



# 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.

## Contacts

LB&I Offshore:

(b)(6) LB&I WEIIC IPN Technical Specialist

(b)(6)

SBSE Domestic:

(b)(6) SB/SE Domestic Voluntary Disclosure Analyst

(b)(6)

SBSE Offshore:

(b)(6) SB/SE Offshore Voluntary Disclosure Analyst

(b)(6)

PSP Questions:

(b)(6) ECS Analyst

(b)(6)

Website - <https://www.irs.gov/vdp>

(Rev:3/8/24)

THE VOLUNTARY DISCLOSURE PRACTICE .....	3
Uniform Issue List Codes (LB&I Only) .....	4
Background History .....	4
Related Procedures.....	5
Intake – Criminal Investigation .....	5
Eligibility (IRM 9.5.11.9 (3)) .....	5
Disqualifying Factors (IRM 9.5.11.9.5).....	6
Records, tax returns and payments .....	6
Examination – Case Building and Assignment.....	6
LB&I – Austin (civil processing) .....	6
Examination Guidance .....	7
VDP Monthly Call for Examiners.....	7
Taxpayers Must Cooperate .....	8
Collectability Considerations .....	9
Pre-Audit Stage.....	9
Statutes of limitations .....	9
Informal/Protective Claims for Refund .....	11
Scope of the Examination – Exam Issues and Disclosure Period .....	12
MFJ returns where only one spouse applied to VDP .....	12
Determining the Disclosure Period.....	12
Review information in the case file.....	14
Review Records and Determine Adjustments .....	17
Unprocessed Forms 1040- Delinquent and Amended/ Erroneously processed returns .....	18
Processing Amended Returns.....	19
When the taxpayer is a Decedent .....	20
Contacting the taxpayer .....	20
Interviewing the taxpayer.....	21
Interest Computations .....	22
Collection Issues.....	23
Penalty Determinations .....	25
Penalty Deviations .....	28
Closing Agreements .....	29
Closing Agreement Checksheets - Review and Approval Process .....	30
The VDP Form 906 Closing Agreement Review and Approval Process:.....	30

Closing Agreement General Procedures .....	35
Case Closure - Agreed .....	35
Case Closure - Unagreed.....	36
Revocation of Preliminary Acceptance .....	36
Disclosure Special Issues .....	39
Employment and Other Specialty Tax Issue Cases – Additional Considerations ...	39
Estate and Gift – Voluntary Disclosure Penalty Framework .....	40
Offshore Issue Cases - Additional Considerations .....	41
<b>Scope of Examination.....</b>	<b>41</b>
<b>Example of a typical fact pattern and resolution:.....</b>	<b>42</b>
<b>Example of an Offshore Structure – Common Swiss Banking Practices ....</b>	<b>42</b>
<b>Reasonable Cause .....</b>	<b>43</b>
<b>Digital Asset (Virtual Currency) Referrals .....</b>	<b>44</b>
<b>IRC 965 Transition Tax .....</b>	<b>44</b>
FBAR Cases .....	44
Definitions .....	45
Related Statute Memorandum .....	46
FBAR Statute of Limitations and FBAR Consents .....	46
VDP FBAR Penalty Development.....	47
FBAR Penalty Deviation.....	48
VDP Willful FBAR Penalty Calculation .....	48
VDP Willful FBAR Penalty Review .....	49
VDP FBAR Agreement.....	50
VDP FBAR Report Issuance.....	51
Execution of a signed FBAR Agreement by IRS designated official .....	52
Processing and Closing FBAR case with an executed FBAR Agreement.....	53
<b>Processing FBAR Payments .....</b>	<b>53</b>
<b>International Information Returns.....</b>	<b>54</b>
<b>Expatriation.....</b>	<b>56</b>
<b>Interviewing Taxpayers Located Outside the U.S. ....</b>	<b>56</b>
<b>Taxpayer Interview Questions .....</b>	<b>56</b>
Return Preparer Interview Questions .....	57
Statutes of limitation .....	58
Planning & Special Programs (PSP) - (case building and assignment) .....	59



<b>CI Acceptance Packages.....</b>	<b>59</b>
<b>Program Control Database .....</b>	<b>59</b>
<b>Case Controls .....</b>	<b>60</b>
<b>Delinquent Returns .....</b>	<b>61</b>
<b>Nonfilers .....</b>	<b>62</b>
<b>Surveys .....</b>	<b>62</b>
<b>Statutes.....</b>	<b>62</b>
<b>Payments.....</b>	<b>62</b>
Payments received for years with an expired IRC 6501(a) statute or on IDRS retention .....	62
<b>Advance Payments of VDP Liability .....</b>	<b>63</b>
<b>Fraud Suspense Cases .....</b>	<b>63</b>
<b>Extension Requests.....</b>	<b>63</b>
<b>Source Codes .....</b>	<b>63</b>
<b>Retention Standard.....</b>	<b>63</b>
<b>ADDITIONAL RESOURCES.....</b>	<b>63</b>

## THE VOLUNTARY DISCLOSURE PRACTICE

The Voluntary Disclosure Practice (VDP) provides taxpayers concerned that their non-compliance was the 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 VDP are generally those concerned about criminal tax exposure.

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

### Project Code

1140 VDP – Rec'd After 9/28/18

### ERCS Tracking Codes

8712 VDP – Domestic  
8369 VDP – Offshore  
8713 VDP – Estate & Gift  
8714 VDP – Employment Tax  
8715 VDP – Virtual Currency  
8716 VDP – Other  
4156 VDP – Info Reports – VDP Declines  
5000 VDP - Revoked



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:

1. If both domestic and offshore are identified, offshore will be the default tracking code.
2. If domestic/offshore is identified along with Virtual Currency, then Virtual Currency will be the default tracking code.
3. 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.
4. If only a specialized issue is identified, the specialty issue tracking code will be the default tracking code.
5. Project and tracking codes should be applied to all related cases (additional years and related taxpayers).
6. 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.

#### **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.

#### **Background History**

1. Treasury and the IRS have a long history of not recommending prosecution for taxpayers who voluntarily come forward to reveal their tax crimes. Treasury had formal policies dating back to the 1950s, and the IRS formalized its VDP in 1961 under Commissioner Caplin.
2. 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.
3. 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.

4. 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. [IRM 4.63.3.26, Voluntary Disclosure Practice \(Post OVDP\)](#), will serve as guidance for civil field examinations.
5. A visual [Flow Chart of the Voluntary Disclosure Practice](#) is available on the [Voluntary Disclosure Practice SharePoint Page](#).

## **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:

1. A taxpayer cooperates with the IRS in determining their correct tax liability, and
2. 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.

Taxpayers eligible to make a voluntary disclosure include:

1. individuals (citizens, green card holders, NRA, expatriates)
2. business entities (corporations, partnerships, LLCs, trusts)
3. estates

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).

#### **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:

1. If they are currently the subject of a criminal investigation or civil examination.
2. If the IRS has notified them that it intends to commence an examination or investigation.
3. If they are under investigation by any law enforcement agency.
4. If the source of any income is considered an illegal activity under federal law.
  - a. VDP is not available to taxpayers with illegal source income including cannabis, even if legal in the taxpayer's state.
5. If they have any reason to believe that the IRS has obtained information concerning their tax liability.
6. 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**

1. 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.
2. 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.
3. If the taxpayer submits payment for any portion of amounts that may be determined from taxes, additions to tax, penalties and interest, ACU 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 they want the payment applied to, it should be applied to the most recent tax year identified by the taxpayer on their voluntary disclosure submission (Form 14457).
4. These payments are advance payments; consequently, any credit or refund of the payments is subject to the limitations of sections 6511 and 6514.
5. 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 at Austin Campus Unit (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.

## **Examination Guidance**

1. 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*
2. SharePoint – VDP. The Voluntary Disclosure Practice SharePoint page at was (b)(7)(E) created to house materials specific to the VDP (such as template Form 906 Closing Agreements, Revocation Letters, Collection Referral Form, Payment Reconciliation Workpaper, etc.) to assist agents with their examinations.
3. IRS employees should route all VDP procedural questions not covered in this field guide through the respective domestic and offshore Analysts listed on the cover page. If necessary, the Analyst will coordinate the elevation of any case issue(s) to counsel specifically designated to the VDP. **We encourage you to use these resources EARLY in the process (but only after reading 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.**
4. When requesting assistance via email, please use this format:
  - a. Email subject line states VDP - X\*\*\* - Brief Description (word or two on topic, such as: Statute Issue/Form 56 Issue/ F906 Initial Review)
  - b. The beginning of the body of the email should include the TP Name/SSN or EIN

### **VDP Monthly Call for Examiners**

1. The VDP analysts 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.)
2. This call is intended **ONLY** for examiners **actively working** VDP inventory. Manager attendance is encouraged but not required.

**Please reach out to** (b)(6) **to request the TEAMS Invite**

<u>Call in (audio only)</u>	<span style="border: 1px solid black; padding: 0 20px;">(b)(6)</span>
-----------------------------	---

<u>Time:</u>	1:00 PM (est) - Second Wednesday of the Month
<u>Invite Contact:</u>	(b)(6)

### **Taxpayers Must Cooperate**

Under the VDP, taxpayers are required to fully cooperate during the civil examination.

Cooperation includes, but is not limited to:

- a) Promptly and fully responding to all information document requests
- b) Submitting to interviews and providing access to related-party witnesses
- c) Providing statute extensions or waivers as necessary for tax and tax-related issues (including FBAR, if applicable)
- d) Providing signed delinquent or amended returns, information returns, supporting documents, accountant's workpapers, etc.
- e) Providing bank account secrecy waivers for offshore cases
- f) Resolving by agreement all compliance matters covered by the taxpayer's disclosure by agreement,
- g) Agreeing to all adjustments the examiner makes to their income and deductions
- h) Agreeing to the assessment of their income tax liabilities, and
- i) Full payment of all determined taxes, additions to tax, interest, and penalties, or entering into a payment arrangement acceptable to the IRS.

Cooperation includes agreeing to all Exam adjustments

Admission into VDP requires taxpayers to accept the terms of VDP, which includes agreeing to all adjustments the examiner proposes to their income and deductions, and fully cooperating by signing a Form 906 closing agreement for all years in the disclosure period. Such closing agreement is not reviewable by Appeals. A taxpayer may only seek Appeals' consideration of an Exam adjustment, after such taxpayer's preliminary acceptance into VDP has been revoked. Once revoked, the taxpayer is no longer a participant in VDP and will have standard Appealrights.

Cooperation includes full payment.

Full payment of all taxes, penalties, and interest for the disclosure period is an integral part of cooperation and should be addressed at the beginning of the examination. Full payment is expected when the delinquent/amended returns are proffered. This payment is an estimate based upon the taxpayer's calculations and could change as a result of exam findings. Payment will also stop interest from accruing.

When a Taxpayer requests consideration for other than full payment, a collection referral will be coordinated by the assigned examiner. For alternative payment



arrangements inside VDP, Taxpayers should have all necessary documentation ready and available upon contact by the Revenue Officer, including, but not limited to, Form 433-A and B with supporting documents. Cooperation includes submitting to taxpayer interviews. Taxpayers will have up to 60 days to provide requested information and, if not received timely, the request will be rejected.

When a taxpayer is not cooperating, such as when a taxpayer does not agree to the penalty structure outlined in [IRM 4.63.3.26.2, Penalty Framework](#), non-responsiveness, failure to provide requested records, or not remitting payment, the examiner should recommend revocation of the taxpayer's preliminary acceptance into VDP. After revocation, the Service is not confined to the VDP disclosure period or penalty framework. The examiner should expand the scope of the exam and assert all applicable penalties to protect the government's interest based upon the facts and circumstance of the case. After the taxpayer's VDP acceptance is revoked, the taxpayer may exercise their rights to appeal adjustments.

If preliminary acceptance into VDP is revoked, the taxpayer will have the usual opportunity to have Appeals consider any unagreed adjustments.

