



Online CLE

# **Current IRS Enforcement Objectives: How the IRS Detects and Pursues Objectives and Taxpayer Defense Alternatives**

## **1.25 General CLE credits**

**From the Oregon State Bar CLE seminar *19th Annual Oregon Tax Institute*, presented on June 6 and 7, 2019**



## Chapter 2

# Current IRS Enforcement Objectives, Ways in Which IRS Detects and Pursues These Objectives, and Taxpayer Defense Alternatives

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Current IRS Enforcement Objectives, Ways in which IRS Detects and Pursues these Objectives and Taxpayer Defense Alternatives

**SPEAKER:**

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Multnomah Athletic Club | June 6, 2019 | 8:00 a.m. – 5:15 p.m.

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Dennis Perez has extensive experience in the representation of clients in civil and criminal tax litigation and in tax disputes and controversies before the Internal Revenue Service and all the California taxing agencies. Mr. Perez was formerly a senior trial attorney with District Counsel, Internal Revenue Service, in Los Angeles, California. Mr. Perez is a Certified Tax Specialist, California State Bar Board of Certification and is also a Fellow of the American College of Tax Counsel. He frequently lectures on advanced civil and criminal tax topics at seminars and before national, state and local bar associations and accountancy groups. He is a co-author of the BNA Portfolio, Tax Crimes, has served as the Chair of the Los Angeles Lawyer Magazine Editorial Board and is the first recipient of the Los Angeles Lawyer Sam Lipsman Service Award for outstanding service to the Los Angeles Lawyer Magazine. He is past Chair of the Tax Procedure and Litigation Committees of the Taxation Sections of the State Bar of California and the Los Angeles County Bar Association. Mr. Perez is past President of the Alumni Board for the UCLA School of Law and has served as an Adjunct Professor, Golden Gate University, Graduate School of Taxation.

## LARGE BUSINESS & INTERNATIONAL CAMPAIGNS

Since January 31, 2017, LB&I has approved approximately 50 compliance campaigns. The latest LB&I announcements were on May 21, 2018 and October 30, 2018, which identified 11 additional campaigns:

- Internet Capitalization for Self-Constructed Assets
- Forms 3520/3520-A Non-Compliance and Penalties
- Forms 1042/1042-S Compliance
- Nonresident Tax Treaty Exemptions
- Nonresident Alien Schedule A and other Deductions
- Nonresident Alien Tax Credits
- Individual Foreign Tax Credit Phase II
- Offshore Service Providers
- FATCA Filing Accuracy
- 1120F Delinquent Returns
- Work Opportunity Tax Credit

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## LARGE BUSINESS & INTERNATIONAL CAMPAIGNS (cont.)

Other Notable Campaigns:

- OVDP Declines and Withdrawals
- Micro Captive Insurance
- Swiss Bank Program Data Mining

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## CAMPAIGN APPROACH

- Identify areas of greatest non-compliance through:
  - Data Analytics
  - Feedback from Field
  - Feedback from tax community
- Deploy resources to those areas
- Transparent to taxpayers
- Focus on mid-market companies

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## DEFINITION OF A CAPTIVE

- Basic Definition
  - A captive is an insurance company that insures the risks of its shareholders or persons closely related to its shareholders.
- Types of Captive Structures
  - Parent-Subsidiary Captive Arrangements
  - Brother-Sister Captive Arrangements
  - Group Captives
  - Micro-captives

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## TAX TREATMENT OF CAPTIVES

- Insureds
  - Deduction for insurance premiums as business expenses
- Captive
  - Taxed under Subchapter L – Earned and incurred
  - Section 831(b) Election – Micro-captives taxed only on investment income; must meet requirements including premium cap of \$1.2 million (\$2.2 million beginning in 2017)
  - Annual premiums received within the \$1.2 million (or \$2.2 million) cap are excluded from income
  - Section 953(d) Election – Insurance company CFC treated as a domestic corporation

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## IRS SCRUTINY: THE DIRTY DOZEN LIST

**Beginning in 2015, the IRS included on its “Dirty Dozen” list of tax scams, what it believes are certain abusive micro-captive insurance arrangements (see IR-2017-31):**

- *In abusive structures ... “coverages may insure implausible risks, fail to match genuine business needs or duplicate the taxpayer’s commercial coverages.”*
- *“Premium amounts may be unsupported by underwriting or actuarial analysis, may be geared to a desired deduction amount or may be significantly higher than premiums for comparable commercial coverage.”*
- *“[Abusive] captives may invest in illiquid or speculative assets or loans or otherwise transfer capital to or for the benefit of the insured, the captive’s owners or other related persons or entities. Captives may also be formed to advance inter-generational wealth transfer objectives and avoid estate and gift taxes. Promoters, reinsurers and captive insurance managers may share common ownership interests that result in conflicts of interest.”*

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## IRS NOTICE 2016-66

On November 1, 2016, the IRS issued Notice 2016-66, which identifies certain transactions relating to small captive insurance companies as “transactions of interest,” making it a category of reportable transaction.

A transaction of interest is defined as a transaction that is the same as or substantially similar to a transaction identified by the IRS as a transaction of interest by notice, regulation, or other published guidance. Treas. Reg. § 1.6011-4(b)(6).

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## CAPTIVES DEFINED AS TRANSACTIONS OF INTEREST

A captive is a transaction of interest if:

- A person owns, directly or indirectly, an interest in an insured entity;
- The captive enters into an insurance arrangement to assume risks of the insured;
- The captive makes an election under Section 831(b) to exclude premium income and to be taxed only on investment income;
- The owner of insured, the insured, or a related person owns directly or indirectly at least 20% of the vote or value of the captive; and
- The captive either:
  - Has liabilities for covered losses and expenses in an amount less than 70% of total premiums earned; AND/OR
  - Uses its premium income to provide financing to related parties in a transaction nontaxable to the recipient.

