



# ***TA 2021/4 - Structured arrangements that avoid luxury car tax***

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## Taxpayer Alert

# Structured arrangements that avoid luxury car tax

### **1 About Taxpayer Alerts**

Alerts provide a summary of our concerns about new or emerging higher risk tax or superannuation arrangements or issues that we have under risk assessment.

While an Alert describes a type of arrangement, it is not possible to cover every potential variation of the arrangement. The absence of an Alert on an arrangement or a variation of an arrangement does not mean that we accept or endorse the arrangement or variation, or the underlying tax consequences.

Refer to [PS LA 2008/15](#) for more information about Alerts. See [Alerts](#) issued to date.

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### **Description**

1. We are reviewing arrangements involving sales of both new and second-hand luxury cars between participating entities designed to improperly obtain refunds of luxury car tax (LCT) and evade LCT on the retail sale of the cars.
2. LCT is ordinarily imposed on the sale or importation of cars that exceed the LCT threshold.<sup>1</sup> LCT can be effectively deferred until the retail sale of a car or a change in use of that car, utilising decreasing adjustments and quoting provisions. These provisions can be exploited, particularly when coupled with illegal phoenixing behaviours.
3. The arrangements of concern typically involve the following features:
  - the supply of a luxury car to a pre-determined recipient identified by the controlling mind of the arrangement

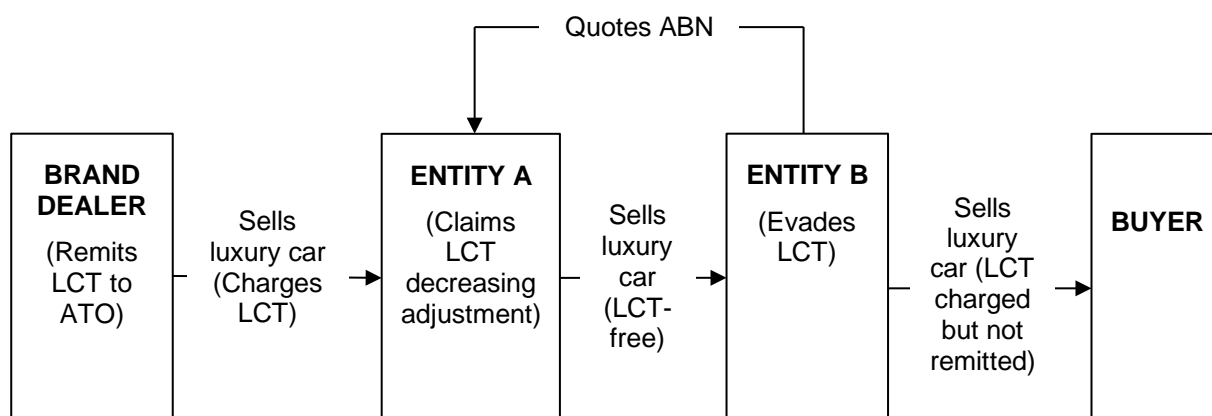
<sup>1</sup> The threshold for the 2021–22 financial year is \$69,152, or \$79,659 for certain fuel-efficient cars – refer to <https://www.ato.gov.au/rates/luxury-car-tax-rate-and-thresholds/>

- a number of wholesale sales of the car are purportedly made, along a chain of participating entities often acting in collusion, prior to the final retail sale to the pre-determined recipient<sup>2</sup>
- one of the entities claims a refund of LCT while creating a consequential liability to another entity in the supply chain
- one or more of the participating entities (described as a 'missing trader') does not correctly report and pay their purported LCT liabilities to the Commissioner.

4. The arrangements may also involve artificially embedding LCT in the price of the car that is not otherwise subject to LCT. One of the participating entities will then seek to recoup this LCT as a refund. The corresponding and artificially-created LCT liability is never reported and paid.

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### Example 1 – new cars



5. The Brand Dealer, being aware of compliance shortfalls in the industry, does not accept an Australian business number (ABN) quotation when selling a luxury car to Entity A, resulting in LCT being embedded in the sale price. The Brand Dealer is generally at arm's length and correctly reports and pays LCT to the Commissioner on its sale of the luxury car.

6. Entity A claims a decreasing LCT adjustment (resulting in a refund) on the basis that it intended to use, and has only used, the car for a quotable<sup>3</sup> purpose (for example, as trading stock).

7. Entity A sells the luxury car to Entity B. It is the intention from the outset that Entity B (the missing trader) will not comply with its taxation obligations on its sale of the luxury car.

8. Entity B has few, if any, assets. It does not report any of its transactions in its tax returns or business activity statements (BAS) and does not pay any taxes to the Commissioner. Entity B sells the luxury car to an ultimate buyer who may be unaware of any wrongdoing.