### **Collectability Considerations**

As stated above, taxpayers submitting a VDP application must make good faith arrangements with the IRS to pay in full the tax, penalties, and interest. As soon as a taxpayer indicates an inability to full pay, a collection referral is needed. See the Collection Referral section of this guide.

## **Pre-Audit Stage**

### **Statutes of limitations**

The examiner is responsible for protecting open statutes of limitations for Title 26 income tax and civil penalties and Title 31 penalties for each tax year or period within the VDP disclosure period, whether or not the year has been established for exam. Due to the complexity of VDP cases, timely statute considerations and correct determinations are important. VDP cases may include tax year(s) or period(s) with:

1. Open IRC 6501(a)(1) assessment statutes,
2. Barred IRC 6501(a)(1) assessment statute with an open assessment statute due to an IRC 6501 statute exception such as:

I.R.C. § 6501(c)(1)	False or fraudulent return with the intent to evade tax
I.R.C. § 6501(c)(2)	Willful attempt to defeat or evade tax
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, 8621, 8865, 926, and 8938. Note: Form 8938 applies to tax years beginning after March 18, 2010, i.e., beginning with the 2011 tax year.



I.R.C. § 6501(e)	<p>Substantial omission of items – 6-year statute (greater than 25% omission of income, greater than \$5,000 omission of income from a foreign financial asset, or omission of I.R.C. § 951(a) inclusion in any amount)</p> <p><a href="#">IRM 25.1.4.3.8.1 (10-07-2016) IRC 6501(e), 6-Year Statute</a></p> <p><a href="#">Spreadsheet for 6-Year Statute of Limitations...</a></p>
------------------	--

3. Barred IRC 6501(a)(1) statute with no known IRC 6501 exceptions, or
4. Barred IRC 6511 refund statutes (RSED).

The following steps should be taken by the examiner to ensure all statute issues are considered and appropriate actions taken:

1. Start cases within 60 days of assignment and work expeditiously to obtain any required consents from the taxpayer or representative.
2. Analyze statutes (income tax, penalty, and FBAR penalty) for all years under your span of control to determine if the statutes are open, expired, or if additional provisions or exceptions within the Internal Revenue Code may extend the statute of limitations.
3. Solicit a Form 872 before relying on any IRC 6501 exception to the regular three-year statute. TM approval is required when updating a statute to an alpha code based upon an IRC 6501 exception.
4. Solicit statute extensions for income taxes and civil penalties using Form 872, *Consent to Extend the Time to Assess Tax*, for tax years with less than one year remaining on the assessment statute period.
5. Solicit FBAR statute extensions (as applicable) using the Consent to Extend the Time to Assess Civil Penalties Provided By 31 U.S.C. § 5321 for FBAR Violations for each year within the disclosure period. Note: unlike Title 26 income tax and penalty statutes, FBAR statutes are common law civil statutes and may be extended by consent after the statutory period for assessment has lapsed.
6. Fully develop all indications of fraud when relying upon the IRC 6501(c)(1), false return exception, to extend the statute of limitations. Examiners cannot base their statute determination solely upon the taxpayers' statements within the Form 14457 - Part II, narrative which specifically describes affirmative acts of tax and tax-related crimes (fraud).
7. Evaluate and protect the Shared Responsibility Payment (SRP) ASER separately from the normal ASER for tax years 2014 through 2018. The individual SRP carries a separate and distinct ASER from the income tax return on which the individual SRP is, or should be, reported. Generally, the individual SRP statute will **not** be automatically extended if the related income tax return's ASER is extended by consent, suspended, or is extended under an alternative statute

provision, such as the unlimited fraud ASER. See [Interim Guidance Memo \(IGM\) 2017 11-17-0081](#).

8. Analyze each RSED (Refund Statute Expiration Date) to determine if a refund is eligible for crediting or refunding under IRC § 6511.
9. Follow [IRM 25.6.1.13.2.8.3, Closing Cases Involving Expired Statute Returns](#), for the rare case(s) that have barred statute years, that will close without a Form 906 Closing Agreement. Voluntary disclosure cases cannot be closed using the YY alpha statute.

For additional statute protection resources see VDP SharePoint General Folder: [SBSE Statute Memo - Documentation Requirements When Soliciting Statute Extensions.pdf](#)

Refer to the **Offshore Issue Cases – Additional Considerations** section of this guide for more information about the IRC § 6501(c)(8) and IRC § 6501(e)(1)(A)(ii) statute exceptions, International Information Return (IIR) penalties, and FBAR penalties and statutes.

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

### **Informal/Protective Claims for Refund**

Whenever we receive a claim for refund, whether it is formal or informal, the examiner must determine if it is timely.

The refund statute expiration date (RSED) analysis is different than an assessment date (ASER) analysis. By law, the Service cannot issue a refund to a taxpayer or credit a refund to another module if the RSED is barred. We don't have the authority per the Code. This is contrary to a TP waiving their rights to an assessment statute in a F906.

In addition to timeliness, consider whether the person signing the claim has proper authority (Form 2848, see instructions for checkbox 5a – Additional Acts Authorized).

The standards for an informal claim are relatively low. Boiling it down to its essence, all that is required is a written communication identifying the taxpayer and a desire for a refund for a period. We recommend date stamping all correspondence and other documents. If an informal claim is contained in a letter, the date stamp will provide crucial info for analyzing its timeliness.

It the Representatives job to protect the RSED. However, sometimes a taxpayer is not represented. As a general practice, when there is a short RSED, advise the TP/Rep to consider submitting an informal protective claim as part of good customer service.

Educate the TP/Reps on what information must be included, and if necessary, provide them the opportunity to perfect.

An informal claim should be:

1. Written
2. Include



- a. Type of tax
  - b. Tax periods involved
  - c. Amount of refund being requested – if the amount is not known the TP needs to provide enough description to identify the projected amount
3. Signed under penalties of perjury

If you have an informal or protective claim that does not include all the required information in IRM 4.10.11.2.1.1, elevate to your analyst for VDP counsel approval

### **Scope of the Examination – Exam Issues and Disclosure Period**

On the Form 14457, Part II, submitted to CI, the taxpayer identifies 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.

### **MFI returns where only one spouse applied to VDP**

Criminal liability depends on individual conduct and intent. Sometimes only one spouse of a “Married Filing Joint” tax return submits an application to VDP.

When **only one** spouse enters VDP:

- Only the taxpayer who applied to VDP is eligible for the VDP terms.
- Do **not** share the Form 14457 with non-disclosing spouse or non-disclosing shareholder **without** permission from VDP Counsel (IRC 6103)
- Notices will be provided to both parties per Separate Notice Requirements
  - See IRM 4.10.1.2.2.1, Separate Notice Requirements and IRM 4.10.2.8.1 , Making Initial Contact
- The case must be full paid, installment agreement are not an option. We can only accept one signature on a Form 906 when joint returns are involved if it is full paid.
  - See IRM 4.10.8.12.3, Waiver of Assessment for Joint Returns
- If a spouse who had filed a “Married Filing Joint” tax return for a year included in the disclosure period chooses not to enter VDP because they believe they have no criminal exposure, the IRS will consider the facts and circumstances of each case to determine if the non-applying spouse may be liable for any taxes or penalties. The IRS may examine the spouse that does not make a voluntary disclosure.

### **Determining the Disclosure Period**

The disclosure period is generally the six preceding tax periods filed or required to have been filed as of the date the taxpayer submits, and CI receives the Form 14457, Part II. The disclosure period may be modified under the following circumstances

1. In cases where noncompliance involves fewer than the most recent six tax years, the taxpayer must show the examiner sufficient documentation (e.g., bank records) that the non-compliance did not occur in other years that would normally



be within the disclosure period, and the voluntary disclosure must correct noncompliance for all tax periods involved.

2. 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.).
3. VDP acceptance can be revoked from a taxpayer. Revocation can occur due to lack of cooperation or when a penalty deviation request was not approved by VDP Counsel. The Service is not confined to the VDP disclosure period or penalty framework after revocation. The taxpayer provides information to CI evidencing they willfully committed tax or tax-related crimes and face potential criminal exposure. As such, VDP Counsel penalty recommendations should not be disregarded in favor of an agreement for lesser penalties. Consideration of this information is required when developing all non-compliant tax periods, exam issues, and applicable penalties.

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 submitted Form 14457, Part II in January 2018, before filing a 2017 tax return, the disclosure period will include tax years 2011-2016. If Taxpayer A came forward in December 2018, after filing a 2017 tax return, 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 and CI acceptance is revoked. 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 prior to filing his 2017 tax return relating to income tax fraud that only occurred only during the preceding 4 tax years. Taxpayer B fully cooperates and documents that only these 4 years were noncompliant. The disclosure period will only include tax years 2013-2016.,

**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.

**Note:** PSP only establishes the most recent tax year for the key taxpayer. It is the examiner's responsibility to establish related years in the disclosure period and related taxpayer.

#### **Review information in the case file**

1. During the pre-audit stage, the most important document to understanding the case is Part II of the Form 14457 wherein the taxpayer provides a narrative describing their willful tax non-compliance. After reading the narrative, the examiner should complete and document the following steps from the case building material or subsequent internal research:
  - a. Identify from the narrative submitted with Form 14457, Part II, the tax years included in the disclosure period (see Disclosure Period examples above).
  - b. Identify the primary and related taxpayers and types of compliance returns covered by the disclosure period
  - c. 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)
  - d. Identify the tax and related information returns required to be filed or amended
  - e. Identify the IRC 6501(a) assessment statute expiration dates for all disclosure years with open assessment statute expiration dates
    - i. Determine if any year closed under IRC 6501(a) is open under another assessment statute period (see Statute Determinations examples below)
    - ii. Do not rely on IRC 6501(c)(1) to hold the expiring assessment statute open before making a civil fraud determination
      - a. Identify potential applicable penalties, keeping in mind the voluntary disclosure penalty structure ([IRM 4.63.3.26.2, Penalty Framework](#))
      - b. Establish examination controls for **all** disclosure years:
        - i. If the IRC 6501(a) assessment statute date has at least 300 days remaining, then the case should be established reflecting the live statute date.
        - ii. If the disclosure year has an imminent IRC 6501(a) assessment statute date and there is a known IRC 6501 exception, then establish the case using the applicable alpha code (example "NN" or "UU") – TM approval is required.
        - iii. If a signed return is in the case file when it's assigned that reflects unposted additional tax and the IRC 6501 assessment statute is eminent, then quick assessment procedures should followed.
        - iv. If the Service is allowing the normal IRC 6501(a) assessment statute to expire, then the case should be established under alpha statute codes "OO" or "YY" - TM approval is required.



- v. If the IRC 6501 assessment period has expired prior to exam controls being established and no known exceptions can be supported with the information available, then before initial contact with the taxpayer:
    - establish a domestic voluntary disclosure case (open under Project Code 0997 or Project Code 1140] using alpha statute “OO”. TM approval is not required. See: [IRM 25-6.23-3, Instructions for Updating the Statute on AIMS](#),
    - establish an offshore voluntary disclosure case using alpha statute “YY”. TM approval is required.
2. In an offshore VDP case, which includes FBAR noncompliance, a Related Statute Memorandum (RSM), Form 13535 must be secured for each disclosure periods year with an open statute, prior to establishing the FBAR examination. Facts provided by the taxpayer in the narrative portion of Form 14457 Part II may be used to support an RSM.
- a. If the FBAR statute is barred, **after** opening an FBAR year with a live statute and securing the RSM for that year, the examiner will need to solicit an FBAR consent for all barred years.
  - b. **Providing an FBAR consent is part of cooperation.**
  - c. Once the consent is secured and executed, the examiner should secure an RSM and establish the case.
  - d. The consent should be requested for **all** years in the disclosure period.
  - e. Most taxpayers will have a POA. Verify that a valid Power of Attorney (Form 2848) has been submitted for the taxpayer’s VDP disclosure, that it has not been superseded on IDRS, and that it covers all years and features of the disclosure period.
    - a. for example, authorized matters may include income tax, civil penalties, and any other taxes, and FBARs.
  - f. Review the taxpayer’s transcripts for previously filed delinquent or amended return postings.
  - g. Review the taxpayer’s transcripts for payment postings to ensure that they were posted to the tax year the taxpayer intended.
    - a. 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.
    - b. Note that advanced payments may have posted to MFT 55.
    - c. See below for more discussion of payments.
  - h. Complete the tax, penalty, and payment [VDP Reconciliation Workpaper](#) located on the [Voluntary Disclosure Practice SharePoint](#) site.
  - i. **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.

