

FAQ on VCES

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1. What is VCES – Voluntary Compliance Encouragement Scheme?

The Finance Bill 2013 proposes to introduce a scheme called Service Tax - Voluntary Compliance Encouragement Scheme. The service providers who have not paid their service tax liabilities for any part of the period from 01.10.2007 to 31.12.2012 can opt for the scheme and be entitled for waiver of interest and penalties.

2. When the scheme will be operational?

The scheme will be operational after the passage of the Finance Bill 2013. Thereafter the other Rules in this regard prescribing the procedures to be followed would be notified.

3. Who is eligible to opt for the scheme?

Those service providers who have not paid their service tax liabilities for any part of the period from 01.10.2007 to 31.12.2012.

4. Who are not eligible to opt for the scheme?

- On whom a show cause notice or order has been issued on or before 01.03.2013.
- Those who have filed their return for the period covered, but not paid the service tax liability for such period, so far.
- If a show cause notice or order has been issued / passed in respect of any part of the period between 01.10.2007 to 31.12.2012, for the same issue, the service provider cannot opt for the scheme, for remaining period for which no notice or order is issued. For example, if a show cause notice has been issued covering the period 01.01.2008 to 31.12.2008, denying abatement, the person cannot opt for this scheme for the period 01.01.2009 to 31.12.2009, accepting the denial of abatement.
- Service providers on whom any enquiry, investigation, or audit has been initiated and such enquiry, investigation or audit is pending as on 01.03.2013.

5. The audit party of the department has visited the premises of an assessee during 2011. No further communication has been received by them. Can that person opt for this scheme?

It depends upon the fact whether the department has noticed any irregularity during such audit, for which the service provider intends to opt for the scheme. As far as the service provider is concerned he can opt for the scheme and file the declaration. If the department is able to prove from their files that the particular issue which is sought to be opted for this scheme has already been noticed by the audit, the application for this scheme can be rejected by the department.

6. As to how an enquiry, investigation or audit can be said to be pending as on 01.03.2013?

- If any search has already been conducted in terms of Section 82.
- If any summons has already been issued under section 14 of the CE Act, as made applicable to service tax.
- If any accounts, documents or other details have already been called for by the department.
- An audit has already been initiated.

In other words, those service providers who have not paid their service tax liability for the prescribed period and have not at all caught the attention of the department till 01.03.2013 alone can opt for the scheme.

7. When and how the declaration has to be made?

After the passage of the Finance Bill, 2013, the format of the declaration and other procedures would be notified. Thereafter the declaration has to be filed on or before 31.12.2013. The declaration has to be filed with the officer, who will be nominated by the jurisdictional Commissioner.

8. How and when the service tax liabilities have to be paid? What are the immunities that are entitled for?

At least 50 % of the accepted liability has to be paid on or before 31.12.2013.

The remaining liability shall be paid on or before 30.06.2014.

If so, immunity from interest and penalties will be granted.

If the first installment is not paid before 31.12.2013 the benefit of the scheme cannot be claimed at all. Having paid the first installment before 31.12.2013, if the second installment could not be paid before 30.06.2014, the same can also be paid up to 31.12.2014. But, for this delayed second installment, interest @ 18 % p.a. has to be paid for the period from 01.07.2014 till the date of payment. It may be noted that interest is only for the delayed second installment amount that too for the period from 01.07.2014 till the date of payment.

9. Whether immunity from prosecution will also be granted?

Yes. Immunities from all further proceedings under Chapter V of the Finance Act, 1994 will be granted, which includes prosecution also.

10. It is stated that immunity from all proceedings under this Chapter will be granted. The scheme is contained in Chapter VI, whereas provisions relating to prosecution are contained in chapter V? How immunity from prosecution will be granted?

The term "chapter" is defined in the scheme as referring to Chapter V.

11. What if, after filing the declaration, the tax dues are not paid, either in full or in part?

The department can straightaway proceed to recover the same, as per the procedure under Section 87 of the Finance Act, 1994. There is no need to issue any further show cause notice.

12. I have a service tax demand confirmed against me, against which I have filed an appeal before the Tribunal which is pending. Can I opt for this scheme?

No.

13. I have lost my case before the Commissioner (Appeals) and I have not filed any further appeals. I am yet to pay the confirmed demands. Can I opt for this scheme?

No.

14. Can the department refuse to accept my declaration and refuse to grant me the immunities?

If the Commissioner is of the view that the declaration is substantially false (which means that the service tax liability declared is lower than the actual liability), then the Commissioner may issue show cause notice for recovery of such service tax and thereafter the usual adjudication proceedings will follow. But no such notice can be issued after one year from the date of filing declaration.

15. How the proceedings under the scheme will come to end?

Having made the declaration, the service provider shall obtain an acknowledgement thereof. Thereafter he has to inform the designated authority of all the payments made by him in pursuance of the declaration. Finally a discharge certificate will be issued by the designated authority.

16. What is the remedy for those to whom show cause has already been issued, if they do not wish to dispute their liability, either party or fully?

They can opt to file an application before the Settlement Commission, subject to other conditions. This facility is already available.

17. Is there any minimum limit of service tax liability to be admitted?

No.

18. I have filed my returns for the period 01.10.2007 to 31.03.2008 but not paid service tax for the period. Thereafter I have neither filed my returns nor paid the service tax liability? Am I eligible to opt for the scheme? If so, to what extent?

You can opt for the scheme for the period from 01.04.2008 to 31.12.2012. You cannot opt for the scheme for the period 01.10.2007 to 31.03.2008.

19. I have not paid my service tax liability for the period from 01.01.2012 to 28.02.2013. For what period I can opt for the scheme?

You can opt for the scheme only for the period from 01.01.2012 to 31.12.2012. The liability for the period after 01.01.2013 shall be paid along with interest and attendant penalties as may be levied.

20. Is it just to waive the interest and penalties for a service provider who had evaded payment of service tax and not caught till now, whereas, those who are already caught would be liable to penalties and interest? Even if they opt for Settlement Commission, no waiver of interest would be granted. What is the respect for the law abiding service providers who have diligently paid their service tax liabilities in time?

These sort of immunity schemes are devised with a view to avoid litigation and to garner revenue. Off course, morally, grant of immunities to evaders would discourage honest tax payers.

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