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## WHO MUST REPORT UNDER NOTICE 2016-16?

Participants identified in Notice 2016-66 are required to report under Treas. Reg. § 1.6011-4.

- The insured(s);
- Certain owners of the insured(s);
- The Captive; and
- Intermediary company (if any).

Material advisors are required to report under the rules of Section 6111 and Treas. Reg. § 301.6111-3.

## IRS AUDITS OF CAPTIVES

- Focus of inquiry
  - Is the product insurance?
  - Does the captive look and operate like an insurance company?
  - Is there an arms-length relationship between the captive and the insured(s)?
  - Are the insurance policies relevant to the insured's business?
  - Terms of coverage
  - Price of premiums
  - Actuarial Analysis
  - Penalties Considered

## *Avrahami v. Commissioner*, 149 T.C. No. 7, August 21, 2017 (Judge Holmes)

- H & W owned jewelry and real estate businesses via pass-through entities. W formed Feedback, a St. Kitts company, to act as a captive insurance company for their businesses. H & W claimed deductions under § 162 on their 2009 and 2010 tax returns for amounts paid by their entities to Feedback and to Pan Am, an offshore third-party insurance company that reinsured a portion of its risk with Feedback, which the IRS disallowed.
- Annual insurance premiums paid by H & W's businesses rose from \$150,000 to \$1.3 million after Feedback was formed. Feedback accumulated a surplus of \$3.8 million, of which \$1.7 million migrated back to H & W via loans and loan repayments.
- For a company to be an insurance company, the company must 1) involve risk shifting, 2) involve risk distribution, 3) involve insurance risk, and 4) meet commonly accepted notions of insurance. Factors considered by the Court included the fact only 3 to 4 companies were insured; the total risk exposure was low; the premiums paid were not reasonable; no claims were paid until after the IRS audit started; Feedback did not comply with St. Kitts insurance regulations; and a real insurance company would not make such loans and loan repayments with its premiums.
- The Tax Court held that neither Feedback nor Pan Am were valid insurance companies. As a result, the court disallowed the taxpayers' deduction for premiums paid and invalidated Feedback's elections under § 831(b) (to be treated as a small insurance company) and § 953(d) (to be taxed as a domestic corporation).

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## *Reserve Mechanical Corp. v. Commissioner*, TC Memo 2018-86, June 18, 2018 (Judge Kerrigan)

- Reserve Mechanical Corp was a captive insurance corporation incorporated in Anguilla. Reserve was a wholly-owned subsidiary of Peak Casualty Holdings, LLC, which was owned by two U.S. citizens, Mr. Zumbaum and Mr. Weikel. Mr. Zumbaum and Mr. Weikel also together owned an S corporation in Osburn, Idaho, that provided and serviced equipment used in underground mining.
- Relying on *Avrahami*, the Tax Court concluded that the captive arrangement did not have adequate risk distribution, did not involve bona fide insurance agreements, involved a circular flow of funds, and had premiums that were not negotiated at arm's length or actuarially determined. The Tax Court further concluded that the company's activities related to those policies were not those of a bona fide insurance company.
- As a result, the Tax Court upheld the IRS's determination that (1) Reserve's transactions were not insurance transactions in the commonly accepted sense, and thus, taxpayer did not qualify for insurance company exemption from income tax; (2) Reserve was not eligible to make an election to be treated as a domestic corporation; and (3) payments that Reserve received were subject to the 30% withholding tax as fixed or determinable annual or periodical (FDAP) income received by a foreign corporation from sources within the United States.

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## *Syzygy Ins. Co. v. Commissioner*, TC Memo 2019-034, April 10, 2019 (Judge Ruwe)

- Syzygy is a microcaptive insurance company established by officers of Highland Tank, an S corp family business engaged in manufacturing of above-ground and below-ground steel tanks.
- Tax Court held that amounts paid to Syzygy were not insurance premiums for tax purposes, and as a result, (1) Syzygy's § 831(b) election was invalid; (2) the premiums weren't excludible from Syzygy's gross income; and (3) the S corporation officers weren't entitled to passthrough business deductions for the premiums paid.
- Key factors in the Tax Court's decision included: Syzygy did not accomplish sufficient risk distribution through fronting carriers, which were also not bona fide insurance companies; Syzygy was not operated as an insurance company; facts indicated the policies were not valid and binding, taking into consideration the related-party transaction and the policies' late issuances, ambiguities, and conflicting terms; and the premiums were unreasonable.

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## OFFSHORE NONCOMPLIANCE

The U.S. Government has implemented and followed a number of procedures aimed at discovering American taxpayers with undeclared accounts and acting against them. The current and expanding information disclosure regime includes a combination of the following disclosure methods to obtain information about foreign financial accounts, whether in secrecy jurisdictions or otherwise:

1. Whistleblowers and informants.
2. Criminal investigations of financial institutions and account holders.
3. Civil summons processes.
4. Requests under tax treaty or mutual information exchange agreements.
5. The voluntary disclosure of thousands of Americans seeking to avoid criminal prosecution and obtain reduced civil penalties, and their continuing tax compliance.
6. FATCA and related legislative and regulatory developments.

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## OFFSHORE NONCOMPLIANCE (cont.)

