

VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME 2013

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1. HISTORY OF VARIOUS OTHER SCHEMES

Under Direct & Indirect Taxes

The problem of black money corroding the economy of the country is not a new or recent problem. It has been there almost since the Second World War and it has been continuously engaging the attention of the Government. The Government has adopted various measures in the past with a view to curbing the generation of black money and bringing it out in the open so that it may be available for strengthening the economy. Whether it is actually used for that or not mainly feeding itself is a moot question. For instance, the Government introduced several changes in the administrative set up of the tax department from time to time with a view to strengthening the administrative machinery for checking tax evasion. The Government also amended Section 37 of the Indian Income Tax Act 1922 with a view to conferring power on the tax authorities to carry out searches and seizures and this power was elaborated and made more effectual when the Income Tax Act 1961 came to be enacted.

- 1.1** Quite apart from these legal and administrative measures taken for the purpose of curbing evasion of tax, certain steps were also taken to tackle the black money built up out of past evasions. In 1946, just at the close of the Second World War, high denomination notes were demonetized so as to bring within the net of taxation black money earned during the War. This was followed by the enactment of the Taxation of Income Investigation Commission Act 1947. Then came the **Voluntary Disclosure Scheme of 1951**, popularly known as Tyagi Scheme, to facilitate the disclosure of suppressed income by affording certain immunities from the penal provisions. This scheme was however not successful because it helped to unearth only Rs. 70.20 crores of black money.
- 1.2** Thereafter, nearly a decade and a half later, a second scheme of voluntary disclosure was introduced by Section 68 of the Finance Act 1965. This scheme, popularly known as the **sixty-forty scheme**, enabled the tax evaders to disclose suppressed income by paying 60% of the concealed income as tax and bringing the balance of 40% into their books. This scheme was a little less successful than the earlier one, but it could help to net only about Rs. 52.11 crores of black money.
- 1.3** Closely following on the heels of this scheme came another scheme under Section 24 of the Finance (No. 2) Act 1965 popularly known as the **'Block Scheme'** according to which tax was payable at rates applicable to the block of concealed income disclosed and not at a flat rate as under the sixty-forty scheme. This scheme received a slightly better response and the income disclosed under it amounted to about Rs. 145 crores.
- 1.4** Then came the **Taxation Laws (Amendment and Miscellaneous Provisions) Ordinance 1965** followed by an Act in identical terms, which provided for exemption from tax in certain cases of undisclosed income invested in National Defence Gold Bonds 1980. We shall have occasion to consider the broad scheme of this Act a little later, but for the time being as we may point out that the scheme as envisaged in this Act was very closely similar to the scheme under the impugned Act. Subsequent to this Act followed the Report of the Wanchoo Committee and as a result of the recommendations made in this Report certain penal provisions contained in the Income-tax Act 1961 were made more severe and rigorous.
- 1.5** Then came the **Voluntary Disclosure of Income and Wealth Ordinance 1975** which was followed by an Act in the same terms. This legislation introduced a scheme of voluntary disclosure of income and wealth and provided certain immunities and exemptions. The record before us does not show as to what was the concealed income and wealth disclosed pursuant to this scheme. But it is an indisputable fact that the adoption of these stringent legal and administrative measures as also the introduction of these different voluntary disclosure schemes did not have any appreciable effect and

despite all these efforts made by the Government, the problem of black money continues unabated and has assumed serious dimensions.

1.6 The Act discloses another scheme, called the special bearer bond scheme which enables tax-evaders to convert black money into white after 10 years and in the meantime use the Bonds as parallel currency initiating a chain of black money investments. There is no provision in the Act requiring that on maturity of the Bonds their holders would have to disclose their identity, which means that if after 10 years black money which had taken the shape of Special Bearer Bonds goes under-ground again and retain its colour, there is nothing to prevent it. There is nothing in the scheme to halt generation of black money which threatens the national economy. Some people by successful evasion manoeuvres are able to throw the burden of taxation off their own shoulders which means a greater burden on the honest tax-payers and this leads to economic imbalance. Further, schemes like the Special Bearer Bonds scheme would tempt more people to evade taxes and instead of serving a legitimate public interest would grievously damage it.

