

VACC Response: State Revenue Office draft Revenue Ruling DA-034v2

27 August 2019



About VACC

The Victorian Automobile Chamber of Commerce (VACC) is Victoria's peak automotive industry association, representing the interests of more than 5,500 members in over 20 retail automotive sectors that employ over 50,000 Victorians.

VACC members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), and automotive dismantlers and recyclers.

VACC is also an active member of the Motor Trades Association of Australia (MTAA) and contributes significantly to the national policy debate through Australia's peak national automotive association.

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Introduction

VACC welcomes the opportunity to provide commentary to the Victorian State Revenue Office (SRO) concerning draft revenue ruling DA-034v2 issued on 12 August 2019. DA-034v2 took effect on 1 July 2019 and replaces the 2006 issued SRO Revenue Ruling DA-034.

VACC is charged with the responsibility to communicate to government where policy matters adversely affect operations within the automotive industry. This paper provides representations on behalf of the industry relating to the recent announcement emanating from the 2019-20 Victorian State Budget that will see the introduction of exemptions from duty for vehicles deemed to be Service Demonstrator Vehicles (SDV).

This submission is provided in collaboration with the Victorian Automobile Dealers Association (VADA), a Division of VACC. VADA represents the interest of over 640 Victorian Franchise Dealers and is the peak association representing new car dealers in Victoria.

About this submission

This submission is based on substantial feedback received from licensed motor car trader (LMCT) members of VACC who are directly impacted by the new SRO Revenue Ruling DA-034v2.

The preferred policy positions as stated have been formulated in consultation with the Executive Committees of the Victorian Automobile Dealers Association, Commercial Vehicle Industry Association of Victoria, VACC Motor Cycle Dealers Division and the VACC Used Car Traders Division.

The data presented in this report relates to new car sales transactions. By contrast, information on used cars sourced from VicRoads is typically based on vehicle transfers, as opposed to actual sales transactions.

Background

Chapter 9 of the *Duties Act 2000* in Victoria imposes duty on an application for registration or transfer of registration of a motor vehicle, unless an exemption applies. Duty is calculated on the dutiable value of a motor vehicle.

Demonstrator vehicles are motor vehicles that are available and used for demonstration to prospective purchasers for the sale of vehicles of the same or similar class. This exemption reflects the Victorian Government's position that motor vehicle dealers should not be disadvantaged in relation to the payment of duty compared to other businesses, simply because the essence of their business is the acquisition and sale of motor vehicles.

Sections 231 (1) and 231 (2) (a) (ii) of the *Duties Act* provide exemptions from duty for Licensed Motor Car Traders (LMCTs) for vehicles that are used as demonstrator vehicles. The current requirements of the *Duties Act 2000* were supported by SRO Revenue Rulings DA.034 and DA.035. These Revenue Rulings were issued in 2006 by the SRO in collaboration with VACC, both in response to and as a reflection of the state of the new vehicle market at that time.

Both market conditions and industry business practices however, are now fundamentally different to 2006 and the previous Revenue Rulings resulted in many Victorian new car dealers paying double taxation.¹

This was an issue that resulted in significant financial repercussions to the industry and Victorian economy. This issue was acknowledged by the Treasurer's Office and was consequently addressed in an announcement made in the 2019-20 Victorian Budget, providing some relief for LMCTs for vehicles referred to by the SRO as a Service Loan Demonstrator Vehicles (SDV)².

As of 1 July 2019, LMCTs have been entitled to an exemption from duty for the newly introduced category of a SDV upon satisfactorily meeting the criteria now published in SRO Revenue Ruling SA-034v2.

Ruling Section 231(1)- Trading stock exemption (Wholesale)

VACC notes that the wording contained in the original guidance in Revenue Ruling DA-034 February 2006 concerning the exemption of wholesale trading stock, remains largely identical to that pertaining to the new DA-034v2 revenue ruling released 1 July 2019.

It is usually the case that a large pool of vehicles are generally available to staff of the LMCT for incidental use, including driving after hours. There is no consistent pattern of usage of these vehicles by staff, with alternating usage of each vehicle occurring daily by different personnel.

