HIGH COURT OF AUSTRALIA

GAGELER CJ,
EDELMAN, STEWARD, GLEESON AND JAGOT JJ

AUTOMOTIVE INVEST PTY LIMITED APPELLANT

AND

COMMISSIONER OF TAXATION RESPONDENT

Automotive Invest Pty Limited v Commissioner of Taxation
[2024] HCA 36
Date of Hearing: 13 June 2024
Date of Judgment: 16 October 2024
S170/2023

ORDER

1. *Appeal allowed with costs.*

2. *Set aside the orders of the Full Court of the Federal Court of Australia made on 11 August 2023 and, in their place, order that:*

   (a) appeal allowed with costs;

   (b) set aside the orders of the Federal Court of Australia made on 19 April 2022 and, in their place, order that:

      (i) the applicant's appeal against the respondent's objection decision be allowed;

      (ii) the objection decision be set aside, and the applicant's objection be allowed in full; and

      (iii) the respondent pay the applicant's costs of the proceedings.

On appeal from the Federal Court of Australia

Representation

D H Bloom KC with K Josifoski and J P Patela for the appellant (instructed by King & Wood Mallesons)

C A Burnett SC with D P Hume and D R Lewis for the respondent (instructed by McInnes Wilson Lawyers)

CATCHWORDS

Automotive Invest Pty Limited v Commissioner of Taxation

Statutes – Construction – Meaning of "purpose" within *A New Tax System (Luxury Car Tax) Act 1999* (Cth) ("LCT Act"), ss 9-5(1), 15-30(3) and 15-35(3) – Where appellant carried on business of acquiring and selling luxury and collectable cars – Where appellant displayed cars in "car museum" to attract purchasers – Where appellant objected to amended assessments of net amounts under Pt IVC of *Taxation Administration Act 1953* (Cth) – Where amended assessments were premised on use of each car for purpose of holding as trading stock and for additional purpose of display in museum – Where increasing luxury car tax adjustment is applicable if taxpayer uses car for purpose other than quotable purpose – Whether assessment of purpose objective or subjective – Whether appropriate to exclude uses that are merely incidental, subservient, or means to an end to continuing use of car as trading stock – Whether phrase "no other purpose" in s 9-5(1) should be read as excluding alternative, but not additional, purposes.

Words and phrases – "additional purpose", "alternative purpose", "characterisation", "collateral purpose", "decreasing luxury car tax adjustments", "for no other purpose", "goods and services tax", "increasing luxury car tax adjustments", "luxury car tax", "means", "motive", "objective purpose", "purpose", "quotable purpose", "quote", "quoting", "single purpose", "subjective purpose", "taxable supply".

A New Tax System (Goods and Services Tax) Act 1999 (Cth), s 69-10.
A New Tax System (Luxury Car Tax) Act 1999 (Cth), ss 2-5(2), 9-1, 9-5(1), 15-1, 15-30(3), 15-35(3).

GAGELER CJ AND JAGOT J.

Overview

1 In our opinion, the appeal should be dismissed. Neither the primary judge[1] (Thawley J) nor the majority in the Full Court of the Federal Court of Australia[2] (Wheelahan and Hespe JJ) erred in rejecting the argument of the appellant that it was not liable to pay luxury car tax ("LCT") under the *A New Tax System (Luxury Car Tax) Act 1999* (Cth) ("the LCT Act") in the tax periods from June 2016 to November 2017 in respect of 40 luxury cars previously acquired by it and then displayed at its premises called the "Gosford Classic Car Museum".

2 The question posed rhetorically by Logan J in dissent in the Full Court, as to how the display of those luxury cars at the Gosford Classic Car Museum in the tax periods could have resulted in liability to pay LCT given the concession of the respondent that the appellant displayed them for sale and therefore held them as trading stock, is readily answered.

3 The answer is that: (a) properly construed, ss 15-30(3)(c) and 15-35(3)(c) of the LCT Act provide for an increasing LCT adjustment in a tax period if a taxpayer uses a luxury car for a purpose other than the purpose identified in s 9-5(1)(a) of the LCT Act of "holding the car as trading stock" in that tax period irrespective of whether that other purpose is in addition to or in the alternative to holding the car as trading stock; and (b) on the facts found by the primary judge, which were not challenged on appeal, the appellant used each of the 40 luxury cars during the relevant tax periods for a purpose in addition to holding them as trading stock, namely, for the purpose of displaying them as part of a tourist attraction.

The construction of the LCT Act

4 Section 2-1 of the LCT Act explains that LCT "is a single stage tax that is imposed on supplies and importations of luxury cars and is in addition to any GST that may be payable". Section 2-5(2) explains that "[t]here is a system of quoting which is designed to prevent [LCT] becoming payable until the car is sold or imported at the retail level".

5 Section 2-10(1) of the LCT Act explains that amounts of LCT "are included in net amounts under the GST system", so that LCT is incorporated into the

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1 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569.

2 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288.

payments and refunds system for the GST, although LCT on importations is paid with customs duty. Section 2-10(2) adds that "[a]djustments to the net amount can arise out of circumstances that occur after the supply or importation of the car". The present case is concerned with such a circumstance occurring after acquisition.

6 Sections 4-1 and 4-5 of the LCT Act combine to make clear that those "explanatory sections" are not "operative provisions" but are included in the LCT Act "to help you identify accurately and quickly the provisions that are relevant to you and to help you understand them". Section 23-10(2) provides that, in interpreting an operative provision, an explanatory section may only be considered for the limited purposes set out in that section. Those limited purposes are: in determining the purpose or object underlying the provision; to confirm the ordinary meaning conveyed by its text taking account of its context and the purpose or object underlying the provision; in determining its meaning if it is ambiguous or obscure; or in determining its meaning if its ordinary meaning leads to a manifestly absurd or unreasonable result.

7 The operative provisions governing when and by whom LCT is payable on supplies and importations of luxury cars are set out in Divs 5 and 7 of Pt 2 of the LCT Act. Sections 5-5 and 7-5 provide that LCT is payable by the supplier on a taxable supply of a luxury car and by the importer on a taxable importation of a luxury car. However, ss 5-10(2)(a) and 7-10(3)(a) provide that a taxable supply or taxable importation is *not* made where the recipient (in the case of a supply) or the importer (in the case of an importation) quotes for the supply or importation of the car.

8 The operative provisions governing quoting are set out in Div 9 of Pt 2 of the LCT Act. Section 9-5(1) provides that "you", being an entity within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("the GST Act"), "are entitled to *quote your *ABN in relation to a supply of a *luxury car or an *importation of a luxury car if, at the time of quoting, you have the intention of using the car for one of the ... purposes" nominated in s 9-5(1)(a)-(c) "and for no other purpose". By s 27-1, "a use of a *car for which you may *quote under section 9-5" is a "quotable purpose" within the meaning of the LCT Act. One "quotable purpose", in s 9-5(1)(a), is "holding the car as trading stock, other than holding it for hire or lease".

9 The precondition to the entitlement of the recipient or importer to quote conferred by s 9-5(1), that the quoting entity has at the time of quoting the "intention" of using the car for a quotable purpose, means that it is the present subjective state of mind of the recipient or importer at the time of supply or importation about their future use of the car that determines their entitlement to quote under s 9-5(1) (the effect of which is to prevent the supply or importation becoming taxable through the operation of s 5-10(2)(a) or s 7-10(3)(a)). However, s 9-20 provides that "[i]f you *quote in circumstances in which you are not entitled

to quote ... the quote is nevertheless effective for the purpose of subsection 5-10(2) or 7-10(3) (whichever is relevant), unless section 9-25 applies". Section 9-25 relevantly applies to render a quote ineffective if the person to whom the quote is made has at the time of the quote reasonable grounds for believing that "you are not entitled to quote in the particular circumstances". As will be seen, however, a recipient or importer who has quoted on the supply or importation of a car can afterwards become liable to pay GST in respect of the supply or importation of the car through the operation of an increasing LCT adjustment if that entity in fact uses the car for a purpose other than a quotable purpose.

10 The operative provisions governing payment of LCT, through alterations to net amounts under the GST system in the form of increases and adjustments, are relevantly set out in Divs 13 and 15 within Pt 3 of the LCT Act.

11 Part 3 and Div 13 of the LCT Act are each headed "Paying the luxury car tax". Understanding the system of payment for which Div 13 provides is important to appreciating the significance of the capacity to quote at the time of supply or importation of a luxury car to two key elements of the scheme of the LCT Act. While the general statutory scheme contemplates that LCT is a "single stage tax" liability (s 2-1), which may be avoided until retail sale of a car (s 2-5(2) and s 9-1), the scheme also provides for adjustments to net amounts as "[c]ircumstances that occur after the supply or importation of a car may mean that too much or too little luxury car tax was imposed" (s 2-10(2) and s 15-1).

12 Under s 13-5 of the LCT Act, an entity's net amount for a tax period determined under the GST Act is increased by the sum of all of the amounts of LCT (if any) attributable to that tax period, other than amounts of LCT payable on taxable importations of luxury cars (being amounts generally payable with customs duty). Under s 13-15(1) of the LCT Act, LCT payable by an entity on a taxable supply of a luxury car is attributable to the same tax period to which the taxable supply is attributable under the GST Act.

13 The entity's net amount for a tax period as increased or potentially increased under s 13-5 is then subjected to "adjustments" under s 13-10. Section 13-10(1) commands that if "you have any *luxury car tax adjustments that are attributable to a *tax period applying to you, alter your *net amount for the period" by (a) adding to that net amount for the period the sum of all the increasing LCT adjustments (if any) that are attributable to the period; and (b) subtracting from that net amount the sum of all the decreasing LCT adjustments (if any) that are attributable to the period. By s 13-10(2), an LCT adjustment "must be made within 4 years after the supply or *importation to which the adjustment relates". Under s 13-15(2), an increasing LCT adjustment or a decreasing LCT adjustment is attributable to the same tax period as the adjustment.

14 Division 15 of the LCT Act governs by whom and in what circumstances such increasing LCT adjustments or decreasing LCT adjustments must be made under s 13-10. Section 15-1, an explanatory section subject to s 23-10(1), explains (consistently with s 2-10(2)) that "[c]ircumstances that occur after the supply or importation of a car may mean that too much or too little luxury car tax was imposed" on the supply or importation and that "[a]ccordingly, adjustments are made to increase or decrease the net amount" and "can be made by the supplier, the recipient or the importer, depending on the circumstances".

15 Subdivision 15-B is headed "Change of use adjustments". The two operative provisions within it, ss 15-30 and 15-35, are headed "Changes of use—supplies of luxury cars" and "Changes of use—importing luxury cars" respectively. Though each heading forms part of the LCT Act,[3] and so is to be taken into account in construing the operative provisions, the structure and content of ss 15-30 and 15-35 make clear that the contemplated "change of use" is not a change *from* one use *to* another use but merely use in a tax period for a purpose that is either a quotable purpose (where quoting did not occur at the time of supply or importation) or a purpose other than a quotable purpose (where quoting did occur at the time of supply or importation).

16 Relevantly, ss 15-30 and 15-35 are mirror provisions which provide for LCT adjustments to be made by the recipient or the importer of a luxury car respectively by reference both to whether they quoted on the supply or importation and to the use to which they later put the car. Sections 15-30(1) and 15-35(1) provide for a *decreasing* LCT adjustment if, relevantly, "(b) luxury car tax was payable on the [supply or importation] because you did *not* *quote"[4] for the supply or importation (respectively) and "(e) you have only used the car for a quotable purpose". Sections 15-30(3) and 15-35(3) provide for an *increasing* LCT adjustment if, relevantly, "(b)(i) no luxury car tax was payable on the [supply or importation] because you **quoted*"[5] for the supply or importation (respectively) and "(c) you use[d] the car for a purpose other than a *quotable purpose".[6]

17 The conditions "you [the recipient or the importer of a luxury car] have only used the car for a quotable purpose" (for a decreasing LCT adjustment) and "you use[d] the car for a purpose other than a *quotable purpose" (for an increasing LCT adjustment) are opposites of each other. That is, if you have not "only used the car

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3 *A New Tax System (Luxury Car Tax) Act 1999* (Cth), s 23-1(1).

