

FAQ's on Amnesty Scheme

1. Can a person file form VCES 1 by declaring NIL tax dues?

- No, a person cannot file form VCES 1 by declaring NIL tax dues. As per the provisions of the scheme, if a person has not paid the tax dues till 01st March, 2013 then he can apply for the scheme. However, if he has already paid the tax dues before 1st March, 2013 then he cannot apply for the scheme.

2. Is Service Recipient eligible to take CENVAT credit of the tax paid under VCES scheme?

- Yes, Service Recipient is eligible to avail CENVAT Credit of the tax paid under VCES scheme because no restriction has been imposed for availing CENVAT credit for the tax paid under the VCES scheme. Thus, CENVAT Credit can be availed.

3. If the acknowledgement of declaration is issued within a period of seven working days from the date of receipt of declaration in terms of provisions of Rule 5 of STVCER, 2013, can such declaration be rejected for any reason after such acknowledgement if given?

- Yes, even after receiving the acknowledgement the declaration made by the declarant can be rejected. As it is not provided anywhere that once the acknowledgement is issued, the declaration shall be construed as accepted. It is merely an intimation received from department that it has received the declaration.

4. Range officer had written a letter to submit a balance sheet and profit and loss account on 01-10-2009 which is submitted by assessee on 10-10-2009. This letter of range officer did not mention any section or rule under which such letter was issued seeking balance sheets and profit and loss account. Thereafter there is no communication from the range officer or any other officer of the service tax department. If the assessee wants to file a declaration under VCES can it be accepted?

- Yes, the declaration shall be accepted. According to Circular No. 169/4/2013-ST dated 13.05.2013 Section 106 (2) (a)(iii) of 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 shortlevied 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. The relevant provisions under which accounts, documents or other evidences can be requisitioned by Central excise Officer, inter alia, include Section . No other communication from the department would attract provisions of section 106(2)(a)(iii) and thus would not lead to rejection of the declaration.,

5. Can CENVAT credit be utilized for the payment of tax dues under VCES scheme?

- Sub rule (2) of Rule 6 of Service Tax Voluntary Compliance Encouragement Rules, 2013 prohibits the utilization of CENVAT credit for payment of tax dues under the Scheme.

6. Does the CENVAT credit be adjusted at the time of making the declaration? For instance if the assessee have Rs. 3 lacs to pay as service tax and he has also not availed CENVAT credit of Rs. 1 lakh for input services received during the period. Whether he can adjust it and make the declaration of tax due of Rs. 2 lakh or not?

- Yes,
- As per the definition of “tax dues” provided under the scheme, tax due means the Service Tax due or payable under the chapter or any other amount due or payable under Section 73A. Further, it is pertinent to mention here that service tax due/payable shall be determined after claiming the CENVAT Credit as available with the assessee for the period for which the declaration has been made. **Therefore, while making the declaration you can adjust the CENVAT credit as available with the assessee for the relevant period.**
- Further, CENVAT Credit for that period, if had been expensed off by the Assessee, the same may also be corrected by the assessee.

7. A proprietorship concern wrongly taken the CENVAT credit of Rs. 5 lacs in 2010 and filed the service tax return accordingly. Now, if it wants to declare and pay the same under VCES – can it do so?

- As per Amnesty Scheme, following persons can take the benefit of this scheme-

- Stop filers
- Non Filers
- Non registrant
- Service provider who have not disclosed true liability in the returns filed by them.

In the instant case, assessee has not shown the service tax liability correctly as assessee has wrongly utilized the CENVAT not available to him. Thus, this clearly amounts to not disclosing true service tax liability and accordingly assessee can avail the aforestated scheme.

8. ABC Ltd. has there different premises in Ahmadabad, Rajkot and Jamnagar respectively. ABC Ltd. is providing services from each office and such offices are separately registered with respective service tax range. Further, it has received a show -cause notice dated 25-02-2013 in respect of some alleged short payment of service tax for Ahmadabad office but has not received any such notice or any communication for Rajkot or Jamnagar offices. Can Rajkot and Jamnagar branch take benefit under VCES for any tax dues relating to those places?

- No, Rajkot and Jamna Nagar Branch cannot take the benefit of the scheme. Under service tax the registration is PAN based i.e. PAN no. of the person is followed by the service tax code. Even if the branches of an entity are registered separately, the person shall remain the same and the branches will be considered as inter-linked. Therefore, even if the default is made by one branch the person shall be debarred from taking the benefit of this scheme.

