



LCTD 2022/D1 - Luxury car tax: how to determine the principal purpose of a vehicle

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 There is a compendium for this document. LCTD 2023/1EC



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Draft Luxury Car Tax Determination

Luxury car tax: how to determine the principal purpose of a vehicle

❗ Relying on this draft Determination

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Determination applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Determination turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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What this draft Determination is about

1. This draft Determination¹ explains how to determine the principal purpose² of a car for the purposes of the *A New Tax System (Luxury Car Tax) Act 1999* (LCT Act).³
2. The term 'principal purpose' is relevant in determining whether a car is a 'luxury car' on which luxury car tax (LCT) may be payable. LCT is not payable on the supply or importation of cars whose principal purpose is the carriage of goods rather than passengers.

Ruling

3. A luxury car is a car whose LCT value exceeds the LCT threshold.⁴
4. A car⁵ is a motor-powered road vehicle (except a motor cycle or similar vehicle) that is:
 - designed to carry a load of less than two tonnes and less than nine passengers, or
 - a limousine (regardless of the number of passengers it is designed to carry).⁶
5. However, paragraph 25-1(2)(c) excludes a car as a luxury car if:
 - it is a commercial vehicle, and
 - is not designed for the principal purpose of carrying passengers.
6. To determine if a car is a luxury car under the LCT Act, the question of whether or not it has 'the principal purpose' of carrying passengers must be considered objectively.
7. There may be several purposes for which a vehicle is designed. However, there can only be one principal purpose. The exclusion in paragraph 25-1(2)(c) only requires that the principal purpose must not be the carrying of passengers. It does not matter if a vehicle carries some passengers, as long as this is not the principal purpose for which it is designed.
8. In situations where there are several design purposes, one of which is the carrying of passengers, it will be a question of fact and degree whether that purpose is the principal purpose. Paragraph 25-1(2)(c) does not require that the principal purpose in question be assessed at over 50% of purposes taken together, only that the principal purpose be

¹ All further references to 'this Determination' refer to the Determination as it will read when finalised. Note that this Determination will not take effect until finalised.

² The 'principal purpose' of a vehicle is used in other statutory contexts, such as fringe benefits tax (FBT). See the Commissioner's views on identifying a vehicle's principal purpose for FBT in Taxation Determination TD 94/19 *Fringe benefits tax: is the method outlined in Taxation Ruling MT 2024 appropriate for determining whether a vehicle, other than a dual or crew cab, is 'designed for the principal purpose of carrying passengers' and thereby ineligible for the work-related use exemption available under subsection 8(2) of the Fringe Benefits Tax Assessment Act 1986?*, Miscellaneous Taxation Ruling MT 2024 *Fringe benefits tax: dual cab vehicles eligibility for exemption where private use is limited to certain work-related travel* and Miscellaneous Taxation Ruling MT 2033 *Fringe benefits tax: application of sub-section 8(2) exemption to modified cars*.

³ All legislative references in this Determination are to the LCT Act, unless otherwise indicated.

⁴ Subsection 25-1(1).

⁵ Subsection 27-1(1). 'Car' has a different meaning for LCT purposes than for the purposes of the *Income Tax Assessment Act 1997* (ITAA 1997), the *Fringe Benefits Tax Assessment Act 1986*, and the *A New Tax System (Goods and Services Tax) Act 1999* where it has the meaning provided in section 995-1 of the ITAA 1997. Importantly, section 995-1 of the ITAA 1997 defines a car as road vehicles designed to carry a load of less than one tonne.

⁶ Section 27-1.

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objectively greater than each of the other design purposes. That is, it is not necessary to assign a percentage to the designed purposes but follow the principles set out in paragraphs 12 to 28 of this Determination.

9. Commercial vehicles not designed for the principal purpose of carrying passengers typically include:

- trucks
- hearses
- cargo or delivery vans.

10. Vehicles designed principally for carrying passengers (including paying passengers), or for sport or recreation purposes, on which you may have to pay LCT typically include:

- station wagons
- passenger sedans
- people movers
- sports utility vehicles.