VADA members therefore seek clarity concerning the provision where SRO will accept secondary uses of a motor vehicle where it is used incidentally in a pool of vehicles available for driving after hours by staff of the LMCT and the vehicle is shown in the LMCTs Fringe Benefits Tax returns. VADA members are seeking a clearer definition of 'incidental use' as it applies to staff with provision of a company vehicle taking the vehicle for weekend use.

Ruling Section 231(2)(a)(i)-Trading Stock Exemption (Retail)

Regarding Section 231(2)(a)(i) concerning the exemption of retail trading stock, VACC advises that these trading stock/exempted vehicles are available for sale despite not being present at the LMCT business premises during normal trading hours.

Contemporary business models amongst LMCTs now dictate the use of flexible sales practices, where business trading stock that is available for sale is often mobilised across various locations, including shopping centres, warehouses and open land, that are not the legal LMCT business address or premises. Often, exempted vehicles are relocated from such varying locations for the purposes of a demonstration drive with prospective buyers.

It is also the case that in Victoria, the Business Licensing Authority (BLA) allocates special criteria or exemptions to motor car dealers to trade in other environments that are not their actual business addresses such as a pop-up store in a major shopping centre, that operate outside the businesses

¹ VACC Impacts of Unintended Double Duties for Victorian New Car Dealers 2018

² Delivering for all Victorians Budget 19/20 Fact Sheet – Changes to service demonstrator vehicles and to motor vehicle duty

normal trading hours.

VACC therefore advises that SRO Revenue Ruling Section 231(2)(a)(i) requires urgent reform to account for the fact that trading stock/exempted vehicles can be still available for sale despite not being present at the LMCT business premises during normal trading hours.

Section 231(2)(a)(ii)-Demonstrator Vehicle Exemption

Similar to commentary in Section 231(2)(a)(i) the scenario regarding contemporary business models and licensing exemptions to provide trading stocks in other locations other than the place of business should apply.

Section 231(2)(a)(iii)- Service Demonstrator Vehicle Exemption

VACC advises that the use of the term 'without charge' and what constitutes a 'charge' in the provision of a SDV must be reviewed. It is important to understand the impacts of the SRO interpretation of the term. The term is being used by the SRO to pass along charges to the dealer that they have not created, and this leads to a negative outcome for dealers.

VADA views on where charges should and shouldn't apply

- VADA members accept that a charge or fee for the rental or loan of a SVD should trigger a change in use and subsequent motor vehicle duty to be applied
- VADA members reluctantly accept that a fee being paid by the consumer to reduce an insurance excess is considered an associated charge for use the SVD and trigger a change in use
- VADA members do not accept that fuel recovery costs or speeding, parking or toll infringements should be absorbed by the dealer and that the SRO position to charge for fuel used by a consumer in a SDV to be considered a 'charge' and trigger a change in use.

Fuel recovery

It is the view of VADA that the SRO have taken the interpretation of 'a charge' to an unrealistic level. The term ,which was introduced by the *State Taxation Acts Amendment Act 2019* and is found in section 3 (Definitions) section of the *Duties Act 2000* ,states that :

a service demonstrator vehicle means a motor vehicle that is -

(a) used for the purposes of the sale of another vehicle of the same class; and

(b) made available without charge by a licensed motor car trader to a customer of the trader for use while the customer's motor vehicle is being serviced;

In relation to SRO comments on fuel charges, and as per correspondence from SRO to VACC DATES

16 August 2019³, the final version DA-034v2 must stipulate the LMCT can encourage the customer to refuel the vehicle upon its return (not a charge).

Typically, VADA members will provide a SDV to a consumer with a full tank of fuel and will request that the consumer to return the SDV with a full tank of fuel. This is logical and a request that consumers see as being reasonable. It is unreasonable and a consumer detriment to not provide a full tank of fuel at the commencement of the provision of a SDV. The dealer is also in a precarious position that if it does not provide a full tank of fuel that this will result in a potential negative customer satisfaction survey.

