IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 105

Originating Summons No 269 of 2016

Between

(1) Zhao Hui Fang
(2) Chew Hwee Ming
(3) Sat Pal Khattar
(4) Jerry Lee Kian Eng

… *Applicants*

And

Commissioner of Stamp Duties

… *Respondent*

JUDGMENT

[Revenue Law] — [Stamp duties] — [Assessment]
[Revenue Law] — [Stamp duties] — [Additional buyer's stamp duties]
[Trusts] — [Purpose trusts] — [Charitable purpose trusts]
[Trusts] — [Beneficiaries] — [Beneficiary principle]
[Statutory interpretation] — [Interpretation Act] — [Extrinsic aids]

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v
Commissioner of Stamp Duties

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High Court — Originating Summons No 269 of 2016
Aedit Abdullah JC
20 June, 25 July, 24 October 2016

11 May 2017 Judgment Reserved.

Aedit Abdullah JC:

1 The applicants ("the Applicants") are trustees of a charitable trust who dispute their liability imposed by the Commissioner of Stamp Duties ("the Respondent") for additional buyer's stamp duty ("ABSD") charged on a conveyance of property to them in their capacity as trustees. As the statutory provisions stipulate liability for ABSD where the transfer of property is to beneficial owners who comprise entities or foreigners, the primary question is whether the beneficial owners of the subject property in our case, if at all identifiable, included such entities or foreigners. Having considered the arguments, I find in favour of the Applicants that ABSD is not chargeable.

Statement of the case

2 A statement of the case was filed under s 40 of the Stamp Duties Act (Cap 312, 2006 Rev Ed) ("SDA"), which provided the background to this dispute. The statement sought the opinion of the court on whether a sale and purchase agreement ("SPA") attracted ABSD under s 4(1) read with Art 3(*bf*) of the First Schedule of the SDA. Under this SPA, Goodwood Residence Development Pte Ltd ("the Vendor") agreed to sell the subject property located at 263 Bukit Timah Road #05-09 Singapore 259704 ("the Goodwood Property") to the Applicants, who acted in their capacity as trustees for the Chew How Teck Foundation ("the Foundation").

3 The Foundation is a charity registered in Singapore with the Commissioner of Charities and was established by Mr Chew Chee Thong ("the Settlor") in 1994. The constituting deed states that the objects of the Foundation are:

> (a) the promotion in Singapore and Malaysia of Medical Research into the causes and treatment of cancer and heart disease;
>
> (b) the relief of hardship, poverty or distress of persons resident in Singapore or Malaysia;
>
> (c) the furtherance of the education of persons resident or whose parents or guardians are resident in Singapore or Malaysia, and who are in need for financial assistance; and
>
> (d) the erection of new hospital buildings of any Chinese hospital in Singapore or Malaysia.

4 The Settlor left a will dated 26 August 1994 ("the Will") when he passed away. Grant of Probate was issued by the High Court to Chew Hwee Ming and Sat Pal Khattar (collectively "the Executors") on 30 October 2001. Clause 2 of the Will provided, in respect of a property located at 37 Chee Hoon Avenue ("the Chee Hoon Property"), as follows:

> My property known as No. 37 Chee Hoon Avenue, Singapore 1129 shall be made available to my wife ZHAO HUI FANG for her personal use during her lifetime or until she remarries whichever is earlier. If my wife does not wish to use the said property as her personal residence, the said property shall be given to my daughter CHEW HWEE MING for her use during her lifetime and or for the use of any one or more of her children during their lifetime as their personal residence. My daughter may in her discretion at her own cost improve build rebuild erect enlarge decorate or improve the said property with a view to using it as her residence. It is my desire however that my daughter does not apply more than Singapore Dollars Two Million ($2,000,000.00) in improving or rebuilding the said property.
>
> Provided that when my daughter's youngest surviving child attains the age of thirty (30) years, neither my daughter nor any one of or more of her children wish to use the said property as their personal residence, the property may be leased or disposed and any income or the proceeds thereof shall be paid to the CHEW HOW TECK FOUNDATION ("the FOUNDATION") a charity established by a Trust Deed (hereinafter called "the Trust Deed") made on 26th August 1994 between me of the one part, and Zhao Hui Fang, Chew Hwee Ming, Sat Pal Khattar and Jerry Lee Kian Eng (hereinafter collectively called "the Trustees"), of the other part.

5 In 2014, on the application of the Executors, the High Court granted an order allowing the Executors to sell the Chee Hoon Property and purchase the Goodwood Property as a substitute ("the Order of Substitution"). The order, which was made with consent of the Applicants, provided, *inter alia*, that:

(a) the Executors be empowered to sell the Chee Hoon Property at not less than $22.8m, freed from all life and contingent life interests set out in the Will;

(b) part of the proceeds be utilised for the purchase of a unit at the Goodwood residence (in which the Goodwood Property is located) at a price of not more than $6.6m in the name of the Foundation;

(c) the balance to be paid to the Foundation subject to trusts set out in its constituting deed; and

(d) Clause 2 of the Will to continue to apply with full force and effect in relation to the Goodwood Property (instead of the Chee Hoon Property) with necessary modifications.

6 The purchase of the Goodwood Property was also authorised by the Commissioner of Charities by order dated 10 February 2015, *vide*, Charity Proceedings Order No 1 of 2015.

7 The SPA for the purchase of the Goodwood Property was thereafter executed at a purchase price of $6.56m.

8 In April 2015, the Applicants sought an adjudication of the stamp duties payable on the SPA. *Ad valorem* stamp duty was some $191,400, which the Applicants duly paid. The SPA was thus stamped on 7 April 2015. However, on 23 April 2015, the Applicants wrote to the Respondent arguing that ABSD should not be charged on the SPA. They represented that the Goodwood Property had been purchased principally for the benefit of Mdm Zhao Hui Fang, the Testator's wife ("Mdm Zhao"), and that the other persons entitled under the Will did not intend to stay in the said property and were

prepared to disclaim, relinquish and renounce all their rights therein. As such, ABSD ought not to be imposed on the SPA as Mdm Zhao was a Singapore citizen who did not hold any other residential properties in Singapore. Further, after Mdm Zhao's death or re-marriage, the Foundation would take possession of the Property to further its charitable objects, and the Foundation was not an entity *per se*.

9 The Respondent, however, replied in November 2015 that the legal and beneficial interest of the Goodwood Property resided in the Foundation, which was an entity, and hence ABSD of 15% on the purchase price of $6.56m, being $984,000, was payable.

10 This was disputed by the Applicants, who maintained, *inter alia*, that (a) Mdm Zhao had a life interest in the Goodwood Property and not a mere licence to reside, (b) she was Singaporean and did not hold another residential property, (c) the Foundation was not an entity *per* se, and (d) the ABSD legislative framework did not contemplate the Applicants' position such that any levy of ABSD on the SPA would be out of its scope.

11 Despite their objections, the Applicants paid under protest, on 22 January 2016, the assessed ABSD of $984,000 and the late payment penalty $2,965, for a total sum of $986,965. By way of letter dated 16 February 2016, the Respondent informed the Applicants that the assessment of ABSD was maintained on the basis that the beneficial interest in the Goodwood Property rested in the Foundation.

12 The Applicants then filed an appeal under s 40 of the SDA to the High Court on 16 March 2016. Under this procedure, a case is to be stated by the Commissioner of Stamp Duties setting out the question(s) upon which the

Commissioner's opinion was required and the decision made by him in that regard (s 40(1)). Thereupon, the matter is to be heard by the High Court for its determination of the question(s) submitted. If the Commissioner's decision is confirmed, the court may order the applicant to pay costs of the appeal to the Commissioner (s 40(5)). If the Commissioner's decision is, however, found to be erroneous, the court shall order the repayment of any excess duty, fine and/or penalty paid in conformity with the erroneous decision, with or without costs (s 40(4)).

13 The questions stated for determination by the court are:

(a) whether the SPA is chargeable with ABSD under s 4(1) read with Art 3(*bf*) of the First Schedule of the SDA; and

(b) if the SPA is chargeable with ABSD, the ABSD with which the SPA is chargeable.

14 As will be elaborated upon below, under s 4(1) read with Art 3(*bf*)(viii) of the First Schedule of the SDA, ABSD is chargeable on an instrument executed in Singapore, on or after 12 January 2013, for the sale of residential property "if the grantee, transferee or lessee [of that property], or any of 2 or more joint grantees, transferees or lessees is a foreigner or an entity". The phrase "grantee, transferee or lessee" is in turn defined under Art 3(2)(*d*), *vis-à-vis* a trust, as a reference to the beneficial owner of the property.

The Applicants' case

15 At the outset, the Applicants argue that the Foundation is not liable for ABSD on the SPA under Art 3(*bf*)(viii) of the First Schedule for three main reasons: (a) the Foundation is not the beneficial owner of the Goodwood

Property, (b) the Foundation is not an "entity", and (c) ABSD is not intended to be imposed on a charitable purpose trust.

16 First, as regards the reference to beneficial ownership of the Goodwood Property, the Applicants argue that while the term "beneficial owner" is not statutorily defined, Art 3(2)(*d*) must refer to a legal personality vested with the equitable interest in the property at the time of execution of the sale and purchase agreement. The Inland Revenue Authority of Singapore ("IRAS") e-tax guide provides some guidance but is over-simplistic as it refers to the "intended owner" which is not the same in law as a "beneficial owner". The various cases cited by the Respondent are also not relevant as they relate to foreign tax provisions.

17 On this approach, Mdm Zhao holds a life interest under the Will in the Goodwood Property and should be regarded as its beneficial owner at the time of execution of the SPA. ABSD is thus not chargeable as Mdm Zhao is a Singaporean and does not hold any other residential property.