11. In paragraphs 12 to 28 of this Determination, we consider the following in more detail:

- factors to consider for dual cab or crew cab utility vehicles
- factors to consider for other cars
- design modifications that may alter a vehicle's purpose.

Dual cab and crew cab utility vehicles

12. The Commissioner accepts that the principal purpose of a dual or crew cab utility vehicle, with a load capacity of less than two tonnes, may be determined by applying the 'dual purpose test' in clause 4.5.2 of the Vehicle Standard (*Australia Design Rule – Definitions and Vehicle Categories*) 2005 (ADR) which sets out that:

A vehicle constructed for both the carriage of persons and the carriage of goods shall be considered to be primarily for the carriage of goods if the number of seating positions times 68kg is less than 50 percent of the difference between the 'Gross Vehicle Mass' and the 'Unladen Mass'.

13. For the purposes of the calculation referred to in paragraph 12 of this Determination:

- the number of seating positions includes the driver's seat
- the difference between the Gross Vehicle Mass (GVM) and the 'Unladen Mass' is the 'load carrying capacity of the vehicle'
- load carrying capacity does not include towing capacity.

14. See Example 1 of this Determination for a worked example.

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Other vehicles

15. Factors to be considered in determining the principal purpose of any other car include but are not limited to:

- the appearance and presentation of the vehicle
- any relevant promotional literature
- the emphasis evident in marketing
- the vehicle's specifications
- the load carrying capacity
- the passenger carrying capacity.

16. When determining a vehicle's principal purpose, the focus is on the design of the vehicle, rather than how it is used in practice.

17. A vehicle's classification under clause 4.5.2 of the ADR, while a relevant factor, is not conclusive in determining the principal purpose of a car that is not a dual cab or crew cab utility vehicle. Therefore, where the factors in paragraph 15 of this Determination indicate that the principal purpose of the car is to carry passengers, it may still be considered a luxury car for the purposes of the LCT Act, regardless of whether it is classified as a Goods Vehicle under the ADR.

Modifications

18. Permanent alterations may change a vehicle's design after manufacture but modifications that can be 'readily reversed', so that the vehicle can be easily used for its original purpose, do not change its design.

19. Whether modifications to a car's design effect a permanent alteration is a question of fact and degree. This requires an assessment of the nature of the modification, not how that modification relates to any intended use of the car. The fact that re-conversion may be made difficult by any bulky equipment or goods regularly stored in a section of the car is not relevant to the assessment of permanency of modifications.

20. Modifications are not required to be undertaken using specialist tools, be approved by certain persons or take a significant amount of time to complete. The presence of one or more of these factors will, however, be indicative of the modifications being sufficiently permanent.

21. Further, it is not relevant whether modifications are actually reversed or whether anyone intends for those modifications to be reversed. The relevant question is whether the modification is capable of being readily reversed.

Significance and extent of modifications

22. Whether a modification causes a change in design that alters a vehicle's principal purpose is a question of fact and degree, requiring assessment of the significance and extent to which the total effect of all modifications implemented divert from the car's original design features.

23. Minor improvements to existing design features, or modifications directed equally to the carriage of goods or passengers, will not cause a change in design that alters a vehicle's principal purpose.

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24. Modifications will generally be considered ‘minor’ where they involve the replacement of existing parts for new parts which perform the same function. Minor modifications would include upgrading a vehicle’s suspension and differentials by replacing these parts with improved parts.

25. Significant modifications that alter a vehicle’s design will typically involve alteration of the vehicle itself and the addition or removal of parts, especially where this requires inspection by a regulator to ensure the vehicle can continue being safely used on a public road. Significant modifications would include the conversion of a wagon into a utility vehicle by cutting the body of the vehicle to lengthen it and installing a goods carrying tray behind the passenger cabin.

26. Even where significant and extensive modifications are undertaken, if on balance the purpose of carrying passengers continues to be the main or the most important and prominent of the car’s design features, the principal purpose of the car will remain that of a passenger carrying vehicle.

