

VOLUNTARY DISCLOSURE PRACTICE EXAMINER GUIDE PAPER

Objective

The Voluntary Disclosure Practice provides taxpayers concerned that their non-compliance was a result of willful or fraudulent conduct 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. Therefore, taxpayers who apply for the Voluntary Disclosure Practice are generally those concerned about criminal tax exposure.

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THE VOLUNTARY DISCLOSURE PRACTICE

The Voluntary Disclosure Practice provides taxpayers concerned that their non-compliance was a result of willful conduct 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. Therefore, taxpayers who apply for the Voluntary Disclosure Practice are generally those concerned about criminal tax exposure.

Voluntary disclosure cases can be identified by the following project and tracking codes:

Project Code

1140 Voluntary Disclosure Practice – Rec'd After 9/28/18

ERCS Tracking Code

8712 Voluntary Disclosure Practice – Domestic
8369 Voluntary Disclosure Practice – Offshore
8713 Voluntary Disclosure Practice – Estate & Gift
8714 Voluntary Disclosure Practice – Employment Tax
8715 Voluntary Disclosure Practice – Virtual Currency
8716 Voluntary Disclosure Practice – Other

If the voluntary disclosure involves multiple types of disclosure (checked on Form 14457, Part 1, Line 3) the following default rules will apply in determining the tracking code:

- If both domestic and offshore are identified, offshore will be the default tracking code.
- If domestic/offshore is identified along with Virtual Currency, then Virtual Currency will be the default tracking code.
- If domestic and/or offshore are identified with specialized issue other than Virtual Currency, the domestic/offshore will be the default tracking code and the examiner will use the SRS to make a specialty referral.

- If only a specialized issue is identified, the specialty issue tracking code will be the default tracking code.

Project and tracking codes should be applied to all related cases (additional years and related taxpayers).

Note: *Do not update original project and tracking codes assigned to domestic disclosures received before 9/28/18, even if they are closed under the terms outlined in the IGM and updated IRM referenced in this guide paper. Cases received before 9/28/18 have Project Code 0997 present.*

Background History

Treasury and the IRS have a long history of not recommending prosecution for taxpayers that voluntarily come forward to reveal tax crimes. Treasury had formal policies dating back to the 1950s, and the IRS formalized its voluntary disclosure practice in 1961 under Commissioner Caplin.

In January 2003, the IRS offered the Offshore Voluntary Compliance Initiative (OVCI) for taxpayers who used offshore payment cards and offshore financial arrangements and had failed to report foreign account income and report their foreign financial account. See Rev. Proc. 2003-11. That was the first voluntary disclosure initiative coupled with a fixed civil penalty structure.

In 2009, the IRS offered the first of several Offshore Voluntary Disclosure Programs (OVDP). OVDP was officially closed on September 28, 2018. OVDP demonstrated the value of uniform penalty structures for taxpayers who came forward voluntarily and reported their previously undisclosed foreign accounts and assets. These programs enabled the IRS to centralize the civil processing of offshore voluntary disclosures and resolve a very large number of cases without examination.

After the closure of the OVDP, the IRS maintains the traditional voluntary disclosure practice. The Service has updated the practice with procedural changes including centralized intake. [IRM 9.5.11.9, Voluntary Disclosure Practice](#), will continue to serve as the basis for determining taxpayer eligibility. The [IRM 4.63.3.26, Voluntary Disclosure Practice \(Post OVDP\)](#), will serve as guidance for civil field examinations.

IRS employees should route all Voluntary Disclosure Practice procedural questions not covered in the field guide through the respective domestic and offshore analysts listed on page 1. If necessary, the analyst will coordinate the elevation of any case issue(s) to counsel specifically designated to the Voluntary Disclosure Practice.

A visual [Flow Chart of the Voluntary Disclosure Practice](#) is available on the [Voluntary Disclosure Practice SharePoint Page](#).

EXAMINATION GUIDANCE

All voluntary disclosures will follow standard examination procedures.

[IRM Part 4: Examining Process](#)

[IRM 4.10.2, Examination of Returns, Pre-Contact Responsibilities](#)

[IRM 4.12.1, Nonfiled Returns, Nonfiled Returns](#)

[IRM 4.46.3, LB&I Examination Process, Planning the Examination](#)

Preparing for VDP Analyst/Counsel Assistance

VDP Analyst and Counsel assistance is available. We encourage you to use these resources EARLY in the process (but after you read this Field Examiner Guide in its entirety). If you would like to set up a call to discuss your case, it is helpful for you to prepare and provide the [VDP Call Preparation Guide](#) so that necessary information is readily available for a productive discussion.

VDP Monthly Call for Examiners

Please reach out to [redacted] to request Outlook Invite

<u>Telephone #:</u>	[redacted]
<u>Access Code:</u>	
<u>Time:</u>	
<u>Invite Contact:</u>	[redacted]
<u>Pre-Submit Call Questions and Feedback</u>	[redacted]
<p>Note: Invite includes a Skype link that will be used to share documents as necessary and for examiners to enter questions in the Conversation box during the call.</p> <p>Always use conference line for audio.</p>	

Starting October 13, 2021, the VDP analysts will hold an informal monthly call for examiners assigned VDP exams to answer questions related to domestic and offshore VDP issues. (For case specific issues, the examiner should consult directly with their designated VDP analyst.)

(b)(7)(E) This call is intended **ONLY** for examiners **actively working** VDP inventory. Manager attendance is encouraged but not required.

Examiners may pre-submit general procedural questions or feedback

During the call, questions may be entered into the Skype Conversation box.

Special Considerations

Cooperation

Under the Voluntary Disclosure Practice, taxpayers are required to fully cooperate during civil examinations.

Cooperation includes but is not limited to:

- providing statute extensions or waivers (as necessary) for both Title 26 and Title 31 issues
- promptly providing accurate and complete records when responding to all information document requests
- submitting to interviews and providing access to related party witnesses
- providing delinquent or amended returns, information returns, supporting documents, workpapers, etc.
- providing bank secrecy waivers (for offshore cases)

The Service expects that voluntary disclosures will be resolved by agreement with full payment of all taxes, interest, and penalties for the disclosure period. Although a taxpayer maintains all rights to appeal adjustments and penalties proposed, the examiner should consider expanding the scope of penalties to protect the government's interest based upon the facts and circumstances of the case. In rare circumstances, when a taxpayer does not agree to the penalty structure outlined in [IRM 4.63.3.26.2, Penalty Framework](#), where the case is closed unagreed due to taxpayer's non-cooperation (such as non-responsiveness, not providing requested records, etc.), an examiner should consider recommending revocation of the taxpayer's preliminary acceptance.

Collectability Considerations

Collectability is not a consideration for voluntary disclosure examination cases. These cases involve taxpayers who have voluntarily disclosed a tax or tax related crime. See [IRM 4.20.2, Scope Consideration](#).

Note: *As soon as a taxpayer indicates an inability to full pay, a collection referral is needed. See the Collection Referral section of this guide.*

Uniform Issue List Codes (LB&I Only)

LB&I examiners should select the UIL code that corresponds to each adjustment made on an issue by issue basis.

Payments received for years with an expired IRC 6501(a) statute or on IDRS retention

Payments received for disclosure years should be applied to the tax years designated by the taxpayer. Examiners should consider assessment statutes under either IRC 6501(a), an IRC 6501(c) exception, or IRC 6501(e) for all tax years covered by the voluntary disclosure. For a tax year module that is on IDRS retention when the payment is received, the examiner should ensure that the payment is posted correctly after submitting it to the Teller Unit for processing.

Recommended Case Starts

Voluntary disclosure cases will likely need examiners to address time-sensitive issues during the pre-audit stage of the examination. For example, disclosure years may have short statutes which could require the immediate solicitation of a consent (Form 872 or FBAR consent), consideration of assessment statute exceptions, or assessing additional tax before an open assessment statute expires. Examiner should start cases within 60 days of assignment and work expeditiously to obtain any consents and accounting records from the taxpayer/representative that are needed to begin the examination.

Scope of the Examination – Exam Issues and Disclosure Period

On the Form 14457 submitted to CI, the taxpayer identified the specific tax years (or periods) that are covered by the voluntary disclosure. Examiners must confirm the disclosure years identified. Voluntary disclosure cases will include a six-year disclosure period where the due date (or properly extended due date) has already passed. In general, the disclosure period is the most recent six tax years, but the examiner should ensure that the taxpayer has met their filing compliance requirements for all years subsequent to the disclosure period.

Decedent

When a deceased taxpayer enters voluntary disclosure, review the Form 56 to ensure that it is properly completed, and all necessary supporting documents are attached. Also, review the narrative to understand whose actions might lead to criminal exposure, the actions of the decedent or the fiduciary or someone else connected to the decedent (e.g., an heir).

Statute Considerations

Timely statute considerations and correct determinations by the field examiner are important due to the complexity of these cases.

Voluntary Disclosure Practice cases may include tax years (or periods) with:

- open IRC 6501(a)(1) statutes

- barred IRC 6501(a)(1) assessment statutes but assessment statutes that are open under another IRC provision, for example:
 - IRC 6501(e) for a substantial omission of gross income reported on an original return or omission of \$5,000 related to a foreign financial asset
 - IRC 6501(c)(8) for the failure to file certain international information returns, and others)
- barred IRC 6501(a)(1) statute with no known exceptions
- barred refund statutes under IRC 6511

Even though taxpayers are required to provide a narrative statement with their Form 14457 - Part II, specifically describing affirmative acts of tax and tax related crimes (fraud), agents cannot solely rely upon such statements to hold open an expiring assessment period under IRC 6501(c)(1), the false return exception.

Note: *The Shared Responsibility Payment (SRP) ASED for tax years 2014 through 2018 needs to be evaluated and protected separate from the normal ASED. The individual SRP carries a separate and distinct ASED from the income tax return on which the individual SRP is, or should be, reported. For example, if the related income tax return's ASED is extended by consent, is suspended, or is extended under an alternative statute provision, such as the unlimited fraud ASED, generally the individual SRP statute will not automatically be extended in kind. See [Interim Guidance Memo \(IGM\) 2017 11-17-0081](#).*

Pre-Audit Stage

When Should I Process Amended Returns?

First, determine if statutes are open, how much time is remaining on the statutes, and whether you will be able to secure a statute extension.

IF...	THEN...
The statute is barred upon receipt...	Amended returns cannot be processed. Enter all adjustments in RGS and prepare Form 4549-A. You must use Form 906 Closing agreement to make assessments.
There is a short statute, and you are not sure you will be able secure a statute extension...	Process the amended return (you may need to consider Quick Assessment procedures). Consider all penalties that might be barred if the ASED expires. Update RGS to reconcile to IDRS reflecting posted amended return. You may/may not use Form 906 to resolve the case.

<p>The statute is open and/or a Form 872 Consent to Extend Statute is secured <u>and</u></p> <p>a) Form 906 will be executed...</p> <p>b) Form 906 will <u>not</u> be executed but the case is closing Agreed...</p> <p>c) Form 906 will not be executed, and the case is closing Unagreed...</p>	<p>a) Do not process the amended returns. All adjustments should be included on Form 4549-A*. Prepare Form 906 for execution.</p> <p>b) All adjustments should be included on Form 4549.</p> <p>c) Process the amended returns. Update RGS to reconcile with taxpayer module. Any additional adjustments identified during the examinations should be included on Form 4549-A.</p>
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*Always use Form 4549-A when resolving the case with a Form 906 Closing Agreement.

Form 906 should include all adjustments identified on both the amended return and during examination. In cases where the amended return was posted, and additional adjustments are later proposed during the examination, the Form 906 and Form 4549-A will not agree.

Initial Examination Actions

During the pre-audit stage, the most important document to understanding the case is the narrative provided with Part II of the Form 14457. After reading the narrative, the examiner should complete and document the following steps from the case building material or subsequent internal research:

- Identify the primary and related taxpayers and types of compliance returns covered by the disclosure period
- Identify the features of the disclosure (for example, domestic, Estate & Gift, virtual currency, offshore, employment tax, U.S. or foreign source income, or illegal income)
- Identify the tax and related information returns required to be filed or amended
- Identify potential applicable penalties keeping in mind the voluntary disclosure penalty structure ([IRM 4.63.3.26.2, Penalty Framework](#))
- Identify the tax years included in the disclosure period from the submitted Form 14457 (see Disclosure Period examples below)
- Identify the IRC 6501(a) assessment statute expiration dates for all disclosure years with open assessment statute expiration dates
 - Determine if any year closed under IRC 6501(a) is open under another assessment statute period (see Statute Determinations examples below)
 - Do not rely on IRC 6501(c)(1) to hold the expiring assessment statute open before making a civil fraud determination
- Establish examination controls for all disclosure years:

- that have an assessment statute date with at least 300 days remaining under IRC 6501(a) or IRC 6501(e),
- that have an imminent assessment statute date if there is a signed return in the case file when it's assigned that reflects unposted additional tax, or
- that the Service is allowing the normal statute to expire and will be established under alpha statute codes "OO" or "YY" - TM approval is required,
- if the assessment period is expired and no known exceptions can be supported with the information available before initial contact with the taxpayer.
 - For domestic voluntary disclosure cases, under [IRM 25-6.23-3, Instructions for Updating the Statute on AIMS](#), alpha statute "OO" can be used when the case is a domestic voluntary disclosure open under Project Code 0997 [which will be updated to include new Project Code 1140] **and** the normal ASED has expired prior to examination controls being established. TM approval is not required.
 - For Offshore Voluntary Disclosures, alpha statute "YY" can be used to open expired years. TM approval is required.
- For offshore cases, establish FBAR examinations using a Related Statute Memorandum (RSM). Facts provided in the narrative portion of Form 14457 Part II may be used to support an RSM.
- Solicit Form 872, Consent to Extend the Time to Assess Tax, for tax years with less than one year remaining on the assessment statute period (solicit FBAR consent, if applicable).

Note: *Agreeing to extend the assessment period is an element of cooperation.*
- We anticipate that the vast majority of voluntary disclosure cases will involve representatives. Verify that a valid Power of Attorney (Form 2848) has been submitted for this disclosure, that it has not been superseded on IDRS, and that it covers all years and features of the disclosure period.
 - for example, authorized matters may include income tax, civil penalties and any other taxes, and FBARs.
- Review the taxpayer's transcripts for previously filed delinquent or amended return postings.
- Review the taxpayer's transcripts for payment postings to ensure that they were posted to the tax year the taxpayer intended.
 - If advance payments were posted to the most recent tax year of the voluntary disclosure because the prior years were unavailable (closed to retention on IDRS), examiners should transfer the payments to the appropriate years using Form 3870 once the corresponding year is established.
 - Note that advanced payments may have posted to MFT 55.