VADA does not agree with the harsh SRO interpretation that if refueling is a condition of any contract or agreement to use the SDV, or the customer is charged for the fuel following use of the SDV, this does amount to a charge as defined in section 3 of the *Duties Act 2000*⁴ and therefore triggers a change in use. The issue is compounded by SRO advice to VACC that the LMCT can encourage the customer to refuel the vehicle upon its return (not a charge)⁵.

Impacts of no fuel charge on dealerships

A modern well-run dealership will generally achieve a net profit of around 2% to revenue – that is, two dollars of profit for every one hundred dollars of sales revenue⁶. This is an extraordinarily low Return on Investment considering the scale of the operation. Every opportunity to introduce efficiencies and reduce red tape are identified and applied in vehicle dealerships.

The reliance on a positive customer experience to ensure factory payments in every facet must be addressed. As dealers strive for customer satisfaction as a means of increasing retention in order to support throughput and profitability, manufacturers measure and incentivise the dealers based on the levels of customer satisfaction achieved, since customer satisfaction drives brand loyalty. Most franchisors use some form of net promoter score to arrive at customer satisfaction metrics and these measures are widely accepted throughout the motor industry (and other industries) as reliable indicators of consumer satisfaction⁷. It is not reasonable to expect dealers to put at risk these incentives by providing a consumer with a SDV with a half or near empty tank. It is not reasonable to expect a dealer to pay for fuel that they have not consumed.

VADA members do not agree that 'without charge' was ever intended to prevent the LMCT from recouping consumable such as a fuel charge from a consumer and that applying this criterion is perverse and unjust. It is the vehicle that is being supplied without charge, not the fuel. To this end, VACC will see a legal position on this issue if it is not dealt with satisfactorily.

³ SRO email communication to VACC 16 August 2019

⁴ SRO email communication to VACC 16 August 2019

⁵ SRO email communication to VACC 16 August 2019

⁶ AADA Submission to ACCC New Car Retailing Industry Market Study 2016 4.1.2 pg.9

⁷ AADA Submission to ACCC New Car Retailing Industry Market Study 2016 4.2.8 4.2.9 4.2.10 pg.10

Traffic and toll infringements

Advice from SRO to VACC in relation to toll fees, parking fines and speeding fines reflects that the SRO accepts that these are incurred as a result of the actions of the consumer using the SDV and are not therefore regarded as 'charges'. SRO further states that *'the recovery of these costs is not a charge for using the vehicle and does not trigger a change in use of the SDV. Therefore, the SRO does not therefore view toll fees, parking fines and speeding tickets as a charge⁸'*.

VADA agrees with the position on SRO on this issue but draws particular note to the utterance that these are incurred a result of the consumer using the SDV and therefore are not regarded as 'charges'. The same methodology must be used with respect to fuel used by a consumer in their use of a SDV.

Class of SDV to be supplied to a consumer

VADA members have concerns regarding the following criteria stipulated in DA-034v2 for the immediate attention and action of SRO:

'The motor vehicle does not need to be the same make or type as the customer's vehicle that is being serviced. However, a lower class of vehicle than the customer's current vehicle is likely to be considered a courtesy vehicle rather than a service demonstrator vehicle'.

The statement that a lower class of vehicle than the customers current vehicle is likely to be considered a courtesy vehicle rather than a service demonstrator vehicle is flawed. The SRO's interpretation in this regard is based on a premise that all customers either purchase the same class or an increased class of vehicle whenever they buy a new vehicle. Customers often down size and/or down- grade due to a variety of reasons, including, customers age, a change in financial position, customers becoming empty nesters, change in customer priorities, change in purpose of vehicle etc.

The following example of supply of a SDV was provided by a prominent Hyundai Dealer:

'We could put on a base model Santa Fe as a Service Demonstrator Vehicle. In 95% of instances this model would be considered a higher class of vehicle than our customers current vehicle. But, if at any stage this vehicle is loaned to a customer who drives the top of the range Santa Fe... does this mean the stamp duty exemption is void?⁹'

In some instances, it is impossible to provide a vehicle that is of higher class. For instance, if a LMCT has a Lamborghini Aventador or Audi R8 in for a service or warranty issue, the statement that "provision of a lower-class vehicle than the customers current vehicle" contained within DA-034v2 leaves the LMCT with no other option but to have those types of cars available as SDVs. This is hardly viable for the LMCT. In these scenarios, the dealer should have the opportunity to showcase their full catalogue of vehicles to a prospective purchaser.

