

# **Amnesty Scheme – Updated with Department Clarification**

## **Service Tax Voluntary Compliance Encouragement Scheme, 2013**

**[Chapter VI of Finance Act, 2013]**

# Background

- The Finance Act, 2013 has provided **“Amnesty Scheme for Non Filers and Stop Filers”**.
- Purpose of this scheme
  - To encourage voluntary compliance and broaden the tax base.
- **Section 104 to 114** of Chapter VI of Finance Act, 2013 provides legal backing to this Amnesty Scheme.

# Chapter VI of Finance Act, 2013

<b>S. No.</b>	<b>Section</b>	<b>Brief</b>
1.	Section 104	Short title
2.	Section 105	Definitions
3.	Section 106	Person who may make declaration of tax dues
4.	Section 107	Procedure for making declaration and payment of tax dues
5.	Section 108	Immunity from penalty, interest and other proceeding.
6.	Section 109	No refund of amount paid under the Scheme
7.	Section 110	Tax dues declared but not paid
8.	Section 111	Failure to make true declaration
9.	Section 112	Removal of doubt
10.	Section 113	Power to remove difficulties
11.	Section 114	Power to make rules

## Notification no. 10/2013; dated 13.05.2013

- The above notification brings into action the proposed Amnesty Scheme.
- This scheme will now be called as “ Voluntary Compliance Encouragement Rules, 2013”.
- These rules provides for
  - *form and manner of declaration,*
  - *form and manner of acknowledgement of declaration,*
  - *manner of payment of tax dues and*
  - *form and manner of issuing acknowledgement of discharge of tax dues.*

# Section 106 - Persons eligible to avail benefit of scheme?

- The following persons can take the benefit of this scheme-
  - Stop filers
  - Non Filers
  - Non registrants
  - Service providers who have not disclosed their full liability in the return filed by them.

The disclosure period in the scheme is from October, 2007 to December, 2012

## Persons not eligible to make declaration

- Person against whom order of determination u/s 72, 73 or 73A has been issued before 1<sup>st</sup> March, 2013.
- Person who have filed the return u/s 70 and disclosed his true liability but has not paid the amount of service tax appropriately.
- Person to whom notice or order of determination has been issued in respect of **any period on any issue** i.e. if a person had already been caught by the department earlier on any issue then he is not eligible to file the declaration. Period here is not specifically specified, we consider it to be Oct, 2007 to 31<sup>st</sup> Dec, 2012.

## Persons not eligible to make declaration

- Person on whom any inquiry or investigation in respect of service tax not levied, not paid or short levied or short paid has been initiated and such inquiry, investigation or audit is pending as on 1<sup>st</sup> March, 2013.

## Section 107 - Procedure of availing the scheme

- **Step 1:** If the defaulter is not registered, then he is first required to get himself registered and then apply for this scheme.
- **Step 2:** After registration, defaulter shall make a declaration (Sec 107) in Form VCES – 1.
- **Step 3:** On receipt of VCES the **designated authority** will issue acknowledgement of declaration in form VCES – 2. This acknowledgment shall be issued within 7 days from the receipt of declaration.

“**designated authority**” means an officer not below the rank of Asst. CCE as notified by the CCE for the purposes of this Scheme.



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## Section 107 - Procedure of availing the scheme

- **Step 4:** The defaulter can pay his tax dues without interest and penalty into installments. The defaulter is required to pay 50% of tax dues by 31<sup>st</sup>, December, 2013 and rest 50% by 30<sup>th</sup> June, 2014.

### On Payment after 30<sup>th</sup> June, 2014 upto 31<sup>st</sup> December, 2014

- No waiver of interest;
- However, immunity from penalty & prosecution still be granted up to 31<sup>st</sup> December, 2014.

## Section 107 - Procedure of availing the scheme

- **Step 5:** On full payment of taxes, the designated authority will issue acknowledgement of discharge (Sub section (7) of section 107) in VCES – 3.

VCES – 3 shall be issued with 7 working days from the date of furnishing of details of tax dues in full along with interest.

