

# IRS Voluntary Disclosure Practice

## IRS VOLUNTARY DISCLOSURE PRACTICE

The U.S. government has a long history of offering voluntary disclosure policies for taxpayers in exchange for leniency. In November 2018, the current Voluntary Disclosure Practice (“VDP”) was introduced to replace the previous Offshore Voluntary Disclosure Program (“OVDP”), which ended in September 2018. Under the current VDP, U.S. taxpayers can make timely, accurate, and voluntary disclosure to the federal tax authority to become in compliance. If a taxpayer decides to participate in the Voluntary Disclosure Practice, the taxpayer is required to cooperate with the IRS in determining his or her correct tax liability and make good faith arrangements with the IRS to pay the tax, and interest penalties, if any.

### What is considered a timely voluntary Disclosure?

A disclosure is only timely if the IRS receives it before: the IRS has initiated a civil examination or criminal investigation on the taxpayer or has notified the taxpayer of its intention to do so. the IRS has received information from a third party such as an informant, John Doe summons, or other foreign agencies notifying the IRS of the taxpayer’s noncompliance. the IRS has acquired information directly related to the concerned non-compliance of the taxpayer from a criminal enforcement action, such as a search warrant. Is VDP the best choice for you? Voluntary Disclosure Practice is not the only program that taxpayers can participate in to correct their noncompliance. Noncompliant taxpayers that are “non-willful” are normally eligible for the Streamlined Filing Compliance Procedures, which are associated with significantly lighter penalties. In the legal world, word has meaning. The term “non-willful” is an objective standard, instead of a subjective one. Whether the taxpayer’s conduct was willful or not depends on the facts and circumstances particular to each case. Sometimes, signing schedule B can be used to establish the willfulness of the taxpayer’s compliance. (Please read our other article for more information) If you have questions about whether your conduct is willful or not, we highly recommend that you discuss with a tax professional the specific facts in detail related to the non-compliance.



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## What is the process for the Voluntary Disclosure Practice?

The Voluntary Disclosure Practice consists of two steps. First, the participating taxpayer must complete Part I of Form 14457, Voluntary Disclosure Practice Preclearance Request and Application, and submit it either by fax or mail. Once the IRS grants you the preclearance confirmation, the participants can move on to the second step, which is completing and submitting Part II of the Voluntary Disclosure Application. The participating taxpayer has 45 days to submit the Part II of the application. An extension is available upon timely written request. IRS Criminal Investigation (CI) will review the Part II of Form 14457 and determine whether the taxpayer can participate in the Voluntary Disclosure Practice. Once approved, CI will provide the taxpayer with a Preliminary Acceptance Letter and CI will forward the submitted Form 14457 to a civil section of the IRS. The taxpayer can then wait for an examiner to contact him or her.

## New Updates on Form 14457

As many people may be aware, the IRS announced in February 2022 that Form 14457 had been revised to provide clarification on many issues. For example, Part I of the revised Form 14457 has a small section dedicated to virtual currency disclosure. What are the penalties under the VDP? To make no mistake, the Voluntary Disclosure Program can help participating taxpayers lessen the risks of a criminal investigation. However, it does not provide much relief in terms of financial penalties. Generally, the participating taxpayers are required to pay: the tax and the interest on the past 6 years of tax deficiencies if applicable, a civil fraud penalty of 75% on the highest tax deficiency for one year out of the past 6 years if applicable, a one-time FBAR penalty for failing to file any FBARs disclosed VDP, which is normally 50% of the highest aggregate balance of the financial account during the disclosure period or \$100,000.00, whichever is greater. The participating taxpayer is recommended to stay truthful through the VDP because if the IRS uncovers false information or illegal activity, they can recommend criminal prosecution for your case.

## Conclusion:

It is important to bear in mind that although a voluntary disclosure will not automatically grant the taxpayer immunity from prosecution, it may be taken into consideration when IRS determines whether to recommend prosecution. Before the taxpayer considers VDP, the taxpayer may want to consider the Streamlined Filing Compliance Procedure since the latter offers a more favorable penalty scheme. If you are trying to assess which program is better for you, contact Thevoz & Partners to consult your particular case. Our attorneys spend the time necessary to understand your case and provide clear guidance that is suitable for your circumstances.

Non-residents who are not tax-compliant have two ways to get compliant. Many people are



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surprised to learn that, even if you do not live in the United States, certain taxpayers with income earned in other countries still must file and pay taxes in the US. These taxpayers include US citizens, permanent residents (green card holders), and people with a substantial presence in the United States (i.e., if they lived in the US for 183 days or more in the past three years according to a specific IRS formula. These are all “US persons for tax purposes.” Even if the income is earned outside the United States, they must file and pay taxes on that income with the IRS. Often, these people discover several years down the road that they have an obligation under US tax laws but they failed to file a tax return in a timely fashion. This means they are non-compliant with their taxes for those years.

For people who simply weren’t aware of their obligation to pay US taxes on that income (sometimes considered non-willful), there are many different methods for getting compliant under the US tax law. One of the methods is the streamlined foreign offshore procedure. The streamlined foreign offshore procedure is fairly complex and requires gathering significant amounts of paperwork and filling out relevant forms, such as the FBAR and Form 8939. In addition, an individual who would like to use this program is required to file three years of US tax returns and six years of FBARs. If accepted to the streamline offshore procedure, the taxpayer could see significant benefits. If the IRS accepts that the taxpayer is following the proper procedure and correctly submitting all of the paperwork required, they will not have to pay penalties for non-compliance such as failure-to-file and failure to pay penalties, accuracy-related penalties, information return penalties and FBAR penalties. However, the taxpayer shall be required pay any tax liabilities.

The IRS takes a darker view of taxpayers who were willfully non-compliant; in other words, taxpayers that knew they had to file US tax returns and pay tax on foreign income but failed to do so. The IRS has another avenue for these types of taxpayers who seek to get compliant, Voluntary Disclosure, but the program requires timely disclosure and full cooperation with the IRS in order to mitigate exposure to criminal prosecution. The process for willfully non-compliant taxpayers initially requires the taxpayer to obtain a pre-clearance from the IRS criminal investigation to determine whether the taxpayers is eligible. Upon receiving pre-clearance confirmation, the taxpayer is required to provide additional information. Needless to say, taxpayers judged to be willfully non-compliant must meet a difficult standard to get compliant. The potential penalties for these taxpayers include a civil fraud penalty that can be substantial. However, there are several items that are at the discretion of the examiners, providing willfully non-compliant taxpayers with an incentive to fully cooperate with the IRS and make restitution in a timely manner. It is highly beneficial for a US person for tax purposes to seek the counsel of an international tax lawyer before using the procedure mentioned above.

The IRS is dedicated to having taxpayers pay what they owe promptly and completely, and the



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rules and paperwork are complex and make people anxious. THEVOZ & Partners will evaluate each taxpayer's situation and assist with IRS programs to be compliant with US tax laws.