

Revenue Rulings

Conveyance of real property to trustee or nominee

Revenue Ruling SD.028

Replaced by: SD.058

CEASED 31 May 1995 CEASED 31 May 1995 CEASED 31 May 1995

Preamble

The transfer or conveyance of real property generally attracts a liability to stamp duty under Heading VI of the Third Schedule to the *Stamps Act 1958*, unless an exemption applies.

Exemption 18 of Heading VI, which is the subject of this ruling, provides that no duty is payable if the real property is conveyed to a trustee or nominee to be held solely as trustee or nominee of the transferor. The exemption will not apply if there is any change in the beneficial ownership of the property as a consequence of the transfer or conveyance.

In addition, a re-transfer of real property to the transferor in such a case, is exempt under Exemption 18.

A difficulty arises in determining whether the property in question is to be held solely in trust for the transferor upon execution of the instrument of transfer or conveyance.

The purpose of this ruling is to clarify this issue, particularly in light of the 1992 Supreme Court decision in *Comptroller of Stamps v. Yellowco Five Pty Ltd* (1993) 2 VR 529.

Ruling

This ruling has been superseded and is now replaced by SD.058.

The Commissioner, in considering the application of Exemption 18 in a particular instance, will refer to the terms of the trust deed in question.

If the terms of the trust deed allow the transferee to hold property as trustee for any person(s) in addition to, or other than, the transferor, the exemption will not apply. Accordingly, if the trust deed permits variation so that other parties may receive a beneficial interest under the trust, the exemption is not available. This is the case even if the transferor is the sole beneficiary under the trust at the time of transfer. In such a case, duty will be payable upon the transfer or conveyance and upon any subsequent re-transfer to the transferor.

In effect it will be difficult to satisfy the requirements of the exemption unless the transferee receives the property as trustee of a fixed trust which does not enable issue of further units or changes in beneficial ownership. However in all cases the decision of the Office will be based on the relevant trust deed.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

Denzil Griffiths

Commissioner of State Revenue

31 December 1993

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