4 Emphasis added.

5 Emphasis added.

6 Section 15-30(3)(c) refers to "use" rather than "used".

for a quotable purpose", then you have thereby and necessarily used "the car for a purpose other than a *quotable purpose". These opposing conditions, because they relate to the time after supply or importation, do not depend on your intention at the time of supply or importation. They depend on the use that you in fact make of the car. Your use of the car for a purpose (or purposes) will determine whether "you have only used the car for a quotable purpose" and, thereby, will also determine whether "you use[d] the car for a purpose other than a *quotable purpose". Your use of the car for a purpose (or purposes) after the time of supply or importation is a question of objective fact to which evidence of your state of mind will be relevant, but not determinative.

18 Your use of the car for a purpose (or purposes) needs to be determined, as a matter of objective fact, at the requisite level of both generality and specificity in the statutory context. The quotable purposes in s 9-5(1)(a)-(c) indicate the requisite level that the relevant statutory provisions involve. Those quotable purposes are (a) "holding the car as trading stock, other than holding it for hire or lease"; or (b) "*research and development for the manufacturer of the car"; or (c) "exporting the car in circumstances where the export is *GST-free under Subdivision 38-E of the *GST Act".

19 The statutory criterion of fact – the "taxable fact"[7] – for an increasing LCT adjustment under s 15-30(3) or s 15-35(3) is not that "you have [not] used the car for a quotable purpose" but that "you use[d] the car for a purpose other than a *quotable purpose". On the proper construction of the statutory provisions, "you use[d] the car for a purpose other than a *quotable purpose" if you have not "only used the car for a quotable purpose". That is, use of a car for a quotable purpose is not sufficient to preclude liability for an increasing LCT adjustment. The focus is *exclusivity* of the use for a quotable purpose (or quotable purposes). Contrary to the appellant's arguments, the provisions are not capable of being read as requiring: (a) a change of use from use for a quotable purpose to use for a purpose other than a quotable purpose; or (b) a use which is in the alternative to, or inconsistent with, use for a quotable purpose. The relevant use is use by the recipient or importer for a purpose other than a quotable purpose in the tax period, whether it be in addition or in the alternative to the use for a quotable purpose in that period. Either suffices to satisfy s 15-30(3)(c) and s 15-35(3)(c).

20 Having regard to these considerations, none of the appellant's construction arguments can be accepted. Section 5-15(2) relevantly provides that "if luxury car tax has already become payable in respect of the car, the amount of luxury car tax payable on a *taxable supply of a luxury car is: (a) the amount of luxury car tax on

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7 *Federal Commissioner of Taxation v Thomas* (2018) 264 CLR 382 at 415 [84]-[85].

the supply (worked out in accordance with [s 5-15(1)];[8] minus (b) the sum of all luxury car tax that was payable in respect of any previous *importation or supply of the car".[9] Section 5-15(3) provides that "[i]n determining the luxury car tax that was payable in respect of any previous *importation or supply of a *car for the purposes of paragraph (2)(b), take into account *luxury car tax adjustments (if any) other than luxury car tax adjustments made under Subdivision 15-C (bad debts adjustments)". By this means, though there may well be new or extra LCT payable as a result of an increasing LCT adjustment under s 15-30(3) or s 15-35(3), no aspect of that liability involves double taxation.

21 Nor is it the case, as the appellant asserted, that where "the luxury car remains, at all times, trading stock of the taxpayer who quoted, there will be no Subdivision 15-B adjustment called for". This is not the case because, as explained, the statutory factual question requires exclusivity of use for the quotable purpose of "holding the car as trading stock". Contrary to the submissions of the appellant, it is also not the case that, after the two-year period referred to in s 5-10(2)(b), "[a] change of use ... cannot ... be a 'change of use' for Subdivision 15-B purposes". Section 5-5 provides that you "must pay the luxury car tax payable on any *taxable supply of a luxury car that you make" and s 5-10(2)(b) provides that you do not make a taxable supply of a luxury car if, relevantly, "the car is *more than 2 years old". Therefore, as the respondent also accepted, it is correct that the disposal of the car outside this two-year period would not be a taxable supply attracting LCT. However, this does not mean that the adjustment provisions in Subdivs 15-A and 15-B (for which a four-year limit is expressly provided in s 13-10(2)[10]), are also limited by that two-year period. An LCT adjustment may be triggered outside of that two-year period if a quoting entity which avoided LCT being payable on a car upon supply or importation (because that entity quoted under s 9-5) subsequently uses the car for a purpose other than a quotable purpose.

22 In this case, the cars acquired by the appellant did not attract LCT on their acquisition or importation because the appellant quoted its ABN on the basis of it having the intention of using the car for the quotable purpose of "holding the car as trading stock, other than holding it for hire or lease" and for no other purpose (s 9-5(1)). But for the quoting, the cars would have been subject to LCT. Because

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8 Which specifies a formula by which the "amount of luxury car tax payable on a *taxable supply of a luxury car is" calculated.

9 Section 5-15(2) further provides that "[t]he amount of luxury car tax payable on a taxable supply of a luxury car is zero if the amount in paragraph (a) is less than the amount in paragraph (b)".

10 Section 13-10(2) states that "[a] *luxury car tax adjustment must be made within 4 years after the supply or *importation to which the adjustment relates".

the appellant so quoted, no LCT was payable on the acquisition of each car. The other conditions relevantly triggering an adjustment to that position (that no LCT was payable on the acquisition of any car) are: for supplies and importations respectively, that "you were supplied with a *luxury car" or that "you *imported a *luxury car" (s 15-30(3)(a) and s 15-35(3)(a)); and, for both supplies and importations, that "you use[d] the car for a purpose other than a *quotable purpose" (s 15-30(3)(c) and s 15-35(3)(c)).[11] If, for supplies, s 15-30(3)(a), (b) and (c) are met, or, for importations, s 15-35(3)(a), (b) and (c) are met, then you (meaning the appellant in this case) have an increasing LCT adjustment, notwithstanding the two-year period referred to in s 5-10(2)(b). And, as already noted, by s 13-10(2), an LCT adjustment must be made within four years after the supply or importation to which the adjustment relates. It follows that, the appellant having been supplied with or imported each car and having quoted for each car, sub-ss (3)(a) and (3)(b) are satisfied for both supplies and importations. The only issue is if sub-s (3)(c) is also satisfied (that is, "you use[d] the car for a purpose other than a *quotable purpose").

23 It is also not the case that the exclusion from the quotable purpose in s 9-5(1)(a) of "holding it [the car] for hire or lease" supports the appellant's approach. That exclusion merely ensures that intending to hold cars as trading stock for hire or lease is not a quotable purpose.[12] Even if, as the appellant suggested, s 9-5(1) could be read as saying "you have the intention of using the car for one of the following purposes, and for no other quotable purpose" (which it cannot), that construction would not assist the appellant to counter the argument that using the car for the purpose of displaying it as part of a tourist attraction would still constitute use for a purpose other than a quotable purpose outside s 9-5(1).

Use of the cars for a purpose other than "holding the car as trading stock"

24 The analysis undertaken so far is that ss 15-30(3)(c) and 15-35(3)(c) of the LCT Act, on their proper construction, operate to create an increasing LCT adjustment where a recipient or importer of a luxury car who has quoted on the supply or importation of the car in fact uses the car in a tax period for a purpose other than a quotable purpose irrespective of whether that purpose is in addition to or in the alternative to a quotable purpose.

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11 As noted, s 15-30(3)(c) refers to "use" rather than "used".

12 See, eg, *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 585-586 [70]; *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 306 [94].

25 The statutory question whether the appellant's use in the tax periods from June 2016 to November 2017 of the 40 luxury cars previously acquired by it was for a purpose in addition to or in the alternative to the use for a quotable purpose in those periods is a question of fact. What is required to answer it is an objective characterisation of the purpose or purposes of the use itself viewed from the perspective of an independent observer. The question is not answered merely by ascertaining the subjective state of mind of the appellant (which, as the appellant is a body corporate, involves attributing to the appellant the subjective state of mind of the person controlling the appellant).[13]

26 The underlying facts as found by the primary judge, not challenged on appeal, compel the conclusion that the appellant used each car for a purpose other than a quotable purpose in addition to the use of each car for a quotable purpose in each applicable tax period. The additional purpose other than a quotable purpose for which the appellant used each car was the purpose of displaying the car as part of a tourist attraction. As will be explained, while the appellant's use of each car was the same (display of the car), there were two separate purposes of such use for each car, being display as trading stock for sale and display as part of a tourist attraction.

27 To understand the significance of the primary judge's unchallenged factual findings which compel this conclusion, it is necessary to understand the case that the appellant put to the primary judge and the primary judge's conclusions about that case. Once this is understood, it becomes clear that the mere fact that the primary judge did not find Mr Denny, the sole director of the appellant and an experienced car dealer, to have given dishonest evidence about his subjective state of mind is immaterial to the outcome (albeit that the primary judge did reject key aspects of Mr Denny's evidence).

The appellant's case

28 The appellant's case was that the Gosford Classic Car Museum was nothing more than an "enterprising marketing strategy intended to increase the sale and price of the cars".[14] The appellant supported this case with evidence from Mr Denny. In an affidavit, Mr Denny explained that he came across a clever and novel way of marketing vehicles in Las Vegas in or about 2013. This involved a car dealership which had cordoned off a section of a hotel and identified that section as a "museum", with the vehicles arranged to highlight the changing look

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13 *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153 at 170-171. See also *Hamilton v Whitehead* (1988) 166 CLR 121 at 127.

14 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [80].

of them at their different times of manufacture. All cars displayed, however, were for sale. Mr Denny considered that this marketing method gave the impression of each of the vehicles displayed having a greater provenance and value than they might otherwise have. He formed the view that any potential purchaser looking at these vehicles would be more willing to buy at a higher price.

29 On returning to Australia, Mr Denny wished to establish a business of dealing in high-end classic and luxury cars. He also decided to adopt a similar model for selling vehicles to that which he had earlier seen in Las Vegas – to present the vehicles for sale in what would be called a "museum" to differentiate his new dealership from the rest of the market and achieve premium prices for the vehicles for sale.

30 Mr Denny then located a former warehouse site in Gosford and had it developed. The re-developed site included a showroom, memorabilia and merchandise shop, café, and offices. The appellant was licensed in New South Wales as a motor vehicle dealer. According to Mr Denny, the business conducted from these premises employed in total, until its closure, 11 salespeople, six mechanics at its peak, operational staff (who would move the vehicles around as necessary, keep the site clean, and make sure that visitors did not touch the vehicles), and marketing staff (who assisted and worked closely with the salespeople, but were not responsible for selling the vehicles). The marketing staff "were responsible for increasing attendance at the dealership, organising for television media attendances, and placing sale advertisements for the vehicles in magazines and on websites". There were also other staff "responsible for general administration, and selling admission tickets" to the premises.

31 Mr Denny said that, between January 2015 and June 2020, the appellant bought and sold 852 vehicles. The premises (to adopt a neutral term) did not open until 28 May 2016, and before that date the appellant sold vehicles by advertising on the internet. Mr Denny said that "[a]ll of the vehicles in stock on that date [28 May 2016] were for sale prior to the showroom being opened and remained for sale from that time".

