



Decision impact statement

Automotive Invest Pty Limited v Commissioner of Taxation [2024] HCA 36

❗ Relying on this Decision impact statement

This publication provides our view on the implications of the court or tribunal decision discussed, including on related public advice or guidance.

Taxpayers can rely on this Decision impact statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Decision impact statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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Venue: High Court of Australia
Venue reference No: S170/2023
Judgment date: 16 October 2024

Summary of decision

1. This Decision impact statement outlines the ATO's response to this case, which considered whether the use of luxury cars as trading stock and for public display in a museum was solely for a 'quotable purpose' under the *A New Tax System (Luxury Car Tax) Act 1999*.

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2. If the cars were used as trading stock and for an 'other purpose', the entity would have a luxury car tax liability, and its input tax credits under section 69-10 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) would be limited.
3. All legislative references in this Decision impact statement are to the *A New Tax System (Luxury Car Tax) Act 1999*, unless otherwise indicated.
4. All judgment references in this Decision impact statement are to the judgment of *Automotive Invest Pty Limited v Commissioner of Taxation* [2024] HCA 36, unless otherwise indicated.

Overview of facts

5. The taxpayer operated the 'Gosford Classic Car Museum'. The museum held collectable and vintage cars for public display. Some of those cars were luxury cars. The museum had all the expected attributes of a museum and was marketed as a tourist attraction. Outside the building, it had signage on the front displaying 'Gosford Classic Car Museum' and ample guest parking.
6. Inside the building:
 - admission fees were charged before entering the one-way entry gates
 - the cars were lined up behind ropes
 - there was a gift shop
 - there was a ticket shop
 - there was a diner serving breakfast and lunch and tables and chairs to eat at, and
 - there was often a queue to get into the museum area of the building.
7. Admission fee revenue was \$1.32 million in the first year of operation.
8. It was not in dispute that, at the same time, the taxpayer also held the cars as trading stock for sale. Over a 4-year period, 800 vehicles were sold with a gross revenue of \$114 million.
9. At the time of acquiring or importing the luxury cars in dispute, the taxpayer indicated they were only to be used as trading stock, and for no other purpose. The taxpayer 'quoted' its Australian business number (ABN) to the supplier of the car (or Australian Border Force on importation), and no luxury car tax was payable.
10. Following an audit, the Commissioner formed the view that 'increasing luxury car tax adjustments' applied to the relevant luxury cars under subsections 15-30(3) and 15-35(3), and that luxury car tax was therefore payable. The adjustments were applied on the basis that the taxpayer used each of the cars for a purpose other than a 'quotable purpose', by displaying them as exhibits in the museum.
11. The same 'quotable purpose' test was also applied to reduce the input tax credits on the purchase and import of some cars under section 69-10 of the GST Act.
12. At first instance, in the Federal Court¹, the controlling mind of the taxpayer (Mr Anthony Denny) gave evidence that the 'museum concept' was no more than a marketing strategy. The primary judge (Thawley J) accepted that Mr Denny wanted to profit from the

¹ *Automotive Invest Pty Limited v Commissioner of Taxation* [2022] FCA 281 (*Automotive Invest FCA*).

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sale of cars, and that Mr Denny considered that the museum concept would be the best way to achieve that objective.²

13. While the primary judge recognised that subjective evidence was not to be ignored, it was concluded that, when objectively assessed, display of the cars in the museum involved a separate and additional purpose. It followed that the cars were not used solely for a quotable purpose.³ The Full Federal Court, by majority, upheld this decision, agreeing that whether there was a separate purpose was determined by objective consideration of the facts and circumstances.⁴

14. On 16 October 2024, the High Court, by majority, (Edelman, Steward and Gleeson JJ, with Gageler CJ and Jagot J dissenting) allowed the taxpayer's appeal.

Issues decided

15. The primary issue in this case involved the luxury car tax concept of 'quotable purpose' in subsection 9-5(1). If the luxury cars displayed at the museum were used solely for the purpose of holding them as trading stock, they were used for a quotable purpose. If they were also used for an 'other purpose', in this case for public display, they were not.

