

## Voluntary Compliance Encouragement Scheme, 2013 (VCES)

Service tax is a new emerging law and there has been lack of clarity on the applicability of the service tax, among the trade, departmental officer and also among the consultants, this would have left lot of assessee not being compliant although has no intention to evade the payment of service tax. Voluntary compliance under service tax comes with the interest and penalty with an added harassment of some of the corrupt departmental offices. Many service providers as well as service receivers have been fearful and not happy with payment of interest and penalties on amounts not collected from the customer. In such state of affair introduction of amnesty scheme is undoubtedly a welcome move which may enable/ entice them to comply without payment of interest and penalty.

This scheme is for all those assesseees who have neither paid the service tax, neither filed any returns nor have not been served any notice or order. Importantly even the cases where there is enquiry already in progress may not be covered under the said scheme. The salient feature of this scheme is as under:

- VCES scheme is applicable in respect of tax dues for the period 01.10.2007 to 31.12.2012. For the period from 01.01.2013, the regular provisions of the Act shall be applicable and no amnesty

under this scheme would be provided.

- The option of claiming amnesty under this scheme has to be exercised by the eligible assessee by filing a declaration to designated authority. Such declaration shall be filed on or before 31<sup>st</sup> December 2013.

- The declaration under sub-section (1) of section 107 of the Act, in respect of tax dues under the Scheme shall be made in Form VCES -1.

- The designated authority on receipt of declaration shall issue an acknowledgement thereof, in Form VCES -2, within a period of seven working days from the date of receipt of the declaration.

- The designated authority shall issue an acknowledgement of discharge under sub-section (7) of section 107 of the Act, in Form VCES - 3. The acknowledgement of discharge shall be issued within a period of seven working days from the date of furnishing of details of payment of tax dues in full along with interest, if any, by the declarant.

**VCES scheme shall not be available to the following categories of the person:**

- Any person to whom any notice or order has been issued before 01<sup>st</sup> March 2013.

- Any person who has filed the returns disclosing his true



liability and not discharged the service tax amount shown in the same.

- Amount unpaid pertains to subsequent period of the same issue for which a notice is service or an order is passed for the previous period.

- Designated authority will reject the declaration by any person if it is found that there was some enquiry or investigation pending as on 01.03.2013. Such investigation may be due to search of premises or by issuing summons or by calling for information/documents or by an audit.

- 50% of tax due has to be paid on or before 31<sup>st</sup> December 2013 and the balance of tax dues has to be paid by 30<sup>th</sup> June 2014 for availing the amnesty of interest and penalty. However if the balance amount is defaulted either in part or full then such

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### Special points of interest:

- June 5 - Payment of Service Tax by Companies
- June 7 - Payment of TDS/ TCS deducted/collected in May
- June 15 - E-Payment of PF for May
- June 15 - Payment of Advance Tax : Companies (15%)
- June 21 - Payment of VAT under MVAT for May
- June 21 - Submission of MVAT return for May

person has the option of payment on or before 31<sup>st</sup> December 2014 for claiming the amnesty of penalty alone. Interest is payable from 1<sup>st</sup> July 2013 till the date of payment before 31<sup>st</sup> December 2014 for claiming the amnesty of penalty. In case there is default either in part or full even after 31<sup>st</sup> December 2014 then the amount so declared shall be received along with the interest.

- The proceeding under this scheme is final and cannot be reopened by any forum. The

amount so paid in non-refundable. However if the Commissioner has reasons to believe that the declaration made by a declarant under this

Scheme was substantially false then he may serve Show Cause Notice within one year from the date of declaration.



*“The move proposed by EPFOs will help in increasing more savings”*

## PF Set To Cover All Pay, Not Just Basic

You may end up saving more in the months ahead with the Employees Provident Fund Organization getting ready to re-notify a new definition of compensation that will include all your allowances, amid intense lobbying against the move by industry bodies.

At present, employers get away by contributing only 12% of the basic salary and dearness allowance, which is not paid by most companies, towards their share of matching PF and Employees Pension Scheme contribution. So, for several thousand employees, the basic salary remains constant, while increments are

passed by way of enhanced or new allowances. In most cases, the tax liability for the employee goes up due to the salary hike and companies earn tax credits on salary-related expenses but the statutory PF contribution remains unchanged. EPFO notified the changes last year but had to withdraw the circular following protests by employers.