32 According to Mr Denny, by "adopting a 'museum' concept and by charging an admission price, [his] main intention was to create a level of exclusivity and attract genuine potential customers", and charging "an admission fee also had the advantage of discouraging 'tyre kickers'".

33 Because of a global downturn in the classic and luxury car market, Mr Denny found it difficult to find purchasers for some of the higher-end vehicles at the price for which he was willing to sell. Accordingly, the appellant ended up holding on to some cars for much longer than Mr Denny would have preferred, and/or sold them for only small margins and sometimes at a loss.

The primary judge's findings

34 The primary judge's findings are set out below.

35 The premises attracted 13,000 visitors in the first month of the premises opening. About a year later, over 100,000 people had visited the premises. Within a short time of opening, there were over 400 vehicles housed in the premises.

36 The appellant's marketing staff promoted the premises as a tourist attraction. The promotions included videos on the appellant's YouTube channel, and evidence adduced at the hearing showed videos of queues lined up at the ticket desk, one-way gates which facilitated entry, visitors walking through lines of vehicles, and interviews with visitors, including children, as well as the merchandise shop and diner. Goods available for purchase at the merchandise shop included such things as model cars and merchandise branded "Gosford Classic Car Museum". The appellant's Facebook page said that the premises were "school holiday fun" and invited viewers to "[b]ring the whole family, there's something for everyone!".

37 The appellant's website also marketed the premises as a desirable location for a "day out" and for a "break" from Sydney and provided links to the websites of various hotels where people might stay in order to visit. The website said, for example, that: (a) the premises were "[n]ot just a museum, we're a car lovers dream. Whether you're a collector, an enthusiast or just a car nut, Gosford Classic Car Museum is the place you want to be"; (b) "Mr Tony Denny and his team viewed approximately 5000 vehicles and hand-selected over 400 rare cars at an investment of $70 million to establish Gosford's curated collection"; (c) "[m]uch like visiting a museum of fine art, the Gosford Classic Car Museum offers the opportunity to explore a curated collection of remarkable pieces, each unique and noteworthy in its own way"; and (d) "[i]t is *part* of the museum's mandate to facilitate the purchase [of] exceptional vehicles. This process allows us to display a rotating selection of fine automobiles for our visitors and members to view and appreciate."[15]

38 Staff at the premises wore uniforms displaying the words "Gosford Classic Car Museum". The staff discussed the vehicles with visitors. The appellant's website said that there "are over 30 hard working and dedicated staff members employed by the museum, as well as 10 passionate volunteers. Many of the staff are motoring enthusiasts themselves and have a vast knowledge of automotive history they are more than happy to share with you."

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15 Emphasis added.

39 Admission to the premises was by purchase of a ticket costing $20 for an adult and $12 for a child and tickets could be purchased online or "at the door". Special events were also held at the premises where admission was by ticket purchase at the usual price, including a "Royal Favourites Exhibition" from 10 to 12 June 2017 (described as a display of models of "trademark Royal classics"), an Australia Day exhibition, a Vintage Fair, and charity days. Some private functions were also held at the premises.

40 The appellant's marketing manager, in a submission for the Central Coast Business Excellence Awards, said that:

> "Gosford Classic Car Museum is a world class, diverse and evolving collection of rare and classic cars offering visitors a unique and inspiring experience of automotive engineering excellence. It is the largest privately owned car collection in Australia and the Southern Hemisphere with 400 motor vehicles on display worth over $60M. The Museum also features an Airstream Cafe and an Automobilia store on site and is earning a reputation as a venue for events staged by external corporations. Gosford Classic Car Museum was recently rated by TripAdvisor as the number one visitor attraction in Gosford and the surrounding Central Coast. In June, just over a year after opening, the 100,000th customer walked through the door."

41 Visitors to the premises typically numbered in the hundreds on weekdays and, on Saturdays and Sundays, at times over a thousand. Typically, the premises would see between one and two thousand visitors a week. By comparison with those numbers, the premises received 10 to 15 car sales inquiries a week.

42 During its first full financial year of operation, the appellant received about $1.32 million in admission fees. Its revenue from the sale of cars in that period (approximately $28,249,359), less the cost of sales ($23,857,392), was approximately $4.39 million.

43 In overall conclusion the primary judge said this:[16]

> "Contrary to the submissions advanced on behalf of the [appellant], the museum was not *solely* an 'enterprising marketing strategy intended to increase the sale and price of the cars'. The charging of admission fees was not a device to discourage 'tyre kickers'. I do not accept Mr Denny's evidence that the admission fees were raised from $16 to $20 because 'we were still getting people that weren't potential buyers coming in' or that when it was 'raised … to $20 there were more affluent people coming

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16 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587-588 [80]-[84] (emphasis in original).

through, more potential for selling the car' or that $16 was rejected in favour of $20 in order to reduce the number of 'tyre kickers' and increase the number of affluent visitors.

As one would expect, the videos suggest that the overwhelming majority of visitors were not visiting the museum to consider a potential purchase of a car at all. Objectively assessed, the museum sought to attract as many visitors as it possibly could and from all walks of life. The museum was a tourist attraction. Indeed, it was spectacular and justifiably successful in attracting customers. It would naturally have attracted many people who were uninterested in buying a car.

...

The [appellant] operated a museum, marketing it broadly to the public, charging substantial admission fees, explaining its exhibits through museum-like display signs, staff and volunteers, providing associated services including the 1950's Airstream diner, operating a substantial physical and online gift shop and engaging in museum-like activities such as demonstrating the engine of the De Havilland Rapide, publishing newsletters and demonstrations of its vehicle or the sound of their engines. The museum activities were marketed and directed to an audience far broader than those who might buy or sell vintage or classic cars.

None of that is to deny that Mr Denny and the [appellant] intended to trade cars through the 'Gosford Classic Car Museum' or that they considered that the museum would assist in maximising the number of sales and the sale price. Mr Denny made clear, as is obvious in any event from the objective facts, that he wanted to profit from the sale of cars and considered that the 'museum concept' would be the best way to achieve that objective. The question though is whether, in implementing the museum concept in the way that it did, the [appellant] 'use[d] the car[s] for a purpose other than a quotable purpose': s 15-30(3)(c), s 15-35(3)(c). The answer is that, in displaying each car in the museum, together with other cars, in the manner described earlier, the [appellant] did use the cars for a purpose additional to holding the cars as trading stock."

The primary judge was correct

44 A key part of the primary judge's findings is his Honour's statement that "[c]ontrary to the submissions advanced on behalf of the [appellant], the museum was not *solely* an 'enterprising marketing strategy intended to increase the sale and price of the cars'". The primary judge also rejected Mr Denny's evidence that: (a) charging of admission fees was a device to discourage "tyre kickers"; and (b) the admission fees were raised because the premises were attracting people

who were not potential buyers and by raising the fees he wanted to attract affluent people who were more likely to buy a vehicle. Every aspect of these conclusions of the primary judge is significant.

45 The primary judge did not have to find Mr Denny to be dishonest to reject the key aspects of his evidence. As the primary judge said, we are all subject to human frailties in terms of recollection, including the "pull, even if subconscious, towards self-interest".[17] While not cited, this is an obvious reference to the ongoing significance of the observations of McLelland CJ in Eq in *Watson v Foxman*.[18] Those observations, while focused on the recollection of conversations, apply generally to the function of memory and recall. Adapting his Honour's observations in *Watson* for that more general purpose, it may be said that "human memory ... is fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time, particularly where disputes or litigation intervene, and the processes of memory are overlaid, often subconsciously, by perceptions or self-interest as well as conscious consideration[s] ... All too often what is actually remembered is little more than an impression from which plausible details are then, again often subconsciously, constructed. All this is a matter of ordinary human experience."[19]

46 In both rejecting specific aspects of Mr Denny's evidence about his intentions and states of mind at the relevant times and saying that "[c]ontrary to the submissions advanced on behalf of the [appellant], the museum was not *solely* an 'enterprising marketing strategy intended to increase the sale and price of the cars'", the primary judge was doing two important things.

47 First, the primary judge was rejecting Mr Denny's evidence that his subjective intention had been to use the museum concept (and thus to use the vehicles displayed in the museum) *only* for the purpose of attracting genuine potential buyers of the vehicles. Once that evidence was rejected, the unstated but necessary inference the primary judge must have drawn is that Mr Denny in fact intended to use the museum concept (and thus to use the vehicles displayed in the museum) to attract people generally to the premises, including (but not limited to) genuine potential buyers of the vehicles. It is true that the primary judge did not expressly identify this inference, but: (a) the inference inevitably follows from the rejection of Mr Denny's evidence that his subjective intention had been to use the museum concept *only* to attract genuine potential buyers of the vehicles; (b) the

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17 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [79].

18 (1995) 49 NSWLR 315.

19 (1995) 49 NSWLR 315 at 319.

inference is obvious and compelling on the evidence summarised above; and (c) some allowance must be made for the fact that the primary judge gave *ex tempore* reasons for judgment after four days of hearing. Even if the primary judge had reserved the decision, it is not to be expected that, having stated the negative proposition (ie, not accepting these aspects of Mr Denny's evidence about his past subjective state of mind), his Honour would have considered it essential also to state the inevitable corresponding positive proposition (Mr Denny was *also* intending to attract people generally to the premises, including but not limited to genuine potential buyers of the vehicles).

48 Second, the primary judge, consistent with orthodoxy in the context of the concept of a use for a purpose,[20] was ultimately making an objective characterisation of the overall facts, at the requisite level of generality and specificity for the statutory purpose. That objective characterisation was that the appellant was simultaneously using each of the cars for two purposes – the purpose of display as trading stock for sale and the purpose of display as part of a tourist attraction. There is nothing peculiar about one physical use (display) being for two (or more) separate purposes.[21] His Honour's statement at [84] of his reasons that "[n]one of that is to deny that Mr Denny and the [appellant] intended to trade cars through the 'Gosford Classic Car Museum' or that they considered that the museum would assist in maximising the number of sales and the sale price. Mr Denny made clear, as is obvious in any event from the objective facts, that he wanted to profit from the sale of cars and considered that the 'museum concept' would be the best way to achieve that objective", in context, is to be understood as accepting that this was indeed a purpose of Mr Denny. It was not, however, the exclusive purpose of Mr Denny, as his Honour's conclusions at [80] expose.

49 In the context of the provisions of the LCT Act, moreover, the concept that a use for one purpose may be ancillary or subservient to a use for, relevantly, a quotable purpose under the LCT Act has a confined function because the relevant statutory requirement is *exclusivity* of use – as conveyed by the opposing but related provisions of "you have only used the car for a quotable purpose" (s 15-30(1)(e) and s 15-35(1)(e)) and "you use[d] the car for a purpose other than a *quotable purpose" (s 15-30(3)(c) and s 15-35(3)(c)).

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20 See, eg, *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* (2024) 98 ALJR 808 at 810-811 [3], 816-817 [34]-[36], 819-822 [54]-[67].

21 eg, *Sonter v Commissioner of Land Tax (NSW)* (1976) 7 ATR 30 at 34-35. See also *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* (2024) 98 ALJR 808 at 819-820 [56]-[57].

50 In *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation*[22] the conclusion of exclusive use of the land for the charitable purpose depended on the facts enabling the farming activities to be characterised, as a matter of objective fact, as a mere incidental and subsidiary means to the end of the charitable object of the boys' reformatory home. The relevant findings included that the purpose of all of the farming activities was to train the boys and the profits from the farming activities defrayed the cost of running the boys' reformatory home.[23] Further, as Dixon, Williams and Webb JJ observed:[24]

> "There is nothing in the evidence to suggest that the appellant is carrying on the farming activities to a greater extent than is reasonably necessary to achieve the above purpose or that under the cloak of this purpose it is really engaged in carrying on the business of a farmer for the purposes of gain. There is no reason to doubt the evidence of Brigadier Leggett that it is necessary to pursue a variety of activities to interest the various types of boys sent to the institution."

