



Administrative Decisions Tribunal
New South Wales

Duties Decision Summaries

Table of Contents

TRIBUNAL DECISIONS SUMMARIES	2
EXEMPTIONS FROM DUTY	2
<i>2011 Decision Summary</i>	2
Hogarth v Chief Commissioner of State Revenue [2011] NSWADT 106078	2
MEANING OF PURCHASER AND TRANSFEREE	2
<i>2011 Decision Summary</i>	2
Warner v Chief Commissioner of State Revenue [2011] NSWADT 212	2
TRANSFER IN CONFORMITY WITH AGREEMENT.....	3
<i>2011 Decision Summary</i>	3
Chief Commissioner of State Revenue v Scarfo [2011] NSWADTAP 57.....	3

Tribunal Decisions Summaries

Exemptions from Duty

2011 Decision Summary

Hogarth v Chief Commissioner of State Revenue [2011] NSWADT 106078

Date of Decision: 28 July 2011

Decision: On 28 July 2011, Deputy President Needham delivered an ex tempore judgment in this matter dismissing the application and affirming the decision of the Chief Commissioner of State Revenue (the Chief Commissioner) to refuse to grant the applicants an exemption under Division 1A (NSW Housing Construction Acceleration Plan) ("HCAP") of the *Duties Act 1997 (Act)* for the purchase of their home at Elderslie NSW. Deputy President Needham found that the applicants could not satisfy the criteria in s.87C of the Act, namely that their purchase of the home was the purchase of a 'new home' within the meaning of the Act and that the 'new home' they purchased was complete and ready for occupation.

Catchwords:-

Duties Act – Housing Construction Acceleration Plan. A new home that has not been previously occupied or sold as a place of residence.

Select this hyperlink to go to the summary:-

[Hogarth v Chief Commissioner of State Revenue \[2011\] NSWADT 106078](#)

Meaning of Purchaser and Transferee

2011 Decision Summary

Warner v Chief Commissioner of State Revenue [2011] NSWADT 212

Date of Decision: 05 September 2011

Decision: The applicants sought a review of the decision by the Chief Commissioner of State Revenue (the Chief Commissioner) to assess them for 'double duty'. The applicants argued that nominal duty under section 18 on the transfer should apply where a majority of the persons constituting the purchaser and the transferee are related to each other in accordance with the definition of related persons in the *Duties Act 1997 (the Act)*.

The Tribunal affirmed the Chief Commissioner's decision that nominal duty cannot apply. Each of the contract and transfer is a dutiable transaction and liable under section 8(1) of the Act.

Catchwords:-

Meaning of "purchaser" and "transferee" where in each case there is more than one - whether section 18(3) of the Duties Act requires the necessary relationship for all parties constituting each of the purchaser and the transferee

Select this hyperlink to go to the summary:-

[Warner v Chief Commissioner of State Revenue \[2011\] NSWADT 212](#)

Transfer in Conformity with Agreement

2011 Decision Summary

Chief Commissioner of State Revenue v Scarfo [2011] NSWADTAP 57

Date of Decision: 06 December 2011

Decision: Appeal allowed.

On 2 December 2010, Judicial Member Block in the Administrative Decisions Tribunal set aside the decision of the Chief Commissioner to impose *ad valorem* duty in respect of a transfer of property at Bondi from Ms Laura Gomez and Ms Monica Da Silva to Mr Sam Scarfo. Judicial Member Block found, at first instance, that the Transfer was liable to nominal duty under s. 18(2) of the *Duties Act 1997* (NSW) ("the Act") on the basis that it was made "in conformity with" an agreement in respect of which duty had been paid. The Chief Commissioner appealed this decision.

The Appeal Panel, having found that the concessions in ss. 18(2) and 18(3) of the Duties Act 1997 did not apply to the Transfer, allowed the appeal, and accordingly confirmed the decision of the Chief Commissioner to assess the Transfer with *ad valorem* duty, on the basis that the Transfer was not made "in conformity with" an agreement in respect of which duty had been paid.

Catchwords:-

Duties – meaning of "in conformity with an agreement"

Select this hyperlink to go to the summary:-

[Chief Commissioner of State Revenue v Scarfo \[2011\] NSWADTAP 57](#)