



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR DIVISION COMMISSIONERS
CHIEF, CRIMINAL INVESTIGATION

FROM: Kirsten B. Wielobob /s/ Kirsten B. Wielobob
Deputy Commissioner for Services and Enforcement

SUBJECT: Updated Voluntary Disclosure Practice

This memorandum addresses the process for all voluntary disclosures (domestic and offshore) following the closing of the Offshore Voluntary Disclosure Program (2014 OVDP) on September 28, 2018.

Background and Overview of Updated Procedures

The 2014 OVDP began as a modified version of the OVDP launched in 2012, which followed voluntary disclosure programs offered in 2011 and 2009. These programs were designed for taxpayers with exposure to potential criminal liability or substantial civil penalties due to a willful failure to report foreign financial assets and pay all tax due in respect of those assets. They provided taxpayers with such exposure potential protection from criminal liability and terms for resolving their civil tax and penalty obligations. Taxpayers with unfiled returns or unreported income who had no exposure to criminal liability or substantial civil penalties due to willful noncompliance could come into compliance using the Streamlined Filing Compliance Procedures (SFCP), the delinquent FBAR submission procedures, or the delinquent international information return submission procedures. Although they could be discontinued at any time, these other programs are still available.

Voluntary disclosure is a long-standing practice of the IRS to provide taxpayers with criminal exposure a means to come into compliance with the law and potentially avoid criminal prosecution. See I.R.M. 9.5.11.9. This memorandum updates that voluntary disclosure practice. Taxpayers who did not commit any tax or tax related crimes and do not need the voluntary disclosure practice to seek protection from potential criminal prosecution can continue to correct past mistakes using the procedures mentioned

above or by filing an amended or past due tax return. When these returns are examined, examiners will follow existing law and guidance governing audits of the issues.

Procedures in this memo will be effective for all voluntary disclosures received after the closing of the 2014 OVDP on September 28, 2018. All offshore voluntary disclosures conforming to the requirements of "Closing the 2014 Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers" FAQ 3 received or postmarked by September 28, 2018 will be handled under the procedures of the 2014 OVDP. For all other voluntary disclosures (non-offshore) received on or before September 28, 2018, the Service has the discretion to apply the procedures outlined in this memorandum. The objective of the voluntary disclosure practice is to provide taxpayers concerned that their conduct is willful or fraudulent, and that may rise to the level of tax and tax-related criminal acts, with a means to come into compliance with the law and potentially avoid criminal prosecution.

Proper penalty consideration is important in these cases. A timely voluntary disclosure may mitigate exposure to civil penalties. Civil penalty mitigation occurs by focusing on a specific disclosure period and the application of examiner discretion based on all relevant facts and circumstances including prompt and full cooperation (see IRM 9.5.11.9.4) during the civil examination of a voluntary disclosure. Managers must ensure that penalties are applied consistently, fully developed, and documented in all cases.

The terms outlined in this memorandum are only applicable to taxpayers that make timely voluntary disclosures and who fully cooperate with the Service.

Criminal Investigation Procedures

Criminal Investigation (CI) will screen all voluntary disclosure requests whether domestic, offshore, or other to determine if a taxpayer is eligible to make a voluntary disclosure. To accomplish this, CI will require all taxpayers wishing to make a voluntary disclosure to submit a preclearance request on a forthcoming revision of Form 14457. IRM 9.5.11.9 will continue to serve as the basis for determining taxpayer eligibility.

Taxpayers must request preclearance from CI via fax or mail.

Fax: (267) - 466-1115

Or

Mail: IRS Criminal Investigation
Attn.: Voluntary Disclosure Coordinator
2970 Market St.
1-D04-100
Philadelphia, PA 19104

For all cases where CI grants preclearance, taxpayers must then promptly submit to CI all required voluntary disclosure documents using a forthcoming revision of Form 14457. This form will require information related to taxpayer noncompliance, including a narrative providing the facts and circumstances, assets, entities, related parties and any professional advisors involved in the noncompliance. Once CI has received and preliminarily accepted the taxpayer's voluntary disclosure, CI will notify the taxpayer of preliminary acceptance by letter and simultaneously forward the voluntary disclosure letter and attachments to the LB&I Austin unit for case preparation before examination. CI will not process tax returns or payments.

