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Committee Secretary
Senate Economics Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Committee Secretary

On behalf of the Australian Automobile Dealers Association (AADA), I thank you for the opportunity to provide the Senate Economics Committee Inquiry into the *Tax Laws Amendment (Luxury Car Tax) Bill 2008*, *A New Tax System (Luxury Car Tax Imposition – General) Amendment Bill 2008*, *A New Tax System (Luxury Car Tax Imposition – Customs) Amendment Bill 2008* and *A New Tax System (Luxury Car Tax Imposition – Excise) Amendment Bill 2008*.

The Australian Government's decision to apply retrospective arrangements to the proposed legislation has caused considerable upheaval within the new vehicle market. The Treasurer's recommendation that dealers collect the additional LCT impost on all vehicles delivered on or after 1 July, irrespective of the legal compulsion to do so, has substantially increased dealers regulatory and compliance burden. This burden is further increased by the need for dealers to revisit and redraft finance arrangements for vehicles purchased prior to the announcement of the Government's proposal.

AADA considers the Luxury Car Tax (LCT) to be an unfair and discriminatory tax in terms of its application and its consequences for dealers and their customers. AADA has long advocated for the abolition of the LCT on two grounds; that no other "luxury" good attracts such a tax and that the LCT, being a tax on a tax, has no place within the Goods and Services Tax system.

While the abolition of the LCT remains AADA's preference, the Association would support a significant increase to the LCT threshold. Given that the current threshold fails to recognise the number of new vehicles in the \$60,000 to \$80,000 price bracket, AADA considers that a figure in the order of \$100,000 would better reflect the composition of the market.

I trust that the attached submission will assist the Senate Committee in its Inquiry. AADA would be happy to provide further information relating to any of the matters raised within this submission should that be necessary.

Yours sincerely

MICHAEL DELANEY
Executive Director

10 July 2008

Australian Automobile Dealers Association



**Submission to the Senate Economics Committee
Inquiry into the
*Tax Laws Amendment (Luxury Car Tax) Bill 2008; A
new Tax System (Luxury Car Tax Imposition-
General) Amendment Bill 2008; A New Tax System
(Luxury Car Tax Imposition-Customs) Amendment
Bill 2008; A New Tax System (Luxury Car Tax
Imposition-Excise) Amendment Bill 2008***

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Overview of the Australian Automobile Dealers Association (AADA)

The Australian Automobile Dealers Association (AADA) is the national peak body for the new vehicle retail sector of the Australian automotive industry and is a Member of the Motor Trades Association of Australia (MTAA). AADA is a federation of the state and territory Automobile Dealers Associations. AADA is an unincorporated association and its affairs are directed by a Board on which each of the Member bodies is represented.

The role of AADA is to:

- encourage, promote and protect the interests of the retail motor dealer business in Australia and to preserve the interests of Members;
- hold an annual national convention for retail motor dealers and their employees;
- cultivate and obtain reciprocal relations with the like associations, both nationally and internationally;
- establish and maintain contact with the legislatures of the Commonwealth and of the states and territories and the Australian governments to promote, support and protect the interests of the Association; and
- conduct seminars, educational programs or other meetings for the purpose of improving the knowledge and understanding of the new vehicle franchise dealers of business, economic and related matters.

AADA's Interest in the Inquiry

Since the introduction of the Luxury Car Tax (LCT) on 1 July 2000, the Association has opposed the LCT on the grounds that it is a discriminatory and unfair tax. The LCT is a "tax on a tax", vehicles are the only good subject to a luxury tax, consumers are unfairly penalised when purchasing vehicles captured within the LCT threshold as these vehicles often offer increased fuel efficiency, emissions reduction technology and additional safety features, it distorts the market, and compliance is not only burdensome, but places the legal obligation to collect and remit the tax on dealers; rather than the customer. In recent months, AADA has proposed to the Treasurer, the Treasury and the Bracks Review of the Australian Automotive Industry (the Bracks Review) that the LCT should be abolished. Failing that, AADA has sought a significant increase to the LCT threshold.

