FAQs – GST on Hire Purchase /Hypothecation / Finance Lease Service Industry

1. **Whether Hire Purchase Transactions are covered under GST?**

   - As per Schedule II, Clause 1(b) of the Central Goods and Service Tax Act (CGST), 2017, any transfer of right in goods or of undivided share in goods without the transfer of title, is a supply of service.
   - Since in hire purchase, the ownership is not compulsorily transferred to the customer and only the right to use is alone transferred, it shall be treated as "Supply of Services".
   - Hence, Hire Purchase Transactions are covered under GST.

2. **Are loan cum transactions hypothecations are subject to GST?**

   - Loan transactions are treated as transaction in money. Hence, repayment of principal portion of loan is neither a good nor a service. Hence it is not liable for GST
   - Interest received on loan shall also be treated as Exempt Supply.

3. **Whether Financial Lease is also taxable under GST?**

   - 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 and hence it is fully taxable under GST.
   - For a lease, 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. Further, there is apparently no difference between financial lease and operating leases under the GST regime.
   - Here it is important to note that some cases of financial leases involve <u>compulsory</u> transfer of title of the asset at the end of the tenure, such cases will be treated as supply of goods, because Schedule II of the CGST Act states any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full

consideration as agreed, is a supply of goods.

4. Whether a Hire purchase transaction is supply of goods or supply of services?

- As per Schedule II, Clause 1(b) of the Central Goods and Service Tax Act (CGST), 2017, any transfer of right in goods or of undivided share in goods without the transfer of title, is a supply of service.
- Since in hire purchase, the ownership is not compulsorily transferred to the customer and only the right to use is alone transferred, it shall be treated as "Supply of Services".

5. Whether threshold limit of Aggregate Turnover of 20 Lakhs or 10 Lakhs as the case may be, is applicable to the Hire Purchase or leasing transactions or Hypothecation Transactions?

a) The threshold limit of 20 Lakhs or 10 lakhs for compulsory registration is calculated as follows

b) Taxable Supplies (HP & Lease instalments) + Exempted Supplies (Interest on Loans) + Nil Rated Supplies + Taxable supplies in the case of Hypothecation (Service charges, document charges or other charges except interest)

c) If the entity is engaged in only exempted supplies (For eg. Interest received on loans), then as per Sec.23 of the CGST Act, there is no need to register. i.e. if the entity is receiving only interest on loan, then there is no need to register.

d) However, the above limit shall not apply and the entity must register in certain situations, especially in the following situations:

   (i) If one of the Taxable Supplies (HP and Lease) is made to another state (i.e. if one of the HP / lease customers is in another State)

   (ii) If entity receives services, for which the service receiver is liable to pay

GST.

e) If total of (b) above is more that 20 lakhs, registration is must, even if taxable service is only Rs.one (1).

6. At what rates shall GST be charged on lease transactions / hire purchase / hypothecation?

The rates shall be as follows (Sl.No.15(iii) of Notification No.11/2017 – Central Tax (Rate) dt. 28.6.17)

<table>
<tr><th>Nature of Receipt</th><th>SAC Code</th><th>Rate of GST</th></tr>
<tr><td>Principal received on Loan</td><td>NA</td><td>Outside the scope of GST</td></tr>
<tr><td>Interest received on Loan</td><td>9971</td><td>Exempt</td></tr>
<tr><td>Financial Leasing</td><td rowspan="2">9971</td><td rowspan="2">Same rate of GST as applicable on the sale of similar vehicles</td></tr>
<tr><td>Hire Purchase</td></tr>
<tr><td>Hypothecation – for other charges</td><td></td><td>18%</td></tr>
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7.What is the meaning of turnover for limit of 20 Lakhs / 10 Lakhs / 75 Lakhs whether it would be gross amount of installments received or net hire charges received?

The threshold limit of 20 Lakhs is calculated =

Taxable Supplies (HP & Lease instalments) + Exempt Supplies (Interest on Loans) + Nil rate Supplies.