18 In any event, the Applicants argue that the Foundation is not the beneficial owner of the Goodwood Property. Legal interest in the Goodwood Property is held by the Applicants in their capacity as trustees, but the Foundation, having no institutional form, is incapable of holding the beneficial interest. Further, the Foundation is not a beneficiary stipulated under its constituting trust deed. As the Foundation is a charitable purpose trust, it is valid even if there is no certainty of objects. The Foundation also remains valid even though its funds have been applied to a non-charitable purpose such as the purchase of the Goodwood Property: s 64 of the Trustees Act (Cap 337, 2005 Rev Ed).

19 Second, the Applicants argue that the Foundation does not fall within the definition of "entity" under Art 3(1) of the First Schedule of the SDA as the Foundation is simply a charity established under a trust deed; it has no institutional form and registration as a charity also does not clothe it with such a form: *Khoo Jeffrey v Life-Bible-Presbyterian Church* [2011] 3 SLR 500 ("*Khoo Jeffrey*").

20 Third, in respect of the legislative purpose of the ABSD regime, the Applicants argue that ABSD was not intended to be imposed on conveyances of residential properties to charitable purpose trusts. This is apparent from a press statement jointly issued by the Ministry of Finance and the Ministry of National Development on 7 December 2011 ("the Press Statement"), which they contend is relevant and admissible under s 9A(3) of the Interpretation Act (Cap 1, 1997 Rev Ed) ("IA"). This is also buttressed by the lack of a specific ABSD provision dealing with such charitable purpose trusts in which there are no identifiable beneficiaries.

21 In reply to the Respondent's alternative submissions that the beneficial owners of the Goodwood Property are (a) the beneficiaries of the charitable objects, (b) the Applicants in their capacity as trustees, or (c) the public, the Applicants submit variously that these arguments are speculative as to the Applicants' exercise of discretion as trustees, based on distinguishable and unpersuasive authorities, and contrary to established trust principles. They also highlight that the Respondent has departed from its initial position, as explained in the Statement of the Case, that the legal and beneficial interests in the Goodwood Property rest in the Foundation as an entity *per se*. In reply to the Respondent's further arguments that the Applicants as trustees, or the public, constitute an "entity", the Applicants contend that Parliamentary debates show that ABSD was intended to moderate investment demand. The

statutory definition of "entity", *ie*, a "person who is not an individual", must accordingly be construed to mean a corporate person and not any body of persons.

22 Finally, the Applicants stress that no other part of Art 3(*bf*) of the First Schedule of the SDA would apply in the circumstances. Contrary to the Respondent's submission, the disapplication of the specific rule in relation to trusts under Art 3(2)(*d*) does not resurrect any general or alternative rule under Art 3(*bf*)(viii). Thus, under Art 3(2)(*d*), the inquiry remains on the beneficial owners of the Goodwood Property, if any, and not the "transferees" of the property as such. This is because the Arts 3(*bf*)(viii) and 3(2)(*d*) should be read in tandem, and to allow the Respondent's argument for a fall-back general rule (see [31]) would be to open a backdoor for it to subject charities to ABSD, contrary to Parliamentary intent.

23 For these reasons, the Applicants submit that there is no basis for the imposition of ABSD on the SPA, and the Respondent should accordingly refund in full the paid ABSD and late payment penalty.

The Respondent's case

24 The Respondent raises three main arguments, framed in the alternative, in support of its position that ABSD is chargeable on the SPA.

25 First, it argues that the beneficial owner of a charitable purpose trust is determined by reference to the objects of that charity. Here, the constituting trust deed prescribes, *inter alia*, medical research in Singapore and Malaysia as the Foundation's objects. As such, the potential persons who would in fact benefit from the Foundation's objects would more likely than not include entities (*eg*, research institutes) and foreigners (*eg*, Malaysian researchers)

(hereinafter referred to as the "factual beneficiaries"). Since there would conceivably be at least one beneficial owner who is an entity or a foreigner on this theory, ABSD of 15% is chargeable.

26 Second, the Respondent submits that the Applicants as trustees of the Foundation are themselves the beneficial owners of the Goodwood Property. Reliance was placed primarily on Australian authorities for the proposition that where no person can be identified as entitled to the equitable estate in land, the trustee, despite being trustee, is entitled to the whole estate both legal and equitable. Accordingly, as the Applicants in their official capacity as trustees fall within the statutory definition of "entity" (*ie*, a "person who is not an individual"), ABSD is chargeable.

27 Third, the Respondent argue that the beneficial owner of property held under a charitable purpose trust is "the public", citing in support the public benefit requirement for validity of charitable trusts, and an academic article. As members of the public would include at least an entity or a foreigner, ABSD is chargeable.

28 The Respondent raises three further arguments in reply to the Applicants. First, it submits that, contrary to the Applicants' submissions, on proper construction of the Will, Mdm Zhao only has a personal licence to use, and not a life beneficial interest in, the Goodwood Property. As such, she is not the beneficial owner of that property, and her citizenship and ownership of other residential properties are irrelevant considerations.

29 Secondly, the Respondent clarifies that it no longer argues that the Foundation is an entity and *per se* the beneficial owner of Goodwood Property. Indeed, it acknowledges that a trust is a relationship and not a legal

person. Rather, its arguments relate to the beneficial owners of the Goodwood Property, whom it argues to be the factual beneficiaries of the charitable objects, the Applicants as trustees, and/or the public.

30 Thirdly, the Respondent argues that ABSD was intended to cover charitable purpose trusts, citing the same Press Statement as the Applicants which it agrees is admissible as extrinsic evidence under s 9A(3) of the IA to aid statutory construction. Express reference was made to "trusts" in the Press Statement, and there is no specific exemption for charitable purpose trusts under the ABSD regime unlike in other local tax legislation. Further, if charitable purpose trusts are excluded from the scope of ABSD, undesirable disparity would result between charities incorporated as trusts, and those constituted as unincorporated associations or companies limited by guarantee.

31 Finally, the Respondent submits that, even if there is no beneficial owner to properties held under a charitable purpose trust, that merely displaces the specific rule in Art 3(2)(*d*) of the First Schedule of the SDA relating to "residential property on trust". In that event, the general rule under Art 3(*bf*)(viii) of the First Schedule would apply in relation to the profile of the transferees as such (*ie*, in relation to the Applicants in their official capacity as trustees of the Foundation) to maintain the chargeability of conveyances to charitable purpose trusts.

The decision

32 ABSD is not chargeable on the SPA. This is because the Goodwood Property is property of a charitable purpose trust (*ie*, the Foundation) under which the beneficial interest of trust assets is suspended. Contrary to the Respondent's submissions, neither the persons who factually benefit from the

charitable objects of the Foundation, nor the Applicants as trustees of the Foundation, nor the public, is the beneficial owner of property held under a charitable purpose trust. There being no active or extant beneficial ownership of the Goodwood Property, there is nothing for ABSD to attach to under the First Schedule of the SDA.

33 However, contrary to the Applicants' submission, Mdm Zhao is not the holder of a proprietary life interest in the Goodwood Property under the Will, but rather, a mere personal licensee with permission to reside rent-free in the property for her lifetime. Her citizenship status and property holdings are therefore irrelevant to the chargeability of ABSD on the SPA.

The analysis

34 The statutory regime for ABSD will first be laid out, then the following issues will be examined in sequence:

(a) whether Mdm Zhao has a beneficial life interest, or a mere personal licence to reside, in the Goodwood Property;

(b) who, if anyone, is the beneficial owner of properties held under a charitable purpose trust;

(c) whether the beneficial owner identified in (b) falls within the statutory definitions of "entity" and/or "foreigner"; and

(d) whether any other provision in the First Schedule of the SDA applies to impose ABSD on the SPA.

35 For the Respondent's position to prevail, issues (a), (b) and (c) must all be answered in its favour. This is because on the Respondent's primary case, in order to warrant the charging of 15% ABSD on the SPA, the beneficial

owner of the Goodwood Property must be determined, and would include an "entity" or "foreigner". Alternatively, the Respondent must succeed on issue (d). Finally, two miscellaneous issues will be dealt with at the end of this judgment.

The statutory regime for ABSD

36 ABSD was introduced in 2011 as part of a series of measures aimed at moderating rising property prices in Singapore. The statutory regime for ABSD is contained in the following provisions in the SDA. Section 4(1) is the charging provision in respect of stamp duties generally:

> 4. —(1) Subject to the provisions of this Act and any other written law, every instrument mentioned in the First Schedule, being an instrument —
>
> (*a*) which, not having been previously executed by any person, is executed in Singapore; or
>
> (*b*) which is executed outside Singapore, and relates to any property situated, or to any matter or thing done or to be done, in Singapore, and is received in Singapore,
>
> shall be chargeable with duty of the amount specified in that Schedule as the proper duty for that instrument.

37 Section 22(1) extends the ambit of the duty to cover not only actual conveyances but also any contract for such conveyance:

> 22. —(1) Every contract or agreement for the sale of —
>
> (*a*) any equitable estate or interest in any property; or
>
> (*b*) any estate or interest in any property except property situated outside Singapore, and stock or shares,
>
> shall be charged with the same ad valorem duty, payable by the purchaser, as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold.

It appears that amendments have been introduced in 2017 removing the phrase "and stock or shares" in s 22(1)(*b*) of the SDA. Those amendments, however, do not concern the present case.

38 The First Schedule lists out the instruments chargeable with stamp duty and the rate payable in respect of each particular instrument. Article 3 of the First Schedule deals with the conveyance, assignment or transfer of immovable property or any interest thereof. In particular, Art 3(*bf*) provides for ABSD to be imposed on the sale of residential property executed on or after 12 January 2013. In this regard, the ABSD rate payable would broadly depend on three factors: (a) whether the grantee, transferee or lessee is a Singapore citizen, Singapore permanent resident, or a foreigner, (b) whether he/she is an individual or an entity, and (c) the number of properties owned by him/her at the material time.