### MORE MOOLAH

EPFOs proposed move may help in increasing savings. Employers will now have to contribute for the PF on all allowances. EPFO had to withdraw the notification last year after protests. CII has written to the labour minister arguing that the plan should be deferred.

### Allowance Definition irks Industry

Industry is resisting the move to define compensation as all allowances, but the Employees Provident Fund Organization is expected to go ahead with

the plan as a panel set up by the labour ministry to vet the proposal has endorsed it. Government officials countered the industry argument on the new definition, saying EPFO membership was mandatory only for employees earning Rs 6,500 a month. Anyone beyond that level could opt out.

Although it may be difficult for several employers to give the opt-out option, reworking of the salary structure to ensure that the wage bill doesn't shoot up can be on the cards. The report is pending with the ministry but sources said the government will go ahead and notify the norms. Confederation of India Industry has dashed off a letter to Labour Minister Mallikarjun Kharge arguing that the plan should be deferred.

## Public Provident Fund



## Taking the Tedium Out of TDS

At this time of the year, the quarterly withholding tax returns (e-TDS returns) is filed electronically by employers. After this exercise, the employers issue Form No. 16 (salary withholding certificate) to employees, for which the due date under the Income-tax law is May 31.

Earlier, in February 2013, the Central Board of Direct Taxes (CBDT) had issued a circular



with a new format of the Form No. 16. The CBDT has now issued another circular, which outlines new procedures for issue of Form No. 16, which has to be followed by employers in relation to taxes withheld from salary income on or after April 1, 2012. This means that Form 16 for the Indian financial year 2012-13 will have to be issued using the new methodology by the above-mentioned due date.

The Income-tax department has recently started using a web-based application called the TDS Reconciliation Analysis and Correction Enabling System Portal (TRACES portal) as a technology platform for the administration of withholding tax. The TRACES portal is maintained by the Income-tax department, and contains information on the

amount of tax withheld and paid. The information on tax withholding is furnished to the Income-tax department through the e-TDS returns filed by employers and others.

The TRACES portal is currently used to produce Form No.16A in relation to withholding tax on payments other than salaries paid to employees. The CBDT had mandated use of the TRACES portal primarily in order to eliminate inconsistencies between the withholding tax certificates issued to taxpayers and the withholding tax amounts reflected in the Income-tax department's system. The new circular requires that the TRACES portal be used by employers in relation to salary payments as well.

As per the new format, Form No.16 will now have two parts – Part A and Part B (Annexure). Part A contains details of the withholding tax deduction, and must be downloaded from the TRACES portal. Only forms issued in accordance with the circular, and which contain a Unique Identification Number, will be treated as compliant under the Income-tax law. The Unique Identification Number will be generated online while downloading Form No.16 from the TRACES portal. After authenticating and verifying Part A, the employers have to issue this to their employees.

Part B contains details of the income from which the with-

holding tax is deducted. Part B is required to be prepared, as well as authenticated and verified, by the employer before it is issued to the employee.

An important point to note is that, these days, the Income-tax return is generally filed electronically (for all tax returns above an income threshold) without any annexures – hence, Form No. 16 is not required to be attached with the Income-tax return.

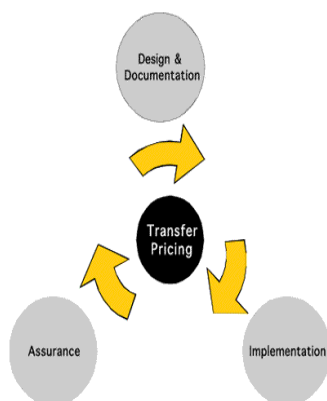
When a taxpayer registers online to file his/ her return, he/ she can download a statement of taxes withheld and deposited on his behalf – called Form No. 26AS. This form reflects the withholding tax from various payments to the taxpayer (including salary paid by the employer).

To further automate and simplify the process, the Income-tax department should explore the possibility of getting the TDS amounts reported by the employers (that currently appear on Form 26AS) to be directly populated into the online Income-tax returns of employees.

*“The Form 16 for the FY 2012-13 will have to be issued using this new methodology”*



## Transfer Pricing Documentation



The Income Tax Rules prescribe detailed Transfer Pricing Documentation to be maintained by the taxpayer for demonstrating compliance with the arm's length standard. Every associated enterprise entering into an international transaction must maintain prescribed information/documents, which must be provided in the event of a request by the AO/Transfer Pricing Officer.

The documentation requirements are two-fold, viz., primary and support. While the taxpayer must maintain the primary documentation, the support documentation requirements are optional and may be maintained by the taxpayer.