### Report of Foreign Bank and Financial Accounts – FBAR

- U.S. law also requires the filing of a separate information return, FinCEN Form 114, known as an “FBAR,” by April 15<sup>th</sup> following each calendar year. The form is not filed with a tax return, but is filed electronically via FinCEN’s BSA E-Filing System.
- A non-willful failure to file an FBAR can be penalized up to \$10,000, but a willful failure to file can result in a civil penalty of as much as 50% of the value of the foreign account, with no cap for each violation, per year. 31 U.S.C. § 5321(a)(5).
- In both *United States v. Williams*, 110 AFTR 2d 2012-5298 (4th Cir. 2012), and *United States v. McBride*, No. 2:09-cv-00378 (D. Utah 2012), the government successfully established that the taxpayer’s failure to comply with the FBAR obligations was willful for purposes of the civil penalty.
- In both cases, the government’s burden of proof on all questions before the court, including the question of whether the taxpayer’s failure to comply with the FBAR obligations was “willful,” was held to be “a preponderance of the evidence.”

## OFFSHORE NONCOMPLIANCE (cont.)

- Taken together, both decisions appear to have adopted a standard of “reckless disregard,” “constructive knowledge,” or “willful blindness” as a basis to establish willfulness for FBAR penalty purposes. “Reckless disregard” means that the individual was aware of the failure to file the FBAR and nonetheless ignored the obligation to file the form; “constructive knowledge” allows the government to impute knowledge of FBAR filing requirements to taxpayers without proving that the taxpayer had actual knowledge.
- IRS guidance issued in May 2015 indicates that the IRS will, in most cases, not assess a penalty greater than 50% of the aggregate high balance during the years open under the statute of limitations. The IRS guidance noted that the Service could seek 100% of the balance in egregious cases, and of course has the statutory right to seek more.

## OFFSHORE NONCOMPLIANCE (cont.)

### Forms 3520, 3520-A and 5471

- If a U.S. transferor of property to a foreign trust, or a U.S. recipient of a distribution from such a trust, fails to timely file a Form 3520 to report these transactions, the IRS may impose a penalty equal to 35% of the gross value of the property transferred to or received from the trust.
- If a U.S. donee fails to timely file a Form 3520 to report the receipt of a large foreign gift, or files the form incorrectly or incompletely, such donee may be subject to a penalty equal to 5%, not to exceed 25%, of the value of the gift or bequest received in the relevant year.
- If a foreign grantor trust fails to timely file a Form 3520-A, or fails to furnish all of the required information, the U.S. owner may be subject to a penalty equal to 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person at the close of the taxable year.

## OFFSHORE NONCOMPLIANCE (cont.)

- The failure to timely file a complete and correct Form 3520 or Form 3520-A may result in an additional penalty of \$10,000 per 30-day period for failing to comply within 90 days of notification by the IRS that the information return has not been filed. The total penalty for failure to report a trust transfer, however, cannot exceed the amount of the property transferred.
- Depending on the type of foreign corporation involved, and the company's relationship to the U.S. shareholder, there are varying penalties that may be imposed on the failure to file a Form 5471. Generally, the penalty is \$10,000 per failure to file, but additional penalties can be imposed if the form is not filed after notice by the IRS.

## IRS CRIMINAL INVESTIGATION

Title 26 Tax Crimes – 26 U.S.C. § 7201, 7206(1)

- Employment Tax
- International Tax Fraud
- Abusive Tax Schemes
- Refund Crimes – QRP, RPP and ID theft
- Cybercrimes (including Virtual Currency)
- Frivolous Arguments Program – Non-filers
- Political/Public Corruption
- Counterterrorism/Terrorist Financing
- Money Laundering/Bank Secrecy Act (BSA)
- Organized Crime Drug Enforcement Task Force (OCDETF)
- High Intensity Drug Trafficking Area (HIDTA)

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## FY STATISTICS

	FY 2016	FY 2017	FY 2018
Investigations Initiated	3,395	3,019	2,886
Prosecution Recommendations	2,744	2,251	2,130
Informations/Indictments	2,761	2,294	2,011
Conviction Rate	92.1%	91.5%	91.7%
Total Sentenced	2,699	2,549	2,111
Percent to Prison	79.9%	80.1%	82%
Average Months to Serve	41	42	45

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## EMPLOYMENT TAX STATISTICS

	FY 2016	FY 2017	FY 2018
Investigations Initiated	137	162	207
Prosecution Recommendations	77	59	81
Informations/Indictments	71	60	64
Sentenced	87	77	48
Incarceration Rate	70.1%	77.9%	77%
Average Months to Serve	14	21	21

## FATCA OVERVIEW

FATCA is a federal law enacted in 2010 that requires foreign financial institutions to identify their U.S. customers and report information (FATCA Information) about financial accounts held by U.S. taxpayers either directly or through a foreign entity. FATCA's primary aim is to prevent U.S. taxpayers from using foreign accounts to facilitate the commission of federal tax offenses.



## LOYAL BANK LTD FATCA PROSECUTION

Adrian Baron, the former Chief Business Officer and former Chief Executive Officer of Loyal Bank Ltd, an offshore bank with offices in Budapest, Hungary and Saint Vincent and the Grenadines, pleaded guilty to conspiring to defraud the United States by failing to comply with the Foreign Account Tax Compliance Act (FATCA).

June 2017 – IRS Undercover Agent met with Baron, explained that he was involved in stock manipulation schemes and wanted to open several bank accounts at Loyal Bank. Although he was the beneficial owner of the accounts, he did not want to appear on any of the bank documents.

July 2017 – UCA met with Baron again to describe his scheme and that he wanted to circumvent FATCA reporting.

August 2017 – Multiple accounts were opened at Loyal Bank and no information was requested by Loyal Bank for FATCA purposes.

