



Date: 1<sup>st</sup> July, 2017

To,  
Shri Upender Gupta  
Commissioner  
Goods & Service Tax Policy Wing,  
Department of Revenue,  
Central Board of Excise & Customs,  
Government of India,  
North Block  
New Delhi – 110 001

Respected Sir,

**Sub: Representation for appropriate relief in respect of ongoing leases to avoid double taxation on leased vehicles**

Asset Finance Association of India (AFAI), an industry body formed with the objective of promoting leasing, factoring and other asset-backed financing entities, is an initiative by the Indian Securitisation Foundation (ISF), a non-profit organization incorporated with the cause of promoting capital market instruments in the country. Some of the eminent players of the leasing industry are members to AFAI and are dedicated to the cause of promoting leasing in India. The details of AFAI, its activities and members are provided for in **Annexure I** to this representation.

The purpose of this representation is to humbly request for appropriate relief by way of, transitional provisions under GST, in respect of ongoing leases to avoid double taxation on leased vehicles.

### Summary of the Representation

Pre GST regime, transaction of purchase of motor vehicles by leasing entities, for use in the leasing business, was subject to central excise duty and VAT. Lease rentals charged by a leasing entity was subject to VAT under the state VAT laws and the same was claimable as input tax credit by leasing entity. As output in case of leasing entities was not subject to central excise duty or service tax, they were not eligible to claim input of the central excise duty paid on the purchase of motor vehicles as a consequence of which the same formed a part of cost for leasing entities.

Post GST, the lease rentals charged by the lessor from the lessee, in a leasing transaction, will be subject to either IGST or CGST + SGST in addition to compensation cess, depending on whether the lease transaction is inter-state or intra-state.

As on the date of transition to GST, in context of the ongoing leases of motor vehicles, while the purchase leg of the transaction would have suffered excise duty, the output would be subject to either IGST or CGST + SGST plus the compensation cess. Hence the lease rentals which would have been only subject to VAT under the old tax regime will now be subject to tax at a much higher rate resulting in double taxation from the CGST perspective for leasing entities involved in lease of motor vehicles.



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While the government has put in place various provisions for transition to avoid such double taxation but, transition provision is missing for leasing industry.

Therefore we humbly request the government to put in place appropriate transitional provisions in context of leasing entities.

## Leasing Industry in India

The Indian leasing industry has witnessed some growth in leasing volumes since 2010 and has seen several new players venture into new asset classes after leasing in India came to a sudden halt in 1996. Leasing has found favor as some of the issues from the past resolved, corporates preferred usage of several assets over ownership, technological obsolescence also created an inclination towards appreciating usage benefits over ownership, leasing facilitated creation of new customer class, as a tool to boost sales for some asset classes and more.

While assessing the performance of the Indian leasing industry, it is noted that the leasing volumes stood at around USD 669 million<sup>1</sup> during FY 2014-2015 as opposed to USD 505 million during FY 2013-2014. The leasing industry outlines the upward trajectory motion in terms of growth. The acquisition of capital goods involve high cash outflow, thus importers opt for equipment leasing rather than buying outright. Leasing, as an alternative provides several benefits which are enumerated below:

1. Technological upgradations are suitably met with the lease form of financing. It is easy for companies to replace their worn out or obsolete machines with the leased assets.
2. Hedging of technological obsolescence helps equipment users to avoid the burdens of ownership, one of them being equipment obsolescence. Much of today's equipment incorporates technology that is rapidly changing.
3. Cashflow constraints makes leasing attractive. An outright purchase requires an immediate cash outflow, whereas in case of lease, the cash outflow are spread over years of usage of the asset. Also in case of leased assets, the ownership of the assets is retained by the leasing entity and only the usage of the assets is transferred to the end user. Therefore, in most lease cases, there is no requirement for additional collateral.

## Existing Scenario

Pre GST regime, the purchase of motor vehicles, by leasing entities involved in leasing of motor vehicles, was subject to central excise and VAT as per the state VAT laws.

Lease of motor vehicles by lessor to lessee amounts to transfer of right to use the goods. A transfer of right to use the goods amounts to a deemed sale under the state VAT laws. As the transaction of leasing qualified to be a sale under the state VAT laws, the lease rentals were subject to VAT and leasing entity was eligible to claim an input tax credit of the same.

Leasing entities were not eligible to claim input tax credit of central excise paid on the purchase of motor vehicles as it was not liable to pay either central excise or service tax on its output. As a consequence, the amount of central excise duty paid became a part of the cost for leasing entities.

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<sup>1</sup> The leasing volumes do not include new leasing business volumes of Indian Railway Finance Corporation a subsidiary of Indian Railways



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## Under GST Law

As per the provisions of Schedule II of the CGST Act, any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services. In case of a lease transaction, there is a transfer of right to use the asset from the Lessor to the Lessee. Therefore, lease transactions shall be treated as supply of services for the purpose of GST and will be a taxable activity.

The lease rentals charged by the lessor from the lessee will be subject to either IGST or CGST + SGST plus compensation cess, depending on whether the lease transaction is inter-state or intra-state.

