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Report No. 1524
March 20, 2026

The Honorable Scott Bessent
Secretary of the Department of the Treasury, and Acting Commissioner of the Internal Revenue Service
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Frank J. Bisignano
Chief Executive Officer
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: NYSBA Tax Section Report No. 1524 – Report on Proposed Updates to the Internal Revenue Service Voluntary Disclosure Practice

Dear Secretary Bessent and Chief Executive Officer Bisignano:

Please see attached Report No. 1524 of the Tax Section of the New York State Bar Association (the "**Report**") commenting on proposed updates to the Internal Revenue Service (the "**IRS**") Voluntary Disclosure Practice ("**VDP**"), issued pursuant to the IRS's request for public comment released on December 22, 2025.

The Report provides comments and recommendations regarding several aspects of the proposed updates that, in our view, would ensure that the VDP continues to serve as an effective and accessible pathway for taxpayers seeking to come into compliance. In particular, the Report addresses (i) the proposed requirement that participating taxpayers make full payment of tax, penalties, and interest within a short period following conditional acceptance into the VDP, (ii) the shortened timeline for submitting original or amended returns and related filings, and (iii) elements of the revised penalty framework, including penalties relating to income taxes, FBARs, international information returns, and estate and gift taxes.

As discussed in the Report, we believe that the proposed updates represent a meaningful step toward improving the efficiency and predictability of the VDP. At the same time, the Report emphasizes the importance of preserving sufficiently reasonable and balanced terms to encourage participation by taxpayers who might otherwise remain noncompliant. Drawing on the IRS's historical voluntary disclosure practices and more recent experience, the Report offers targeted recommendations intended to promote participation, enhance fairness and administrability, and advance the shared objectives of voluntary compliance, efficient revenue collection, and effective tax enforcement.

We appreciate the opportunity to comment on the proposed updates and thank the IRS and the Department of the Treasury for considering our views. If you have any questions or would like to discuss any aspect of the Report, please feel free to contact us. We would be pleased to assist in any way.

Respectfully submitted,

Lawrence M. Garrett
Chair

Enclosure

cc:

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Report No. 1524

New York State Bar Association Tax Section

Report on Proposed Updates to the Internal Revenue Service Voluntary Disclosure Practice

March 20, 2026

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I. Introduction

This report (the "**Report**")[1] of the Tax Section of the New York State Bar Association **("Tax Section")** comments on proposed updates to the Internal Revenue Service (the "**IRS**") Voluntary Disclosure Practice ("**VDP**"), pursuant to a request for comment issued on December

[1] The principal authors of this Report were Megan L. Brackney, Bryan C. Skarlatos, Aaron Esman, Elliot Pisem, Michael Sardar, and Michael Waalkes. Helpful comments were provided by Robert Kantowitz, Lawrence Garrett, David N. Milner, Paul M. Predmore, Arvind Ravichandran, and Michael Schler. This Report reflects solely the views of the Tax Section and not those of its individual members or any other party.

22, 2025.[2] The proposed updates would make significant changes to the IRS VDP framework and administrative processes.

This Report comments and provides recommendations on certain aspects of the proposed updates that may require clarification or amendment.

II. Background

The IRS VDP provides a procedural mechanism for taxpayers to disclose their tax noncompliance and pay outstanding liabilities, in exchange for a set penalty structure, a limited lookback period, and the IRS's commitment to consider the voluntary disclosure in determining whether to recommend criminal prosecution. Generally, a taxpayer is eligible to make a voluntary disclosure if the IRS does not yet have information about the taxpayer's tax noncompliance. The VDP is part and parcel of the IRS's administrative discretion to decline prosecutions and compromise tax liabilities.[3]

Under the VDP's current iteration, a taxpayer submits an initial pre-clearance request to IRS Criminal Investigation (**"IRS-CI"**), which includes disclosure of their name, identifying information, financial accounts, and cryptocurrency wallets/accounts. Should IRS-CI determine that the taxpayer is eligible to proceed with a VDP (i.e., that the IRS does not already have information about the taxpayer's noncompliance and no illegal source income is involved), it will grant pre-clearance. This triggers a 45-day period in which the taxpayer must submit the full

