

Client alert

Update: Stamp Duty refund opportunity on certain insurance policies

This alert provides a brief overview of a recent NSW Supreme Court decision which may entitle certain organisations to a refund of stamp duty paid on insurance policies placed with insurers not registered as general insurers under the *Insurance Act 1973 (Cth)*.

An earlier alert was issued in December 2008 to clients who were identified as having paid stamp duty to the NSW Office of State Revenue for cover placed with offshore insurers.


The NSW Supreme Court recently held in the case of *Qantas Airways Ltd v Chief Commissioner of State Revenue* [2008] NSWSC 1049 (Qantas case) that stamp duty was not payable under the *Duties Act 1997 (NSW)* on insurance premiums paid to insurers not registered as general insurers under the *Insurance Act 1973 (Cth)*, which are essentially offshore insurers, including Lloyd's.

Although the Qantas case is not binding in jurisdictions other than New South Wales, there is a fair argument that the reasoning in the Qantas case **should** apply to stamp duty paid on insurance premiums:

- During the period starting 5 years ago (January 2004) and ending 18 May 2006 (when the legislation was amended) under the Australian Capital Territory's duties legislation
- During the last 5 years under Queensland's duties legislation
- During the last 3 years under Tasmania's duties legislation

Marsh understands that the NSW Commissioner of State Revenue has lodged an appeal and, as such, there is a possibility that the appeal Court could reverse the decision. Nonetheless, a bulk application was lodged by Marsh in December 2008 with the NSW Commissioner of State Revenue.

Additionally, Marsh considers it to be in the interest of its clients to similarly lodge an application for reassessment with the Revenue Offices in Tasmania, Queensland and Australian Capital Territory. This will ensure clients benefit from the longest possible refund period, in the event that the decision stands, and help protect against any adverse legislative change.



On this basis, a bulk application for a reassessment was lodged with the Revenue Offices of Tasmania, Queensland and Australian Capital Territory by Marsh on **2 February 2009**. The application was lodged on behalf of all clients identified as having paid stamp duty in these jurisdictions for cover placed with offshore insurers.

At this time, it is not certain how the relevant Revenue Offices will respond to this application, given that the outcome of an appeal against the decision remains pending. Marsh will inform clients of developments on this issue, including the response from the Revenue Offices to this bulk application, via our website at www.marsh.com.au. It may become appropriate at a later stage for your organisation to become more directly involved in pursuing its rights against the relevant Revenue Office(s), if it wishes to do so.

In the interim, we encourage you to contact your client executive at Marsh if your organisation wishes to be removed from the bulk application, or should you require further information about the amount of duty your organisation has paid, or the process involved.

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 steps.

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