Government of **Western Australia**
Department of **Treasury and Finance**
RevenueWA

Form FDA40

Pre-determination of Section 270 Decision

General Anti-avoidance Provisions

Chapter 7 of the *Duties Act 2008*

Chapter 7 of the Duties Act allows a person to request that the Commissioner 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, unless a full and true disclosure of information in relation to each transaction and acquisition to which the scheme relates has not been made.

When to use this form

Use this form to request that the Commissioner make a pre-determination as to whether a scheme, if it were entered into or carried out, would be considered a tax avoidance scheme.

How to lodge this form

Lodge through your Online Services Portal account to record and track your correspondence with us. Access the Online Services Portal via RevenueWAConnect. If you don't have an account, see how to create one.

If you can't lodge this form through the Online Services Portal, attach it to a web enquiry.

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. Provide a diagram if 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.

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.

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.

Details 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.

Facts describing the scheme

Provide a separate document with a detailed description of each step in the scheme in proposed date/sequence order. 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 this form 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.

Include copies of all relevant documents (including drafts, flowcharts, diagrams, etc.).

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.

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.

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.

Other information

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

Declaration

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.

I declare that the information contained in this application is, to the best of my knowledge and belief, true, accurate and complete in every particular.

Name		Phone	
Address			
Capacity in which declaration is made			
Signature		Date	

Contact RevenueWA

Web enquiry	www.osr.wa.gov.au/DutiesEnquiry	Website	wa.gov.au
Office	200 St Georges Terrace, Perth	Phone	(08) 9262 1100 1300 368 364 (WA country landline callers)
Postal	GPO Box T1600 Perth WA 6845		

Privacy statement

The Commissioner of State Revenue collects personal information under the authority of the *Taxation Administration Act 2003* and the *First Home Owner Grant Act 2000* (Acts) for the purposes of administering and enforcing those Acts and the State revenue laws. The collected information is protected by the confidentiality provisions in the Acts. We will not use your information outside of revenue administration purposes or share your information without your consent except in circumstances required or authorised by law.

See www.wa.gov.au/organisation/department-of-treasury-and-finance/revenuewa-privacy-and-personal-information for details about how your personal information is handled.