

# 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.

## DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

## Research Papers

### From Capital to Impact: Role of Blended Finance

June 15, 2024

### Opportunities in GIFT City

June 14, 2024

### Start-up Governance Essentials

May 30, 2024

## Research Articles

### Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

### Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

### Emerging Legal Issues with use of Generative AI

October 27, 2023

## Audio

### Why is the ad industry unhappy with MIB's self-declaration mandate?

June 18, 2024

### Incorporation of arbitral clause by reference: Position in India and other Asian Jurisdictions

June 12, 2024

### Third-Party Funding: India & the World

April 27, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

[Click here to view Hotline archives.](#)

## Video

### Future of India-Mauritius tax treaty – Impact of new Protocol on M&A deals and Private Equity structures

April 23, 2024

**Q&A 2024 Protocol to the Mauritius  
India Tax Treaty**

April 22, 2024

**Boost to India's Space Potential:  
India Liberalizes Foreign Direct  
Investment**

April 03, 2024