

# Revenue Rulings

## Conveyance of real property to trustee or nominee

### Revenue Ruling SD.058

#### Replaced by SD.101

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### 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* (the Act), unless an exemption applies.

Exemption 18 (the exemption) of Heading VI exempts from duty any instrument for the conveyance or transfer of real property which is made by the transferor to a trustee or nominee to be held solely as trustee or nominee of the transferor, without any change in beneficial ownership.

In addition, an instrument of conveyance or transfer of real property made by way of re-transfer to the transferor in such a case is also exempt under the exemption.

A particular difficulty which may arise is the determination of whether a 'change of beneficial ownership' is effected, within the meaning of the exemption, when the conveyance is to a trustee of a trust. Whilst upon execution of an instrument of conveyance or transfer, the sole beneficiary under the receiving trust may be the transferor, the possibility of future additions or changes in beneficiaries will affect the applicability of the exemption.

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 replaces Revenue Ruling SD.028.

The Commissioner, in considering the application of the exemption to a particular conveyance, will refer to the terms of the trust deed in question.

The effect of *Comptroller of Stamps v. Yellowco Five Pty Ltd (1993) 2 VR 529* was that for the exemption to apply, the Commissioner must be satisfied that if the conveyance is to a trustee of a trust, the terms of the trust deed do not allow any future possibility of trust property being held by the trustee as trustee for any other person(s) in addition to, or other than, the transferor.

In some instances a unit trust deed may incorporate clauses which prevent, for example, extra unit holders from being added to the trust, or existing unit holders from transferring their unit holding. This may create an impression that no possibility exists of future changes in beneficial ownership of the property transferred. If the trust permits variation however, in order that other parties may receive a beneficial interest under the trust subsequent to the conveyance, then the exemption will not apply.

In such a case, duty will be payable upon the conveyance(s), and upon any subsequent re-transfer to the transferor, unless a further exemption applies.

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 where the trust deed or instrument does not provide for the issue of further units or other future changes in beneficial ownership. In addition, there can be no power of variation under the trust that could allow the possibility of an addition to, or removal of, existing beneficiaries subsequent to the conveyance.

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In all cases the decision of the Office will be based on the terms of the relevant trust deed or instrument.

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.

**Commissioner of State Revenue**

**30 April 1999**

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