9. If the person has NIL service tax liability as he has not provided services from last 5 years. The person has not filed any return on the belief the return is not required to be filed if there is no service tax liability. Then do he is eligible to go for the scheme?

- No, the person is not eligible for the scheme. However, according to third proviso [inserted vide Notification No. 4/2008 dated 01.03.2008 with effect from 01.03.2008] to Rule 7C of Service Tax Rules, 1994 where the gross amount of service tax payable is nil, the Central Excise Office may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty. Therefore by foregoing proviso to Rule 7C, the assessee can save himself.

10. Audit of the assessee was conducted on 27-28 February, 2013 and NIL audit report dated 05-03-2013 is issued to this assessee. This assessee wants to pay

service tax for the period 01-04-2008 to 31-12-2012 which was not paid by it and the audit party could not unearth such non-payment or short payment of service tax. Can this assessee get benefit of VCES?

- **No, the assessee shall not get the benefit under the scheme. As per the provisions of Section 106(2) of the Act, if an audit of a particular assessee is initiated and the same is pending as on 01.03.2013, then declaration filed by such assessee shall be rejected. As a result,, in the instant case, as the audit was not concluded as on 01.03.2013 (audit report was pending), assessee shall not be eligible to avail the benefit of the scheme.**
- As assessee is not eligible to avail the scheme, therefore it is advisable to pay service tax along with interest and file intimation under Section 73(3) of Finance Act, 1994. Consequently, no show cause notice can be issued to the assessee in respect of the same.

11. Can amount payable under Rule 3(5), Rule 3(5A) and under Rule 6(3) of CCR be treated as ‘tax dues’ for the purpose of VCES? If yes, can benefit of waiver of penalty u/r 15 of CCR be availed under VCES?

- Rule 3(5), Rule 3(5A) and Rule 6(3) is having no nexus with the VCES. Tax dues have been specifically defined in the scheme.

12. If some amount is paid in excess under this scheme then as per Sec 109 of the Finance Act, 2013 any amount paid in pursuance of a declaration made shall not be refundable. Can the amount paid in excess be adjusted against the future liability?

- In terms of Article 265 of Constitution, of India no taxes shall be collected except by authority of law. Thus, it is clear that amount paid in excess in pursuance of the scheme due to some technological error can be adjusted. For example, if a declarant has declared service tax amounting to Rs. 110. However, due to some technological error, declarant has paid service tax amounting to Rs. 1100. In the instant case, the same shall be adjusted against its future liability.

13. If a person has tax dues for the period 01-10-2007 to 31-12-2012 but he declares tax dues only for the period 01-10-2008 to 31-12-2012 by a declaration dated 26-10-2013. Since the period of five years from relevant date for demand for period up to 30-09-2008 is over on 25-10-2013, he did not declare or pay any service tax for the period 01-10-2007 to 30-09-2008. Can

his declaration be treated as substantially false and can recovery be made by commissioner in terms of powers conferred by section 111 of the Finance Act, 2013?

- At the outset, we would like to advert to definition of Tax due as provided under Section 105(1)(e) of Finance Act, 2013. The same is reproduced as under:

“(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.”

As per aforestated definition tax due means service tax payable or due under the chapter or any other amount due or payable under Section 73 A of the Act.

Payment under the Chapter

As per the provisions of the chapter contained in the Finance Act, show cause notice for recovery of service tax due or payable can be issued upto 5 years by virtue of Section 73 of the Act. In other words, as on 10.05.2013, service tax payable for the period 01.10.2007 to 31.03.2008 can not be recovered or demanded from the assessee. Thus, the same is not due or payable by the assessee thereby not falling under the definition of “tax dues” as reproduced above. In view of above, it can be easily inferred that tax due for the period 01.10.2007 to 31.3.2008 need not be declared under aforestated declaration.

However, service tax due or payable for the period 01.04.2008 to 30.09.2008 should be declared. If tax dues for such period are not declared, Commissioner might reject such declaration on account of declaration being substantially false in pursuance of Section 111(1) of Finance Act, 2013.

Any amount payable or due under Section 73A of the Finance Act, 1994

Further, as per the provisions of the Section 73A of the Act, Show Cause Notice for the recovery of tax due can be issued for any period. In other words, as on 10.05.2013, service tax due or payable for any period can be recovered from the assessee. Thus, entire tax dues for the period 01.10.2007 to 31.12.2012 shall constitute the “tax dues” as reproduced above. Thus, assessee needs to declare the tax dues for the entire period starting from 01.10.2007 to 31.12.2012.

