

Legal Update

5 February 2010

Queensland Office of State Revenue's decision on insurance Stamp Duty refunds flowing from Qantas Case

We refer to our NewsFlash of 3 December 2009 in which we indicated that the Queensland Office of State Revenue (QLD OSR) was yet to provide a view on how it would take the Qantas case into account concerning the historical and ongoing payment of stamp duty under the Duties Act 2001 (Qld) (QLD Duties Act) for insurers not authorised under the Insurance Act 1973 (Cth) to carry on insurance business.

QLD OSR has now released details of its decisions that flow from the Qantas case. A copy of the release is available on the QLD OSR's website at <http://www.osr.qld.gov.au/duties/insurance-duty/insurance-duty-changes.shtml>

The effect of these decisions as represented by QLD OSR can be summarised as follows:

- By reason of proposed retrospective amendments to the relevant sections of the QLD Duties Act applicable from 14 January 2010, QLD OSR will treat insurance duty as payable on premiums paid for insurance from that date taken out with:
 - overseas insurers
 - non-commercial captive insurers, and
 - other insurers not required to be registered or authorised under Commonwealth legislation (unregistered insurers).
- Persons who have paid insurance duty on premiums paid between 8 December 2009 and 13 January 2010 (inclusive) on insurance taken out with the above unregistered insurers will qualify for an automatic refund of such duty where they apply for a refund using the reassessment process.

The process for making an appropriate application for a reassessment refund for this limited period can be found in the Qld OSR's website at <http://www.osr.qld.gov.au/duties/insurance-duty/refund-process.shtml>

The relevant period to apply for such a reassessment refund appears to be five years from the date of the original assessment notice (an original assessment notice is deemed to be given once a person (who is a self-assessor) lodges a return with QLD OSR).

QLD OSR has stated that in addition to the above automatic refund process, persons who, for any reason, consider that the insurance duty provisions do not apply in a particular case, have the right to seek a refund of duty using the objection and appeal process in the Taxation Administration Act 2001 (Qld).

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Time limits apply to the objection process which need to be taken into account. The right to object appears to expire 60 days from the date of the original assessment notice or such other time agreed to by the QLD OSR.

Persons who are affected may want to consider whether they want to:

- follow the above reassessment process to get an automatic refund for duty on premium paid in the limited period between 8 December 2009 and 13 January 2010 (inclusive)
- lodge an objection to the original assessment of duty under the Taxation Administration Act 2001 (Qld) within the prescribed time limits available, and/or
- seek a refund for stamp duty paid for different periods based on other grounds e.g it may be possible to do so on the basis of mistake of law etc depending on the circumstances.

The above matters are complex and care needs to be taken to avoid prejudicing or losing any rights that may exist. You may want to contact your insurance broker/intermediary to discuss how they might be able to assist.

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

IMPORTANT NOTICE

This document is designed to provide helpful 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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