- Complete the tax, penalty, and payment [VDP Reconciliation Workpaper](#) located on the [Voluntary Disclosure Practice SharePoint](#) site.
- **An exception to required Fraud Referral procedures exists for VDP cases closing agreed with a Form 906 Closing Agreement under IRM 4.63.3.26.2.** FEA involvement and approval via Form 11661- Fraud Development Recommendation- Examination is not required and examiners should not update their cases to Status Code 17. However, examiners must develop key facts which support the civil fraud penalty determination for all years covered by the voluntary disclosure regardless of the VDP fraud penalty framework.
 - Examiners should rely on relevant admissions provided by taxpayers in the Form 14457 - Part II narrative, that specifically describe their affirmative acts of tax and tax related crimes (fraud).
 - A summary in bullet point format is acceptable for efficient presentation.
 - Lengthy narratives are not required to support the fraud penalty.
- However, if preliminary acceptance has been revoked by CI, the VDP case will close unagreed, or the VDP case will close agreed without a Form 906 closing agreement, then the VDP exception no longer applies. The Examiner must adhere to regular Fraud Referral Procedures.
 - Secure FEA involvement and approval by completing Form 11661 – Fraud Development Recommendation - Examination for all years shown in the voluntary disclosure.
 - Update Status Code to 17 for all years and related returns (even if civil fraud penalty is only considered for one year.)
 - Determine all relevant facts and prepare a detailed summary to support the assertion of the civil fraud penalty for all applicable years. Examiners should develop and support a fraud determination for all years covered by the voluntary disclosure regardless of a final penalty determination that may limit penalties to the one tax year with the highest tax liability determined from examination adjustments.
- Address examination pre-contact responsibilities ([IRM 4.10.2, Examination of Returns, Pre-Contact Responsibilities](#))
 - Examiners must complete an in-depth pre-contact analysis ([IRM 4.10.2.3, In-Depth Pre-Contact Analysis](#)).
 - Voluntary disclosures allow taxpayers to come forward to self-identify their noncompliance on Form 14457. Cooperation and continued participation in the practice requires they provide delinquent/amended returns and other workpapers and documents related to the noncompliance. Pre-Audit steps for voluntary disclosure cases will require the examiner to contact the taxpayer to secure delinquent/amended returns and supporting documentation/workpapers.

- Once secured, the examiner must review the documents provided. Examiners need to evaluate the Form 14457 in conjunction with internal (for example, IDRS and IRP) and external information to determine if the adjustments identified by the taxpayer are materially correct. Any Large Unusual or Questionable (LUQ) items identified by the examiner that are inconsistent, contradictory, or are absent from the adjustments disclosed by the taxpayer should be documented and considered if the potential adjustment will materially affect the tax liability or will be important from a compliance standpoint during the examination.
- Initial Contact – Follow standard examination procedures in [IRM 4.10.2. Examination of Returns, Pre-Contact Responsibilities](#).
 - Issue the taxpayer Initial Contact Letter 2205 enclosing Pub 1 and Notice 609. Follow up with a telephone call discussing taxpayer rights and summary of information that will be requested on the IDR.
 - After telephone contact, the examiner will follow up with Letter 3254 enclosing the initial IDR soliciting necessary documentation (for example – amended/delinquent returns, payments, supporting documents/workpapers, etc.)
- Examiners should prepare a Memorandum of Interview (“MOI”). An MOI details the context and content of an interview. The MOI will specify the time and place of the interview, who was present, and the role of each person present at the interview. An MOI is helpful in supporting civil fraud and willful FBAR penalties. Provide the taxpayer a copy of the MOI with an opportunity to clarify or correct any misunderstandings of any statements made during the interview. All concurrence and corrections or clarifications should be signed under the penalties of perjury. A template MOI is provided on the VDP SharePoint page. ([IRM 9.4.5.7.4, Memorandum of Interview](#) and [IRM 4.10.3.3.5, Documenting Interviews](#))

Documentation

- The interview should be documented as soon as possible after the interview. You want to ensure that your documentation is complete and accurate. As you document the interview, use the words of the taxpayer or third party rather than a summary statement. As you use his/her exact words, make sure your document preserves the context in which the statement was made. You are preserving the meaning of what was said, not just the words, and the same words may have different meanings in different contexts.
- The memorandum of interview will answer the questions of who? what? where? how? when? why? with regard to the facts developed in the interview. Separate the memorandum by

topic and keep facts in sequence. Maintain the order of the topics in the same order they were done in the interview. Numbered narrative paragraphs are recommended. Be concise and direct. If possible, avoid using specialized terminology (remember, this may be read by people who are unfamiliar with IRS terminology). If you need to use specialized terminology, explain it, but state clearly whether it is an explanatory note or whether it was discussed in the interview.

- You should take notes during the interview. These may be handwritten or typed. Any notes should be retained, even after more formal documentation of the interview is completed. If a case goes to court, these notes may be discoverable. Your handwritten notes may contain statements about the body language, etc. of the taxpayer that may convey additional meaning to his/her verbal responses.

Unprocessed Forms 1040- Delinquent and Amended

The Voluntary Disclosure Practice requests the taxpayer hold original delinquent returns and/or amended returns for submission to the assigned examiner . In some instances, taxpayers may have included original delinquent returns or amended returns with their initial Voluntary Disclosure Practice submission or may have submitted returns to Campuses.

It is important that examiners consider any returns included in the case file. In very rare instances, CI may have accepted, and date stamped these returns but not posted them. Before proceeding, the examiner should review IDRS to determine whether the delinquent/amended returns were processed.

If the delinquent/amended return submitted was processed prior to case assignment, follow regular exam procedures. Reconcile starting figures in RGS using the posted return figures as the “per return” amount. Review transcript to reverse inappropriately assessed penalties. These penalties would typically be assessed systematically, including but not limited to failure to file and pay penalties related to Form 1040 and Foreign International Information Returns.

Note: Examiners should wait until the conclusion of the examination to reverse penalties after the Form 906 Closing Agreement has been returned signed by the taxpayer.

If original delinquent returns are provided directly to the examiner (or were previously submitted but not processed) follow Substitute for Return Procedures processing found in IRM 4.4.9.6.

Note: Do NOT send delinquent returns to the Campus for processing and assessment.

- Select push code 036 – EXAM/SFR
- Use “EE” Alpha Statute to establish the year and once established, update statute to three years from receipt date using Form 5348
- Use Form 4549/4549A for tax computations capturing all items on delinquent returns. The Service will usually assess tax based on a closing agreement related to those tax computations.

Amended returns received from the taxpayer should *not* be processed. All adjustments should be made on Form 4549-A. If an amended return was processed, reconcile starting figures in RGS, as stated above.

If amended/delinquent returns are processed prior to the examination being assigned, and the examiner accepts the returns as filed, a “no change” audit report should be submitted for all years except the year with the penalty. The penalty should be placed on the RAR in the year with the highest tax deficiency per the processed returns. On the Form 906, the examiner must include all items (income/deductions) reported on the processed delinquent/amended returns filed as part of the disclosure.

Determining the Disclosure Period

In general, disclosure periods will include the most recent six tax years. Exceptions are as follows:

- a. In cases where noncompliance involves fewer than the most recent six tax years, the voluntary disclosure must correct noncompliance for all tax periods involved.
- b. With the IRS’s review and consent, cooperative taxpayers may be allowed to expand the disclosure period to include more than six years. 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, etc.).
- c. If a taxpayer has their preliminary acceptance revoked, they can no longer benefit from the limited scope of the Voluntary Disclosure Practice. In such cases, 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 and concurrence of Counsel (for the fraud penalty).

Disclosure and examination periods may vary as illustrated in the examples below:

Example #1 – Taxpayer A makes a voluntary disclosure relating to income tax fraud spanning the last 20 years. Taxpayer A fully cooperates and provides amended returns fully correcting all matters for the most recent six years. If Taxpayer A came forward in January 2018, the disclosure period will include tax years 2011-2016. If Taxpayer A came forward in December 2018, the disclosure period will include tax years 2012-2017.

Example #2 – Taxpayer A makes a voluntary disclosure relating to income tax fraud spanning the last 20 years. Taxpayer A does not cooperate during the civil examination. The Service is not limited to a six-year disclosure period and may examine all years with noncompliance. The examiner will potentially assert maximum penalties for all tax years with management approval.

Example #3 – Taxpayer B makes a voluntary disclosure in January 2018 relating to income tax fraud that occurred only during the most recent 4 tax years. Taxpayer B fully cooperates. Thus, his disclosure period includes tax years 2013-2016, the 4 years where there was noncompliance.

Example #4 – Taxpayer B makes a voluntary disclosure in January 2018 relating to income tax fraud in tax years 2008 through 2015. Taxpayer B fully cooperates and clearly establishes that he is in compliance with all tax and information requirements for the most recent tax year that was filed (2016). Taxpayer B's disclosure period will be limited to 2011-2015, the first five years of the disclosure period.

Examples - Statute Determinations

In all examinations, the examining agent has the responsibility for protecting open statutes of limitation. When examining returns with open statutes, it is the examining agent's responsibility to solicit statute extensions for income taxes and penalties on Form 872 and to solicit extensions of the FBAR statute of limitation when FBAR penalties are possible

You **must** attempt to solicit a Form 872 **before** relying on any exception to the regular three-year statute. Securing TM approval is required when using some alpha statutes.

The examiner should analyze statutes for all years under control to determine if the statutes are open, expired, or if additional provisions of the Internal Revenue Code may extend the statute of limitations on these cases. Consider all exceptions to the normal assessment statute for your case:

I.R.C. § 6501(c)(1)	False return
I.R.C. § 6501(c)(2)	Fraudulent return
I.R.C. § 6501(c)(3)	No return filed
I.R.C. § 6501(c)(8)	Failure to notify Secretary of certain foreign transfers (i.e., Failure to File Forms 3520, 3520-A, 5471, 5472, 8865, and/or 926), and 8938. Note: Form 8938 only applies to tax years beginning after March 18, 2010, i.e., beginning with the 2011 tax year.
I.R.C. § 6501(e)	Substantial omission of items – 6-year statute (25% omission of Income or substantial omission of income from a foreign financial asset)

	IRM 25.1.4.3.8.1 (10-07-2016) IRC 6501(e), 6-Year Statute Spreadsheet for 6-Year Statute of Limitations...
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See Offshore section for additional exceptions for offshore cases and information on International Information Return (IIR) penalties and FBAR statutes.

For cases closing without a Form 906 Closing Agreement that have barred statute years, follow [IRM 25.6.1.13.2.8.3 Closing Cases Involving Expired Statute Returns](#). Voluntary disclosure cases cannot be closed using the YY alpha statute.

Resource: [LB&I Concept Unit: Overview of Statute of Limitations of the Assessment of Tax Guide to Statutes of Limitations under Title 26](#)

Note: *Each RSED (Refund Statute Expiration Dates) must be analyzed to determine if a refund is eligible for crediting or refunding under IRC § 6511.*

Review Records and Determine Adjustments

Examiners must develop cases, use appropriate information gathering tools, and determine proper tax liabilities and applicable penalties. Taxpayer interviews, IDRs, and summonses may be used at the examiner's discretion. But remember that the bedrock of the Voluntary Disclosure Practice is taxpayer cooperation. Rely first on IDRs and cooperative discussions with the representative¹ for needed documents and information. Communicate with the representative. Explain the penalty structure. Establish early in the examination the taxpayer's intentions (does the taxpayer plan to agree to the penalty structure?). If the representative does not cooperate, clearly communicate to the representative what you see as a lack of cooperation and document the lack of cooperation in the case activity records.

The examiner will be responsible for corresponding with the representative to secure necessary documentation that supports all adjustments and penalties proposed during the examination.

Cooperation requires that the taxpayer voluntarily disclose the material issues, adjustments, and specific filing compliance requirements that need to be made to the tax years in the voluntary disclosure. This may be done by submitting a signed delinquent tax return or amended tax return, ledgers or workpapers that clearly identify and support the items to be adjusted, or other documentation the

¹ We refer to representative because the vast majority of voluntary disclosures will involve representatives. The principles discussed apply to taxpayers that do not have representatives.

examiner can rely upon to support the adjustments to be made during the examination.

If the taxpayer does not timely provide the examiner with complete information needed to evaluate the voluntary disclosure, the examiner should consider procedures for requesting that CI revoke preliminary acceptance.

Resource: [IRM 4.10.3, Examination of Returns, Examination Techniques](#)

Interest Computations

Taxpayers may make several payments to satisfy their liabilities during the submission process. Typically, RGS is used to accurately compute interest, however, reconciliation may be needed if multiple payments were made. Another tool available to compute interest is COMPA on IDRS.

If the taxpayer did not fully prepay tax, interest, and penalties as part of their submission package or prior to issuance of the RAR, it is recommended the examiner compute interest for a few months out from the RAR issue date to allow time for processing the case.

Advise the taxpayer the interest shown on the RAR is an estimate and they may receive a refund or balance due notice after the case is closed and processed. Also, state the following in the comment section of the F4549/4549A: **“Interest is an estimate computed XX days past the Form 4549A issue date.”**

Collection Issues

The Voluntary Disclosure Practice expects full payment of tax, interest and penalties as part of cooperation. As soon as a taxpayer indicates they do not have the ability to full pay, the examiner should request a completed Form 433-A, Collection Information Statement, with all required attachments from the taxpayer. The examiner is responsible for verifying that all forms and supporting documents are complete.

Mandatory: A referral to Collections is mandatory if the estimated unpaid tax, interest, and penalties are greater than \$250,000, or if the Taxpayer makes a preassessment Installment Agreement request for amounts more than \$50,000. [See IRM 4.20.1, General Collectability Procedures; 4.20.1.3, Soliciting Payment; and 4.20.1.4, Installment Agreements.](#)

Optional: Consult with a domestic or offshore analyst regarding a potential referral to Collections if the estimated unpaid tax, interest, and penalties are greater than \$50,000 and less than \$250,000, and without a preassessment Installment Agreement request.

Streamlined: For installment agreement requests up to \$50,000, the examiner is authorized to approve a streamlined installment agreement; Form 433-A not required. See [IRM 4.20.1.4.3](#).

The Voluntary Disclosure Practice [Collection Referral Form](#) should be used for both mandatory and optional referrals and is available on the [Voluntary Disclosure SharePoint](#) page. Once a referral is made, the examiner should wait for Collection input before closing the case. If there are excessive delays with the referral, the examiner should contact the domestic or offshore analyst listed on page 1 for elevation.

Note: *Examiners must include the special non-full pay language in any Form 906 Closing Agreement.*

Note: *Each RSED (Refund Statute Expiration Dates) must be analyzed to determine if a refund is eligible for crediting or refunding under IRC § 6511.*

Penalty Determination

Proper penalty consideration is important in these cases. If a taxpayer cooperates, a voluntary disclosure will mitigate a taxpayer's exposure to civil penalties. Civil penalty mitigation occurs by focusing on a specific disclosure period and applying the penalty structure under [IRM 4.63.3.26.2, Penalty Framework](#).