- a. 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).
  - b. A summary in bullet point format is acceptable for efficient presentation.
  - c. Lengthy narratives are not required to support the fraud penalty.
- h. However, if preliminary acceptance has been revoked by CI (see Revocation Steps below), 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.
- a. Secure FEA involvement and approval by completing Form 11661 – Fraud Development Recommendation - Examination for all years shown in the voluntary disclosure.
  - b. Update Status Code to 17 for all years and related returns (even if civil fraud penalty is only considered for one year.)
  - c. 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 deficiency determined from examination adjustments.
- i. Address examination pre-contact responsibilities (IRM 4.10.2, Examination of Returns, Pre-Contact Responsibilities)
- a. Examiners must complete an in-depth pre-contact analysis (IRM 4.10.2.3, In-Depth Pre-Contact Analysis).
    - i. Cooperation and continued participation in the practice requires taxpayers 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.

- ii. Once secured, the examiner must review the documents provided. Examiners need to evaluate the Form 14457 in conjunction with internal information (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.

### **Review Records and Determine Adjustments**

Examiners must develop cases, use appropriate information gathering tools, and determine proper tax liabilities and applicable penalties. Taxpayers must be interviewed, especially with respect to documenting their fraudulent conduct identified in the narrative. IDRs, and summonses may be used at the examiner's discretion. But remember that the bedrock of the VDP is taxpayer cooperation, so the Examiner should not have to issue a summons to obtain information. Rely first on IDRs and cooperative discussions with the representative<sup>1</sup> 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 is 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 VDP period. 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 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.

---

<sup>1</sup> 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.



Resource: IRM 4.10.3, Examination of Returns, Examination Techniques

**Unprocessed Forms 1040- Delinquent and Amended/ Erroneously processed returns**

1. VDP Taxpayers are told to hold delinquent returns and/or amended returns for submission to the assigned examiner. In some instances, taxpayers may have included delinquent returns or amended returns with their initial VDP submission or may have submitted returns to Campuses.
2. **Do NOT send delinquent or amended returns to the Campus for processing and assessment.**
  - a. **Now that we are closing cases electronically:** Where the IRM instructs you to staple the delinquent return to the back of the RAR or keep the delinquent return in the case file, you will instead do the following:
    1. Scan a copy of the return to the RGS case file.
    2. Follow the two-step directions for Sending the Delinquent Return to CCP (attach Form 3870 to the delinquent return or amended return and mail it to CCP)

Mailing the return to CCP with Form 3870 attached will result in a TC 290 with zero tax to post to the module. This creates a DLN under which the delinquent return or amended return can be filed. This procedure does not post an assessment, establish a statute date, or process the delinquent or amended return in any way. It is only a means to preserve the paper document in a way that it can later be retrieved via ESTAB, if needed.

See:

[Handling hardcopy original delinquent tax returns and amended returns \(sharepoint.com\)](#)

[Sending\\_Delinquent\\_Return\\_to\\_Files .docx \(sharepoint.com\)](#)

3. The delinquent international Information Returns (IIRs), which should have been filed with the original income tax return, must be associated with the original income tax return after it is secured from the taxpayer. The examiner should:
  - a. Scan a copy of the delinquent IIR into the electronic case file.
  - b. Request the delinquent IIR to be "Returned to Files" by mailing the original delinquent IIR with Form 9856 Attachment Alert, to **Files**
  - c. The delinquent IIR should be associated with the original return based upon the original return's TC 150 DLN.
  - d. Note: File Location Codes (FLCs) represent the first two digits of the Document Locator Number (DLN). Listing of addresses based upon IRS

Source information is available in [Directories-ReturnToFileAddresses.pdf](#) on the VDP General folder.

4. For delinquent returns provided directly to the examiner (or were previously submitted, but not processed) follow Substitute for Return Procedures processing found in IRM 4.4.9.6.2
  - a. Select push code 036 – EXAM/SFR.
  - b. Use “EE” Alpha Statute to establish the year and once established, update statute to three years from receipt date using Form 5348
  - c. Follow [IRM 4.4.9.6.3.1.1, Prepare for Case Closing.](#)
5. All adjustments for amended and delinquent returns should be incorporated into made on Form 4549-A. The tax computations should capture all items included on the amended/delinquent return(s). The tax assessed pursuant to the Form 906 closing agreement will be based upon the adjustments and tax computation reflected within the Form 4549-A..
6. If delinquent or amended returns were processed prior to the examination being assigned, follow regular exam procedures.
  - a. Reconcile starting figures in RGS using the posted return figures as the “per return” amount.
  - b. Review transcript for 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. Do not reverse penalties until the conclusion of the examination and receipt from the taxpayer of the signed Form 906 Closing Agreement.
  - c. If the examiner accepts the returns as filed, a “no change” audit report should be submitted for all years except the year with the civil fraud 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.
7. CI may have accepted and date-stamped returns submitted with the taxpayer’s VDP disclosure, but not posted them. Before proceeding, the examiner should review IDRS to determine whether the delinquent/amended returns were processed.

#### **Processing Amended Returns**

1. When the taxpayer sends their signed amended returns, 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 ASER 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>

2. 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 returns 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.

### **When the taxpayer is a Decedent**

When a deceased taxpayer enters voluntary disclosure, review the Form 56, "Notice Concerning Fiduciary Relationship," 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, the fiduciary, or someone else connected to the decedent (e.g., an heir).

### **Contacting the taxpayer**

1. Initial Contact – Follow standard examination procedures in IRM 4.10.2. Examination of Returns, Pre-Contact Responsibilities.
  - a. Issue the taxpayer Initial Contact Letter 2205 enclosing Pub 1 and Notice 609.
  - b. Follow up with a telephone call discussing taxpayer rights and summary of information that will be requested on the IDR. Initial

contact must include a discussion of the terms of VDP, specifically, the disclosure period, the penalty structure, and full payment requirement. Also, since the taxpayers prepared their delinquent/amended returns, they should have a calculation of the amount due. The examiner should request pre-payment of the amount they computed as due and owing, including tax, interest, and all applicable penalties. Inform the taxpayer that these payments are estimates and could change based upon the examination findings.

- c. Prepare a memorandum to document taxpayer responses and understanding of VDP terms discussed in “b” above. Note: After every ‘significant’ telephone contact with the taxpayer, examiners should prepare a memo to document the discussion.

### **Interviewing the taxpayer**

1. After reviewing all case building material and documentation requested and provided in response to the initial IDR (tax returns, bank records, workpapers), the examiner should interview the taxpayer to address any questions. The POA should not be interviewed in lieu of the taxpayer because the taxpayer is the individual with personal knowledge of their actions. Interviewing the POA is only helpful to question the advice provided by the POA. Examiners should control the timing and participants to the interview.
  - a) When interviewing a taxpayer located outside the US – refer to section Offshore Issues Cases – Additional Considerations.
2. The comprehensive interview should be followed up with a MOI documenting what transpired “during” the interview.
3. Interviews are especially important when Form 14457 narratives are thin or when they include statements or disclaimers “contrary to fraud/willfulness” or “implying reasonable cause”. Examiners must further develop and document facts supporting the fraud/willfulness penalties.
4. Cooperation in VDP includes the taxpayer agreeing to interviews. See below for a list of suggested interview questions.
5. The examiner should have someone take notes during the interview so the examiner can focus on questions and follow-up questions to the taxpayer’s responses. The notes may be handwritten or typed. The notes should use the words of the taxpayer or third party rather than a summary statement. If the taxpayers exact words are recorded, make sure the document preserves the context in which the statement was made. Preserving the meaning of what was said, not just the words, and the same words may have different meanings in different contexts.
6. All 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. The handwritten notes may contain statements about the body language, etc. of the taxpayer that may convey additional meaning to the taxpayer’s verbal responses.



7. An MOI should be prepared as soon as possible after the interview. Ensure that the documentation is complete and accurate. The MOI will specify the time and place of the interview, who was present, and the role of each person present at the interview. The MOI will answer the questions of who? what? when? where? why? how? with regard to the facts developed in the interview. Maintain the order of the topics in the same order they were done in the interview. Number the narrative paragraphs. Be concise and direct. If possible, avoid using specialized terminology (remember, this may be read by people who are unfamiliar with IRS terminology). If specialized terminology is used, explain it, but state clearly whether it is an explanatory note or whether it was discussed in the interview.
8. At the end of the MOI, include an attestation statement above the taxpayer signature line memorializing that the taxpayer has read the MOI, that it is a correct accounting of the statements made or answers given, certifying under penalties of perjury that the statements or answers are true and correct, that they have made any corrections shown, have initialed each correction and each page of the MOI, and have made the statement freely and voluntarily.
9. Provide the taxpayer with a copy of the MOI. Ask the taxpayer to examine the memo ,and to clarify or correct the transcription of their statements or answers provided during the interview, initial each correction and each page of the MOI.
10. Request that the taxpayer sign the MOI under the attestation statement. The Service always signs after the Taxpayer. The document should be reviewed to ensure the taxpayer has made no changes. Any clarifications should be provided in an attachment.
11. The taxpayer signing the MOI is not mandatory. If the taxpayer refuses to sign the MOI, document that in your activity record and insert an item at the end of the MOI indicating that the statement was read by taxpayer, the date it was read, that the taxpayer was given the opportunity to provide clarification/corrections, whether the taxpayer concurred it was true and correct, and that the taxpayer refused to sign the MOI. The refusal to sign should be considered with all other acts of non-cooperation in determining whether revocation is warranted. By itself, refusal to sign an MOI is not considered lack of cooperation sufficient to revoke the taxpayer's preliminary acceptance into VDP.
12. A [template MOI](#) is provided on the [Voluntary Disclosure SharePoint](#). (See [IRM 9.4.5.7.4, Memorandum of Interview](#) and [IRM 4.10.3.3.5, Documenting Interviews for additional information](#))

### **Interest Computations**

1. 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, see the



RGS Quick Interest Instructions found on the VDP SharePoint. Another tool available to compute interest is COMPA on IDRS.

2. If the taxpayer did not fully prepay tax, interest, and penalties as part of their submission package or prior to issuance of the RAR, the examiner should compute interest for a few months beyond the RAR issue date to allow time for processing the case.
3. 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

1. The VDP program expects **full** payment of tax, interest and penalties as part of cooperation.  
**Note:** Taxpayers can easily estimate amounts due based upon the tax shown on delinquent or amended returns prepared. The 75% civil fraud penalty is charged to the highest deficiency. The willful FBAR penalty is 50% of the highest aggregate balance as shown on FBARs filed. Tax software can usually estimate the interest.
2. Examiners should be addressing with the taxpayer full payment in their initial contact. 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.
3. If taxpayer anticipated when they filed their VDP submission they could not pay the total amount of tax, interest, and penalties required, they should have submitted 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 VDP from IRS-CI.
4. When a Taxpayer requests consideration for other than full payment, a collection referral should be coordinated by the assigned examiner.
  - a. Any collection issues related to an inability to full pay Title 31 FBAR penalties must be elevated to your VDP Offshore Analyst.
5. For alternative payment arrangements inside VDP, Taxpayers should have all necessary documentation ready and available upon contact by the Revenue Officer including, but not limited to, Form 433-A and B with supporting documents. Collection allows taxpayers up to 60 days to provide requested information and, if not received timely, the request for a payment plan will be rejected.



