

# Tax Hotline

September 30, 2005

## MAINTENANCE, SERVICE OR REPAIR OF COMPUTER SOFTWARE TO ATTRACT SERVICE TAX

The Department of Revenue of the Ministry of Finance has issued a draft circular (Circular No. 354/132/2005-TRU) stating that the maintenance, service or repair of all computer software is now subject to levy of service tax under the term 'taxable service'. There was a question as to whether the maintenance and repair of computer software, which is not tangible good, would fall within the ambit of levy of service tax under this category.

The circular clarifies this, relying on the decision of the Supreme Court in Tata Consultancy Services v. State of Andhra Pradesh (Civil Appeal No. 2582 of 1998) wherein the Supreme Court has ruled that the sale of computer software falls within the scope of sale of goods. It states that the Supreme Court has categorically ruled that branded software (canned software) sold off the shelf, falls within the definition of goods.

The circular further clarifies that in the case of unbranded / customized software, the supplier develops the program and generally transfers it onto a media and thereafter, the program is delivered to the customer's premises and loaded onto his system. Thus, in this case too, the software is incorporated in a media for use and hence, such computer software on a media is goods.

Thus, in either case, the taxable service of maintenance, servicing or repair of computer software is in relation to computer software on a media, which is covered under the definition of goods and therefore subject to levy of service tax.

It is interesting to note that the decision of the Supreme Court, on which this circular is based, is only dealing with computer software which is transferred on a medium, not software which is downloaded on-line. The circular seems to have missed dealing with the maintenance and repair of such software.

-Daksha Baxi & Khushboo Baxi

Source: Economic Times - August 20, 2005

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