1.7 The Kar Vivad Samadhan Scheme announced in the Budget by the Finance Minister, Shri Yashwant Sinha has come into operation from September 1, 1998. The Scheme aims to bring down the pending litigation between the Department and the assessee in the direct and indirect tax and speedily realise the arrears of taxes locked in dispute. The time limit for making declaration by eligible tax-payers will end on December 31, 1998.

It may be possible to say and that the enforcement machinery of the tax department is not as effective or is at times actively involved in colluding with evaders. No serious effort has been made to eliminate the other causes of generation of black money especially the rampant corruption. The fact remains that there is considerable amount of black money in the hands of persons which is causing havoc to the economy of the country and seriously prejudicing mobilisation of resources for social and economical reconstruction of the nation. The tax compliant bear the burden of those who evade.

2. WHY HAS THIS SCHEME BEEN BROUGHT ABOUT?

- a. They believe what they do is not a service- more in the unorganized and uneducated service providers who may constitute more than 30% of the total!!!
- b. Nobody else in their trade is paying the service tax.- Policy of we will see when proceeded against.

- c. The customers/ clients are not willing to pay the additional amount as others not charging or client unable to avail the credit.
- d. They would have collected as a matter of precaution and once the law is clear they would pay the amount or return to the customers as getting refund from revenue is a difficult process.
- e. They believe that they are exempted sue to sector
- f. Lack of awareness of tax laws
- g. They would be unaware of the exemption limit and may think it could be much above their turnover.
- h. Higher Rate of 12.36% more than their profit margin.
- i. Assessee believes that if he starts paying now, he will be liable for the earlier periods as well

Generally we could say that the assessee believe that, the Voluntary compliances under service tax is coupled with the interest & Penalty and also with an added harassment of some of the corrupt departmental offices when trying to clean the state. Most of the service providers as well as service receivers are fearful & unhappy with payment of interest & Penalties on amounts not collected by them.

In such a state of affair introduction of the amnesty scheme was perceived as a welcome move which may enable the assesses to be tax compliant without interest & penalty though there are some misgivings.

3. VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

3.1 Introduction

The Service tax VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013 (VCES) has now offered a lifeline to persons who have not complied with the law in the past, to set their service tax records straight. "VCES"-A tool, designed by the Central Government which was announced in this Union budget, aims to iron out the past non-compliance under service tax. By using a system of taxation by confession "VCES" will not only broaden the tax base, but also helps in smoother filing of returns by the non-compliant assesseees. The declarants under VCES will not just be exempt from penalties but can also do away with payment of interest and the risk of possible prosecution.

3.2 What the scheme offers

- a. The scheme is available in respect of tax dues from 1st October, 2007 and up to 31st December, 2012.

- b. The scheme is available to non-filers and stop-filers and to those assesseees who have not disclosed their true liability in the returns and also for those who never registered under service tax.
- c. The scheme is not available to those persons to whom summons were issued or where an audit/investigation has been initiated and is pending as on 1st March 2013 or where a notice or an order has been issued or made on the same issue prior to 1st March 2013.
- d. Under this scheme, the declarant (i.e. the applicant under this scheme) will be required to make a truthful declaration of all his tax dues and pay 50% of the tax dues on or before 31st December 2013. The balance tax dues can be paid by 30th June 2014 without interest and upto 31st December 2014 with interest at applicable rates.

