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John Gill
Office of the Chief Tax Counsel
Australian Taxation Office

Email: John.Gill@ato.gov.au

7 February 2025

Dear Mr Gill,

Decision Impact Statement - Automotive Invest Pty Limited v Commissioner of Taxation [2024] HCA 36

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 173,000 members in over 100 countries and regions. We make this submission in response to The ATO's Decision Impact Statement **Decision Impact Statement - Automotive Invest Pty Limited v Commissioner of Taxation [2024] HCA 36** (DIS) released on 11 December 2024 on behalf of our members.

We generally agree with the comments in the DIS. We make the following summary comments and key points to improve the utility of the DIS for your consideration:

- The High Court reasoning in the Automotive Invest case means one must now use subjective intention. It also means many past cases, guidance and ATO rulings should be reconsidered in light of the High Court decision.
- The DIS needs to explain and reconcile how to re-interpret existing ATO written materials, i.e., rulings, determinations, fact sheets and other Decision Impact Statements which still refer to an objective test.
- A table should be introduced in the DIS that sets out all GST provisions that must now use subjective intention.

Please refer to the Appendix for our detailed discussions. If you have any queries, contact me at jenny.wong@cpaaustralia.com.au or Bill Leung, Tax Technical Advisor at bill.leung@cpaaustralia.com.au.

Yours sincerely,

Jenny Wong
Tax Policy Lead

Appendix

Detailed discussion

In broad terms, CPA Australia is in agreement with the High Court's **Automotive case** decision, outcome and this ATO DIS. In the case, a majority of the High Court that the identification of purpose within ss 9-5(1) and 15-30 of the *A New Tax System (Luxury Car Tax) Act 1999* (Cth) requires the identification of the specific ends, objects or goals which are the ultimate reason or reasons why a taxpayer is using a car in a particular way. It is necessary to distinguish between this meaning of purpose and the concepts of "motive" and "means". Purpose is subjective in the sense that it belongs to a subject. The appellant's purpose in holding the cars was to hold them as trading stock, and the museum concept was only the means by which to achieve that purpose, rather than the ultimate object or end in itself.

Based on the above High Court decision, the DIS does not say how important and critical this is to the operation of the GST regime. Furthermore, we believe the DIS needs to say overtly and clearly state that many past cases and ATO rulings will now need to be reconsidered, in light of the High Court reasoning that it is the subjective intention rather than an objective purpose test that is the correct application of the law. For example, the ATO should explain how the Automotive decision sits with the landmark 2015 **Rio Tinto** case, where the taxpayer was denied input tax credits for input taxed residential accommodation in the form camp site accommodation. Rio Tinto's clear reason and intention for setting these up to provide on-site accommodation for miners was to produce taxable (or GST-free exported) minerals. The Court in that instance ruled the ATO had to look at the first and immediate 'objective purpose and use' of providing accommodation, and not 'look through' to the ultimate mining of minerals.

More recent cases include **Hanover Life** case on insurance and subsequent re-insuring and **Lewski** case that 'ignored' Lewski's subjective purpose and intention at acquisition. In all three cases, the subsequent 'application' of the acquisitions for the 'adjustment provisions' should use the same subjective intention.

This DIS will be used by the professional advisers and by the taxpayers in determining entitlements to GST import tax credits and potential adjustment events every day. Therefore it must provide correct and better guidance in light of the High Court's Automotive Invest judgment. For example:

- A table should be introduced in the DIS that sets out all GST provisions that refer to actual person (i.e., you) that must now use subjective intention. Also, other provisions that will still refer to an objective test.
- Distinguish this decision from other decisions such as the three cases above.
- Taxpayers' rights to now challenge previous ATO assessments that incorrectly relied on an objective versus subjective test.
- What action is ATO taking regarding existing ATO rulings, fact sheets and Decision Impact Statements, in light of the Automotive Invest decision?