

# Client Alert

## Update: Queensland Government announces stamp duty decisions following outcome of the Qantas Case

The Queensland Office of State Revenue (QLD OSR) recently released details of its decisions on the matter of stamp duty, in response to the NSW Court of Appeal's ruling in the Qantas case.<sup>1</sup>

A copy of the full statement is available from the QLD OSR's website ([www.osr.qld.gov.au/duties/insurance-duty/insurance-duty-changes.shtml](http://www.osr.qld.gov.au/duties/insurance-duty/insurance-duty-changes.shtml)).

We also refer you to our earlier client alerts available on the Marsh website at [www.marsh.com.au/stampdutyrefund.php](http://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

The Queensland Government has agreed to make some limited refunds of stamp duty on insurance placed with unauthorised foreign insurers and Lloyd's underwriters<sup>2</sup> following changes made to the Commissioner's assessment policies and practices towards insurance duty.

Consequently, QLD OSR has stated that any overseas insurers, non-commercial captive insurers and other insurers not required to be registered or authorised under the *Insurance Act 1973* (Cth) who have paid insurance duty pursuant to the *Duties Act 2001* (Qld) on premiums received **between 8 December 2009 and 13 January 2010** (inclusive) may apply for a refund of duty for that period, as may the insured where they have paid this duty directly to the Commissioner.

Further details of the refund process can be found on the QLD OSR website at [www.osr.qld.gov.au/duties/insurance-duty/refund-process.shtml](http://www.osr.qld.gov.au/duties/insurance-duty/refund-process.shtml).

Insurance brokers will be able to claim bulk refunds for clients who paid the broker premium on relevant policies during the applicable period. Marsh is in the process of collating the relevant information and will submit the necessary refund claim and reimburse affected clients on receipt of the money from the QLD OSR.

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<sup>1</sup> Chief Commissioner of State Revenue v Qantas Airways Ltd [2009] NSWCA 163.

<sup>2</sup> An insurer that was not required to be registered or authorised under relevant Commonwealth legislation.

In addition to the refund procedure outlined above, taxpayers who, for any reason, consider that the insurance duty provisions do not adequately apply to their particular case, have the right to seek a refund of duty using the objection and appeal processes under the *Taxation Administration Act 2001*.

As notified in our client alert issued on 6 February 2009, Marsh lodged an application with QLD OSR for reassessment on behalf of clients. Correspondence from QLD OSR was received on 15 January 2010 advising that a formal response to this application would be provided in the near future.

Clients are advised that there may also be other legal right(s), under which claims of a refund of duty paid can be made. The responsibility rests with individual clients to obtain legal advice and consider whether any further steps are required.

## Proposed changes to stamp duty legislation

Concurrent with the QLD OSR's decision to issue limited stamp duty refunds, the Queensland Government announced changes to the *Duties Act 2001* (Qld) to ensure that the insurance duty provisions will apply to insurance taken out with overseas insurers, non-commercial captive insurers and other insurers not required to be registered or authorised under relevant Commonwealth legislation.

The legislation to give effect to the announced changes is still being drafted but will take effect retrospectively from 14 January 2010.

## Refund opportunity in other jurisdictions

As notified in earlier client alerts, Marsh has also sought to reserve our clients' reassessment rights in Tasmania. 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.

For eligible clients in NSW and the ACT, refunds of stamp duty have already commenced, as advised in client alerts issued in November 2009.

## IMPORTANT NOTICE

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.