## Section 108 - Benefit of availing the scheme

- The declarant upon payment of amount in default shall get immunity from – interest, penalty, any other proceedings under Service Tax.
- **On issuance of acknowledgement of discharge no matter shall be reopened thereafter in any proceedings before any authority or court relating to the period covered by such declaration, subjected to the provisions of Section 111-Failure to make true declaration.**

## Section 109- No refund of amount paid under the Scheme

- Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances.

## Section 110- Tax dues declared but not paid

- Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.

## Section 111-Failure to make true declaration.

- (1) *Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.*
- (2) *No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.*
- (3) *The show cause notice issued under sub-section (1) shall be deemed to have been issued u/s 73, or as the case may be, u/s 73A of the Chapter and the provisions of the Chapter shall accordingly apply.*

## Power's with CG (Section 113 & 114)

- **Section 113** – In order to remove any inconsistency or any difficulty the Central Government is vested with power to remove such inconsistency or difficulty by issuing the required orders.
- **Section 114** – Central Government is vested with the power to make rules for carrying out the provisions of this scheme.

# Departments Clarification

The department vide circular no. 169/4/2013-ST dated 13.05.2013 has provided certain clarifications in relation to Voluntary Compliance Encouragement Scheme (VCES).



## Issue - 1

**Whether a person who has not obtained service tax registration so far can make a declaration under VCES?**

Any person who has tax dues to declare can make a declaration in terms of the provisions of VCES. If such person does not already have a service tax registration he will be required to take registration before making such declaration.

## Issue - 2

**Whether a declarant shall get immunity from payment of late fee/penalty for having not taken registration earlier or not filed the return or for delay in filing of return.**

Yes. It has been provided in VCES that, beside interest and penalty, immunity would also be available from any other proceeding under the Finance Act, 1994 and Rules made thereunder.

## Issue - 3

**Whether an assessee to whom show cause notice or order of determination has been issued can file declaration in respect of tax dues which are not covered by such SCN or order of determination?**

In terms of section 106 (1) of the Finance Act, 2013 and second proviso thereto, the tax dues in respect of which any show cause notice or order of determination under section 72, section 73 or section 73A has been issued or which pertains to the same issue for the subsequent period are excluded from the ambit of the Scheme. Any other tax dues could be declared under the Scheme subject to the other provisions of the Scheme.

## Issue - 4

**What is the scope of section 106 (2)(a)(iii)? Whether a communication from department seeking general information from the declarant would lead to invoking of section 106 (2) (a)(iii) for rejection of declaration under the said section.**

Section 106 (2) (a)(iii) of the Finance Act, 2013 provides for rejection of declaration if such declaration is made by a person against whom an inquiry or investigation in respect of service tax not levied or not paid or short-levied or short paid, has been initiated by way of requiring production of accounts, documents or other evidence under the chapter or the rules made there under, and such inquiry or investigation is pending as on the 1st day of March, 2013.

- The relevant provisions, beside section 14 of the Central Excise Act as made applicable to service tax vide section 83 of the Finance Act, 1994, under which accounts, documents or other evidences can be requisitioned by the Central Excise Officer for the purposes of inquiry or investigation, are as follows-
  - (i) Section 72 of the Act envisages requisition of documents and evidences by the Central Excise Officer if any person liable to pay service tax fails to furnish the return or having made a return fails to assess the tax in accordance with the provision of the Chapter or rules made there under.
  - (ii) Rule 5A of the Service Tax Rules, 1994 prescribes for requisition of specified documents by an officer authorized by the Commissioner for the purposes specified therein.

- The provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by the authorized officer from the declarant under the authority of any of the above stated statutory provisions and the inquiry so initiated against the declarant is pending as on the 1st day of March, 2013.
- No other communication from the department would attract the provisions of section 106 (2)(a)(iii) and thus would not lead to rejection of the declaration.

**CRUX:** If Sec 14 of Central Excise as made applicable to service tax vide section 83 or section 72 of Finance Act or Rule 5A of the Service tax rules gets attracted then the declaration can be rejected u/s 106 (2) (a) (iii).



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