If the taxpayer fails to cooperate or otherwise agree to the terms of the Voluntary Disclosure Practice, the examiner should implement the process of requesting CI to revoke preliminary acceptance. Also, the examiner should coordinate with the FTA by completing Form 11661, Fraud Development Recommendation – Examination, for all years covered by the voluntary disclosure. For all cases where the case is closed unagreed, examiners should fully develop and support a fraud determination for all years covered by the voluntary disclosure. A FEA can assist the examiner in the full development of the penalty write-up.

Note: *In general, facts supporting fraud must be developed following standard examination procedures. In some cases, the narrative may provide sufficient admissions to assert fraud. Each case will be different. Coordinate with VDP Counsel. The key is that the narrative is direct evidence about the taxpayer's state of mind and intent whereas evidence collected by exam concerning intent is circumstantial evidence.*

A fraud penalty report must summarize evidence of fraud. Such evidence may be derived from the taxpayer's accounting records, invoices, correspondence, or other documents. For example, taxpayer's accounting records that exclude a bank account

used to deposit taxable business receipts and the bank records that show the taxable deposits are circumstantial evidence of the taxpayer's intent to not report income.

Group Managers must ensure that penalty considerations are applied consistently, cases are adequately developed to support the penalty, and penalty determination is documented in all cases. Similarly situated taxpayers should receive comparable treatment which will be facilitated by elevating all cases to the designated domestic or offshore analyst listed on page 1.

It is expected that an overwhelming majority of voluntary disclosure cases will be resolved by agreement. If the case is not resolved by agreement at the examination level, a taxpayer will be afforded standard administrative and judicial rights. All adjustments proposed including the fraud penalty, which may also be holding open an assessment statute period, must be supported if the tax years are challenged before the Independent Office of Appeals or in Tax Court.

Under the Voluntary Disclosure Practice, penalties will be applied as follows:

- a) 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 presumptively apply to the one tax year with the highest tax liability determined from examination adjustments. We anticipate that the vast majority of voluntary disclosure practice cases will be resolved with a single fraud penalty according to the standard penalty structure of the voluntary disclosure practice.
- b) Examiners may apply the civil fraud penalty to more than one year in the disclosure period or beyond the disclosure period if the taxpayer fails to cooperate or if CI revokes preliminary acceptance on other grounds.
- c) A taxpayer is not precluded from requesting the imposition of accuracy related penalties under I.R.C. § 6662 instead of the civil fraud penalty. Given the objective of the Voluntary Disclosure Practice, requests for the imposition of lesser penalties should be exceptional. A taxpayer must present clear and convincing evidence to the satisfaction of the Service to overcome the presumptive application of the civil fraud penalty.
- d) Willful FBAR penalties will presumptively apply to all cases involving FBAR noncompliance. Willful FBAR penalties will be computed in accordance with existing IRS penalty guidelines under [IRM 4.26.16, Report of Foreign Bank and Financial Accounts](#) and [IRM 4.26.17, Report of Foreign Bank and Financial Accounts \(FBAR\) Procedures](#).
- e) Penalties for the failure to file information returns will not be automatically imposed. Examiner discretion will consider the application of other penalties (such as civil fraud penalty and willful FBAR penalty) and resolve the examination by agreement. In general, information return penalties should not be assessed when a taxpayer agrees to the normal single year fraud penalty for voluntary disclosure practice cases.
- f) Please see specific guidance for employment tax and estate and gift taxes.
- g) Penalties relating to excise taxes will generally not be automatically imposed when the civil fraud penalty is imposed on income/employment/estate and gift

taxes. Examiners must coordinate with appropriate subject matter experts and VDP analysts on excise tax matters.

In general, only one fraud penalty will apply to the disclosure period. Assuming all terms of the Voluntary Disclosure Practice are complied with (including but not limited to full cooperation), then the one-year civil fraud penalty will be in lieu of accuracy-related penalties, delinquency penalties, and information return penalties.² However, the penalty for failure to make estimated tax payments under IRC § 6654 is applicable because this penalty is merely computational and a proxy for interest.

For example:

- Taxpayer submits six years of amended returns: one fraud penalty on the year with the highest tax liability determined from examination adjustments and no accuracy-related penalties for the other five years.
- Taxpayer submits six years of delinquent returns: one fraudulent failure to file penalty on the year with the highest tax liability determined from examination adjustments with no delinquency penalties on the other five years.
- Taxpayer submits three years of delinquent returns and three years of amended returns: a single penalty for either fraud or fraudulent failure to file on the year with the highest tax liability determined from examination adjustments with no accuracy-related or delinquency penalties on the other five years.

Note: *Any deviations to the penalty structure must be elevated to the designated domestic or offshore analyst listed on page 1 for coordination and VDP Counsel review. VDP Counsel approval for the deviation must accompany the case at closure.*

To Request Penalty Deviation – If a taxpayer indicates they does not agree with the prescribed VDP penalty structure, the examiner should request the taxpayer provide their argument for an alternative penalty in writing. Once received, the examiner should review the merits of the request and then provide their VDP analyst with the taxpayer’s arguments and the exam team’s position. The analyst will review the request and coordinate with VDP counsel.

² Additions to tax (IRC 6501(a)(1) or (a)(2)) determined from tax returns filed prior to the submission of a voluntary disclosure (Form 14457) are not abated or included in the penalty determination from the voluntary disclosure submission. Examiners will exercise their discretion regarding IRC 6698 or 6699 penalties after coordinating with appropriate subject matter experts.

IRC § 6751(b) requires that prior to assessment all cases recommending the assertion of certain penalties must have written managerial approval documented using Lead Sheet 300-1, Civil Penalty Approval Form. The group manager must perform a meaningful review of the penalty determination. See [IRM 4.10.9.7.8.2, Penalties: Managerial Approval](#). Managerial review and approval is also required on the non-assertion of penalties when there is a substantial understatement of tax under IRC § 6662(d). Penalties requiring managerial approval must be approved before the case closes from the group. See [IRM 20.1.1.2.3 \(8\), Managerial Approval for Penalty Assessments](#), for additional information.

WARNING: In light of recent court holdings, Voluntary Disclosure Practice cases **require** that written managerial approval is secured **prior** to issuance of the 30-day letter. I.R.C. § 6751(b). **Graev v. Commissioner**, 149 T.C. No. 23 (2017)(**Graev III**)

Resources:

[20.1.2.2.7.5, Fraudulent Failure to File—IRC 6651\(f\)](#)
[4.8.9.16.4, Civil Fraud Penalty \(IRC 6663\)](#)
[20.1.2.2.7.5, Fraudulent Failure to File—IRC 6651\(f\)](#)
[20.1.5.14, IRC 6663, Civil Fraud Penalty](#)
[25.1.6, Fraud Handbook - Civil Fraud](#)
[Form 11661, Fraud Development Recommendation - Examination](#)

Closing Agreements

ALERT: Please make sure you are using the **updated INITIAL Form 906 Review Checksheet**. The order for the review process has changed significantly. Specifically, VDP Counsel will review the Form 906 **prior** to Tech Service’s review (effective 8/12/2021).

Note: Any Form 906 involving Employment Tax must also be reviewed and approved by VDP Counsel.

WARNING: Do **not** issue the Form 906 Closing Agreement to the taxpayer before the **entire** review process has been completed and approved for issuance.

Note: [Disposal Code 08](#) must be used for all year when a Form 906 Closing agreement is present. If a return was processed and will be accepted as processed, RGS may generate a “No Change” Report. Examiners will need to enter \$1 in RGS as either a deficiency or penalty since ERCS requires an assessment of at least \$1 to enable case closing using Disposal Code 08.

We **strongly** encourage the use of Form 906 Closing Agreement for Title 26 matters and FBAR Agreements for Title 31 matters. Although closing agreements may not be required

in all cases, not executing them should be the exception, not the norm. In many cases, it will be mutually advantageous for the government and the taxpayer to resolve these cases with closing agreements.

A closing agreement will be required if there are barred statute years within the disclosure period.

In accordance with [IRM 4.8.8.3.1, Technical Services Responsibilities](#), all closing agreements must be reviewed by designated VDP Technical Services **before** obtaining the taxpayer's signature. The [VDP Initial 906 Review Checksheet](#) should be completed to ensure required reviews and approvals are secured.

Template Form 906 Closing Agreements can be found on the [Voluntary Disclosure Practice SharePoint](#) page and should be used as a starting point. The templates should be modified as appropriate to reflect the specific facts and circumstances of the disclosure.

EARLY in the process, we encourage you to work with your voluntary disclosure practice analyst for assistance in drafting Forms 906/FBAR Agreements and for Counsel assistance with specialized language.

Closing Agreements - Form 906 Review and Approval Process

Form 906 Initial and Final Review Checksheets have been created for assistance throughout this process. These Checksheets are available on the Voluntary Disclosure SharePoint Site. Each phase of the review must be completed in chronological order and documented as complete by checking each checkbox and signing at the bottom with a digital signature.

The Revenue Agent, Field Group Manager, VDP Technical Analyst, VDP Counsel and VDP Technical Services Reviewer must digitally sign on the ***"Initial 906 Review Checksheet"*** to indicate that they have conducted a meaningful review, completed all steps in their respective Reviewer Column and they agree that the Form 906 is ready for the next step in the review process or issuance of Form 906 to the taxpayer if they are the final Reviewer.

The Revenue Agent, Field Group Manager, Technical Services Reviewer, Technical Services Tax Examiner and Technical Services Group Manager must digitally sign the ***"Final 906 Review Checksheet"*** to indicate that they have completed all steps in their Reviewer Column and concur for the Form 906 to be executed and the case to move to closure.

Note: FBAR Agreements follow a different review and approval process. See FBAR section below and consult with your offshore Voluntary Disclosure analyst.

The VDP Form 906 Review and Approval Process is outlined below:

Step 1-

Revenue Agent:

- Follows the instructions in Step 2 of the Initial Form 906 Review checksheet to upload required files into the RGS folder created called “906 Supporting Documents”/“Office Documents” for 906 approval. Documents include but are not limited to:
 - Copies of Original Tax Returns for all years in disclosure period,
 - Copies of Amended Tax Returns for all years in disclosure period,
 - IMFOLT, IMFOLA, and IMFOLR for all years in disclosure period,
 - Form 4549-A(RAR) for all years,
 - Draft Form 906 Closing Agreement,
 - Voluntary Disclosure Letter/Application (Form 14457 and Narrative),
 - Email from designated VDP Counsel approving any deviations from the penalty framework,
 - Any other documentation RA feels is relevant to approve Form 906,
 - If other penalties are applicable, i.e., FBAR, Foreign Information Returns, etc., include related case file documents (such as, computations workpapers and Form 886A).
- Completes all steps and digitally signs the Initial 906 Review Checksheet.
- Sends the case and signed Initial 906 Review Checksheet to their Group Manager for review.

Step 2-

Field Group Manager:

- Reviews the Form 906 and supporting documents according to the Initial 906 Review Checksheet and digitally signs the checksheet once all steps are completed.
- Group manager elevates to the appropriate VDP Technical Analyst for review and elevation.

Step 3-

VDP Analyst

- Reviews the case file and completes necessary steps on the Initial Form 906 Review Checksheet.
 - Analyst may reach out to the exam team for additional information as required.
- VDP analyst elevates the case to VDP Counsel.

Step 4-

VDP Counsel Attorney (do **not** route to local Counsel):

- Conducts a thorough review of the Form 906, penalties and FBAR Agreement (as appropriate).
 - Any deviations to the VDP Penalty structure must be approved by VDP Counsel and will be supported with an email/memo to the casefile from VDP Counsel.
- Approves Form 906, digitally signs the Initial 906 Review Checksheet and emails approval to the Analyst/Field Group Manager with the Form 906 and signed Initial 906 Review Checksheet.

- The signing of the checksheet will documents counsel's review and approval of the Form 906.

Step 5-

Group Manager

- After VDP Counsel returns the approved Form 906, the manager sends notification with Taxpayer Name/SSN to Technical Services mailbox at: *SBSE Tech Svcs VDP 906 Review (sbse.tech.svcs.vdp.906.review@irs.gov) to let them know that the Form 906 is ready to be reviewed.
- Includes the Initial 906 Review Checksheet digitally signed by the examiner, manager, technical analyst, VDP Counsel.
- Verifies that the case is moved to Technical Services Group Code in RGS

Note: *Case remains in Group Status Codes while Technical Services completes their review. The Technical Services Reviewer will charge time to the case which will appear as "Time Charged by Others" on IVL.*

Step 6-

VDP Technical Services Reviewer:

- Reviews Form 906 and supporting documents according to Initial 906 Review Checksheet.
- If any changes are recommended, the Reviewer may correspond with the Revenue Agent or VDP Counsel to make the changes.
- If no changes are recommended, the Reviewer will notify the Field Group Manager that Form 906 is approved for issuance to the Taxpayer.
- Will provide the final Form 906 and signed Initial 906 Review Checksheet to the Group Manager by email.
- Technical Services will include a VDP Closure coversheet identifying the address of the Technical Services office where the "final" case file should be closed once the signed Form 906 is received from the Taxpayer.

Note: *Allow 30 days for Technical Services review. If, the Form 906 has not been approved 30 days from the initial request, the group manager should request a status update by replying all (or forwarding) the email where the initial request was made including any attachments. Any additional delays should be elevated to the VDP Technical Analyst.*

Step 6-

Revenue Agent:

- Sends the Form 906 approved by VDP Counsel and Technical Services to the taxpayer/representative in triplicate, along with a Cover Letter 4555 and Form 4549-A.
- Copy of the completed Initial Form 906 Review Checksheet should be placed in the case file.

Note: Providing the Form 906 to the taxpayer is not considered an offer to resolve the case by the government. However, the taxpayer signing and returning shall constitute an offer by the taxpayer.

Note: Once VDP Counsel has approved the Form 906 for issuance to the taxpayer, any substantive changes to the Form 906 will require re-elevation for approval. Re-elevation is not required for benign errors such as change of address, typographical errors, etc. If you are unsure if re-approval is needed, please reach out to VDP Counsel under an abundance of caution due to the finality that comes with a Form 906 Closing Agreement.

Step 7-

Revenue Agent:

- Receives three signed Forms 906 from the taxpayer/representative. Upon receipt, RA must review each page of the submitted Form 906 for changes, alterations, and missing pages. If the document is complete, accurate and fully executed by the taxpayer or an authorized representative, RA must complete and sign the text box following the Commissioner's signature line as a "Receiving Officer" and date stamps the back page of each Form 906 submitted by the taxpayers.