3.3 Benefits which accrue under the VCES Scheme

- a. Waiver of Interest which arises due to delay in payment of Service tax
- b. Waiver of penalties under the Finance act,
- c. No further prosecutions under chapter V of the Finance act
- d. Restriction on reopening of the proceeding before any authority or court relating to such declared period.
- e. There is no mention of the fact whether CENVAT Credit on the various expenses he has incurred (During the period of the scheme), whether it can be availed for an assessee who has taken registration and paid service tax for the period in the scheme. Since the law is silent in this regard the assessee is eligible to take credit he is eligible for and for those on which he has incurred during the period of the scheme.

3.4 Negatives which arises from the scheme

- a. If the Service tax amount calculated is incorrect and has paid excess, the assessee will not be eligible for the refund
- b. The act does not speak of any remedies if the application made is rejected. The only option is to file a writ petition.
- c. The Payment of Service tax to be paid is to be paid in cash and cannot be paid by utilizing the CENVAT Credit.

3.5 Assesseees ineligible from making application

- a. Any person who has filed the return disclosing his true liability and not paid the service tax amount.
- b. Any person to whom any notice or order has been issued and the amount due pertains to subsequent period on the same issue for which notice is serviced or an order has been passed for the previous period.

3.6 Assessee whose declaration are liable to be rejected

Declaration shall be rejected is In-case of any inquiry, investigation for short payment or non-payment of tax is initiated by way of

- (i) Search or premises as u/s 82
- (ii) Summons have been issued under section 14 of CEA as made applicable under service tax
- (iii) Requiring production of books of accounts, documents or other evidences.

3.7 Procedure for making declaration & Payment of tax dues

- (a) First step is to apply for registration in Form ST-1 through ACES (If Registration not obtained)
- (b) Declaration required to be made in 'Form VCES 1' in duplicate on or before 31st Dec 2013
- (c) Acknowledgement shall be received in Form 'VCES-2' within a period of 7 Working Days from the date of receipt of VCES 1
- (d) 50% of the Declared amount to be paid on or before 31st December 2013 by GAR-7 Challan and submit the proof of such payment to the designated authority within the due dates.
- (e) Balance of tax dues after the above (Balance 50%) required to be paid within 30th June 2014.
- (f) If any default in the above mentioned payments within the due dates, assessee required to pay the amount with Interest as applicable in Section 73 or 75B of the Finance act as the case maybe. Amount is to be paid with Interest within 31st December 2014.
- (g) Assessee is to furnish the details of payment from time to time and also upon full payment of the declared amount. Once all dues have been paid off, the designated authority shall issue acknowledgement in Form VCES-3.

3.8 Failure to make true declaration

If the declaration made by the assessee is substantially false, the commissioner of central excise and service tax may issue a show cause notice for the tax short-paid/not paid. However the commissioner shall not be entitles to issue a show cause notice after the expiry of one year from the date of making the declaration. However once the show cause notice has been issued, the normal provisions shall apply.

4. PRACTICAL PROBLEMS UNDER VCES

(a) **How will a registered non filer having “no tax dues” (eg. Person covered under threshold exemption limit) avail benefit of the scheme?**

- Though CBEC has clarified that late fees for filing returns will also be waived, it should further clarify that tax due which is paid be reflected as NIL and declaration be filed to waive the penalty for a person who has not filed return / a person who has filed with delay.

(b) **Can an assessee, to whom an SCN/order is issued for a particular issue, file declaration for the same period for tax dues not covered under the issue?**

- Yes, declaration can be filed for issues not covered under SCN/OIO

(c) **What is the scope of the communication initiating enquiry/ investigation for non/short payment of tax by way of production of records/ documents?[as pendency of such enquiry on 1st Mar-13 will lead to rejection of declaration]**

- Apart from issuance of summon u/s 14 of CEA, a declaration is liable to be rejected only on following communication(s):
 1. Documents desired for assessing correctness of filed return or details required from non-filers for Best Judgment Assessment u/s 72.
 2. Records requisitioned u/r 5A of STR,1994

(d) **Where is the filing required to be made?**

- As mentioned in the notification 10/2013 dated 13th May 2013, the declaration is to be filed to the Central excise officer notified as designated authority under section 105(C) of the act. 105(C) of Finance Act 2013 states that,

“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.