While the Association clearly accepts that the Government is quite entitled to propose changes to the LCT arrangements, AADA notes that the recently announced change in LCT policy pre-empted the soon to be released Reports of the Bracks Review and the final report of Garnaut Climate Change Review, both of which have ramifications for the automotive industry and consumers. The LCT increase also pre-empted the forthcoming Review of Australia's Future Tax System.

AADA thus welcomes the opportunity to provide a submission to the Senate Economics Committee Inquiry into the *Tax Laws Amendment (Luxury Car Tax) Bill 2008*, *A New Tax System (Luxury Car Tax Imposition – General) Amendment Bill 2008*, *A New Tax System (Luxury Car Tax Imposition – Customs) Amendment Bill 2008* and *A New Tax System (Luxury Car Tax Imposition – Excise) Amendment Bill 2008*.

The Impact of the Luxury Car Tax upon Dealers and Consumers

AADA considers the LCT to be both discriminatory and unfair; both in its application and through the significant compliance burden on dealers. No other goods attract such a tax. Other “luxury” items such as artwork, boats or jewellery are not similarly penalised. Adding to this unfairness is the inclusion of the GST amount within the LCT threshold, equating to a “tax on a tax”. AADA believes that with the introduction of a GST, the imposition of this tax has no place in a fair taxation system which taxes goods and services across the board at a standard rate. For these reasons, AADA and the MTAA continue to seek the abolition the LCT. Failing the removal, AADA seeks a significant increase to the LCT.

Regulatory Burden

The decision by the Government to increase the Luxury Car Tax impost from 25 per cent to 33 per cent is disappointing. Equally disappointing is the lack of consultation with industry representatives particularly given the challenges in the market of dealing with an increase in a tax that applies not at the point of contract, but on delivery of the goods; and as matters have transpired, where there is likely to be a significant period of retrospective application of the increase. Retrospective application of legislation is unfair and places dealers and affected customers under considerable administrative and financial burden. Should the legislation pass the Parliament in its current form, dealers will have to collect the additional rate of LCT on all vehicles delivered on or after 1 July 2008. The Association notes that not only is there presently no legal requirement for customers to pay this additional rate of LCT, but that the administrative burden on dealers associated with collecting the additional amount will be significant. The ATO has advised that monies can be collected:

- at the time of purchase or delivery and held in trust by the business until such time as the legislation has secured passage;
- at the time of purchase or delivery and forwarded to the ATO; or
- after legislation has secured passage and the customer has already taken receipt of the vehicle.

AADA anticipates that the new arrangements will cause some difficulty for dealers attempting to collect the additional impost, as there is no legal requirement for them to do so, nor for their customers to pay. The Association does accept that section 111.60 of the *Taxation Administration Act 1953* allows for contracts to be amended if the rate of LCT is increased.

However, the Association understands that that section only applies once the legislation to increase the rate has passed the Parliament. It is unclear that it provides dealers with any assistance in this current period of uncertainty. It is also unclear what affect that section has once a contract has been completed.

Additionally, affected customers who have pre-paid or pre-financed their purchases must arrange to pay the additional LCT impost, regardless of any additional costs which were not calculated into the original sales contract. The administrative burden of recalculating financing and sales contracts is extensive.

Dealers are also faced with uncertainty surrounding the cost to their businesses in collecting the additional impost. AADA understands that the ATO has advised that the 25 per cent should be included in the appropriate BAS statement and that the additional 8 per cent should be held back by the dealer, and that once the legislation has passed, the 8 per cent should be included in the next Business Activity Statement ensuring that dealers will not attract any penalties or general interest charges. However, AADA also understands that, should the legislation fail to secure passage, the 8 per cent will need to be remitted to affected customers.

The uncertainty surrounding the status of any interest earned on this revenue when it sits in trust because of the current administrative treatment is considerable. Does the dealer face additional taxation for interest earned on such funds? Is interest owned by the dealer and what happens if the legislation fails to secure passage? Is the interest owned by the dealer or does it belong to the customer?