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## JOINT CHIEFS OF GLOBAL TAX ENFORCEMENT aka J5

Australian Criminal Intelligence Commission (ACIC) and Australian Taxation Office (ATO)

Canada Revenue Agency (CRA)

The Netherlands – Fiscale Inlichtingen-en Opsporingsdienst (FIOD)

The United Kingdom – HM Revenue & Customs (HMRC)

Internal Revenue Service Criminal Investigation (IRS-CI)

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## THE J5 IS DEDICATED TO COMBATTING TRANSNATIONAL TAX CRIME, COMMITTED TO:

Develop shared strategies to gather information and intelligence that will strengthen operational cooperation in matters of mutual interest, and target those who seek to commit transnational tax crimes, cybercrime and launder the proceeds of crime.

Drive strategies and procedures to conduct joint investigations and disrupt the activity of those who commit transnational tax crime, cybercrime and enable money laundering.

Collaborate on effective communications that reinforce that J5 is working together to tackle transnational tax crime, cybercrime and money laundering.

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## INTERNATIONAL TAX ENFORCEMENT GROUP (ITEG)

Dedicated to developing significant international tax investigations, building on the NCIU efforts, utilizing data analytics from BSA, FATCA, OVDP, Swiss Bank investigations, Whistleblowers including the Panama Papers and Paradise Papers.

Attaches will be located in Barbados, Bogota, Frankfurt, Europol (at the Hague), Hong Kong, London, Mexico City, Ottawa, Panama City and Sydney and the Netherlands.

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## NATIONALLY COORDINATED INVESTIGATION UNIT (NCIU)

NCIU will be responsible for overseeing all IRS field offices, and coordinating major investigations at a national level.

Initially focused on Employment Tax, International Tax Enforcement, Microcap Stock Fraud (coordinating with the SEC), and fuel excise tax.

Unit will report to CI Executives in HQ and will identify national areas of non-compliance.

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## STREAMLINED DOMESTIC OFFSHORE PROCEDURES

### Terms:

- U.S. taxpayers (U.S. citizens, lawful permanent residents, and those meeting the substantial presence test of IRC section 7701(b)(3)) must:
  - For each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed (the “covered tax return period”), file amended tax returns, together with all required information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621);
  - For each of the most recent 6 years for which the FBAR due date has passed (the “covered FBAR period”), file any delinquent FBARs (FinCEN Form 114, previously Form TD F 90-22.1);
  - Pay a 5% Title 26 miscellaneous offshore penalty; and
  - Submit certification of non-willfulness.

A taxpayer who is eligible and who complies with all of the instructions will be subject only to the 5% Title 26 miscellaneous offshore penalty and will not be subject to accuracy-related penalties, information return penalties, or FBAR penalties. Even if returns properly filed under these procedures are subsequently selected for audit under existing audit selection processes, the taxpayer will not be subject to accuracy-related penalties with respect to amounts reported on those returns, or to information return penalties or FBAR penalties, unless the examination results in a determination that the original return was fraudulent and/or that the FBAR violation was willful.

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## STREAMLINED DOMESTIC OFFSHORE PROCEDURES (cont.)

### Offshore Penalty

- **Includes:**
  - A foreign financial asset is subject to the 5-percent offshore penalty in a given year in the covered FBAR period if the asset should have been, but was not, reported on an FBAR for that year.
  - A foreign financial asset is subject to the 5-percent offshore penalty in a given year in the covered tax return period if the asset should have been, but was not, reported on a Form 8938 for that year.
  - A foreign financial asset is also subject to the 5-percent offshore penalty in a given year in the covered tax return period if the asset was properly reported for that year, but gross income in respect of the asset was not reported in that year.
- **Does not include:**
  - Any asset (tax compliant or non-compliant) that was not the kind of asset reportable on either FBAR or Form 8938.
  - Assets in which the taxpayer had no financial interest, such as an employer's account over which the taxpayer had only signature authority, or portions of assets in which the taxpayer had no personal financial interest.

## STREAMLINED FOREIGN OFFSHORE PROCEDURES

### Terms:

- Same as Streamlined Domestic Offshore Procedures, but must also meet the non-residency requirement.
  - Non-Residency Requirement: Individual U.S. citizens or lawful permanent residents, or estates of U.S. citizens or lawful permanent residents, meet the applicable non-residency requirement if, **in any one or more of the most recent three years** for which the U.S. tax return due date (or properly applied for extended due date) has passed, the individual did not have a U.S. abode and the individual was physically outside the United States for at least 330 full days.
- There is **no** 5% Miscellaneous Offshore Penalty under the Streamlined Foreign Offshore Procedures.

## DELINQUENT FBAR SUBMISSION PROCEDURES

### What are the eligibility requirements:

- Taxpayers have not filed required FBARs.
- Taxpayers do not need to use either OVDP or the SFOP to file delinquent or amended tax returns to report and pay additional tax.
- Taxpayers are not under a civil examination or a criminal investigation by the IRS, and have not already been contacted by the IRS about the delinquent FBARs.

### How does one file the FBARs?

- File the delinquent FBAR electronically and include a statement explaining why you are filing the FBARs late (recall that the FBAR can only be filed electronically)

### What is the benefit?

- The IRS **will not impose a penalty** for the failure to file the delinquent FBARs if the taxpayer properly reported on his U.S. tax returns, and paid all tax on, the income from the foreign financial accounts reported on the delinquent FBARS. What about de minimis unreported income?
- FBARs will not be automatically subject to audit but may be selected for audit through the existing audit selection processes that are in place for any tax or information returns.