Modifications do not change the character of separate taxable supplies or importations

27. LCT is payable on any:

- taxable supply⁷ of a luxury car that you make, or
- taxable importation of a luxury car that you make.⁸

28. Where modifications are made to a luxury car under a separate supply after the car is supplied or imported, LCT will still be payable on the earlier supply or importation of the car. The separate supply (the modifications) will not change the character of the other supply or importation on which LCT was payable.

Examples

Example 1 – principal purpose – dual cab utility vehicle

29. *Brooke, a car dealer, sells a dual cab utility vehicle, which seats five people including the driver.*

30. *The value of the vehicle is more than the LCT threshold and the load capacity of the vehicle is 960 kg (according to its specifications). That is, the difference between the GVM and the unladen mass is 960 kg.*

31. *Brooke must apply the dual-purpose test to work out whether the vehicle is designed principally to carry passengers (see paragraph 12 of this Determination):*

Passenger capacity = number of seating positions × 68 kg

$$5 \times 68 \text{ kg} = 340 \text{ kg}$$

Vehicle load capacity × 50%

$$960 \text{ kg} \times 0.5 = 480 \text{ kg}$$

32. *The passenger carrying capacity is less than 50% of the load carrying capacity, so Brooke determines that the car is not principally designed for the purpose of carrying passengers and is not a luxury car for the purposes of the LCT Act.*

⁷ The meaning of ‘supply’ is considered in Goods and Services Taxation Ruling GSTR 2006/9 *Goods and services tax: supplies*.

⁸ Sections 5-5 and 7-5.

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Example 2 – principal purpose – other vehicles with minor modifications

33. *Derek sells luxury vehicles and is modifying a 4x4 off-road wagon with seating capacity for seven people, including the driver. The vehicle is classified as an ‘MC category passenger vehicle’ at the time it is manufactured.*

34. *Derek modifies the vehicle by:*

- *repainting the car to include reflective stripes and the customer’s business logo*
- *reducing the vehicle’s seating capacity from seven passengers to five passengers by removing two of the passenger seats and their anchorage points*
- *increasing the car’s GVM by upgrading the vehicle’s suspension and differentials.*

35. *The modifications will result in the majority of the vehicle’s load capacity being available to carry goods. The vehicle will be reclassified from a passenger category vehicle to an ‘NB1 category goods carrying vehicle’.*

36. *On review of each of the modifications, and having regard to each of the factors listed in paragraph 15 of this Determination, it is considered that:*

- *The GVM upgrade will have minimal effect on the design of the vehicle, as the upgrade merely involves the replacement of existing parts for improved parts.*
- *While a paint job may be considered permanent and changes the appearance of the vehicle, it will not alter the design of the vehicle or impact passenger capacity.*
- *Although the seating capacity of the vehicle has been reduced, the carriage of passengers continues to be the most important and prominent of the vehicle’s design features.*
- *The combined effect of the modifications will allow the vehicle to carry a slightly heavier load and will free up a small amount of additional space to carry goods.*

37. *The principal purpose of the car has not changed from that of a passenger carrying vehicle. Accordingly, the car is still considered to be a luxury car. When Derek sells the modified car, he makes a taxable supply of a luxury car and is liable to pay any LCT.*

Example 3 – principal purpose – other vehicles with significant modifications

38. *Assume the same facts in Example 2 of this Determination, except that Derek modifies the vehicle by:*

- *removing five of the seats and their respective anchorage points, converting the car into a two-seater wagon*
- *installing a goods carrying tray behind the driver’s seat, which extends throughout the rear cabin to the end of the vehicle*
- *installing a cargo barrier behind the driver’s and front passenger seat*
- *installing shelving and additional cargo restraints from behind the passenger seats, which extend throughout the rear cabin to the end of the vehicle*

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- *increasing the car's GVM by reinforcing the vehicle's structure, and upgrading the suspension and differentials*
- *increasing the vehicle's ground clearance.*

39. *The combined effect of the modifications will allow the vehicle to carry a significantly heavier load and make substantially more space available to carry goods. At the same time, the modifications will significantly alter the appearance of the car, and significantly diminish the passenger carrying capacity of the car.*