The uncertainty surrounding the additional impost has resulted in further administrative burden for dealers because of the inclusion of LCT in stamp duty calculations. As a result of the proposed increase to the LCT impost, the rate of stamp duty to be collected faces similar uncertainty. Because there is no legal compulsion for consumers to pay the proposed additional rate of LCT, there is also no compulsion for customers to pay higher stamp duty. Thus if a dealer within an affected jurisdiction pays stamp duty based on the current, rather than proposed rate of LCT, and the Bill secures passage and is applied retrospectively, then state and territory governments will demand the additional rate of stamp duty. Customers, having no legal compulsion at the time of purchase to pay either additional amount, may refuse to pay the now owed monies to the dealer, who acts as the collection point for the LCT and stamp duty, may be held liable for these amounts.

AADA considers that the regulatory and compliance burden surrounding the collection of the additional LCT impost are immense. AADA asks that the Committee strongly recommend to the Government that it reconsider the retrospectivity of the proposed legislation and that the Committee also asks for greater clarification on the matter of interest earned on amounts in trust.

AADA also notes that the effective date of 1 July has caused enormous upheaval in the market. Even if the Committee were to recommend change (as AADA recommends), there will still be some upheaval in the market because some dealers have begun (as they were instructed to do so by the Treasurer) incorporating retrospective compliance into their business practices.

Green Technology, Safety and Vehicle Security Features Captured

Many of the vehicles captured by the LCT offer additional safety and environmental benefits, such as electronic stability control, active traction control, additional airbags, enhanced vehicle security, greater fuel economy, and reduced tailpipe emissions. The costs of these technologies/accessories are either features of the base vehicle model or purchased as an “add on”. In either scenario these technologies/accessories add to the vehicle’s price, potentially capturing it within the LCT threshold or increasing the amount of tax. For example, a NS3V45 Mitsubishi Pajero 3.2l Manual retails at \$56890 (RRP). The addition of side and curtain airbags (\$850 RRP) brings the total cost of the vehicle to \$57740 (RRP), exclusive of LCT or on road costs. The LCT on the vehicle (including additional side and curtain airbags) would equate to approximately \$184.80.

Given the Government’s commitment to a more fuel efficient Australian fleet¹, the imposition of LCT (in any form) is penalising those Australian’s who seek greater fuel efficiency and reduced emissions in their vehicles. AADA notes the following passage from the Parliamentary Library *Bills Digest*:

The timing of the increase in LCT coincides with the Bracks Review of Australia’s automotive industry and the government’s efforts to attract R&D for an Australian built hybrid car. As part of the review, current assistance arrangements are being examined as are options for continued support to the industry and a final report is due by 31 July 2008. Funding for the \$500 million Green Car Innovation Fund in the 2008-09 Budget and the increase in LCT which will raise \$555 million foreshadow the government’s intention to take pre-emptive action to support the local industry by increasing the cost of imported luxury cars and investing in production of an Australian hybrid car.²

It is disappointing that the LCT increase has pre-empted the findings and recommendations of the Review of Australia’s Automotive Industry and the final outcome of the Garnaut Climate Change Review; both of which are in the process of examining the effect of climate change and, to varying degrees, determining what can be done to reduce the emissions of Australia’s vehicle

¹ Rudd, K 1 July 2008. *Transcript of joint press conference with Prime Minister Kevin Rudd, Senator Kim Carr and Premier John Brumby, Toyota Motor Corporation, Altona, Melbourne, Commonwealth of Australia*, retrieved http://www.pm.gov.au/media/Interview/2008/interview_0338.cfm.

² Priestly, Michael, 13 June 2008, ‘Tax Laws Amendment (Luxury Car Tax) Bill 2008, A New Tax System (Luxury Car Tax Imposition – General) Amendment Bill 2008, A New Tax System (Luxury Car Tax Imposition – Customs) Amendment Bill 2008 A New Tax System (Luxury Car Tax Imposition – Excise) Amendment Bill 2008’, *Bills Digest*, Parliamentary Library, Canberra, no 131-134. p 9.

fleet. While AADA supports investment in green vehicle technology, it cannot support taxing vehicles which offer reduced tailpipe emissions or greater fuel efficiency for the purposes of raising revenue. Indeed, industry analysis suggests that the LCT limits the ability of manufacturers to improve vehicle specifications.³