- [Information note - It has been noted that for Bangalore the declaration is required to be filed with the respective range officer of the assessee and no separate designated authority has been assigned to the task.- Maybe required to see if done for all commissionerates.

(e) **If service tax not collected from the client of the assessee at an earlier period when the service was liable, can the amount be recovered from the client and whether credit allowed?**

- Yes, the assessee can raise a valid invoice after registration to his client separately for the service tax amount and recover the service tax portion from him. By doing this the assessee does not lose out on the cash flow and the client can claim credit of the amount paid by him.

(f) When the Invoice is being raised to the client of the assessee on the service tax amount, can the party take credit of the amount paid as per the Invoice?

- Rule 9 (bb) of the CENVAT Credit rules, 2004 disallows the credit of those invoices only when the same is due to non-levy or non-payment or short-levy or short payment by reason of fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of the finance act or of the rules made with the intent to evade payment of service tax.
- Hence the same should not be disallowed for his client as this disclosure is not pursuant to a SCN.

(g) What is the Interest as mentioned in Point 6 of the Notification 10/2013 when payment of tax dues? Is it contradictory to the benefit obtained from the scheme?

- The interest amount as mentioned in the notification refers to interests when there is a delay in the payment of the declared amount as in the VCES-I after December 2013 (50%) and the balance after 30th June 2014 which is under section 73 or 75B of the finance act as the case maybe.

(h) Can the payment be made in multiple installments or should the entire 50% be paid in lumpsum?

- The act specifies that the amount up to 50% is required to be paid within Dec 2013 and the balance within 30th June 2014. The payment can be made in any number of installments as the client desires.

(i) Whether when notice which has been issued by the department before 1st March 2013 but not yet received by the assessee, can he go for the VCES Scheme?

- Section 106 of the Finance act 2013 states that *“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 Chapter has been issued or made before the 1st day of March, 2013”*

- This clearly states that even though the same is made by the department and not sent to the assessee before 1st March 2013, there are chances that VCES **may be rejected**.

5. CLARIFICATIONS / SUUGESTION BY ICAI ON CERTAIN ISSUES.

(a) Premises having separate registration be also treated separately for the purpose of VCES?

- It be clarified that in such a case, VCES can be applied in respect of other premises as no inquiry, investigation or audit is pending in respect of such premises as on 01-03-2013.

(b) Meaning of “tax dues”

- It is suggested that the term “service tax due” be defined to mean net liability i.e., after availing CENVAT credit. Alternatively, if the assessee is not allowed to avail the CENVAT credit while calculating “Tax Dues” then the department shall allow the assessee to take said amount as opening balance of CENVAT Credit as on 1st Jan 2013.

(c) Amount mentioned under Rule 3(5),Rule 3(5)A & under Rule 6(3) of the CENVAT Credit Rules, 2004 be treated as “Tax dues”

- It is suggested that such amounts be also treated as ‘tax dues’ for the purpose of VCES and also that penalty under Rule 15 of CENVAT Credit Rules, 2004, be also waived under VCES.

(d) Time limit for Rejection of Declaration

ICAI Has suggested to the department that a time limit of one or two months be provided for rejection of a declaration under section 106(2), so that once the period for rejecting the declaration has elapsed, then the declarant can pay the tax without any fear or apprehension of a situation where he would have paid the tax under the scheme but it may be rejected at a later point.

Further, a notice be given to the declarant intending to reject the application so that he has an opportunity to give his submission. This will also ensure that the rejection is made after taking cognizance of any information or justification offered by the declarant.

(e) Revision/Rectification of Declaration

ICAI has suggested to the department that a provision be made for revision/rectification of declaration on account of omission and/or errors made by the declarant. Revision of declaration

be also allowed when the declaration is rejected by the designated authority and the tax dues computed by the designated authority are acceptable to the declarant.

