

Tax Hotline

August 27, 2003

MAINTENANCE OF PCS NOT SUBJECT TO SERVICE TAX, MORE CLARIFICATIONS REGARDING NEW SERVICES

The Ministry of Finance ("**Ministry**") has issued a series of notifications clarifying the scope and taxability of some of the new services that have been brought within the service tax net. The Indian industry was anxious about the scope of these new services and hence representations were made to the Ministry to obtain clarity on the same. Some of the important clarifications are discussed hereunder:

Maintenance or repair services: From July 1, 2003, maintenance or repair services under contracts became subject to service tax at the rate of 8%. Pursuant to the representation made by Indian corporates, the Ministry has, in public interest, exempted maintenance and repair of computers, computer systems and computer peripherals from the levy of service tax by **Notification No. 20/2003**, dated 21st August, 2003. It is apparent that all IT companies engaged in maintenance and repair services will benefit from this decision.

Additionally, the Ministry has also made it clear in **Circular No. 62/11/2003** dated 21st August, 2003 that maintenance or repair services (other than maintenance and repair of computers, computer systems and computer peripherals) rendered prior to July 1 this year will not be taxable irrespective of when the bills are raised or payments are made.

Commissioning or installation of plant, equipment or machinery: The Ministry has clarified under a separate **Notification No. 19/2003** dated 21st August, 2003 that in case of the new category of service "commissioning or installation of plant, equipment or machinery", where there is a turnkey contract, which involves commissioning or installation along with supply of plant, machinery or equipment, the assessee will have the option to pay the service tax on 33% of the gross amount charged, or on the actual amount of service fee billed to the client.

Business auxiliary services: The Ministry has also clarified by **Notification No. 20/2003** dated 21st August, 2003 the scope of IT service under business auxiliary service. Thus, any service of back office processing primarily in relation to operation of computer system will be considered as IT services and will be exempt from service tax. However, services such as pay roll processing, account management, etc. rendered even by using computer programs, cannot be termed as activities primarily in relation to computer systems as the use of computer in these services is secondary and the primary activity is that of business-related work. Accordingly, such services will attract service tax of 8%. Mere fact that a computer or a laptop has been used for providing the service does not, ipso facto, make the service an IT service. IT service essentially means any service related to designing, developing or maintaining computer software, or computerized data processing, or system networking, or any other service primarily related to the operation of computer systems.

Source: The Economic Times. 22nd August, 2003, p. 5.

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