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Customs, Trade & Transport Law e-alert

Application of the Luxury Car Tax ("LCT")

Hummers, as well as other vehicles not fitting within the traditional description of 'luxury car', will now be subject to LCT on top of GST and other customs and excise duties wherever applicable.

The findings in the below case heard before the Administrative Appeals Tribunal ("AAT") on the various definitions relevant to the LCT mean that a wider class of cars may now be caught by the tax if their luxury car tax value exceeds the threshold. This potentially could mean four wheel drives with features that could be considered luxurious by a class of persons, or other large vehicles that may be colloquially called 'limousines' despite having significant design discrepancies.

The findings of the AAT will impact the luxury vehicle industry by expanding the scope of 'luxury' to include the subjective, and the scope of 'motor powered road vehicle' to include vehicles beyond those designed solely for road use. The fact that a vehicle will need to be modified prior to use on Australian roads does not negate its ability to be used on roads for the purposes of the definition.

Case: Dreamtech International Pty Ltd –v– Commissioner of Taxation [2009] AATA 365

Facts

The appellant, Dreamtech International Pty Ltd ("**Dreamtech**"), is a car dealer which imports vehicles and also makes substantial modifications to those imports. A Hummer limousine was imported from the US and various modifications were undertaken, including those to comply with Australian Design Standards.

Dreamtech were assessed as liable to pay LCT in the amount of \$22,548.59. An appeal was lodged in the AAT by Dreamtech against the decision of the Commissioner of Taxation that the LCT applied to its imported Hummer vehicles.

Decision

In the decision handed down by the AAT on 19 May 2009, the tax was held to apply to the Hummer as a 'luxury car'. The AAT made a number of significant findings on the scope of definitions relating to the tax.

Definition of a 'limousine'

A limousine falls within the definition of 'car', but is not itself defined in *A New Tax System (Luxury Car Tax) Act 1999* ("**LCT Act**"). General principles of statutory interpretation dictate that it must therefore be taken to have its ordinary meaning.

The AAT rejected arguments put forward by Dreamtech that, as the Hummer was required to comply with certain bus standards, the Hummer could not be defined as a limousine, and decided that the Hummer in question would colloquially be described as a limousine, and so it follows that it must fall within the definition a 'car' in the LCT Act.

Definition of 'car'

The definition of 'car' within the LCT Act is a 'motor vehicle' designed to carry a load of less than 2 tonnes and less than 9 passengers, or a limousine. A 'motor vehicle' is defined as a 'motor powered road vehicle'.

Definition of a 'motor powered road vehicle'

The argument put forward by Counsel for Dreamtech was that the Hummer is a vehicle designed for off-road use, does not meet Australian Design Standards without modifications and is not practical for use on many Australian roads due to its size. Therefore, although it is a motor powered vehicle, it does not fit the description of a 'road vehicle'.

The AAT decided that the term did not distinguish between vehicles that are classified as 'off-road' vehicles but also designed for on road use, and vehicles designed solely for on road use. If the vehicle can conceivably be use on road, it falls within the description of 'road vehicle'.

Definition of 'luxury'

Importantly, the AAT disagreed with the contention of Counsel for Dreamtech that the Hummer would not be classed as 'luxurious' to enable it to be captured by the LCT.

The AAT effectively decided that the term 'luxury' is subjective, and may have different meanings to different people depending on their age. Thus, it was able to class the Hummer as a luxury vehicle despite its lack of features generally associated with 'luxury', for example leather seats, quality suspension and soundproofing. These features are not necessary for a vehicle to be subjectively luxurious for a person under the age of 30.

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