

Public Ruling

Ruling Number	:	PUB-DT-2008-27
Title	:	Property vested in an "Apparent Purchaser "
Tax Line	:	Duties
Legislative Reference	:	Duties Act 2001
Previous Ruling	:	-
Date of Ruling	:	21 Jul 2008
Attachments	:	-

Preamble

This ruling provides guidance on the application of section 39 of the *Duties Act 2001* ("Duties Act").

Section 39 of the Duties Act provides that certain transactions in relation to property vested in an apparent purchaser are chargeable with duty of \$20. The concession applies to:

- (a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property –
 - (i) vested in the apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property; or
 - (ii) to be vested in the apparent purchaser upon trust for the real purchaser, if the Commissioner is satisfied that the money for the purchase of the dutiable property has been or will be provided by the real purchaser; or
- (b) a transfer of dutiable property from an apparent purchaser to the real purchaser, in a case where dutiable property is vested in an apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property.

Section 39 therefore provides a concessional rate of duty for a resulting trust under which the apparent purchaser is trustee and the real purchaser is the beneficial owner of the trust property.

Ruling

Apparent purchaser and real purchaser

A resulting trust arises where a person (the "real purchaser") acquires property in the name of another person (the "apparent purchaser") or jointly in the names of both the real and apparent purchasers. In the absence of evidence that the real purchaser intended the apparent purchaser to take a beneficial interest in the property (and subject to any presumption of advancement that might arise from a relationship between

the real and apparent purchaser), the apparent purchaser is presumed to hold the property in trust for the real purchaser. In the case of a joint purchase, the purchasers are presumed to hold the property in trust for themselves as tenants in common in the proportions in which they contributed the purchase money regardless of the proportions in which they purchased the property¹.

Where part of the purchase price is provided by means of a loan secured by a mortgage over the property, the persons who are under an obligation to repay the loan are taken by the general law to have provided that part of the purchase price, *regardless* of who actually makes those repayments. This is because the person who actually pays the mortgage instalments is merely repaying the loan, not contributing to the purchase price.

For the purposes of the application of section 39, where part of the purchase money has been provided by a person other than the real purchaser (eg by way of a mortgage in the apparent purchaser's name as mortgagor), the money will be taken by the Commissioner as being provided by the real purchaser if satisfied that the money was provided as a loan and has been or will be repaid by the real purchaser. Consequently the person who has been repaying or is intended to repay the loan will be taken to have provided that part of the purchase price.

Evidence required – sections 39(1)(a)(i)

Evidence that the real purchaser actually provided the purchase money including the deposit. This may take the form of bank statements, copies of cheques etc. The evidence should be sufficient to demonstrate that the real purchaser actually provided the deposit as well as the balance of the purchase money.

Evidence required – section 39(1)(b)

Both the apparent purchaser (trustee) and the real purchaser should furnish a statutory declaration stating:

- (a) the intention of the parties regarding the beneficial ownership of the property at the time of purchase by the apparent purchaser;
- (b) why the property was purchased in the name of the apparent purchaser;
- (c) who actually provided the purchase money for the property, including any deposit payable under the agreement for the purchase of the property;
- (d) the date of birth of the real purchaser (if he or she was under 18 years of age at the time of the purchase by the apparent purchaser) or, if the real purchaser is a company, the date of its incorporation.

In addition, evidence is required to confirm that the real purchaser actually provided the purchase money for the trust property. This may consist of bank statements, copies of cheques etc. The evidence should be sufficient to demonstrate that the real purchaser actually provided the deposit as well as the balance of the purchase money. If any part of the purchase money was borrowed by the apparent purchaser (eg in the apparent purchaser's name as mortgagor) details of the loan arrangements and any indemnities given by the real purchaser should be provided, together with evidence of the source of any loan repayments made prior to the transfer.

¹ Calverley v Green (1984) 155 CLR 242

In certain circumstances the Commissioner may accept a transfer as satisfying the requirements of section 39(1)(b) without requiring evidence of payment of the purchase money. For example, a statutory declaration would be sufficient evidence to enable a transfer to a listed company to be accepted as satisfying the requirements of section 39(1)(b).

Enquiries about this Revenue Ruling should be directed to the Research, Analysis and Legislative Review Section on telephone 03 6233 2694 or e-mail at revenueview@treasury.tas.gov.au. Copies of this ruling may be obtained from our website at www.sro.tas.gov.au by selecting "Resources" and then "Rulings".

All rulings must be read subject to Revenue Ruling PUB-GEN-2005-5, "Explanation and status of Revenue Rulings".



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