51 That is, the objective nature of the farming activities (their scale, intensity, and output) supported their objective characterisation as a mere incidental means to the single charitable end of the boys' reformatory home.

52 Similarly, as Windeyer J (with whom Dixon CJ and Kitto J agreed[25]) said in *Randwick Corporation v Rutledge*, "[t]he words 'exclusively' and 'solely' are familiar in fiscal and rating law. Where an exemption from rating depends upon the use of land exclusively for a particular stated purpose, then the use must be for that purpose only. ... The presence of 'exclusively', 'solely', or 'only' always adds emphasis; and is not to be disregarded. ... [S]uch words confine the use of the property to the purpose stipulated and prevent any use of it for any purpose, *however minor in importance, which is collateral or independent, as distinguished from incidental to the stipulated use*."[26] To the same effect, in *Ryde Municipal Council v Macquarie University* Gibbs A-CJ explained that, in respect of a use only for a charitable purpose, "if the use which the charity makes of the land is *'wholly ancillary to', or 'directly facilitates'*, the carrying out of its charitable

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22 (1952) 85 CLR 159.

23 (1952) 85 CLR 159 at 165, 170-171.

24 (1952) 85 CLR 159 at 171.

25 (1959) 102 CLR 54 at 61.

26 (1959) 102 CLR 54 at 93-94 (citations omitted, emphasis added). See also *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* (2024) 98 ALJR 808 at 819 [54].

objects, that is sufficient to satisfy the requirements that the premises are used for charitable purposes. If, on the other hand, *the use is only 'collateral' or 'additional' to the purposes* which give the charity its character as such, the land will not be used for the purposes of the charity."[27]

53 As recognised in *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue*,[28] where a statutory provision requires a use for a single purpose only, the concept that a use for one purpose may be "ancillary" or subservient to a use for another purpose is apt to mislead. The same use for another purpose, no matter how minor, takes the facts outside of the scope of the required use for a single purpose only unless, on the facts as found, it can be concluded that the other purpose is "wholly ancillary to or directly facilitative" of the single purpose and is not "an additional, independent or collateral purpose".[29]

54 The appellant's purpose of using the cars (by displaying them at the premises) as part of a tourist attraction cannot be said to be "wholly ancillary to or directly facilitative" of the single required use of the cars (by displaying them at the premises) for the purpose of holding the vehicles as trading stock. Nor can that purpose – the display of the cars as part of a tourist attraction – be said not to be an "additional, independent or collateral purpose". On the primary judge's unchallenged findings, the use of the cars (by displaying them at the premises) was manifestly use of the cars by the appellant for two separate (albeit complementary) purposes – as part of a tourist attraction and holding them as trading stock.

55 The appellant's contrary arguments must all be rejected. It is immaterial that no admission fee paid is able to be related to any individual car. The admission fee was payable for the right to see each and every car. It is irrelevant that a particular car may not have been on display on any given day and that the display was of rotating stock. That was part of the use for each separate purpose – to have new vehicles for visitors to see as part of the tourist attraction and new stock for potential customers to buy. It is not to the point that the planning law characterisation of the premises was as a showroom. The LCT Act is not a planning law. It is true that the LCT Act must be applied on a vehicle-by-vehicle basis, but that makes no difference to the outcome in this case as all cars in issue were displayed at the premises for the two separate purposes. It does not matter that every vehicle *continued to be* held as trading stock, because that continued use for

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27 (1978) 139 CLR 633 at 643 (citations omitted, emphasis added). See also *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* (2024) 98 ALJR 808 at 820 [59].

28 (2024) 98 ALJR 808.

29 (2024) 98 ALJR 808 at 822 [67].

a purpose may or may not be exclusive (and here it was not exclusive). Nor does it matter that Mr Denny wanted to sell every vehicle for the maximum amount possible, because this too may co-exist with both another intention and use for another purpose (and here it did). On the primary judge's unchallenged findings: (a) Mr Denny also subjectively wanted the appellant to display each vehicle as part of a tourist attraction; and (b) irrespective of Mr Denny's subjective intention, the appellant did in fact display each vehicle as part of a tourist attraction. That use for an additional purpose engages the increasing LCT adjustment liability. Finally, the LCT Act must be construed not in accordance with some superimposed policy reflecting the general scheme of the LCT Act, but in accordance with the terms of its provisions. Those provisions expressly enable LCT adjustments to be made by reference to circumstances after the importation or supply of the car and irrespective of the subjective intention of the importer or recipient, whether at the time of importation or supply or over the relevant tax period.

Conclusion

56 In addition to the issue concerning the liability of the appellant to pay LCT, there is an issue concerning the liability of the appellant to pay GST. However, it was common ground before the primary judge and the Full Court and on appeal to this Court that the GST issue follows the resolution of the LCT issue.[30] Accordingly, the appeal should be dismissed with costs.

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30 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 304 [83].

57 EDELMAN, STEWARD AND GLEESON JJ. This appeal concerns the ingenuity of humans in selling goods, here cars, and the imposition of luxury car tax ("LCT") as well as goods and services tax ("GST"). It is also a case about characterising the purpose underlying that ingenuity. The appellant carried on a business of acquiring and then selling luxury and collectable cars at Gosford in New South Wales. The appellant used the novel technique, designed only as a means to attract purchasers, of displaying many of the cars in a "car museum". This appeal is concerned with 40 of those cars. Almost all of these were eventually sold by the appellant either to other dealers or to collectors or consumers. Ordinarily, a car dealer becomes liable to pay LCT (or GST) when it sells a car at the "retail level" to a consumer. The burden of this liability is then offset by receipt of the sale price of the car.

58 This is not how the appellant has been assessed here. The factual premises of the LCT and GST assessments served on the appellant were that each car was (i) used for the purpose of holding the car as trading stock, and (ii) also used for the additional purpose of being displayed as an exhibit in a car museum. That second premise misunderstood the concept of purpose in an LCT and GST assessment, which is concerned with the taxpayer's ultimate end or object. The use of the cars as exhibits in a car museum was intended by the appellant only as a means to the ultimate end or object of using the cars as trading stock, ie, selling them. The evidence of subjective purpose from the controlling mind of the appellant was uncontradicted, supported by substantial objective evidence, and accepted by the primary judge. The second premise mischaracterised the appellant's purpose for acquiring and then holding the 40 cars, treating it as an objective purpose abstracted from the appellant itself. For the reasons which follow, this appeal must be allowed with costs.

The assessments and the operation of LCT and GST

59 The appellant was issued with a single notice of amended assessments of net amounts for the tax periods commencing from 1 April 2016 to 30 November 2017. The aggregate of LCT and GST payable was $6,164,613. The appellant objected and pursued its objection and appeal rights under Pt IVC of the *Taxation Administration Act 1953* (Cth).

The imposition of LCT

60 Until 1999, wholesale sales tax was generally imposed on motor cars, but a higher rate of tax was imposed on cars deemed to be luxury vehicles. Upon the introduction of the GST, all of Australia's sales tax enactments were repealed and the sale of cars instead became subject to this new indirect tax. A separate luxury car tax was also created by the enactment of the *A New Tax System (Luxury Car Tax) Act 1999* (Cth) ("the LCT Act"). The Explanatory Memorandum which

accompanied the introduction of the Bill which became the LCT Act described the new tax as follows:[31]

> "It is a single stage tax that is imposed on taxable supplies and importations of luxury cars and is *in addition* to any goods and services tax (GST) that may be payable, but is not levied on top of the GST."

61 A critical design feature of the tax is that car dealers, such as the appellant, ordinarily do not become liable to pay LCT until a car is sold (or imported) "at the retail level".[32] This is achieved by the dealer quoting its Australian Business Number ("ABN") when acquiring or importing a car. Thus s 2-5(2) of the LCT Act provides:

> "There is a system of quoting which is designed to prevent the tax becoming payable until the car is sold or imported at the retail level. (Division 9)"

62 The scheme of the LCT Act is that LCT is paid on "any *taxable supply of a luxury car that you make".[33] Section 5-10 of the LCT Act defines when a person makes a taxable supply. Generally, it is when a luxury car is supplied in the course or furtherance of an enterprise which is carried on and the taxpayer is registered (or required to be registered) under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("the GST Act"). The phrase "luxury car" is defined;[34] it is not in dispute that all of the 40 cars were cars of this kind. Section 5-10(2) of the LCT Act excludes the supply of a luxury car from being a taxable supply where the recipient "quotes" for the supply of the car; or where the car is more than two years old; or where the car is exported in certain circumstances.

63 Division 9 of Pt 2 of the LCT Act deals with the topic of quoting. Section 9-1 describes what the Division is "about" as follows:

> "In certain circumstances you can quote for a supply or importation of a luxury car and not pay the luxury car tax. This is designed to avoid the

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31 Australia, House of Representatives, *A New Tax System (Luxury Car Tax) Bill 1999*, Explanatory Memorandum at 5 [1.1] (emphasis in original).

32 Australia, House of Representatives, *A New Tax System (Luxury Car Tax) Bill 1999*, Explanatory Memorandum at 5 [1.2].

33 *A New Tax System (Luxury Car Tax) Act 1999* (Cth), s 5-5.

34 *A New Tax System (Luxury Car Tax) Act 1999* (Cth), s 25-1.

> luxury car tax becoming payable unless the car is sold or imported at the retail level."

64 Section 23-10(2) of the LCT Act provides that explanatory sections, such as s 9-1, form part of the Act and, whilst they are not operative provisions, they may for certain purposes be used as an aid to construction of an operative provision. Section 9-5(1) sets out when a person is entitled to quote an ABN in relation to the supply or importation of a luxury car. It provides:

> "You are entitled to *quote your *ABN in relation to a supply of a *luxury car or an *importation of a luxury car if, at the time of quoting, you have the intention of using the car for one of the following purposes, and for no other purpose:
>
> (a) holding the car as trading stock, other than holding it for hire or lease; or
>
> (b) *research and development for the manufacturer of the car; or
>
> (c) exporting the car in circumstances where the export is *GST-free under Subdivision 38-E of the *GST Act."

65 The "you" to which s 9-5(1) refers is the taxpayer. The "intention" to which s 9-5(1) refers is the taxpayer's intention. And the "purpose" to which s 9-5(1) refers is the taxpayer's purpose.

66 If a person quotes in circumstances where there is no entitlement to do so, the quote is "nevertheless effective", unless the person to whom the quote is made (typically, the car dealer's supplier) has reasonable grounds for believing that: there was no entitlement to quote; or the quote has not been made in the approved form; or the quote was misleading in a material particular.[35] There was no suggestion here that the quotes made by the appellant in relation to the 40 cars were not "effective", although the respondent ("the Commissioner") otherwise contends that there was no entitlement to quote in respect of some of the cars.

67 Division 13 of Pt 3 of the LCT Act deals with the payment of LCT. In general terms, amounts of LCT for a given period are added to a person's "net amount" for the purposes of the GST Act.[36] The net amount may be increased by

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35 *A New Tax System (Luxury Car Tax) Act 1999* (Cth), ss 9-20 and 9-25.

36 *A New Tax System (Luxury Car Tax) Act 1999* (Cth), s 13-5.

any "increasing luxury car tax adjustments" or decreased by any "decreasing luxury car tax adjustments".[37]

68 Division 15 of Pt 3 of the LCT Act deals with these adjustments. Section 15-1 explains what this Division is "about" in the following terms:

> "Circumstances that occur after the supply or importation of a car may mean that too much or too little luxury car tax was imposed. Accordingly, adjustments are made to increase or decrease the net amount. Adjustments can be made by the supplier, the recipient or the importer, depending upon the circumstances."