14. Mr. A has paid tax by challan on 09.05.2013 before the VCES comes into action. He filed application on 12.06.2013 and the payment made by him on 09.05.2013 is treated as payment against this declaration date d12.06.2013. Can he do so? Is there any requirement that the payment against tax dues need to be made on or after 10.05.2013 or on or after filing declaration.

- The only requirement under this scheme is tax should be due on 01st March, 2013. If the tax is paid after 01st March, 2013 the same shall be eligible to be adjusted against this scheme.

15. Mr. A has filed a declaration declaring tax dues of Rs. 5 lakhs and pays the same on 12-06-2013. Later on he realizes that the actual dues were Rs. 6 lakhs and wants to pay additional Rs. 1lakh by filing another declaration. Can he do so?

- No, another declaration cannot be filed.

Further, it is pertinent to mention here that another declaration might lead to the conclusion that declaration filed earlier is false and might amount to the rejection of the same.

16. Can this declaration be filed through ACES website?

- No, presently there is no such facility available. Currently, you need to file it manually.

17. The assessee has paid service tax dues and filed return late. A demand letter was issued to assessee for the late filing penalty & interest. Can assessee go for VCES?

- No the assessee cannot go for VCES. As the person have no tax dues pending to be paid. The penalty and interest standing due on part of assessee is not covered under tax dues.

18. If someone has deposited service tax amounting Rs. 5 lacs and filed NIL return now the time period for revision has lapsed. Whether he can avail benefit of this scheme?

- If the tax is deposited after 01st March, 2013 then he can apply for the scheme otherwise not.

19. If a person have paid service tax for the financial year 2012-13 but not paid for the year financial year 2011-12. Can he go for the scheme for the year 2011-12?

- Yes, he can go for the part of period between 01st October, 2007 to 31st December, 2012.

20. The assessee has undergone SIV investigation for the FY 2008-09 to 2011-12. Whether he can apply for the scheme for FY 2012-13.

- An assessee can not go for the scheme for F.Y. 2012-13 if service tax payable is in respect of the **same issue** on which investigation was initiated earlier in the period 2008-09 to 2011-12. Looking from another perspective, the assessee can go for VCES for 2012-13 in respect of a new issue which was not investigated by Department in earlier years.

21. Can assessee on whom search was initiated on 01.04.2013 take benefit of this scheme?

- Yes, he can avail the benefit under the scheme.

22. One of the clients (a banking institution) had deposited tax regularly in one of the branch code but now it has taken his own branch registration so can this scheme be available for rectifying this error by filing return.

- There is no need to go for the scheme. Assessee can file an intimation to the department with respect to payment of service tax payable in another branch code.

23. Where to file VCES 1, because I have get Service tax registration at Chennai and now residing in Udaipur than where to file this form.

- You need to file the form to the designated authority of the jurisdiction where you have taken registration.

24. Whether assessee is required to take registration before going for this scheme.

- Yes, if the assessee is not registered under service tax then he is required to take registration first and then apply for the scheme.

25. If the assessee died then does his legal heirs can go for this scheme.

- Yes

26. If notice from service tax audit team received in April, 13 for the period covered under VCES scheme, in such case whether shall he is eligible to go for VCES or not.

- Yes

27. Since return is not filed, after filing of VCES – 1, do the assessee need to file the return.

- No, assessee is not required to file the return for the period concerned after making declaration in form VCES – 1. He is only required to pay the tax dues declared by him.

28. What is the status of Tax Liability for the period from 01.01.2013 till the date of application in forms VCES – 1? Can department issue show cause for this period. Should the assessee discharge his Tax of this period first and then for the earlier period.

- The period beginning from 01.01.2013 is not covered under the scheme and therefore department can issue notice for this period. It is advisable to clear your dues whether it is for any period. Once, you make declaration under this scheme it is might possible that department will keep an eye on you. So, it's better to clear all the sins.

29. Whether rejection of application is quasi judicial function. Whether principles of natural justice will be followed. Whether such rejection is appealable.

- Yes, it is appealable on account of principles of natural justice.

30. How to apply for VCES – 3 i.e. how to inform department about payment of Service Tax?

- On every payment of the amount declared by you need to present VCES 1 before the designated authority. The designated authority will acknowledge the payment made by you every time. So, when you dispose off the entire amount the department will get to know.

31. If I paid all the dues before 30th June, 2014. Do the Designated Authority will issue acknowledgement of discharge immediately?