16. The High Court majority accepted that holding cars as trading stock and for public display in the museum were both capable of being separate uses.⁵ The next step was to determine the intended purpose of those respective uses.⁶

Application of section 9-5 'quotable purpose'

17. Having explained the need to understand the difference between 'motive', 'means' and 'purpose',⁷ the majority made several general observations:

- Purposes (like intentions) are the purposes or intentions of a person whether of a natural person, an artificial legal person, or a construct.⁸
- A natural person's purpose 'can only be proved by the person's direct evidence, or by inference from the circumstances, or both'.⁹
- The most common means of identifying the purpose of an artificial person is via identification of a person whose purposes are to be attributed to the legal person.¹⁰
- Where the law is concerned with the purpose of a construct, there is no natural person who can give direct evidence for the construct. Purpose in these situations can only be established by inference from the facts and circumstances.¹¹

18. Against that background, the majority held that 'purpose' in subsection 9-5(1) is used in the 'sense of the purpose of the taxpayer, not some purpose that a reasonable

² *Automotive Invest FCA* at [84].

³ *Automotive Invest FCA* at [79] and [84].

⁴ *Automotive Invest Pty Limited v Commissioner of Taxation* [2023] FCAFC 129 at [110].

⁵ At [107].

⁶ At [108].

⁷ 'Purpose' being usually 'the ultimate end, object or goal that the person seeks to achieve', 'motive' being 'the reason that the person seeks to achieve that purpose or end', and 'means' being 'the way in which the purpose is to be achieved' (at [110]).

⁸ At [113].

⁹ At [113].

¹⁰ At [114].

¹¹ At [115–116].

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person in the taxpayer's position might hold'. That is, the focus of the enquiry is on the subjective purpose of the taxpayer in question.¹²

19. The majority explained that this conclusion reflects the specific statutory context of section 9-5. This was so for 2 reasons. First, the focus of section 9-5 is on the 'intention' of an actual taxpayer to use a car for a purpose before use commences. Second, the term 'you' within the provision refers to the actual taxpayer, 'not an objective construct or reasonable person'. The majority found that the provision assumes that the taxpayer has an actual intention of using a car for purpose or purposes.¹³

20. There was no dispute that the intention of the taxpayer was the intention of its controlling mind, Mr Denny.¹⁴ The majority emphasised that the evidence of Mr Denny's intention and subjective purpose was 'uncontradicted', and materially accepted by the primary judge.¹⁵ The majority observed that Mr Denny's evidence was also 'supported by substantial objective evidence'.¹⁶

21. The majority concluded that the effect of the primary judge 'finding that the museum concept was chosen by Mr Denny only as the way for [the taxpayer] to achieve its objective of selling cars' was that the taxpayer intended to trade cars through the museum and '... considered the museum would assist in maximising the number of sales and the sale price.'¹⁷ The majority concluded¹⁸:

... The museum concept never ceased to be subjugated to, or the means of achieving, the goal of selling cars. For the "museum concept" to be effective, the museum had to be as real as possible. The signage, the presentation of the cars, the gift shop, the diner, the marketing and the available staff were all dedicated to those means. But this activity, large as it was to be, was not intended by Mr Denny to be an "independent" purpose, end or object. It was an elaborate and extensive marketing exercise designed to promote the appellant's business of being a car dealer ...

22. In addition, the majority observed that it was for Mr Denny to decide how to run his business¹⁹:

... Unless Mr Denny was not to be believed, it was for him to delineate, as the controlling mind of the appellant, the four walls of that business. The substance and reality [of the arrangements], applying a common sense and commercial approach, is that ultimately the [taxpayer's] business was just to sell cars.

23. The display of cars in the museum was simply a means of achieving an end – that is, of selling cars. It was not a separate purpose, nor was it an ultimate end itself.²⁰ This was the case, even though the means chosen and applied were substantial.²¹

Application of subsection 15-30(3) 'increasing luxury car tax adjustments'

24. As with section 9-5, subsection 15-30(3) is also concerned with the taxpayer ('you') and with the taxpayer's use of the car or cars in question. And, as with section 9-5, the focus is on the purpose of the taxpayer. The majority observed it would be a remarkable

¹² At [126–128].

¹³ At [127–128].

¹⁴ At [135].

¹⁵ At [58], [91], [96] and [141].

¹⁶ At [58]. The majority sets out the evidence at [73–81] and 5 matters that reinforced Mr Denny's evidence at [82–86].

¹⁷ At [89].

¹⁸ At [138].

¹⁹ At [139].

²⁰ At [137].

²¹ At [138].

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and surprising interpretation of subsection 15-30(3) to conclude otherwise. In this regard, subsection 15-30(3) was characterised as an ‘allied provision’ of section 9-5.²²

25. Compared with section 9-5, the difference with section 15-30 is that²³:

... recourse can now be had to everything which has happened since acquisition in determining the purpose of the actual use of a car rather than the purpose of the intended use.