## DELINQUENT INFORMATION RETURN SUBMISSION PROCEDURES

### What are the eligibility requirements?

- Same as Delinquent FBAR Submission Procedures but also must have **reasonable cause** for not timely filing the information returns.
- Unlike the procedures described in OVDP FAQ 18, penalties may be imposed under the Delinquent International Information Return Submission Procedures if the Service does not accept the explanation of reasonable cause.
- Taxpayers who have unreported income or unpaid tax are not precluded from filing delinquent international information returns.

### What is required in the reasonable cause statement?

- A reasonable cause statement must be attached to each delinquent information return filed for which reasonable cause is being requested. If a reasonable cause statement is not attached to each delinquent information return filed, penalties may be assessed.
- The longstanding authorities regarding what constitutes reasonable cause continue to apply, and existing procedures concerning establishing reasonable cause, including requirements to provide a statement of facts made under the penalties of perjury, continue to apply.
- As part of the reasonable cause statement, taxpayers **must certify** that any entity for which the information returns are being filed was not engaged in tax evasion.

## OTHER OPTIONS

### Quiet Disclosure

- File amended returns and FBARs outside of any formal voluntary disclosure program. Generally tailor the filing of the delinquent returns and FBARs to the applicable statute of limitations.
- IRS has consistently announced that they are looking for quiet disclosures. The implication is the potential penalties will be applied harshly. Of course, if the taxpayer has a good willfulness defense or reasonable cause, then this is still a viable option, but the willfulness defense and reasonable cause should be thoroughly vetted.

### Prospective Compliance

- Taxpayer complies with his obligations moving forward.
- Generally the easiest option but the taxpayer will generally have unlimited exposure on the tax return side and the FBAR civil penalties will remain for 6 years. Criminal exposure for the tax return and the FBAR will remain for 5 years.

### Do Nothing

- IRS has said about 100 times to not do this.
- Not a viable option and may be an excellent indicator to walk away from the client.

## PROCEDURES IN NOVEMBER 2018 GUIDANCE

- Once Criminal Investigation preliminarily accepts submissions, it will forward cases to a civil compliance unit in Austin for distribution to the appropriate civil examination unit.
- All voluntary disclosures will be assigned for examination and follow standard examination procedures.
- The IRS expects the majority of cases to be resolved by agreement.

## FRAMEWORK IN NOVEMBER 2018 GUIDANCE

- Voluntary disclosures will generally include a 6 year disclosure period.
- Taxpayers must submit all required returns and reports for the disclosure period.
- Taxpayer cooperation is required.
- Examiners will use the interim guidance in considering penalties.

## FRAMEWORK IN NOVEMBER 2018 GUIDANCE (cont.)

### **Fraud Penalties will be asserted as follows:**

- Civil fraud penalty will apply to one year with the highest tax liability.
- Examiners may apply civil fraud penalty to more than one year, up to all six years, based on facts and circumstances, for example, if there is no agreement to tax liability.
- Examiners may apply civil fraud penalty beyond six years if taxpayer fails to cooperate and resolve examination by agreement.

## FRAMEWORK IN NOVEMBER 2018 GUIDANCE (cont.)

### Other Penalties will be asserted as follows:

- Willful FBAR penalties will be asserted in accordance with existing IRS penalty guidelines under IRM 4.26.16 and 4.26.17
- Penalties for failure to file information returns will be at examiner's discretion
- Penalties related to excise taxes, employments taxes, estate and gift tax, etc. will be based on facts and circumstances with examiners coordinating with subject matter experts

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## FRAMEWORK IN NOVEMBER 2018 GUIDANCE (cont.)

### Taxpayers may:

- Request imposition of accuracy related penalties 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. The taxpayer must present convincing evidence to justify the reduction.
- Request an appeal with the Office of Appeals.

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# Thank You

Dennis Perez  
Hochman Salkin Toscher Perez P.C.



## FY2018 Statistics

	FY 2017	FY 2018
Investigations Initiated	3019	2886
Prosecution Recommendations	2251	2130
Informations/Indictments	2294	2011
Conviction Rate	91.5%	91.7%
Total Sentenced	2549	2111
Percent to Prison	80.1%	82%
Average Months to Serve	42	45



- ▶ THERE WERE 66,873 CASES REPORTED TO THE UNITED STATES SENTENCING COMMISSION IN FISCAL YEAR 2017.
- ▶ OF THESE CASES, 584 INVOLVED TAX FRAUD.<sup>1</sup>
- ▶ THESE OFFENDERS WERE SENTENCED UNDER SECTIONS 2T1.1 AND 2T1.4 OF THE U.S. SENTENCING COMMISSION’S *GUIDELINES MANUAL*.

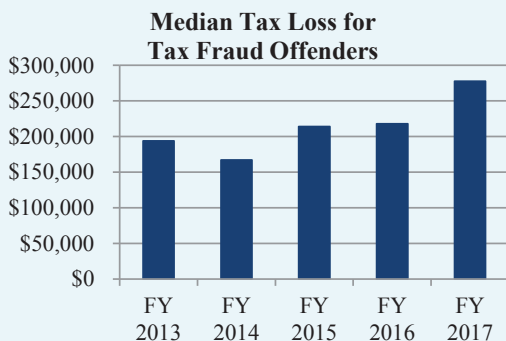
# Quick Facts



## Tax Fraud Offenses<sup>1</sup>



Top Five Districts Tax Fraud Offenders FY 2017
Northern District of Illinois (N=35)
Northern District of California (N=31)
Eastern District of California (N=29)
Central District of California (N=25)
Eastern District of New York (N=23)



In fiscal year 2017, there were 584 tax fraud offenders, who accounted for 0.9% of all offenders sentenced under the guidelines.<sup>2</sup> The number of tax fraud offenders has decreased slightly during the last five years.

