

**ORDER OF CLARIFICATION MADE BY SHRI RAMENDRA JAKHU,
FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY,
GOVERNMENT OF HARYANA, EXCISE AND TAXATION
DEPARTMENT UNDER SECTION 56(3) OF THE
HARYANA VALUE ADDED TAX ACT, 2003**

Querist : M/s Lease Plan India Ltd., Gurgaon.

The querist M/s Lease Plan India Ltd., Gurgaon, registered under Haryana VAT Act, 2003 holding TIN No. 06160820945 is a company engaged in business of purchase, sale including leasing of Motor Vehicles to various corporate houses on transfer of right to use basis. The cars purchased by the company, after payment of tax to the authorized dealers of the car manufacturing company, are given on lease to corporate houses. As per the term agreed upon by the company and the corporate houses the cars which are transferred to them for a fixed period/term are returned back to the company on termination of the Lease Agreement. Thus, on termination of lease, the car is in the physical possession of the company. The car then is either sold to the end-user at the residual value is sold in the open market.

Haryana Government, vide notification No. SO/HA 6/2003/S.59/2006, dated 6.09.2006 has amended entry No. 68 of schedule `C` and further amended schedule `G` attached to the Haryana VAT Act and a lump-sum tax of Rs. 3000 per car on pre-owned cars with engine capacity upto 1000 CC and a lump-sum tax of Rs. 5000 per car on pre owned-cars with engine capacity of above 1000 CC has been fixed on sale of such cars, incase of first sale by a dealer liable to pay tax under the Haryana VAT Act.

Another practice peculiar to the trade of the company is that the cars leased out to the corporate houses are registered in the name of the corporate houses for the purposes of Motor Vehicles Act, though the cars are legally owned by the applicant firm.

Contention of the applicant is that the word pre-owned has not been defined anywhere under the Haryana VAT Act and has created a lot of ambiguity in respect of taxability and rate of tax to be charged. The querist has sought clarification as to whether the cars sold by the car distributor who is into business of selling cars manufactured by the manufacturer can be termed as pre-owned, secondly, whether the car which is legally owned by the querist can be termed as pre-owned, thirdly, whether the corporate house to whom the car has been leased out and is a registered owner under Motor Vehicles Act can be classified as an owner of pre-owned car.

In light of situation explained above the following queries have been raised for clarification under section 56(3) of the Haryana VAT Act :-

1. Whether sale of leased cars to the end-users after the termination of the lease period or in the open market by the company can be termed sale of pre-owned cars ?
2. Whether the company can avail benefit of the rate of tax as enshrined in the Schedule holding that the car purchased by the company from the authorized dealer of the car manufacturer can be termed as pre-owned ?
3. If the answer to the above question is in affirmative, then what is the rate of tax to be charged by the company ?
4. Whether there will be any difference of rate of tax to be charged if the company is availing credit of tax paid on cars purchased by it in the State of Haryana ?

Though word pre-owned has not been defined anywhere under the Haryana VAT Act, there should be no ambiguity as to its meaning. Word pre-owned car means a **second-hand car** which has been **acquired after being used by another**. There are dealers dealing in second-hand merchandise viz., second-hand book-store or second-hand furniture or second-hand cars, scooters etc. Thus, there should be no ambiguity as to the word pre-owned. Regarding the cars sold by the distributor who is into business of selling cars manufactured by the manufacturer, the same cannot be termed as pre-owned cars since the cars sold by the distributor are stock-in-trade and the distributor deals in fresh cars only. As to the cars legally owned by the applicant firm and further leased out to corporate houses, such cars also cannot be termed as pre-owned cars, since the applicant firm is not dealing in second-hand cars and stock-in-trade of the applicant firm are new cars, the cars legally owned by the applicant cannot be termed as pre-owned.

As to the cars which have been leased out to corporate houses who are the registered owner of such cars under the Motor Vehicle Act, rightful and legal owner of such cars remains the lesser since substantial ownership in such circumstances remains with the applicant himself and the lessee companies are simply in possession of such cars. In view of what has been explained above point wise the issues are clarified as under :-

1. Sale of leased cars to the end users after the termination of lease period or in the open market by the company cannot be termed as sale of pre-owned cars.
2. Cars purchased by the company from the authorized dealers of car manufacturers cannot be termed as pre-owned cars since the authorized dealers of the car manufacturers deal in new cars only and not in second hand cars and hence the company cannot avail the benefit of lump-sum rate of tax fixed for pre-owned cars (viz. second hand cars).
3. Since answers to questions 1 and 2 is not affirmative, rate of tax to be charged by the company is that leviable on new cars viz. @12.5%.

4. Answer to question 4 is also negative.

Queries raised by the applicant are replied accordingly.

Chandigarh
Dated :9.06.2008

(RAMENDRA JAKHU)
Financial Commissioner and Principal Secretary
to Government Haryana, Excise and Taxation
Department.

Issued vide letter No. 1467-69/ST-I , dated 17.06.2008