- No, the acknowledgement of discharge i.e. VCES 3 shall be issued within 7 working days from the date of furnishing of details of tax dues.

32. Will Designated Authority do scrutiny before issuing VCES 3?

- Yes, it might be possible. Because once VCES 3 is issued the ball will be out of the court of department. On issuance of acknowledgment of discharge, no matter shall be re-opened thereafter in any proceedings before any authority or court relating to the period covered by such declaration, subject to the provision of section 111 of the Finance act, 1994.

33. Can the assessee deposit the 50% of tax dues in monthly installment?

- Yes, the assessee can pay his/her tax dues in the monthly installment. The only condition needs to be fulfilled is that 50% of tax dues are required to be paid by 31st December, 2013 and rest 50% shall be paid by 30th June, 2014 without any interest, penalty or prosecution. However, even if the assessee misses the deadline of 30th June, 2014 he can pay the tax due along with interest by 31st December, 2014. After 31st December, 2014 i.e. from 01st January 2015 department shall invoke Section 110 of the Act and issue a letter of recovery under Section 87 of the Act.

34. How can one identify/differentiate a routine enquiry and an enquiry for anti-evasion?

- It depends on facts and circumstances of each case. This issue is subject to dispute.

35. An assessee has export turnover of Rs. 60, 00,000/- Is he liable to get registration? If yes, can he now take registration and file returns for past years under VCES without penalties and interest? He has no local business at all.

- Yes he is liable to take registration. However, he cannot go for this scheme as no tax dues are standing on his part. However, he can be saved from penalties and prosecution by referring clause 6 of circular 97/8/2007.

36. Department has issued a notice to my client by speed post in which the name of the company is wrong. Moreover, the address is somewhat different. Can I go for VCES?

- Yes, assessee can for the scheme as the above stated notice shall not be considered as proper notice issued by the department.

37. Till date no notice is issued, but if the service provider has not filed declaration and before December, 2013 department issued some notice or audit is conducted, still can he file this declaration now.

- Yes you can.

38. How can give tax calculation details with VCES - 1?

- Calculation sheet is required to be furnish separately, For the purposes of calculation of tax dues the manner of calculation as prescribed in S. No. 3F (I), or as the case may be the Part B of form ST 3 as existed during relevant period may be used and calculation of tax dues may be furnished tax return period wise.

39. Should we need to file the working of the Service Tax Payable along with VCES 1?

- Yes

40. Assessee has made declaration but later realized that he is not liable to pay. So he did not pay the taxes can department invoke section 87?

- Yes, the department can invoke section 87 by virtue of Section 110 of Finance Act, 2013,

41. Service Tax partly paid for period covered by amnesty scheme and service tax is partly pending for a certain period as on 01/03/2013. Can the assessee go for the scheme?

- Yes he can go for the period for which service tax is not paid.

42. What if the 50% of the tax due which is required to be paid by 31st December 2013 is not paid?

- The assessee shall be out of the scheme as the assessee has not followed the required procedure.

43. Whether Service Receiver under reverse charge can go for VCES?

- Yes, if there are some tax dues on his part. He can go for amnesty scheme.

44. If the notice is issued before 01.03.2013 and is served upon the assessee after 01.03.2013 then does that person can apply under VCES?

- The words written under scheme are – *“Person to whom notice or order of determination has been **issued** in respect of any period on any issue”*. Therefore, even the notice is served after 01st March, 2013 it will be construed as valid.

45. Whether declaration in respect of CENVAT credit wrongly availed can be made under amnesty scheme?

- As per Amnesty Scheme, following persons can take the benefit of this scheme-
 - Stop filers
 - Non Filers
 - Non registrant
 - Service provider who have not disclosed true liability in the returns filed by them.

In the instant case, assessee has not shown the service tax liability correctly as assessee has wrongly utilized the CENVAT not available to him. Thus, this clearly amounts to not disclosing true service tax liability and accordingly assessee can avail the aforestated scheme.

46. What rate will be applicable for payment of tax?

- The rate applicable as in the relevant period shall apply.

47. Whether any penalty or interest is imposable or not on the service tax payers who had intentionally evaded service tax but now they are opting for this scheme?

- This scheme is specially structured for these type of people. Yes, they can avail the benefit of this scheme.

48. Assessee has paid all his service tax dues on time. But his ST 3 returns are not traceable in the system. Can he take the advantage of VCES for the same so as to avoid any penalty?

- No, as no service tax is payable as on 01.03.2013.

49. Can a person take input credit of the service tax paid under VCES?

- Yes