

NewsFlash

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Possible entitlement to refund of stamp duty on insurance policies

The NSW Supreme Court of Appeal in Chief Commissioner of State Revenue v Qantas Airways Ltd [2009] NSWCA recently confirmed the decision of the Supreme Court in Qantas Airways Ltd v Chief Commissioner of State Revenue [2008] NSWSC 1049 that stamp duty was not payable under the Duties Act 1997 (NSW) on premiums paid to insurers neither registered nor authorised as general insurers under the Insurance Act 1973 (Cth) until 20 June 2006 when the legislation was amended.

The Qantas decision also has an impact in other States and Territories with similar legislation.

The following is a basic summary of the position as at the date of this release.

NSW

The NSW Office of State Revenue (OSR) has put in place a procedure for making refunds to relevant policyholders who have paid stamp duty on NSW general insurance cover effected prior to 20 June 2006 with an insurer that was neither registered nor authorised under the Insurance Act 1973 for the purposes of the relevant NSW stamp duties legislation (i.e. unauthorised foreign insurers and Lloyd's underwriters).

Eligible policyholders can use OSR's application form Request for Refund of Duty on Insurance taken out with Non-Registered / Unauthorised Insurers (ODA 060) which is available for download at <http://www.osr.nsw.gov.au/taxes/other/insurance/general>

ACT

The ACT legislation was similar to the NSW legislation and was also previously amended to "close the gap".

The ACT Revenue Office has agreed to refunds to all relevant policyholders who have paid stamp duty on general insurance effected in relation to ACT insurance business during the period 1 March 1999 to 17 May 2006 with an insurer that was neither registered nor authorised under the Insurance Act 1973 for the purposes of the relevant ACT stamp duties legislation (i.e. unauthorised foreign insurers and Lloyd's underwriters).

Eligible policyholders can use the ACT Revenue Office's application form "Special Application for the refund of ACT duty on insurance policy" which is available for download at <http://www.revenue.act.gov.au/duties/insurance>

Tasmania

We understand that the Tasmanian Department of Treasury and Finance has advised the National Insurance Brokers' Association of Australia that, in its opinion, there is no entitlement to a refund of the duty paid by policyholders on general insurance placed with offshore insurers. Its legislation is different in certain respects to that in NSW but you may wish to consider seeking advice on whether this view is able to be challenged based on similar reasoning used in the Qantas decision.

QLD

In Queensland, unlike NSW and the ACT, the relevant legislation was not amended to fix the potential problem. This means that you may have a right to a refund for past payments and no obligation to make future payments in relation to unauthorised foreign insurers.

We understand that the Commissioner of State Revenue in QLD has yet to provide a view and that insurance brokers are seeking a response from the Commissioner on the QLD position.

The above matters are complex. You may want to contact your insurance broker/intermediary to discuss the issues. They should also be able to provide you with information to assist you in seeking any refund.

Please contact us if you would like any assistance in relation to the above.

IMPORTANT NOTICE

This document is designed to provide general guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances. It is only current as at the date of release. You must ensure that you seek appropriate professional advice as to the currency, accuracy and relevance of this material for you.

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