



GENERAL ANTI-AVOIDANCE PROVISIONS: PRE-DETERMINATION OF SECTION 270 DECISION

CHAPTER 7 OF THE *DUTIES ACT 2008*

This form is to be completed when requesting a pre-determination under section 269(2) of the *Duties Act 2008* ('Duties Act') as to whether, if a scheme were entered into or carried out, the Commissioner would apply the general anti-avoidance provision under section 270 of the Duties Act.

INSTRUCTIONS

Chapter 7 of the Duties Act allows a person to request the Commissioner to decide whether to apply the general anti-avoidance provision in respect of a proposed scheme for a particular transaction or acquisition, or series of transactions or acquisitions. The Commissioner will be bound by that decision when the scheme is carried out. For further details, please refer to the Duties Act.

All questions in this form must be completed and any additional supporting information that is requested is to be attached and numbered according to the question to which it refers. If the questions are more conveniently answered by way of an attachment, please indicate that in the answer field and confirm that the attachment forms part of this application and is subject to the declaration made at the end of this form.

NOTE: The Commissioner should be provided with all information requested to be fully informed in relation to each transaction and acquisition to which the scheme relates. If there is not a full and true disclosure of information in relation to the request, any decision made under this application is not binding on the Commissioner.

GENERAL REQUIREMENTS

1. Summary of the transactions, acquisitions or other steps that form the scheme

Outline the transactions, acquisitions or other steps that will form part of the scheme as a whole and explain:

- the circumstances surrounding the scheme as a whole; and
- why the scheme has been structured in this way.

2. Purpose of the scheme

Provide a full explanation of the purpose of the scheme. Where there is more than one purpose, please explain which purpose the parties consider to be the dominant purpose in structuring the scheme in this manner and why the scheme has been structured in this way.

3. Parties to the scheme

Provide a full description of the parties to the scheme (including ACNs / ABNs where relevant) and the connection if any between them.

A connection can be of a business, family or another nature. A diagram should be provided where a party has a connection with other parties, showing the nature of the connections between them. This includes showing the shareholdings of corporate bodies and the beneficiaries and trustees of any trusts.

4. Advisors to the scheme

Provide a full description of all persons who were involved in or that facilitated the scheme being carried out, for example, professional advisors who were instrumental in structuring and realising the scheme.

5. Facts describing the scheme

Provide a detailed description of each step in the scheme. This description should include:

- expected duty consequences;
- connection between the parties (family, business or other), if this changes or evolves as a consequence of the scheme;
- legal rights and obligations that flow from each step of the scheme;
- economic and commercial outcomes of each step of the scheme;
- role of each step in achieving the purpose as outlined in Q2 above; and
- when the scheme is to be entered into and the length of the period of time during which the scheme is to be carried out

Copies of all relevant supporting documents (including drafts, flowcharts, diagrams, etc.) should be included with this description. The description should be in proposed date/sequence order.

6. Duty consequences of the scheme

Provide an explanation of the expected duty consequences of the scheme, including whether it is expected that there will be any elimination, reduction or postponement in the liability of a person for duty.

7. Financial and other consequences of the scheme

This should include any change to a person’s financial position or any other consequence that will result or may reasonably be expected to result from the scheme having been entered into or carried out.

8. Submissions

Provide your submissions supporting the application, including:

- why the scheme is not a tax avoidance scheme; and/or
- even if the scheme is a tax avoidance scheme, why it is not of a blatant, artificial or contrived nature.

This may include a summary of research and analysis, including references to any relevant legislation, rulings and case law.

9. Any other relevant information the Commissioner will require to be fully informed in relation to each transaction and acquisition to which the scheme relates.

IMPORTANT

A person who provides information to the Commissioner knowing it to be false or misleading in a material particular commits an offence under the *Taxation Administration Act 2003*. The penalty for the offence is:

- a) \$20,000 and
- b) three times the amount of duty that was avoided or might have been avoided if the false or misleading information had been accepted as true.

DECLARATION

I _____

of _____

Telephone () _____

the person making this request, declare that the information contained in this form and any attachments is, to the best of my knowledge and belief, true, accurate and complete in every particular.

Official capacity in which application is made:

Dated this _____ day of _____ 20____

Signature _____

CONTACT THE OFFICE OF STATE REVENUE

Online www.finance.wa.gov.au/cms/State_Revenue/Online_Services/Online_Services.aspx

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PERTH WA 6000

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Website www.osr.wa.gov.au