

# Voluntary Compliance Encouragement Scheme, 2013

Amnesty Scheme

{Chapter VI of Finance Act, 2013}



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# **Brief Introduction of Tax Structure**

- Till 30.06.2012 Specified Category based taxation
- W.e.f. 01.07.2012 Negative List Based Taxation
- Self Assessment Based Taxation
  - Calculation of Liability & its discharge
  - Filing of return
- Inherent risk of non compliance, intentionally or un-intentionally.

# Constitutional Validity of Amnesty Schemes

- VDIS, 1997 was challenged
- Due to the following reasons given by the Government the Supreme Court upheld the validity, in General.
  - After 31.12.1997 stepping up of Survey and Search operations by the Income Tax Dept.
  - If in search income undisclosed is detected assess will be liable for
    - (a) tax @ 60%;
    - (b) penalty up to 300% of tax evaded
    - (c) interest u/s 158BFA

# Constitutional Validity of Amnesty Schemes ...Contd

- Finance Minister has also announced that in every case where undisclosed income is detected, prosecution will be launched.
- Confidentiality of declarant as per section 72 of the VDIS – 97.
- Besides tightening up legal provisions, steps as to acceleration of computerisation, issuance of PAN etc is also taken by dept.
- ***All India Federation of Tax Practitioners vs. Union of India 1998 (231) ITR 24.***

# Need and Purpose of Amnesty Scheme VCES, 2013

- As per Honorable Finance ministers speech on 28.02.2013 out of 17 Lakhs registered only 7 lakhs assessee file returns.
- Another Opportunity to the defaulters to become tax compliant.
- Due to limitations with the dept. in terms of manpower, infrastructure etc. this route can surely prove to be successful in increasing compliance and accelerating collection.
- This scheme can give new life giver to many of the un-intentional defaulters.

# Framework of VCES, 2013

- Scheme is effective from 10.05.2013
- Scheme comprises of following 11 Sections i.e. Section 104 to Section 114 of the Finance Act:
  - Section 104 : Short Title
  - Section 105 : Definitions
  - Section 106 : Person who may make declaration of tax dues.
  - Section 107 : Procedure for making declaration and payment of tax dues.
  - Section 108 : Immunity from penalty, interest and other proceedings.

# Framework of VCES, 2013....Contd

- Section 109 : No refund of the amount paid under the scheme.
- Section 110 : Tax dues declared but not paid.
- Section 111 : Failure to make true declaration.
- Section 112 : Removal of Doubts.
- Section 113 : Power to remove difficulties.
- Section 114 : Power to make rules.



# Detailed Analysis of VCES, 2013

## *Important Definitions – Section 105*

- *“declarant”* means any person who makes a declaration under sub-section (1) of section 107. *Section 105(1)(b).*
- *“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. *Section 105(1)(c).*

