

## TAX LITIGATION ISSUES

## IRS Seeks to Revive its Voluntary Disclosure Practice

By Jeremy H. Temkin

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Since 1952, the Internal Revenue Service has offered a Voluntary Disclosure Practice (VDP) through which taxpayers who are concerned that they may have criminal exposure can come into compliance with the law and reduce their risk of criminal prosecution. In recent years, tax practitioners have used the VDP to help tens of thousands of taxpayers resolve offshore non-compliance issues. Between 2009 and 2018, approximately 56,000 taxpayers participated in one of a series of Offshore Voluntary Disclosure Programs or Initiatives (OVDPs), paying over \$11 billion while “getting right” with the IRS.

A major contributor to the success of the OVDPs was active civil and criminal enforcement of offshore tax evasion by the IRS and the Department of Justice. These highly publicized efforts heightened the fear of discovery among noncompliant taxpayers. But, in addition to offering protection from criminal prosecution, the OVDPs were successful because they provided a clear and efficient framework for resolving civil liabilities.

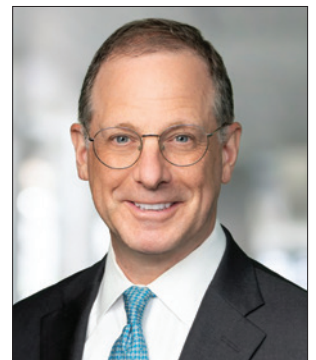
More recently, the VDP has lost much of its appeal to noncompliant taxpayers, and on Dec. 12,

2025, Guy Ficco, Chief of IRS Criminal Investigation (IRS-CI), announced that the IRS is planning to update the VDP with input from the tax community. Following up on Chief Ficco’s announcement, on Dec. 22, the IRS issued a news release outlining

“key proposed changes” to the VDP and formally announcing the 90-day public comment period. See “IRS seeks public comment on Voluntary Disclosure Practice proposal,” (Dec. 22, 2025). This column outlines the background of the VDP, describes some of the current challenges faced by taxpayers and practitioners, and discusses the value of a reinvigorated VDP as a viable option for bringing taxpayers into compliance.

**A Brief History of Voluntary Disclosure Practice**

The VDP is an administrative program that allows taxpayers to cure past violations and mitigate the risk of criminal prosecution. It reflects the IRS’s policy judgment to encourage compliance by promising to consider a taxpayer’s



Jeremy Temkin

voluntary disclosure in deciding whether to recommend criminal prosecution. The Internal Revenue Manual sets forth specific criteria for determining what qualifies as a voluntary disclosure, providing that it must be truthful, timely (*i.e.*, received prior to the initiation of an audit, a criminal investigation, or a third party coming forward with information concerning the taxpayer's noncompliance), and complete. It also requires participating taxpayers to cooperate with the IRS in determining their correct tax liability. Additionally, the IRM makes clear that the VDP is not available to taxpayers disclosing unreported illegal source income. See IRM 9.5.11.9(5).

Over the years, the IRS has combined the protection from criminal prosecution associated with the VDP with civil settlement initiatives that provided clarity to taxpayers regarding the financial penalties that would be associated with a successful voluntary disclosure. For example, in 2009, in the wake of publicity surrounding the IRS's investigation of UBS, the IRS announced the first of four OVDPs. Each of the OVDPs incorporated specific procedures and requirements, provided detailed guidance in the form of Frequently Asked Questions (FAQs), and included a defined civil penalty structure. Each successive program imposed more severe financial penalties and participation waned (from a peak in 2011, when approximately 18,000 individuals came forward, to only 600 disclosures in 2017).

### **Current Voluntary Disclosure Practice**

On Nov. 20, 2018, approximately two months after closing the 2014 OVDP, the IRS announced new VDP guidelines that would apply to *all* voluntary disclosures (domestic and offshore). See LB&I-09-1118-014, Memorandum For Division Commissioners Chief, Criminal Investigation, Updated Voluntary Disclosure Practice (Nov. 20, 2018). As outlined in the IRM, taxpayers

seeking to make a voluntary disclosure must submit Form 14457, the "Voluntary Disclosure Practice Preclearance Request and Application" in two phases. IRM 9.5.11.9.1(2). First, to obtain "preclearance," the taxpayer must submit Form 14457, Part I to IRS-CI, which evaluates whether the taxpayer is eligible to participate in the VDP. That submission requires applicants to disclose their identity, any related entities, details regarding their financial accounts and digital assets, and information relating to the timeliness of the disclosure.

If preclearance is granted, taxpayers have 45 days to submit Part II of Form 14457, which requires disclosure of the nature of the funds underlying the disclosure, an estimate of the amount of unreported income and highest aggregate value of offshore holdings, the identity of any professional advisors who aided in the noncompliance, and a "non-compliance narrative" that identifies other parties involved and the "specific acts of noncompliance and how they were willful."

If IRS-CI grants "preliminary approval," the disclosure is forwarded to a revenue agent for civil processing. The taxpayer must submit six years of amended (or delinquent) returns and information reports. In addition to back taxes and interest, the examiner will assess a 75% civil fraud penalty on the year with the highest tax liability. For disclosures that include unreported offshore accounts, or other types of foreign non-compliance, the taxpayer will be subject to willful Foreign Bank Account Report (FBAR) penalties in accordance with existing penalty guidelines set forth in the IRM, as well as other penalties under limited (but undefined) circumstances.