69 Section 15-30(3) of the LCT Act sets out when a person has an "increasing luxury car tax adjustment". It provides:

> "You have an increasing luxury car tax adjustment if:
>
> (a) you were supplied with a *luxury car; and
>
> (b) either:
>
> (i) no luxury car tax was payable on the supply because you *quoted for the supply; or
>
> (ii) you had a decreasing luxury car tax adjustment under subsection (1); and
>
> (c) you use the car for a purpose other than a *quotable purpose."

70 The phrase "quotable purpose" is defined in s 27-1 of the LCT Act to mean "a use of a *car for which you may *quote under section 9-5". The amount of the adjustment is relevantly the amount of luxury car tax that the supplier of the car would have had to pay if the taxpayer had not quoted for the supply.[38] There is an equivalent to s 15-30(3) for cases where a car is imported.[39]

71 The language of s 15-30(3) is consistent with the occurrence of some event or circumstance which takes place after the supply of a car in respect of which the taxpayer had previously quoted. That is consistent with the reference in s 15-1 to

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37 *A New Tax System (Luxury Car Tax) Act 1999* (Cth), s 13-10.

38 *A New Tax System (Luxury Car Tax) Act 1999* (Cth), s 15-30(4)(a).

39 *A New Tax System (Luxury Car Tax) Act 1999* (Cth), s 15-35(3).

circumstances that occur "after the supply" and the language in s 15-30(3)(a) "you were supplied".

The imposition of GST

72 The parties agreed that the appellant's GST liability turns upon whether the appellant was entitled to quote its ABN for the purposes of the LCT Act.[40]

The evidence and the facts found

73 Most of the facts were not in dispute in this Court. They were efficiently distilled below by the majority of the Full Court of the Federal Court of Australia. Mr Denny controlled the appellant. He had previously operated around 40 car dealerships in Europe, selling mostly used cars, and for that purpose had deployed a range of marketing activities, such as cafe lounges, cinemas and golf-practice driving ranges at dealerships.

74 In 2013 Mr Denny discovered a novel way of selling cars at a hotel in Las Vegas. A dealership was using a section of the hotel to display a collection of classic cars. Even though all of the cars were for sale, the section was referred to as a "museum" and the vehicles were arranged to highlight their changing look over time. This is what Mr Denny said in his evidence:

> "I ... decided ... that I would adopt a similar model to selling vehicles to that which l had earlier seen in Las Vegas – to present the vehicles for sale in what would be called a 'museum' to differentiate my new dealership from the rest of the market and achieve premium prices for the vehicles for sale. I also thought using the term 'museum' in the proposed business name would pique interest in the dealership both in Australia and, as importantly, overseas."

75 Mr Denny formed the view, rightly or wrongly, that:[41]

> "[A]ny potential purchaser looking at these vehicles, placed within premises containing a number of other distinguished vehicles, would be more likely to be immediately impressed with the vehicle and more willing to buy at a higher price."

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40 *A New Tax System (Goods and Services Tax) Act 1999* (Cth), s 69-10.

41 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 301 [64].

76 Mr Denny considered that holding vehicles for display in a museum would help distinguish his dealership from competitors and assist in achieving premium prices from collectors and consumers both here and overseas of high-end classic and luxury cars which he intended to sell. This was called the "museum concept". As the primary judge observed:[42]

> "Mr Denny made clear, as is obvious in any event from the objective facts, that he wanted to profit from the sale of cars and considered that the 'museum concept' would be the best way to achieve that objective."

77 The museum opened in Gosford, New South Wales in 2016. Until its closure in 2019, the appellant, which held a licence to sell motor vehicles, sold over 800 cars with gross sales income amounting to $114 million. It was accepted that all of the 40 cars were the appellant's trading stock; they were all for sale.[43] None of the 40 cars were on permanent display. The appellant operated trading stock software to record the purchase and sale of vehicles and to manage invoices and stock levels. All vehicles had a stock number. A spread sheet entitled "Sold Stock Report" listed all of the cars sold. They included exotic cars such as a Ferrari Testarossa and a Mustang Shelby. Sales prices varied greatly. One car, an Aston Martin DB5, sold for $1,550,000; in contrast, an AWZ P70 sold for only $1,150. The appellant made profits and losses. In the first full financial year of operation its net revenue from car sales was $4.39 million. It had a sales office at the premises. It also sold cars online.

78 The evidence revealed that this business unquestionably took place within a car museum in accordance with Mr Denny's intentions. The display of the cars took place within all of the expected attributes of a museum housing rare and luxury vehicles. Photos contained within the reasons of the primary judge amply bear this out. They show signage on the front of the building that bears the name "Gosford Classic Car Museum". They show that inside the building, cars are lined up behind ropes; there is a gift shop; there is a ticket shop; there is a diner; there are tables and chairs to eat at; and there is a queue to get in.

79 The appellant marketed the museum as a tourist attraction through its website and in social media; it was said to be a desirable "day out" from Sydney. The website proclaimed that it was not just a museum: "we're a car lovers dream". It attracted 13,000 visitors in its first month, and thereafter about 2,500 per week; in about its first year it attracted 100,000 visitors. No doubt most of these were

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42 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 588 [84].

43 All, or nearly all, of the other cars were also held as trading stock.

attending the premises as museum visitors and not as car buyers. In comparison, the premises received only 10 to 15 car sales inquiries per week. The venue could be used for functions and weddings. At first, the website did not state that cars were for sale nor was there at that time prominent signage in the museum stating that cars were for sale, although Mr Denny gave evidence, accepted below, that this was all part of his "marketing strategy". Over 30 employees and 10 volunteers worked at the museum. They were available to discuss the cars. Some of these were devoted to marketing the premises as a museum. In contrast, only about five sales staff would be at the premises. In 2017, a monthly newsletter describing events and cars began to be published.

80 The appellant made arguably contradictory statements about the sale of cars on the premises. In 2016, for example, the website said that only excess stock was for sale. A Statement of Environmental Effects prepared on behalf of the appellant in 2017 said that only "most" of the cars were for sale. Not all cars displayed the "Form 5" notice required by law for the sale of second-hand cars; or if they did, they were not visible or not easily visible. However, Mr Denny's evidence was that 98% of the cars were for sale and the reason that the other 2% were not for sale was that some cars had already been sold but "nearly every car we sold would stay with us for two to four weeks before we were paid in full". Indeed, a business plan in January 2016, prepared by Fortunity Group Pty Ltd for the appellant, explained that all cars in the premises would be for sale. After the Commissioner indicated an interest in the business, signage making it clear that cars were for sale became more prominent. In the accounts for the 2016 year, but prepared in 2020, the "principal activities" of the appellant were described as the "Retail Sale of Vehicles".

81 The foregoing evidence about the use of the premises, and the extent of cars sold at the premises, thus tended to support Mr Denny's evidence that his sole reason for employing the museum concept was as a means to achieve his ultimate object or end of selling cars. Indeed, five further matters reinforced Mr Denny's evidence that this was the sole reason for the use of the museum concept.

82 First, it was accepted that, at the premises, all of the 40 cars the subject of this appeal were for sale; they were trading stock. There was also no suggestion that any of the "classic motor vehicles" were unavailable for sale. To the contrary, classic car auctions were run from the premises. Therefore, it did not detract from Mr Denny's evidence about his purpose whether or not there were some cars that remained on the premises for a period after they had been sold and during which time they were used only as displays to attract customers.

83 Secondly, making the premises appear as much as possible to be a museum and not an ordinary car dealership was precisely Mr Denny's intended way of advancing Mr Denny's method of selling cars. The more spectacular the premises

appeared, and the less that it appeared like an ordinary car dealership, the more people would be attracted to the premises, the more publicity that the premises would receive, and the more cars would be sold:[44]

> "The absence of ... signage at that time was consistent with Mr Denny's desire to create an impression that the Museum was not a car saleyard."

84 Thirdly, this is not a case about distinctly different uses of the same property; nor is it a case of clashing or inconsistent uses. The display of cars in a museum was precisely the appellant's means of selling those cars:[45]

> "Mr Denny's oral evidence was that, by increasing visiting rates, he increased sales because '[w]ithout visitors, you don't have sales' but, to avoid being a 'typical used car dealer', he refrained from describing the Museum as 'a showroom with cars for sale'. The Museum was 'about making money ... It's all about moving the metal, selling the cars'."

85 Fourthly, to the extent that the museum might be treated as a separate business, there was evidence that the museum made a loss. The evidence comprised a "marked up notation" prepared by an in-house bookkeeper in response to a draft Australian Taxation Office document. It recorded that in the nine months to 31 March 2017 income from the museum was less than associated overheads and operational expenses. The document was tendered by the Commissioner into evidence, but he disputed its correctness. If it was inaccurate, however, it was for the Commissioner to demonstrate this, even though the onus was otherwise generally on the appellant to demonstrate that the assessments issued to it were excessive or otherwise incorrect.[46] At the very least, the document is uncontradicted evidence that the museum made a loss for the nine months to 31 March 2017.

86 Fifthly, the revenue from the museum was, and remained, only a tiny fraction of the revenue from the sale of the cars. As senior counsel for the appellant observed, if we assume that the gross revenue in the first year from museum admission fees of $1.32 million had been maintained over four years (amounting

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44 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 308-309 [107].

45 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 302 [70].

46 *Allied Pastoral Holdings Pty Ltd v Commissioner of Taxation* [1983] 1 NSWLR 1 at 11; *Taxation Administration Act 1953* (Cth), s 14ZZO.

to a total of $5.28 million), this sum was negligible when compared to the gross revenue of $114 million from the sale of cars.

87 In light of these five matters it is unsurprising that the unchallenged finding of the primary judge was:[47]

> "Mr Denny ... wanted to profit from the sale of cars and considered that the 'museum concept' would be the best way to achieve that objective."

88 There was only one aspect of Mr Denny's evidence which the primary judge rejected. It concerned the reason for increasing fees for admission to the appellant's museum. Adults were charged $20 each, which was increased from an initial $16 charge. Mr Denny gave evidence that the appellant increased the fees to discourage "tyre kickers" from visiting and to encourage more affluent people to attend who might be more likely to buy a car. The primary judge rejected this explanation, concluding, in effect, that the admission fees were charged, and were increased, in order to raise income to support this means of selling cars.[48] The fees certainly generated income: $1.32 million in the first full financial year. But the fees generated in the years which followed are unknown because, perhaps consistently with the appellant's intended use of the cars, the appellant did not at the time separately account for the income and expenses of the museum.

89 The rejection by the primary judge of Mr Denny's evidence about the reason for increasing fees to the museum did not in any way undermine the primary judge's finding that the museum concept was chosen by Mr Denny only as the way for the appellant to achieve its objective of selling cars. This finding was unchallenged in the Full Court. The effect of this unchallenged finding of the primary judge was that, as Logan J observed in the Full Court:[49]

(a) Mr Denny, and thus the appellant, "intended to trade cars through the 'Gosford Classic Car Museum'"; and

(b) "they considered that the museum would assist in maximising the number of sales and the sale price".

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47 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 588 [84].

48 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [80].

49 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 293 [22].

90 No doubt if the museum activity had generated significant profits, or profits larger than that of selling cars, it might have been more difficult to accept as true or accurate that Mr Denny's reason for the museum concept was solely to sell cars. If profits had been made from the museum then that fact might have been forensically deployed to invite the primary judge not to believe Mr Denny's evidence and to conclude that the museum was an endeavour in its own right, not merely a clever marketing ploy to sell cars. The larger the profits the more forensic potency such an argument might have had. But the fact is that, for the purposes of this appeal, Mr Denny's evidence was accepted, save for the explanation given about increasing fees for entry into the museum.

