

# Analytical Speaking

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## VAT on lease and hire purchase transactions in Delhi

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## Analytical Speaking

At some point of time in the past, the instruments of lease and hire purchase fell out of popularity largely because of tax issues. Among tax issues, the major issue was sales-tax, as sales tax on lease and hire purchase transactions amounted to an incremental burden. When VAT laws were introduced, it was largely expected that the incremental burden due to interposition of lease/HP transactions in the chain of procurement of goods will be largely eliminated, as taxes paid at the time of purchase are allowed to be offset against taxes payable on the lease/ HP receivables. However, while that is the true spirit of VAT laws, state laws, apparently without any great philosophy, enacted laws which completely spoil the competitiveness of lease and HP transactions. Lease and HP have been in the doldrums for several years now, but now that they are reviving, it is very important to understand whereall does the pain lie in case of lease /HP transactions.

This article makes a quick review of VAT laws in case of lease and HP transactions in Delhi.

Lease (transfer of right to use goods) and HP are defined as “sale” under sec 2(1)(zc) of the Delhi VAT Act. In case of hire purchase, the language in the Delhi VAT Act is “transfer of goods” rather than delivery of goods. The Delhi High Court held in *Goodwill India Ltd. vs. The state, 45 STC 368* that the word “transfer of goods” can be taken to mean the delivery of goods, or transfer of possession from one person to another. Hence, HP is a sale in Delhi at the time of delivery. Again, it may be argued that the words “transfer of goods” do not mean the same as “transfer of property in goods”. It was held by the Supreme Court in the case of *M/S. Jay Bharat Credit and Investments Pvt. Ltd. vs. Commissioner Of Sales-Tax & Anr* on 9<sup>th</sup> August, 2000 that if the definition of “sale” under sec 2(g) of the Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi, is to include within its ambit only that transfer which takes place at the time of purchase when the option is exercised, then it would not have been necessary to widen the scope of the definition to include transfer of goods on hire purchase and to provide for it separately.

In case of lease transactions, the lease rentals are to be taken as “sale price”, and hence, included in the definition of turnover. The benefit of set off of tax paid at the time of purchase is available to the lessor in terms of sec. 9 of the Delhi VAT Act. There are no other provisions relating to a lease.

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In case of hire purchase, Rule 4 (a) provides that for the purposes of sub-section (4) of section 12, the amount of turnover or turnover of purchases arising in the tax period in the case of a sale or purchase occurring by means of an installment sale or hire purchase of goods made in the tax period, is the total amount of the sale price that will be due and payable under the agreement, including the amount of any option fee paid or that may be payable.

This may be read with the definition of Sale price as defined in section 2(1)(zd) of the Delhi VAT Act whereby interest is also included as a part of selling price. One may argue that if tax is imposed on the selling price immediately, interest, if separately billed, cannot be treated as a part of the selling price, since States do not have right to impose sales-tax on anything except the value of goods at the time of sale. Interest certainly does not form part of the value of goods, and hence, the right of States to impose tax on sale or purchase of goods cannot be extended to a tax on interest. However, the wording of Rule 4(a) of Delhi VAT Rules read with section 2(1)(zd) has the impact of levying sales-tax on interest as well.