### Offender and Offense Characteristics

- In fiscal year 2017, approximately two-thirds of tax fraud offenders were men (69.4%).
- More than half were White (52.4%) followed by Black (30.8%), Hispanic (10.3%), and Other Races (6.5%).
- The average age of these offenders at sentencing was 52 years.
- Most tax fraud offenders were United States citizens (93.8%).
- The majority of tax fraud offenders had little or no prior criminal history (80.5% of these offenders were assigned to Criminal History Category I).
- The median tax loss for these offenses was \$277,576.<sup>3</sup>
  - ◆ 87.2% of tax offenses involved tax losses of \$1.5 million or less.
  - ◆ 19.8% of tax offenses involved tax losses of \$100,000 or less.
- Sentences for tax fraud offenders were increased for:
  - ◆ 12.5% of offenders for using sophisticated means to execute or conceal the offense;
  - ◆ 8.4% of offenders for having a leadership or supervisory role in the offense;
  - ◆ 3.8% of offenders for abusing a public position of trust or using a special skill; and
  - ◆ 8.7% of offenders for obstructing or impeding the administration of justice.
- Sentences for tax fraud offenders were decreased for:
  - ◆ 2.4% of offenders because they were a minor or minimal participant in the offense.

### Punishment

- More than half of tax fraud offenders were sentenced to imprisonment only (59.1%).
- The average sentence length for tax fraud offenders was 17 months.

<sup>1</sup> Tax fraud offenses include cases with complete guideline application information in which the offender was sentenced under §2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents) or §2T1.4 (Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud) using a *Guidelines Manual* in effect on November 1, 2001 or later.

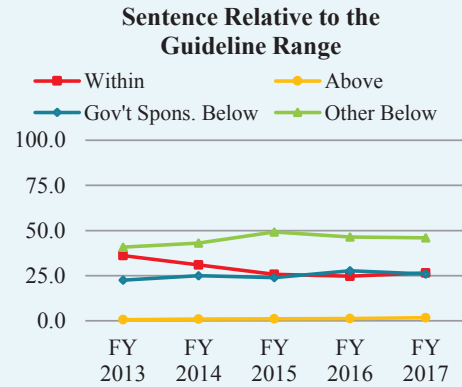
<sup>2</sup> Of the 66,873 offenders sentenced in fiscal year 2017, 4,956 were excluded from this analysis due to incomplete guideline application information.

# Quick Facts

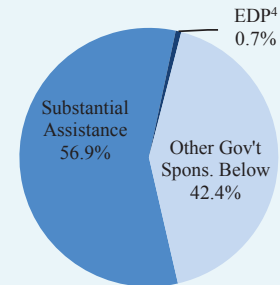
## Tax Fraud Offenses

### Sentences Relative to the Guideline Range

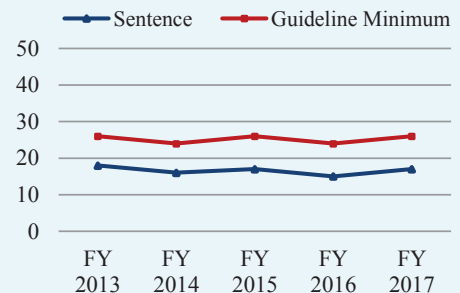
- During the past five years, the rate of within range sentences for tax fraud offenders has decreased (from 36.1% in fiscal year 2013 to 26.5% in fiscal year 2017).
- In each of the past five years, approximately one-quarter of tax fraud offenders received a sentence below the guideline range because the government sponsored the below range sentence.
  - ◆ Substantial assistance departures were granted in approximately 15 to 17 percent of tax fraud cases in each of the past five years.
    - ◇ These offenders received an average reduction of 67.3% in their sentence during the five-year time period (which corresponds to an average reduction of 17 months).
  - ◆ Other government sponsored departures were granted in approximately seven to thirteen percent of tax fraud cases in each of the past five years.
    - ◇ These offenders received an average reduction of 68.1% in their sentence during the five-year time period (which corresponds to an average reduction of 13 months).
- The rate of non-government sponsored below range sentences increased during the past five years (from 40.8% of tax fraud cases in fiscal year 2013 to 45.9% in fiscal year 2017).
  - ◆ Reductions for non-government sponsored below range sentences were smaller than in cases in which the government sponsored a below range sentence, with an average reduction of 59.0% during the five-year time period (which corresponds to an average reduction of 12 months).
- Both the average guideline minimum and average sentence have varied slightly for the past five years.
  - ◆ The average guideline minimum ranged between 24 months and 26 months during that time period;
  - ◆ The average sentence ranged between 15 months and 18 months during that time period.



### Government Sponsored Below Range Sentences FY 2017



### Average Sentence and Average Guideline Minimum (in months)



<sup>3</sup> The Tax Table was amended effective November 1, 2015.

<sup>4</sup> "Early Disposition Program (or EDP) departures" are departures where the government sought a sentence below the guideline range because the defendant participated in the government's Early Disposition Program, through which cases are resolved in an expedited manner. See USSG §5K3.1.

SOURCE: United States Sentencing Commission Datafiles, 2013 through 2017, USSCFY13-USSCFY17.

For other Quick Facts publications, visit [www.ussc.gov/research/quick-facts](http://www.ussc.gov/research/quick-facts).