*“Rule 10D(1) lays down 13 different types of information & documents that a person has to keep with respect to Transfer Pricing”*

### Type of information and documents

Rule 10D(1) lays down thirteen different types of information and documents that a person has to keep and maintain. Broadly, these information and documents may be classified into three types:

(i) *Enterprise-wise documents* – These are documents that describe the enterprise, the relationships with other associated enterprise, the nature of business carried out, etc. This information is, largely, descriptive.

(ii) *Transaction-specific documents* – These are documents that explain the international transaction in greater detail. It includes information with regard to each transaction (nature and terms of the contract, etc.), description of the functions performed, assets employed and risks assumed by each party to the transaction, economic and

market analyses, etc. This information is both descriptive and quantitative in nature

(iii) *Computation related documents* – These are documents which describe and detail the methods considered, actual working assumptions, policies etc., adjustments made to transfer prices and any other relevant information, data, document relied for determination of arm's length price.

**Ownership, profile and business A description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises. [clause (a), Rule 10D(1)].**

Where the person is a company, the names of members who are associated enterprises, the number of shares held by each of them and the percentage of their holding to the total holding has to be stated. However, where the number of members is very large, a generic classification of the ownership structure may be given. Where the person is a firm or an association of persons, the names of the partners of the firm or members of the association of persons and their profit sharing ratios have to be stated.

Similar details, to the extent applicable, need to be furnished when the person is a body of individuals, trust, Hindu undivided family, etc. The description of the ownership structure should be stated as at the day on which one person became an associated enterprise of another and as at every other day on which there was change in the owner-

ship interest of that other enterprise. The accountant shall verify that the assessee maintains information regarding enterprises having direct or indirect ownership interests, through intermediaries, in the assessee enterprise. The accountant may rely on representation from the management with regard to the veracity of the same.

**A profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions have been entered into by the assessee, and ownership linkages among them. [clause (b), Rule 10D(1)].**

As part of the profile of the multinational group, it may be advisable to maintain, amongst other things, corporate brochures, catalogues and other similar printed and / or electronic material that describe the principal line(s) of business in which the group is engaged, such as manufacturing of electronic goods, trading in chemicals, wholesale trade in food grains, pharmaceuticals, etc.; geographical areas in which the group one operates and





summarized global financials and other details such as capital invested, assets employed, turnovers achieved, incomes earned, profits made / losses incurred, etc. With respect to each of the associated enterprises in the group with whom the assessee has entered into international transaction, the following specific details must be maintained:

- Name;
- Address;
- Legal status (company, limited liability partnership, firm, etc.);
- Country of tax residence;
- Ownership linkages between the assessee and the associated enterprise.

Sometimes, the establishment of ownership linkages between the assessee and other associated enterprises is a problem for the reason that sufficient reportable information is not available. In such cases, the assessee will have to provide only the information that is available with him. The accountant should obtain written representation from management providing him with name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions have been entered into by the assessee, and ownership linkages among them. He shall exercise his professional judgment and due diligence to verify that the same is *prima facie* correct.

**The accountant shall perform certain checks in regard to the various categories and situations in which the two enterprises are associated enterprises as provided in section 92A(1) and clause (a) and (b) of section 92A(2).** He should check the register of members maintained by the assessee under section 150

of the Companies Act, 1956 and the voting rights corresponding to the shares of the associated enterprise.

**A broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted. [Clause (c), Rule 10D (1)].**

The accountant should obtain written representation by management detailing the overview of the business of the assessee and a description of the business of the associated enterprises with whom the assessee has transacted.

#### **Details of International Transactions**

**The nature and terms (including prices) of international transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction. [Clause (d), Rule 10D (1)].**

The list of individual international transactions entered into by the assessee with each of its associated enterprises is required to be stated here. For ease in comprehension and verification, the details may be compiled and presented in a tabular form giving the details required.

While the data may be classified in any convenient manner, for the purpose of facilitating the study of comparability, it is suggested that the nature of the property transferred or service provided be used as the primary key.

In addition to the standard inclusions such as name of associated enterprise, product transferred or service

provided, quantity, price per unit of measurement etc., the data should, also, provide information on matters such as:

- Form and time of payment;
- Discounts;
- Shipment;



- Purchase commitments;
- Product returns by the customer;
- Supportive services; etc.

