A HOBBY, A HERITAGE, AN INDUSTRY: HOW THE LUXURY CAR TAX IMPACTS THEM ALL

Doug Young[1], 29 March 2017 (first published in the April edition of the Vintage Car Club of Qld Inc. magazine)

The Luxury Car Tax (LCT) is a uniquely Australian creation, introduced at the request of the then-Australian car manufacturers, as the second of 2 taxation measures intended to protect them from overseas competition.

The first measure occurred in 1979, when the Fraser government set a limit on the value of a car which could be depreciated for tax purposes. This limit was set at just above the cost of the most expensive offerings from Ford and Holden. The practical effect was that it only applied to imported cars, and deprived business purchasers of the depreciation tax deductions previously available.

The second measure was the introduction of the predecessor of the LCT, an LCT by another name, in 1986. From 1930, until the introduction of the Goods and Services Tax (GST) in 2000, the Commonwealth taxed many things through a Wholesale Sales Tax (WST). The WST was introduced to make up for the drop in Customs Duty receipts, resulting from Depression-induced reductions in imports.

By early 1986, the WST was 20% for new cars. In August that year, the Hawke government imposed a higher rate of 30% for the component of the price above the depreciation limit – the first luxury car tax.

By 2000, the WST on cars priced above the depreciation limit was 45%.

In 2000, the Howard government made sweeping changes to the indirect tax system, doing away with many and replacing them with the GST, a 10% tax imposed at the point of retail sale.

However, had GST been the only tax on new cars priced above the depreciation limit, the price would have fallen substantially. So, among the multitude of Bills which made up the GST package was a suite of 4 Bills which included in their title the words "Luxury Car Tax". Each was intended to ensure that all available heads of Commonwealth legislative power were invoked, such as the power to impose Customs and Excise duties.

The primary target among of the LCT was new cars (or new cars resold at a profit within 2 years), with the imposition of a 10% GST and LCT at 25%. For imported cars up to 30 years old, there was the additional Customs (import) duty of 10%.

This is where the trouble began for the old car movement in Australia. The problem was that the age restriction of new cars up to 2 years old was omitted when it came to imported cars. Cars of any age were caught in the net. So while second hand cars over 2 years old sold privately within Australia were exempt from the GST and LCT, cars bought privately overseas and imported into Australia were subject to both. And, if under 30 years old, until recently, Customs duty at 10% as well. (It is now 5%.)

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[1] President VCCQ 2012-16; Area Rep AMOC 2009-10; and committee member of various old car clubs from the 1980s to the present; Honorary Life Member and former Chairman, Business Law Section, Law Council of Australia.

The next significant change in the LCT regime occurred in 2008, when the Rudd government increased the LCT from 25% to 33%.

A further tweak to the LCT is a higher threshold for "fuel efficient" new cars that get better fuel consumption than 7L/100kms, or 40mpg.

The threshold at which the LCT commences is indexed and is currently $64,132 (and $75,526 for fuel efficient cars).

The Old Car Problem

Since the 1970s, the old car movement has benefitted from the elimination of import (or Customs) duty on vehicles and parts more than 30 years old. The rationale (from the AOMC submission to the 2008 Senate Inquiry into the proposed increase in LCT from 25% to 33%) was "there were no commercial or industry implications in the hobby of old vehicle restoration and maintenance and that its social and community value was enhanced by not imposing barriers". Other benefits were that many cottage industries were involved in maintaining and restoring the country's historic vehicle fleet, and the larger the fleet, the more business activity ensues.

However, this recognition was not reflected in the way the new GST and LCT legislation was imposed, as they were framed so as to apply to the importation of vehicles of any age.

How the Import Taxes on old cars are calculated

The $64,132 LCT threshold is illusory when it comes to imports, because that figure is not the purchase price of the car. It is the "LC Value", which includes the cost of freight and insurance for bringing the car to Australia, and GST – and Customs duty if under 30 years old. If one assumes the cost of freight and insurance to be $4000, then the overseas purchase price which would result in LCT being payable is only $54,300. For cars under 30 years old, it would be even less, as the LCT value would also include Customs duty.