While section 9-5 is concerned with the intended purpose of use, subsection 15-30(3) is concerned with the actual purpose of that use.²⁴

26. The majority observed that evidence of the circumstances in which actual use occurred ‘is not necessarily more probative than the sworn or affirmed testimony of a witness in inferring actual purpose’ – it all depends on the facts and circumstances of a given case.²⁵

27. The majority observed that Mr Denny’s uncontradicted evidence was that there was never a change to his initial intended purpose of selling cars. The museum concept was simply a means of achieving that purpose until the museum ceased operations.

28. No facts or circumstances cast doubt on the veracity of Mr Denny’s evidence.²⁶ The majority said that²⁷:

... the primary judge was ... correct to conclude that Mr Denny’s “subjective evidence” of his goals “might properly inform an assessment of purpose” ... but incorrect to assume that it was possible to accept Mr Denny’s subjective evidence but still reach a different conclusion of purpose.

The cars in question were used for a quotable purpose (trading stock) and were used for no other purpose. Accordingly, the taxpayer did not have ‘increasing luxury car tax adjustments’ and the assessments were excessive to that extent.

29. For the same reasons, the majority held that the taxpayer’s input tax credits on acquiring or importing the cars were not limited by section 69-10 of the GST Act.

30. The High Court minority concluded that the cars were not used solely for a quotable purpose. They agreed that ‘intention’ in subsection 9-5(1) is subjective.²⁸ The inference to be drawn from the primary judge’s findings was that Mr Denny subjectively intended to use the museum concept not only to attract potential buyers, but also to attract people to the museum more generally.²⁹ In contrast, subsections 15-30(3) and 15-35(3) required an objective characterisation of purpose viewed from the perspective of an independent observer.³⁰

ATO view of this decision

Section 9-5 quoting

31. When an entity quotes in relation to the supply or importation of a luxury car, the supplier or the Comptroller-General of Customs (Australian Border Force)³¹ must

²² At [131].

²³ At [133].

²⁴ At [131].

²⁵ At [134].

²⁶ At [141].

²⁷ At [145].

²⁸ At [9].

²⁹ At [47].

³⁰ At [25].

³¹ The Australian Border Force (ABF) Commissioner is designated as the Comptroller-General of Customs. ABF is a portfolio agency within the Department of Home Affairs.

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determine if the quotation is effective under section 9-25. If the quote is effective, no luxury car tax will be payable on the supply or importation.

32. If the supplier or Australian Border Force have reasonable grounds for believing that the quoting entity is not entitled to quote under section 9-5³², the quote will not be effective. In these circumstances, the conclusion regarding the entity's quotable purpose will be based on the quoting entity's intended use of the car for a purpose. That purpose will be the quoting entity's subjective purpose, rather than some objective purpose.³³ The supplier or Australian Border Force will reach that conclusion on the information available to them at the time the quote is made. At this point, they will not have the benefit of any later evidence about how the car was actually used.³⁴

Division 15 change of use adjustments

33. While the majority only considered subsections 9-5(1) and 15-30(3) in detail, it is considered that their conclusions will apply equally to the determination of 'quotable purpose' for other change of use adjustments under Division 15.

34. Where the Division 15 adjustment provisions require 'quotable purpose' to be determined, the intended or actual use for a 'purpose' will be determined by the taxpayer's subjective purpose.³⁵ Determining subjective purpose where the taxpayer is not an individual, however, is not limited to the purpose of the controlling mind of the taxpayer.³⁶ Depending on the circumstances, the intention and purpose of the taxpayer's directors, officers and employees may be relevant to attributing a purpose to the taxpayer.³⁷

35. The following information may be relevant when determining if a car has only been used for a 'quotable purpose' under the Division 15 adjustment provisions:

- direct evidence of the taxpayer about the purpose for which the car is actually used, rather than the purpose of the intended use, noting that in situations where we need to test the subjective purpose of the identified use of a car, this may include interviews with various relevant persons
- contemporaneous evidence of the taxpayer's intended purpose at the time of acquiring or importing the cars³⁸, as well as the taxpayer's purpose after the acquisition or importation of the car, which may include board papers, business plans, financial plans, budgets, and communications with third parties³⁹
- any other relevant evidence, including how the car has actually been used⁴⁰, which may be available to draw inferences about purpose.

³² There are 2 other factors that must be considered under section 9-25. These are that the quote is not made in approved form, or that the quote is false and misleading in a material particular (either because of something stated in the quote or something which is left out).

³³ At [128–129].

³⁴ At [133].