Civil Processing

Once the LB&I Austin unit receives information from CI, LB&I will route the case as appropriate. The IRS will not require taxpayers to provide additional documents to the LB&I Austin unit. If a taxpayer or representative wishes to make a payment prior to case assignment with an examiner, payments may be remitted to the LB&I Austin unit. The LB&I Austin unit will establish the most recent tax year covered by the voluntary disclosure for examination. Then, the LB&I Austin unit will forward cases for case building and field assignment to the appropriate Business Operating Division and Exam function for civil examination. Civil examiners receiving the disclosure will establish any additional controls necessary on IRS systems.

Case Development

All voluntary disclosures handled by examination will follow standard examination procedures. Examiners must develop cases, use appropriate information gathering tools, and determine proper tax liabilities and applicable penalties. Under the voluntary disclosure practice, taxpayers are required to promptly and fully cooperate during civil examinations. In general, the Service expects that voluntary disclosures will be resolved by agreement with full payment of all taxes, interest, and penalties for the disclosure period. In the event a taxpayer fails to cooperate with the civil examination, the examiner may request that CI revoke preliminary acceptance. See I.R.M. 9.5.11.9.4 (discussing cooperation).

Civil Resolution Framework

For all voluntary disclosures received after September 28, 2018, the Service will apply the civil resolution framework outlined below. At the Service's discretion, this civil resolution framework may extend to non-offshore voluntary disclosures that have not been resolved but were received on or before September 28, 2018.

Examiners are authorized to resolve tax and tax related noncompliance of taxpayers who make voluntary disclosures in the following manner:

- a) In general, voluntary disclosures will include a six-year disclosure period. The disclosure period will require examinations of the most recent six tax years. Disclosure and examination periods may vary as described below:
 - i. In voluntary disclosures not resolved by agreement, the examiner has discretion to expand the scope to include the full duration of the noncompliance and may assert maximum penalties under the law with the approval of management.
 - ii. In cases where noncompliance involves fewer than the most recent six tax years, the voluntary disclosure must correct noncompliance for all tax periods involved.
 - iii. With the IRS' review and consent, cooperative taxpayers may be allowed to expand the disclosure period. Taxpayers may wish to include additional tax years in the disclosure period for various reasons (e.g., correcting tax issues with other governments that require additional tax periods, correcting tax issues before a sale or acquisition of an entity, correcting tax issues relating to unreported taxable gifts in prior tax periods).
- b) Taxpayers must submit all required returns and reports for the disclosure period.
- c) Examiners will determine applicable taxes, interest, and penalties under existing law and procedures. Penalties will be asserted as follows:
 - i. Except as set forth below, the civil penalty under I.R.C. § 6663 for fraud or the civil penalty under I.R.C. § 6651(f) for the fraudulent failure to file income tax returns will apply to the one tax year with the highest tax liability. For purposes of this memorandum, both penalties are referred to as the civil fraud penalty.
 - ii. In limited circumstances, examiners may apply the civil fraud penalty to more than one year in the six-year scope (up to all six years) based on the facts and circumstances of the case, for example, if there is no agreement as to the tax liability.
 - iii. Examiners may apply the civil fraud penalty beyond six years if the taxpayer fails to cooperate and resolve the examination by agreement.

- iv. Willful FBAR penalties will be asserted in accordance with existing IRS penalty guidelines under IRM 4.26.16 and 4.26.17.
 - v. A taxpayer is not precluded from requesting the imposition of accuracy related penalties under I.R.C. § 6662 instead of civil fraud penalties or non-willful FBAR penalties instead of willful penalties. Given the objective of the voluntary disclosure practice, granting requests for the imposition of lesser penalties is expected to be exceptional. Where the facts and the law support the assertion of a civil fraud or willful FBAR penalty, a taxpayer must present convincing evidence to justify why the civil fraud penalty should not be imposed.
 - vi. Penalties for the failure to file information returns will not be automatically imposed. Examiner discretion will take into account the application of other penalties (such as civil fraud penalty and willful FBAR penalty) and resolve the examination by agreement.
 - vii. Penalties relating to excise taxes, employment taxes, estate and gift tax, etc. will be handled based upon the facts and circumstances with examiners coordinating with appropriate subject matter experts.
 - viii. Taxpayers retain the right to request an appeal with the Office of Appeals.
- d) The Service will provide procedures for civil examiners to request revocation of preliminary acceptance when taxpayers fail to cooperate with civil disposition of cases.
- e) All impacted IRM sections will be updated within two years of the date of this memorandum.

If you have any questions about this memorandum, please contact Scott Roberts, Team Manager at the LB&I Austin unit at (737) 800-7616 or Christine Stone, LB&I WIIC IPN Technical Specialist at (781) 876-1186.

cc: IRS.gov