(f) Declaration in case of Audit initiated between 02.03.2013 and 31.12.2014

It is suggested that the parallel inquiry or proceedings during the period when the scheme is operational be prohibited. Hence, ICAI has asked the department to either the condition of initiation of audit be dropped from the scheme or it be defined so as to ensure that thousands of assesseees who have received a simple notice without any further correspondence are covered in the scheme.

(g) Eligibility to the scheme where notice is issued involving matters in respect of few services

ICAI clarifies that where notice is issued involving matters in respect of few taxable services, the declaration can be made in respect of tax dues involving the other services not covered in the SCN.

(h) Payment made on or after 01.03.2013 before filing of the declaration be treated as payment against declaration

ICAI has clarified that in absence of any specific requirement of payment against tax dues to be made only after filing declaration, payment made on or after 01.03.2013 (date of announcement of the scheme) before filing of the declaration be adjusted against the declaration.

(i) Credit of tax paid under VCES be allowed to the receiver of supplementary invoices

Yes, Will be allowed

(j) Payment of tax through Cenvat Credit – to be allowed

Rule 6 of the Service tax Voluntary Compliance Encouragement Rules, 2013 provides that CENVAT Credit shall not be utilized for payment of tax dues under the Scheme. However, this would cause substantial hardship in cases where the value addition of the service provider is significant.

For example, if in a case where service provider's value addition is say 20% and his tax payable is ` 1 Crore his CENVAT credit available would be ` 80 Lakhs. Hence instead of paying ` 20 Lakhs to come clean he will have to pay ` 1 Crore. Incidentally, if he would have to pay taxes pursuant to an investigation/Show cause notice, he would have been entitled to pay by utilising CENVAT Credit of ` 80 Lakhs. Thus, the requirement of not utilising CENVAT credit would cause severe hardship and may deter people coming forward.

It is suggested by the ICAI that Rule 6 be amended to provide for payment of service tax by CENVAT Credit also.

(k) Confidentiality of information

It is suggested by ICAI that the information submitted in the declaration made by the declarant be not shared with any other tax authorities such as income tax authorities, vat authorities etc.

(l) Applicability of Scheme

ICAI has clarified that the Scheme would also apply to:

- Tax payable under reverse charge mechanism; and
- Wrong availment and utilization of CENVAT credit

(m) It appears that VCES 2013, is applicable to only those assessee's who have not paid tax dues. There is no relief to those small service providers who have not filed the return and are thus liable to penalty for non-filing of returns without having any tax liabilities.

It is suggested by ICAI that benefit of the scheme be also extended to such small service providers so that they are absolved of the late filing fees of Rs. 20,000 per returns.

(n) Though it has been clarified that declaration will be rejected only when records have been requisitioned under authority of specified provisions, letters from department seldom invoke such specified provisions.

ICAI has clarified that unless the letter is specifically issued under the specified provisions, the declaration be not rejected else not only it will be against the clarification but also hamper the basic objective of the scheme.

6. VIEWS OF THE SPEAKER FOR CERTAIN ISSUES IN VCES

(a) Whether a person who is liable to pay tax as a recipient of service is eligible to avail the VCES scheme?

- **Yes.** On perusal of the scheme it states that tax dues means any amounts due under the chapter or any other chapter which means that even amounts paid by the recipient of service shall be covered by this scheme

(b) I have some CENVAT erroneously accumulated in my returns, which is carrying forward till date, whether I can use VCES scheme for regularizing my credit?

- This scheme is for the payment of service tax under this chapter and not for the reversal of the CENVAT and hence such reversal is not eligible here. However since the amount has not been utilized there may not be the implication of interest and penalty. Preferable to go under the normal scheme.

(c) I am providing exempted service, but had erroneously collected service tax on the same, but did not remit to Govt. Nor did I return the money collected to the clients/ customers. Will I be eligible for this scheme?