Note: Three original, signed and unaltered Form 906 Closing Agreements must be returned to the examiner to close the case with Form 906. *IRM 8.13.1.3.5.2, Power of Attorney Holder*, allows a Power of Attorney holder to execute a closing agreement on behalf of the taxpayer but the document appointing the Power of Attorney must be valid at the time the Form 906 is signed and must authorize the Power of Attorney for all matters covered by the closing agreement. When RA receives a signed Form 906, compare it to what was mailed. In a few cases, representatives have retyped closing agreements and altered them without alerting RA to changes. It is the RA's responsibility to ensure that the signed Forms 906 match exactly to those mailed to the representative. The taxpayer has an affirmative duty to disclose any changes or alterations made to the versions sent by exam.

- Reflects Disposal Code 08 (Item 13) on Form 5344 for Form 906 cases closed by agreement. Also, ensures that fraud penalties are properly reflected as TC 320 in Item 12 and "C" is coded in Item 38, if applicable.
- Prepares Title 26 case file for final closure including Letters 1595-E to be signed by the Technical Services Group Manager and Letter 937, if a representative is present. Includes in the case file a copy of Counsel's email approving Form 906.
- Completes all steps on the Final 906 Review Checksheet and digitally signs the Final 906 Review Checksheet.
- Gives the physical case file to their Group Manager for closure.

Note: Examiners working a VDP case with offshore issues **must** review and follow VDP FBAR Agreement Procedures prior to closing the Title 26 case file(s).

[IRM 8.13.1, Closing Agreements – Processing Closing Agreement in Appeals](#), provides general procedures regarding closing agreements under IRC 7121, including guidance on content, preparation, execution, and other closing agreement procedures. Final determinations of specific matters pursuant to IRC § 7121 are ordinarily reflected on [Form 906, Closing Agreement on Final Determination Covering Specific Matters](#).

Examiners should request full payment of the amount due (including interest and penalties) and document the request in the case file. If the taxpayer is unable to make full payment, the examiner should explain payment options, including installment agreements, to the taxpayer or their representative. If the examiner does not secure full payment or an installment agreement from the taxpayer, the examiner must coordinate with Collection. Per [SBSE-04-1018-0029](#), a Collection referral is mandatory for agreed, unpaid cases over \$250,000 for individuals and \$100,000 for businesses.

Case Closure - Agreed

If a **Form 906** Closing Agreement is executed in a voluntary disclosure case, the case should be closed to the Technical Services office as instructed on the Tech Services “VDP Closure” coversheet provided when the initial review was completed and approved, typically, this will be the same Technical Services that performed the initial review.

Examiners will date stamp the back page of each Form 906 submitted by the taxpayers. Examiners must review each page of the submitted Form 906 for changes, alterations, and missing pages. If the document is complete, accurate and fully executed by the taxpayer or an authorized representative, the examiner must complete and sign the text box following the Commissioner’s signature line as a “Receiving Officer.”

Form 5344 should reflect disposal code 08 (Item 13) for Form 906 cases closed by agreement. Also, ensure that fraud penalties are properly reflected as TC 320 in Item 12 and “C” is coded into Item 38.

Letter 1595-E should be drafted in duplicate by the examiner for the Technical Services Group Manager who will sign and mail the letter after approving the Form 906. In order to facilitate Technical Services’ final review, please include in the case file the final version of the “Initial 906 Review Checksheet” including all signatures of approval and if applicable, any additional emails or documents from Counsel approving the Form 906.

The Technical Services Manager must sign the Form 906 prior to closure to Centralized Case Processing (CCP).

All other agreed cases without a Form 906 should be closed directly through Centralized Case Processing (CCP).

Note: Form 906 Closing Agreements are used to make assessments when there is a barred assessment statute (ASED) or uncertainty concerning the ASED. Typically, an examiner will work the barred ASED under the OO/YY alpha

statute. If the barred statute year will close **agreed** with a Form 906 Closing Agreement, the tax year should be closed to Tech Services under the OO/YY alpha statute. Once Tech Services executes the Form 906, Tech Services will update the alpha statute to AB.

For a case closing **unagreed**, there will be no Form 906. The examiner will need to update the OO/YY alpha statute to reflect actual barred statute, then, follow regular exam procedures to close the barred statute year (see [IRM 25.6.1.3 Barred Assessments/Barred Statute Cases](#)).

Case Closure - Unagreed

A voluntary disclosure is not complete until the civil examination is closed. As in all examinations, the taxpayer is entitled to all rights to contest determinations under [Publication 1](#).

In cases where the taxpayer and the IRS cannot reach an agreement, the examiner must determine whether the lack of agreement results from a disagreement over a technical issue or results from lack of taxpayer cooperation. If the lack of agreement results from a lack of cooperation, examiners must consider procedures to request CI revoke preliminary acceptance.

Unagreed voluntary disclosure cases should be closed through Technical Services following standard closing procedures for either an Appeals conference or Statutory Notice of Deficiency (SNOD).

Unagreed cases should consider expanding the scope of the examination and assessing all applicable penalties. Consult with your VDP analyst and VDP Counsel. Consistency across the program is essential.

Revocation of Preliminary Acceptance

In the event a taxpayer fails to cooperate with the civil examination, the examiner may request that CI revoke preliminary acceptance. If your taxpayer is not in agreement with the terms of VDP, discuss with your analyst and VDP counsel. The process for revocation includes the examiner sending an initial letter providing a warning about the lack of cooperation to the taxpayer. If the taxpayer continues to be uncooperative, the examiner will send a second letter informing the taxpayer that the examiner may request that CI revoke preliminary acceptance. This letter allows time for the taxpayer to request a review of the examiner's preliminary decision by a Territory Manager. If the lack of cooperation continues, the examiner will send a memorandum to CI providing facts documenting the lack of cooperation. CI will review the request from the examiner. When CI revokes preliminary acceptance, CI will do so in writing to the taxpayer with notification to the examiner.

A visual [Flow Chart of the Revocation Process](#) is available on the [Voluntary Disclosure Practice SharePoint Page](#)

Note: VDP taxpayers are under examination. These cases are not certifications like within OVDP. **Revocation is at the discretion of the Service.** A taxpayer cannot request revocation, be removed, or opt out from the program. VDP follows standard examination procedures. If the taxpayer does not agree, they can exercise their appeal rights. They are not eligible to participate in other avenues for compliance.

STEPS FOR REVOCATION:

Requests for revocation are expected to be **rare**.

In the event a taxpayer fails to cooperate with the civil examination (cooperation is described in paragraph 4 of IRM 4.63.3.26.1), the examiner may request that CI revoke preliminary acceptance. Examiners should attempt multiple requests (at least 2-3) with a taxpayer before considering revocation. Examiners should continue to actively work both the Title 26 and 31 examinations (if applicable) while pursuing revocation. The steps for revocation are outlined in the following paragraphs.

Note: If the taxpayer responds to either revocation letter before the end of the 30/45 day waiting period, you may move to the next step without waiting for the waiting period to expire.

Note: Maintaining a detailed Form 9984 - Examining Officer's Activity Record, documenting examination's requests for information and the taxpayer's response will be key in preparing the summary for a revocation request.

Discuss the lack of cooperation with the taxpayers/representatives. If taxpayers remain uncooperative, the examiner should discuss the facts and circumstances of the case with the Group Manager (GM), domestic/offshore Voluntary Disclosure Practice analyst, and VDP Counsel.

If it is agreed that the taxpayers are not cooperating, proceed with next step.

- 1) Issue Letter 6229 – Voluntary Disclosure Practice Revocation informing the taxpayers their preliminary acceptance into the Voluntary Disclosure Practice is conditional, in part, on cooperation.
 - a. Provide the examiner's information as the contact information.
 - b. Letter 6229 should be signed by the examiner.
 - c. Complete grid at the end of Letter 6229 detailing the dates, contacts made, and results of the contact.
 - d. Enclose a new Form 4564, Information Document Request, listing all outstanding information previously requested.
 - e. Allow 30 days response time (45 days if outside the U.S.).

- f. If the taxpayers remain uncooperative, proceed to next step as shown in paragraph 2 below.
 - g. If the taxpayers become cooperative, continue with the examination.
 - h. If the taxpayers become cooperative then later resume uncooperative behavior, skip to the next step in paragraph 2 below and issue Letter 6230. Letter 6229 does not need to be reissued and the waiting period does not reset.
- 2) Issue Letter 6230 – Voluntary Disclosure Practice Revocation Status is a follow up letter to Letter 6229, addressing taxpayers' continued lack of cooperation. Taxpayers may request a review of the examiner's decision to request CI revocation of preliminary acceptance in writing to the Territory Manager (TM).
- a. Enter TM or designee contact information in body of the letter. The designee can be the Group Manager.
 - b. Provide the examiner's information as the contact information.
 - c. Letter 6230 should be signed by the examiner.
 - d. Allow 30 days response time (45 days if outside the U.S.).
 - e. If the taxpayers fail to respond or remain uncooperative, proceed to next step in paragraph 3 below.
 - f. If the taxpayers request a TM conference, the examiner should coordinate a mutually agreeable time, preferably within two weeks of the request.
 - g. If an agreement is not secured after TM conference, move to the next step as shown in paragraph 3 below.
 - h. If the taxpayers become cooperative, continue with the examination. Explain to the taxpayers/representatives that further failure to cooperate may result in the revocation referral being made without notification.
 - i. If the taxpayers become cooperative and then later resume uncooperative behavior, skip to the next step in paragraph 3 below. Letter 6230 does not need to be reissued and the waiting period does not reset.
- 3) If after issuance of Letters 6229 and 6230, it is determined that taxpayers are not cooperating, complete the "[Voluntary Disclosure Practice – Revocation Referral Request](#)" found on the Voluntary Disclosure Practice SharePoint.
- a. Prepare an executive summary of your case, highlighting the taxpayer's lack of cooperation. All pertinent facts and circumstances should be provided for CI to make an informed decision.
 - b. Send the completed request to your voluntary disclosure domestic or offshore analyst for elevation to CI.
- 4) Continue with the examination while waiting for a determination. Examiner may consider expanding the scope of the disclosure period as well as applying maximum penalties for all years.
- 5) The analyst will notify the examiner of CI's determination.
- 6) If preliminary acceptance is revoked, the examiner should consult with the FTA for fraud development and if applicable, refer to (1) of IRM 4.26.17.5.3, Fraud Referrals in FBAR Exams.

- 7) If preliminary acceptance is not revoked, proceed with the examination in accordance with the terms of the Voluntary Disclosure Practice. See Exhibit 4.63.3-11– Voluntary Disclosure Practice Flow Chart Revocation Process.

In certain other extraordinary circumstances, CI may revoke preliminary acceptance upon the written request of Exam personnel. If you identify egregious post-disclosure period non-compliance, clear signs of false material statements on the Form 14457, or other exceptional circumstances, please coordinate with your VDP analyst and VDP Counsel. The following hypothetical illustrates “other exceptional circumstances”:

Taxpayer admits on Form 14457 Part II to skimming cash corporate receipts from her C corporation. Taxpayer’s narrative fully explains the skimming and tax non-compliance. Taxpayer submits amended corporate and individual income tax returns correcting the underreporting relating to the skimmed cash receipts. The skimmed corporate cash receipts average approximately \$1 million per year. During the examination, the revenue agent identifies material unreported income from virtual currency transactions. Taxpayer failed to report approximately \$500,000 of net income from virtual currency transactions in each year of the disclosure. That income was not mentioned by taxpayer on the Form 14457 Part II and was not included on taxpayer’s amended income tax returns. The revenue agent should coordinate with management, the VDP analyst, and VDP Counsel to consider writing a memo to CI to revoke preliminary acceptance based on a materially false VDP submission. The revenue agent should carefully document all representations made by taxpayer’s representatives under such circumstances. If the representative provided oral assurances that the amended returns were complete and accurate and a subsequent fraud referral is made, the representative may be a witness or possibly a target.

(b)(7)(E)

SharePoint - Voluntary Disclosure Practice

The [Voluntary Disclosure Practice SharePoint](#) page at [redacted] was created to house materials specific to the Voluntary Disclosure Practice (such as template Form 906 Closing Agreements, Revocation Letters, Collection Referral Form, Payment Reconciliation Workpaper, etc.) to assist agents with their examinations.

Other Disclosure Special Features (Issues)

Employment and Other Specialty Tax Issue Cases – Additional Considerations

While working a voluntary disclosure case, the examiner can work other specialty tax issues such as Employment Tax, that are part of the submission. If the examiner is trained in Employment Tax, Estate & Gift or other specialty tax issues, a referral is not required, and the examiner can work all aspects of the Voluntary Disclosure Practice case simultaneously. Examiners should consult with a specialty Exam group and/or designated VDP Counsel if they have any questions or concerns.

Employment tax liabilities, penalties, and interest. A civil fraud penalty or a fraudulent failure to file penalty, sections 6663 or 6651(f), respectively, will apply to the tax quarter of the voluntary disclosure with the highest employment tax liability. The application of a single fraud or fraudulent failure to file penalty assumes that all terms of the Voluntary Disclosure Practice are complied with. The single fraud penalty is in lieu of accuracy-related penalties (section 6662) and delinquency penalties (sections 6651(a)(1) and (2)). The failure to deposit penalty under section 6656 will apply when it is normally applicable. The calculation of the employment tax liability will be made without regard to section 3509(a) or (b) rates. The applicable supplemental income tax withholding rate will be applied in cases where the employer failed to deduct and withhold income tax from employees' wages. Relief under Section 530 of the Revenue Act of 1978 is unavailable. Suspension of interest provisions of section 6205 will not apply. Acceptance into the Voluntary Disclosure Practice and execution of a closing agreement does not obviate the taxpayer's obligations, if any, pursuant to section 6051 to file Forms W-2, *Wage and Tax Statement*, or Forms W-2c, *Corrected Wage and Tax Statement*, with the Social Security Administration reporting adjustments contained in the closing agreement; however, no amount will be reported in Box 1 of Forms W-2c. The following examples relate to how the amount of employment tax will be calculated and the application of employment tax penalties:

- a) Taxpayer failed to treat one or more workers as employees and failed to withhold and remit federal employment tax: one fraud penalty on the tax quarter with the highest tax liability and no accuracy-related penalties for all other quarters; failure to deposit penalty applied for all periods; tax liability calculated without regard to section 3509 with the income tax liability calculated using the supplemental income tax withholding rate applicable for the periods at issue.
- b) Taxpayer failed to include in employees' wages all remuneration for employment: one fraud penalty on the tax quarter with the highest tax liability and no accuracy-related penalties for all other quarters; failure to deposit penalty applied for all periods.
- c) Taxpayer failed to obtain taxpayer identification numbers from payees before making a reportable payment or failed to withhold income tax when required: one fraud penalty or fraudulent failure to file (in the case of non-filed Forms 945) on

- the tax year with the highest tax liability and no accuracy-related penalties for all other years; failure to deposit penalty applied for all periods.
- d) Taxpayer submits delinquent returns: one fraudulent failure to file penalty on the tax quarter with the highest tax liability with no delinquency penalties on the other periods; failure to deposit penalty applied for all periods.
 - e) Taxpayer submits three years of delinquent returns and three years of amended returns (24 tax quarters in total): a single penalty for either fraud or fraudulent failure to file on the tax quarter with the highest tax liability and no accuracy-related or delinquency penalties on the other periods; failure to deposit penalty applied for all periods.