(The Gross amount of installments must be considered and not the net hire charges).

8.Is GST applicable on Non-Banking Financial Companies only or it is also applicable to Non-corporates?

GST is applicable to every person irrespective of being a corporate or non–corporate if there is a supply of service or goods and the value of supply is above the threshold limit.

9.How the GST is calculated. What are the items covered for taxability of GST for Hire Purchase / Hypothecation / Financial lease transactions.

- **GST must be paid based on the date of invoice as decided by the GST Act, 2017.**
- Since the Financial Leasing and Hire Purchase is normally for a longer period of time, it could come under the definition of Continuous Supply of Services as defined as per Sec.2(33) of the CGST Act:

  2(33) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify
- Further, as per Section 31(5) of the GST Act, 2017, Invoice must be issued in case of Continuous Supply of Services as follows:

Situation	**Invoice must be issued**
If the due date of payment is ascertainable from the contract	On or before the due date of payment
If the due date of payment is not ascertainable	Before or at the time of receipt of payment
If the payment is linked to the completion of event	On or before the date of completion of that event.

In the case of hire purchase / financial lease – total amount of installments, service charges and all other charges, initial hire (down payment) shall be added and GST would be levied on full.

In the case of hypothecation GST would be levied on everything except principal & interest on loan. Overdue penalty is taxable but overdue interest is exempted.

10.Whether an entity can obtain centralized registration under GST for supply of services?

Irrespective of supply of services or goods, an entity should apply for one single registration within one state. If there are places of business in more than one state, each state business shall have one separate registration in the respective state.

11. Whether sale of repossessed goods be subject to GST? If yes, calculation method thereof.

a) If financier is having invoice in the name of customer

b) If financier is having invoice in his name

c) If financier is not having any invoice

d) If total value of repossessed stock does not exceed 20 lakhs

e) If total value of repossessed stock exceed 20 lakhs

The above questions are answered in the following manner, as a whole:

A. In case of loan agreement:

- It is normally a practice that a power of attorney is executed to give powers to the lender to take over and sell the underlying asset, if the loan is repaid and settle the loan. In such case, there is a possibility that the lender could be treated as an agent. Further as per Schedule I, it could be deemed as supply of goods on behalf of the borrower.
- Further, there is a specific Rule Number 32(5) which provides for sale of an asset, repossessed from a defaulting borrower who is not registered under GST.
- Hence, Sale of repossessed asset could be liable for GST, as per the present position of law.

B. In case of Hire Purchase / Finance Lease

- In case of sale of repossession of asset, it shall be treated as supply and attracts GST.
- Cost of such repossessed asset is calculated on the basis of original cost less depreciation @5% per quarter. Sale proceeds less such calculated cost would be profit and such profit would be subject to GST. It is immaterial that financier has refund excess amount to hirer.
- If financier is not having any original invoice in his name, he would not get any input

thereon.

- Profit on sale of repossessed stock, as calculated above shall also be added to turnover for the purpose of limit of 20 lakhs.

12.Whether Banks, NBFC's, Financial Institutions etc. avail input tax credit?

- Banks, NBFC's and Financial Institutions can avail Input Tax Credit on all their expenses and assets, to the extent of 50% of the GST paid on such expenses and assets. (Provided that his restriction of 50% shall not apply to the taxes paid on supplies made by one registered person to another registered person having the same permanent account number.
- However, if the expenses and assets are used for only the taxable services, then 100% credit can be availed.
- In case of Financiers other than Banks and NBFCs, they can avail their credits in the following manner:

  (a) GST paid on Expenses and Assets – Used for making further taxable supplies – 100% credit can be availed. For Eg. Vehicle purchased by paying GST. If such vehicle is given on finance lease, then GST is payable on such lease. In such case, 100% GST paid on purchase can be availed as credit.

  (b) GST paid on Expenses and Assets – Used for making exempt and taxable supplies – Proportionate credit can be availed based on taxable Supplies to total supplies. For Eg. An Entity dealing with Hire Purchase and Loan transactions, GST paid on expenses can be availed proportionately.