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DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

November 20, 2018

Control Number: LB&I-09-1118-014  
Expiration Date: 11/20/2020  
Affected IRM: 9.5

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

## Chapter 2—Current IRS Enforcement Objectives

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## Chapter 2—Current IRS Enforcement Objectives

Form <b>14457</b> (March 2019)	Department of the Treasury—Internal Revenue Service <b>Voluntary Disclosure Practice                  Preclearance Request and Application</b>	OMB Number 1545-2241
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**Note:** Use Part I of this form to make a preclearance request to determine whether you are eligible to use the voluntary disclosure practice. Only submit Part 1 of this form for preclearance. If you receive preclearance, proceed with submitting Part II to request preliminary acceptance. Submitting the information requested in Part I of this form does not guarantee acceptance. **All answers and attachments must be in English.**

**Mailing Address:** Internal Revenue Service  
 Attn.: Voluntary Disclosure Coordinator  
 2970 Market Street  
 1-D04-100  
 Philadelphia, PA 19104

**Fax Number:** 267-466-1115

**Part I - Preclearance Request (Mail or FAX Part I Only to Above)**

1. Part I submission date	2. Person submitting disclosure <i>(check box that applies)</i> <input type="checkbox"/> Individual(s) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Executor
---------------------------	--

3. Disclosure special features *(check all that apply)*

<input type="checkbox"/> Domestic Issues	<input type="checkbox"/> Estate & Gift Issues	<input type="checkbox"/> Virtual Currency Issues
<input type="checkbox"/> Offshore Issues	<input type="checkbox"/> Employment Tax Issues	<input type="checkbox"/> Other Issues <i>(briefly describe)</i>

Briefly describe issue

4a. Taxpayer name	b. Identification number (SSN/ITIN/EIN)	c. Date of birth
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d. Telephone number	e. Number, street, and room or suite number
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f. City or town	g. State or province	h. ZIP/Foreign postal code	i. Country
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j. Occupation	k. Passport information <i>(list all passport numbers and countries)</i>
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5a. Spouse name <i>(if joint disclosure)</i>	b. Identification number (SSN/ITIN)	c. Date of birth
--	-------------------------------------	------------------

d. Telephone number	e. Number, street, and room or suite number <i>(complete 5d through 5i if different than 4d through 4i)</i>
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f. City or town	g. State or province	h. ZIP/Foreign postal code	i. Country
-----------------	----------------------	----------------------------	------------

j. Occupation	k. Passport information <i>(list all passport numbers and countries)</i>
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6a Representative's name <i>(attach Form 2848, if applicable)</i>	<input type="checkbox"/> Check if no representative	b. Telephone number
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c. FAX number	d. Number, street, and room or suite number
---------------	---

e. City or town	f. State or province	g. ZIP/Foreign postal code	h. Country
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7. List any entities (corporations, partnerships, etc.) for which you are making a disclosure, include EIN if applicable. Further identification information for these entities will be required in Part II of this application

8. Do you believe that the IRS has obtained information concerning your tax liability  Yes     No

If "Yes," specify

## Chapter 2—Current IRS Enforcement Objectives

9. Disclose if you, your spouse or any related entities are currently under audit or criminal investigation by the Internal Revenue Service or any other law enforcement authority and if any income is sourced from an illegal activity

	Taxpayer		Spouse			Related Entities		
	Yes	No	Yes	No	N/A	Yes	No	N/A
a. Has the IRS notified you, your spouse or any related entities that it intends to commence an examination or criminal investigation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Are you, your spouse or any related entities under criminal investigation by the Internal Revenue Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Are you, your spouse or any related entities under criminal investigation by any law enforcement authority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Do you, your spouse or any related entities have income sourced from an illegal activity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If "Yes" to any, explain

### 10. Schedule of financial accounts

- List **ALL** noncompliant financial accounts you owned or controlled or were the beneficial owner of, either directly or indirectly.
  - The listings must cover the entire disclosure period as outlined in the [Updated Voluntary Disclosure Practice Memorandum](#) dated November 20, 2018.
  - This includes opened and closed accounts which held unreported funds during the disclosure period.
  - This includes accounts held through entities you owned or controlled or were the beneficial owner of, either directly or indirectly. **Note:** The entities will be further identified in Part II of this application.
- Disclose all account numbers held at each financial institution.
  - Organize the account numbers in order of who held the account. Jointly held accounts should be identified as such and only listed once.
  - Account holders must match the disclosing taxpayer(s) from Lines 4 and 5, or an entity on Line 7 that will be subsequently disclosed in more detail in Part II after pre-clearance is received
  - If an account is closed, mark it with a "(CL)" after the account number.
  - Detailed Example: John Smith – 2023245454534, 342345845454 (CL), 3423423434343  
 Jane Smith – 3423233443232, 523124523123  
 Joint (John and Jane Smith) – 23124523163,23453232326  
 ABC Ltd – 3433423343344
- Click "Add Financial Account" button below for additional financial institutions.

#### Financial Institution 1

Financial institution name (complete bank legal name, including all suffixes (e.g., Inc., A.G., S.A., etc.), DBAs and pseudonyms)

Telephone number	Number, street, and room or suite number		
City or town	State or province	ZIP/Foreign postal code	Country

Accounts numbers

#### Important:

Catalog Number 61637F

[www.irs.gov](http://www.irs.gov)

Form **14457** (Rev. 3-2019)

## Chapter 2—Current IRS Enforcement Objectives

- **CI will provide a case control number that is required to submit Part II.**
- **Only submit Part II and attachments after preclearance is received.**
- **Do not send returns and/or remit payments with this form. No returns or payments will be accepted by IRS-Criminal Investigation.**
- **Complete all fields. If you cannot complete a field, attach a statement explaining why.**
- **Wait for contact from IRS examiner who will request additional documentation.**

