

# Client Alert

## Refund Opportunity – NSW Insurance Duty

In April 2009, Freeman McMurrick first alerted clients of the decision of the NSW Supreme Court in *Qantas Airways Limited v Chief Commissioner of State Revenue* (**Qantas Decision**) which held that insurance duty was not payable under the *Duties Act 1997 (NSW)* (**the Act**) on premiums paid to insurers not registered or authorised as general insurers under the *Insurance Act 1973 (Cth)* (including Lloyds) (collectively **Foreign Insurers**) prior to 20 June 2006 (**the Relevant Period**). The Qantas Decision has now been upheld on appeal.

Prior to the Qantas Decision, the NSW Office of State Revenue (**NSW OSR**) maintained that insurance duty was payable under the Act in the Relevant Period on premiums paid to Foreign Insurers and required insurance duty to be paid on such policies.

This Alert provides a brief overview of the refund process that has just been implemented and how Freeman McMurrick can assist affected clients claim a refund.

### Application Form

Applications for refund can be made by clients using the form provided by the NSW OSR *Request for Refund of Duty on Insurance taken out with Non-Registered/Unauthorised Insurers*, which is available for download at [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au).

The refund applications are to be lodged with the Chief Commissioner of State Revenue, Office of State Revenue, GPO Box 4042, Sydney NSW 2001 and marked to the attention of John Renshaw, Manager Returns. Any enquiries about the application can be made by calling the NSW OSR on 1300 139 817 or via email at [returns@osr.nsw.gov.au](mailto:returns@osr.nsw.gov.au).

### Refund Claim Period

Eligible policyholders may request a refund of duty paid in a five year period prior to the date on which an application is made. Section 9 of the *Taxation Administration Act 1996 (NSW)* prevents the Commissioner from making a tax reassessment more than five years after initial assessment.

On 8 April 2009, Freeman McMurrick reserved the rights of all its affected clients to claim a refund of insurance duty from the NSW OSR as a result of the Qantas Decision.

The NSW OSR has acknowledged that reservation of rights and advised that affected Freeman McMurrick clients are able to make a claim for refund of the duty paid in respect of the period from 8 April 2004 to 19 June 2006 (inclusive), notwithstanding that the individual refund application is now made.

### How Freeman McMurrick can assist?

The NSW OSR procedures for claiming a refund make it the responsibility of the insured taxpayer to make a refund claim. Freeman McMurrick will happily assist clients, on request, by providing supporting information about affected insurance policies and duty paid.

Part B of the NSW OSR application requires claimants to provide details of the relevant insurance policies for which a refund is being requested. The NSW OSR has agreed to accept a form (a **Broker Statement**), providing essentially the same information from insurance intermediaries in lieu of completing Part B.

If you would like Freeman McMurrick to assist with your refund application and provide you with a Broker Statement, please contact your Freeman McMurrick broker.

Please note that we may need to charge you a search and administrative fee to cover our processing costs. This charge will depend upon the work that is required to collate the information required by the NSW OSR, which in some cases may involve us conferring with the NSW OSR, your previous broker and any underwriting agency or Lloyd's coverholder who remitted the duty. Your broker will provide you with an estimate of that fee before undertaking any work.

The time required to complete a Broker Statement will depend on a number of factors, including the extent of enquiries of third parties that we will need to make on your behalf to ascertain and collate the information supporting your refund application. Any delays should not prejudice your refund given that your rights to claim were reserved as at 8 April 2009.

### Refund opportunities in other jurisdictions

While the Qantas Decision applies to NSW, it may have implications for duty levied in the ACT, Queensland and Tasmania jurisdictions on general insurance placed with Foreign Insurers, where similar legislation exists or existed.

We have been closely working with the National Insurance Brokers Association (**NIBA**) in approaching the offices of state revenue in the ACT, Queensland and Tasmania for a response as to their position regarding the Qantas Decision.

At this stage:

- ACT Revenue Office has responded to NIBA in correspondence most recently dated 12 November 2009 advising that it has determined to accept applications for refund from 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* and that it proposes to implement a system of refund similar to the NSW OSR. Freeman McMurrick will provide an updated *Client Alert* on its website once further details of the ACT refund process are known.
- NIBA has engaged with the Queensland Office of State Revenue but the Queensland Authority is yet to articulate its position. Freeman McMurrick is also seeking urgent advice from that authority on this issue and will post the outcome of its communications with the authority on our website.
- Tasmanian Department of Treasury and Finance has indicated that, in its opinion, there is no entitlement to a refund of the duty paid by policyholders on general insurance placed with Foreign Insurers.

This alert does not constitute legal advice and should not be relied upon as such. You should seek your own legal advice as to how the Qantas Decision affects your organisation and whether you should be taking any further action.