13.There are three types of Hire Purchase transaction

a) New vehicles, which are sold by vehicle dealer directly to customer and hire purchase transaction is entered. For this type of transaction, two type of invoices are issued (i) sold to financier and hirer name is mentioned (ii) sold to hirer and

financier name is mentioned.

If the Hire Purchase transaction is entered, it is advisable to ensure the following:

- Sale invoice is in the name of the Financier, with GST number of the Financier.
- HP agreement is entered between the borrower and the Financier.
- GST Credit can be availed by the Financier
- Financier shall collect the GST on the installments received from the customer and adjust input, if the invoice is in the name of financier.

Note: If the Vehicle invoice is in the name of customer, availing credit shall be an issue for the financier.

b) Customer 'A' approaches financier with his vehicle and financier enters into Hire Purchase Transaction (Normally such customer is not registered under GST)

- The Hire Purchaser purchases the asset from the borrower. This could attract GST under reverse charge, if the customer is not registered and the customer is selling in the course of his business. It could be his fixed asset also and need not be a stock. If the customer is registered, he has to charge GST on such sale. But if it is private vehicle and customer is not using the same for his business, GST on revenue charge shall not be applicable.
- The Financier can take GST credit next month of the above GST paid on reverse charge.
- Financier shall collect the GST on the installments received from the customer and pay the same to the government.

c) Customer 'A' approaches financier for purchase of vehicle. Other person 'B' sales vehicles to financier. Financier gives this vehicle to customer 'A' on hire purchase. 'A' and 'B' are normally not registered under GST.

Please explain implication of GST for all three types of transactions, in both the circumstances if customers are register/non-registered under GST

- The Hire Purchaser purchases the asset from B. This could attract GST under reverse charge, if B is not registered and B is selling in the course of his business. It could be his fixed asset also and need not be a stock. If B is registered, he has to charge GST on such sale. But if it is private vehicle and B is not using the same for his business, GST on revenue charge shall not be applicable.

- The Financier can take GST credit next month of the above GST paid on reverse charge.
- Financier shall collect the GST on the installments received from the customer and pay the same to the government.

14.For installments received after 1st July 2017 for Hire Purchase transactions entered before 1st July 2017, what would be implication of GST?

- Installments due after the GST law come into effect shall be liable to GST. But installments due before 30.06.2017 but receive after 01.07.2017, no GST is payable. Even if installments are not collected but due after 01.07.2017, GST is payable.
- However, since the goods underlying the transaction is considered as stock / asset, it could be treated as stock as on 30th June 2017 and the ED / VAT paid at the time of original purchase, could be availed as credit (Sec.140(3) of the CGST Act) subject to time limit. Such credit can be availed only if invoice is in the name of hire purchase financier.

15.Whether registration under GST is required if

The threshold limit of 20 Lakhs is calculated =

Taxable Supplies (HP & Lease installments) + Exempted Supplies (Interest on Loans) + Nil Rated Supplies

a) Hire Purchase installments received Rs.25 Lakhs	Aggregate turnover greater than 20 lakhs, the amount received in excess of Rs.20 Lakhs is liable to GST.
b) Net hire charges received Rs.22 Lakhs	Aggregate turnover greater than 20 lakhs, the amount received in excess of Rs.20 Lakhs is liable to GST.
c) Net hire charges received Rs.18 Lakhs and commercial rent received Rs.5 Lakhs	Aggregate turnover greater than 20 lakhs, the amount received in excess of Rs.20 Lakhs is liable to GST. Interest received is to be considered and not net hire charges.
d) Interest on hypothecation Rs.19	Aggregate turnover greater than 20 lakhs.

Lakhs **Commercial rent received Rs.3 Lakhs**	Hence, registration is registered Commercial Rent is subject to GST at 18%, but interest received is an exempt supply.

