

FIDC

Finance Industry Development Council

(A body incorporated as a Self Regulatory Organisation for Registered NBFCs)
101/103, Sunflower, 1st Floor, Rajawadi Road No.2, Ghatkopar (East), Mumbai – 400 077 (India)
Tel: 022 21027324/9820035553 • E-mail: maheshthakkar45@yahoo.in website: www.fidcindia.org

August 20, 2016

**SRI MOHD MAHMOOD ALI,
Hon'ble Revenue Minister,
Telangana State,
HYDERABAD.**

Respected Sir,

SUB: REPRESENTATION REGARDING AMENDMENT TO TELANGANA VAT, 2005 (TGVAT ACT, 2005) BY TELANGANA VAT ACT NO. 10 OF 2016

Finance Industry Development Council (FIDC) is a Self-Regulatory Organization (SRO) cum Representative Body of the NBFCs, registered with the Reserve Bank of India and engaged in Asset Financing. FIDC was formed 12 years ago, and is the recognized face of NBFCs, specially, those engaged in asset financing. We have been engaged in regular interactions both with Reserve Bank of India and Govt. of India, which include pre-budget meetings and also important policy related meetings with RBI. Almost all the leading NBFCs and a large number of small and medium sized NBFCs are our members.

NBFC Sector

- 1) As per the Financial Stability Report (FSR) dated June 2016:
 - Asset quality of NBFCs improved during the year 2015-16 and is better than the banks
 - The performance of the NBFC sector in terms of RoE and RoA is much better as compared to that of banks
 - NBFCs can support the drive towards promoting inclusive growth by catering to diverse financial needs, specially of MSMEs and individuals.
- 2) NBFCs have mastered the art of lending to the “unbanked” segment thereby furthering the Government’s agenda on financial inclusion for the last seventy years now.
- 3) NBFCs have been the pioneers in asset backed retail lending thereby playing an instrumental role in the development of important sectors like transport , infrastructure and SMEs/ MSMEs
- 4) Recent studies done by credit rating agencies show that few of the leading NBFCs have overtaken some of the scheduled commercial banks in terms of their balance sheet size
- 5) In spite of the fact that bank funding is one of the major sources of funds for NBFCs, none of the NBFCs have defaulted in meeting their liabilities towards the banks in the

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recent past

- 6) NBFCs have a regulation history of more than 19 years and all the key parameters of our activities are well regulated, almost at par with banks
- 7) 100% FDI is permitted in the NBFC sector which has projected this as an important attraction for FDI investment
- 8) The report of the RBI Committee on Mid Term Path on Financial Inclusion has recommended building of strong linkages between banks and NBFCs

Issue:

New Provision:

Telangana VAT Act No. 10 of 2016 has inserted Sub-section (3E) to Section 22 of the TGVAT Act, 2005 which provides that, in every lease transaction, that is liable to tax under sub-section (8) and sub-section (8B) of Section 4 of the Act, the lessee shall deduct tax on the lease consideration due at the rates specified in the said sections and remit the tax so collected to the State Government on the immediate next working day from the date of collection.

Section 4 of the TGVAT Act, 2005 is the charging section and sub-section (8) thereof refers to the transactions of lease and provides that every VAT dealer who transfers the right to use goods taxable under the Act shall pay tax at the rates specified in the Schedules. Rule (8B) gives an option to such dealer to pay, by way of composition, tax at 5% on the total amount received or receivable by him towards transfer of right to use the goods.

Thus, in every lease transaction, the liability to pay tax to the Government continues to be that of the lessor. However, burden to deduct tax at the time of payment is shifted to the lessee.

TGVAT Act, 2005 is framed on the principle of value added tax meaning, tax paid at earlier stage in the chain of business transactions is allowed as input tax credit at the next stage of payment of tax. This principle is implemented by allowing input tax credit to the VAT dealer for tax paid in respect of purchase of taxable goods for use in the business of the VAT dealer (Ref S 13 of TGVAT Act, 2005). This input tax is deducted by the VAT dealer while discharging its output tax liability and net amount is paid to the State Government. Thus, it envisages payment of output tax by the person who makes the sale and has purchased the goods and paid VAT on such purchase.

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A VAT dealer engaged in the business of leasing of motor vehicles as also machineries, equipments and so on is thus entitled to take input tax credit in respect to tax paid by the dealer on purchase of vehicles and other items, as the case may be, so purchased for use in the business of leasing.

Now, if the tax is to be paid by the lessee to the Government, how will the lessor claim input tax credit of the tax paid by it on purchase of these items? It goes against the very basis of value added tax principle.

Suggestion:

The provisions introduced by the TGVAT Act, 2016 in first instance ought to be removed as;

1. Registered Dealers engaged in the business of leasing;
-who are eligible to take input tax credit of taxes paid on purchase of goods leased by them, the tax on the lease transaction is currently payable by the lessor. Such a dealer paid tax on its purchases which it will be entitled to claim by way of input tax credit and pay net tax (output tax minus input tax) to the Government.
- covered under sub-section 8B which refers to composite scheme. The ITC is not allowed to the Registered Dealers and the lessors are obliged to pay VAT/tax from their own at the rate specified.
2. in case of Unregistered Dealer or where the dealer is below the Threshold limit, while leasing out assets (any asset), the transaction even when not subject to VAT, the lessee cannot be made liable to pay VAT to the Government as the lessee cannot make the deduction of tax when the VAT has not been charged from him by lessor

Whereas, the above proposal is not feasible, we believe that such a provision may have been introduced to curb non-payment of tax where the lessor is not a registered VAT dealer. The below proposed amendment will address the concern and, at the same time, will not impact the value chain and the VAT principle of taxation. The amendment could be on the following lines:

S 3E could read as under:

“In every lease transaction, [other than the transactions where the lessor is a registered VAT dealer](#), that is taxable under sub-section (8) and sub-section (8B) of Section 4 of the Act.....”.

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Amendment is to provide for exclusion of Registered Dealers engaged in the business of leasing and who are eligible to take input tax credit of taxes paid on purchase of goods leased by them. The effect of the amendment (indicated in blue colour above) will be that in cases where the lessor is a Registered VAT Dealer, the tax on the lease transaction will be payable by the lessor in terms of provisions of S 4(1) read with S 4 (8) or (8B), as the case may be. Such a dealer would have paid tax on its purchases which it will be entitled to claim by way of input tax credit and he will pay net tax (output tax minus input tax) to the Government. In cases, where the lessor is not a registered dealer, the burden of payment of tax will shift to the lessee.

We hope that the above said issues and our suggestions thereon shall be considered favorably.

Assuring you of our full co-operation always and thanking you in anticipation

Thanking you,

Warm Regards

For **FINANCE INDUSTRY DEVELOPMENT COUNCIL**

MAHESH THAKKAR
DIRECTOR GENERAL