6. Cooperation includes the taxpayer submitting to interviews, so examiners should interview the taxpayer if necessary to get answers to questions about the taxpayer's collection information statements or proposed payment plan.
7. A referral to Collection is mandatory if the estimated unpaid tax, interest, and penalties total more than \$250,000, or if the Taxpayer makes a preassessment IA 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.
8. The VDP Collection Referral Form should be used and is available on the Voluntary Disclosure SharePoint page. On the referral form, check the box Yes or No as to whether an installment agreement was requested. 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 the cover page for elevation.
  - a. FBAR Liabilities are not included on the Collection Referral amount, however, a notation should be made of the outstanding FBAR liabilities because the alternative payment arrangement must satisfy all Title 26 and 31 liabilities.
    - i. Elevate FBAR collection issues to the Offshore VDP Analyst.
    - ii. Best practice is for the Title 31 FBAR liabilities to be resolved before the Title 26 tax liabilities.
  - b. The collection referral amount should include all outstanding liabilities of the taxpayer, not just the VDP disclosure period.
  - c. The referral form should be sent to ATAT Collection group based upon the taxpayer's residence. There is a link on the referral form to identify the correct group. Do not use the SRS system.
  - d. Examiners must use non-full pay Form 906 Closing Agreement for all cases that do not full pay all tax, penalties, and interest.
  - e. Each RSED (Refund Statute Expiration Dates) must be analyzed to determine if a refund is eligible for crediting or refunding under IRC § 6511.
9. Installment Agreement requests up to \$50,000, the examiner is authorized to approve a streamlined installment agreement without having to get Form 433-A from the taxpayer. See IRM 4.20.1.4.3.

Example: TP is assessed tax, interest and civil fraud penalty totalling \$300,000 as part of their VDP. TP prepaid \$200,000 for the tax. When the Form 906 is issued, there is balance due of \$100,000. TP pays \$25,000 when they return the signed Form 906 and requests an IA of \$75,000 to pay the remaining balance. A collection referral is required because the IA is over \$50,000.

If the TP paid \$75,000 when returning the signed Form 906 and requested IA for \$25,000, no referral is required. Examiners are authorized to approve IAs up to \$50,000.

10. Collection activity may commence prior to the VDP case being assigned to a field examiner. This usually happens when a TP filed amended or delinquent returns

with a Service Center without full payment. After the assessment is made, a collection case is established. The Revenue Officer may not be familiar with the nuances of VDP. Examiner must reconcile the installment agreement to ensure it includes the entire VDP balance due, plus any other deficiencies of the taxpayer.

11. Offer In Compromise (OIC) will not be considered pre-assessment for a Voluntary Disclosure Practice case. If an OIC is prematurely submitted, the examiner will date stamp page 1 of Form 656, Offer in Compromise, in the upper right-hand corner and forward to the Centralized Offer in Compromise (COIC) location based on where the taxpayers reside, as shown in Offer-in-Compromise – Centralized Service Center locations:

(b)(7)(E)

If the taxpayer has no assessed liability, the offer will be returned as not processable by COIC. Please notify VDP Counsel if an OIC is submitted and the tax liabilities are significant.

A Form 906 Closing Agreement should **not** be executed until full payment is received **or** an alternative payment arrangement has been agreed to by IRS Collections. If an alternative arrangement is made, the closing agreement must include language waiving all defenses to collection.

### **Penalty Determinations**

1. Proper penalty consideration is important. If a taxpayer cooperates, a voluntary disclosure will mitigate the 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.
2. If the taxpayer fails to cooperate or otherwise agree to the terms of the VDP, the examiner should implement the process of requesting CI to revoke preliminary acceptance. See Revocation Steps below.
  - a. When a case is closed unagreed, examiners should fully develop and support a fraud determination for all years covered by the voluntary disclosure. The examiner should coordinate with the FEA by completing Form 11661, Fraud Development Recommendation – Examination, for all years covered by the voluntary disclosure. An FEA can assist the examiner in the full development of the penalty write-up.
  - b. 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 Analyst and VDP Counsel. The key is that the narrative provided by the taxpayer on Form 14457 is direct evidence about the taxpayer's state of mind and intent, whereas evidence collected by exam concerning intent is most likely circumstantial.



- c. A fraud penalty write-up must summarize evidence of fraud. Such evidence may be derived from the taxpayer's accounting records, invoices, correspondence, or other documents. For example, the 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.
  - d. Group Managers must ensure that penalty considerations are applied consistently, cases are adequately developed to support penalties, and penalty determinations are documented. Similarly situated taxpayers should receive comparable treatment which will be facilitated by elevating all cases to the designated domestic or offshore Analyst listed on the cover page.
3. Under VDP, 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 deficiency determined including examination adjustments.<sup>2</sup> We anticipate that the vast majority of VDP cases will be resolved with the single fraud penalty.
    - i. Taxable Entity **and** Individual Fraud - When a voluntary disclosure involves fraud by a taxable entity (most commonly a subchapter C corporation) or when employment tax is present in addition to fraud of an individual related to the entity, a civil fraud penalty or a fraudulent failure to file penalty, sections 6663 or 6651(f), respectively, will apply to at least one year of the voluntary disclosure **at both** the entity and individual levels. This penalty structure applies whether the entity submits a separate Form 14457.  
 Example: Individual taxpayer was the sole shareholder of a subchapter C corporation, and the corporation fraudulently understated income by paying personal expenses of the individual taxpayer and deducting them as business expenses. Individual taxpayer submits six years of amended returns, Forms 1040X, and the corporation submits six years of amended returns, Forms 1120X. One fraud penalty will apply to the year with the highest tax liability at the individual level and at the corporate level and no accuracy-related penalties will apply for the other five years.
    - ii. Each separate form (1040/1120/941 etc) will have one civil fraud penalty.

---

<sup>2</sup> Additions to tax (IRC 6501(a)(1) and/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 (Failure to File Partnership Return) or 6699 (Failure to File S Corporation Return) penalties after coordinating with appropriate subject matter experts.

- iii. If a manual penalty must be entered in RGS – the examiner must enter a note in the Other Comment section to the effect: The manual penalties identified in line , relates to [pick appropriate penalty]: the civil penalty under section 6663 of the Internal Revenue Code for fraud OR the addition to tax under section 6651(a)(1) and (f) of the Internal Revenue Code for the fraudulent failure to file an income tax return.]
  - b. 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.
  - c. If the taxpayer fails to cooperate or if CI revokes preliminary acceptance on other grounds, examiners may apply all applicable penalties to every year examined.
  - d. For cases closing agreed, a taxpayer may request the imposition of accuracy-related penalties under I.R.C. § 6662 instead of the one-year civil fraud penalty. Given the objective of VDP, requests for the imposition of lesser penalties should be rare. A taxpayer must present clear and convincing evidence to the satisfaction of the Service to overcome the presumptive application of the civil fraud penalty.
  - e. Willful FBAR penalties will presumptively apply to all cases involving FBAR noncompliance, and 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.
  - f. 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 one-time fraud penalty, and the willful FBAR penalty, if applicable, for the six-year VDP disclosure period.
  - g. Please see specific guidance for employment tax and estate and gift taxes.
  - h. 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.
- 4. Prior to notifying the taxpayer of a penalty to be asserted against them, all cases recommending the assertion of certain penalties must have written managerial approval documented using Lead Sheet 300-1, Civil Penalty Approval Form, prior to issuance of the 30-day letter. IRC § 6751(b). Graev v. Commissioner, 149 T.C. No. 23 (2017)(Graev III); Battat v. Commissioner, T.C. Memo. 2021-57. The group manager must perform a meaningful review of the penalty determination before the taxpayer is notified of the penalty assertion.



5. 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.

Examples:

1. Taxpayer submits six years of amended returns: apply one fraud penalty on the year with the highest tax deficiency determined including examination adjustments, and no accuracy-related penalties for the other five years.
2. Taxpayer submits six years of delinquent returns: apply one fraudulent failure to file penalty on the year with the highest tax deficiency determined including examination adjustments, with no delinquency penalties on the other five years.
3. Taxpayer submits three years of delinquent returns and three years of amended returns: apply one penalty on the year with the highest tax deficiency determined including examination adjustments: if the year with the highest deficiency was an amended return, apply a single penalty for fraud; if the year with the highest deficiency was a delinquent return, apply a single penalty for fraudulent failure to file. Do not apply accuracy-related or delinquency penalties on the other five years.

**Penalty Deviations**

1. Any deviations from the penalty structure must be elevated to the designated domestic or offshore VDP Analyst for coordination and VDP Counsel review.
  - a. VDP Counsel approval for the deviation must accompany the case at closure.
2. If a taxpayer indicates they do 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. If the VDP Analyst and VDP Counsel do not approve the penalty deviation, and the taxpayer does not agree to pay the VDP penalty, the taxpayer should be referred to CI for revocation of their preliminary acceptance. See Revocation Steps below.
3. Most VDP cases will be resolved by agreement. If the case is not resolved by agreement at the examination level, the taxpayer's preliminary acceptance into VDP will be revoked and the taxpayer will be subject to a regular exam, after which they will be afforded standard administrative and judicial rights. All adjustments proposed, including the fraud penalty which may 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.

Resources:

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

## **Closing Agreements**

1. All VDP cases should close with a Form 906 Closing Agreement for Title 26 matters and an FBAR Agreement for Title 31 matters. Closing a case without a closing agreement should be the exception. In most cases, it will be mutually advantageous for the government and the taxpayer to resolve cases with closing agreements.
  - a. A closing agreement will be required if there are barred statute years within the disclosure period.
  - b. If a taxpayer indicates they do not want to sign a Form 906/FBAR Agreement inside VDP, elevate the case to your VDP Analyst for coordination with VDP Counsel.
  - c. If the taxpayer is cooperating and a closing agreement is not required (no tax deficiency or no penalty) please elevate to VDP Analyst for counsel concurrence on how to close examination.

Example – Husband and wife made a joint VDP submission, however, for all years they filed MFS. Wife has no non-compliance on her separately filed returns.
2. Coming Soon - “*Tips For Preparing Closing Agreements*” posted to the Closing Agreements and Resource Tool on the VDP SharePoint Practice Public Library.
3. All closing agreements must be reviewed by designated VDP Technical Services **before** obtaining the taxpayer’s signature, in accordance with [IRM 4.8.8.3.1, Technical Services Responsibilities](#). The [VDP Initial 906 Review Checksheet](#) must be completed to ensure required reviews and approvals are secured. See below.
4. Do **not** issue the Form 906 Closing Agreement to the taxpayer before the **entire** review process has been completed and approved for issuance.
5. 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.
6. [Disposal Code 08](#) must be used for all years 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.
7. When a taxpayer is unable to full pay and an alternative payment arrangement has been approved, the "NonFullPay" Form 906 must be used to include the special collection language.
  8. EARLY in the process, we encourage you to work with your VDP Analyst for assistance in drafting Forms 906/FBAR Agreements and for VDP Counsel assistance with specialized language.