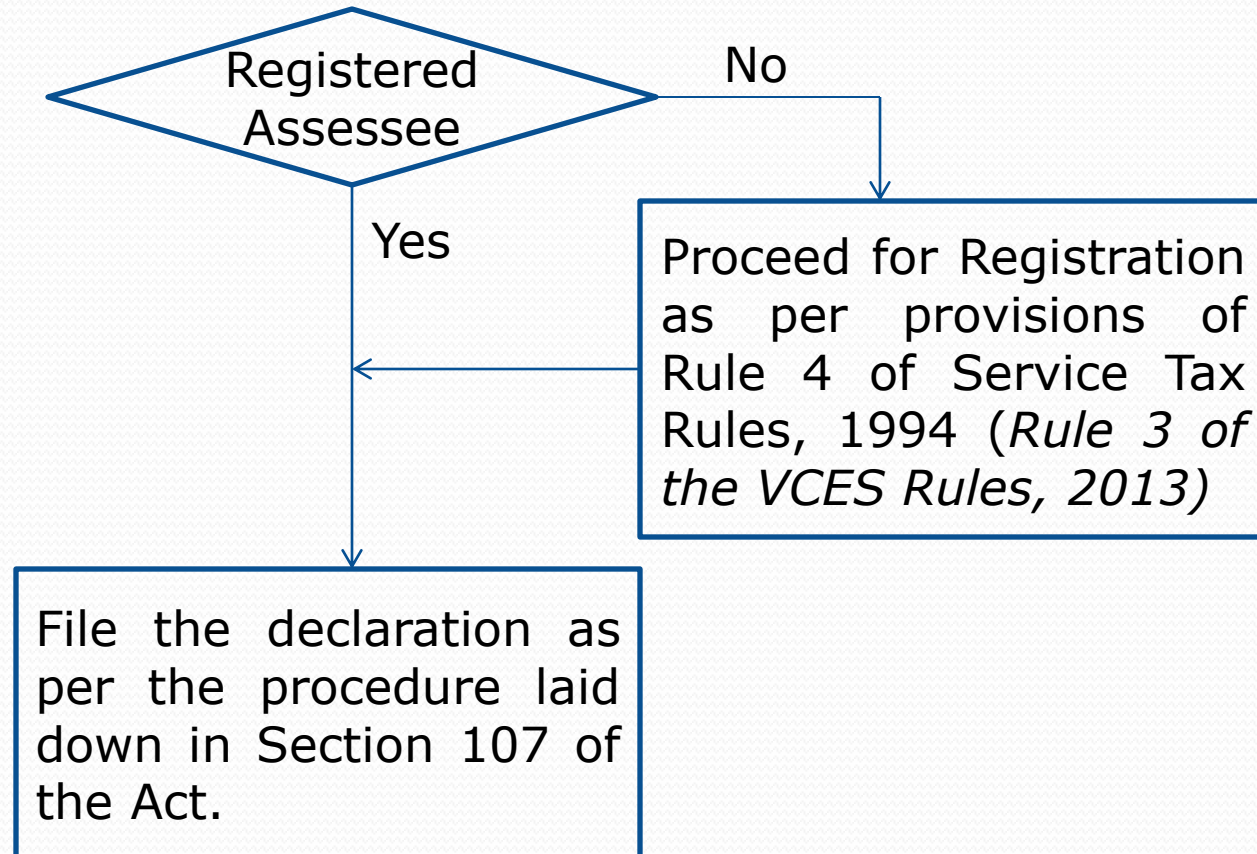
# Detailed Analysis of VCES, 2013

## *Important Definitions – Section 105.....contd*

- "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.* Section 105(1)(e).

# Detailed Analysis of VCES, 2013

## *Person who can make the declaration – Section 106*



# Detailed Analysis of VCES, 2013

*Person who can make the declaration – Section 106*

Sub section (1) of Section 106 provides *any person may declare the tax dues in respect of which no notice or order of determination has been issued or made:*

Under Section 72  
(*Best Judgment Assessment*) of  
the Chapter.

Under Section 73  
(*Recovery of service  
tax not levied or paid  
or short levied or  
short paid or  
erroneously refunded*)  
of the Chapter.

Under Section 73A  
(*Service Tax collected  
from any person to be  
deposited with Central  
Government*) of the  
Chapter.

# Detailed Analysis of VCES, 2013

*Period or case for which declaration cannot be filed*

**Proviso to** Sub section (1) of Section 106 says

## ***First Proviso***

Person who has furnished returns u/s 70 and disclosed true liability but not paid the amount of service tax. *But where the true liability is not disclosed then the declaration can be filed.*

## ***Second Proviso***

Where a notice or order of determination has been issued in respect of any period on any issue.

# Detailed Analysis of VCES, 2013

*Cases where declaration shall be rejected by the designated authority*

Sub section (2) of Section 106 says, where a person against whom,

## **Clause (a)**

Inquiry or investigation has been initiated by way of:

- (i) Search of premise u/s 82
- (ii) Issuance of summon u/s 14 of CE Act, 1944
- (iii) Requiring production of accounts, documents or other evidences.

## **Clause (b)**

An audit has been initiated.

