

Tax Hotline

August 20, 2004

DRAFT RULES FOR DETERMINING 'EXPORT OF SERVICES' ANNOUNCED

The Finance Bill, 2004 enabled the Government to make rules for defining 'export of taxable service' which would be exempt from the 8% service tax levy. In exercise of this power, the Government has released draft rules ("**Rules**") for defining the meaning of export of services for public comments.

Currently, as per the **Notification No 21/2003** dated November 20, 2003, services in respect of which consideration is received in convertible foreign exchange are exempt from service tax. The Rules propose to modify this position by granting such exemption only to export of taxable services, as defined by the Rules. These Rules have bifurcated the taxable services in various categories discussed below in brief:

- Services of architects, interior decorators, real estate agents and construction services will be regarded as having been exported if the immovable property with respect to which the services are rendered is situated outside India.
- A host of other services such as stock broking, underwriting, credit rating, market research, technical testing, commissioning and installation, and commercial training or coaching are regarded as exported if they are performed either wholly or partly outside India.
- The balance taxable services are regarded as exported depending on the location of the recipient, as under:
 - § if they are used in or in relation to commerce or industry, they will be regarded as exported if the recipient of such services is located outside India. However, the proviso to this sub-rule states that where the recipient has a commercial or industrial establishment or any office in India, the recipient shall be deemed not to be located outside India.*
 - § In other cases, i.e. in respect of the residual services not relating to commerce and industry, the services will be regarded as having been exported if the recipient of the service is outside India at the time when such service is received.

Where any taxable services are provided to units undertaking export of goods, irrespective of the above bifurcation, such services will be regarded as exempt from tax. The Rules also state that the Government may release further rules for rebate of service tax paid on input services in respect of exports of taxable services.

Note*: Kindly note that these are draft Rules, open for public comments. These Rules do not provide clarity regarding a situation where the consideration is paid by an entity outside India, who though might have an office in India, is actually consuming the services outside India.

Source: www.taxindiaonline.com/What's New/Export of services/ Draft rules

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