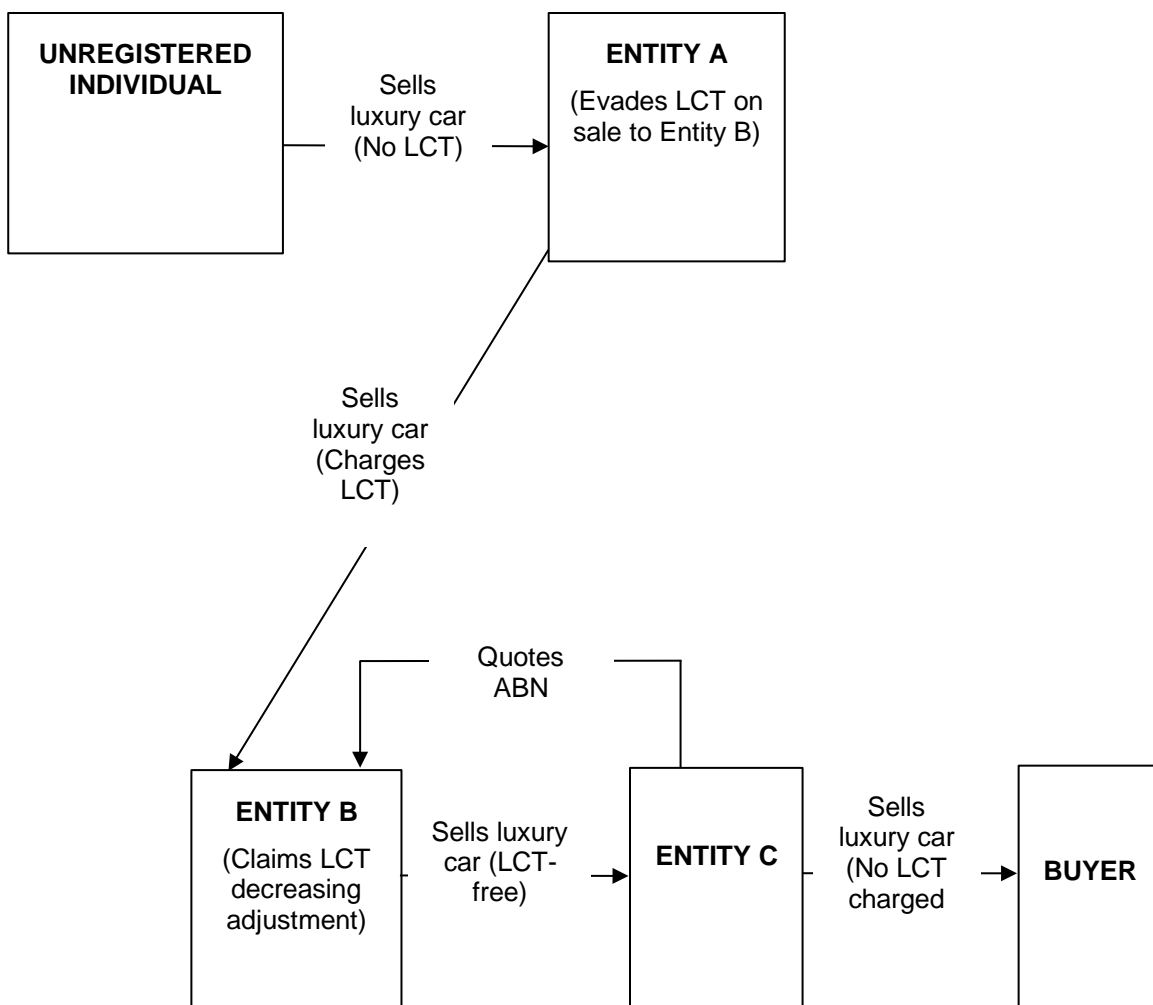
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<sup>2</sup> The effect of the arrangements can be achieved irrespective of the number of interposed entities in the supply chain.

<sup>3</sup> Quoting of an ABN allows LCT to be deferred to a later assessable dealing or to give effect to exemption from LCT for a particular type of vehicle. Section 9-5 of the *A New Tax System (Luxury Car Tax) Act 1999* (LCT Act) outlines when you are entitled to quote.

9. The improperly-obtained LCT refund is shared among various parties to the arrangement.

**Example 2 – second-hand cars (less than two years old and sold for less than original retail price)**



10. Entity A acquires the car from an unregistered individual and sells the car to Entity B for an amount below the unregistered individual's original acquisition price. The participating entities are aware that the sale to Entity B would not attract LCT, however LCT is artificially included in the invoice/sale. Entity A does not report the sale on any tax return or BAS and will usually liquidate so as to not pay any amounts owing to the Commissioner. By artificially implanting LCT into the sales price of the car, Entity A creates an LCT refund opportunity for Entity B.

11. Entity B does not quote its ABN for its acquisition of the car; however, Entity B contends this acquisition was for a quotable purpose and claims a refund by way of a decreasing LCT adjustment in its BAS.