- Yes this scheme is not only for the tax payable, but also for the amount payable under Section 73A which is for depositing the amount collected representing as service tax

(d) I am an assessee registered with service tax department. I have not paid the service tax, but have filed the return indicating the service tax is due. Will I be eligible for this scheme?

- An assessee who has filed his returns and has indicated the turnover but has failed to pay service tax would not be eligible the benefit of this scheme. However the benefit may be claimed to the extent of the turnover not indicated in the ST-3 if any

(e) I have received a show cause notice in respect of an issue on a liability during the period Oct'07 to Dec'12. However order is yet to be passed by the Adjudicating Authority, whether I would be eligible for VCES?

- No, this scheme is restricted for those people on whom notice has been serviced.

(f) I was served SCN for the period Oct 07 to March 08 seeking payment of service tax on sales commission, which is pending in Appeals. However I have been receiving such commission till date but a periodical SCN was not served nor did I pay the service tax on the same till date. Now can get the benefit of this scheme for the period April'08 to Dec'12?

- No, this scheme is specifically barring the cases where service tax is unpaid on the same issue on which the notice was serviced for the previous period. Therefore this benefit cannot be claimed for the subsequent period. However, in case an assessee who has been issued a notice on one issue, can make a declaration for VCES for another issue

(g) I have been registered for service tax, but have neither paid service tax nor filed any returns, prior to three months I received a letter from my range superintendent enquiring about

failure to make the returns and also called for details of revenue, financial statements etc. whether I will be eligible for this scheme now?

- Section 96(2) (iii) specifically restricted the benefit of this scheme to the person on whom any investigation has been initiated by way of calling for accounts documents etc. and hence such all application may be rejected.

(h) In the above case, if the application is rejected, what would be the future course of action?

- Department may issues a SCN for demanding the amount so declared along with the interest and penalty, however whether the extended period of limitation (5 year notice) can be invoked has be decided on case to case basis.

(i) I have been summoned for investigation of application of service tax on a certain issue which is still on. [started prior to 1.3.2013] In the meantime can I make an application for this scheme for other revenue which is not covered under investigation?

- No if any investigation is pending on any issue that is upto issue of SCN any application made under this scheme would be rejected. However once the investigation has been concluded and an SCN has been issued on certain issue, then application can be made for the other issues not covered under the SCN.

(j) I was subject to audit, but there was no discrepancies found by the audit party and the audit was concluded giving Nil audit report. Now for such audit period can I claim the benefit of this scheme?

- Yes the restriction is only in case the audit has been initiated, which indicate that the audit is pending and hence once the audit is concluded there is no bar on claiming the benefit of the scheme subject to satisfaction of all other requirement.

(k) In case I pay service tax under this scheme on an issue that is not clear as to taxability and after the payment if it has been held in any judicial forum that service tax is not payable, whether I can claim refund of the amount so paid under this scheme?

- No, Amount declared and paid under this scheme is not eligible for refund. However, since the service tax itself was not liable, retaining such amount by department is ultra vires to constitution.

(l) Can the declaration be made by any declarant be rejected on any grounds?

- Yes, in case the commissioner has reasons to believe that the declaration made by the declarant is substantially false, he may serve a notice as to why tax dues as stated therein should not be paid by him.

(m) Whether any proceedings can be initiated against persons opting for VCES scheme subsequent to payment of tax dues?

- On furnishing the details of payment of tax dues by the declarant the designated authority shall issue a form for acknowledgement of dues upon which the declarant shall be granted immunity from interest, penalties and other proceedings under the Act.

(n) In case a declarant makes a declaration but fails to deposit the tax dues within prescribed time limit what shall be consequences?

- Where the declarant fails to make the payment of tax dues within the prescribed time limit, the tax dues shall be recovered with interest under Section 87 of the Act viz. Recovery of any amount due to the Government.