39 The present case focuses on Art 3(*bf*)(viii) of the First Schedule, which imposes a charge of 15% ABSD on the total amount of consideration of the residential property sought to be conveyed "if the grantee, transferee or lessee, or any of 2 or more joint grantees, transferees or lessees is a foreigner or an entity".

40 To this end, Art 3(2)(*d*) of the First Schedule clarifies that save for limited exceptions, if the property concerned is held on a trust, the phrase "grantee, transferee or lessee" would refer to the beneficial owner(s) of that property:

> except where the residential property is to be held as property of a business trust or a collective investment scheme or as partnership property, a reference to a grantee, transferee or lessee, in a case where he is to hold the residential property on trust, is a reference to the beneficial owner; and where there is more than one beneficial owner (whether or not

> including the grantee, transferee or lessee himself), all the beneficial owners shall be treated as joint grantees, transferees or lessees

41 Two other definitions in Art 3(1) of the First Schedule are material:

(a) "Entity" means "a person who is not an individual, and includes an unincorporated association, a trustee for a collective investment scheme ("CIS") when acting in that capacity, a trustee-manager for a business trust when acting in that capacity and, in a case where the property conveyed, transferred or assigned is to be held as partnership property, the partners of the partnership whether or not any of them is an individual".

(b) "Foreigner" means "an individual who is not a citizen of Singapore and not a permanent resident of Singapore".

42 In essence, the relevant rule in the present case is that 15% ABSD would be chargeable if any of the beneficial owners of the Goodwood Property is a "foreigner" or "entity" as defined.

Mdm Zhao's interest under the Will

43 The first issue which arises for consideration is whether Mdm Zhao's interest in the Goodwood Property under the Will is a proprietary life interest or a mere personal licence to reside. This issue arises as the Applicants argue that Mdm Zhao has, in her personal capacity and on proper construction of the Will, at the material time of assessment of ABSD, a proprietary life interest in the Goodwood Property which takes priority over all other equitable interests in the same. Thus, no ABSD would be chargeable on the SPA as Mdm Zhao is a Singapore citizen and holds no other property in Singapore. Their submission in this regard, if accepted, is fatal to the Respondent's case. The

Respondent counters that Mdm Zhao has only a personal licence to reside in the Goodwood Property, and thus her citizenship status and property holdings are not relevant.

The effect of the Order of Substitution

44 The preliminary issue is whether the Order of Substitution made by the High Court in 2014, allowing the Executors to sell the Chee Hoon Property and purchase the Goodwood Property as a substitute, had any effect on the nature of Mdm Zhao's interest under the Will. It did not. While the Order of Substitution referred to the life interest of Mdm Zhao as a proprietary interest, that did not preclude me from finding otherwise. The Order of Substitution was a consent order, concerned only with the substitution of one property for another. The nature of the interest held by Mdm Zhao was not in issue. No issue estoppel would thus have arisen, as that requires a court of competent jurisdiction to have determined a question of fact or law in the course of the same litigation or other litigation between the same parties (*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 ("*TT International 2015*") at [100]). In this regard, the Respondent was not party to that earlier proceeding, and no question of fact or law was actually determined there, save only as to the substitution of property, and even that was resolved by consent.

45 No cause of action estoppel would arise either: this estoppel arises where the existence or non-existence of a particular cause of action has already been determined in a previous litigation between the same parties (*TT International 2015* at [99]). Again, neither the parties in the earlier proceedings nor the substantive claim there (if there could even be said to be

one) was the same as those in the present dispute. It should be noted that the Applicants do not actually put forward a contrary position on estoppel or preclusion, but rather invite the court to construe the Will as well.

Mdm Zhao's interest in the Goodwood Property

46 Turning to the substantive submissions, I agree with the Respondent that, on a proper construction of the Will, Mdm Zhao was a mere licensee with a personal right to reside in the Goodwood Property rent-free; the Will confers no proprietary or ownership interest on her. Specifically, the legal interest in the property remains vested in the trustees of the Foundation, and, as will be discussed, the beneficial interest is suspended.

47 Clause 2 of the Will is set out above. For ease of reference, the salient portion of that clause is reproduced as follows:

> My property… shall be made available to [Mdm Zhao] for her personal use during her lifetime or until she remarries whichever is earlier. If [Mdm Zhao] does not wish to use the said property as her personal residence, the said property shall be given to my daughter… for her use during her lifetime and or for the use of any one or more of her children during their lifetime as their personal residence…

48 The clause then provides that the daughter may, in her discretion and at her own cost, improve or build on the property, though the Testator expressed his wish that his daughter should not spend more than $2m doing so. The clause further provides that if the daughter's youngest surviving child reaches 30 years, and neither the daughter nor any of the children wishes to use the property as their personal residence, the property may then be leased or disposed of, with the proceeds to be paid to the Foundation.

49 The issue as to whether Mdm Zhao has a proprietary or personal life interest is one that turns on the Testator's intention (see Peter Butt, *Land Law* (Lawbook Co, 6th Ed, 2010) at para 10.06). As the Court of Appeal held in *Foo Jee Seng v Foo Jhee Tuang* [2012] 4 SLR 33, this intention "must predominantly be derived from the wording of the will itself, although the circumstances prevailing at the time the will was executed may be taken into account" (at [17]).

50 The Applicants highlight the following factors in cl 2 of the Will to support their submission that the Testator's expressed intention is for Mdm Zhao to be given a proprietary life interest:

(a) the references to "use" during the lifetime of Mdm Zhao and thereafter the lifetime of their daughter and grandchildren, such use being a reference to residence and thus necessitating occupation of the property by Mdm Zhao;

(b) the reversion of the property to the Foundation only upon the renunciation of each of the life interests of Mdm Zhao, their daughter and grandchildren; and

(c) the fact that the Foundation may only lease or dispose of the property, and use any proceeds deriving therefrom, upon renunciation of the life interests of Mdm Zhao, their daughter and grandchildren.

51 The Applicants' submissions are not persuasive in this regard. First, the appearance of the word "use" in the Will does not in itself determine the nature of Mdm Zhao's interest. There is no consistent approach that can be gleaned from the cases cited by either party, and the inquiry must in the end be contextual against the particular will in issue. Here, it is significant that cl 2

does not expressly refer to "life interest", but rather adopts language such as "personal use during her lifetime", "as her personal residence", "for her use" and "the use of any one or more of her children". In my view, the focus of the gift was clearly only on Mdm Zhao's personal right to reside on the property if she so desired. The salient terms in cl 2 spoke of "personal use", which would appear inconsistent with Mdm Zhao having any rights of possession, exclusion or alienation. These are important incidents of ownership, which Mdm Zhao would ordinarily have been entitled to if she had a proprietary life interest. Further, the multiple instances at which the qualifying phrase "as her personal residence" appear emphasise the limited nature of Mdm Zhao's interest.

52 Second, the Applicants' use of the word "revert" or "reversion" in their submission, suggesting that Mdm Zhao and the family members have proprietary life interests in Goodwood Property, is incorrect. Nothing "reverts" to the Foundation on the family's renunciation of their interests; rather, the operative term in cl 2 is a direction to the Executors that the property "shall be made available" to Mdm Zhao and other family members during their lifetimes. Presumably, on renunciation, remarriage, or death of the family members, the property shall no longer be "made available" to them. There is some authority that the phrase "made available" does not confer any proprietary right in the subject, but rather grants a mere licence to use as residence (*Morss v Morss* [1972] 1 All ER 1121 at 1124-1125).

53 Third, the Applicants' suggestion that the Foundation's ability to exercise proprietary rights *vis-à-vis* the trust property (*eg*, for lease or disposal) arises only upon the renunciation or expiration of the family's rights, if true, may be a relevant factor in their favour. However, under the Will, income and proceeds from the property, even during the lifetime of Mdm Zhao and their children and grandchildren, accrue to the Foundation if, simply,

none of the family members wish "to use [the property] as their personal residence". The restrictive phrasing of the interest that is to be renounced brings this case closer to *Re Hadjee Yousof* [1961] 1 MLJ 267, where the High Court found that the testator's wife and children had a mere personal licence to reside rent-free until the date of distribution, as *inter alia*, the gift did not carry with it the right to make any profit. It is also incongruous for the testator to have given Mdm Zhao and the family members proprietary interests in the Goodwood Property, and yet have the Will provide expressly for the daughter's (and no other family member's) power to renovate the property. This suggests that what was conferred upon Mdm Zhao was not a proprietary life interest at all. A life interest is a form of an estate in freehold (Robert Megarry & William Wade QC, *The Law of Real Property* (Charles Harpum, Stuart Bridge & Martin Dixon gen eds) (Sweet & Maxwell, 8th Ed, 2012) at paras 3-004 to 3-007). This is not changed in Singapore law: only the *estate in tail* was statutorily converted into an *estate in fee simple* through s 51 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed). Given that freehold status, no further control or restriction on – and no especial provision or stipulation as to – the enjoyment of the land would ordinarily be expected.

54 It may be that the Testator's intent was for the Goodwood Property to be used as a family home for Mdm Zhao and their children, but that does not by itself mean that the family members receive proprietary rights in the property. On a proper construction of the Will, I find that Mdm Zhao was only given a personal licence to reside, as opposed to a proprietary life interest, in the Goodwood Property.