Resources:

[IRM 4.24.1, Excise Tax, Introduction to Excise Taxes](#)

[IRM 4.23.1, Employment Tax - Employment Tax Objectives, Organization](#)

[IRM 4.23.25.2, Introduction to Voluntary Closing Agreement Requests to Resolve Employment Tax Issues](#)

Estate and Gift – Voluntary Disclosure Penalty Framework

The Voluntary Disclosure Practice penalty framework for Estate & Gift examinations can be found in IRM 4.63.3.26.14.1 and the Instructions to the Form 14457.

A civil fraud penalty or a fraudulent failure to file penalty, sections 6663 or 6651(f), respectfully, will apply to the deficiency in estate tax for all voluntary disclosures involving estate tax issues at the reduced rate of 50% rather than the statutory rate of 75%.

The following examples relate to estate tax penalties:

- a. **Omitted Asset:** Executor of Estate Alpha filed a Form 706 for year 201X. Executor intentionally omitted \$2,000,000 of assets that should have been reported on the Form 706. Executor submits an amended Form 706, and a fraud penalty applied at the rate of 50% rather than 75% will apply to the deficiency in estate tax resulting from the omitted assets.
- b. **Non-File:** Executor of Estate Alpha intentionally failed to file a required Form 706 for year 201X. Executor files a Form 706, and a fraud penalty applied at the rate of 50% rather than 75% will apply to the deficiency in estate tax resulting from the fraudulent failure to file the return.
- c. **Valuation:** Executor of Estate Alpha filed a Form 706 for year 201X. Executor intentionally reported a fraudulent value on the return. Executor submits an amended Form 706, and a fraud penalty applied at the rate of 50% rather than 75% will apply to the deficiency in estate tax resulting from the fraudulent value.
- d. **Gifts/Deductions/Exclusion/Credits/Tax:** Executor of Estate Alpha filed a Form 706 for year 201X. Executor intentionally reported fraudulent lifetime

gifts, deductions, exclusion, credit and/or total transfer tax on the return. Executor submits an amended Form 706, and a fraud penalty applied at the rate of 50% rather than 75% will apply to the deficiency in estate tax resulting from the fraudulent reporting on the return.

Gift Tax and Generation-Skipping Transfer Tax Penalties: A civil fraud penalty or a fraudulent failure to file penalty, sections 6663 or 6651(f), respectively, will apply to the deficiency in gift tax and generation-skipping transfer tax for all voluntary disclosures involving gift tax and generation-skipping transfer tax issues.

If the fraudulent activity or reporting involves multiple years, the 6-year disclosure period does not apply. The taxpayer submits original and/or amended returns for all years, and a fraud penalty is assessed on the year with the highest tax liability and no accuracy-related penalties for the other years.

The following example relates to gift tax penalties involving multiple years: Donor makes gifts for 9 years from 201X to 201X and intentionally failed to file Forms 709 for all years. Donor files Forms 709 for all 9 years, and a fraud penalty applied at the rate of 75% is assessed on the year with the highest tax liability and no accuracy-related penalties for the other years.

1. If the fraudulent activity involves a single year, a fraud penalty at the rate of 50% rather than 75% will apply to the deficiency in gift or generation-skipping transfer tax resulting from the fraudulent activity.
2. The examples that relate to estate tax penalties apply to a donor with respect to gifts, and with respect to generation-skipping transfer tax distributions and terminations.

Offshore Issue Cases - Additional Considerations

Scope of Examination

Unless there are other substantial issues worthy of examination, these examinations should first concentrate on gross income and foreign financial accounts. Focus on the source of funds deposited into/funding foreign financial assets and whether the income earned in the foreign financial assets (e.g., interest income, securities sales, income from a foreign entity) was properly reported by the taxpayer. Deposits into and withdrawals/transfers from the taxpayer's domestic accounts from/to any of the offshore accounts should provide a financial trail to expose the taxpayer's offshore presence. Trace the funding of foreign financial assets and determine whether the asset was funded with previously unreported income even if the income earned by the foreign financial asset seems insignificant.

The taxpayer may also have ownership interests in foreign entities such as foreign corporations, partnerships, foundations, and trusts. A detailed discussion of foreign

entities is beyond the scope of this examination guide. If foreign entities are discovered, contact the Foreign Entities Practice Network (PN) for further information.

As with all offshore cases, there is a potential lack of compliance regarding information reporting of the taxpayer's foreign financial assets. See the section below on FBARs & Information Returns for more details about reporting requirements.

Although the taxpayer is coming forward voluntarily to disclose their non-compliance because they believe they have criminal exposure, it is the responsibility of the examiner to conduct and document thorough income tax, FBAR and international information return penalty examinations to determine if the taxpayer acted willfully or fraudulently. The Voluntary Disclosure Practice recommends terms and a penalty structure based upon taxpayer cooperation, but regular exam procedures must be followed. Take a holistic approach toward your examination. The examiner should keep in mind the publicity surrounding the various offshore compliance programs/initiatives (2009 OVDP, 2011 OVDI, 2012 OVDP, 2014 OVDP...) and the Department of Justice's Swiss Bank Program.³ Examiners should verify that the taxpayer is in full compliance after the voluntary disclosure was made.

The following hypothetical illustrates a typical fact pattern and resolution:

- Taxpayer 1 is a U.S. citizen who lives in California, but he was born in Italy and lived in Italy for parts of his adult life. Taxpayer 1 has several bank accounts in Italy and a Swiss bank account established by his grandfather's estate for Taxpayer 1's inheritance. The Swiss bank account was held by a nominee foreign corporation. Taxpayer 1 was listed as the beneficial owner of the Swiss bank account. Taxpayer 1 consistently accessed the Swiss account making withdrawals from the account and never informed the Swiss bankers of his U.S. citizenship. Taxpayer 1 intentionally did not tell his return preparer about his foreign bank accounts and checked "no" to the question about having foreign bank accounts on Schedules B filed with his tax returns. Taxpayer 1 fully cooperates with the civil examination. The examiner asserts the civil fraud penalty for one year and a willful FBAR penalty totaling 50% of the highest aggregate balance in all foreign bank accounts.

³ For information on the Swiss Bank Program see <https://www.justice.gov/tax/swiss-bank-program>

Example of an Offshore Structure – Common Swiss Banking Practices

Taxpayers may have structured accounts, where U.S. persons would create an entity, such as a Liechtenstein foundation, a Panama corporation, or a British Virgin Islands corporation, and pay a fee to third parties to act as corporate directors. Those third parties, at the direction of the U.S. person, would then open a Swiss bank account in the name of the entity or transfer funds from a pre-existing Swiss bank account at another Swiss bank. In certain cases that involved a non-U.S.-based entity, the Swiss bank was aware that a U.S. person was the true beneficial owner of an account. Despite this, the respective bank would obtain from the entity's directors an IRS Form W-8BEN or equivalent bank document in which the directors falsely declared that the beneficial owner was not a U.S. person. Although it was highly probable that in such cases the U.S. person was avoiding U.S. taxes, some of these accounts were permitted to trade in U.S. securities without the respective bank reporting account earnings or transmitting any withholding taxes to the IRS, as required by its Qualified Intermediary ("QI") Agreement.

In some instances, relationship managers at the Swiss bank met with or took directions or instructions from the U.S. beneficial owner of an offshore account, instead of the directors or other authorized parties on the account. Some of these relationship managers interacted with corporate service providers, including Swiss lawyers, who assisted U.S. taxpayers in setting up nominee entities for their undeclared accounts. In some instances, relationship managers referred U.S. clients who were interested in creating nominee offshore entities to these corporate service providers. After these entities were created, relationship managers assisted these clients in opening and maintaining accounts at the Swiss bank.

Swiss law requires Swiss banks to identify the true beneficial owner of structures on a document called a Form A or an equivalent document. Banks knew that these accounts were beneficially owned by the U.S. persons. Nonetheless, for numerous such accounts, Swiss bank relationship managers and other employees knowingly accepted and included in account records IRS Forms W-8BEN or equivalent bank documents provided by the directors of the offshore companies that falsely represented under penalty of perjury that such companies were the beneficial owners, for U.S. income tax purposes, of the assets in the Swiss bank accounts. This aided and assisted the U.S. clients in concealing these assets and income from the IRS.

Some offshore cases also involve fictitious business expenses/invoicing to move funds to foreign financial assets. For example, a taxpayer with a domestic entity may pay fictitious expense to move funds offshore. Expand the scope of the examination based on the facts of the case.

If the taxpayer does not want to accept the default terms of the Voluntary Disclosure Practice (fraud penalty for one year and willful FBAR penalty), then examiners must probe any reasonable cause arguments that the taxpayer might raise against the assertion of penalties. This will help solidify and support the assertion of fraud and willful FBAR penalties and international information return penalties if the taxpayer becomes uncooperative. Be sure to question the taxpayer specifically as to possible reliance on tax experts in deciding whether or not to report the income which may have been diverted to these offshore bank accounts and the income earned on these accounts. If the taxpayer claims to have relied on the advice of professionals, determine who provided the advice and whether the taxpayer provided the advisor with all the information necessary to make a proper judgment. If needed, interview the experts the taxpayer claims to have relied upon to determine what information the taxpayer gave them, what advice the expert provided, and in what format the advice was provided (e.g., orally or in writing). Before proceeding with an interview that probes reasonable cause, carefully review the narrative on Form 14457, Part II. Taxpayers are required to disclose information on professional advisors in their narrative.

IRC 965 Transition Tax

Contact your analyst for assistance and available resources to assist with this issue.

The IRC § 965 “transition tax” treats deferred foreign income as Subpart F income. IRC § 965(a) defines deferred foreign income as the greater of the accumulated post-1986 deferred foreign income of such corporation determined as of November 2, 2017 or December 31, 2017. IRC § 965(d) further clarifies that in the case of a Controlled Foreign Corporation (CFC), deferred foreign income does not include income that would be excluded from gross income of a United States Shareholder under IRC § 959, i.e., Previously Taxed Income (PTI).

A taxpayer participating in VDP remedies a specific number of tax years. For taxpayers that own CFCs or otherwise have Subpart F income, part of coming into compliance includes reporting applicable Subpart F income. Since the disclosure scope within VDP is generally six years, noncompliant years prior to the disclosure scope may have previously untaxed Subpart F income. Absent the Subpart F income actually being reported by the taxpayer, VDP does not constructively provide the taxpayer with PTI for pre-disclosure years. In other words, a taxpayer using VDP must strictly comply with the Internal Revenue Code for purposes of § 965 and computing PTI. Taxpayers must properly account for and report Subpart F income and PTI and only amounts actually reported by the taxpayer prior to the disclosure period and amounts reported as part of the disclosure will constitute PTI.

Special language is required in the Form 906 Closing Agreement for IRC 965 Transition Tax.

FBARs

Under the terms of the Voluntary Disclosure Practice the “willful” FBAR penalty will presumptively apply if an FBAR violation occurred.

In general, the willful FBAR penalty will be 50% for the year of the disclosure period with the highest HAB.

To ensure consistency within the Voluntary Disclosure Practice any deviation must be approved by designated Voluntary Disclosure Practice Counsel.

With limited exception discussed in this guide, examiners must follow regular FBAR examinations procedures under [IRM 4.26.16](#) and [4.26.17](#), including proper and timely approvals for willful FBAR penalties.

A related statute memorandum (RSM) must be secured before initiating the FBAR examination, discussing FBAR matters with the taxpayer or representative and requesting FBARs information.

Note: Examiners must have an approved Form 13535, Related Statute Memorandum, in order to discuss FBAR matters with the taxpayer or representative, even if authorization is provided on Form 2848. A new Form 2848 is not needed if the RSM is secured after the Form 2848 was authorized. [IRM 4.26.17.3.2](#)

The willful FBAR penalty should be developed regardless of whether the TP plans to agree with an FBAR Agreement. Development is necessary because the taxpayer may not agree to sign an FBAR agreement.

It is anticipated that for most cases FBAR penalty “mitigation threshold conditions” under IRM 4.26.16.6.1(2)(d) will **not** be met since the terms of the Voluntary Disclosure Practice require the assessment of a civil fraud penalty.

Note: The civil fraud or fraudulent failure to file penalty does not need to be applied to the same year as the willful FBAR penalty. For purposes of determining mitigation, we look to the entire disclosure period.

Examiners should request bank statements or equivalent documents that include the violation dates. If they are not provided, examiners must document in the casefile why they have not been provided, including proof from the taxpayer supporting their efforts to secure the necessary records.

It is essential to establish the account balance on the violation date (June 30th for years 2015 and prior or April 15th for years 2016 and later). As a general rule, we need to use the June 30th or April 15th balance in determining the penalty calculation. If the agent is unable to secure the violation date balance, the file needs to be notated describing all attempts to secure them. If the violation date bank statement is available and the taxpayer is not providing it, remind the taxpayer of cooperation and if necessary, consider summons enforcement.

Approval of willful FBAR penalties will require review by your FBAR coordinator and designated Voluntary Disclosure Practice FBAR Counsel, not local FBAR counsel. Please coordinate with your offshore voluntary disclosure practice analyst.

Note: The FBAR penalty approval form was updated 4/2021. FBAR coordinator and FBAR counsel are no longer signing the FBAR penalty approval form, rather they will provide a separate email/memo documenting their position.

References:

- [IRM 4.26.16](#) , *Bank Secrecy Act, Report of Foreign Bank and Financial Accounts (FBAR)*, which describes FBAR law and examination requirements, and [IRM 4.26.17](#), *Report of Foreign Bank and Financial Accounts (FBAR) Procedures*,

which outlines the procedures in an FBAR examination and assessing FBAR penalties.

- [Interim Guidance for Report of Foreign Bank and Financial Accounts Penalties, Control Number SBSE-04-0515-0025](#), dated May 13, 2015, which directs certain FBAR cases be coordinated with Operating Division FBAR Coordinators.
- For LB&I examinations - "[LB&I Procedures regarding the Interim Guidance for Report of Foreign Bank and Financial Accounts \(FBAR\) Penalties](#)" dated September 29, 2015.