7. ISSUES WHICH NEEDS CLARITY

(a) The scheme announced on 28th Feb-2013 covers period from 1-Oct-07 to 31st Dec-12. As assent is received only on 10th May-2013, return for period Oct-07 to Mar-08 due on 25th Apr-08 has already become time barred [*Notice for return period could be issued only till 25th Apr-13*]. Further notice for period Apr-08 to Sep-08 will also be time barred after 25th Oct-10. However CBEC should issue a suitable clarification.

(b) **(Appeal)** No hearing/appeal mechanism on rejection of declaration by designated authority where enquiry/ audit/ investigation is open. Can a declaration rejected be filed again? Can multiple declarations be filed for different period, especially in light where form VCES-1 does not provide for period of declaration? Can a declaration filed be withdrawn and fresh declaration be filed?

Though Rules are silent, but ideally an appeal can be filed against an AC order u/s 85(1) to Commissioner (Appeals).

(c) **(Search):** In case of enquiry pending due to search, is declaration liable to be rejected for whole of scheme period or only to period before search?

- (d) **(Summon):** In all cases where summons for enquiry are issued for production of records and/or recording statement, no information is available to the person regarding fate of the enquiry, unless a show cause notice is issued for recovery.
- (e) **(False declaration):** Illustrative instances should be provided by CBEC as to when a declaration be treated as “substantially false” by the Commissioner. The same doubt has also been asked by ICAI to the Department which is yet to be responded to.
- (f) **Tax dues covered by SCN** - In a case where the assessee has been denied exports for the period prior to 1.7.2012 and the matter is at the show cause adjudication stage or at the appeal stage and he is of the view that he has a good case but post 1.7.2012 the Place of Provision of Service Rules, 2012 is clearly against him and he would like to pay the tax post 1.7.2012, whether he can pay the tax under the scheme. Attention is drawn to second proviso to s. 106(1) which reads as follows:

“Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.”

In this regard can it be interpreted that the issue is not the same in view of the new Place of Provision of Service Rules, 2012?

- (g) **Formal disclosure of Inquiry to be informed** - It is a common experience that inquiries or investigations go on for long time. The assessee might have submitted the details / documents or appeared before service tax authority in pursuance to summons and there may not be further correspondence or communication from the department. However, the assessee may not know that inquiry is completed or not as there is no statutory time limit for closure of the investigation. Such assessees, otherwise eligible for scheme, would be deprived of the scheme.

- (h) **Acknowledgement of Receipt under section 107 read with Rule 5** - After Submitting VCES-1 and after 7 Days, would it be deemed that his declaration is accepted and the declarant can start making payment of the tax dues as prescribed under the scheme?
- (i) **There can be certain issues in SCN on which tax is already paid and appropriation is proposed.**
The declarant will stand at a loss if he is debarred benefit of immunity on such issues for subsequent period. There can also be instances where SCN are issued which are eventually dropped/ may be dropped. Not permitting declaration in such cases is detrimental to interests of the declarant. (ICAI has asked the department to allow the declarations for such cases to be accepted as well).
- (j) **In a case where the assessee opts for the VCES Scheme for the period upto 31.12.2012 and pays tax under this scheme, when he pays tax for the period post 1.1.2013, there would be an apprehension of penalty.**

ICAI has asked that the Board may consider issuing suitable circulars to assuage the apprehension of those who want to come forward and pay the tax that penalty would not be levied for the taxes paid along with interest for the period commencing from 1.1.2013 and ending with the month / quarter in which the declaration under the scheme was filed.

(k) **Uniformity of information / documents required to for filing of the Declaration**

ICAI Has asked the board , clear instructions be issued to field formations that no details other than those specified in the Scheme, be insisted upon while accepting the declaration. Else, each Commissionerate may specify its own set of requirements of documents to be filed which would create unnecessary hurdle in filing declaration and paying taxes. If at all any details are required, they may be sought after the declaration is filed. Alternatively, Board may prescribe the information / documents required for filing of the declaration through legal route to bring uniformity across the country.