Beneficial ownership of property under a charitable trust

55 The consequence of Mdm Zhao's having only a personal licence to reside in the Goodwood Property is that the beneficial interest *may* remain elsewhere. Against that backdrop, the Respondent's main case for imposing ABSD on the SPA is premised on three alternative arguments:

(a) The persons factually benefiting from the charitable work of the Foundation are beneficial owners of the Goodwood Property. Since there would conceivably be at least one entity (*eg*, research institutes) or foreigner (*eg*, Malaysian researchers) among them, ABSD is chargeable. Alternatively, these factual beneficiaries constitute a "body of persons" within the definition of "entity" such that ABSD applies.

(b) The Applicants in their capacity as trustees are "legal beneficial owners" of the Goodwood Property. Since they are a "body of persons", they fall within the definition of an "entity". ABSD is thus chargeable.

(c) The public is the beneficial owner of the Goodwood Property. Since members of the public would include at least an entity or a foreigner, ABSD is chargeable. Alternatively, the public is a "body of persons" within the definition of "entity" and thus ABSD applies.

Law on beneficial ownership of charitable trust property

56 The SDA refers to ownership in Art 3(2)(*d*). Ownership as a concept is related to, but not coterminous with, concepts of property, title and interest. The focus in the present proceedings is on beneficial ownership, which entails a right that can be asserted against the world except a *bona fide* purchaser for value without notice, rather than only against the trustee. Proprietary incidents

of ownership apply to a beneficial owner; that is, his interest can be protected from wrongful interference by third parties, and it can also be alienated, mortgaged, partitioned, devised or bequeathed. The precise nature of beneficial rights and the interplay between legal and beneficial ownership have not been fully mapped out, but the argument is probably in favour of the position that beneficial ownership is a right *in rem*, rather than just *in personam* against the trustee (see Jamie Glister & James Lee, *Hanbury & Martin: Modern Equity* (Sweet & Maxwell, 20th Ed, 2015) ("*Hanbury & Martin*") at paras 1-1018 to 1-1019; Steven Elliott, *Snell's Equity* (John McGhee QC gen ed) (Sweet & Maxwell, 33rd Ed, 2015) ("*Snell's Equity*") at paras 2-001 to 2-004).

57 For the creation of a private express trust for persons, there has to be certainty of objects, in addition to the certainties of subject matter and intention (*Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 at [51]). The requirement for the three certainties is connected to the ownership of legal and equitable rights under a trust, and serves broadly the purpose of enabling the trustee, or the court in default, to execute the trustee's duties (*Snell's Equity* at para 22-012). In particular, certainty of objects is usually taken to be concerned with the identification or identifiability of specific beneficiaries in order that "a trust can both be enforced against the trustee and controlled by the courts" (*Goi Wang Firn (Ni Wanfen) and others v Chee Kow Ngee Sing (Pte) Ltd* [2015] 1 SLR 1049 ("*Goi Wang Firn*") at [27]). However, the three certainties do not conclusively identify the locus of ownership. Nor do they apply in the exact same manner to charitable purpose trusts, which attract a different set of requirements both under common law and statute.

58 A charitable trust is a trust for purposes, not persons. In a trust for persons, beneficial ownership of the trust assets would lie with the

beneficiaries of that trust, *ie*, the *cestuis que trust*. That is trite law. In contrast, a purpose trust may not have an ascertainable beneficiary. In *Hongkong Bank Trustee (Singapore) Ltd v Tan Farrer and others* [1988] 1 SLR(R) 53 ("*Tan Farrer*"), the High Court recognised as "a fundamental principle of English law that no trust which is not a charitable trust can be valid if it has no beneficiary" (at [15]), and that the law in Singapore was generally the same (at [16]). Charitable trusts thus fall within a narrow exception of trusts that are not subject to the requirements of certainty of objects or the beneficiary principle: in essence, no beneficiary needs to be identified (see *Koh Lau Keow and others v Attorney-General* [2013] 4 SLR 491 ("*Koh Lau Keow (HC)*") at [19]; *Goi Wang Firn* at [19]; *Hanbury & Martin* at para 15-003; *Snell's Equity* at para 23-003; Graham Virgo, *The Principles of Equity and Trusts* (Oxford University Press, 2nd Ed, 2015) ("*Virgo on Equity*") at 174). As a corollary, there is simply no identifiable beneficial ownership under a charitable purpose trust. The persons who may benefit from a charitable trust are not, by mere virtue of their receipt of factual benefits, vested with the beneficial interest in the trust property. Thus, in the absence of statutory guidance to the contrary, individuals who may factually benefit from a charitable trust do not have standing to enforce that trust (*Hanbury & Martin* at para 15-002; *Hauxwell v Barton-on-Humber UDC* [1974] 1 Ch 432 at 450 per Brightman J). Rather, in place of the concepts of beneficial interest and beneficial ownership, the focus *vis-à-vis* charitable purpose trusts is on the control and supervision of the trustees, which power is vested in the Commissioner of Charities and the Attorney-General under the Charities Act (Cap 37, 2007 Rev Ed) ("Charities Act") and the Government Proceedings Act (Cap 121, 1985 Rev Ed) (see *Goi Wang Firn* at [46]).

Respondent's submissions on beneficial ownership

59 The Respondent makes three alternative submissions as to the identity of the beneficial owner of the Goodwood Property, the legal title of which is held by the Applicants in their capacity as trustees of the Foundation. If one of these submissions is accepted, it will then arise for consideration whether the beneficial owner so identified is a "foreigner" or "entity" within the meaning of Art 3(*bf*)(viii) of the First Schedule such that ABSD applies. These submissions are examined in turn.

(1) Factual beneficiaries of the charity as beneficial owners

60 The Respondent's first submission is that in a charitable purpose trust, the beneficial interest is held by the persons who may factually benefit from the charity's objects and work, which in this case would conceivably include research institutes and Malaysian researchers. The Respondent cites Geraint Thomas & Alastair Hudson, *The Law of Trusts* (Oxford University Press, 2nd Ed, 2010) ("*Thomas & Hudson*") for the following passage (at para 6.43):

> It is arguable that the beneficiaries of a charitable trust (who constitute an appreciable section of the public) are indeed the equitable 'owners' of the trust property and that a charitable trust is saved from invalidity, not by the disapplication of the beneficiary principle, but by the disapplication of the rules relating to certainty of objects and/or the rule against perpetuity. In other words, it could be said that the beneficiaries of a charitable trust, which is usually a continuing trust with an open class of beneficiaries, are effectively in the same position as the objects of a private discretionary trust.

61 I do not accept the Respondent's submission in this regard. With respect to the learned authors, it would seem that that quote, invoked by the Respondent as a proposition of authority, was really in the nature of a hypothesis or something to provoke thought about the beneficiary principle.

The quotation is located in the concluding section of a chapter concerned primarily with non-charitable purpose trusts. In that section, the authors were considering the problem thrown up by such private purpose trusts – that they lack beneficiaries, and by a traditional view of the beneficiary principle, without a beneficiary there is no trust. Thus, the learned authors focused their attention on the possible circumventing argument that "the fundamental problem of non-charitable purpose trusts is not one of essential validity but of enforceability"; if so, then one practical effect is that an English court may recognise a foreign non-charitable purpose trust in respect of which an enforcer has been appointed (*Thomas & Hudson* at paras 6.41-6.42). It is against this context that the authors considered the argument on whether the factual beneficiaries of a charitable trust can be considered the equitable "owners" of the trust property. In essence, the point of the passage was not to equate the factual beneficiaries with the beneficial owners in the proprietary sense, or to examine the true nature of the factual beneficiary's interest in the charitable trust, but rather to probe the limits and content of the beneficiary principle. The Respondent's select quote therefore does not assist him.

62 Furthermore, it is important to note that the authors themselves placed the term "owner" in quotation marks, and subjected the Respondent's select quote to a number of qualifiers (see *Thomas & Hudson* at para 6.43). Indeed, the authors do not appear to be equating *per se* the factual beneficiaries of a charitable trust with the beneficial owners in a proprietary sense properly-so-called. The text itself recognised in a footnote that the rule in *Saunders v Vautier* (1841) 4 Beav 115 is not applicable to these factual beneficiaries – *ie*, they cannot, even if acting together, require the charitable trustee to transfer the legal interest in the charity's property to them and thereby terminate the trust (*Thomas & Hudson* at para 6.43 n 144). Furthermore, there is no

suggestion that such factual beneficiaries have rights of alienation or exclusion against others, lacking thus the crucial hallmarks of ownership.

63 I note that Professor Hudson also does not appear to continue to support the Respondent's position in his other text, at where he made a clear distinction between the factual beneficiaries of a charitable trust and the "beneficiaries in the trust law sense" who hold proprietary rights in the trust property (Alastair Hudson, *Equity and Trusts* (Routledge, 7th Ed, 2012) at para 25.2.1):

> There are a number of interesting features of the charitable trust… The triangle of settlor-trustee-beneficiary does not apply in the case of public trusts such as charities… [T]here is no nexus between trustee and beneficiary precisely because there are no individual beneficiaries. This is because the Attorney-General sues in place of beneficiaries to enforce the purposes of the charity against the trustees. While charities will seek to benefit individuals or groups of people, those people are not beneficiaries in the trust law sense because they do not acquire proprietary rights in the property held on trust for the charitable purpose.

64 In any event, even if Professors Thomas and Hudson had the intent of clothing the factual beneficiaries of a charitable trust with beneficial ownership, such a proposition is to my mind not supported by law. There would also appear not to be any other commentary or text adopting the same approach. To this end, I find apposite another leading commentary highlighting that the factual beneficiary's "benefit" is strictly incidental to the objects of the charitable purpose trust (*Snell's Equity* at para 23-001):

> Identifiable individuals may benefit from these charitable purposes. However, any benefit they derive as individuals is strictly incidental to the main purpose of the trust, which is to confer a benefit on the public at large or some section of it.

65 For the foregoing reasons, the Respondent's submission that those factually benefiting from the charity work of the Foundation are the beneficial owners of the Goodwood Property could not be accepted.