### Part II - Voluntary Disclosure (Mail or FAX Part II to Address or FAX Number on Page 1)

Taxpayer name	Identification number	Telephone number
Spouse name (if joint disclosure)	Identification number	Telephone number
Representative's name (attach Form 2848, if applicable)	<input type="checkbox"/> Check if no representative	Telephone number
1. Part II submission date	2. Case control number (required from preclearance approval)	

3. Identify the source of funds (check all that apply and explain below)

- U.S. source   
  Foreign source   
  Illegal source   
  Gift/Inheritance   
  Virtual Currency   
  Other

4. During the disclosure period, have you taken a position that you were a bona fide resident of a U.S. territory (e.g., American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands) or did you file an income tax return with a U.S. territory  Yes     No

If "Yes," list the territory and tax years

5. Provide estimated total annual **unreported income** during the disclosure period (for fields 5 and 6, input all amounts in U.S. Dollars using year-end exchange rates AND provide the most recent 6 years unless the noncompliance was for a shorter period)

Tax year	Unreported income	Tax year	Unreported income	Tax year	Unreported income
Tax year	Unreported income	Tax year	Unreported income	Tax year	Unreported income

6. Provide estimated annual range of the highest aggregate value of your offshore holdings (**Offshore Issues Only**)

Tax year	Highest aggregate account/Asset value	Tax year	Highest aggregate account/Asset value
Tax year	Highest aggregate account/Asset value	Tax year	Highest aggregate account/Asset value
Tax year	Highest aggregate account/Asset value	Tax year	Highest aggregate account/Asset value

7. Offshore issues only (check appropriate boxes)

	Taxpayer		Spouse	
	Yes	No	Yes	No
a. Has anyone, including a foreign government or a foreign financial institution, advised you that your offshore account records, which are the subject of this voluntary disclosure, were susceptible to being turned over to the U.S. Government pursuant to an official request	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. If 7a is "Yes," did you or anyone on your behalf submit documents in opposition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. If 7b is "Yes," were copies of those documents provided to the Attorney General of the United States as required by 18 USC §3506	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 2—Current IRS Enforcement Objectives

### 8. Schedule of entities

- List **ALL** entities you owned or controlled or were the beneficial owner of, either directly or indirectly for which you reported noncompliant financial accounts in the Part I preclearance request.
- The listings must cover the entire disclosure period as outlined in the [Updated Voluntary Disclosure Practice Memorandum](#) dated November 20, 2018.
- Click “Add Entity” button below for additional entities.

#### Entity 1

Entity name (including all DBAs and pseudonyms)		Identification number	Country of incorporation
Telephone number	Number, street, and room or suite number		
City or town	State or province	ZIP/Foreign postal code	Country

9. Narrative (Your narrative must truthfully and fully explain your noncompliance from inception to the present. Organize the narrative with the following headings: (1) Noncompliance, (2) Taxpayer Background and (3) Professional Advisors. “Noncompliance” must include a complete and thorough discussion of all Title 26 and Title 31 failures to report income, pay tax, and submit all required information returns and reports. Address the source of all unreported income. Explain the use of nominees, alter egos, and any other methods used to conceal your noncompliance. Completely identify all entities involved in your noncompliance. “Taxpayer Background” must include all aspects of personal and professional history. “Professional Advisors” must include complete details on attorneys, accountants, financial planners, private bankers, etc. that rendered services to you from the inception of the noncompliance to the present, regardless of their connection to or knowledge of your noncompliance. If your disclosure involves offshore issues, provide a complete story about your foreign financial assets. The field below will automatically expand to accommodate your narrative.)

**Note:** You must provide specific facts on this form or on a signed attachment providing a complete story about your tax fraud and willful noncompliance. Any submission that does not contain a narrative statement of facts will be considered incomplete.

By signing this document, I certify that I am willing to continue to cooperate with the Internal Revenue Service, including in assessing my income tax liabilities and making good faith arrangements to pay all taxes, interest, and penalties associated with this voluntary disclosure.

Under penalties of perjury, I declare that I have examined this document and accompanying schedules and statements and to the best of my knowledge and belief, they are true, correct, and complete.

Signature of taxpayer	Name (print/type)	Date
Signature of taxpayer's spouse	Name (print/type)	Date

**Signature must be original (must be mailed), preferably in blue ink. Photocopied, facsimile, or electronic signatures are not acceptable. The power of attorney may not sign the voluntary disclosure letter on behalf of the taxpayers.**

**IRS reserves the right to make further contacts with the taxpayer to clarify his/her submission.**

### Privacy Act and Paperwork Reduction Act Notice

We ask for the information on this foreign account or asset statement to carry out the Internal Revenue laws of the United States. Our authority to ask for information is sections 6001, 6109, 7801, 7803 and the regulations thereunder. This information will be used to determine and collect the correct amount of tax under the terms of the offshore voluntary disclosure program. You are not required to apply for participation in the offshore voluntary disclosure program. However, if you choose to apply you are required to provide all the information requested on the offshore voluntary disclosure letter.

You are not required to provide the information requested on a document that is subject to the Paperwork Reduction Act unless the document displays a valid OMB control number. Books or records relating to a document or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. Section 6103, however, allows or requires the Internal Revenue Service to disclose or give this information to others as described in the Internal Revenue Code. For example, we may disclose this information to the Department of Justice to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information may delay or prevent processing your application. Providing false information may subject you to penalties.

The time needed to complete and submit the foreign account or asset statement will vary depending on individual circumstances. The estimated average time is: 2 hour.

If you have comments concerning the accuracy of this time estimate or suggestions for making the foreign account or asset statement simpler, we would be happy to hear from you. Comments should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.