91 The uncontradicted evidence is that following the decision of the United Kingdom of Great Britain and Northern Ireland to leave the European Union, prices for classic and luxury cars began to decline in that prominent market. This affected the global market, making it more difficult for the appellant to find buyers for his cars at the right price. Following the Commissioner's decision to assess the appellant, the appellant decided in 2019 to close down the Gosford showroom and museum. There was no suggestion that continuation of the "museum concept" as an independent venture was even considered. The obvious inference is that, in the absence of a business of selling cars, the appellant no longer had any use for a museum. This provides still further support for the uncontradicted finding of the primary judge that the purpose or object of the appellant was to sell cars; the museum was only a means of achieving that purpose.

The Commissioner's case and the reasoning of the primary judge

92 The Commissioner contended that in respect of all 40 cars there was an "increasing luxury car tax adjustment" within s 15-30(3). The Commissioner accepted that for most of the 40 cars, acquired after the appellant had commenced its car museum, nothing of relevance to the imposition of LCT changed from the time of their acquisition until their eventual sale. For a minority of the cars, according to the Commissioner, there was a relevant change in circumstances; these had been acquired before the appellant had commenced its car museum.

93 The basis for the Commissioner's contentions was that a car dealer is only entitled to quote its ABN, with the result that no LCT is payable on acquisition of a car by the dealer, if its sole purpose, relevantly here, is to hold the cars as trading stock and that remains its sole purpose. Here, the Commissioner argued, the appellant was not entitled to quote in relation to the 40 cars because, whilst they were held as trading stock, they were always going to be used, or came to be used, for the purpose of being displays in a museum. The Commissioner submitted that the purpose of using the cars in a museum was not an additional purpose that was a "quotable purpose".

94 The appellant advanced two contentions before the primary judge. The first was that the museum was no more than a unique and inventive means of selling stock, and that the cars were held solely as trading stock. The second was that the word "other" in the phrase "for no other purpose" in s 9-5(1) of LCT Act should be construed as meaning "alternative" rather than "additional". It was submitted that using the cars in the museum was an additional, and not an alternative, purpose.

95 Both of the appellant's contentions were rejected by the primary judge. As to the first, the primary judge held that the purpose of an activity is the end that is sought to be accomplished by it, and not the reasons for engaging in that activity.[50] The primary judge said that the characterisation of purpose was "an objective characterisation" and that the most reliable method of determining the end to be accomplished was to draw inferences from the objective facts, without excluding subjective evidence which might properly inform an assessment of purpose.[51] The primary judge found that the 40 cars were being used for another purpose which his Honour did not specify, but which, inferentially, was the operation of a museum. Whilst accepting that the appellant's "primary commercial objective" was to sell cars, the primary judge concluded that the "museum component of the [appellant's] activities was substantial ... [It] gave rise to significant revenue."[52]

96 This "objective" approach to purpose that was taken by the primary judge informed his Honour's conclusion that "[c]ontrary to the submissions advanced on behalf of the [appellant], the museum was not *solely* an 'enterprising marketing strategy intended to increase the sale and price of the cars'".[53] The conclusion concerning the objective characterisation that was reached by the primary judge was informed by the primary judge's reasoning that the admission fees charged for the museum were to raise income and not (as Mr Denny had said) merely a device to discourage "tyre kickers". But the raising of income from admission fees to the museum to offset some of its costs was also consistent with Mr Denny's evidence that the museum was, for him, only a means to an end or subsidiary. In reaching

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50 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [78].

51 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [77], [79].

52 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 588 [87].

53 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [80] (emphasis in original).

his conclusion as to the objective assessment of purpose, the primary judge was not making a finding (contrary to his Honour's later acceptance of Mr Denny's primary commercial purpose) that Mr Denny's uncontradicted evidence in this respect, strongly supported by the five matters described above, was untruthful or had not been genuinely held. The primary judge was, instead, placing little weight upon that evidence.

97 As to the second contention, the primary judge found that the phrase "for no other purpose" and the word "other" were not ambiguous.[54] The legislative scheme was clear. If there exists a second purpose for using a car, which is not a quotable purpose, then "the taxpayer cannot quote".[55] In that respect, the primary judge accepted that one of the statutory objectives of the LCT Act was to ensure that LCT was levied at the "retail level".[56] But that was not the only object. Another was to impose tax at an earlier point where a car is intended to be used for an additional purpose, which is not a quotable purpose, or is in fact so used after acquisition.[57] It was thus unnecessary to "read down" the LCT Act so that it should conform to some assumed primacy of purpose.[58]

The reasoning of the Full Court

98 The majority of the Full Court of the Federal Court upheld the judgment and reasoning of the primary judge. They first rejected the appellant's contention that the phrase "for no other purpose" meant no alternative purpose. In that respect, they observed that the LCT Act did not define a "retail" sale and that there was no

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54 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 585 [68].

55 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 585 [68].

56 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 586 [71].

57 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 586 [73].

58 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 586 [72], [75], citing *Brayson Motors Pty Ltd (In liq) v Federal Commissioner of Taxation* (1985) 156 CLR 651 and *Certain Lloyd's Underwriters v Cross* (2012) 248 CLR 378.

basis for importing into s 9-5(1) the idea of taxing only such a sale.[59] They also observed that s 9-5(1) did not distinguish between a dominant or main purpose and a subsidiary purpose.[60] Thus, to be entitled to quote here required an intended and then actual use of cars solely as trading stock.[61]

99 It followed that the majority were of the view that the question to be asked was: (i) whether the use of the cars as displays in the museum was a further or additional use for a purpose other than the use of the cars for the purpose of "holding the car[s] as trading stock"; or (ii) whether the use of the cars as displays in the museum was no more than part of the use of the cars for the purpose of "holding the car[s] as trading stock".[62] The majority observed that this was an issue of fact and degree.[63]

100 The majority accepted that the deployment of a novel manner of displaying cars would not necessarily mean that they were being used for a purpose other than that of being held as trading stock.[64] However, the majority considered that the novel method deployed achieved a commercial purpose "in and of itself by attracting as many visitors as possible".[65] Mr Denny's evidence, that he wanted to "move the metal" and secure the best prices for those sales, was characterised as going to his motive in having the appellant display the cars, as distinct from the

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59 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 306 [95].

60 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 306 [96].

61 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 306 [98].

62 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 307 [99].

63 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 307 [100].

64 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 307 [101].

65 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 307 [102].

end sought to be accomplished, which was, according to the majority, "attract[ing] visitors to [see] the [museum] collection".[66] Thus, the majority reasoned:[67]

> "Whatever Mr Denny as the controlling mind of the appellant thought he was doing, or whatever character might be attributed to the use of the premises for local government purposes, and irrespective of whether the premises constituted a museum *stricto sensu*, the scale and nature of the appellant's activities resulted in each of the cars being held as more than trading stock."

101 Logan J dissented. His Honour was of the view that it was incongruous for tax to be imposed before cars are sold at the retail level whilst they remained trading stock.[68] Given that the LCT Act imposed a single stage tax, it was appropriate to exclude uses which are merely incidental or subservient to a continuing use of a car as trading stock and to exclude that which is merely a means to an end.[69] Given the acceptance of Mr Denny's evidence as to how the museum was to be deployed to assist his business of selling cars, Logan J concluded that the museum was only ever a means of achieving that end. His Honour also concluded that the scale of the museum, and the appointment of staff as, for example, a "curator", were just aspects of the "museum concept".[70] Logan J concluded:[71]

> "To focus, with respect, as did the primary judge, and in submissions the Commissioner, on aspects of promotional literature, staff titles and

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66 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 309 [109].

67 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 309 [110].

68 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 295 [35].

69 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 296 [36], 298 [44].

70 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 298-299 [51]-[52].

71 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 299 [54].

display in isolation is to fail to discriminate between an overarching end and its incidental means."

102 With respect, as explained in more detail below, that reasoning and conclusion is correct.

The grounds of appeal in this Court

103 The appellant had three grounds of appeal. The first complained of error in failing to apply the underlying legislative policy of the LCT Act; the second complained that s 9-5(1) should not have been treated as determining how s 15-30(3) was to apply; and finally, the appellant complained that the Full Court wrongly rejected the appellant's contention that the concept of a "retail" sale should be imported into s 9-5(1).

104 In argument, the appellant distilled its grounds of appeal into two claims. First, and most simply, it embraced the reasoning of Logan J. It emphasised that all of the cars were held as trading stock. The "museum concept" was a means of marketing the appellant's trading stock. Secondly, it claimed that s 9-5(1) should be read as excluding alternative, but not additional, purposes of using cars which are held as trading stock. Much of the focus of submissions, and the important point of principle, concerns the appellant's first claim. For the reasons below, this claim should be accepted. It is therefore unnecessary to consider whether s 9-5(1) should be read as excluding alternative, but not additional, purposes of using cars which are held as trading stock.

The language of s 9-5(1) and the issues it raises

105 The LCT Act is drafted to speak directly to the public using ordinary language and communication. As well as applying the ordinary rules of interpretation to this language, it is well to remember that the LCT Act is a law that creates an impost in the course of commercial activity. In the case of car dealers, it is a regular and significant impost. In that respect two further observations are applicable. The first, from the former jurisprudence concerning sales tax, is that it is always important to look "at the substance and reality of the matter".[72] The second, from the jurisprudence concerning diesel fuel rebates, is

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72 *Federal Commissioner of Taxation v Kentucky Fried Chicken Pty Ltd* (1988) 12 NSWLR 643 at 651.

that one should apply a "commonsense and commercial approach" in applying the LCT Act.[73]

106 The ordinary language of s 9-5(1) shows that it is concerned with the purpose for which "you have the intention" of using the car. It is concerned with the *intended* purpose of use. In this respect it contrasts with the *actual* purpose of use with which s 15-30(3) is concerned when that provision imposes an increasing luxury car tax adjustment if "you use the car for a purpose other than a *quotable purpose". In order to identify the intended purpose of use it is necessary first to identify the intended use then to identify the purpose of that use.

107 In general, a car is used by being driven. But the language in s 9-5 of using a car for the purpose of "holding it" implies that a car might be used even if it is not driven. Further, the exception to s 9-5(1)(a) indicates that a car may be used by being held for hire or lease. The car need not actually be hired or leased to anyone in order to be used for a non-quotable purpose. It is sufficient that the car is held (as stock, but not trading stock) by the taxpayer for that purpose. Section 9-5 thus recognises a broad conception of "use". Both "display in a museum" and "holding as trading stock" are capable of being uses.

108 Once the intended use or uses have been identified, it is necessary to identify the intended purposes of those uses. Based on the quotable purposes, which are specific ends or goals, s 9-5 requires the identification of the specific ends or goals which are the ultimate reason or reasons why a taxpayer is using a car in a particular way. It is necessary, in this respect, to distinguish between this use of purpose to mean a specific "end" and the different concepts of "motive" and "means".

A purpose or end distinguished from motives and means

109 There was much debate on this appeal about the meaning of "purpose" in ss 9-5(1) and 15-30(3) and whether the reference to "purpose" in those provisions is to the objective or subjective purpose of the person whose purpose is in issue. The Commissioner relied upon the distinction drawn by the primary judge and the majority of the Full Court between motive and purpose, and the reasoning of the majority that the "statutory question is not why the appellant engaged in the activities it did".[74] The Commissioner also contended that the reference in each

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73 *Abbott Point Bulk Coal Pty Ltd v Collector of Customs* (1992) 35 FCR 371 at 378.