To put some numbers around this for importing old cars, the table below sets out the taxes involved for importing cars purchased overseas for different amounts:

<table>
<tr><th>Purchase price A$</th><th>LCT</th><th>Total tax</th><th>Tax as % of purchase price</th></tr>
<tr><td>100,000</td><td>15,080.40</td><td>25,480.40</td><td>24.4%</td></tr>
<tr><td>200,000.00</td><td>48,080.40</td><td>68,480.40</td><td>34%</td></tr>
<tr><td>500,000</td><td>147,080.40</td><td>197,480.40</td><td>39.5%</td></tr>
<tr><td>1,540,000*</td><td>490,280.40</td><td>644,680.40</td><td>41.9%</td></tr>
<tr><td colspan="4">*A Bugatti from long term Australian ownership was sold at the Bonhams Monaco sale in May 2016 for €1,058,000 (A$1,488,923.) Rounding up to €1.1m, these are the taxes any purchaser would have to pay to import the car back into Australia today. The problem is that that any purchaser who imports the car to Australia will have paid A$2,184,680.40, but the car is still only worth €1.1m, or A$1.54m.</td></tr>
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Compare this with the 5% import duty for importing old cars into the UK. They want old cars to be imported because they recognise the value of the restoration and maintenance industry to the UK economy – currently 5.5 billion GBP a year. The UK government also does other things to encourage such vehicles to be regularly used – cars over 30 years old pay no registration fees, and there is no restriction on their use. Regular use means more work for the industry.

The LCT also applies to the reimportation of vehicles taken out of Australia, if when they are overseas, they are subjected to any "treatment, repair, renovation, alteration or any other process". This applies even if ownership does not change. One of the many anomalies in the way the GST and LCT are imposed is that while GST is only imposed on the cost of the repairs and parts supplied, the LCT is imposed on the restored value of the vehicle.

As was pointed out in the excellent 2008 AOMC submission (the AOMC is the Victorian equivalent of Qld's QHMC):

"Unfortunately, and probably due to no more than oversight, the advent of Luxury Car Tax did not acknowledge this category of exemption (no Customs duty on cars over 30 years old) and imposed a barrier to the bringing of historic vehicles to Australia. Moreover, in the past two or three decades the historic vehicle fleet in this country .once recognised as one of the finest in the world, with many examples of the rarest survivors from the first forty years of motoring history- has been decimated. Hundreds, perhaps thousands, of early vehicles have been shipped to buyers from countries with stronger currencies, such as the UK, Europe and the US. Those local enthusiasts who may have wished to redress such depredation in a small way have faced prohibitive cost barriers due to the impact of GST and LCT. LCT does not apply to domestic sales of old vehicles, its application to imports is inconsistent and has simply made worse the net losses of our pool of historic vehicles.

GST has a similarly inconsistent application to the historic vehicle hobby. Old cars and parts are bought and sold between enthusiasts without any GST implication. If the opportunity or necessity arises to acquire from the international old car community then GST is imposed. Again the tax system's macro policy settings have arbitrarily swept up hobbyists in its swathe."

Other impacts include the loss of business activity in the restoration and maintenance sector, as well as the loss of skills required for that work. Australia has some world class restoration facilities – but could have many more were old cars able to be imported without penalty. Two examples illustrate this. Wolf Grodd's Sleeping Beauties restoration facility in Brisbane has won awards at the World's premier Concours de Elegance, Pebble Beach, California. And those who watched the ABC news during the week would have seen how Victoria's Grant Howie achieved a world first using laser mapping and 3D printing to recreate an engine block for a 1914 GP Delage racer.

The hallmark of an efficient tax is that it can be applied without creating undue distortions to consumption decisions. The effect here, so far as old cars are concerned, is the exact opposite.

The AOMC also highlighted the importance of this issue, saying:

"The local historic vehicle movement represents some 120,000 enthusiasts committed to preserving a part of our heritage by developing their own skills and techniques and utilising the specialist resources of a network of suppliers and workshops throughout metropolitan and regional Australia. The vehicles are used only very occasionally and in ways that do not contribute to traffic congestion or environmental damage. They do contribute to the colour and variety of our social landscape through their rallies and the support they lend to charity and community events. Some of Australia's major historic vehicle events have even attained international stature, such as Adelaide's Bay to Birdwood. The annual swap meet in Bendigo is likewise an internationally recognised event, as well as a major source of regional economic benefit.

The impact of LCT on the movement has been to restrict Australia's access to the middle and upper strata of old vehicles .the very ones that we have lost most of in the one-way traffic out of the country. They are also the very ones that act in the same way as elite athletes do for mainstream participation in sport; they act as the beacons to inspire and attract new, younger people to the movement."

Reviews of and Inquiries into the LCT

There have been many such reviews and inquiries, some devoted exclusively to the LCT, and others where it was considered in passing. All have represented an opportunity for the old car movement to make submissions and be heard.