The listing should, also, include transactions where the property has been transferred or service has been provided "free of cost". The accountant should examine the details of nature and terms (including prices) of international transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction. The accountant should verify the information provided by the assessee, by using standard examination procedures from the books of accounts maintained by the assessee and information/explanations obtained during the course of such examination.

A description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction. [clause (e), Rule 10D(1)].

Records having a bearing on international transaction



A record of the economic and market analyses, forecasts, budgets or any their financial estimates prepared by the assessee for the business as

a whole and for each division or product separately, which may have a bearing on the international transactions entered into by the assessee. [clause (f), Rule 10D(1)].

A record of uncontrolled transactions taken into account for analyzing their comparability with the international transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions. [clause (g), Rule 10D(1)].

A record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction.

Description of methods considered and working thereof A description of the methods considered for determining the arm's length price in relation to each international transaction or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case.

A record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction and the

comparable uncontrolled transactions, or between the enterprises entering into such transactions.

The assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price. [clause (k), Rule 10D (1)].

Details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes.

Any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

Relief from maintenance of specific records In a case where the aggregate value, as recorded in the books of account, of international transactions entered into by the assessee does not exceed one crore rupees the above-mentioned requirements will not apply.

#### Supporting documents:

The information specified in sub-rule (1) shall be supported by authentic documents, which may include the following:

(a) Official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise or of any other country;

(b) Reports of market research studies carried out and technical publications brought out by institutions of national or international re-

pute;

(c) Price publications including stock exchange and commodity market quotations;

(d) Published accounts and financial statements relating to the business affairs of the associated enterprises;

(e) Agreement and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions;

(f) Letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;

(g) Documents normally issued in connection with various transactions under the accounting practices followed.

#### Relaxation of Requirement to Maintain Fresh Documentation

It is prescribed that in cases where an international transaction continues to have effect over more than one financial year, fresh documentation need not be maintained separately in respect of each financial year, unless there is any significant change in the nature or terms of the international transaction, in the assumptions made, or in any other factor which could influence the transfer price, and in case of such significant change, fresh documentation shall be maintained bringing out the impact of the change on the pricing of the international transaction.

#### Period of Maintenance of Documentation

The specified information and documents are required to be maintained for a period of eight years from the end of the relevant assessment year.

*“All the documents & information are required to be maintained for a period of 8 years from the end of the relevant assessment year”*

*“Mandatory for E-filing of IT Returns for salaried taxpayers, earning more than Rs.5 lakh for the FY ending March, 2013.”*

## Income Tax E-Filing

The Central Board of Direct Taxes (CBDT) is Spreading e-tax net through Notification dated 34/2013 dated 01.05.2013. E-filing of I-T returns is now mandatory for individuals, including salaried taxpayers, earning more than Rs 5 lakh taxable income during the financial year ended March 31, 2013. Earlier the same was mandatory for the Individuals having salaried Income more than 10 Lakhs.

CBDT's earlier notification that salaried Individual having Income less than 5 Lakhs need not to file Income tax returns continues to be in force. Therefore salaried Individual earning less than Rs 5 lakh and whose saving bank interest income is less than Rs 10,000 in a year will need not to file Income Tax returns. However, if an employee has switched jobs during the financial year, then this levy of tax filing exemption is not available. Since there is a condition to get the exemption that the employer has discharged the entire tax liability through deduction of tax at source and deposited it with the government & there is very chance that either of the employers will not discharge entire tax liability due to lower tax calculations at their end.

After the above said new notification comes into force income tax return filing is mandatory for three

types of individuals having salaried income:

- i) Individuals having salaried income over 5 lacs
- ii) Individuals having salaried income over 5 lacs & switch over their job during the financial year.
- iii) Individuals having salaried income less than 5 lacs & switch over their job during the financial year.
- iv) Employees having income less than over 5 lacs but having other incomes and/or having interest income over 10000.

For the first two categories of employees e-return filing is mandatory. For the other category of individuals e filing is mandatory if their total income exceeds Rs. 5 lacs. Simultaneously e-filing of I-T returns also helps speed up the process of granting refunds to taxpayers – the processing is carried out at the CPC-Bangalore.

After making the income tax return mandatory for the individuals having total income over 10 lacs, IT department needs to extend the time limit for return filing of individuals from 31<sup>st</sup> July to 31<sup>st</sup> august (for 1 Month) due to non availability of access of website of the tax department which enables e-filing of returns. As per IT department there is about 18 lacs of individuals who file return between 5 lakhs to 10 lakhs

which gather more traffic in the e-return filing website in this AY. It's a good step by the IT department to gear up the Income tax return processing but a question that how the department's website handles such huge traffic especially during the peak return filing season.