40. *Having regard to the factors in paragraph 15 of this Determination, the design of the vehicle has sufficiently changed such that it is not designed principally for the carriage of passengers for the purpose of the LCT Act. Accordingly, the modified car is not considered to be a luxury car. When Derek sells the modified car, he will make a taxable supply of the modified car but will not be liable to pay any LCT.*

Example 4 – modifications – readily reversible modifications

41. *Sanjeet is purchasing a modified luxury car from Tom, who operates a business trading in luxury cars. The original car is a seven-seater 4WD wagon designed for off-road use, which will be modified as follows:*

- *different tyres will be fitted to the car*
- *a roof bar will be installed, which attaches to the car using rubber clamps*
- *a platform rack will be installed using a simple bracket and thumb screws which attach to the roof bar*
- *stickers with business logos, advertising material and high visibility reflective markings will be added*
- *five of the seats will be folded down and shelving, which is attached to the seats existing anchorage points, will be installed throughout the rear of the car*
- *a rubber mat will be placed over the top of the folded-down seats*
- *a protective screen/barrier, which is attached using plastic vice grips, will be installed behind the driver's seat.*

42. *The modifications mount easily to the existing design of the vehicle and do not affect or alter the existing design of the car, including the dimensions or load bearing capacity of the vehicle.*

43. *None of the modifications made to the car are considered permanent as they are all capable of being readily reversed. Therefore, they do not effect a permanent reduction in the passenger carrying capacity of the vehicle. The use of the vehicle could alternate between carrying goods or passengers. Accordingly, the car is still a luxury car designed for the principal purpose of carrying passengers. When Tom sells the modified car to Sanjeet, he makes a taxable supply of a luxury car and is liable to pay any LCT.*

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Example 5 – modifications – permanent modifications

44. *Matthew is purchasing a modified luxury car from Dao, who operates a business trading in luxury cars. The original car is an eight-seater 4WD wagon designed for off-road use, which will be modified as follows:*

- *the original chassis will be cut in half and a new custom-made section will be installed to extend the length of the chassis*
- *the three rear rows of passenger seats and their anchorage points will be removed and an additional seat will be installed in the front row so the car has seating for three passengers, including the driver*
- *a goods carrying tray will be installed behind the remaining passenger seats, which extends to the rear of the vehicle*
- *the vehicle's suspension and differentials will be upgraded to increase the vehicle's load carrying capacity*
- *a roof rack will be installed on the vehicle's exterior by cutting the top of the vehicle and welding the rack into place.*

45. *Each of the modifications are considered to be permanent, because the extent of the modifications will prevent Matthew from regularly altering use of the car between a goods-carrying and passenger-carrying purpose.*

46. *Considering each of the factors listed at paragraph 15 of this Determination, the modified car is designed for the principal purpose of carrying goods.*

47. *When Dao sells the car, she makes a taxable supply of the modified car to Matthew. The modified car supplied to Matthew is principally designed for the carriage of goods, therefore no LCT is payable on the supply by Dao.*

Date of effect

48. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Commissioner of Taxation
23 February 2022

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Appendix – Your comments

49. You are invited to comment on this draft Determination, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

50. A compendium of comments is prepared when finalising this Determination, and an edited version (names and identifying information removed) is published to the Legal database on ato.gov.au

51. Please advise if you do not want your comments included in the edited version of the compendium.

Due date: **25 March 2022**

Contact officer details have been removed following publication of the final determination.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 94/19; GSTR 2006/9; MT 2024; MT 2033;
TR 2006/10

Legislative references:

- ANTS(LCT)A 1999 5-5
- ANTS(LCT)A 1999 7-5
- ANTS(LCT)A 1999 25-1(1)

- ANTS(LCT)A 1999 25-1(2)(c)
- ANTS(LCT)A 1999 27-1
- ANTS(LCT)A 1999 27-1(1)
- ITAA 1997 995-1
- TAA 1953

Other references:

Vehicle Standard (Australia Design Rule –
Definitions and Vehicle Categories) 2005

ATO references

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