#### **Closing Agreement Checksheets - Review and Approval Process**

1. Form 906 Initial and Final Review Checksheets have been created to help prepare the Form 906. The VDP Initial 906 Review Checksheet is available on the Voluntary Disclosure SharePoint Site.
2. 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.
3. Make sure you use the current INITIAL Form 906 Review Checksheet. VDP Counsel will review the Form 906 prior to Tech Service's review. Any Form 906 involving Employment Tax must also be reviewed and approved by VDP Counsel.
4. The Examiner, Field Group Manager, VDP Analyst, VDP Counsel and VDP Technical Services Reviewer must digitally sign on the "Initial 906 Review Checksheet" to indicate they have conducted a meaningful review, completed all steps in their respective Reviewer Column, and they agree 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.
5. When the case is ready to close, the Examiner, 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.
6. 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 Closing Agreement Review and Approval Process:**

##### **Step 1- Examiner:**

1. Follow the instructions in Step 2 of the Initial Form 906 Review checksheet to upload required files into the RGS folder called "906 Supporting Documents"/"Office Documents" for 906 approval. Documents include, but are not limited to:
  - a. Copies of Original Tax Returns for all years in disclosure period,
  - b. Copies of Amended Tax Returns for all years in disclosure period,
  - c. IMFOLT, IMFOLA, and IMFOLR for all years in disclosure period,
  - d. Form 4549-A(RAR) for all years,
  - e. Draft Form 906 Closing Agreement,
  - f. Voluntary Disclosure Letter/Application (Form 14457 and Narrative),

- g. Email from designated VDP Counsel approving any deviations from the penalty framework,
  - h. Any other documentation RA feels is relevant to approve Form 906,
  - i. If other penalties are applicable, i.e., FBAR, International Information Returns, etc., include related case file documents (such as computations workpapers and Form 886A).
2. Completes all steps and digitally signs the Initial 906 Review Checksheet.
  3. Sends the case and signed Initial 906 Review Checksheet to their Group Manager for review.

#### Step 2-Field Group Manager

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

#### Step 3-VDP Analyst

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

#### Step 4-VDP Counsel Attorney (do **not** route to local Counsel):

1. Conducts a thorough review of the Form 906, penalties and FBAR Agreement, as appropriate (see below).
  - a. 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.
2. Approves Form 906, digitally signs the Initial 906 Review Checksheet and emails approval to the VDP Analyst with the Form 906 and signed Initial 906 Review Checksheet.
  - a. The signing of the checksheet will document VDP Counsel's review and approval of the Form 906.
  - b. VDP Analyst will accept all changes and remove draft stamp then will provide a clean copy of the F906 to the exam team for submission to Tech Services.

#### Step 5-Group Manager

1. After VDP Counsel/VDP Analyst returns the approved Form 906, the manager will send an email with Taxpayer Name/SSN to the Technical Services mailbox at: *\*SBSE Tech Svcs VDP 906 Review* (b)(6) with a cc: to (b)(6) and (b)(6) to let them know that the Form 906 is ready to be review.
2. Email should include the Initial 906 Review Checksheet digitally signed by the examiner, manager, technical analyst, VDP Counsel.



3. Once Technical Services receives the Form 906 review request, they will contact the Group Manager to advise to which RGS Group Code the case should be sent in RGS and the TSC (Tech Services Code) the case should be updated to in ERCS when the case is placed in status 21. The manager should verify that the case is moved to Technical Services Group Code in RGS.
4. Once Technical Services has completed their review the case will be returned to status 12 and the Group Manager will be advised via Form 3990 that will be email indicating the case has been returned in ERCS and RGS.

Step 6-VDP Technical Services Reviewer:

1. Reviews Form 906 and supporting documents according to Initial 906 Review Checksheet.
2. If any changes are recommended, the Reviewer may correspond with the Examiner or VDP Counsel to make the changes.
3. If no changes are recommended, the Reviewer will notify the Field Group Manager that Form 906 is approved for issuance to the Taxpayer.
4. Will provide the final Form 906 and signed Initial 906 Review Checksheet to the Group Manager by email. Technical Services will provide the RGS Group Code to use when closing the case on last page of the checksheet.
5. 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.
6. 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 7-Examiner:

1. 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.
2. Copy of the completed Initial Form 906 Review Checksheet should be placed in the case file.
3. *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 constitutes an offer by the taxpayer.*
4. 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.
5. Tip: if an authorized party is signing on behalf of the taxpayer, refer to IRM 8.13.1.3.5 for how the signatures must appear and provide specific instructions to the signor.

### Step 8-Examiner:

1. Per the current IRM, three original, signed and unaltered Form 906 Closing Agreements must be returned to the examiner to close the case. Upon receipt, RA must review each page of the submitted Form 906 for changes, alterations, and missing pages. Ensure the TP signed correctly. Corporations, fiduciaries, minors, etc. have special signing requirements see IRM 8.13.1 for examples.

#### This example is for corporations and trusts:

In the section "Taxpayer (other than individual)

Line 1: Corporate Name

Line 2: Signature of Corporate Official followed by their printed name.

Line 3: Date signed

Line 4: Title of person who signed

#### This example is for an estate/fiduciary:

If one TP (individual, estate, or decedent) on the Form 906 - the POA, Attorney, Agent, Fiduciary or Trustee would sign in the space provided for Taxpayer's representative. Please see instructions printed on back of Form 906 to find out what documents must be provided with the signed Form 906 if a POA, Attorney, Agent, Fiduciary and/or Trustee signs the document.

If two TP's (MFJ tax period return) are on the Form 906 – the POA, Attorney, Agent, Fiduciary, Executor or Trustee, would sign in the place for "Your signature" or "Spouse's signature", as appropriate. They would sign, print their name, write their authority (POA, Attorney, Agent, Fiduciary, Executor or Trustee) next to their name. and applicable documents must be attached. If the same person is authorized for both TPs subject of the Form 906, then authorized person would sign in both spaces allotted for Your Signature and Spouse's Signature and provide applicable documents for each TP/Spouse. Please see "Instructions" at the end of Form 906 for required supporting documents.

2. 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 page of each Form 906 submitted by the taxpayers. Only the examiner signs, not the group manager. Do **not** sign in the box for "**Reviewing Officer**" it is for Technical Services reviewer.
3. Electronic signatures - This is an emerging issue as we move to electronic case closures.
  - As a result of Covid, the Service can accept electronic signatures on Form 906.
  - Unofficial guidance has been provided for processing Closing Agreements with electronical signatures.
  - Three originally copies are not required; one should suffice.
  - The TP can submit a wet signature by scanning and emailing or e-faxing. Examiners should follow all rules for accepting electronic signatures.



- As a best practice for VDP, we recommend physically printing the closing agreement signed by the taxpayer, then the RA will wet sign as the receiving officer, date stamp the back of one page and re-scan the entire document back into the case file and label as “XXXX – VDP Form 906 signed and ready for TS execution”.
  - If the RA chooses not to print and signs electronically, be careful when converting to Adobe as the taxpayer’s signature may show in a weird font with characters (not the actual signature). This is not acceptable.
- 4. 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, but may not do so.
- 5. 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.
- 6. 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.
- 7. Includes in the case file a copy of VDP Counsel’s email approving Form 906.
- 8. Completes all steps on the Final 906 Review Checksheet and digitally signs the Final 906 Review Checksheet.
- 9. Gives the physical case file to their Group Manager for closure.
  - a. The manager will close the file on RGS to the RGS Group Code provided on the Form 906 “Initial” Review Checksheet.
- 10. 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).

#### Notes for Delinquent Returns:

1. To ensure delinquency penalties are not auto assessed during case closing procedures when SFR TC150 Push Code 036 is present, the examiner must include the following information:
  - a. Form 5344
    - Line 2 enter the two digit PRC 46 (only two digits leave off the 0 in front)
    - Line 12:
      - TC 300 with tax \$\$ (auto generated) (the TC must be a 300)
      - TC 160 with \$0
      - TC 270 with \$0
  - b. Form 3198

- Special Instructions Other Section write: "To input PRC 046 with TC 270"

### **Closing Agreement General Procedures**

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. (Please refer to the VDP Template Closing Agreements found on the [VDP SharePoint Site](#).)

If a closing agreement requires full payment, the taxpayer must full pay the amount due, including interest and penalties, or be removed from VDP. The Examiner must document in the case file the request for full payment. 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 case must be referred to CI for revocation of the taxpayer preliminary acceptance into VDP, and the examiner must coordinate with Collection. Per [IRM 4.20.1.3.4](#), a Collection referral is mandatory for agreed, unpaid cases over \$250,000 for individuals and \$100,000 for businesses.

### **Case Closure - Agreed**

1. 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.
2. 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 VDP Counsel approving the Form 906.
3. The Technical Services Manager must sign the Form 906 prior to closure to Centralized Case Processing (CCP).
4. 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.
5. All agreed cases without a Form 906 should be closed directly through Centralized Case Processing (CCP) **after** elevation to your VDP analyst for VDP Counsel concurrence.



## **Case Closure - Unagreed**

1. 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](#).
2. In cases where the taxpayer and the IRS cannot reach an agreement within the perimeters of VDP, examiners must discuss with their VDP Analyst, VDP Counsel, and CI revoking the taxpayer's preliminary acceptance.
3. VDP examinations may not close unagreed. If a resolution within the confines of the VDP program cannot be achieved, then the case must be resolved through the regular examination process.
4. Examiners must consider all years with non-compliance and all applicable penalties. Consultation with your VDP Analyst and VDP Counsel is strongly advised as consistency across the program is essential.
5. If a penalty deviation was requested and the VDP examiner or VDP Counsel determined that reasonable cause does not apply, the Examiner must document this conclusion within the case file. Once revoked, absent a significant change to the facts, exam should not deviate from the prior reasonable cause determination. Taxpayers may exercise their appeal rights.
6. If the VDP case will not close agreed, then a Form 906 will not be secured. Examiners will need to take corrective actions to address statute related issues. The use of the OO/YY alpha statute will require TM review and approval. Tax periods with expired statutes and no identifiable statute exceptions will need to adhere to regular exam procedures to close the barred statute years (see [IRM 25.6.1.3 Barred Assessments/Barred Statute Cases](#)).

## **Revocation of Preliminary Acceptance**

1. In the event a taxpayer fails to cooperate with the civil examination (cooperation is described in IRM 4.63.3.26.1(4)), the examiner may request that CI revoke preliminary acceptance. Cooperation includes making good-faith arrangements to full-pay their VDP liability.
2. VDP taxpayers are under examination. These cases are not certifications like with OVDP. Revocation is at the discretion of the Service. A taxpayer cannot request revocation, removal, or opt out of the practice. 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.
3. A visual [Flow Chart of the Revocation Process](#) is available on the [Voluntary Disclosure Practice SharePoint Page](#)
4. Examiners should attempt multiple requests (at least 2-3) with a taxpayer before considering revocation. Discuss the lack of cooperation with the taxpayers / representatives. Examiners should continue to actively work both the Title 26 and 31 examinations (if applicable) while pursuing revocation. If your taxpayer is not in agreement with the terms of VDP, discuss with your Group Manager (GM), VDP Analyst, and VDP Counsel. If it is agreed that the taxpayers are not cooperating, proceed with steps for revocation.



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

**Revocation steps:**

1. Issue Letter 6229 – Voluntary Disclosure Practice Revocation informing the taxpayer their preliminary acceptance into the VDP 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 the 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 the next step in paragraph 2 below.
  - g. If the taxpayer becomes cooperative, continue with the examination.
  - h. If the taxpayer becomes 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 taxpayer fails to respond or remains uncooperative, proceed to next step in paragraph 3 below.
  - f. If the taxpayer requests 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 taxpayer becomes cooperative, continue with the examination. Explain to the taxpayer/representative that further failure to cooperate may result in the revocation referral being made without notification.
  - i. If the taxpayer becomes cooperative and then later resumes 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, the taxpayer is 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 expand the scope of the disclosure period as well as apply maximum penalties for all years.
5. The Analyst will notify the examiner of CI's determination.
  - a. Once revocation has been approved, the examiner must update the Tracking Code to 5000.
6. If preliminary acceptance is revoked, the examiner should consult with the FEA 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 VDP. See Exhibit 4.63.3-11– Voluntary Disclosure Practice Flow Chart Revocation Process.
8. Best practices dictate that revocation letters are issued, however, in certain extraordinary circumstances, CI may revoke preliminary acceptance upon the written request of Exam personnel. By-passing the issuance of revocation letters must be documented in the exam activity records, with email concurrence from VDP analyst/counsel to record the extraordinary circumstance. 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 hypotheticals illustrate “other exceptional circumstances”:

- a. 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 examiner 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 period. 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 examiner should coordinate with management, the VDP Analyst, and VDP Counsel to consider writing a memo to CI requesting revocation of the taxpayer's preliminary acceptance based on a materially false VDP submission. The examiner 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. Collection referral resulted in a determination that the taxpayer is currently non-collectible. All parties agree that an acceptable collection arrangement for full payment cannot be reached inside VDP. Examiner documents the mutual agreement of all parties that the case must be resolved outside the terms of VDP.

