

Client Alert

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

We refer you to our earlier client alerts available on the Marsh website at www.marsh.com.au/stampdutyrefund.php for further information on the stamp duty refund opportunity.

As a result of changes made to the Commissioner of State Revenue's assessment policies and practices towards insurance duty, QLD Office of State Revenue (OSR) stated in January 2010 that any insurer 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.

QLD OSR has since informed Marsh that the opportunity for refund of stamp duty only applies to insurance placed with unauthorised foreign insurers. Applicable insurers¹ include overseas insurers and non-commercial captive insurers, but it does not apply to Lloyd's underwriters as was originally expected.

Details about the refund process can be found on the QLD OSR website at www.osr.qld.gov.au/duties/insurance-duty/refund-process.shtml.

Marsh submitted a bulk refund claim for the Relevant Period on behalf of affected clients entitled to a refund above \$500 (a minimum claim amount was established due to the cost involved to cover processing and expenses in obtaining the refund). However, the QLD OSR has agreed to directly pay clients who are entitled to a refund of \$500 or less. In order to be paid directly, those clients must apply in writing to the QLD OSR for payment of a refund of premiums paid during this period.

Outcome of bulk refund application for the period 30 January 2004 to 30 January 2009

In our client alert issued on 6 February 2009, Marsh advised that a bulk application had been lodged to the QLD OSR on behalf of clients for refund of stamp duty paid to offshore insurers between January 2004 and January 2009. This was to ensure that clients would benefit from the longest possible refund period in the event that the application was accepted.

¹ An insurer that was not required to be registered or authorised under relevant Commonwealth legislation.



Correspondence was received on 15 January 2010 from QLD OSR advising that a formal response to this application would be provided in the near future. Marsh has since been informed by the QLD OSR that:

Since the introduction of the Duties Act it has been the Commissioner of State Revenue's ('the Commissioner') consistent practice that premiums paid to overseas insurers were premiums for the purposes of the Duties Act. ... under section 20 [of the Tax Administration Act 2001], a reassessment of duty can only be made in accordance with the legal interpretations and assessing practices applied by the Commissioner at the time the original assessment, including a self assessment, was made.

As the self assessments were made in accordance with the assessing practices applied by the Commissioner at the time of assessment, the Commissioner has determined not to reassess these self assessments. The duty assessed and paid by Marsh Pty Ltd for the period 30 January 2004 to 30 January 2009, is consistent with the Commissioner's assessing practice for that period of time.

Accordingly, your request for a refund of insurance duty paid between 30 January 2004 and 30 January 2009 is refused.

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 or the changes to the QLD OSR's assessment practices affects your organisation, and to consider whether you should take any further action.