NSW OSR. In order to cover our costs, a document charge will apply on a per policy basis.

Clients must contact their Marsh advisor if they wish to use this alternative documentation method.

In situations where our client has changed brokers after the original duty was paid, Marsh may be able to obtain the relevant information in the required format from the previous broker and pass it on to the policyholder.

Refund opportunity in other jurisdictions

While this refund opportunity applies only to stamp duty paid to the NSW OSR, the case may also have implications for insurance duty paid in other states and territories. As notified in our client alert on 6 February 2009, Marsh has sought to reserve our clients' reassessment rights in Tasmania, Queensland and the ACT. The responsibility rests with individual clients to obtain legal advice and consider whether any further steps are required.

As a member of the National Insurance Brokers Association (NIBA), Marsh has been involved in the association's approaches to the revenue commissioners in the ACT, Queensland and Tasmania. A delegate for the Commissioner in the ACT responded to NIBA on 12 October 2009 with the following:

"The Commissioner acknowledges that during the period 1 March 1999 to 17 May 2006 (inclusive) the Duties Act 1999(ACT) included provisions that had substantially the same effect as the equivalent provisions of the Duties Act 1997 (NSW) that were decided upon by the Court of Appeal."

NIBA has met with the ACT Commissioner in order to consider possible procedures for making refunds of the ACT duty to relevant policyholders. The Commissioner for ACT Revenue is considering using a similar process to the one nominated by the NSW OSR for the issuing of refunds. Marsh will issue another client alert informing clients of the procedures once they are confirmed and finalised.

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To date, Queensland has only provided an interim reply indicating that an appropriate response will be provided in due course. NIBA has been in contact with the relevant Queensland officials in order to press them for a reply.

The Tasmanian Department of Treasury and Finance has previously stated that, in its opinion, there is no entitlement to a refund of the duty paid by policyholders on general insurance placed with offshore insurers.

This alert does not constitute legal advice and should not be relied upon as such. You should obtain your own legal advice to determine if and how the Qantas case affects your organisation, and to consider whether you should take any further action.