The proposed increase in the rate of LCT also fails to recognise that consumers who purchase vehicles within the LCT threshold often have little choice in what they buy. Rural and regional motorists are impacted by the LCT as many small or mid size passenger vehicles do not suit the terrain in which the vehicle will be driven. Rural and regional motorists often face driving conditions which differ immensely from the driving experiences within cities and towns. Due to terrain and difficult driving conditions (such as unsealed roads, climate, light, and so on) vehicles with greater stability, often provided by wider wheel- bases, are a necessity in parts of Australia because of the inherent safety features such designs and technology provide. For example, speaking in opposition to the proposed LCT Amendments, the Federal Member for Kennedy, the Hon Bob Katter MP spoke of how his daughter rolled her vehicle travelling from Mt Isa to Charters Towers, an accident he thought could have been avoided had she been driving a vehicle with a wider wheel base⁴. He went on further to say:

In its wisdom, for the past 20-odd years, the government of Australia has allocated members in rural areas very wide wheelbase vehicles. The reason for that was the tragic death of the wife of the then member for Riverina—a good friend of my father’s—and it was decided that where we were driving great distances in country areas, we needed a bigger and more stable car. The very wide, big cars were made available to us. If we applied those rules to ourselves, for our benefit, it is terribly unfair for us to say that people should be charged a punitive tax for adopting exactly the same principle. It is really bad that we would set one set of rules for ourselves and another set of rules for other people.⁵

In addition to the environmental and safety benefits mentioned above, AADA notes that four of the eight vehicles which won their class categories in the 2007 National Motor Vehicle Theft Reduction Council (NMVTRC) ‘Secure By Design’ competition are captured by the LCT. These include the Subaru Liberty, BMW X3, Audi A8 and Audi Q7.⁶

AADA notes that “luxury” vehicles are often the first vehicles in which new technologies are introduced to the market place, due to the ability of higher end vehicles to absorb the cost of new technology. Because of the cost of manufacturing such components, AADA understands that these technologies “trickle down” the automotive design chain until the cost of

³ Australian Automotive Intelligence, 27 June 2008, *Luxury Vehicle Price Changes*, Federal Chamber of Automotive Industries, Canberra, p 19.

⁴ Katter, B 28 May 2008, ‘Tax laws Amendment (Luxury Car Tax) Bill 2008 Consideration in detail’, *House of Representatives Official Hansard*, Commonwealth of Australia, p 3567.

⁵ Ibid.

⁶ National Motor Vehicle Theft Reduction Council, 2007, *Secure by Design 2007 Class Winners List*, National Motor Vehicle Theft Reduction Council, Melbourne.

manufacturing reaches a point where it is easily absorbed by lower priced vehicles. Today's common technologies such as Anti-lock Braking System (ABS Brakes) and Electronic Stability Control (ESC) were originally introduced into the "luxury" market. AADA is concerned that the increase in the LCT impost may hinder the development of new safety, green and vehicle security technologies and the additional cost of the LCT increase may further act as a disincentive to consumers when considering purchasing new technologies.

Insufficient LCT Threshold

Whilst it is AADA's preference that the LCT be abolished, the Association has long advocated for a substantial increase to the threshold. Since 1991, when the Hawke Government increased the Luxury Vehicles Sales Tax (LVST) applied to vehicles above a price of \$43,000 from 30 per cent to 50 per cent. Since that time inflation has pushed the true value of that threshold value to something in the order of \$131,754.⁷ On the introduction of the Goods and Services Tax, the LCT replaced the LVST.

However, the current threshold fails to recognise there has been a significant increase in the number of vehicles on the market that are priced between the \$60,000 to \$80,000 bracket; which is of course above the LCT threshold.⁸ There has been no shift in the LCT threshold to recognise that there have been changes in vehicles and their technology which have resulted in the increased number of vehicles being subject to the LCT. AADA considers that a substantial increase to the threshold is more than justified, given that the 'luxury' threshold has only been increased by a nominal amount of \$14,270 since 1991.