While, consistent with prior policy, the IRS expects participating taxpayers either to pay their liabilities in full or to secure a full-pay

installment agreement, in the past, the IRS allowed taxpayers who established a genuine inability to pay to reduce their financial liability through an Offer in Compromise. As of 2022, however, Part II of Form 14457 includes a checkbox asking if the applicant is unable to pay in full, and the IRS's website currently provides that participants in the VDP are required to "[p]ay in full or secure a full-pay installment agreement for the tax, interest and any applicable penalties."

Also consistent with prior policy, the 2018 guidelines make clear that the VDP does not create any substantive rights or guarantee non-prosecution (as opposed to providing assurance that the IRS would consider the taxpayer's voluntary disclosure in deciding whether to recommend prosecution), and the IRS-CI's decisions remain entirely discretionary. Participation can be revoked at any time for false statements or failing to cooperate.

Although the IRS has not released information on the amounts collected under the current VDP, in response to a request for information by the National Taxpayer Advocate, the IRS reported that from fiscal year 2019 through fiscal year 2024, only 1,626 taxpayers applied for the program and, as of Aug. 31, 2024, only 161 VDP cases had been completed.

### **Criticism of Current VDP**

Since 2018, the tax community has criticized the VDP as largely ineffective and unattractive to noncompliant taxpayers. The most common criticisms have focused on (1) the procedures for applying; (2) the requirements for obtaining preliminary approval from IRS-CI; and (3) the civil processing of accepted disclosures. Following reports to Congress by the National Taxpayer Advocate and public outcry, the IRS addressed some, but by no means all, of these concerns.

The use of Form 14457 has been criticized as making the disclosure process too formal and burdensome. Specifically, the level of information required in Part I of the Form, especially the requirement that taxpayers disclose "ALL domestic and foreign digital asset transactions," has been objected to as overbroad and "incredibly burdensome," especially since the information is required before the taxpayer receives preclearance.

A second category of criticism was lodged with respect to the requirement, added to Form 14457 in June 2024, that applicants check a box attesting that they had been "willful in the actions that led to [their] tax noncompliance and understand that willfulness is a requirement to be considered for entry into the VDP." This checkbox, intended by the IRS to limit the program to those taxpayers who face criminal prosecution, raised concerns that the IRS could use the admission under penalty of perjury in a future criminal prosecution, especially if the taxpayer's disclosure is rejected. In July 2025, the IRS issued a revised Form 14457 that removed the willfulness checkbox.

The IRS's current requirement of full payment has also been the source of substantial consternation. See Daniel N. Price, "Is the IRS Trying to Terminate the Voluntary Disclosure Practice," Tax Notes (Nov. 19, 2024). In addition to concerns that the IRS has been applying the full-pay requirement retroactively, the tax community has noted that an all or nothing approach unnecessarily limits the program to wealthy taxpayers and excludes those that may otherwise want to come into compliance.

Finally, practitioners have complained that, after receiving preliminary approval from IRS-CI, there are frequently lengthy delays (often several years) before a revenue agent starts the

examination process. Moreover, once contacted the taxpayer is subject to a wide range of cooperation requirements, a “one-size-fits-all” civil penalty structure that fails to take into account their conduct or specific circumstances, and includes a 75-percent civil fraud penalty that is significantly harsher than the penalties imposed under the successful OVDPs.

### Proposed Revisions

The IRS’s Dec. 22 news release formally announcing the 90-day public comment period outlines the “key proposed changes” to the VDP. The IRS envisions that taxpayers who meet all disclosure and compliance requirements “*will not* be recommended for criminal prosecution,” which provides slightly greater certainty than the IRS’s current assurance that a voluntary disclosure “*may result* in prosecution not being recommended.” The IRS is also proposing to continue the current six-year disclosure period and the requirement that participating taxpayers pay their liabilities in full (within three months of conditional approval).

The IRS has, however, proposed revising the penalty structure so that taxpayers who had not previously filed returns would be subject to failure-to-file penalties, while taxpayers filing amended returns would be subject to a 20-percent accuracy-related penalty for each year during the six-year disclosure period. Penalties will also still be

applicable for delinquent or amended FBARs and other international information returns. The IRS release does not indicate whether the information requirements to obtain preclearance will be alleviated, whether taxpayers applying for the program will be required to acknowledge that they acted “willfully” or whether the applicant will still be subject to onerous disclosure requirements.

### Conclusion

The VDP is most successful when noncompliant taxpayers have a genuine fear of getting caught. In recrafting the VDP, the IRS should recognize that without a robust civil and criminal enforcement regime, it will need to take steps to make the VDP an attractive alternative for tax professionals to present to their clients. To do so, it will be essential to make the application process less onerous, to provide clear and consistent guidance, efficient processing, and genuine economic incentives, including flexible payment options. Unless the IRS can strike an appropriate balance between the “carrot” of voluntary disclosure and the “stick” of enforcement, tax professionals will have difficulty persuading clients that the VDP is the best option for addressing past noncompliance.

**Jeremy H. Temkin** is a principal in Morvillo Abramowitz Grand Iason & Anello P.C. **Emily Smit**, an associate of the firm, assisted in the preparation of this article.