## Transitional provisions under GST law

Leasing entities, involved in the lease of motor vehicles, have several vehicles which are on lease on the day of transition to GST. As on the date of transition to GST, in context of the ongoing leases of motor vehicles, while the purchase leg of the transaction would have suffered excise duty at the rates ranging between 24% to 43% as per the type of vehicle, the output would be subject to 14% CGST + plus the compensation cess of 1%/15% in addition to SGST of 14%.

Hence the lease rentals which would have been only subject to VAT under the old tax regime will now be subject to tax at a much higher rate resulting in double taxation from the CGST perspective for leasing entities involved in lease of motor vehicles.

While the government has put in place various provisions for transition to avoid such double taxation but, transition provision is missing for leasing industry. Absence of transitional provisions for leasing industry will result in double taxation and cascading effect in respect of the excise duty paid on purchase of motor vehicles.

## Our Representation

Considering that there will be double taxation and cascading of taxes as explained above, we suggest that under section 140(3) of the CGST Act, which allows for *credit of eligible duties in respect of inputs held in stock allowed in certain situations*, the requirement of the purchase being a maximum of 12 months old, so as to be eligible for a carry forward of the input tax credit, should be substituted with 36 months for leasing entities in particular, so that loss to the leasing industry is minimised.

As AFAI is dedicated to the cause of contributing to the development of the asset backed funding sector in particular, in the event of any further clarification needed, we would be happy to provide the same.

For *Asset Finance Association of India*

Sd/-

(Nidhi Bothra)



## **Annexure - I**

The Asset Finance Association of India is an initiative by the Indian Securitisation Foundation to bring together the stakeholders of the asset finance sector in India. The organisation is intended to promote, help, develop, protect, encourage and secure, in India, general interest of various forms of asset backed funding by acting as industry association, to organize industry events, forums, discussions to promote research, generally to take care of the interest of trade, industry and commerce, stakeholders, participants and investors in asset finance and generally to act in the best interest of the Indian asset finance sector. Primarily, the asset finance activities to be catered to by the Association include leasing, factoring, trades in receivables, etc.

The Association aims at bringing industry players on a common platform – to join their thoughts, and to provide a voice to their thoughts. The Association aims at providing a strong platform of advocacy for asset finance industry.

Some of the functions of the organisation include:

- **Advocacy:** making representation to various authorities from time to time on matters concerning the following –
  - a. Leasing
  - b. Factoring
  - c. Receivable Financing
  - d. Other forms of asset backed finance.
- **Industry forums and networking:** holding periodic conventions and educational courses.
- **Development of industry standards:** framing self-regulatory standards on disclosures, reporting, servicing reporting, DOs and DONTs for various forms of asset finance.
- **Information exchange:** on matters of common interest, collateral performance etc.

### **AFAI Executive Committee Members**

#### ***1. Ms. Simi Thapar***

Ms. Simi Thapar is a Head - Equipment Leasing and Financing Solutions - Corporate Finance at Tata Capital. Simi has 25 Years Work Experience in Financial Services across diverse industries and diverse asset and product categories. Ground experience in new business initiative, product development and in devising strategy for organic and inorganic growth of business.

#### ***2. Mr. Gautam Munish***

Mr. Gautam Munish, currently serving Hewlett Packard financial services as regional sales director is a seasoned finance professional with 20 years of diverse work experience across Asset, Liability and Investment products. He has extensive experience in building and managing business from ground up, with exposure to detailed competitive landscape analysis, compliance and regulatory adherence and evangelizing the merits of a differentiated approach to market.

#### ***3. Mr. Sunil Badala***



Mr. Sunil Badala is a partner with the financial services tax practice of the Indian Firm of KPMG. He specializes both in domestic corporate tax and international tax and entry and exit strategies for multinationals and large domestic companies investing into/ outside India. He has a total of about 18 years of experience, including 14 years with the India Firm and has extensive experience in International and Domestic taxation, Inbound Entry Strategies for Multinationals and Outbound Structuring Strategies for large domestic companies.

**4. *Mr. Shrirang Tambe***

Mr. Shrirang Tambe founder and CEO of ORIGA Leasing one of the first FinTech asset leasing companies for high growth oriented companies with philosophy of access to finance. His expertise lies in advising and nurturing growth oriented companies across financial and strategic areas.

**5. *Ms. Nidhi Bothra***

Ms. Bothra is a consultant on leasing, asset backed lending, securitisation, structured finance and corporate finance and is Executive Vice President in Vinod Kothari Consultants (P) Ltd. Ms. Bothra has conducted various corporate training workshops on leasing, and has handled several consulting assignments on leasing in different markets. Nidhi has analysed state of leasing industry in several countries and writes the report on the state of leasing industry in India for several years now.

**6. *Mr. Dipankar Sen***

A MBA graduate with specialisation in finance, He has over 20 years of experience in leasing and financial services and today heads the leasing portfolio for Orix in India. His experience has been in both fund based and fee based activities where he has managed the SME, Corporate and PSU segments for their leasing requirements in equipments. Under the leasing portfolio in Orix, he today manages the vehicle leasing business where company offers solutions in both dry and wet leases.