74 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [78]; *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 309 [108].

provision was to "objective purpose", ascertained by inference from how the cars were in fact used, and to the exclusion, for the most part, of the evidence of Mr Denny. In that respect, the Commissioner invoked a proposition that revenue statutes are generally concerned with "objective purpose" and relied, amongst other things, upon cases concerning s 8-1 of the *Income Tax Assessment Act 1997* (Cth) and the recent decision of this Court in *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue*,[75] which concerned a provision of the *Land Tax Management Act 1956* (NSW).

110 The starting point must be an understanding of the difference between "motive", "means" and "purpose". A person's purpose is usually the ultimate end, object or goal that the person seeks to achieve. A person's motive is the reason that the person seeks to achieve that purpose or end.[76] And a person's means are the way in which the purpose is to be achieved. In one sense, a person's means to achieving their ultimate object could also be characterised as a purpose but it is only an intermediate or "proximate" end.[77] The means are distinct from the ultimate end, object or goal, which is the sense in which purpose is used in ss 9-5 and 15-30(3).

111 It is therefore necessary to characterise the relevant person's purpose or end at the proper level of generality, as distinct from any motive for that purpose or the intended means of achieving that purpose. For instance, an elite athlete might engage in a sporting activity for the purpose or end of competing at the Olympics. The motive for that end might be personal fulfilment, profit, or glory. And the means to achieve that end might be many hours of training.

112 In a passage in *News Ltd v South Sydney District Rugby League Football Club Ltd*,[78] referred to in the joint judgment of all members of this Court in *Federal Commissioner of Taxation v Sharpcan Pty Ltd*,[79] Gleeson CJ said that:

> "Purpose is to be distinguished from motive. The purpose of conduct is the end sought to be accomplished by the conduct. The motive for conduct is the reason for seeking that end. The appropriate description or

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75 (2024) 98 ALJR 808.

76 Lever, "Means, Motives, and Interests in the Law of Torts", in Guest (ed), *Oxford Essays in Jurisprudence* (1961) 50 at 55.

77 Finnis, *Intention and Identity: Collected Essays Volume II* (2011) at 153.

78 (2003) 215 CLR 563 at 573 [18].

79 (2019) 269 CLR 370 at 400 [49].

> characterisation of the end sought to be accomplished (purpose), as distinct from the reason for seeking that end (motive), may depend upon the legislative or other context in which the task is undertaken. Thus, for example, in describing, for the application of a law relating to tax avoidance, the purpose of an individual, or of an arrangement, it will be necessary to look at what is sought to be achieved that is of fiscal consequence, not at a more remote, but fiscally irrelevant, object, such as increasing a taxpayer's disposable income."

113 In every instance, "purposes", like other "intentions", are the purposes or intentions of a person, whether the person is a natural person, an artificial legal person or a construct. In each case, the purpose or intention is subjective in the sense that it belongs to a subject. When the concern is with the purpose of a natural person then, since "the devil himself knoweth not the thought of man",[80] a natural person's purposes can only be proved by the person's direct evidence, or by inference from the circumstances, or both.

114 When the purpose is concerned with the purpose of an artificial legal person such as a company, the most common means of identifying that purpose involve the identification of a person whose intentions and purposes are to be attributed to the company.[81] The most obvious instance of such people is a person who controls the company. As Gibbs CJ observed in *Federal Commissioner of Taxation v Whitfords Beach Pty Ltd*:[82]

> "[I]n deciding whether what was done was an operation of business, it is relevant to consider the purpose with which the taxpayer acted, and, since the taxpayer is a company, the purposes of those who control it are its purposes."

115 Sometimes, however, the purpose or intention with which the law is concerned is the purpose or intention of a construct, such as the purpose or intention of a reasonable person. That construct is used in interpreting contracts (the intention of a reasonable person in the position of the parties), interpreting trusts (the intention of a reasonable person in the position of the trustee), and interpreting statutes (the intention of the notional Parliament). In each case, no natural person can give direct evidence of the purpose or intention of the construct.

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80 Ames, "Law and Morals" (1908) 22 *Harvard Law Review* 97 at 97.

81 *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 at 507.

82 (1982) 150 CLR 355 at 370.

The purpose of a construct is one that can only be established by inference from the circumstances as to the purpose that such a reasonable person in the relevant position would have had. In common language, this is what is usually meant when a "purpose" is used to describe the objective function or end for an item or thing; for example, a reasonable person's usual purpose for a washing machine is for it to wash clothes. That is its usual function or objective. This usual purpose may be inferred from the objective features of the machine and from a consideration of what it can do and how in fact it is used.

116 In *Magna Alloys and Research Pty Ltd v Federal Commissioner of Taxation*,[83] Brennan J set this out as a third concept of purpose as follows in the context of incurring of expenditure, by comparing it with the purpose of a natural person:

> "Purpose may be either a subjective purpose—the taxpayer's purpose—where it means the object which the taxpayer intends to achieve by incurring the expenditure; or it may be an objective purpose, meaning the object which the incurring of the expenditure is apt to achieve."

117 Where the concern is with the "taxpayer's purpose", Brennan J explained that "what the taxpayer says are the character and scope of his business or undertaking is evidence of what its character and scope are in fact".[84] But, by contrast with the purpose of an actual taxpayer, the object which some act is generally "apt to achieve", "an objective purpose" in that sense, can be determined by reference to what a reasonable person engaging in the act would expect to achieve. Thus, as Brennan J rightly explained, "the taxpayer's purpose" can be proved by direct evidence of state of mind and by inference from the circumstances but an object which an act is "apt to achieve" can be proved only by inference from "known circumstances".[85]

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83 (1980) 33 ALR 213 at 215.

84 *Magna Alloys and Research Pty Ltd v Federal Commissioner of Taxation* (1980) 33 ALR 213 at 222.

85 *Magna Alloys and Research Pty Ltd v Federal Commissioner of Taxation* (1980) 33 ALR 213 at 215.

Two prominent cases

Salvation Army

118 It is in the context of these general observations that the decision of this Court in *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation*,[86] and the difference that it established between means and ends, is instructive. The Salvation Army was the owner of lands within the shire of Fern Tree Gully. The land was used as a training farm by the Salvation Army for boys.[87] The purpose of the training farm was reformatory. Produce from the boys' activities at the farm was sold and the proceeds were used to defray the cost of running the farm training.[88] The question was whether the lands were used "wholly and exclusively for charitable purposes" within the meaning of the *Local Government Act 1946* (Vic). If they were not, they were liable to be rated.[89]

119 Brigadier Leggett was a controlling mind of the Salvation Army. He confirmed that it was necessary to have a variety of activities as part of the training of the boys and confirmed that all of these activities were directed at this training.[90] Brigadier Saunders, inferentially another controlling mind, "was asked whether the whole of the work on the property was carried out for the sole purpose of training the boys, and he replied: 'Yes, that all the work done in regard to the dairying, vegetable growing, and orchard was done for the purpose of training the lads, and in order that they might, if possible, develop into useful citizens upon their discharge from the institution'".[91]

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86 (1952) 85 CLR 159.

87 *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation* (1952) 85 CLR 159 at 164-165.

88 *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation* (1952) 85 CLR 159 at 165.

89 *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation* (1952) 85 CLR 159 at 164.

90 *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation* (1952) 85 CLR 159 at 167.

91 *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation* (1952) 85 CLR 159 at 165-166.

120 Dixon, Williams and Webb JJ referred to, and approved of, a series of English decisions concerning the *Scientific Societies Act 1843* (Imp),[92] which provided that no person was to be rated in respect of land belonging to a society instituted for the purposes of science exclusively.[93] Their Honours explained that in these cases a society remained exclusively constituted for scientific purposes although it had other purposes:[94]

> "provided the other purposes were merely a means to the fulfilment of its scientific ... purposes and incidental thereto but that the exemption was lost if the other purposes ceased to be a means to an end and became collateral and additional purposes."

121 That principle was applied to the charitable purpose of reforming the boys. Their Honours expressly accepted Brigadier Leggett's evidence about the purpose of the use of the land, namely to implement a variety of training.[95] That purpose remained the exclusive purpose despite the activity of selling the farming produce. The activity of selling the farming produce was only a means to the charitable purpose or end. It was not an activity that would have occurred "irrespective of [the charitable] use".[96]

122 The decision in *Salvation Army* was applied by this Court in *Ryde Municipal Council v Macquarie University*.[97] One exemption from rates arose if land belonging to Macquarie University was "used or occupied by the University ... solely for the purposes thereof".[98] The University had leased some of its land to be used for commercial purposes, such as shops, a bank, a chemist and a travel

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92 6 & 7 Vict c 36.

93 The cases were *Purvis v Traill* (1849) 3 Ex 344 [154 ER 876]; *Metropolitan Borough of Battersea v The British Iron and Steel Research Association* [1949] 1 KB 434.

94 *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation* (1952) 85 CLR 159 at 169.

95 *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation* (1952) 85 CLR 159 at 171.

96 *Salvation Army (Victoria) Property Trust v Fern Tree Gully Corporation* (1952) 85 CLR 159 at 172.

97 (1978) 139 CLR 633.

98 *Local Government Act 1919* (NSW), s 132(1)(fii).

centre. These operated for profit and were open to the public to use. But they also provided a convenience to staff and students. The nearest similar facilities were about two miles away.[99] The University was paid rent by these businesses.[100] A majority of the Court (Gibbs A-CJ, Stephen and Murphy JJ) held that the land was used solely for the purposes of the University. The profitable leases did not change the nature of the activities of Macquarie University on its land as having been done for the purposes of the University. As Gibbs A-CJ said, quoting from *Salvation Army*, the commercial purposes of the training farm in that case were "'merely a means to the fulfilment' of the charitable purposes", and the "same tests are applicable" in relation to the exemption claimed by the University.[101]

123 This distinction between means and ends, or between an intended end and the intended means of achieving that end, is also extremely well established in the law of taxation of charities, where the notion of purpose is central.[102] As Lord Millett said for the Privy Council in *Latimer v Commissioner of Inland Revenue*:[103]

> "The distinction is between ends, means and consequences. The ends must be exclusively charitable. But if the non-charitable benefits are merely the means or the incidental consequences of carrying out the charitable purposes and are not ends in themselves, charitable status is not lost."

Godolphin Australia

124 As already mentioned, the Commissioner placed much reliance upon the recent decision of this Court in *Godolphin Australia*.[104] That case is entirely consistent with the principles discussed above but the statutory context is entirely different from the statutory context in this case. The case concerned an exemption

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99 *Ryde Municipal Council v Macquarie University* (1978) 139 CLR 633 at 635-636.

100 *Ryde Municipal Council v Macquarie University* (1978) 139 CLR 633 at 645.

101 *Ryde Municipal Council v Macquarie University* (1978) 139 CLR 633 at 643.

102 See *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 at 221 [26]; see also at 269 [186], quoting *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10 at 44-45 [38]-[40]. See also Murray, "Looking at the charitable purposes/activities distinction through a political advocacy lens: a trans-Tasman perspective" (2019) 19 *Oxford University Commonwealth Law Journal* 30 at 32-33.

103 [2004] 1 WLR 1466 at 1476 [36]; [2004] 4 All ER 558 at 569.

104 (2024) 98 ALJR 808 at 816 [34].

from land tax in New South Wales for land used for primary production. Section 10AA(3)(b) of the *Land Tax Management Act 1956* (NSW) relevantly provided:

> "For the purposes of this section, *land used for primary production* means land the dominant use of which is for –
>
> ...
>
> (b) the maintenance of animals (including birds), whether wild or domesticated, for the purpose of selling them or their natural increase or bodily produce".