Adjustments to the LCT threshold are calculated by measuring the Car Depreciation Limit (CDL) which is the same as the LCT threshold against movements in the Consumer Price Index Motor Vehicle (CPIMV) Index. Since the introduction of the LCT in 2000, the CPIMV has risen three times, resulting in increases to the LCT in 2002 (\$57,009), 2007 (\$57,123) and as of 1 July 2008, \$57,180.

These increases have been so small as to negate any real benefit. Indeed, these increases have been more of a nuisance as the costs of compliance, such as the reconfiguring of computer systems to reflect and collect the revised rate far outweigh the increase itself.

AADA believes that any increase to the threshold should reflect today's vehicles prices and address the bracket creep identified above. AADA also believes that because of the relationship between the Car Depreciation Limit (CDL) and the LCT that a significant increase to the LCT threshold, independent of the CDL, is warranted. In order to better reflect the realities of the new vehicle market and encourage the take-up of new technologies, AADA considers that the LCT threshold should be increased to a figure of the order of \$100,000. Such an

⁷ Australian Bureau of Statistics, 1991 – 2008, *Consumer Price Index, December Quarter*, Commonwealth of Australia, catalogue no. 6401.0.

⁸ Australian Automotive Intelligence, 27 June 2008, *Luxury Vehicle Price Changes*, Federal Chamber of Automotive Industries, Canberra, p 18.

increase would remove some of the market inefficiencies and unfairness that have resulted from a largely unresponsive threshold.

Distortion of Vehicle Accessories Market

In addition to the regulatory and taxation burden caused by the LCT, the LCT has also significantly distorted the vehicle accessories market. Currently, the method in which LCT is calculated includes the value of additional accessories sold with the vehicle (such as roof racks and tow bars). This inclusion of accessories within the method of valuing vehicles results in market distortion as customers can reduce or avoid LCT by having such accessories fitted by aftermarket suppliers. As a result of this distortion, customers have a real disincentive to include accessories in their new vehicle purchase; often resulting in lost business and revenue for the dealership. AADA considers that this distortion in favour of aftermarket suppliers is unfair and recommends that accessories be excluded from the LCT valuation.

Conclusion

The Bills to increase the LCT, as currently drafted, have already had the effect of substantially increasing the regulatory and compliance burden for dealers. The uncertainty surrounding the retrospective application of the LCT increase has placed dealers in an invidious position where they must collect revenue without any legal basis for doing so, but face the prospect, if they have not collected the increased amount from their customers, of being liable to the ATO for the uncollected amount. Furthermore, dealers are further burdened by the considerable cost and complexity of applying the additional impost to existing finance agreements. Because of the significant compliance burden and uncertainty surrounding the collection and remittance of the additional LCT impost, AADA strongly recommends to the Committee that the retrospective element of the Bill be removed.

Currently, some customers, such as those with large families or from rural and regional areas, are penalised for purchasing a vehicle that not only suits their needs, but which provides the necessary level of safety features. Consumers in general are also penalised for purchasing vehicles that offer environmental, safety and security benefits; the very things that Australian Government policy is seeking to achieve within the national fleet. AADA believes that consumers should be encouraged to purchase vehicles which provide such benefits, rather than face discrimination in the form of a "luxury" tax which fails to recognise the needs of consumers and the environmental benefits that may be offered.

AADA also recommends that accessories be excluded from the calculation of the LCT value. Dealers are further disadvantaged within the automotive accessory market due to the inefficiencies surrounding the inclusion of accessories within the LCT calculation. By excluding accessories from the LCT calculation, the Government would be able to remove the imbalance that the LCT has caused with the automotive accessory market.

AADA considers the LCT to be an unfair and discriminatory tax, and thus supports the removal of that tax. Failing that, AADA respectfully asks that the LCT threshold be significantly increased, independent of the CDL, to remove the inefficiencies, discrimination and unfairness that occur as a result of this tax.

In conclusion, AADA makes the following recommendations to the Senate Committee:

1. that the LCT be abolished;
2. failing its abolition, that the LCT threshold be increased to \$100,000;
3. that the retrospective application of the additional LCT impost be removed;
4. that consumers be encouraged to purchase vehicles which offer safety, environmental and vehicle security benefits; and
5. that accessories be removed from the LCT valuation calculation.

AADA NATIONAL SECRETARIAT
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