The main reviews/inquiries (with dates of final reports etc shown) have been:

22 July 2008 Report The Hon Steve Bracks (leader) Review of Australia's Automotive Industry

August 2008 Senate Standing Committee on Economics Inquiry Report into proposed increase in the LCT rate from 25% to 33%

December 2009 Australia's future tax system: Report to the Treasurer (Henry Review) recommended abolition of the LCT

5 October 2011 Tax Forum, Parliament House. Ken Henry described the LCT as "truly absurd"

31 March 2014 Productivity Commission Inquiry Report into Australia's Automotive Manufacturing Industry – critical of the LCT and urged reform

March 2015 Treasurer Hockey released the Tax White Paper Re:Think – Tax Discussion paper. This called for submissions and was to result in a Green Paper. However, with the change in leadership from Abbott/Hockey to Turnbull/Morrison the project has faded away. However, it is telling that one statement in the paper asserts the LCT does not discriminate against imports. While that may be so for new cars, it is not true for older cars.

February 2016 Vehicle Emissions Discussion paper

There have also been annual opportunities such as the pre-budget submissions etc.

Reform opportunities: Opportunities Lost

So far as I can determine, the only submissions that have been made on behalf of the old car movement about the impact of the LCT (and GST) occurred in 2008, when the Association of Motoring Clubs, the Victorian peak body for historic motoring organisations in that state, made a well reasoned and argued written submission to the Senate Inquiry referred to above. This was supported at the public hearings in Adelaide by John Burt, the then president of the Sporting Car Club of South Australia.

The Inquiry handed down a majority (government) report, and a dissenting report. Both did agree however on the appropriateness of looking into removal of the LCT from cars over 30 years old. In other words, bipartisan support! The dissenting report also recommended this be considered by the Henry Inquiry.

The peak national body representing the peak bodies from each of the States, the AHMF, did make a submission to the Henry Inquiry – but said noting about the LCT, confining its submission to the way clubs were taxed. One wonders why, with bipartisan support for reform, nothing was said. Perhaps it was, but I have been unable to find it.

There appears to be nothing further until, in 2016, the Bugatti Club of Australia raised the issue, with the AHMF, as the minutes of the August AGM disclose. A timetable was to be established and the Canberra-based voluntary AHMF lobbyist retained. However, it is unclear what has occurred since.

Meanwhile, however, the Museums and Galleries lobby group have achieved remarkable success, as on 28 February 2017, laws were passed which resulted in them being able to import for display purposes only cars over 30 years old without having to pay customs duty, GST, or LCT.

There was a long campaign beginning in 2011, as in the 2011-12 Budget, Treasurer Swan announced this would occur. This was well publicised, and on 24 May 2011, the Director of the Museum of Australia was questioned about the matter in Senate Estimates.

In 2013, a decision was made not to proceed, but in 2015, it was back on the Federal budget agenda and Treasurer Hockey announced this would occur. After another false start, legislation was introduced and on 28 February 2017, the *Tax and Superannuation Laws Amendment (2016 Measures No. 2) Act* 15 of 2017 was passed.

This appears to have been an opportunity lost for the old car movement, as it would have been relatively simple to piggy-back on the work done by the museum lobby. Because whatever the justifications for exempting such vehicles for museum exhibits, there are far more to justify exempting cars which will be driven. Museum pieces generate no maintenance or restoration revenue as they sit, static, for years and often decades. Contrast that with the work generated were such vehicles to be used on the road.

According to Motoring.com (http://www.motoring.com.au/push-to-abolish-lct-on-classic-cars-106307/) The article goes on to say Terry Healy wrote to Treasurer Morrison, who

‘forwarded Healy’s letter to Treasury’s A/g Division Head, Individuals and Indirect Tax Division, Murray Crowe, for a response.

Crowe replied: “The Government appreciates the cultural value that classic cars can offer to Australia”.

But then he simply continued by referring to other law changes largely irrelevant to classic-car LCT, including pending (2018) changes to the Motor Vehicle Standards Act 1989. Those changes will permit importation of used vehicles more than 25 years old (without undergoing expensive modifications under the current RAWS scheme) and they also abolish the $12,000 tariff on privately imported cars less than 12 months old.

MPs James Patterson and John Alexander both responded to Healy’s letter in the positive, Patterson saying: “You make some very reasonable points. Personally, I think the rationale for a luxury car tax at all is weaker than it ever has been, but I see your point of view that it has particularly negatively affected classic car owners”.’

Now is certainly the hour for a properly reasoned submission to be made, as despite no matter how persuasive a lobbyist, there needs to be documentation on which to base any reform decision.