

REVENUE RULING NO. SD 109

DECLARATIONS OF TRUST - CONTRACT WITH PURCHASER SHOWN AS TRUSTEE - FARRAR'S CASE

PREAMBLE

Questions have arisen from time to time regarding the effect of section 17 of the Stamp Duties Act 1920 where a contract of sale describes the purchaser as "trustee for ..".

This issue was raised in **Farrar v Commissioner of Stamp Duties** (1975) 5 A.T.R. 364 and this Ruling sets out the assessing practice in the Office of State Revenue having regard to section 17 and **Farrar's** case.

RULING

The facts of Farrar's case were that the plaintiff was trustee of a discretionary trust and had entered into a contract of sale to purchase real property where the plaintiff was expressed to be buying "as trustee for John Joseph Farrar" (the plaintiff's infant son and principal beneficiary of the discretionary trust).

A deposit was advanced by the plaintiff to the trust as an interest free loan repayable on demand and this amount was paid to the vendor. The balance of the purchase price was provided from a bank loan secured by a mortgage over the land purchased and an interest free loan repayable on demand. These loan moneys were never deposited in the bank account of the trust.

Sheppard J held that if the words "as trustee for John Joseph Farrar"> amounted to a declaration of trust there were two matters involved in the document - a contract of sale and a declaration of trust. His Honour concluded that the words amounted to a declaration of trust on the basis that without those words there was nothing binding the plaintiff to hold the land purchased on trust for his infant son. Accordingly, duty was payable in respect of the document as both a contract of sale and a declaration of trust.

In accordance with the views expressed in **Farrar's** case contracts for sale will be considered to be liable to stamp duty as declarations of trust, in addition to the duty normally payable on the agreement for sale or conveyance, where the purchaser is described-

- (1) as trustee for a named person(s);
- (2) as trustee for a named class of persons (for example, "for the children of X");
- (3) as trustee for a named corporate body;

(4) as trustee for a named unincorporated body,

but a contract will not be considered to be liable to duty as a declaration of trust where the purchaser is described:

(5) as trustee;

(6) as trustee for the estate of a named person;

(7) as trustee for a named settlement;

(8) as trustee for a company to be formed or incorporated.

R. P. DALEY,
for Chief Commissioner of Stamp Duties.
25 July 1988

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