16.Whether composition scheme of turnover of Rs.75 Lakhs is applicable for Hire purchase/Hypothecation/Financial lease transactions. If yes what is the rate of tax and what is the procedure to be followed?

As per Section 10 of the CGST Act, 2017 – Composition Scheme is not applicable to any person engaged in supply of services. Since Financial Lease or Hire Purchase or hypothecation is treated as supply of services, composition scheme shall not be applicable.

17.For person registered under GST, what are the procedures to comply?

The following procedures are to be complied:

a) **GST must be charged** on the taxable supplies.

b) **GST Invoice** must be issued along with CGST + SGST (if the customer address is within the same stae) or IGST (if the customer address is outside the state).

c) **GST Returns** is to be filed for every month within the due dates – GSTR 1 (Details of outward Supplies) within 10th from the end of every month, GSTR 2 (Details of Inward Supplies – All expenses and purchases of assets) within 15th from the end of every month, GSTR 3 (Consolidated Returns) within 20th from the end of every month.

d) **GST Input Tax Credits** can be availed on all eligible purchases and expenses.

e) **GST Liability must be paid** on or before 20th of the next month

f) **Comply with all other provisions** of CGST, IGST and SGST acts.

18.If one has stopped hire purchase but receives the installments after 01.07.2017 for hire purchase transactions executed before 30.06.2017 and such installment amount is more than 20 lakhs, whether registration required and he has to pay GST.

As per the provisions of GST, a supplier shall be registered when the aggregate turnover exceeds Rs.20 lakhs in a Financial Year. So in this case, the aggregate turnover exceeds

Rs.20 lakhs and the supplier is to register under GST. If in the next year if his turnover comes below Rs.20 lakhs, he can de-register. For the calculation of 20 lakhs, even installments collected during April to June 2017 would all to be included.

19.What are the expense for which financier has to pay GST on reverse charge mechanism.

Few examples are

- Seizing charges	**- Field verification**	**- Purchase of car**
- Godown rent	**- Audit fees**	**- Purchase of other fixed assets**
- Insurance	**- Telephone expense**	**- Salary**
- Collection exp.	**- RTO agent charges**	**- Advocate Fees**

What is the procedure for claiming this reverse charge.

Normally, the Supplier of goods and services is liable to pay GST. However, in certain cases, the receiver of goods / services is liable to pay GST. Such situation is called as Reverser Charge Mechanism.

For the purpose of GST, the following services are taxed under Reverse Charge Mechanism –

a. Services obtained from outside India (Import of Services)
b. Goods Transport Agency
c. Advocate Services (if the recipient's aggregate turnover in the PFY exceeds Rs.20 Lakhs)
d. Services by Government or local authority
e. Part Time Director
f. Insurance Agent
g. Recovery Agent
h. Ocean freight from a place outside India to Customs Station in India
i. Copyright Services

Apart from the above, there is a specific provision which states that if a registered person purchases / receives goods / services from unregistered person, (whose aggregate supplies from unregistered person per day exceeds Rs.5000), then such registered person must pay GST on such purchase / service value.

In the given question, advocate is specifically listed under RCM and _____ of Rs.5000 is not applicable. Apart from the above, if other expenses are paid to unregistered vendors, GST must be paid subject to the exemption of Rs.5000 per day.

20.If financier is not registered, but he enters into hire purchase/hypothecation/lease transaction with customer registered with GST, what is the GST implication?

If the financier is not registered, the customer has to pay GST under Reverse Charge Mechanism on the hire interest paid by such customer.

21.If GST is not payable on hypothecation, why one should not have only hypothecation and avoid hire purchase?

If you have other expenses (apart from interest expenses) and there will be a huge GST credit from such expenses, then hire purchase could be a better option. Otherwise, giving loan against security seems to be a better option than Hire Purchase.

Apart from this, one may have to enter into hire purchase to avoid provision of money lends act and usurious interest act. Interest rate under such acts are such low that transactions, if executed according to these acts are not at all viable.