66 Two other observations are due. First, this surprising argument by the Respondent confuses the different meanings attached to beneficial ownership and obtaining a factual benefit from something. Beneficial ownership is concerned with rights in relation to property. The latter just refers to obtaining some positive impact from something. A beneficial owner properly-so-called may often also be a factual beneficiary, but factual beneficiaries are not, necessarily and by mere virtue of their receipt of factual benefits, beneficial owners. Second, it goes against the very concept of a charitable trust to find that beneficial ownership is vested in the factual beneficiaries of the charity. If that were the case, it should follow that the all the persons factually benefiting could, if they so desired, get together and dispose of the property that is the subject matter of the trust. But that is simply not the law. On the other hand, if the factual beneficiaries could not dispose of their interest in the charitable trust or alienate it in some way, then clearly that renders their purported "ownership" meaningless: that is not ownership in any true sense.

67 In the present case, therefore, those factually benefiting from the objects and work of the Foundation, whether in Singapore or Malaysia, could not be regarded as beneficial owners of the Goodwood Property.

(2) The trustees of the charity as "legal beneficial owners"

68 The Respondent alternatively argues that the Applicants in their capacity as trustees are entitled to both the legal and beneficial interests in the trust property and should therefore be treated as beneficial owners of the

Goodwood Property. Reliance was primarily placed on a series of Australian cases, including *Glenn v Federal Commissioner of Land Tax* [1915] 20 CLR 490 ("*Glenn*"), *CPT Custodian Pty Ltd v Commissioner of State Revenue of the State of Victoria* [2005] 221 ALR 96 ("*CPT Custodian*") and *Lend Lease Funds Management Ltd v Commissioner of State Revenue* [2009] VSC 360 ("*Lend Lease Funds*"). The Applicants seek to distinguish these cases as dealing with different statutory provisions. I agree with the Applicants that the Respondent's reliance on these cases is misplaced.

69 Taking first the case of *Glenn*. In that case, the appellants were the residuary legatees under a will, taking subject to certain directions by the testator to the trustees to, *inter alia*, manage the estate to accumulate a certain sum and thereafter make specified payments or provisions out of the estate at specified intervals. It was undisputed that at the time of hearing, the accumulation had not started and that the appellants had no accrued right to any part of the testator's estate, real or personal (at 495-496). The issue of law stated for the opinion of the court was whether the appellants were liable to be assessed as joint owners in respect of certain lands which formed part of that estate. This issue turned on a provision under the Australian Land Tax Assessment Act 1910 which defined an "owner" as "every person jointly or severally, whether at law or in equity, [who] (a) is entitled to the land for any estate of freehold in possession; or (b) is entitled to receive, or in receipt of, or if the land were let to a tenant would be entitled to receive the rents and profits thereof, whether as beneficial owner, trustee, mortgage in possession, or otherwise" (at 496). The Federal Commissioner's argument was that the appellants were entitled to the equitable estates of freehold in possession notwithstanding that they may derive no benefit from the estate for some time. As such, they fell within the statutory definition of "owners" and were taxable

as joint owners of the land. The appellants countered that they had at no time an estate of freehold in possession in the land concerned; at best, they had only a contingent estate in remainder.

70 Thus, *Glenn* was concerned with the interpretation of the phrase "estate… in possession" within the statutory definition of "owner" used in the Australian statute. Griffith CJ, delivering the lead judgment, rejected the Federal Commissioner's submissions and cited an academic text for the proposition that "the person taking under the conditional limitation or executory devise, cannot, while the suspense continues, in the proper sense of that word, having any *estate*, though the event, on which it depends, is certain of happening" (at 496). Griffith CJ then moved to adopt this position as the proper construction of the statutory phrase "estate in possession" (at 497):

> In my opinion, the term "estate in possession" is used in the *Land Tax Assessment Act* in the sense explained by [the academic text]. This is not only the natural, but the only just, interpretation that can be put on the words. For the tax is an annual tax and the "owner" of the land is the person who is in the present enjoyment of the fruits which presumably afford the fund from which it is to be paid.

71 It was in this context that Griffith CJ rejected the assumption underlying the Federal Commissioner's submissions – that there must be a distinct holder in equity of the estate of freehold in possession whenever there was a trustee at law. The particular dictum of Griffith CJ's, on which the Respondent in our case relies, reads as follows (at 497):

> The [Federal Commissioner's] argument is based on the assumption that whenever the legal estate in land is vested in a trustee there must be some person other than the trustee entitled to it in equity for an estate of freehold in possession, so that the only question to be answered is who is the owner of that equitable estate. In my opinion, there is a prior inquiry, namely, whether there is any such person. If there is not, the trustee is entitled to the whole estate in possession, both legal and equitable.

72 It is notable that the other members of the bench in *Glenn*, Isaacs and Rich JJ, did not expressly concur with Griffith CJ on this point as to the locale of the beneficial interest, and their respective judgments were clearly prefaced as decisions on the proper construction of the phrase "estate in possession" which was used in the statutory definition of "owner" (at 500, 507). In fact, Isaacs J appears to have taken an entirely different approach from Griffith CJ, preferring instead the view that the various other named individuals in the testator's will, as well as the appellants, constituted collectively the objects of the trust and hence shared in the complete equitable interest in the trust property (at 503):

> Trusts… are equitable obligations to deal with property in a particular way. Trustees have no equitable interest; that belongs to the person or persons for whom the benefit is intended… In *Pearson v Lane*, Sir William Grant makes this plain. He says: "The equitable interest in that estate must have resided somewhere: the trustees themselves could not be the beneficial owners; and, if they were mere trustees, there must have been some *cestui que trust*. In order to ascertain who they are, in such a case a Court of equity inquires, for whose benefit the trust was created; and determines, that those, who are the objects of the trust, have the interest in the thing, which is the subject of it."
>
> But it must not be overlooked that the complete interest in the thing is shared by all the objects of the trust…
>
> [internal citations and quotations omitted]

73 The Respondent further relied upon *CPT Custodian*, which is a more recent case endorsing the dictum of Griffith CJ in *Glenn*. *CPT Custodian* concerned the issue of whether unit holders of a unit trust were liable for land tax under the Land Tax Act 1958 (Vic). Such liability attached, similarly as it did in *Glenn*, to the "owner" of any equitable estate or interest in land, which was statutorily defined to include a "person entitled to any land for any estate of freehold in possession". In this context, after quoting Griffith CJ in *Glenn*, Gleeson CJ writing for a unanimous court said as follows (at [25]-[26]):

> That statement was a prescient rejection of a "dogma" that, where ownership is vested in a trustee, equitable ownership must necessarily be vested in someone else because it is an essential attribute of a trust that it confers upon individuals a complex of beneficial legal relations which may be called ownership…
>
> In *Glenn,* Griffith CJ construed the statutory expression "estate in possession" as denoting "an estate of which some person has the present right of enjoyment", saying that land tax being an annual tax, "the 'owner' of the land is the person who is in the present enjoyment of the fruits which presumably afford the fund from which it is to be paid"…

74 From the context of *CPT Custodian*, Gleeson CJ clearly took the view that *Glenn* was concerned with the construction of the terms used in the Australian statutes, namely "estate in possession" and "owner", which appeared in both the Land Tax Act and the Land Tax Assessment Act. The Australian courts took the view, broadly speaking, that this phrase referred to the person who has the present benefit of the funds from which tax is to be paid. In applying this interpretation, traditional equitable propositions were not taken to be material in the face of the statutory language. Instead, *Glenn* and *CPT Custodian* were focused on the construction of the terms in the particular trust and the particular statute in those cases, which held sway over the traditional concepts of equity as such. This was made clear by a long introductory passage of the decision in *CPT Custodian*, the salient parts of which are reproduced as follows:

> [14] Something now should be said respecting the task of statutory construction which was presented to Nettle J and then to the Court of Appeal. There were two steps to be taken… The first step was to ascertain the terms of the trusts upon which the relevant lands were held. The second was to construe the statutory definition to ascertain whether the rights of the taxpayers under those trusts fell within the definition.
>
> [15] In taking those steps, a priori assumptions as to the nature of unit trusts under the general law and principles of

> equity would not assist and would be apt to mislead. All depends… upon the terms of the particular trust…
>
> [16] To approach the case… by asking first whether… the holder of a unit "in a unit trust" has "a proprietary interest in each of the assets which comprise the entirety of the trust fund" and answering it in the affirmative, did not immediately assist in the construing the definition of "owner" in the Act. That definition does not speak of ownership of proprietary interests at large, but of entitlement to any estate of freehold in possession.
>
> [17] … it is one thing to identify rights protected by a court of equity, and another to identify an interest which has "the necessary quality of definable extent which must exist before it can be taxed". In the present case, the "definable extent" is that specified by the definition in the Act. No doubt, unit holders accurately may be said to have had rights protected by a court of equity, but that does not require the conclusion that in the statutory sense they were "owners" of the land held on the trusts in question.

75 *Lend Lease Funds* is a further case cited by the Respondent which followed *CPT Custodian* and *Glenn.* The issue in that case was whether certain statutory exemptions applied to a transfer of the *estate in fee simple* in land, from the statutorily defined "custodian" of a registered scheme under Chapter 5C of the Australian Corporations Act 2001 (Cth), to the responsible entity of that scheme. One issue was whether it was indeed only a bare legal *estate in fee simple* that was transferred. The Supreme Court of Victoria held in favour of the taxpayer based on a construction of the terms of the trust deed concerned, albeit accepting that *CPT Custodian* lent some support to the tax authority's submissions. It is on this latter quote that the Respondent relies (*Lend Lease Funds* at [54]):

> Although the High Court was concerned with the definition of "owner" in the Land Tax Act, the above passage supports the argument put by the Commissioner that, in the case of a unit trust and depending on the terms of the Trust Deed, where no persons can be identified as entitled to an equitable estate in the land, the trustee, despite being a trustee, is entitled to the whole estate both legal and equitable.