³⁵ The change of use decreasing adjustment provisions require that intended use for a purpose is determined. Intended use under paragraphs 15-30(1)(d) and 15-35(1)(d) will be determined on the same basis as intention is determined in section 9-5.

³⁶ At [114] referring to *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 at [507].

³⁷ Consistent with *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 and with Deane & Fisher JJ in *Magna Alloys & Research Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia* [1980] FCA 180.

³⁸ This will be particularly relevant for decreasing adjustments which require determining intended use – see footnote 35 of this Decision impact statement.

³⁹ At [129].

⁴⁰ At [113] and [130].

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36. To determine the use for a purpose of a car under Division 15, the information noted in paragraph 35 of this Decision impact statement will be taken into account to determine if and to what extent the taxpayer's direct evidence about their purpose should be accepted.⁴¹ Whether evidence of actual use is more or less probative than the direct evidence of the taxpayer in determining actual purpose, depends on the particular facts and circumstances of each case.⁴²

37. We will apply the quotable purpose provisions in subsection 9-5(1) on the basis that, if a car is held for one or more of the 3 allowable purposes, it will cease to be held solely for a quotable purpose if the car is used for an alternative or additional purpose.⁴³

GST input tax credits – car limit

38. Section 69-10 of the GST Act will apply the ascertained subsection 9-5(1) 'quotable purpose' based on the taxpayer's intention about their subjective purpose at the time of acquisition or importation of the car, to determine if input tax credits are limited.

Other legislation administered by the Commissioner

39. The conclusion of the majority that subsection 9-5(1) does not involve objective purpose turned on the particular terms, context and construction of that provision. This is also evident from the comparison the majority made between this provision and the land tax provisions considered in *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] HCA 20.⁴⁴

40. In particular, subsection 9-5(1) uses the second person 'you' and 'your' with the words 'intention' and 'purpose'. This feature was important in the majority's construction of the provision as adopting a subjective purpose test in this specific statutory context. Our position is that the mere fact that a provision is framed by reference to 'purpose' and employs use of the second person 'you' or 'your' will not for that reason alone mean that 'purpose' is to be taken to be a reference to subjective purpose.

41. Other provisions that have tests based on 'purpose' need to be construed by reference to their own statutory context, and in accordance with relevant case law. For example, the general anti-avoidance rules provisions in section 177D of the *Income Tax Assessment Act 1936* and Division 165 of the GST Act have a purpose test that is determined by objective criteria.

Implications for affected advice or guidance

42. We are reviewing the impact of this decision on related luxury car tax and GST advice and guidance, including guidance published about:

- [Quoting an ABN](#) and [Keeping accurate LCT records](#) for luxury car tax purposes
- entitlement to input tax credits when [purchasing a motor vehicle](#) that exceeds the car limit.

⁴¹ At [129], [130], and [132–133].

⁴² At [134].

⁴³ Majority at [144], minority at [19] indicating that 'other purpose' is not limited to an 'alternative purpose'.

⁴⁴ In *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] HCA 20 at [127–128] where the relevant question under the NSW land tax statute was whether the dominant use of the land is for certain designated primary production activities and the focus of the statutory language was upon the use of the land that actually occurred 'abstracted from the person who was using the land' (at [125]).

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Comments

43. We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

Due date: 7 February 2025

Contact officer details have been removed as the comments period has ended.

Commissioner of Taxation

11 December 2024

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References

Legislative references:

- ANTS(LCT)A 1999 9-5
- ANTS(LCT)A 1999 9-5(1)
- ANTS(LCT)A 1999 9-25
- ANTS(LCT)A 1999 Div 15
- ANTS(LCT)A 1999 15-30
- ANTS(LCT)A 1999 15-30(1)(d)
- ANTS(LCT)A 1999 15-30(3)
- ANTS(LCT)A 1999 15-35(1)(d)
- ANTS(LCT)A 1999 15-35(3)
- ANTS(GST)A 1999 69-10
- ANTS(GST)A 1999 Div 165
- ITAA 1936 177D

Cases relied on:

- Automotive Invest Pty Limited v Commissioner of Taxation [2022] FCA

- 281; 2022 ATC 20-823; 114 ATR 569; [2023] ALMD 979
- Automotive Invest Pty Limited v Commissioner of Taxation [2023] FCAFC 129; 299 FCR 288; 2023 ATC 20-875; 117 ATR 151; [2023] ALMD 2534
- Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue [2024] HCA 20; 2024 ATC 20-914; 98 ALJR 808
- Magna Alloys & Research Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia [1980] FCA 180; 80 ATC 4542; 11 ATR 276; 49 FLR 183
- Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500

ATO references

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