

Revenue Rulings

Conveyance of real property to trustee or nominee

Revenue Ruling SD 101

Replaces SD.058

Preamble

Revenue Ruling SD.058 considered a number of issues concerning the application of Exemption 18 of Heading VI of the Third Schedule to the *Stamps Act 1958* (the Act) to transfers of real property to the trustee of a unit trust and the Supreme Court decision in *Comptroller of Stamps v. Yellowco Five Pty Ltd (1993) 2 VR 529* (Yellowco).

The purpose of this ruling is to further clarify questions that have arisen as a result of Yellowco.

Revenue Ruling SD.058 stated '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.'

Exemption 18 has three requirements, and all must be satisfied:

- (a) The conveyance is to a trustee or nominee;
- (b) The property is 'to be held' by that trustee or nominee solely as trustee or nominee of the transferor; and
- (c) The property is to be held without any change in beneficial ownership.

The Court in Yellowco made the following comments:

- 'I am aware that the construction which I would place upon the exemption gives very little scope indeed to the exemption, but that is simply a consequence of the words used by the legislature.' — Justice Fullager

- 'Upon this interpretation Exemption (18) has, no doubt, a very narrow field of operation.' — Justice Tadgell

Ruling

Power of sale

The current exemption presumes that there will ultimately be a re-transfer of the property to the original owner. The Commissioner will, therefore, refuse applications where the trustee has an unrestricted power of sale.

Trusts

Bare Trust

A bare trust is a trust under which the trustee holds property without any interest in it, other than an interest existing by reason of the office and the legal title of trustee. Apart from administration matters, the only duty such a trustee has to perform is to convey the property on demand to the beneficiary, or as otherwise directed by the beneficiary. A bare trust in favour of the transferor is therefore the only type of trust which can satisfy the requirements of the exemption.

Discretionary Trust

The trustee of a discretionary trust, in accordance with the terms of the trust, has wider powers to deal with trust property than under a bare trust. As a consequence the trustee has the discretion to transfer the property other than to the transferor. The Commissioner is of the view that for this reason the exemption cannot apply to a discretionary trust.

Unit Trust

The Commissioner is also of the view that the exemption will not apply where the trust is a unit trust. Again, this is because, in accordance with the terms of the trust, the trustee has wider powers to deal with the property. In addition, under a unit trust, a unit holder has an interest in the value of all the property of the trust without interest in any specific property. Consequently the trustee is under no obligation to transfer property held by the trust back to the transferor notwithstanding that the transferor is also a unit holder.

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

March 2000

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