

Bimal Jain

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Dear Professional Colleagues,

Please note the FAQ on Service Tax Voluntary Compliance Encouragement Scheme, 2013 ("VCES") recently got published on www.taxindiaonline.com

http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=17409

The VCES is introduced by Finance Bill 2013. We have prepared and summarized frequently asked question(s) in this regard for ease of understanding:

Query **What is VCES?**

Reply VCES is a new amnesty scheme introduced vide Chapter VI of the Finance Bill, 2013 ("**the Finance Bill**"), to encourage voluntary compliance by defaulter of Service Tax under Chapter V of the Finance Act, 1994 ("**the Finance Act**"). The Hon'ble Finance Minister in his budget speech mentioned that there are nearly 17,00,000 registered assesseees under the service tax but only about 7,00,000 assesseees file their service tax returns. Thus VCES is announced in order to self-motivate the defaulters to pay the service tax, not paid in the past.

Query **Who are eligible to apply under VCES?**

Reply Tax payers/ assesseees who have not filled return or stopped filling return or who have not made a truthful declaration in their return are eligible to apply under VCES. Further, any person may declare his tax dues, in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Finance Act has been issued or made before the 1st day of March, 2013.

Query **Who are ineligible to apply under VCES?**

Reply The following assesseees are not eligible to opt for VCES in terms of Section 96 of the Finance Bill:

- 1 The person who has furnished return under Section 70 of the Finance Act and disclosed true liability, but has not paid the service tax so disclosed whether in total or in part, in such scenario declaration under VCES cannot be made for the period covered under the return.
- 2 The person against whom,—

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(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of —

(i) Search of premises under Section 82 of the Finance Act; or

(ii) Issuance of summons under Section 14 of the Central Excise Act, 1944, as made applicable to the Finance Act under Section 83 thereof; or

(iii) Requiring production of accounts, documents or other evidence under the Finance Act or the rules made thereunder; or

(b) An audit has been initiated,

And such inquiry, investigation or audit is pending as on the 1st day of March, 2013.

Query **What do you mean by “Tax Dues”?**

Reply Tax dues means the service tax due or payable under the Finance Act or any other amount due or payable under Section 73A thereof, for the period beginning from the October 1, 2007 and ending on the December 31, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on March 1, 2013.

Query **What is period for which assesses can avail relief under VCES?**

Reply The Assesseees can avail benefit under VCES for all service tax including cess, not paid from October 1, 2007 to December 31, 2012.

Query **What are the benefits under VCES?**

Reply Assessee who is making truthful declaration would be granted immunity from interest, penalty and other proceeding.

Query **What are the conditions to be fulfilled to avail benefit under VCES?**

Reply The assesseees has to deposit at least 50% of the declared dues by December 31, 2013 and the remaining portion of tax dues has to be paid by June 30, 2014 without any interest.

Where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the December, 31, 2014 along with interest thereon, to be calculated from July 1, 2014.

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Query **Whether tax paid under VCES is refundable?**

Reply Tax paid under VCES is not refundable

Query **When the declaration made under VCES will be deemed as conclusive?**

Reply Declaration will attain finality/ become conclusive upon issuance of acknowledgment of discharge of total tax dues from designated authority.

Query **What is the effective date for implementation of VCES?**

Reply The Scheme will come into force from the date of enactment of the Finance Bill.

Query **Whether the tax dues after December 31, 2012 will be eligible for benefit under VCES?**

Reply No. Service tax liability effective from January 1, 2013 to be paid as normal service tax liability.

Query **What is the last date for availing the scheme?**

Reply The assessee can file the declaration under this scheme only upto December 31, 2013.

Query **What if the declarant fails to pay declared tax dues?**

Reply Where the assessee fails to pay the tax dues, either fully or in part, then said amount along with interest will be recovered as arrear of land revenue, which can be recovered by attaching the movable and immovable properties of the declarant.

Also the immunity in terms of the VCES would be withdrawn.

Query **What do mean by “Designated Authority”?**

Reply According to VCES “designated authority” means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme.

Query **What are the consequences if the declaration made under VCES is substantially incorrect?**

Reply As per VCES, if the declaration made under VCES is found substantially incorrect by the Commissioner of Central Excise, then show cause notice is to
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be served for recovery of tax dues not paid or short paid within a period of one year from the date of declaration.

Query **Who can remove difficulties while implementing the Scheme?**

Reply In terms of Section 103 of the Finance Bill, the Central Government may remove the difficulties and provide clarity in case of ambiguities while implementing the scheme.

Further the Central Government cannot make such order (i.e. to remove ambiguity) after expiry of two years from the date when VCES comes into force.

Query **State the matters for which the Central Government is empowered to make rules regarding VCES?**

Reply In terms of Section 104 of the Finance Bill for successful implementation of VCES, the Central government is empowered to make rules by notification in official Gazette. Such rules may provide for all or any of the following matters, namely:—

(a) the form and the manner in which a declaration may be made under sub-section (1) of Section 97;

(b) the form and the manner of acknowledging the declaration under sub-section (2) of Section 97

(c) the form and the manner of issuing the acknowledgement of discharge of tax dues under sub-section (7) of Section 97;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Query **What are the open grey areas under VCES?**

Reply 1. VCES scheme is criticized being discriminative as helping only to dishonest assessee.

2. Also, the Scheme does not contain any secrecy clause as to confidentiality of information furnished under VCES. Thus there is a risk that the information disclosed under VCES may be used by other tax authorities.

3. Declared tax dues is subject to approval by designated authority, may requires neutral and simplified mode of adjudication.

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4. A portion of Cut off period for which declaration can be made before December 31, 2013 for the period from October 1, 2007 to December 31, 2012 is beyond period of limitation i.e. 5 Years from the relevant date of declaration. Legal sanctity of this provision may be looked into.

It is hoped that the FAQ would prove to be immensely helpful to those who would not like to miss the bus this time around!

Thanks & Best Regards.

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