

# Additional buyer's stamp duties does not apply to residential property purchased by charity in Singapore

16 MAY 2017

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**CATEGORY:**  
ARTICLE

In a landmark decision released on 11 May 2017, the Singapore High Court had in the case of *Zhao Hui Fang and another v Commissioner of Stamp Duties* [2017] SGHC 105 ruled that the additional buyer's stamp duties ('ABSD') regime does not apply to residential property purchased by a charity. Led by [Ms Joanna Yap](#), Partner, KhattarWong, the firm successfully represented the trustees of the charity ('the Trustees') against the Commissioner of Stamp Duties ('the Commissioner') in the case.

Briefly, the late Settlor of the charity (established under a trust deed) ('the Charity') provided in his last will that his family home shall be made available to his surviving family members for use as their personal residence during their lifetimes and, once the family home is no longer required, the family home may be disposed or leased, and any proceeds thereof shall be paid to the Charity. The Settlor's surviving spouse subsequently decided that she no longer wished to use the family home as her personal residence and, together with the rest of the family, agreed to turn the family home to the Charity provided that the Trustees agreed to purchase an apartment for the Settlor's surviving spouse. The Trustees agreed. Subsequent to obtaining the relevant court application and approval from the Commissioner of Charities, the Trustee proceeded to execute the sale and purchase agreement for the apartment for which the Commissioner was of the view that ABSD at the rate of 15% of the purchase price – SGD 984,000 – was payable on the agreement. Dissatisfied with the decision, the Trustees appealed against the Commissioner's decision before the High Court.

ABSD was introduced in 2011 as part of a series of measures aimed at moderating property prices in Singapore. The ABSD rate to be applied to the purchase of residential property on or after 12 January 2015 would broadly depend on three factors:

- ( a ) whether the grantee, transferee or lessee is a Singapore citizen, permanent resident or a foreigner,
- ( b ) whether he/she is an individual or an entity, and
- ( c ) the number of properties owned him/her at the material time.

The ABSD at the rate of 15% is applicable where 'the grantee, transferee or lessee or any of 2 or more of the grantee, transferee or lessee' is a foreigner and entity. In the case where the residential property is under a trust, t'he grantee, transferee or lessee' would refer to the beneficial owner of the residential property.

The High Court held that ABSD was not chargeable under the Act as the apartment is a property of a charitable purpose trust, under which the beneficial interest of trust assets is suspended. In arriving at this decision, the High Court took the view that the concept of a 'beneficial owner' was not statutorily derived and is instead left to be determined according to the general laws and principles. As the charitable trust is a trust for purposes and not persons, neither the persons who factually benefit from the charitable objects under the trust deed, nor the individuals who were Trustees, nor the public (as contented by the Commissioner) is the beneficial owner of property held under a charitable purpose trust. There is, therefore, no active or extent beneficial ownership of the apartment and accordingly, there is nothing for ABSD to attach to. Consequent to its decision, the High Court ordered the Commissioner to refund the ABSD which was paid under protest by the Trustees.

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