## Disclosure Special Issues

### Employment and Other Specialty Tax Issue Cases – Additional Considerations

1. While working a voluntary disclosure case, the examiner can work other specialty tax issues, such as Employment Tax, that are part of the submission.
2. 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 VDP case simultaneously. Examiners should consult with a specialty Exam group and/or designated VDP Counsel if they have any questions or concerns.
3. 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 is appropriate when all terms of the VDP have been 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.
4. 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.
5. Suspension of interest provisions of section 6205 will not apply.
6. Acceptance into the VDP 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.

### Employment tax examples

The following examples relate to how the amount of employment tax will be calculated and the application of penalties:

1. 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.



2. 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.
3. 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.
4. 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.
5. 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 VDP penalty framework for Estate & Gift examinations can be found in IRM 4.63.3.26.14.1 and the Instructions to the Form 14457.

1. 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%.

**Estate tax examples:**

1. **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.
2. **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.
3. **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.

4. **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 (GST) Tax Penalties

1. 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 GST tax for all voluntary disclosures involving gift tax and GST tax issues.
2. 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.

#### Gift Tax example

Donor makes gifts for 9 years from 201X to 201Y 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

1. These examinations should concentrate on gross income and foreign financial accounts unless there are other substantial issues worthy of examination,. The focus is on the source of funds deposited into/funding foreign financial assets and whether the income earned on 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.
  - a. Trace the funding of foreign financial assets to determine whether the asset was funded with previously unreported income, even if the income earned by the foreign financial asset seems insignificant.
2. 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.

3. 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 & international information returns for more details about reporting requirements.
4. The examiner must thoroughly document the taxpayer's income tax, FBAR and international information return penalty liabilities to determine if the taxpayer acted willfully or fraudulently. Regular exam procedures must be followed.
5. The examiner should keep in mind the publicity surrounding the various offshore compliance programs/initiatives (2009 OVDP, 2011 OVDI, 2012 OVDP, 2014 OVDP, and now VDP) and the Department of Justice's Swiss Bank Program.<sup>3</sup>
6. Examiners should verify that the taxpayer is and has been in full compliance for their tax years after the voluntary disclosure was made.

**Example of 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.

**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 and/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

---

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



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 “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 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 expenses to move funds offshore.

#### Reasonable Cause

1. If the taxpayer does not want to accept the default terms of the VDP (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.
2. Before proceeding with an interview that probes reasonable cause, carefully review the taxpayer’s narrative on Form 14457, Part II. Taxpayers are required to disclose information on professional advisors in their narrative.
3. 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 offshore bank accounts.
4. If the taxpayer claims to have relied on the advice of professionals, ask the taxpayer to provide documentation of the advice and whether the taxpayer provided the advisor with all the information necessary to make a proper judgment.
5. If the taxpayer claims to have relied on the advice of professionals, interview the advisors the taxpayer claims to have relied upon to determine what information



the taxpayer gave them, what advice the advisor provided, and in what format the advice was provided (e.g., orally or in writing).

### **Digital Asset (Virtual Currency) Referrals**

For assistance with Digital Asset issues (which include Virtual Currency you may email:

LB&I - [redacted (b)(6)] with a cc: to [redacted (b)(6)]  
[redacted (b)(6)] and [redacted (b)(6)]

SBSE - [Digital Asset SME](#) (link also includes DA/VC Counsel Cadre)

### **IRC 965 Transition Tax**

**Contact your VDP Analyst for assistance and available resources to assist with this issue.**

1. The transition tax under IRC § 965 treats “deferred foreign income” as Subpart F income, which is defined 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(a). 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 U.S. Shareholder under IRC § 959, i.e., Previously Taxed Income (PTI). IRC § 965(d).
2. For CFC owners, or taxpayers who otherwise have Subpart F income, part of VDP includes reporting applicable Subpart F income. Since the VDP disclosure period is generally six years, noncompliant years prior to the disclosure period may have previously untaxed Subpart F income. Absent the Subpart F income being reported by the taxpayer, VDP does not constructively provide the taxpayer with PTI for pre-disclosure years. So, a taxpayer using VDP must strictly comply with the Code for purposes of § 965 and computing PTI. Taxpayers must properly account for and report Subpart F income and PTI and only amounts reported by the taxpayer prior to the disclosure period and amounts reported as part of the VDP disclosure will constitute PTI.
3. Special language is required in the Form 906 Closing Agreement for IRC 965 Transition Tax.

### **FBAR Cases**

Willful FBAR penalties will apply in cases involving FBAR noncompliance. Examiners must follow existing FBAR procedures, with limited exceptions, under [IRM 4.26.16](#) and [4.26.17](#), including proper and timely approvals for willful FBAR penalties.

In general, Offshore VDP cases, examiners should be controlling 6 years of income tax MFT 30s and 6 years FBARs MFT Y0 (12 years if joint disclosure – 6 TPH and 6TPS). One of the first acts when assigned a VDP is to confirm the scope years then establish. For FBAR examiners need to provide RSMs and 5345Ds for the open FBAR statute years and concurrently solicit FBAR Consents for the closed years (reminder separate

consents for husband and wife). Once consents are returned and executed, manager signs the related RSMs listing the extended ASER and provides to CTR Ops along with the consent, then the examiner should immediately establish the remaining FBAR years on ERCS. You will need to force generate the F895s for these years to associate with the FBAR consents. Similarly, for the 1040 modules, examiners secure Form 872 Consents for short and closed statutes, then seek YY approvals for barred years, and establish all 6 disclosure years for exam.

#### Summary of general VDP Policy for FBAR:

1. Secure consents for all years in the disclosure period as part of cooperation.
  - a) Elevate if a short disclosure period is warranted based upon facts and circumstances.
2. Determine the willful FBAR penalty based upon the HAB year in the disclosure period
3. Allocate the penalty to all years and all accounts considering statutory limitations.
  - a) If the statutory limitation applies, then the limited amount should be allocated and absorbed in another account/year of the disclosure period.
  - b) If the limited amount cannot be fully absorbed in other years of the disclosure period, the penalty will be limited per statute.
  - c) We should be assessing one 50% willful penalty on the HAB amount.
    - i. A deviation to limit the penalty when the \$100k adj for inflation is greater than 50% of the HAB may be requested if the facts and circumstances warrant.

**UPDATE effective 10/27/2022:** [SBSE-04-1222-0018, Updated Deviation for FBAR Compliance Activity](#) – This memo addresses continued use of FBAR procedures deemed beneficial during the COVID-19 pandemic (with updates, as appropriate), including those for statute protection, electronic signature use, and electronic processing and case closing; Eliminates FBAR guidance no longer needed, including that regarding status codes 14 and 19, limitations on in-person contacts, and mailing priorities; and Revises FBAR IRM payment processing procedures to include Form 3244-A.

- Resuming FBAR Compliance Activity (Attachment 1)
- Mailing FBAR Payments to CTR Operations (Attachment 2)
- Electronic Processing and FBAR Case Closing (Attachment 3)

#### Definitions

1. *FBAR Agreement* refers to a written, binding agreement (contract) for FBAR matters. It does not include any of the following forms which should not be used for FBAR matters:
  - a. Form 906, *Closing Agreement on Final Determination Covering Specific Matters*; and
  - b. Form 866, *Agreement as to Final Determination of Tax Liability*.



2. Designated Counsel for VDP cases means VDP Counsel who is authorized to review and approve FBAR Agreements. VDP Counsel, rather than Local FBAR Counsel, must be utilized for cases involving FBAR procedures and guidance that reference "Designated Counsel."
3. Violation Date refers to the statutory FBAR due date in instances when the taxpayer fails to timely file a required FBAR.
  - a. For calendar years 2015 and earlier, the FBAR is due June 30 of the year following the calendar year being reported.
  - b. For calendar years 2016 and later, the FBAR is due April 15 of the year following the calendar year being reported, with an extension to file the FBAR through October 15 of the year following the calendar year being reported.
  - c. Examiners should use April 15 as the violation date for years 2016 and later. Account statements and financial records should be requested through October 15 of the year following the calendar year being reported for unagreed cases.

#### Related Statute Memorandum

1. A Related Statute Memorandum (RSM), Form 13535, should be secured for all tax periods with open FBAR statutes.
2. RSMs must be secured before initiating the FBAR examination, requesting FBAR records or FBAR filing, using Title 26 audit information in an FBAR examination, or discussing FBAR compliance with the taxpayer or representative. See IRM 4.27.17.2(1)(b), (f), and (g). *The narrative provided by the taxpayer will likely have sufficient facts for an RSM determination.*
3. Form 2848 authorization to represent a taxpayer in an FBAR exam is not sufficient to initiate FBAR related activity with a representative. The Examiner must first have the approved RSM. A new Form 2848 is not needed if the RSM is secured after the initial Form 2848 was authorized. IRM 4.26.17.3.2
4. A separate RSM is required for each year an FBAR was required, for each person required to file an FBAR (there is no provision for joint filing by spouses), and for each entity required to file an FBAR. Once the RSM(s) is secured, examiners should follow procedures in IRM 4.26.17.2.1.3.

#### FBAR Statute of Limitations and FBAR Consents

1. In general, the statute of limitations for assessing FBAR penalties is six years from the due date of the FBAR. The statute of limitations for assessing an FBAR penalty is a common law civil statute which can be extended or waived with the execution of an FBAR Consent. Unlike the Title 26 Form 872, there does not have to be an open statute to extend the FBAR statute of limitations. The

taxpayer can consent to extending or waiving the FBAR statute after it has expired.

2. In all VDP FBAR audits, examiners must solicit a consent to extend the civil statute of limitations on FBAR penalty assessment for **all years** in the disclosure period 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.
  - a. If the taxpayers/representatives refuse to sign the consent, the examiner should request VDP Counsel support to consider removing the taxpayer from VDP for lack of cooperation.
  - b. The consent should be solicited after securing an RSM and establishing an open statute FBAR year for examination.
  - c. Once the consent is secured and executed, the examiner should secure an RSM and establish the remaining years. The RSM should list the extended statute date and be forwarded to CTR Operations along with the executed consent.
3. For years in the disclosure period that have barred statutes or statutes with less than one year, a request for an FBAR statute extension should be made **prior** to initiating RSM procedures as outlined in IRM 4.26.17.2.1.2 & 3 and IRM 25.6.23.1.

#### VDP FBAR Penalty Development

1. 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.
2. At the beginning of the audit, examiners should discuss with the taxpayer / representative the VDP penalty framework and whether it is their intention to agree, sign an FBAR Agreement, and pay in full.
  - a. Any collection issues related to an inability to full pay Title 31 FBAR penalties must be elevated to your VDP Offshore Analyst.
3. The willful FBAR penalty should be developed regardless of whether the TP plans to agree and sign an FBAR Agreement. Adequate development is necessary as the taxpayer may later refuse to sign the FBAR Agreement. However, the depth of penalty development is influenced in part by the taxpayers' stated intentions.
4. **Examiners must develop key facts which support the FBAR penalty for each year covered by the voluntary disclosure.** An FBAR Agreement legally binds the taxpayer and precludes the ability to later contest the agreed upon FBAR penalties before the Independent Office of Appeals or in a court of law. The taxpayer's narrative and interview will include information to establish and support indicators of willfulness. In all cases, the examiner must develop and fully document willfulness in each period the penalty is applied in the event the FBAR penalty is not full paid and the taxpayer challenges the penalty in court. .