Through the same notification, the CBDT has also introduced e-filing of tax audit reports, transfer pricing (TP) reports and Minimum Alternate Tax (MAT) certificates. Earlier, while e-filing of I-T returns was mandatory for India Inc, these reports had to be physically filed at the local tax offices.





## Home Loan Prepayment Fee

A ruling by the Mumbai bench of the Income Tax Appellate Tribunal spells welcome relief for taxpayers who have paid huge sums as prepayment or foreclosure charges on early repayment of their housing loans. Such taxpayers can claim prepayment charges as deductible under the head income from house property and could set it off against other heads of income, such as salary income. This will help in saving tax.

Hearing an appeal filed by Windermere Properties, the tribunal examined the definition of interest. Interest on housing loan is admissible as a deduction under income from house property. The appellant had obtained a loan from HDFC for acquisition of property. The bank accepted the early repayment of loan on receipt of prepayment charges (of Rs 1.56 crore). It is

obvious that these prepayment charges have a live and direct link with the housing loan.

Dismissing the stand taken by the tax department, the tribunal bench added, it is beyond our comprehension as to how the amount paid as interest for the housing loan taken is allowable as a deduction but the amount paid as prepayment charges of the very same loan is not deductible. Both the direct interest and prepayment charges were held by the tribunal to fall within the definition of the term interest and allowable as a deduction from house property income.

This ruling will help those who had paid prepayment charges during FY 2012-13. This payment will be deductible from income from house property.

As a next step in the tax computation, salaried employees can claim a set-off against their salary income while filing their returns, the due date for which is July 31.

It must be noted that the Reserve Bank of India in June last year had prohibited banks from charging foreclosure charges or prepayment penalties of any kind on home loans taken on floating interest basis. Against this backdrop, it is likely that taxpayers for the financial year 2012-13 would have paid foreclosure charges only during April and May 2012. However, tribunal decision will also help in the course of pending assessment of earlier years.



## Details - Form 26AS

It is general phenomena amongst the tax payers that in form 26AS they can only view the details of TDS deducted, Advance tax and Self Assessment tax Paid. But in addition to these a taxpayer can view in 26AS the information on his Income Tax Refund and his transaction in Mutual Fund, Shares and Bonds, Immovable properties etc. (as reported by AIR filer).

### Details in Form 26AS

- Details of tax deducted on behalf of the tax payer by deductors
- Details of tax collected on behalf of the tax payer by collectors
- Advance tax / self-

assessment tax / regular assessment tax etc. deposited by the tax payers (PAN holders)

- Refund received during the financial year
- Details of following transactions done by you (as reported by AIR filer)
  - Cash deposits in saving account (Rs. 10 lakh and above)
  - Credit card bills (Rs. 2 lakh and above)
  - Mutual Fund purchase (Rs. 2 lakh and above)
  - Purchase of bonds/debentures (Rs. 5 lakh and above)
  - Purchase of shares

of a company (Rs. 1 lakh and above)

- Purchase of immovable property (Rs. 30 lakh and above)
- Sale of immovable property (Rs. 30 lakh and above)
- Purchase of RBI bonds (Rs. 5 lakh and above)



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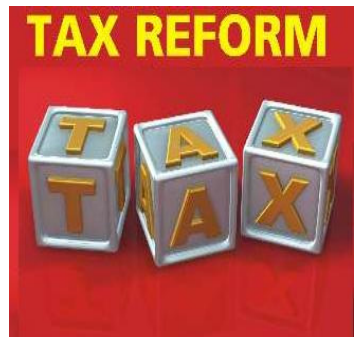


## Tough Time for Service Tax Evaders

Service tax evaders are set to face a tough time. Failing to deposit the tax may attract arrest and imprisonment of up to seven years in addition to the penalty which may extend to Rs 1 lakh. With the passage of Finance Bill 2013, revenue department officials can now arrest a person for nonpayment of collected service tax.

Earlier, the officials did not have any power to arrest a person for service tax evasion. This is for the first time that service tax rules have been amended to attract the Criminal Procedure Code (CPC) in line with customs and central excise. Aimed at widening revenue from indirect tax, the finance ministry has implemented a one-time

amnesty scheme for service tax defaulters to pay their due without any penalty or late payment charges. The Voluntary Compliance Encouragement Scheme can be availed by a service tax defaulter by this year end.



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