For calendar years 2015 and earlier, the FBAR is due June 30th of the year following the calendar year being reported. For calendar years 2016 and later, the due date for the FBAR is April 15th of the year following the calendar year being reported. For purposes of FBAR examinations for years 2016 and later, Counsel recommends using April 15th as the violation date as a conservative position. We also recommend securing account statements through October 15 of the year following the calendar year being reported for all unagreed cases.

If the taxpayer has a financial interest in or signature or other authority over one or more foreign financial accounts and the combined balances of those accounts exceeds \$10,000 at any time during the calendar year, the taxpayer is required to file an FBAR. To determine applicable FBAR penalties, refer to I.R.M. 4.26.16, Report of Foreign Bank and Financial Accounts (FBAR), which describes FBAR law and examination requirements and IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures, which provides the procedures that apply to an FBAR examination.

In general, the statute of limitations for assessing FBAR penalties is six years from the due date of the return. In all VDP FBAR examinations, examiners must solicit a consent to extend the civil statute of limitations on FBAR penalty assessment using the [Consent to Extend the Time to Assess Civil Penalties Provided by 31 U.S.C. §5321 for FBAR Violations](#) pursuant to [IRM 4.26.17.3.1.3, Extending the FBAR Statute of Limitations](#) for **all years of the disclosure period**. The FBAR statute may be extended or waived by the taxpayer after expiration. In other words, an expired FBAR statute **can be resurrected** with taxpayer consent.

Note: Related Statute Memorandums should be secured for all tax periods with open FBAR statutes. Once the RSM(s) has been secured the Examiner should follow procedures as outlined in IRM 4.26.17.2.1.3.

For years in the disclosure period that have barred statutes or statutes with less than one year, the Examiner should first request FBAR statute extensions and then secure an RSM by following procedures as outlined in IRM 4.26.17.2.1.2 & 3 and IRM 25.6.23.1 as applicable.

The FBAR Consent is a common law waiver of the statute. The Title 26 Form 872 is an anomaly for waivers in that it requires an open statute in order to extend. The FBAR consent should be solicited for all years. If the

taxpayers/representatives refuse to sign the consent, request VDP Counsel support.

A related statute memorandum (RSM) must be secured before initiating the FBAR examination and requesting FBARs from a taxpayer. A separate case file must be maintained for the FBAR examination. Duplicate copies of all relevant documentation **must** be included in the FBAR examination file. Relevant documentation for the FBAR examination file includes but is not limited to complete copies of all income tax returns.

Do not ask the taxpayer about FBAR compliance before obtaining a signed Related Statute Memorandum (RSM). I.R.M. 4.27.17.2(1)b states: "The examiner should not ask interview questions or request documents that are only relevant to the FBAR examination without first obtaining a related statute memorandum signed by the examiner's Territory Manager." An examiner must secure an RSM to use information from the Title 26 audit in an FBAR examination. I.R.M. 4.26.17.2 (1)(f) and (g).

Note: *The narrative provided by the taxpayer will likely have sufficient facts for an RSM determination.*

We recommend securing the RSM prior to contacting the taxpayer. Also, a separate RSM is required for each year an FBAR was required, each person required to file an FBAR (there is no provision for joint filing by spouses), and each entity required to file an FBAR. Consult with your Area's FBAR Coordinator for additional information.

FBAR exceptions specific to the Voluntary Disclosure Practice

- FBAR Agreements are not required but highly recommended. Templates are available and should be modified for the facts and circumstances of the case. For assistance with drafting contact your offshore Voluntary Disclosure Practice analyst.
 - For cases resolved with an FBAR Agreement, apply the penalty per the FBAR agreement.
 - Pro-rata allocate the penalty as described in [IRM 4.26.16.6.5.3\(2\), Penalty for Willful FBAR Violations - Calculation](#).
 - If statutory maximum limitations apply, consult with your offshore analyst and Voluntary Disclosure Practice FBAR Counsel.
- After FBAR Coordinator completes their review and makes a recommendation, final review, and approval of FBAR penalties is performed by the **Voluntary Disclosure Practice FBAR Counsel Coordinator (not local FBAR counsel)**. FBAR Agreements should be sent for review along with the Form 906 Closing Agreement to your offshore analyst for coordination.
 - FBAR penalty approval and closing agreement review must be completed in conjunction with VDP Counsel Form 906 Closing Agreement review
 - Designated VDP Technical Services will execute Voluntary Disclosure Practice Closing Agreements and FBAR Agreements.
- At the beginning of the exam, examiners should discuss with the taxpayer/representative the penalty framework and whether it is their intention to

agree, sign an FBAR Agreement and pay in full. **IF the taxpayer agrees and will sign an FBAR Agreement, the VDP FBAR penalty development need not be exhaustive.** To conserve valuable resources, in many cases, the Taxpayer's narrative and interview will be sufficient for documenting the case file in support of fraud and willfulness. But the write up must provide sufficient detail to document the taxpayer's willful conduct. When an FBAR Agreement is entered, a taxpayer has no rights to contest the penalties before the Independent Office of Appeals. However, if the case is unagreed, the Examiner will be required to fully develop willfulness so that it could be upheld in Appeals or court if challenged.

VDP FBAR Agreement Procedures

Per the VDP penalty framework, it is anticipated that all Offshore VDP cases with FBAR noncompliance will be assessed a willful FBAR penalty.

- It is expected, at the beginning of the examination, that the examiner and the taxpayer/representative will have discussed the VDP Penalty Framework , (the penalty structure and agreement to full pay) **before** working the FBAR case. This enables the examiner to determine the depth of penalty write up necessary and whether an FBAR Agreement should commence.
- **It is highly recommended that VDP FBAR penalty cases close with an FBAR Agreement.**
- Examiners should use the FBAR Agreement templates posted on the VDP SharePoint site as a starting point and consult with their VDP Offshore analyst in drafting the FBAR Agreement as necessary.
- Examiners will request operating division FBAR Coordinator review and approval of the proposed FBAR penalty per IRM 4.26.17.4(2)b.
- After securing FBAR coordinator approval, the examiner will coordinate with the VDP Offshore analyst to obtain **VDP FBAR Counsel** (not local FBAR counsel) approval of the FBAR penalty and the FBAR Agreement.
 - The FBAR penalty approval will be performed simultaneously with the initial review of the FBAR Agreement and Form 906.
 - Documents for VDP FBAR Counsel review includes: FBAR coordinator approval, written case summary (see IRM 4.26.17.2.4.1(1)(g) and 4.26.17.4(2)(a)), draft Form 906, FBAR Agreement, Form 13449, FBAR penalty computation, Form 4549-A).
- VDP FBAR Counsel will prepare a brief memo summarizing the facts and providing an opinion about the willful FBAR penalty. This memo will also document VDP FBAR Counsel review of the FBAR Agreement.

In general, examiners will follow IRM 4.26.17.4 for closing VDP FBAR cases with exceptions noted (in red) below.

- Examiners will issue the approved closing agreement package to the taxpayer for signature. The FBAR Agreement package includes:

- **In lieu of Letter 3709, a 'cover letter', drafted by the examiner and approved by the manager, to include the following information and instructions:**
 - Proposed penalty is for the willful failure to file a complete and accurate FBAR under 31 U.S.C. § 5321(a)(5)
 - Direct the taxpayer to sign, date, and return FBAR Agreement
 - Direct the taxpayer to sign each Form 13449 attached to the FBAR agreement AND initial each and every page of the Form 13449 attached to the FBAR agreement.
 - Payment options per IRM 4.26.17.4.4:
 - Full payment via check or money order payable to the United States Treasury, include the taxpayer identification number (TIN) and year(s) for which the FBAR payment is made.
 - Electronic payments are **not** available for FBAR penalties.
 - Provide a response date and where/how to sign and return (by mail, eFax or electronically) See [NHQ-01-1120-0004](#). If issuing the FBAR Agreement package simultaneously with the Form 906 Closing Agreement package, it is recommended that the response due dates of the two packages are coordinated.
 - **No changes are to be made to the enclosed forms.**
 - **After execution by the Service, one copy of the FBAR Agreement will be returned to you.**
 - Contact information for any questions
- Approved FBAR Agreement
- [Form\(s\) 13449 – Agreement to Assessment and Collection of Penalties Under 31 USC 5321\(a\)\(5\) and 5321\(a\)\(6\)](#)
 - Form 13449 requires taxpayer signature.
 - Penalties must be allocated down to the account level.
 - Consolidate the Form 13449 for all years as an “attachment” to the FBAR Agreement. Insert a header. See instructions on the VDP SharePoint.
- Written summary (see IRM 4.26.17.4(2)a for contents)
 - For agreed cases with a closing agreement an abbreviated written summary is acceptable for VDP, so long as it addresses all the requirements in 4.26.17.4(2)a.
- [Notice 1330 – Information on Making FBAR Payment by Check](#)

NOTE: The examiner should not begin the case closing process until the taxpayer has returned **both** the signed Form 906 Closing Agreement **and** the FBAR Agreement. Closing procedures differ for Title 26 and Title 31 cases. The examiner will send the Title 26 case file(s) and Form(s) 906 to Tech Services. The examiner will not send the Title 31 (FBAR) case file to Tech Services. **Only** the FBAR Agreement signed by the taxpayer will be electronically forwarded to Tech Services for execution. **Examiners should place copies of the signed but unexecuted FBAR Agreement in all related return case files. Make a notation in your Title 26 and Title 31 case file (activity record and lead sheet) as to which Tech Services executed the FBAR Agreement.** After Tech

Services has executed FBAR Agreement they will return an executed copy to the examiner for issuance to the taxpayer and the FBAR casefile.

- (b)(7)(E)
- Upon receipt of the signed FBAR Agreement and after reviewing for completeness and alterations, Examiners will **electronically forward 1) the signed FBAR Agreement and 2) Counsel's approval memo to** Technical Services designated to VDP at *SBSE Tech Svcs VDP 906 Review
[REDACTED]
 - Since the penalty has been reviewed and approved by VDP FBAR Counsel, the physical FBAR casefile does not need to accompany the FBAR Agreement to Technical Services for execution. The examiner should **retain the physical case file**.
 - Authorization and guidance for digital signatures is in IRM 4.10.1.4.4, Digital Signatures.
 - The exam group should maintain control of the FBAR case on ERCS (**do not update to status 21**).
 - Technical Services is delegated authority to execute FBAR Agreements for SBSE/WEIIC. Territory Manager is delegated for LB.
 - The office executing the FBAR Agreement will follow normal retention policy which currently requires a hard copy of the executed FBAR Agreement to be kept on file indefinitely.
 - After the FBAR Agreement is executed, an electronic copy will be provided to the examiner.
 - **Examiner will send a copy of the executed FBAR Agreement to the Taxpayer/Representative.**
 - Draft a cover letter by modifying language in IRM Exhibit 8.13.1-22 and Letter 1595-E, as appropriate for FBAR matters.
 - Submit the letter and a copy of the executed FBAR Agreement for manager's signature. Once signed, forward to the taxpayer, with a copy to authorized POA(s) with Letter 937.
 - **Retain a copy of all correspondence and the executed FBAR Agreement in the physical FBAR case file and a copy in all related exam case files for reference.**
 - Examiners should follow IRM 4.26.17.4 for preparing case to close from the group
 - See [SBSE-04-1120-0074](#) for **COVID FBAR Case Closing Instructions**
 - **There are no Appeal rights if the taxpayer agreed and the FBAR Agreement has been executed.**
 - **If the taxpayer does not agree to sign the FBAR Agreement and penalties are proposed, Letter 3709 must be issued with Form 13449.**
 - **If appropriate, after the FBAR Agreement has been executed, the examiner will follow existing procedures to update the ERCS statute to Alpha Code "AB" per IRM Exhibit 25.6.23-3.**

Moving Mispusted FBAR Payments

If an agent receives payment for an FBAR Penalty, payments should be processed per [IRM 4.26.17.4.4, Closing the FBAR Case – Payment and Collection](#) paragraph (5).

Prior to case assignment, any pre-payments designated for FBAR penalties received by Austin will be applied by ACU to MFT 55. As soon as practical, once the FBAR penalty is determined and before closing the FBAR case, examiners should consider and discuss with the taxpayer applying the pre-payments to Title 26 deficiencies first and then request taxpayer provide a separate payment to satisfy any outstanding FBAR liability. If, there are no Title 26 penalties to absorb the pre-payments examiners must follow [IRM 4.26.17.4.4.1, Instructions for Mispusted FBAR Payments](#), to move the funds from MFT 55. Confirm fund movement from MFT 55 via transcript, which must be printed and included in the physical FBAR case file before closing it from the exam group. Please contact your VDP analyst for assistance.

Note: The information in [IRM Exhibit 4.26.17-5](#) provides a fax number for Ogden which is no longer in operation. For Form 2424 required to be submitted to the Ogden Campus, mail them to the address listed in [IRM Exhibit 4.26.17-5, Campus Contacts for Mis-posted FBAR Payments](#):

1973 N Rulon White Blvd
M/S 6261
Ogden, UT 84201

Each case file must be defensible independent of the other. This statement means Title 31, Title 26, and other penalty case files must contain complete records to support the assessment and penalty calculation. Bank records, tax returns, notes from taxpayers, and other third-party individual's interviews must be included in all files.

International Information Returns

The terms of the of the Voluntary Disclosure Practice allow for examiner discretion in applying other international information return (IIR) penalties. We anticipate application of IIR penalties in rare situations to provide penalty consistency among similarly situated taxpayers holding foreign assets. Specifically, in some unusual cases where taxpayers hold foreign assets not reportable on FBARs, examiners may use IIR penalties to ensure consistency among taxpayers making voluntary disclosures.

Form 8938 - Beginning with tax year 2011, I.R.C. § 6038D imposes a penalty for failing to file Form 8938 *Statement of Specified Foreign Financial Assets* reporting the taxpayer's interest in certain foreign financial assets, including financial accounts, certain foreign securities, and interests in foreign entities. The penalty for failing to file this information return is \$10,000, with an additional \$10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$50,000 per return.

Other International Information Returns –If you discover that the taxpayer owned or controlled foreign entities, various sections of the Internal Revenue Code and regulations require reporting of transactions and relationships between U.S. persons and foreign entities. Each information return has specific filing requirements and associated penalties. The various information return must be filed as part of the disclosure. Additionally, even if the information returns were timely or previously filed, they may not be complete or did not substantially complied with the law. Some common information returns follow:

1. Form 3520, “Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts” and Form 3520-A, “Annual Information Return of Foreign Trust with a U.S. Owner.” I.R.C. § 6048.

