

Tax Hotline

June 23, 2003

SERVICE TAX AMBIT WIDENED - NEW SERVICES NOTIFIED

The Finance Bill, 2003 ("Bill") (the provisions of which were summarized in our legal update dated February 28, 2003) proposed to widen the service tax net to include 8 new services within its ambit. Further, the Bill also proposed to increase the service tax rate from 5% to 8% on the gross value of the services. (The Bill became the Finance Act, 2003 and was notified on May 14, 2003).

On June 20, 2003, the Government notified these 8 services, listed as under, on which service tax at the rate of 8% would be leviable from July 1, 2003:

- Commercial training and coaching centre;
- Technical Testing & Analysis Technical inspection and certifications;
- Maintenance and repair service;
- Commissioning and installation;
- Business Auxiliary services;
- Internet Café;
- Franchise services.

Further, the Government has clarified certain issues raised by the industry and professionals in respect of these new services. Some of the relevant clarifications have been summarized below:

BUSINESS AUXILIARY SERVICES:

The following services, falling within the definition of Business Auxiliary Services are specifically exempt from service tax:

- Call centers, which provide assistance, help or information through telephone, on behalf of other entities/ persons;
- Medical subscription centers, which transcribe medical history, treatment, medical observations, etc.;
- Commission agents who cause sales or purchases of goods on behalf of their principals, for a consideration based on the quantum of such sale or purchase. However, such an exemption is available only to a commission agent who is not a consignment agent, since services provided by a consignment agent would be covered in the already existing "Clearing and Forwarding Agents" category;
- Information Technology services ("IT services"), being services in relation to designing, developing or maintaining of computer software or computerized data processing or system networking or any other service primarily in relation to operation of computer systems. Here, it has now been clarified that only if the **output service** provided by a service provider is in the nature of the above operations, such exclusion would apply. Accordingly, mere use of technology in order to provide a service will not make the service an IT Service. Similarly, the fact that any of the above mentioned IT Services are used by the service provider as an input service, would not automatically make the output service an IT Service.

VOCATIONAL TRAINING AND COACHING CENTERS:

- It is clarified that the intention of the Government is to levy service tax on commercial coaching and training services provided by institutes that prepare applicants for Board exams, competitive exams, etc. However, where institutes like colleges, apart from imparting education for obtaining recognised degrees/diplomas/certificate, also impart training for competitive exams, entrance tests, etc. the same will be outside the scope of service tax;
- Services in the nature of commercial coaching and training, but provided by vocational, computer or recreational training institutes would be exempt from levy of service tax upto February 29, 2004;
- Services provided by a commercial training or coaching centre, which form part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification would be exempt from tax, provided the charges for such services are paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre;
- Service tax would be leviable on any coaching or training provided by any institution on postal coaching as well;
- Where an employer provides free training to its employees, the same would be exempt from service tax levy, provided such training is in-house training. However, where the employer hires an outside commercial coaching or training centre for imparting some training to its employees, then the payment made by the said employer to such coaching centre would be chargeable to service tax.

MAINTENANCE AND REPAIR SERVICES:

Services provided by a dealer of goods or any other authorized dealer, during the warranty period would be subject

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to service tax, irrespective of whether the payment for such services is received from the person to whom such service is provided (the customer) or from any other person (the manufacturer of such goods).

FRANCHISE SERVICE:

The Bill defined Franchise as an agreement by which:

- franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;
- the franchisor provides concepts of business operation to franchisee, including know how, method of operation, managerial expertise, marketing technique or training and standards of quality control except passing on the ownership of all know how to franchisee;
- the franchisee is required to pay to the franchisor, directly or indirectly, a fee; and
- the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person

It is now clarified that unless all of the above ingredients are satisfied, the agreement cannot be called as a franchise agreement and hence cannot be subject to service tax levy. Accordingly, it is also clarified that a mere "licence production agreement" does not make a Franchise Agreement and hence the same is not charged to service tax.

TECHNICAL INSPECTION AND CERTIFICATION SERVICES:

All kinds of certification and inspection services, including services like certification of immovable property would be covered within the service tax ambit.

COMMISSIONING AND INSTALLATION SERVICES:

- It is clarified that service tax is leviable on commissioning and installation charges only and not on the material and goods supplied. However, in cases where the service provider does not show the break-up of commissioning or installation charges, service tax would be levied on the consolidated amount of such charges as well as the goods supplied.
- Further, it is clarified that charges for erection of plant or any other services which are other than commissioning and installation would not be subject to service tax.

CLARIFICATION ON MISCELLANEOUS ISSUES:

- The Government has issued a general notification exempting that part of the value of all taxable services from service tax, which represents the cost of goods or material sold by the service provider to the receiver of such services during the course of provision of the taxable services. However, this exemption would be available only in cases where the sale of such goods is evidenced and the sale value is, quantified and shown separately in the invoice.
- In case of non-resident service providers not having any office in India, the service receiver in India is liable to pay service tax on behalf of the non-resident. Currently, the receiver is required to register in order to pay the service tax and is also required to comply with other procedural formalities in order to be able to claim credit of the taxes paid by him on behalf of the non-resident. In this regard, the process is now simplified and the service receiver after having paid the service tax on behalf of the non-resident service provider can take credit of the same on the basis of document/ bill/ invoice under which he has paid the service tax.

Source: Circular No 59/8/2003, dated June 20, 2003, F. No. B3/7/2003-TRU; Notification Nos 7/2003, 8/2003, 9/2003, 10/2003, 11/2003, 12/2003, 13, 14/2003 - Service Tax, dated June 20, 2003.

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