⁸ SRO email communication to VACC 14 August 2019

⁹ Hyundai Dealer email feedback to VACC 17 August 2019

At the very least the statement should be repealed as the original guidance ,issued by the Victorian Governments' *Delivering for all Victorians Budget 19/20 Fact Sheet – Changes to service demonstrator vehicles and to motor vehicle duty* 'that has been articulated to industry clearly makes the announcement that a SDV does not need to be the same make or type as the car being serviced ¹⁰ .

Meaning of 'primarily' in section 231(2)

VACC has no commentary on this section.

Purposes or uses outside sections 231(1) and 231(2)(a)

VACC agrees with all but one of the non-exhaustive lists of uses that are considered ineligible for the exemptions granted under Section 231(1) and 231(2)(a).

Private use vehicles as they are supplied to staff

It is the view of VADA members that this provision results in dealers having to pay stamp duty on these vehicles every time a staff member goes in and out of a car.

A non-LMCT facing business would turn over their private use vehicles every 2 years as a minimum. This places an unfair condition on a dealership who could be paying stamp duty every week on a car that is available for sale and customer demonstration purposes every business day at the dealership.¹¹ The suggestion would be that stamp duty is paid on the average value of a car as per the FBT return calculation once every 2 years x the number of staff who are recorded in the FBT returns / employment agreements.

VADA recommends that Revenue Ruling DA-034v2 makes a clear and defined set of exclusions that include the following:

- Statement for exemption from interpretation of 'charge' for fuel used by a consumer in a SDV
- Statement of exemption from interpretation of 'charge' for a SDV that has incurred toll fees, parking tickets and speeding fines or any other vehicle operator issue connected with the Road Safety Act and Hoon Legislation
- Statement of exemption that the dealer can at its discretion advise the consumer in writing that the consumer will pay an agreed excess amount in the event of any accident or damage incurred by the consumer whilst in possession of the SDV
- Clear definition of driving after hours incidentally (i.e. currently services advisors take the vehicle home at the end of their shift each night and over the weekend)

¹⁰ Delivering for all Victorians Budget 19/20 Fact Sheet – Changes to service demonstrator vehicles and to motor vehicle duty. Make of SDV 29 May 2019.

¹¹ VADA member advice received by VACC 23 August 2019

- VADA members seek a clearer definition of 'incidental use' as it applies to staff with provision of a company vehicle taking vehicle for weekend use
- That stamp duty is paid on the average value of a car as per the FBT return calculation once every 2 years x the number of staff who are recorded in the FBT returns / employment agreements.

Examples of taxes absorbed by consumers on new vehicles in Victoria

Government fees on top of list price

Mercedes-Benz E200

VADA
VICTORIAN
AUTOMOBILE
DEALERS
ASSOCIATION

List price \$80,000	GST \$8,399	Rego (inc TAC) \$861.80	Federal Luxury Car Tax \$7,817.40	Vic Stamp Duty \$7,028
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Total extra taxes \$24,106.20



Government fees on top of list price

Mercedes-Benz G63 S AMG SUV

VADA
VICTORIAN
AUTOMOBILE
DEALERS
ASSOCIATION

List price \$200,000	GST \$20,499	Rego (inc TAC) \$861.80	Federal Luxury Car Tax \$47,747.40	Vic Stamp Duty \$24,606
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Total extra taxes \$93,714.20



Government fees on top of list price



Mercedes-Benz C63 S AMG Coupe

List price \$140,000	GST \$14,499	Rego (inc TAC) \$861.80	Federal Luxury Car Tax \$27,947.40	Vic Stamp Duty \$16,884
Total extra taxes \$60,192.20				