125 The focus of the statutory words upon the use which actually occurred, abstracted from the person who was using the land, led all of the judges of this Court to emphasise that the determination of the dominant purpose of the use of land posited an "objective" test for purpose. The reference to "objective" described the purpose which would be held by a reasonable person in the position and circumstances of the user of the land. Thus, the plurality referred to the decision of Barrett A-JA in *Chief Commissioner of State Revenue v Metricon Qld Pty Ltd*[105] and said that the question was one of "characterisation of the use or uses to which the land is put" and that "one should not ignore the conclusion reached by an objective observer who is viewing the land as a whole".[106] As Barrett A-JA further explained, the statutory question was "not what an owner, lessee or other person able to do so decides is to happen in relation to the land".[107] In short, it is "not to be tested by the intention of the owner".[108] That abstracted context is far from the particular terms of provisions such as ss 9-5(1) and 15-30(3).

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105 (2017) 105 ATR 11 at 27 [52], quoting *Thomason v Chief Executive, Department of Lands* (1995) 15 QLCR 286 at 303.

106 *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* (2024) 98 ALJR 808 at 816 [34].

107 *Chief Commissioner of State Revenue v Metricon Qld Pty Ltd* (2017) 105 ATR 11 at 29 [60].

108 *Greenville Pty Ltd v Commissioner of Land Tax (NSW)* (1977) 7 ATR 278 at 280.

Purpose in the provisions of the LCT Act

Section 9-5(1)

126 In s 9-5(1) "purpose" is used in its central sense of the purpose of the taxpayer, not some purpose that a reasonable person in the taxpayer's position might hold, in all the circumstances. That is so for two reasons.

127 First, the concern is with the intention of a specific person to use a car for a purpose; namely, to hold as trading stock and for no other purpose. Unlike the legislation considered in *Godolphin Australia*, the focus is not upon the intention and purpose that it might be thought that a reasonable person would have based upon a particular use of a car. Section 9-5(1) is dealing with the acquisition of a car, here by a car dealer, before that dealer commences to use it. The focus of the section is upon the intention of the taxpayer. The "intention" here must therefore be that of the actual appellant.

128 Secondly, s 9-5(1) requires an examination of the purpose of using a car by using ordinary communication directed to "you". The "you" is the taxpayer, not an objective construct or reasonable person. By its terms, the section assumes that a taxpayer has an intention of using a car for a purpose or purposes.

129 The concern of s 9-5(1) is with an inquiry into the intention and purpose of the taxpayer, and this can be shown by the taxpayer producing contemporaneous evidence of intended use of a car for a purpose, such as in a board paper, a business plan, or another document, as well as by the sworn or affirmed testimony of the taxpayer.[109]

130 That is not to say that objective evidence about the nature of the car acquired, or how it ends up in fact being used, is irrelevant. It is not. Such evidence may be used to corroborate the purpose of the use that was intended or to demonstrate that the taxpayer's evidence of intended use was in some way false. But if direct evidence is accepted, corroboration is unnecessary. As Hunt J said in *Allied Pastoral Holdings Pty Ltd v Commissioner of Taxation*:[110]

> "There is no requirement of law that a taxpayer on a taxation reference or appeal is obliged to produce other evidence to corroborate his own evidence, nor should there be any rule of practice adopted in such cases

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109 *Allied Pastoral Holdings Pty Ltd v Commissioner of Taxation* [1983] 1 NSWLR 1 at 6.

110 [1983] 1 NSWLR 1 at 11.

> by which such corroboration is required ... There is no legal obligation upon the taxpayer to produce other evidence to corroborate his evidence before it can be accepted."

Section 15-30(3)

131 Turning to s 15-30(3), as explained above, it would be a remarkable and surprising interpretation of s 15-30(3) if, as an allied provision to s 9-5, s 15-30(3) were, without any express language to suggest a change, somehow to have switched from a focus on the purpose of the taxpayer to a focus upon the "objective" purpose of a reasonable person in the position of the taxpayer. It does not do so.

132 As explained above, the concern of s 15-30 is with a change in the use of a car, for a purpose which is not a quotable purpose. Plainly, that section requires consideration of how a car has been used since its acquisition. When, following acquisition, s 15-30 refers to a change in the use of a car to a use "for a purpose other than a *quotable purpose", the section is referring to the circumstances in which you "may quote" under s 9-5. Inferentially, therefore, the legislative regime thus requires "you" to address the purpose of "your" use when there is a change in use, on the assumption that there is another supply of the car in question. That is because, as the language of s 9-5(1) makes clear, quoting is something that takes place where there is a supply or importation of a luxury car.

133 In short, "purpose" in s 15-30(3) is not the type of abstracted or notional purpose of a reasonable person discernible only by inference from objective evidence. Textually, that is because s 15-30(3) is still concerned with "you" and your use of the car. The difference from s 9-5(1) is that 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.

134 Thus, in a simple case, where the car has actually been used for a purpose other than the purpose for which one "may quote", there may be a need for either a decreasing or increasing luxury car tax adjustment. In that respect, evidence of the circumstances in which the actual use occurred is not necessarily more probative than the sworn or affirmed testimony of a witness in inferring actual purpose. What is more, and what is less, probative always depends on the facts and circumstances of a given case.

Characterisation of the appellant's purpose

135 There was no dispute that the intention of the actual appellant in this case, which was a company, was the intention of the controlling mind of the appellant. That was Mr Denny. It was, of course, for Mr Denny to decide how to run his

business, and not for the Commissioner to decide otherwise. Mr Denny's choice of method was, arguably, unusual. But as Brennan J generally observed in *Magna Alloys*:[111]

> "The taxpayer is at liberty to determine for himself what the scope and nature of his business or undertaking shall be and how it shall be conducted, the Act having no effect upon those matters but taking 'the result of the taxpayer's activities as it finds them'".

136 The principles described above can be applied easily to Mr Denny's chosen purpose, and thus the chosen purpose of the appellant, in this case.

Section 9-5(1)

137 At the appropriate level of generality, consistently with the legislative purpose of s 9-5(1), Mr Denny's accepted evidence was that the appellant's purpose in holding the cars was to hold them as trading stock. In short, he held the cars to sell. Mr Denny's motive for doing so was obvious: it was to make profit. And Mr Denny's accepted evidence was that the museum was only the means by which the appellant's purpose was achieved. The museum was not the ultimate object or end itself. As the controlling mind of the appellant, Mr Denny's intended means and intended purpose was properly to be attributed to the appellant.

138 True it is the means that Mr Denny, and therefore the appellant, proposed to employ to achieve the purpose were substantial; like the rent in *Ryde Municipal Council*, they were not negligible. But at no point, based upon the accepted evidence of Mr Denny, did the museum concept become an end in itself. 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; it was precisely a means to an end in the sense considered in *Salvation Army* and the authorities discussed above, which followed the plain distinction recognised in that decision.

139 In short, selling cars was the business Mr Denny intended to pursue and the museum was his means of achieving that purpose. Unless Mr Denny was not to be

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111 (1980) 33 ALR 213 at 222. See also *Tweddle v Federal Commissioner of Taxation* (1942) 180 CLR 1 at 7.

believed, it was for him to delineate, as the controlling mind of the appellant, the four walls of that business. The substance and reality here, applying a common sense and commercial approach, is that ultimately the appellant's business was just to sell cars.

140 No part of the foregoing confuses motive with purpose. Mr Denny did not give evidence about why he wanted to run a car dealership as a "museum concept". Presumably, like any business person, it was to make money. Instead, his evidence was about the purpose or objective of the appellant's business; about what he wanted it to achieve, and the means of achieving it.

Section 15-30(3)

141 Mr Denny's uncontradicted evidence, accepted by the primary judge, was that there was never any change to Mr Denny's initial purpose of selling cars or the use of the museum concept as the means of doing so. That purpose and those means continued right up until the point at which the appellant ceased selling cars from the Gosford showroom, so that the museum (the means to the end of selling cars) was closed. No facts or circumstances cast any doubt upon the veracity of Mr Denny's evidence in this respect.

142 In particular, the museum was never separately accounted for as an independent venture or purpose. As a result, there was no separate treatment of the cars as stock of the museum, which might otherwise have led to consideration of the tax treatment of the cars in relation to the museum as a separate venture. And whilst the profitability of the "museum concept" is unclear, because it was never separately accounted for, the comparison of gross revenues discussed above demonstrates that the museum always remained subordinate in a revenue sense to the sale of cars.

The error of the primary judge and the majority of the Full Court

143 For the reasons explained above, neither s 9-5(1) nor s 15-30(3) is concerned with the purpose of a reasonable person, or that a reasonable person in the position of the taxpayer was "apt to achieve". The purpose in all the relevant provisions was the purpose and intention of a taxpayer, either a natural person or, as in this case, a company.

144 There are important aspects of the reasoning of the primary judge and the majority of the Full Court with which we agree entirely. For instance, for the five reasons explained above,[112] the primary judge's acceptance of Mr Denny's

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112 At [82]-[86].

evidence about his, and therefore the appellant's, purpose was compelling. Further, and although it is unnecessary to decide on this appeal, there is much force in the reasoning of the primary judge and the majority of the Full Court that the phrase "no other purpose" in s 9-5(1) does not mean no alternative purpose. Nevertheless, we do not accept the "objective" approach to purpose that was taken by the primary judge and the majority of the Full Court. In that respect, the reasoning of Logan J should be preferred.

145 The primary judge misapprehended the passage from Gleeson CJ in *News Ltd v South Sydney District Rugby League Football Club Ltd*, set out above, saying that "[t]he reasons for a person engaging in an activity explains the person's motive, but is distinguishable from, even if it might inform, the purpose of the activity".[113] But, as explained, the reasons, in the sense of desired ends or goals, for a person *engaging in an activity* are a person's purpose. The motive is the reason for those *ends*, not the reason for the activity. The primary judge was therefore correct to conclude that Mr Denny's "subjective evidence" of his goals "might properly inform an assessment of purpose"[114] but incorrect to assume that it was possible to accept Mr Denny's subjective evidence but still reach a different conclusion of purpose.

146 The majority of the Full Court correctly identified Mr Denny's purpose when their Honours said that "Mr Denny realised his subjective intention of making the cars appear more desirable to potential purchasers of the cars by exhibiting each of the cars as part of a curated 'museum' collection to be seen by as many people as possible".[115] But the majority rejected Mr Denny's purpose as the relevant purpose in favour of a conception "ascertained by an objective consideration of the totality of the facts and circumstances".[116] The majority thus reached their conclusion independently of "[w]hatever Mr Denny as the

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113 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [78].

114 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2022) 114 ATR 569 at 587 [79].

115 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 309 [109].

116 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 309 [110].

controlling mind of the appellant thought he was doing".[117] It seems, therefore, that the "objective" purpose conception of the majority of the Full Court was akin to the purpose that would be held by a reasonable person in the appellant's position. As explained above, that approach was an error because although the majority of the Full Court properly recognised the appellant's purpose in holding the 40 cars, they failed to apply that purpose.

Disposition

147 For the foregoing reasons this appeal must be allowed in respect of the LCT issue and, it follows, in respect of the GST issue. The orders of the Court should be:

1. The appeal be allowed.

2. Set aside the orders made by the Full Court of the Federal Court of Australia on 11 August 2023 and, in their place, order that:

    a. the appeal be allowed;

    b. the orders made by the primary judge on 19 April 2022 be set aside and, in their place, order that:

        (i) the appeal against the Commissioner's objection decision be allowed;

        (ii) the objection decision be set aside, and the appellant's objection be allowed in full; and

        (iii) the Commissioner pay the appellant's costs; and

    c. the Commissioner pay the appellant's costs.

3. The Commissioner pay the appellant's costs of this appeal.

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117 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2023) 299 FCR 288 at 309 [110].