Note: *Form 3520 - In general, gifts and inheritances are not taxable to the recipient. I.R.C. § 102. Many taxpayers and representatives know that basic tenant of tax law but are not aware of the requirement to report large foreign gifts and inheritances under I.R.C. § 6039F. Section 6039F imposes information reporting penalties for failing to report a large foreign gift or inheritance. A taxpayer may allege that the source of funds in a foreign financial asset is from a gift or inheritance from a foreign source. If that arises, ask the taxpayer for all facts and documents supporting the story. Analyze whether the taxpayer had a Form 3520 filing requirement for the foreign gift or inheritance and consider whether penalties under I.R.C. § 6039F apply.*

2. Form 5471, “Information Return of U.S. Persons with Respect to Certain Foreign Corporations.” I.R.C. §§ 6038, 6046.
3. Form 8865, “Return of U.S. Persons with Respect to Certain Foreign Partnerships.” I.R.C. §§ 6038, 6038B, 6046A.
4. Form 926, “Return by a U.S. Transferor of Property to a Foreign Corporation.” I.R.C. § 6038B.

For a detailed discussion of these and other requirements, refer to I.R.M. 20.1.9, International Penalties. Examiners should refer to the Failure to File IPS units developed by the Foreign Entities PN which discuss both filing requirements and related penalties with respect to most of the information returns mentioned above.

Note: *When soliciting Form 872 – Consent to Extend the Time to Assess Tax make sure to include special language related to IIR Penalties. (see [page 17](#) of Statute of Limitation Desk Guide v 2.4.19 on the Offshore Arrangements PN site).*

Note: *Follow regular examination procedures relating when accepting Form(s) 2848. Verify that the current version of Form 2848 is being used and confirm the “description of matters” section includes “Report of Foreign Bank and Financial*

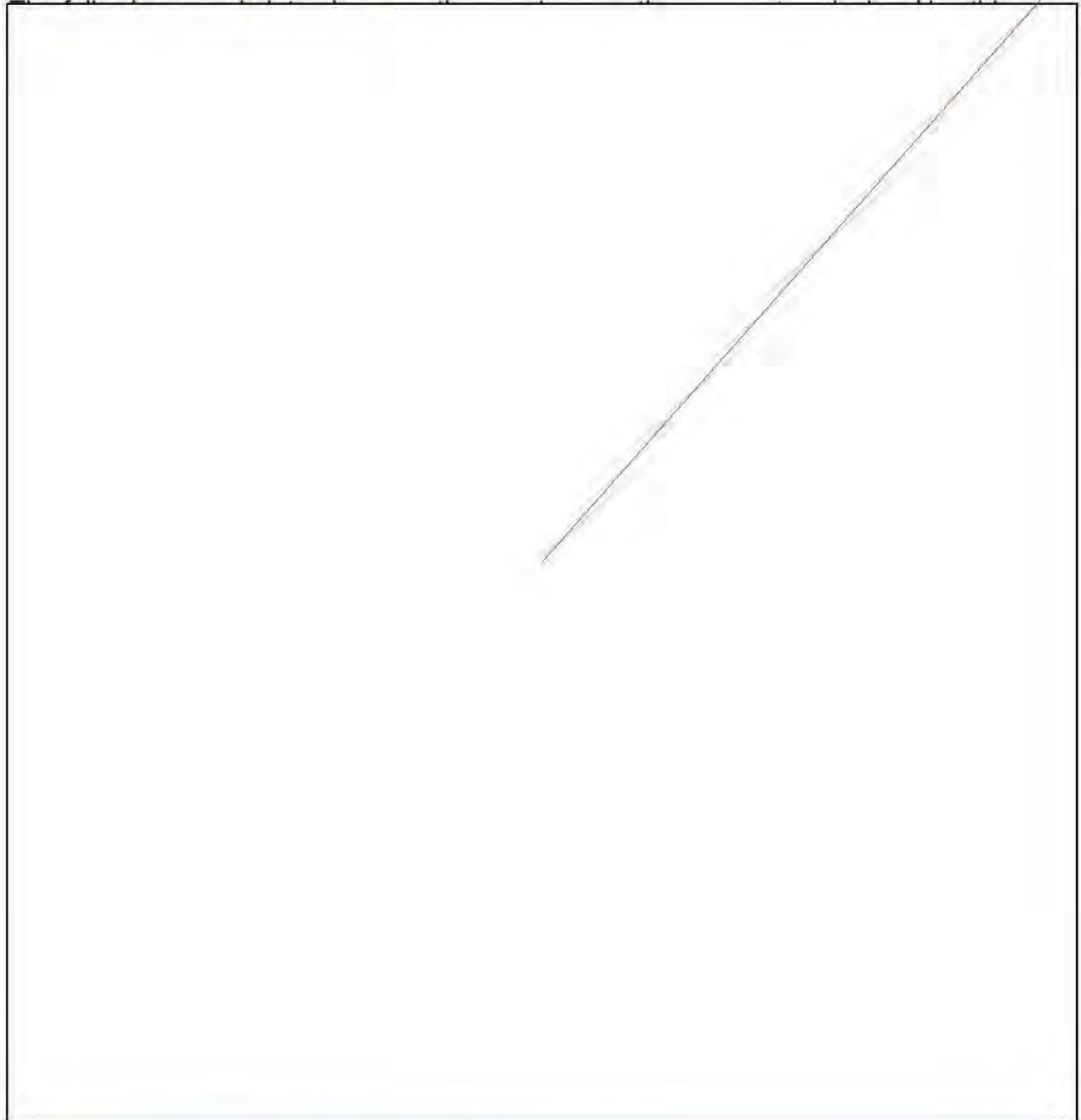
Accounts (FBAR) Matters/Penalty” and/or “Civil Penalties.” Examiners and representatives may refer to the template [Form 2848](#) posted to the [IRS Criminal Investigation Voluntary Disclosure Practice](#) page.

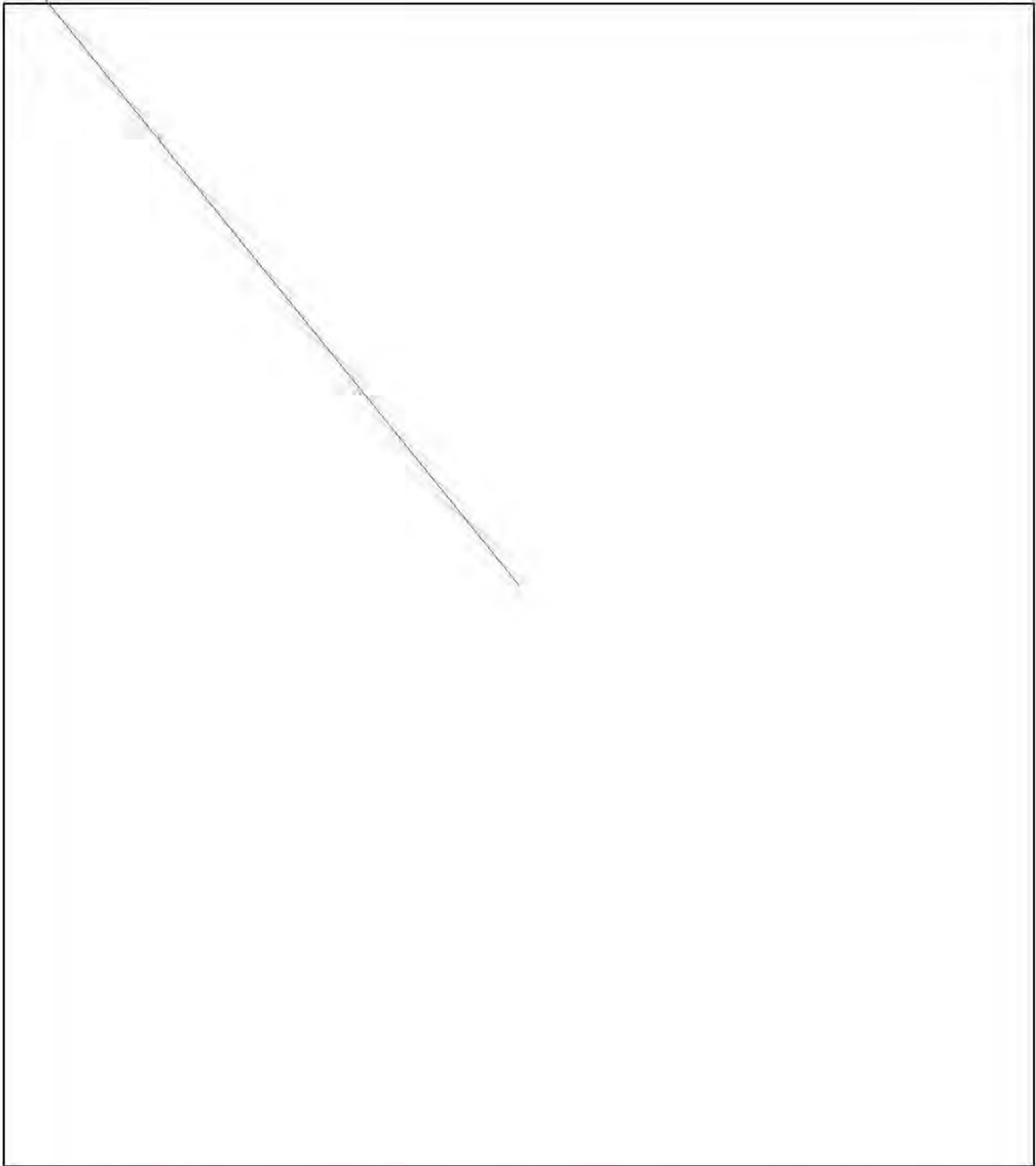
Expatriation

Guidance is pending – If your disclosure involves expatriation issues, contact your Voluntary Disclosure Practice analyst and elevate to VDP Counsel.

(b)(7)(E)

Taxpayer Interview Questions





Statutes

Statutes as discussed earlier; the examining agent has the responsibility for statute protection. In addition to statute extenders previously discussed, the following apply and are commonly used in offshore cases:

I.R.C. § 6501(c)(8)	Failure to notify Secretary of certain foreign transfers (i.e., Failure to File Forms 3520, 3520-A, 5471, 5472, 8865, and/or 926), and 8938 ⁴
I.R.C. § 6501(e)(1)(A)(ii)	Six-year statute of limitations on assessment if omission of more than \$5,000 in gross income attributable to specified foreign financial assets required to be reported under new §6038D. The effective date for § 6501(e)(1)(A)(ii) limits its application to tax years 2011 and after where 6038D reporting requirements are in effect.
*Hiring Incentives to Restore Employment Act (HIRE Act) - effective for all returns with an open statute on March 18, 2010, (as long as the reason the statute has not yet expired on March 18, 2010, was not due to these HIRE Act amendments)	<p><i>Section 6501(e) was amended to add that an omission of more than \$5,000 in gross income attributable to specified foreign financial assets required to be reported under new §6038D, "Information with Respect to Foreign Financial Assets," extends the period for assessment to 6 years from the date the return was filed. For purposes of I.R.C. § 6501(e), whether a specified foreign financial asset is required to be reported under I.R.C. § 6038D is determined without regard to any otherwise applicable dollar filing threshold and certain specified foreign financial asset reporting exceptions.</i></p> <p><i>I.R.C. § 6501(c)(8) was amended to clarify that the ASED remains open for the entire tax return unless the failure to file the information return was due to reasonable cause and not willful neglect. If the failure to file the information return was due to reasonable cause, the ASED is extended only to the item or items associated with such failure.</i></p> <p><i>In Rafizadeh v. Commissioner, 150 T.C. No. 1 (2018), the taxpayer failed to report more than \$5,000 of income from his UBS account on his 2006, 2007, and 2008 tax returns. He argued that § 6501(e)(1)(A)(ii) could not be used to extend the limitations period for those years because § 6038D was not in existence when the returns were filed. The IRS took the position that § 6501(e)(1)(A)(ii) is effective for returns filed on or before March 18, 2010, so long as the period for assessment had not expired as of that date. In finding for the</i></p>

⁴ Form 8938 only applies to tax years beginning after March 18, 2010, i.e., beginning with the 2011 tax year. Failure to file correct Form 3520 under IRC 6039F does not extend the normal statute of limitations.

	<p>taxpayer, the Tax Court determined that the effective date for § 6501(e)(1)(A)(ii) limits its application to years for which the § 6038D (Form 8938) reporting requirement also is effective. In other words, the six year assessment statute of limitation only applies to tax years 2011 and after. Consequently, the Service cannot rely on § 6501(e)(1)(A)(ii) to keep the assessment statute open for tax years 2010 and earlier. Alternative grounds for an open assessment statute (e.g., 25% gross omission of income, § 6501(c)(8), fraud, etc.) should be explored, developed, and documented in the case file.</p>
<p>YY Alpha Statute - If no exception applies:</p>	<p>The “YY” Alpha Statute can be used to examine expired years or to allow a statute to expire while working a case after soliciting a consent and/or when the determination was made that no other exception applies. TM approval is required.</p> <p>If it is later determined an exception applies, the statute should be updated.</p>

For FBAR examinations, secure statute extensions by means of a [Consent to Extend the Time to Assess Civil Penalties Provided by 31 U.S.C. 5321 for FBAR Violations](#). An example can be found on the LBI FBAR Site. The regular FBAR statute is always six years from the due date of the FBAR return.

Note: *Unlike Title 26 statutes, Title 31 FBAR statutes can be resurrected after the statute expires through the execution of a consent.*

Offshore Resources

[Beginners Guide to Offshore Examinations](#) - The resources listed in the guide are intended to provide examiners with the basic tools available when working offshore examinations. The list is not meant to be all inclusive. In addition, the links provided in the guide can also be used by examiners for quick access to current versions of the tools.

[Offshore Training Recordings](#) – The list of recorded training sessions is intended to provide a foundation for working offshore examinations. Both the recording link and PowerPoints for each session can be accessed by clicking the title. Examiners should consider viewing the recordings in the chronological order presented.

[Offshore Project Cases – Scope of Examination and Statute of Limitations](#) - Guidance on determining which tax years to open for examination on cases assigned as part of offshore projects. This memo also provides guidance to the field on the authority to allow the three-year statute of limitations to expire on such cases.

Offshore Arrangements Practice Network

RELATED PROCEDURES

Intake – Criminal Investigation

Making a voluntary disclosure is a two-step process using [Form 14457](#). Part I of Form 14457 relates to preclearance which confirms whether the taxpayer's disclosure is timely. If "preclearance" is granted, taxpayers complete Part II of Form 14457 requesting "preliminary acceptance".

Preliminary acceptance requires specific information to be submitted with Form 14457 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 grants a taxpayer preliminary acceptance, the disclosure is forwarded to the IRS exam function for civil processing.

Resource: [IRM 9.5.11.9, Voluntary Disclosure Practice](#)

Eligibility (IRM 9.5.11.9 (3))

A voluntary disclosure occurs when the communication is truthful, timely, complete, and when:

- A taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his/her correct tax liability, and
- The taxpayer makes good faith arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable.

Timely means the disclosure is received before:

1. The IRS has initiated a civil examination or criminal investigation.
2. The IRS has received information from a third party (e.g., informant, other governmental agency, or the media) alerting the IRS to the specific taxpayer's noncompliance.
3. The IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (e.g., search warrant, grand jury subpoena).