- (l) **How to File STR/Report Income for the Period 1st Jan 2013 to date of Registration (in case of new Registration for this scheme)** - The ACES do not accept the STR period prior to Registration. In that case, how the assessee can report the service tax payable so that no penalty will be there on such disclosure. Whether the same will be covered under Section 73(3) or 73(4A).

(m) **Rejection of declaration u/s 106(2)** - Section 106(2) provides that where a declaration is made by the assessee against whom any inquiry or investigation in respect of 'service tax not levied or short levied or not paid or short paid' has been initiated (by way of search, summons, requisition of documents, etc.) or an audit has been initiated and is "pending" as on 1st March, 2013, the designated authority shall by an order, for reasons recorded in writing, reject the declaration. The following issues may arise in this regard:

1. A letter is issued by the department on 27.02.2013 and received by the assessee on 01.03.2013 seeking production of accounts. Is the proceeding 'pending' as on 01.03.2013?
2. An investigation (prior to 1.3.2013) wherein details of revenues where tax was not paid were given culminated in an SCN only in respect of one of the revenues. Whether other revenues in respect of which no SCN has been issued would be eligible for VCES or would the enquiry be considered as 'pending' in respect of other revenues?

8. ANNEXURES

7.1

THE FINANCE ACT, 2013 (17 of 2013)

CHAPTER VI

SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

Short title.

104. This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

Definitions.

105.

(1) In this Scheme, unless the context otherwise requires,—

- (a) "Chapter" means Chapter V of the Finance Act, 1994;
- (b) "declarant" means any person who makes a declaration under sub-section (1) of section 97;
- (c) "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;
- (d) "prescribed" means prescribed by rules made under this Scheme;
- (e) "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

(2) Words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

Person who may make declaration of tax dues.

106.

(1) 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 Chapter has been issued or made before the 1st day of March, 2013:

Provided that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return:

Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

(2) Where a declaration has been made by a person against whom,—

(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 Chapter; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or

(iii) requiring production of accounts, documents or other evidence under the Chapter 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, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

Procedure for making declaration and payment of tax dues.

107.

(1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that 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 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

Immunity from penalty, interest and other proceeding.

108.

(1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 97 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 101, a declaration made under subsection (1) of section 97 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 97 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

No refund of amount paid under the Scheme.

109.

Any amount paid in pursuance of a declaration made under sub-section (1) of section 97 shall not be refundable under any circumstances.

Tax dues declared but not paid.

110.

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.

Failure to make true declaration.

111.

(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 under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

Removal of doubts.

112.

For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 98. Immunity

Power to remove difficulties.

113.

(1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

114.–

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, 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 subsection (1) of section 97;

(b) The form and the manner of acknowledging the declaration under subsection (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.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7.2 CIRCULAR 169/4/2013-ST dated 13th May 2013

The Service Tax Voluntary Compliance Encouragement Scheme (VCES) has come into effect upon enactment of the Finance Bill 2013 on the 10th May, 2013. The Service Tax Voluntary Compliance Encouragement Rules, 2013 has been issued to bring into effect the Scheme. Some references have been received seeking clarification as regards the scope and applicability of the Scheme.

#	Issues	Clarifications
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.
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 there under.
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.

4	<p>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?</p>	<p>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 thereunder, and such inquiry or investigation is pending as on the 1st day of March, 2013.</p> <p>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,-</p> <p>(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 thereunder.</p> <p>(ii) Rule 5A of the Service Tax Rules, 1994 prescribes for requisition of specified documents by an officer authorised by the Commissioner for the purposes specified therein.</p> <p>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 authorised 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.</p> <p>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.</p>
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It is expected that more clarification would be issued on some of the issues unresolved which would provide more information to the assessee in time to come. These maybe referred before any action taken in this regard. The professional who is practicing in this area could follow a value additive process to showcase his/her professionalism in ensuring smooth and easy compliance.

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