76 Three observations may be made. First, it was accepted in *Lend Lease Funds* that *CPT Custodian* was concerned at its essence with an issue of statutory construction *vis-à-vis* Victoria's Land Tax Act that was in force. Second, the court was cautious to limit the scope of its proposition to a unit trust, and even then, contingent on the terms of the particular trust deed in question. It is not clear if the same proposition applies to a charitable purpose trust, and the Respondent did not seek to analogise the trust deed in our case to that in *Lend Lease Funds*. Third, and most importantly, the court here was again concerned with the application of the particular statutory language in the Victorian Duties Act to delimit their grounds for exemption from duty.

77 These cases cited by the Respondent are clearly concerned with a different legislative context, and do not stand for a broad proposition that the Applicants as trustees of the Foundation are concurrently beneficial owners of the Goodwood Property and thus liable for the ABSD that may be imposed. In this regard, there is an immediate contrast between the language of the Land Tax Assessment Act discussed in *Glenn*, which is the progeny of the series of cases relied on by the Respondent, and the ABSD provisions under the SDA. The Australian statute's definition of "owner" targeted the holder of the estate in possession and the recipient of rents and profits, and it expressly covers not only beneficial owners, but also "trustee, mortgagee in possession, or otherwise". In contrast, the language of the ABSD provisions looks, in the context of a trust, specifically and only to the status of the beneficial owner, the concept of which is not statutorily defined in the SDA and instead left to be determined according to the general laws and principles of equity.

78 Further, the Australian cases cited make clear that they were primarily concerned with the proper construction of the statutes in issue, and that the reasoning relied upon in that regard may not be entirely consistent with

equitable principles. To this end, it bears reminder that it is not generally helpful to selectively highlight dicta from foreign jurisprudence on the construction of particular terms in foreign tax statutes, even if those terms are *in pari materia* with local provisions (which is not the case here), without an explication of the relevant context, history, and purpose of the foreign tax statutes and how those compare to the local regime in Singapore. The situation may be different if the salient issue relates to the judicial approach or philosophy to be taken in applying the law or in engaging in non-jurisdiction-specific inquiries (see, *eg*, *ABB v Comptroller of Income Tax* [2010] 2 SLR 837 ("*ABB v CIT*") at [13]), but that is not our case. Particularly where, as is the case here, the issue before the court involves the construction or application of a head of tax that *prima facie* is peculiar to Singapore and serves a unique localised legislative purpose, the party seeking to rely on foreign jurisprudence would have to do more to show its relevance. To this end, I find apposite guidance from the Court of Appeal in *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484:

> [31] It is understandable for tax practitioners to exhibit a proclivity towards relying on texts and case law from the Commonwealth jurisdictions…
>
> [32] However, we find it important to remind practitioners that as tax law is essentially a creature of statute, decisions from foreign jurisdictions should be treated with the appropriate degree of caution, especially where the wording of the foreign tax legislation is not identical with or not *in pari materia* with the local equivalent… It is desirable, therefore, in interpreting tax legislation, to rely on foreign authorities only if the corresponding tax statutes are identical or very similar to local legislation, and if the schemes of deduction and taxation systems are alike.

79 The Respondent also cites a single line in David J. Hayton & Charles Mitchell, *Hayton & Marshall: Commentary and Cases on The Law of Trusts and Equitable Remedies* (Sweet & Maxwell, 12th Ed, 2005) ("*Hayton &*

Marshall 12th Ed") (at para 3-200), for the proposition that the trustees of a charitable purpose trust are "legal beneficial owners" of the trust property, but under fiduciary and equitable duties owed to the Attorney-General. I set out the cited quote in greater context as follows:

> Thus, the English courts should not hold the above Jersey trusts to be void so that the settlor is entitled from the outset to the beneficial interest under a resulting trust. Where then is the beneficial interest? Should a non-charitable purpose trust be treated like a charitable purpose trust where the trustees are the legal beneficial owners, but are under fiduciary and equitable duties owed to the Attorney-General and the Charity Commissioners or any "interested person" having the permission of the Commissioners?

80 With respect to the learned editors, apart from the issue of context, the proposition that trustees of a charitable purpose trust are "legal beneficial owners" has not been established as good law. The sole authority cited for the proposition was a footnote stating "Just like executors of a testator: *Commissioner of Stamp Duty v Livingston* [1965] AC 694" (*Hayton & Marshall 12th Ed* at 204 n 29). But that case related to the nature of rights of a residuary legatee as against the executor of an un-administered estate, and its extrapolation into our case is questionable. Further, there may be some imprecision in the term used by the learned editors, *ie*, "legal beneficial owner", for at least on one view, where the whole legal and beneficial ownership of an asset resides in the same party, "[i]t might… not be appropriate to speak of a 'trust' at all" (*Power Knight Pte Ltd v Natural Fuel Pte Ltd (in compulsory liquidation) and others* [2010] 3 SLR 82 ("*Power Knight*") at [49]). Indeed, this view is supported by the original text of Viscount Radcliffe's decision in *Commissioner of Stamp Duty v Livingston*, where he refuted the false assumption that "for all purposes and at every moment in time the law requires the separate existence of two different kinds of estate or interest in the property", and thereupon reasoned that "[w]hen the

whole right of property is in a person… there is no need to distinguish between the legal and equitable interest in that property" (at 712-713). It thus does not follow – and it in fact appears contradictory to the Viscount Radcliffe's reasoning – that even in a trust for purposes, the legal and beneficial interests of the property must simultaneously exist and concurrently lie in the trustee who is then termed the "legal beneficial owner".

81 On principle, the proposition that trustees of a charitable trust hold both the legal and beneficial interests in the trust property also ignores the significant handicap that is imposed on the powers of the trustees by the trust instrument, statute, and general law. Certainly, trustees in general, including those acting in relation to a charitable purpose trust, cannot do as they wish, since the ultimate right to enjoyment of the property is not theirs. If that is still to be termed "beneficial ownership", it is beneficial ownership of such a withered sort that does not merit that name. The proposition relied on by the Respondent also does not appear to have been retained in the 14th edition of the work (see Ben McFarlane & Charles Mitchell, *Hayton & Mitchell: Text, Cases and Materials on the Law of Trusts and Equitable Remedies* (Sweet & Maxwell, 14th Ed, 2015) ("*Hayton & Mitchell 14th Ed*")).

82 For the above reasons, I do not accept the Respondent's submission that the trustees of a charitable purpose trust are entitled to both the legal and equitable estates of the trust property. The Applicants cannot, by mere virtue of their being trustees of the Foundation, be simultaneously referred to as the legal and beneficial owners of the Goodwood Property.

(3) "The public" as beneficial owners

83 The Respondent makes a third alternative argument that "the public" is the beneficial owner of properties held by a charitable purpose trust. In support of this, the Respondent cites an academic article (Roger Cotterrell, "Power, Property and the Law of Trusts: A Partial Agenda for Critical Legal Scholarship" (1987) 14(1) Journal of Law and Society 77 at 88-89):

> … the law cannot comprehend property without any beneficial owner…
>
> … Property put into a charitable trust is not 'disembodied' property. Not only is it technically owned by charity trustees but its protection is in various aspects the responsibility of public officials… The crucial factor here is that the property settled on charitable trust is given for the 'public benefit'. Its ultimate beneficial owner is 'the public' or we might say 'society'. Charitable trusts provide a rare, perhaps unique, instance of the construction of society as a collective subject – a property owner – within private law. Small wonder that property once dedicated to charity remains perpetually so dedicated. Society as beneficial owner can never die.

84 With respect to the learned author, the context of the article renders it suspect as authority for the proposition put forward. Professor Cotterrell's article is a critique of, *inter alia*, the classical conceptions of property and ownership; it is unabashedly written from the perspective of the Critical Legal Studies movement. That movement aimed at unpacking notions and conceptions, long held by courts and lawyers, focusing on what the movement perceived to be suspect concentration and exercise of political power. The conception of law held by the movement, while perhaps thought-provoking, is relatively far removed from the day-to-day law administered by the courts. This may perhaps be the first instance of a revenue authority citing an article written from the Critical Legal Studies perspective.

85 In any event, the article does not assist the Respondent in the analysis of the question at hand. Aside from issues about the context and source of the quotation relied upon, there is no authority for the proposition that beneficial ownership of a trust must always be identifiable. In the context of a charitable purpose trust, the only substantive objection to trust property being without beneficial ownership is the lack of control or constraint on the legal owners or trustees should they seek to depart from the stipulated term and purposes of the trust. As recognised by Professor Cotterrell, a mechanism is supplied through control either by the Attorney-General or the Commissioner of Charities. Significant issues may arise in respect of non-charitable purpose trusts, but such trusts have been recognised as valid on occasion. How they are to be characterised is a matter for another case, but it suffices to note that on one view such trusts would also not have beneficial owners: "These [non-charitable purpose] trusts are generally recognised as valid, notwithstanding the absence of any beneficiary, for reasons which have more to do with 'human weakness or sentiment' rather than legal logic or principle" (*Goi Wang Firn* at [45]-[46], citing *Tan Farrer* at [15]).