Taxpayers eligible to make a voluntary disclosure include:

- individuals (citizens, green card holders, NRA, expatriates)
- business entities (corporations, partnerships, LLCs, trusts)
- estates

Disqualifying Factors (IRM 9.5.11.9.5)

A taxpayer may not be allowed to make a voluntary disclosure if the following potential disqualifying factors exist:

- a. If they are currently the subject of a criminal investigation or civil examination.
- b. If the IRS has notified them that it intends to commence an examination or investigation.
- c. If they are under investigation by any law enforcement agency.
- d. If the source of any income is considered an illegal activity under federal law.
Note: *The IRS Voluntary Disclosure Practice does not apply to taxpayers with illegal source income including cannabis, even if legal in the taxpayer's state.*
- e. If they have any reason to believe that the IRS has obtained information concerning their tax liability.

Note: *If the taxpayer responds yes to any of the above questions, the facts and circumstances of each investigation must be clarified to determine if it is a disqualifying factor.*

Records, tax returns and payments

CI will not process tax returns or payments. Form 14457 Instructions specifically direct the taxpayer not to submit tax returns or payments until they are contacted by the examining civil case agent.

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. Payments will be posted as directed by the taxpayer.

Also, if taxpayers anticipate that they cannot pay the total amount of tax, interest, and penalties required, they are encouraged to submit their proposed payment arrangement and a completed Collection Information Statement (Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, or Form 433-B, Collection Information Statement for Businesses, Collection Information Statement for Businesses, as appropriate) with their Form 14457 - Part II submission when requesting preliminary acceptance to the voluntary disclosure practice from IRS-CI.

If the taxpayer submits payment for any portion of amounts that may be determined from taxes, additions to tax, penalties and interest, LB&I Austin will accept and process those payments as designated by the taxpayer. If the taxpayer does not designate a specific tax or penalty type, or the tax year a payment should be applied to, it should be

applied to the most recent tax year identified by the taxpayer on their voluntary disclosure submission (Form 14457).

These payments are advance payments; consequently, any credit or refund of the payments is subject to the limitations of Section 6511.

Note: *Examiners are responsible for reconciling payments in all modules and must request funds be transferred to correct modules as necessary.*

Examination – Case Building and Assignment

LB&I – Austin (civil processing)

All voluntary disclosure cases accepted by CI will be centrally processed in Austin. Austin will consolidate all CI documentation available (e.g., Form 14457 part I and part II, correspondence from representatives, checksheets, etc.) and forward cases for case building and field assignment to the appropriate Business Operating Division and Exam function for civil examination.

Planning & Special Programs (PSP) - (case building and assignment)

Note: *This section includes guidance intended for PSP purposes only.*

CI Acceptance Packages

ACU will receive all voluntary disclosure cases from CI and disseminate to LB&I and SB/SE based upon established criteria. The ACU will deliver the Domestic Voluntary Disclosure (DVD) CI acceptance packages to PSP via the DVD Shared Drive. The Area PSPs will receive all CI packages electronically. ACU will notify the Area PSP coordinators by email and forward the electronic Form 3210, when they have placed the CI acceptance packages in the respective Area folder.

If the Area PSPs do not have access to the DVD Shared Drive, contact the ECS Analyst in Field Case Selection listed on Page 1.

*The DVD Share Drive can be accessed by visiting the link:
<\\VPWSENTHRCMN43\Common\EO\HQ\ECS\FCS\DVD>*

After CI acceptance package is received, PSP will case build and input all tax years from the voluntary disclosure on the Program Control Database SharePoint. However, PSP will only establish the **most recent tax year** on AIMS.

Program Control Database

The Program Control Database can be accessed by visiting the link below:
<https://organization.ds.irsnet.gov/sites/SBSEfeEPD/PSPPC/Welcome/>

You may refer to the Program Control Database Quick Start Guide.



Program Control
Database SharePoin

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If you do not have access to the Program Control Database, email [redacted] and include: Name, Area, Programs, SEID, and role (Coordinator, GM, TE).

Case Controls

PSP will identify the most recent tax year listed in the voluntary disclosure applicant's Form 14457, Part II – line 5.

- o In some cases, the most recent tax year of the voluntary disclosure will not be the most recent calendar year.

Examples of disclosure periods:

In general, a voluntary disclosure will cover the most recent six years tax returns.

Example #1: Taxpayer A makes a voluntary disclosure relating to income tax fraud spanning the last 20 years. Taxpayer A fully cooperates and provides amended returns fully correcting all matters for the most recent six years. If Taxpayer A came forward in January 2018, the disclosure period will include tax years 2011-2016. If Taxpayer A came forward in December 2018, the disclosure period will include tax years 2012-2017.

Example #2: Taxpayer A makes a voluntary disclosure relating to income tax fraud spanning the last 20 years. Taxpayer A does not cooperate during the civil examination. The Service is not limited to a six-year disclosure period and may examine all years with noncompliance. The examiner will potentially assert maximum penalties for all tax years with management approval.

Example #3: Taxpayer B makes a voluntary disclosure in January 2018 relating to income tax fraud that occurred only during the most recent 4 tax years. Taxpayer B fully cooperates. Thus, his disclosure period includes tax years 2013-2016, the 4 years where there was noncompliance.

Example #4: Taxpayer B makes a voluntary disclosure in January 2018 relating to income tax fraud in tax years 2008 through 2015. Taxpayer B fully cooperates and clearly establishes that he is in compliance with all tax and information requirements for the most recent tax year that was filed (2016). Taxpayer B's disclosure period will be limited to 2011-2015, the first five years of the disclosure period.

Generally, the most recent tax year of the voluntary disclosure period should be established. If the most recent tax year meets the requirements of the 26 month cycle for IMF/27 month cycle for BMF per IRM [4.10.2.2.2, Examination Cycles](#), PSP will

establish that year on ERCS for examination. If the most recent year of the disclosure period that would normally be established is past this cycle, the Coordinator should consult with the ECS Analyst to determine which year to establish.

Note: *The examiner receiving the case needs a minimum of 300 days on the statute to secure extensions and resolve open examination issues.*

No year other than the most recent tax year of the voluntary disclosure should be established by PSP without prior approval of the ECS Analyst for voluntary disclosure. Upon assignment, the examiner will establish all other years included in the disclosure period.

Delinquent Returns

If PSP receives an original signed delinquent return from the taxpayer, as part of the case building documents, the return should be processed and assessed by PSP. See IRM 4.4.9, *AIMS Procedures and Processing Instructions, Delinquent and Substitute for Return Processing*.

PSP will establish all tax years for any delinquent returns received.

Form 13133 should be attached to the front of the return and check the two applicable boxes for BMF or IMF (as shown below) to not assert any delinquency penalties. See IRM 4.4.9.5.11 for form completion instructions. After assignment, the field examiner will determine which penalties are applicable.

Note: *This does not apply to the penalty for failure to make estimated tax payments under IRC 6654, this penalty is merely computational and a proxy for interest.*

Expedite Processing Cycle IRM Ref. 4.4.9	Examining Officer (Name)		Telephone number ()
	Contact information		
	Contact Person		Telephone number ()
	Street address		Mail Stop or Room number
	City	State	ZIP code
<input type="checkbox"/> Delinquent Return (Enter an "X" in the box below if applicable. More than one box can be checked)			
BMF		IMF	
CCC		CCC RPC	
<input checked="" type="checkbox"/> D	Do NOT Assess Failure to Pay	<input checked="" type="checkbox"/> M	Do NOT Assess Failure to Pay Penalty
<input type="checkbox"/> J	Do NOT Assess Failure to Deposit Penalty (Forms 720, 940, 941, 942, 945 and 1042)	<input type="checkbox"/> P	Do NOT Assess Estimated Tax Penalty
<input checked="" type="checkbox"/> R	Do NOT Assess Failure to File Penalty	<input checked="" type="checkbox"/> R	Do NOT Assess Failure to File Penalty
<input type="checkbox"/> S	Do NOT Assess Estimated Tax Penalty	<input type="checkbox"/> K	Bypass Submissions Processing Statute Unit
<input type="checkbox"/> W	Bypass Submissions Processing Statute Unit	<input type="checkbox"/> 3	Hold Credits on Module - Generates TC 570
<input type="checkbox"/> X	Hold Credits on Module - Generates TC 570		
Form 13133 (Rev. 7-2005) Catalog No. 3236P publish.no.irs.gov Department of the Treasury - Internal Revenue Service			

Nonfilers

If the most recent tax year is a nonfiled return and the taxpayer has not provided a delinquent return, follow delinquent return procedures to establish controls. See IRM 4.12.1-Nonfiled Returns

Surveys

Voluntary Disclosure cases are mandatory work and PSP should *not* survey the returns.

Statutes

The Coordinator should identify the statute and establish examination controls for **the most recent** disclosure year.

- If the most recent disclosure year has an imminent IRC 6501(a)(1) assessment statute, please consult with your manager for guidance prior to establishing this year.
- If the normal ASER has expired prior to examination controls being established, consider use of alpha code OO. TM approval is not required to use the alpha code "OO" in years where the statute has already expired.

IRM 25-6.23-3, Instructions for Updating the Statute on AIMS, states that alpha statute "OO" can be used when the case is a domestic voluntary disclosure open

under Project Code 0997 and the normal ASED has expired prior to examination controls being established. TM approval is not required to use the alpha code "OO" in this situation.

Payments

Prior to a case being assigned to the field examiner, any Taxpayers who would like to make advance payments for the voluntary disclosure years should send their payments directly to the LB&I Austin unit at the following address:

Internal Revenue Service
3651 S. IH 35
Mail Stop 1919 AUSC
Austin, TX 78741
ATTN: Voluntary Disclosure Practice

If PSP receives an advance payment for the voluntary disclosure years, use F3244A to post the payment as a TC640 with .00 next to TC 570, this will prevent the payment from refunding.

If the taxpayer does not designate a specific tax, penalty type, or tax year for the payment, it should be applied to the most recent tax year identified by the taxpayer on their voluntary disclosure submission (Form 14457).

Once a case is assigned to a field examiner, Taxpayers may make advance payments directly to the assigned examiner. The examiner will be responsible for processing and ensuring they are posted to the correct modules.

Fraud Suspense Cases

If there is a TC 914/ -Z Freeze on the module for a CI Investigation, for any year covered by the Voluntary Disclosure, please contact the ECS Analyst for assistance.

Extension Requests

If PSP receives a request for an extension of time, the case should be processed as usual and assigned to the Field. PSP should not get involved in the extension process. The examiner will consider and respond to the extension request.

PSP should not communicate with the taxpayer or their representative about the progress of their case assignment. All tax returns, information returns or other documents that the taxpayer would like to submit for consideration should be held by the taxpayer/representative until they are contacted by the field examiner.

Project Codes

Voluntary Disclosure cases can be identified by the following project, tracking and source codes:

Project Code

1140 Voluntary Disclosure Practice – Rec'd After 9/28/18

ERCS Tracking Codes

- 8712 Voluntary Disclosure Practice – Domestic
- 8369 Voluntary Disclosure Practice – Offshore
- 8713 Voluntary Disclosure Practice – Estate & Gift
- 8714 Voluntary Disclosure Practice – Employment Tax
- 8715 Voluntary Disclosure Practice – Virtual Currency
- 8716 Voluntary Disclosure Practice – Other

If the voluntary disclosure has multiple disclosure special features checked on Form 14457, Part 1, Line 3, the following default rules will apply to determining tracking:

- If both domestic and offshore are identified, offshore will be the default tracking code.
- If domestic/offshore is identified along with Virtual Currency, then Virtual Currency will be the default tracking code.
- If domestic and/or offshore are identified with specialized issue other than Virtual Currency, the domestic/offshore will be the default tracking code and the examiner will use the SRS to make a specialty referral.
- If only a specialized issue is identified, the specialty issue tracking code will be the default tracking code.

Note: *Project and tracking code should be applied to all related cases (additional years and related taxpayers) when the examiner picks up additional years.*

Source Codes

Filed Returns			Nonfiled Returns		
Type of Return	Source Code	Push Code	Type of Return	Source Code	Push Code
Primary case	73	N/A	Primary case	24	036

Retention Standard

Follow the records control schedule of Document 12990, *Records and Information Management Records Control Schedules* to determine the retention period.

ADDITIONAL RESOURCES

- Voluntary Disclosure Practice SharePoint page.
- WIIC Offshore Arrangements PN: For general information on issues involving offshore accounts, foreign entities, financial structures, and schemes used to hide the ownership of financial accounts and other assets owned by U.S. Taxpayers, contact the Senior Revenue Agents listed on the PN SharePoint site for the WIIC Offshore Arrangements PN.
- WIIC Foreign Entities PN: For general information on foreign corporations, foreign pass-through entities (e.g., partnerships, trusts and disregarded entities), and related filing requirements and penalties, contact the Senior Revenue Agents listed on the PN SharePoint site for the WIIC Foreign Entities PN.
- Offshore Arrangements PN
- [https://organization.ds.irsnet.gov/sites/LBIINTL/OffshoreArrangements/layouts/15/start.aspx#/SitePages/Offshore%20Arrangements%20\(WIIC\).aspx](https://organization.ds.irsnet.gov/sites/LBIINTL/OffshoreArrangements/layouts/15/start.aspx#/SitePages/Offshore%20Arrangements%20(WIIC).aspx)
- Foreign Entities
[https://organization.ds.irsnet.gov/sites/LBIINTL/ForeignEntities/SitePages/Foreign%20Entities%20\(WIIC\).aspx](https://organization.ds.irsnet.gov/sites/LBIINTL/ForeignEntities/SitePages/Foreign%20Entities%20(WIIC).aspx)
- LB&I FBAR Webpage – with links to the LB&I FBAR Audit Tool, LB&I OCI FBAR Coordinators
- <https://irsource.web.irs.gov/LBI/Lists/WIIC/DispItemForm.aspx?ID=27&Source=https%3A%2F%2Firsource%2Eweb%2Eirs%2Egov%2FLBI%2FLists%2FWIIC%2FAIItems%2Easpx&ContentTypeId=0x01001AC5D16E8283AC40A64247B0479EF55C>
- SBSE FBAR Webpage:
<http://mysbse.web.irs.gov/examination/tip/FBAR/default.aspx>
- SBSE FBAR Coordinators:
<http://mysbse.web.irs.gov/examination/tip/FBAR/fbarcontacts/23151.aspx>
- My SB/SE Counsel
http://ccintranet.prod.irscounsel.treas.gov/OrgStrat/Offices/sbse/Pages/MySBSE_Counsel.aspx
- Department of Justice Swiss Bank Program
<https://www.justice.gov/tax/swiss-bank-program>