

Luxury burdened with taxes in West Bengal



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The burden of taxes on luxury is increasing and making it undesirable in West Bengal. The West Bengal government, vide *Notification no 456 dated 31st March 2012*¹ [effective from April 01, 2012), has increased the rate of tax to 14.5% on certain specified sales above the specified limit. The list includes:

- a. Air Conditioner with capacity above one ton
- b. Motor Car - price of which exceeds Rs. 10 lacs
- c. Television of any type - the maximum retail price of which exceeds Rs. 25,000/-
- d. Mobile phone of any type - the maximum retail price of which exceeds Rs. 20,000/-
- e. Watches - maximum retail price of which exceeds Rs. 15,000/-

Critical in the list above and of concern to us here is increased VAT on motor cars as this has an impact on leasing as well. Value Added Tax ("VAT") or Sales tax is charged on "sale" hence applicable on deemed sales such as lease and hire purchase transactions too. Hence the higher rate of taxes on certain items above may raise concerns for the lessor as well.

Let us consider the following circumstances arising from this notification:

a) If the purchase price (excluding VAT component) exceeds specified limit, what will be the VAT Rate applicable on Lease Rental.

VAT is levied on lease rentals in case of lease transactions. Higher rate of VAT will apply if the price exceeds the specified limits as mentioned above. The question that arises is whether the lease rentals will be burdened with higher VAT rates or not? For example - in case a lessor buys a car at a cost exceeding specified limit (the specified limit in case of car is Rs 10 lacs), the input tax paid on purchase will be 14.5%. Higher rate of tax will be applicable on lease rentals as well, as in case of lease, the tax is applicable on lease rentals, which is considered as "sale price".

One needs to understand that tax rate has been escalated by means of introduction of aforementioned notification. Pursuant to the said notification, burden of tax has been increased for people dealing in lease transactions for example **A** leased his car to **B**;

The rates applicable are shown in Table 1: Rates Applicable:

¹ <http://www.wbcomtax.nic.in/notification/456-FT.PDF>



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Table 1: Rates Applicable

Limits	Before 01.04.2012	Covered under Schedule	After 01.04.2012	Covered Under Schedule
Value Upto 10 Lac	13.5%	Schedule CA	13.5%	Schedule CA
Value more then 10 Lac	13.5%	Schedule CA	14.5%	Schedule D

What would happen if the car was purchased prior to the notification date and the lease rentals are continuing on and after 1st April, 2012 as well?

Let us consider a case where car (of value above Rs. 10 lacs) is purchased before 1st April, 2012 and is leased out with lease rentals continuing after 1st April, 2012 as well. The VAT applicable on the sale of the car would be covered by Schedule CA and the tax rate applicable would be 13.5% on the purchase consideration. Lease being a deemed sale, VAT on lease rentals before 1st April, 2012 will be charged with tax rate of 13.5%.

However, after the notification coming into effect the lease rentals would be charged at a higher rate of tax of 14.5% as per Schedule D. This would mean that there is an incremental burden of VAT on B for the lease rentals paid after 1st April, 2012 which may also render the transaction uneconomical in some cases.

b) What would be the rate of tax applicable in case of pre-used cars?

Pre-used cars have been dealt under item 55C of Schedule C of the West Bengal VAT Act. The section enumerates that in case of pre-used cars, the rate of VAT applicable will be 4%. The notification does not specifically include pre-used cars hence in case of pre-used cars the VAT rate applicable is 4%.

c) If the purchase price (excluding VAT component) does not exceeds Specified limit (but including VAT component exceeds specified limit), what will be the VAT Rate applicable on Lease Rental.



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Purchase Price refers to the price excluding the VAT component, that is, VAT is not a part of the purchase price. Hence, higher VAT rate will not be applicable if the purchase price excluding VAT is within the specified limit.

d) If the annual lease rentals payable is less than the specified limit, what will be the VAT rate applicable on lease rentals?

As mentioned in point b) above, irrespective of the annual lease rentals, if the price exceeds the specified limit, the rate of tax would be 14.5% on the lease rentals.

e) What is the present scenario on the applicability of tax on the specific items

Table 2: Present Scenario on Applicability of Tax on Specified Items with Specific Limits

Items	Rates applicable on items covered by the notification prior to the notification	Rate applicable on items covered by notification and inserted in Schedule D
Air Conditioner	Specified in schedule C VAT rate is 4%	14.5%
Motor Car	Not specified in any schedule so comes under schedule CA, VAT rate is 13.5%	14.5%
Television of any type - the maximum retail price of which exceeds Rs. 25,000/-	Not specified in any schedule so comes under schedule CA, VAT rate is 13.5%	14.5%
Watches	Not specified in any schedule so comes under schedule CA, VAT rate is 13.5%	14.5%



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Mobile phone	Not specified in any schedule so comes under schedule CA, VAT rate is 13.5%	14.5%

While the intent of the notification was to introduce differential tax in case of luxury items, but the same might have not so good implications on the lease transactions.