86 The argument that it is "the public" that owns a charitable trust is an ultimately empty proposition. Contrary to the Respondent's reliance on *Koh Lau Keow (HC)*, the fact that a charitable trust must be for public benefit in order to be valid does not thereby mean that the public is the beneficial owner of the trust property. This is again a conflation of the concepts of factual benefits and legal beneficial interest. Further, it is questionable if the rule in *Saunders v Vautier* allowing the beneficiaries as a group to require the transfer to them of the legal title of the trust property absolutely could apply to charitable purpose trusts in general (*Thomas & Hudson* at para 6.43, n 144), or under the Respondent's submission as to the "public" being beneficial owners

of a charitable trust, since that would allow any stipulated charitable purpose to be disregarded or circumvented by the said "public" invoking this rule. Although charities often seek to promote public benefit, charitable trust property cannot be said to be property of the commons: most trust property, aside perhaps from pastoral land, simply cannot be used in that way. On a Hohfeldian analysis of jural relationships, public ownership *per se* does not contain any content as a legal concept. Describing the "public" or "society" as the "owner" of the charitable trust property, therefore, is a misuse of the term and does not create any right in the public as a group.

87 For the above stated reasons, I reject all three of the Respondent's submissions as to the locale of the beneficial interest under a charitable purpose trust. Neither the factual beneficiaries of the charitable trust, nor the trustees, nor the public can be said to be the beneficial owners of property held under a charitable purpose trust. Rather, in my view, the beneficial interest in a charitable purpose trust is simply "in suspense" and not extant; there is in such a trust simply no ascertained or ascertainable beneficiary. This is not a concept unfamiliar to trust law or to local jurisprudence (see, *eg*, *Power Knight* at [51]; *Koh Lau Keow and others v Attorney-General* [2014] 2 SLR 1165 at [18(a)]). Accordingly, since there is no active or extant beneficial owner to property held under a charitable purpose trust, there is nothing to which ABSD may attach under Art 3(*bf*)(viii) read with Art 3(1) of the First Schedule of the SDA.

Foreigners or Entities

88 The above decision as to the non-identifiability of the beneficial owner of the Goodwood Property renders it, strictly speaking, unnecessary to make a determination as to whether any of the purported beneficial owners fall within

the statutory definitions of "entity" or "foreigner". However, as parties have submitted full arguments in this regard, two issues will be considered:

(a) whether the Applicants as trustees of the Foundation constitute an "entity" as defined in Art 3(1) of the First Schedule of the SDA; and

(b) whether the Foundation itself constitutes an "entity".

Definition of "entity" under Art 3(1) of the First Schedule

89 It is an established principle in Singapore that the purposive approach to statutory construction under s 9A(1) of the IA governs the interpretation of tax statutes, and in this regard "effectively displaces the common law principle that tax statutes should be interpreted strictly in favour of the taxpayer" (*ABB v CIT* at [54]; see *ACC v Comptroller of Income Tax* [2011] 1 SLR 1217 at [17]). The Australian courts appear to take a similar approach: "tax statutes do not form a class of their own to which different rules of construction apply" (*Alcan (NT) Alumina Pty Ltd v Commissioners of Territory Revenue* [2009] 239 CLR 27 at [57]), as do the English authorities (Lord Wilberforce, *W T Ramsay Ltd v Inland Revenue Commissioners* [1982] AC 300 at 323; see generally, Oliver Jones, *Bennion on Statutory Interpretation* (LexisNexis, 6th Ed, 2012) ("*Bennion*") at s 310):

> A subject is only to be taxed on clear words, not on "intendment" or on the "equity" of an Act… What are "clear words" is to be ascertained on normal principles; these do not confine the courts to literal interpretation. There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded.

90 According to the Respondent, ABSD is chargeable in the present context under article 3(*bf*)(viii) of the First Schedule of the SDA because the

beneficial owners of the Goodwood Property include an "entity" or "foreigner". The term "entity" is defined in Art 3(1) of the First Schedule as follows:

> "entity" means a person who is not an individual, and includes an unincorporated association, a trustee for a collective investment scheme when acting in that capacity, a trustee-manager for a business trust when acting in that capacity and, in a case where the property conveyed, transferred or assigned is to be held as partnership property, the partners of the partnership whether or not any of them is an individual

The primary definition of "entity" is thus "a person who is not an individual", whereas the extended definition includes the specific examples stated, such as a trustee for a CIS.

91 Generally, the phrase "means… and includes…" may serve two purposes: the first being to illustrate the primary definition following the term "means", and the second being to extend that primary definition beyond its natural import (*Low Guang Hong David and others v Suryono Wino Goei* [2012] 3 SLR 185 at [14]; citing *Pan-United Marine Ltd v Chief Assessor* [2008] 3 SLR 569). In this case, it is immaterial which purpose the phrase was intended to serve, since even taking the second purpose *ex hypothesi*, and thereby giving the term "entity" the broadest definition possible, it would nevertheless still not cover the trustees of charitable purpose trusts. As will be explained, this is because the extended definition of "entity" expressly includes the trustees of a CIS and of a business trust, but makes no mention of trustees in general, whether of a trust for persons, a private purpose trust, or a charitable purpose trust.

Whether the Applicants as trustees are an "entity"

92 The Applicants argue that the definition of "entity" under Art 3(1) of the First Schedule of the SDA does not cover a body of persons such as the Applicants in their capacity as trustees. The Parliamentary debates are material and should be taken into account in the construction of the term "entity". Although the Parliamentary debates did not accompany the introduction of the ABSD regime, which was introduced by way of a Ministerial Order, the Minister's speech subsequently when the Parliamentary debate was held focused on purchases of residential properties made by individual buyers and companies. These debates also indicate that the concern underlying the introduction of ABSD was with investment demand, which would primarily concern companies which are commercially-driven, rather than charitable trusts. The Respondent argues to the contrary that the Parliamentary debates do not assist in construing the meaning of the term "entity", which has remained the same since 2011.

93 I find that the Applicants as trustees of a charitable purpose trust are not an "entity" within the meaning of Art 3(*bf*)(viii) of the First Schedule. First, they do not fall within the primary definition of "entity", *ie*, a "person who is not an individual". Second, even if the extended definition serves an expansionary purpose to the primary definition, trustees of a charitable purpose trust are not captured within its scope.

94 As regards the primary definition, the phrase "person who is not an individual" is potentially wide but constrained ultimately by the meaning of the word "person". In the absence of any other indication, the word "person", since it must not be an individual, would by ordinary meaning have to be taken as a legal person, clearly capturing body corporates and presumably

corporations sole. However, this definition would not include trustees of charitable purpose trusts. The Applicants in their capacity as trustees are certainly non-individuals, but even as a collective they are not a legal person: they are individuals discharging their respective duties, and are not treated usually as a bloc in their dealings with the world. Although they usually act unanimously, each trustee must exercise his or her discretion separately unless otherwise authorised by the trust deed (*Snell's Equity* at paras 29-005 and 29-038). A trustee's liability for breach of trust is generally also limited to the losses resulting from his own breach; where more than one trustee is involved in the wrongdoing, each trustee remains jointly and severally liable (*Snell's Equity* at para 30-045). Certainly, trustees could be treated as a bloc or a legal person by statute, but that requires clear language, in the absence of which the general position should apply.

95 The Respondent attempts to rely on s 2(1) of the IA, but it does not assist. That provision reads:

> "Person"... include[s] any company or association or body of persons, corporate or unincorporate

96 The definition of "person" under the IA is inclusive and covers a "body of persons". In that sense, it is potentially broader than the phrase "person who is not an individual" under Art 3(1) of the First Schedule of the SDA. However, the definition in Art 3(1) is also inclusive, and through the extended definition captures a number of specific concepts, including a trustee for a CIS, a trustee manager for a business trust, and partners of a partnership. Given this, the IA definition is excluded by virtue of the introductory words contained in the chapeau of s 2(1), which provide that the definitions that follow (including that of "person") would not apply if "there is something in the subject or context inconsistent with such construction".

97 Turning to the extended definition of "entity" under Art 3(1), by virtue of this limb, the primary definition of "entity" is expanded to cover unincorporated associations and partnerships, both of which would otherwise not normally be taken to have legal personality. These concepts, however, do not apply to the Foundation or the Applicants as trustees. An unincorporated association is a group of persons bound together by a mutual contract, which the Applicants are not. Nor are the Applicants in a partnership.

98 The extended definition also includes trustees of a CIS and trustee-managers of a business trust. However, while the trustees of these two specific kinds of trusts (*ie*, CIS and business trusts) are referenced, it does not follow that the trustees of any other kind of trust are necessarily to be captured by the definition *ejusdem generis*. The definition does not clearly and expressly cover trusts in general, nor are the two specific kinds of trusts mentioned typical or representative examples of trusts: a CIS is a group investment vehicle usually open to the public and governed by its own regulatory regime; a business trust is another special type of investment vehicle that bears little resemblance to a traditional trust and was introduced into our law by a specific statute: the Business Trusts Act (Cap 31A, 2005 Rev Ed).

99 Therefore, as the extended definition is after all a specific list, without any general description of structures and arrangements that may cover the concept of charitable purpose trusts, it is not possible for the Respondent to place reliance beyond the primary defining phrase "person who is not an individual". The legal understanding of what is a non-individual person thus controls what the term "entity" can cover in this case. As explained, on this construction, neither the primary nor the extended definition – and thus the definition of "entity" as a whole – includes the Applicants in their capacity as trustees of the Foundation.

Whether the Foundation itself constitutes an "entity"

100 The Applicants argue that the Foundation itself was not an "entity". The registration of the Foundation as a charity under the Charities Act merely accords it with the status of being a "charity", but does not give it institutional character, nor mean that it is therefore an "entity". This institutional form of a charity is distinct from its charitable status: *Khoo Jeffrey* at [33]. I agree. The Respondent does not argue otherwise, focusing instead on the positions of the factual beneficiaries, the Applicants as trustees, and the public, as opposed to the Foundation itself. In my view, the Respondent is correct not to take a contrary position.