5. Examiners should secure records to support willfulness determinations. Financial records, bank statements, or equivalent documents which support highest aggregate balance (HAB) determinations and violation date balances should be requested and copied. 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. Examiners should use the next best alternative for the violation date balance and document their rationale in consultation with VDP FBAR Counsel.
6. When there is no civil fraud penalty in a VDP case, examiners must consider and analyze Willful FBAR Penalty Mitigation Criteria. This may occur when there is no tax deficiency.

### **FBAR Penalty Deviation**

1. If the taxpayer or representative initiates a request for deviation from the VDP Willful FBAR penalty framework, it may be considered.
2. Exam must not initiate penalty deviations on behalf of the taxpayer.
3. The taxpayer must provide a written statement addressing the facts and law which support a penalty deviation.
4. The examiner must review the taxpayer's statement and then summarize the government's position in support of or denial of the deviation request. Both the request and summary should be elevated to the offshore VDP Analyst who will coordinate with VDP Counsel. To ensure consistency within the VDP a penalty deviation request must be reviewed and approved by designated VDP Counsel.

### **VDP Willful FBAR Penalty Calculation**

#### VDP – FBAR Penalty Computation Template Workbook

1. Within VDP, FBAR penalty "mitigation threshold conditions" under IRM 4.26.16.6.1(2)(d) will **not** be met on most cases since the terms of VDP require the assessment of the civil fraud or fraudulent failure to file penalty. For purposes of determining mitigation, VDP considers the entire disclosure period. Therefore, the willful FBAR penalty does not need to be applied in the same year as the civil fraud penalty or the fraudulent failure to file penalty.
2. The "*high balance*", the "*combined high balance*", and the "*highest aggregate balance*" is defined and calculated as described in IRM 4.26.16.1.6.
3. Determine the high balance in each foreign account during each year within the disclosure period.
4. For each year in the disclosure period, calculate the "combined high balance" by adding together the high balance of each account and then subtracting any transfers among the accounts during that year as necessary to avoid counting the same funds more than once.
5. The year within the disclosure period with the greatest "*combined balance*" is the year with the "*highest aggregate balance*".
6. Willful FBAR penalty will not exceed 50 percent of the highest aggregate balance (HAB) of all unreported foreign financial accounts during the disclosure period years.



7. Allocate the 50% HAB amount among all disclosure period years based on the ratio of the combined high balance for each year to the total of the combined high balances for all years.
8. Since FBAR penalties are determined under the statute on a per-violation basis, the total penalty allocated to each year should then be further allocated to the account level based on the ratio of the high balance per account to the total high balances for all accounts.
9. Once penalty allocations are completed to the account level, compare the determined penalty amount to the statutory maximum penalties. (Willful FBAR penalty should not exceed the statutory maximum).
10. The maximum penalty is the greater of \$100,000 penalty amount under 31 USC 5321(a)(5)(C)(i)(I), adjusted for inflation (post 08/01/2016), or 50% of the balance for each account on the violation date as defined in [IRM 4.26.16.5.2](#).
11. If penalty amount(s) computed **exceeds** the statutory maximum limitation, contact your designated Offshore VDP Analyst and VDP FBAR Counsel for guidance **prior** to finalizing penalty computation and requesting FBAR Coordinator review.
12. In no event may the total penalty amount (among all open years) exceed 100 percent of the highest aggregate balance of all foreign financial accounts to which the violations relate during the years under examination.
13. For purposes of determining the violation date balance for accounts where a currency other than U.S. dollars is used, follow additional guidance in paragraph (4) of [IRM 4.26.16.2.2.2](#).
14. If the TP does receive an approved VDP penalty deviation or is revoked, refer back to IRM 4.26.16 for FBAR penalty computation.

#### VDP Willful FBAR Penalty Review

1. FBAR Coordinator will provide a separate email/memo documenting their approval and/or position in lieu of signing FBAR penalty approval form.
2. Examiners must secure VDP Analyst and VDP Counsel review and approval of the proposed Willful FBAR penalty computation and [Form\(s\) 13449 – Agreement to Assessment and Collection of Penalties Under 31 USC 5321\(a\)\(5\) and 5321\(a\)\(6\)](#) per IRM 4.26.17.4(2)b before the agreement can be discussed with or issued to the taxpayer or representative.
3. Once VDP Counsel has approved the FBAR Agreement, the examiner/manager will need forward to BSA for review prior to issuance to the taxpayer. You will need to email the following documents to \*Servicewide FBAR Support (b)(6) and cc the offshore VDP Analyst. BSA should provide a response within 30 days from the request.
  - Documents needed for FBAR Agreement Review:
  - FBAR Agreement (reviewed by VDP Counsel)
  - FBAR Exhibit A – Combined Form 13349
  - FBAR Penalty computation
  - FBAR VDP Counsel Approval



- FBAR Coordinator Approval
- FBAR F886A Explanation
- RSM for each year
- FMD for each year
- FBAR Consents Executed
- BSA will let you know if additional information is needed to complete the review.

### VDP FBAR Agreement

1. FBAR Agreements are **expected** to be utilized for VDP cases. Contact your designated Offshore VDP Analyst if the taxpayer or representative states they do not want to resolve their case using an FBAR Agreement.
2. A template [FBAR Agreement](#) is available on the VDP SharePoint site. Language should be modified for the facts and circumstances of the case. Your designated Offshore VDP Analyst is available to assist as needed.
3. FBAR Agreement language specifically stated the willful penalty amount and references "Exhibit A" which is a consolidate Form 13449 including all the detailed information.
  - a. The VDP SharePoint has tips for preparing and consolidating Forms F13449 for VDP FBAR Agreements. In addition, the link to the new BSA guidance for formatting all Exhibits to FBAR Agreements. It will be incorporated into the FBAR IRM and is included in the VDP Tips Guide: [Report of Foreign Bank & Financial Accounts \(FBAR\) Knowledge Base - FBAR Agreement Exhibit Instructions.pdf - All Documents \(sharepoint.com\)](#)
4. In instances involving taxpayers who filed "married filing jointly," each spouse must receive and execute a separate FBAR Agreement. See IRM 4.26.16.3.4, FBAR Filing by Married Couples.
5. FBAR penalty calculation and FBAR Agreement review and approval will be completed **concurrently** with the initial review of the Form 906 Closing Agreement.
6. The examiner will forward FBAR penalty calculation, FBAR Agreement, required documents, along with the VDP Initial Form 906 Review Checksheet to designated Offshore VDP Analyst who will complete review and then elevate to VDP FBAR Counsel.
7. Required documents include:
  - a. FBAR coordinator approval;
  - b. written case summary - see IRM 4.26.17.2.4.1(1)(g) and 4.26.17.4(2)(a);
  - c. FBAR Agreement;
  - d. a consolidated Form 13449 with VDP header;
  - e. FBAR penalty computation;
  - f. FBAR Form 886-A;
  - g. RSM;
  - h. Form 906; and
  - i. Form 4549-A.

8. VDP FBAR Counsel will review and approve the FBAR penalty calculation and the FBAR Agreement in accordance with IRM 4.26.17.4.3.1, Closing the FBAR Case with Penalties - VDP Counsel Review.
9. 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 and approval of the FBAR Agreement.

#### VDP FBAR Report Issuance

1. Examiners will follow IRM 4.26.17.4 and Interim Guidance for issuing FBAR packages with exceptions noted below.
2. Full payment of the FBAR penalty is expected if an FBAR Agreement is utilized. Any other arrangement must be coordinated with VDP FBAR Counsel, incorporated into the FBAR Agreement, and approved in advance of issuing the Agreement.
3. Examiners will issue the approved FBAR agreement package to the taxpayer for signature. The FBAR Agreement package should include:
  - a. An FBAR "cover letter" in lieu of Letter 3709, drafted by the examiner and approved by the manager, to include the following information and instructions:
    - i. Proposed penalty is for the willful failure to file a complete and accurate FBAR under 31 U.S.C. § 5321(a)(5);
    - ii. A request to sign, date, and return the FBAR Agreement, complete with Form(s) 13449 Exhibit.
    - iii. A request to sign, date, and return Form(s) 13449 Exhibit attached to the FBAR Agreement **AND** initial each page of the Exhibit.
    - iv. Instructions to return the signed package by mail, eFax or electronically. See NHQ-01-1121-0004, Approval to Accept Images of Signatures and Digital Signatures and Approval to Receive Documents and Transmit Encrypted Documents by Email.
    - v. A statement to not make any changes to the enclosed documents.
    - vi. A statement that after execution by the Service, one copy of the FBAR Agreement will be returned to the filer and any authorized POA(s).
    - vii. A request to submit payment following guidance in IRM 4.26.17.4.4(1).
      - a. 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.
      - b. Electronic payments are **not** available for FBAR penalties.
    - viii. Contact information for questions.
  - b. Approved FBAR Agreement, which requires:



- i. “Exhibit A” – Consolidated Form(s) 13449 – Agreement to Assessment and Collection of Penalties Under 31 USC 5321(a)(5) and 5321(a)(6)
  - a. Penalties must be allocated down to the account level.
  - b. The “consolidated” Form 13449 for all years is an “attachment” to the FBAR Agreement. Insert the proper header and page numbers. See instructions on the VDP SharePoint.
- ii. Written summary (see IRM 4.26.17.4(2)(a) for contents)
- c. Notice 1330 – Information on Making FBAR Payment by Check
- d. The FBAR Agreement package must also be sent to authorized POA(s) with Letter 937.

**Execution of a signed FBAR Agreement by IRS designated official**

1. BSA Policy will execute FBAR Agreements after taxpayer signatures are secured.
2. Upon receipt of the signed FBAR Agreement review all items for alterations and completeness.
3. Email the signed FBAR Agreement package to BSA Policy at \*Servicewide FBAR Support [redacted (b)(6)] to secure the Service’s execution pursuant to Delegation Order 25-13. Do **not** send the physical FBAR case file. Retain it.
4. The signed FBAR Agreement package for execution includes:
  - a. The signed FBAR Agreement and Exhibit(s) referenced therein.
  - b. If signed by a representative, document(s) validating authority to do so.
  - c. VDP Counsel’s memo approving issuance of the FBAR Agreement and penalties for willful violations.
  - d. Signed FBAR Penalty Approval Form. Provide any other documentation you feel is relevant to this review for execution, or that is specifically requested via BSA Policy for this purpose.
  - e. The exam group will retain ERCS controls during the process of review and execution. (Do not update the FBAR case to status 21).
  - f. FBAR Agreement execution should be secured **before** closing Title 26 income tax cases.
  - g. Within 30 days of receipt of the FBAR Agreement for execution, BSA Policy will return the executed FBAR Agreement to the examiner via email.
  - h. After BSA has executed FBAR Agreement, they will return via email an executed copy to the examiner for issuance to the taxpayer and inclusion with the FBAR casefile.
  - i. In addition, BSA Policy will email a copy of the executed FBAR Agreement to Technical Services at \*SBSE Tech Svcs VDP 906 Review [redacted (b)(6)] for association with the related executed Form 906 Closing Agreement.