And such inquiry or investigation or audit is pending as on 01.03.2013

# Detailed Analysis of VCES, 2013

*Procedure for making declaration & payment of tax dues – Section 107*

- Declaration shall be made on or before 31.12.2013 in the form and manner prescribed. *Rule 4 of the VCES Rules, 2013 prescribes Form VCES-1.*
- Once the declaration is filed, designated authority shall acknowledge in prescribed form & manner. *Rule 5 of the VCES Rules, 2013 prescribes Form VCES-2 and it needs to be issued within seven working days from the date of declaration.*

...Contd

# Detailed Analysis of VCES, 2013

*Procedure for making declaration & payment of tax dues – Section 107*

- Declarant shall pay not less than 50% by 31.12.2013 and inform the designated authority by submitting the proof of such payment.
- Remaining tax dues shall be paid on or before 30.06.2014. *Provided* where he fails to do so he shall pay by 31.12.2014 along with interest for the period of delay starting from 01.07.2014.
- Liability for the period starting from 01.01.2013 shall be paid as per the provisions of the chapter.

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# **Detailed Analysis of VCES, 2013**

*Procedure for making declaration & payment of tax dues – Section 107*

- Declarant shall submit the proof of payment from time to time, along with the copy of Form No VCES-2, to the designated authority.
- Once the full payment is made, as per the declaration and also the interest thereon, if any, and the details are furnished to the authority. He shall issue an acknowledgment of discharge in prescribed form and manner. *Rule 7 of the VCES Rules, 2013* Form VCES-3 is prescribed for acknowledgment of discharge and is shall be issued within seven working days from the date of intimation by declarant.

# **Detailed Analysis of VCES, 2013**

*Immunity from penalty, interest and other proceedings – Section 108*

- Once the full payment by the declarant is made as per declaration in Form VCES-1 along with interest, if any, the declarant shall get immunity from penalty, interest and other proceedings under the chapter.
- Declaration u/s 107(1) shall become conclusive on issuance of VCES-3 and no matter shall be reopened thereafter in any proceedings under the chapter before any authority or court for the period covered in the declaration.
- Exception to this is provisions of Section 111.

# Detailed Analysis of VCES, 2013

## *No refund – Section 109*

- Any amount paid in pursuance of declaration made under section 107 shall not be refundable in any circumstances.

## *Tax dues declared but not paid – Section 110*

- Provisions of Section 87 shall be invoked in this situation.

# Detailed Analysis of VCES, 2013

## *Failure to make true declaration – Section 111*

- Commissioner if have reason to belief that the declaration filed is substantially false, he may, with reasons recorded in writing, serve a Show Cause Notice to declarant in respect of such declaration that why he should not pay the tax dues not paid or short paid.
- Above SCN can be issued within one year from the date of declaration.
- Above SCN shall be deemed to have been issued u/s 73 or 73A of the chapter.

# Detailed Analysis of VCES, 2013

## *Removal of Doubts – Section 112*

- No benefit other than the benefit granted u/s 108

## *Power to remove difficulties – Section 113*

- In case of any difficulty, Central Government, by order shall remove. Such order shall be made within two years from the date on which scheme become effective.

## *Power to make rules – Section 114*

# VCES Rules, 2013

- Notified vide notification no 10/2013 dated 13.05.2013
- Comprises of following 7 rules & 3 Forms
  - Rule 1 : Short Title and commencement
  - Rule 2 : Definitions
  - Rule 3 : Registration
  - Rule 4 : Form of declaration. (VCES-1)
  - Rule 5 : Form & acknowledgment of declaration. (VCES-2)
  - Rule 6 : Payment of Tax Dues
  - Rule 7 : Form of acknowledgment of discharge. (VCES-3)

# CBEC Clarification / Circular

- Circular No 169/4/2013-ST dated 13.05.2013

S. No.	Issues	Clarification
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 thereunder.

# CBEC Clarification / Circular

- Circular No 169/4/2013-ST dated 13.05.2013

S. No.	Issues	Clarification
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	What is the scope of section 106 (2)(a)(iii)? Whether a communication from department seeking	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



# CBEC Clarification / Circular

- Circular No 169/4/2013-ST dated 13.05.2013

S. No.	Issues	Clarification
	general information from the declarant would lead to invoking of section 106 (2)(a)(iii) for rejection of declaration under the said section?	<p>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</p>

# CBEC Clarification / Circular

- Circular No 169/4/2013-ST dated 13.05.2013

S. No.	Issues	Clarification
		<p>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</p>

# **CBEC Clarification / Circular**

- Circular No 169/4/2013-ST dated 13.05.2013

S. No.	Issues	Clarification
		<p>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>



# Questions ?



# Thank You

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