Liability for ABSD under other provisions

101 Given the decision above that properties held under a charitable purpose trust do not have identifiable beneficial owners, there is no beneficial owner of the Goodwood Property to which Art 3(2)(*d*) may relate, and therefore Art 3(*bf*)(viii) read with Art 3(2)(*d*) does not apply to impose ABSD on the SPA. The Respondent argues, as a fall-back alternative, that even if Art 3(2)(*d*) is incapable of applying, liability attaches directly through the operation of Art 3(*bf*)(viii) *vis-à-vis* the trustees themselves. In that case, it would be the profile of the Applicants as trustees (rather than the beneficial owner of the Goodwood Property) that becomes the focal of the inquiry, since they are in such capacity the direct "grantees, transferees or lessees" of the Goodwood Property.

102 However, there is nothing in Arts 3(2)(*d*) or 3(*bf*)(viii), or in the framework of the First Schedule, that supports the Respondent's proposed interpretation. Article 3(2)(*d*) itself provides that "in a case where [the grantee, transferee or lessee of the conveyed residential property] is to hold the

residential property on trust", it is the beneficial owner of that property that is the concern of ABSD liability, "except where the residential property is to be held as property of a business trust or a collective investment scheme or as partnership property". The natural and plain reading of the provision would be that Art 3(2)(*d*) defines comprehensively the scope of ABSD liability when the conveyed property is to be held on a trust, unless that trust is of a specific kind that is clearly and expressly exempted from its purview (*ie*, a business trust or CIS). Those exemptions do not apply in the present case. The Art 3(2)(*d*) definition of "grantee, transferee or lessee" is premised on the subject property having an identifiable beneficial owner; nothing in the First Schedule operates where no beneficial interest is identifiable despite the property being held on trust.

103 Further, none of the other ABSD provisions in the First Schedule would apply to impose ABSD liability on the SPA. All of the sub-provisions in Art 3(*bf*) make reference to the "grantee, transferee or lessee" of the conveyed property, which phrase is then defined under Art 3(2)(*d*) to refer to the beneficial owner of the same if the property is to be held on trust. Accordingly, even if the Respondent relies on any of these other sub-provisions, he would face the same issues *vis-à-vis* charitable purpose trusts and the non-identifiability of their beneficial ownership. Indeed, the Respondents do not argue that any other sub-provisions apply.

Miscellaneous

104 Aside from the arguments above on the chargeability of ABSD on the SPA, there are two other issues which remain.

Materials in aid of statutory interpretation

105 In the present proceedings, both parties placed reliance on the Press Statement issued to accompany the enactment of the ABSD provisions, but for different purposes. The Applicants use it to argue that ABSD was not intended to be imposed *vis-à-vis* conveyances to a charitable purpose trust. The Respondent cites the Press Statement to show that it was.

106 In determining the admissibility of, and weight to be given to, the Press Statement with respect to a statutory construction of the SDA, it is primarily ss 9A(2) to (4) of the IA that need to be considered:

> (2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material —
>
> (*a*) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or
>
> (*b*) to ascertain the meaning of the provision when —
>
> (i) the provision is ambiguous or obscure; or
>
> (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.
>
> (3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include —
>
> (*a*) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;
>
> (*b*) any explanatory statement relating to the Bill containing the provision;

> (*c*) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;
>
> (*d*) any relevant material in any official record of debates in Parliament;
>
> (*e*) any treaty or other international agreement that is referred to in the written law; and
>
> (*f*) any document that is declared by the written law to be a relevant document for the purposes of this section.
>
> (4) In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to —
>
> (*a*) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and
>
> (*b*) the need to avoid prolonging legal or other proceedings without compensating advantage.

107 Section 9A allows a broad category of material to be used to interpret statutory provisions. But some materials are by their nature more likely to be useful than others: that is the basis of the clarifications contained in sub-sections (3) and (4). Thus, in deciding the weight to be ascribed to any material cited in aid of a purposive construction of a statute, the context of these materials must itself be considered. In this regard, preparatory materials used in the process of enacting or drafting a statute, and materials used or referred to in the relevant legislative deliberations, would clearly be useful in the elucidation of the purpose of that statute or its provisions. These assist because they could have conceivably influenced and had an impact on the statutory language and structure, or may reflect the object and mind of the draftsmen as eventually sanctioned by Parliament. In contrast, materials post-enactment would in most situations be unhelpful and caution must be

exercised to avoid ascribing meaning that arises after enactment, or was not present at all in the minds of those exercising the power of enactment (see generally, *Bennion* at p 654).

108 In addition, the purpose of the material sought to be relied on is also relevant. Generally, greater weight will be given to materials that are clearly intended or designed to be used to explain, in a legal sense, the meaning of the statutory provisions, or are designed to be capable of scrutiny by a court of law. Materials meant for other purposes, such as explanation for laypersons, must be treated cautiously lest unintended meanings are grafted on to the legislative provisions.

109 Press statements thus must be warily used in statutory interpretation. First, they are generally prepared post-enactment. Secondly, their targeted purpose is primarily and presumably to explain the position in a simple and easily understood way, without usually being legally precise, or with the intent to have legal effect. The additional danger is that a whole slew of different public materials, such as Facebook posts and Twitter feeds, would be posited as possible interpretative aids. A post on social media would generally not be regarded as useful in interpreting a statutory provision because it is usually made in a context that would not involve any element of drafting or legislative intent, but rather, would be intended to educate the public or to respond to a particular situation. For similar reasons, a press statement would also rarely give rise to an estoppel binding the government.

110 In our present case, it is said by the Respondent, with whom the Applicants joined, that the Press Statement was the only available material that could assist. In my view, however, the absence of any other aid to interpretation is not sufficient to clothe the Press Statement with the mantle of

being assistive or a document to be accorded any significant weight. If there is nothing, there is nothing. If the Minister or authority in enacting the ABSD wishes to provide guidance on interpretation, there are other means. They may, acting under delegated law-making powers, issue legal guidance on how words and phrases are to be interpreted: in that event, those statements may be legitimate interpretative material of considerable weight under s 9A, since that material is clearly created and intended to explicate the statutory language (assuming it does not cross the line by enacting legislation outside the legislative process). However, such intent must be made manifest by adopting the appropriate form, such as by being issued expressly as an interpretive guide, which would signal clearly its intent to be taken as a legal interpretative document. A press statement, on the other hand, will be coloured by its usual purpose – to publicise and explain the regime to laypersons who are unfamiliar and untrained in the law. A press statement not being drafted with an eye to its being used or scrutinised in the legal sense by a court of law, will very rarely be conferred much weight, if at all, as an interpretive material, unless it was expressly flagged to be intended to give interpretive effect; but in that case it would really just be express legislative guidance.

111 In this case, the Press Statement that both parties sought to rely on is unhelpful to either party. The Press Statement states, *inter alia*, the following:

(a) the Government's objective "is to promote a sustainable residential property market where prices move in line with economic fundamentals";

(b) the Government "decided to impose the ABSD to moderate investment demand for private residential property and promote a more stable and sustainable market";

(c) in a Table appended to the Press Statement, ABSD is said to apply to transactions with "[f]oreigners and non-individuals (corporate entities) buying any residential property"; and

(d) in a footnote, "non-individuals" is said to "include[] corporate, trusts, and collective investments schemes amongst others".

112 The Respondent points to the inclusion of "trusts" in the footnote, while the Applicants highlight the failure to specifically include trusts for purposes (*eg*, charitable purpose trusts) and the references to "corporate entities" and "investment demand", which the Applicants claim do not apply to them. In my view, both parties are stretching the Press Statement too far; the language in the Press Statement was at best ambiguous. In the circumstances, the Press Statement generally as a rule, and specifically in this case, does not illuminate legislative purpose as to whether ABSD was intended to apply *vis-à-vis* conveyances of residential property to a charitable purpose trust.

113 The Applicants also cite a tax-guide issued by IRAS to the public in arguing for its interpretation of "beneficial owner". For the same reasons as discussed above in relation to the use of the Press Statement, such tax guides should not generally control or influence the interpretation of statutory provisions. They are not preparatory materials, thus running the risk of modifying the language of the statute post-enactment. Nor would it be part of their purpose to be construed legally by a court of law: they are generally intended to guide laypersons in navigating a particular statutory regime. Simplification, as well as the glossing over of technicalities and complexities, are to be expected. Furthermore, it must be cautioned that these tax guides, to the extent that they reflect the guidelines and practices of the tax authorities,

are not necessarily law: "That this has been the practice of the Comptroller does not in any way illuminate the question of whether this *should* be the practice of the Comptroller. Practice is not law" [emphasis in original] (*Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR(R) 948 at [35]).

Imposing Tax Liability on Charities

114 For avoidance of doubt, it should be made clear that there is nothing in principle for or against having ABSD apply to transactions over residential properties by charities. Whether or not a charity, and in particular a charitable trust, is to be liable for tax of any sort is a matter of policy for the relevant Ministries and agencies. There just needs to be stated clear imposition under the relevant statutory instrument. The preferred course would be to ensure that the language of the statute itself is clear, and that it has been drafted to reflect the legislative intent as best as humanly possible.

115 For this reason, not much weight could be given to the Respondent's argument that if charitable purpose trusts are excluded from the scope of ABSD liability, an undesirable disparity would arise between the treatment of charities constituted as trusts as opposed to those constituted as unincorporated associations or companies limited by guarantees. The desirability of this position as a matter of policy falls outside the province of the courts.

Conclusion

116 My answers to the questions posed in the Case Stated are thus:

(a) The SPA is not chargeable with ABSD.

(b) In view of the answer to (a), the second question does not arise.

117 It follows that there should be repayment of the sums paid by the Applicants to the Respondent under protest. Separate directions will be given with respect to arguments on costs.

Aedit Abdullah
Judicial Commissioner

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