12. Entity C quotes its ABN, contending that it has acquired the car for a quotable purpose, and sells the car to a buyer without charging, reporting and remitting LCT.

13. The improperly-obtained LCT refund is shared among various parties to the arrangement.

14. A variation to this Example could be that Entity A sells the car for an amount above that for which it was originally acquired by the unregistered individual. In this case, the amount of LCT legally payable would be limited to the increase in the car's LCT value.

However, Entity A would include LCT on the full sale price to artificially inflate Entity B's decreasing LCT adjustment.

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### What are our concerns?

15. We are concerned that entities are using these types of arrangements to improperly obtain LCT refunds and to evade LCT. These arrangements can also result in luxury cars being sold without income tax and goods and services tax (GST) obligations being met. Cars are sold to end users at more competitive prices, with generally greater profit margins, due to those involved intentionally avoiding their taxation obligations and falsely claiming refunds. These practices undermine the business of compliant car dealers. Entities in the supply chains liquidate to circumvent ATO compliance or recovery action.

16. The arrangements are contrived and the sales between participating entities appear to be designed to improperly procure a tax benefit for the financial betterment of those entities.

### What are we doing?

17. We are engaging with taxpayers to ensure that all parties have correctly met their LCT, GST and income tax obligations. Taxpayers who adopt these types of arrangements, and their advisers, will be subject to increased scrutiny from the ATO.

18. We have sophisticated systems in place to identify high risk LCT refunds, which we withhold pending adequate reviews. Contractual obligations that arise under each sale in the supply chain are reviewed in high risk refund cases pending release to ensure compliance with the LCT Act, the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and the *Income Tax Assessment Act 1997*. Transactions are not viewed in isolation and all sales of the cars, including their ultimate sale to end users, will be examined to ascertain the purpose of the entities involved in the arrangements.

19. While each case turns on its own unique set of facts and circumstances, the anti-avoidance provisions in Division 165 of the GST Act may apply to these arrangements, and parties who obtain a benefit from these arrangements will be liable for LCT and penalties where:

- transactions in the supply chain are artificial, contrived and not commercial in their design and execution
- in the absence of the scheme, the end user would have purchased the car directly from the compliant car dealer.

20. We will also consider whether the documentation underpinning the purported transactions reflects the true intentions of the parties to determine if the arrangements or certain steps within them are shams at general law.

21. In appropriate cases, sanctions under criminal law may apply to fraudulent claims.

22. Registered tax agents advising entities to incorrectly claim LCT decreasing adjustments (and GST input tax credits) may be referred to the Tax Practitioners Board to consider whether there has been a breach of the *Tax Agent Services Act 2009*. Promoter penalty laws may also apply under Division 290 of Schedule 1 to the *Taxation Administration Act 1953* for promoters of these types of arrangements.

### What should you do?

23. You should consider whether our concerns apply to you. If you have entered into a similar arrangement to that described in this Alert, we encourage you to:

- phone or email us using the contact details provided at the end of this Alert
- seek [tailored technical assistance](#)
- seek independent advice as to the legal and tax consequences of your arrangement, and/or
- make a [voluntary disclosure](#) to reduce penalties that may apply.

24. Penalties may apply if you have not complied with your LCT, GST or income tax obligations in relation to such arrangements. Penalties may be significantly reduced if you contact us and make a voluntary disclosure. Generally, the reduction is greater if you make the disclosure before we notify you of an examination of your tax affairs.

25. If you are a registered tax agent or tax adviser who has been involved in these arrangements, you are at risk of being perceived as a 'promoter' of a scheme. We encourage you to engage with us.

26. Legitimate car dealers can avoid getting inadvertently caught up in these arrangements by not accepting LCT quotes from purchasers.

### Do you have information?

27. To provide information regarding this type of arrangement or about a promoter of this or another arrangement:

- contact an officer named in this Alert with the relevant information or to arrange a meeting with us
- phone us on 1800 177 006
- complete the [ATO Tip-Off Form](#).

**Contact officers:** Ash Khera

**Email address:** [ash.khera@ato.gov.au](mailto:ash.khera@ato.gov.au)

**Phone:** (03) 9275 2058

**Tony Poulakis**

**[tony.poulakis@ato.gov.au](mailto:tony.poulakis@ato.gov.au)**

**(02) 6216 2332**

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**Commissioner of Taxation**

2 November 2021

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## References

### *Related Practice Statement:*

PS LA 2008/15

- LCT Act
- LCT Act 9-5
- TAA 1953 Sch 1 Div 290
- Tax Agent Services Act 2009

### *Legislative references:*

- GST Act
  - GST Act Div 165
  - ITAA 1997
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### ATO references

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Luxury car tax ~~ Quoting ~~ Trading stock test  
Luxury car tax ~~ Taxable supply exemptions  
Luxury car tax ~~ Taxable importation exemptions

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