22.How hire purchase financier is able to avail input tax credit if he register & receives a tax invoice?

(a) HP Financier can avail Input Tax Credit on all the expenses and assets (including the asset purchased for giving on HP).

(b) He must obtain the invoice in the entity name with his GST Number.

(c) The Supplier (who issued the bill) must declare the same in his GST Returns

(d) GST must be paid by the Supplier to the Government.

Note: If the Supplier does not declare the GST in his returns (within 2 months) or does not pay the GST to the Government within 2 months, then the credit availed by the recipient will be disallowed.

23.How should hire purchase financier issue invoice

a) **Whether for whole amount i.e. full invoice value of vehicles, life tax and GST.**

b) **Or a separate invoice needs to be issued for every EMI charging GST proportionately.**

Invoice must be raised for the instalments due as and when the EMI is due.

c) **If vehicles are non-transport vehicle**

d) **If vehicle is transport ferrying passenger & goods**

The GST must be the same the rate applicable for the relevant asset and the invoice should be issued for EMI within 30 days from the due dates. Invoice should be unique number with alpha numeric and shall not exceed 16 digits. The invoice needs to be raised for amount more that Rs.200. If payment of EMI is not revised within 60 days. GST need not to be paid and it can be reversed as sale return.

24.If a financier receives invoice from vehicle dealer with GST but financier enters into hypothecation, what is the status of refund of GST?

Since the outward supply (interest on loan) is an exempt supply, ITC cannot be availed of the GST paid on the purchase of vehicle.

25.Agreements executed in Chennai but hirer and hire assets is in Kerala, whether registration required in Kerala, whether in such case limit of Rs.20 lakhs & Rs.75 lakhs is applicable. Whether SGST/IGST is payable?

No separate registration is required in Kerala, the supply can be from Tamil Nadu to Kerala and IGST is payable in such cases. In such case, you cannot opt for the exemption limit of Rs.20 Lakhs and you cannot opt for Rs.75 Lakhs, hence registration is required even for all transaction below 20 lakhs also.

26.If only interest from hypothecation exceeds 20 lakhs, whether registration is required.

Since interest is exempt from GST, if you are receiving only interest income and there is no other taxable supply, then there is no need to register.

27.Whether any TDS/TCS provision is applicable to this industry.

No TDS/TCS provision is applicable to this industry.

28.What is the meaning of separate vertical in GST

"Business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals

Explanation.––For the purposes of this clause, factors that should be considered in determining whether goods or services are related include

(a) the nature of the goods or services;

(b) the nature of the production processes;

(c) the type or class of customers for the goods or services;

(d) the methods used to distribute the goods or supply of services; and

(e) the nature of regulatory environment including banking, insurance, or public utilities;

This effectively means Hypothecation is one business vertical and Hire Purchase is another business vertical. If needed, you can opt for 2 different registrations for each of this vertical.

This may be useful if one wants to claims higher input tax credits.

29.One person enter into franchisee of another NBFC for sourcing & collection – whether franchisee needs to be register & pay GST – if yes

Such sourcing and collections charges shall be liable to GST.

i) In which state – if he is having offices in various states

GST registration must be taken in the states from where they are making the taxable supplies. i.e. all their branches need to be registered.

ii) In the state in which agreement with NBFC is executed

Refer above

But if such arrangement is revenue sharing agreement, this GST may not be applicable.

30.If financier sells personal car registered in the name in which he is doing hire purchase/hypothecation business - GST implication on such transactions.

If the car is shown as asset in the books of Hire Purchaser, then GST would get attracted at the time of sale of car. However, this is the legal issue as on date. We expect few changes to be done in the coming months.

31. If one has got registration under VAT / service tax and feels that he would not exceed Rs.20 lakhs, he can opt for cancelation of registration.

<u>Disclaimer:</u>

Members are requested to seek professional advice and act accordingly, Federation of Indian Hire Purchase Associations is not responsible for any action taken based on these frequently asked questions.