

# Client Alert

## Possible refund opportunity – NSW Insurance Duty

April 2009

A recent NSW Supreme Court decision in *Qantas Airways Limited v Chief Commissioner of State Revenue* [2008] NSW 1049 (**Qantas Decision**) held that insurance duty was not payable under the Duties Act 1997 (NSW) (**DANSW**) on premiums paid to insurers not registered as general insurers under the Insurance Act 1973 (Cth) prior to 20 June 2006. This decision conflicts with the requirements of the NSW Office of State Revenue which prevailed at the time.

### Effect of Qantas Decision

The Qantas Decision means that insureds may be entitled to a refund of insurance duty charged in NSW on policies of general insurance effected with insurers who were not registered under the Insurance Act in the period prior to 20 June 2006.

While the Qantas Decision applies to NSW, it may have application to legislation relating to insurance duty operating in other Australian states and territories.

The Commissioner of State Revenue (**the Commissioner**) has filed an appeal against the Qantas Decision (**the Appeal**), which is likely to be heard in the first half of 2009 with a determination later in 2009.

### Possible right to refund and proposed bulk application for reassessment

Under the Tax Administration Act 1996 (NSW) (**TANSW**), a person has a right to require the Commissioner to reassess the amount of duty paid in the 5 year period immediately prior to the date on which the request is made.

Notwithstanding the Appeal, Freeman McMurrick considers that it was in the interests of its affected clients to lodge an application for bulk reassessment under the TANSW to attempt to ensure the longest possible refund period in the event that the Appeal does not succeed. If the Commissioner accepts the application, it may become necessary at a later date for your organisation to become more directly involved in prosecuting the application.

Please note that Freeman McMurrick lodged the bulk application for reassessment in April 2009. If you wish your organisation to be excluded from the bulk application, please advise your Freeman McMurrick Client Relationship Manager.

### Legal advice

Please note that this alert does not constitute legal advice and should not be relied upon as such.

We cannot guarantee that the Commissioner will accept the bulk application or that the notification will act to preserve your organisation's right to claim a refund of insurance duty as a consequence of the Qantas Decision. You should seek your own legal advice as to how the Qantas Decision affects your organisation and whether it should be taking any further steps to protect its position.

### Further updates

Please note that further updates on this issue, including relevant responses from the Commissioner, will be posted on this website [www.freemanmcmurrick.com.au](http://www.freemanmcmurrick.com.au).