### **Processing and Closing FBAR case with an executed FBAR Agreement**

1. The examiner should not begin case closing process until the taxpayer has returned **both** the signed Form 906 Closing Agreement **and** the FBAR Agreement as case closing procedures differ for Title 26 and Title 31 cases. The Title 26 case file(s) and Form(s) 906 will be closed to Tech Services while the Title 31 case file(s) and FBAR Agreement will be closed to CTR Operations.
2. Examiners should place copies of the executed FBAR Agreement in all related return case files. Notate in your Title 26 and Title 31 case file (activity record and lead sheet) that BSA executed the FBAR Agreement.
3. Attach an executed copy of the FBAR Agreement to the signed Form 906 Closing Agreement.
4. Draft a cover letter by modifying language in IRM Exhibit 8.13.1-22 and Letter 1595-E, as appropriate for FBAR matters.
5. Submit the letter (with a copy of the executed FBAR Agreement) to exam group manager for signature.
6. Once signed, forward to the taxpayer, and a copy to authorized POA(s) with Letter 937, if applicable.
7. Taxpayer has no Appeal rights if they agreed and executed the FBAR Agreement.
8. After the FBAR Agreement has been executed, if applicable, the examiner will follow existing procedures to update the ERCS assessment statute expiration date (ASED) to Alpha Code "AB" per IRM Exhibit 25.6.23-3.
  - a. There are no special VDP procedures for applying AB in FBAR cases. In other words, AB is intended to be used in FBAR cases in the same way it's used in Title 26 cases, which is set by IRM 25.6.23-3.
  - b. ERCS will not allow you to update a statute to any alpha statute when there are more than 210 days on the ASED (AA, AB, GG). Only use AB when the normal ASED has expired (YY cases) or there are 210 or fewer days remaining on the statute.
9. Follow IRM 4.26.17.4.3.2, Closing the FBAR Case with Penalties – Agreed, to complete and close the case from the group. See SBSE-04-1120-0074 for COVID FBAR Case Closing Instructions.
10. If the filer or representative does not sign the FBAR Agreement and penalties are proposed, consult with VDP Analyst and VDP FBAR Counsel about revoking the taxpayer's preliminary acceptance into VDP

### **Processing FBAR Payments**

1. 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).
2. 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 Mispasted 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.

3. The information in [IRM Exhibit 4.26.17-5](#) for Ogden Campus contact for misposted FBAR payments states there is no fax number, and the Form 2424 required to be submitted must be mailed to the Ogden Campus at the following address:

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

## **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.

## **International Information Returns**

1. The terms of the of the VDP allow for examiner discretion in applying other international information return (IIR) penalties. We anticipate application of IIR penalties 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.
  - When a taxpayer files a delinquent international information return with the Service Center, an automated penalty may be assessed. If abatement is proper based upon facts and circumstances, i.e., the taxpayer had reasonable cause, the abatement should be requested at completion of the entire VDP examination.

The IRM does not provide specific instructions for how to request an abatement. For abatement of International Information Return penalties in VDP cases, we recommend the examiner establish case control, then prepare a Form 886-A with a short explanation why the penalties are being abated. This will create a record of why the penalty was abated in case the

abatement is later questioned. The penalty case file will include a Form 3198, Form 8278 signed by manager, and the Form 886-A, and should be closed to CCP for processing/abatement of the penalty following regular procedures (including the electronic case closure procedures if required).

1. 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 Limitations Desk Guide v 2.4.19 on the Offshore Arrangements PN site).
2. When accepting Form(s) 2848, follow regular examination procedures. 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.
3. 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 30-day period (or fraction thereof) during which the failure continues, beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of \$60,000 total per return (\$10,000 initial penalty + \$50,000 continuation penalty). Treas. Reg. § 1.6038D-8(c).
4. 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 persons and entities. Each information return has specific filing requirements and associated penalties. The various international information returns 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 comply with the law. Some common information returns follow:
  - a. 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.
    - i. 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.

- b. Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations." I.R.C. §§ 6038, 6046.
  - c. Form 8865, "Return of U.S. Persons with Respect to Certain Foreign Partnerships." I.R.C. §§ 6038, 6038B, 6046A.
  - d. Form 926, "Return by a U.S. Transferor of Property to a Foreign Corporation." I.R.C. § 6038B.
5. 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.

### **Expatriation**

Guidance is pending – If your disclosure involves expatriation issues, contact your VDP Analyst for coordination with VDP Counsel.

### **Interviewing Taxpayers Located Outside the U.S.**

Guidance is forthcoming. If you have a case where you will be interviewing a taxpayer outside of the U.S. check with your VDP Analyst and VDP Counsel.

### **Taxpayer Interview Questions**

As with all offshore examinations, the taxpayer is your primary source of records regarding foreign accounts and entities relevant to the examination. Your interview will be key in gathering background information. You should ask the taxpayer to provide you with all relevant documentation to support their statements.

If the taxpayer becomes uncooperative and fails to provide you with source documents, contact your VDP Analyst about having the taxpayer's preliminary acceptance into VDP revoked.

Following are some sample interview questions, and is not an exclusive list. Use this list to begin your own extensive interview outline based on the facts of your case:

1. When did you become aware of your requirement to report income from your foreign account(s)/asset(s)?

2. When did you become aware of your requirement to disclose your interest in a foreign account/asset? (Disclose on FBAR and/or international information return)
3. Did you receive a notice (oral or written) from your foreign bank that you should report your account?
  - a. Beginning in 2009 and after, many foreign banks began informing their U.S. citizen customers of their obligations to report their foreign bank accounts to the IRS.
4. What information did you provide to your return preparer related to your foreign income, foreign account(s), foreign asset(s)?
  - a. If the taxpayer didn't provide information to their return preparer, ask why they didn't provide the information.
5. Did you complete a tax questionnaire for your return preparer? Did the questionnaire inquire about foreign account(s) or asset(s)?
  - a. Please provide the contact information for the return preparer.
  - b. If a return preparer was used to prepare the original tax return(s), obtain copies of the tax questionnaire completed by the taxpayer.
6. Why didn't you originally report your foreign income?
7. What was the source of funds in the foreign account(s)/asset(s)?
  - a. If the taxpayer claims gift/inheritance, ask for documents to support the statement. If the alleged gift/inheritance was large and from a foreign source, open a § 6039F penalty examination.
8. Were these funds previously taxed?
9. Why was the foreign account/asset created/established?
10. For what purpose did you have the foreign account/asset?
  - a. Explore the purpose and ask about personal and business aspects.
11. What connection do you have to the foreign country where the account/asset is located?
  - a. Explore personal and business connections to the country.
12. If the taxpayer closed a foreign account during the disclosure period and moved the funds to a new foreign account during the disclosure period, why was this done? (The IRS was able to obtain account holder names from certain foreign banks, and it is possible the taxpayer may have been concerned with being discovered. Some taxpayers may have closed foreign account(s) and moved their funds to a new foreign account(s) to keep from being discovered. If this is the case, this is an indicator of willful conduct.)
13. If a foreign entity is involved, why was the foreign entity established?
14. Did the foreign entity conduct active business, or is the foreign entity only in existence to hold foreign bank/investment account/assets?
15. Identify all attorneys, private banks, and financial advisors used during the years under exam to the present.

### **Return Preparer Interview Questions**

1. How long have you prepared tax returns for the taxpayer?
2. When you accepted the taxpayer as a client, did you meet with the taxpayer to become acquainted with the taxpayer's personal and business background?



- a. If a meeting was held, secure a copy of the preparer's notes/workpapers relating to the meeting.
3. Were you aware the taxpayer had an interest in a foreign account/asset? If yes, when did you become aware of the foreign financial asset?
4. Did the taxpayer complete a tax questionnaire each year?
  - a. Secure copies of completed tax questionnaires.
5. When did you first ask the taxpayer whether they had an interest in a foreign account/asset?
6. What advice did you provide to the taxpayer related to their interest in the foreign account/asset?
  - a. Secure copies of all advice and related workpapers.
7. What other services did you perform for the taxpayer?

### **Statutes of limitation**

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 <sup>4</sup>
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.
<i>*Hiring Incentives to Restore Employment Act (HIRE Act) - effective for tax years 2011 and later.</i>	<i>For tax years 2011 and later, 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>

<sup>4</sup> 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.

	<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>
YY Alpha Statute - If no exception applies:	<p>The “YY” Alpha Statute can be used to examine expired years <u>or</u> 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>

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

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

### **CI Acceptance Packages**

1. 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. 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.
2. The Area PSPs will receive all CI packages electronically.
3. If the Area PSPs do not have access to the DVD Shared Drive, contact the ECS Analyst in Field Case Selection listed on the cover page. The DVD Share Drive can be accessed by visiting the link:  
\\VPWSENTSHRCMN43\Common\EO\HQ\ECS\FCS\DVD
4. 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:

(b)(7)(E)

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





Program Control  
Database SharePoint

If you do not have access to the Program Control Database, email

(b)(6) and include: Name, Area, Programs, SEID, and role (Coordinator, GM, TE).

### **Case Controls**

1. PSP will identify the most recent tax year listed in the voluntary disclosure applicant's Form 14457, Part II – line 4 and, if it 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.
  - a. In some cases, the most recent tax year of the voluntary disclosure will not be the most recent calendar year.
  - b. 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.
  - c. The examiner receiving the case needs a minimum of 300 days on the statute to secure extensions and resolve open examination issues.
  - d. 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, as well as, all related entities.**

### **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.

### 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.*

<b>Expedite Processing Cycle</b> <b>IRM Ref. 4.4.9</b>	Examining Officer (Name)		Telephone number (     )
	Contact Information		
	Contact Person		Telephone number (     )
	Street address		Mail Stop or Room number
	City	State	ZIP code

☐ **Delinquent Return** (Enter an "X" in the box below if applicable. More than one box can be checked)

<b>BMF</b> CCC <input checked="" type="checkbox"/> D Do NOT Assess Failure to Pay <input type="checkbox"/> J Do NOT Assess Failure to Deposit Penalty (Forms 720, 940, 941, 943, 945, and 1042) <input checked="" type="checkbox"/> R Do NOT Assess Failure to File Penalty <input type="checkbox"/> 8 Do NOT Assess Estimated Tax Penalty <input type="checkbox"/> W Bypass Submissions Processing Statute Unit <input type="checkbox"/> X Hold Credits on Module - Generates TC 570	<b>IMF</b> CCC    RPC <input checked="" type="checkbox"/> M Do NOT Assess Failure to Pay Penalty <input type="checkbox"/> P Do NOT Assess Estimated Tax Penalty <input checked="" type="checkbox"/> R Do NOT Assess Failure to File Penalty <input type="checkbox"/> K Bypass Submissions Processing Statute Unit <input type="checkbox"/> 3 Hold Credits on Module - Generates TC 570
---	--

Form **13133** (Rev. 7-2005)    Catalog No. 32396P    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 ASER has expired prior to examination controls being established. TM approval is not required to use the alpha code "OO" in this situation.

### Payments

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

1. Payments received for disclosure years should be applied to the tax years designated by the taxpayer.
2. 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.
  - a. For current payments received, use a TC 640, Advanced Payment of Determined Deficiency to credit the module with the payment, which automatically freezes the module from refund, offset, or credit elect or offset until a TC 300/301 posts onto the account.
  - b. Review a current transcript to identify if a prior payment was posted with TC 640 or TC 670 was used. If a prior payment posted with a TC 670, Subsequent Payment, make sure there was a corresponding TC 570, Additional Liability Pending or Credit Hold, to avoid the payment being moved to another module. A TC 570 will freeze the module and prevent refund, offset, or credit elect because the account now indicates that an additional liability is pending. If there is not a TC 570, the examiner must add the TC 570.

### Advance Payments of VDP Liability

Prior to a case being assigned to the field examiner, a Taxpayer who would like to make advance payments will call the hotline for specific instructions.

1. 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.
2. 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 when there is no offsetting assessment.
3. 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).

### 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.

### Source Codes

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

### Retention Standard

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

## ADDITIONAL RESOURCES

1. Voluntary Disclosure Practice SharePoint page.
2. 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.

3. 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.

4. Offshore Arrangements PN

(b)(7)(E)

5. Foreign Entities

(b)(7)(E)

6. LB&I FBAR Webpage – with links to the LB&I FBAR Audit Tool, LB&I OCI FBAR Coordinators

(b)(7)(E)

7. SBSE FBAR Webpage:

(b)(7)(E)

8. SBSE FBAR Coordinators:

(b)(7)(E)

9. My SB/SE Counsel

(b)(7)(E)

10. Department of Justice Swiss Bank Program

<https://www.justice.gov/tax/swiss-bank-program>