[2] IRS, IR-2025-124: *IRS seeks public comment on Voluntary Disclosure Practice proposal* (Dec. 22, 2025).
[3] *See United States v. Hebel*, 668 F.2d 995, 998 (8th Cir. 1982) (While the IRS has consistently reserved the right to do so, there appears to be few, if any, prosecutions of true voluntary disclosures).

voluntary disclosure application, including estimates of unreported income/overstated deductions and detailed narratives of the taxpayer's background, tax noncompliance, and the role any professional advisors may have played. IRS-CI will then determine whether to preliminarily accept the voluntary disclosure, based on whether the taxpayer appears to have made full disclosure of the material facts of their noncompliance and involvement of any professional advisers.

If accepted, the preliminary acceptance is communicated to the taxpayer and the VDP is assigned to a revenue agent for examination. The IRS can revoke preliminary acceptance if the taxpayer fails to cooperate with the IRS in the course of the examination, including agreeing to all requested extensions of the limitations period of assessment, responding fully to all document requests, and cooperating in any investigation of professional advisers who enabled the noncompliance.[4] At the conclusion of the examination, the IRS and the taxpayer enter into a binding closing agreement that sets forth the tax and penalties due. At that time, the taxpayer generally is required to make full payment of tax, penalties, and interest for each year in the disclosure period.

The VDP is mutually beneficial to both taxpayers and the government. Taxpayers are given a pathway to becoming tax compliant and the near certainty of avoiding criminal consequences. Through the VDP, the government brings taxpayers into compliance, obtains information about people who may have assisted the non-compliant taxpayer and new tax

[4] IRM pt. 4.63.3.18.1(3)–(4) (Apr. 21, 2025).

evasion schemes, and gains additional revenue—that it might otherwise have never received—without needing to engage in time- and resource-intensive efforts at investigation and collection,[5]

The VDP has deep roots in the history of U.S. tax administration. From 1919 through 1934, the Bureau of Internal Revenue (the IRS's predecessor) had a policy of considering whether to formally compromise a taxpayer's criminal liability under section 7122(a)[6] in the event of the taxpayer making a voluntary disclosure.[7] From 1934 to 1952, the policy took another form: if the IRS accepted a taxpayer's voluntary disclosure prior to initiating an investigation of the taxpayer, it would not recommend prosecution of the taxpayer to the Department of Justice.[8] After a Congressional investigation and well-publicized hearings into alleged corruption in the policy's application, the voluntary disclosure policy was discontinued.[9] The policy was reinstated in 1961 and has existed in one form or another since then. As the IRS has stated, "[t]he objective of the voluntary disclosure practice is to provide taxpayers concerned that their conduct is willful or fraudulent, and that may rise to the level of tax and tax-related

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[5] *See, e.g.*, *Shotwell Mfg. Co. v. United States*, 371 U.S. 341, 349 (1963) (characterizing VDP as "taking a sensible step to produce the revenue *called for by law* with the minimum cost of investigation") (quoting Address by J. P. Wenchel, Chief Counsel of the Bureau of Internal Revenue, to the Tax Executives Institute, May 14, 1947) (emphasis in original).

[6] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times.

[7] *See* Allen Madison, *An Analysis of the IRS's Voluntary Disclosure Policy*, 54 Tax Lawyer 729, 731 (2001); Leo P. Martinez, *Federal Tax Amnesty: Crime and Punishment Revisited*, 10 Va. Tax Rev. 535, 549–551 n.54 (1991).

[8] *E.g.*, *United States v. Lustig*, 67 F. Supp. 306, 307 (S.D.N.Y. 1946) ("At all times between 1934 and the date of the trial of this cause the Treasury Department of the United States had a settled policy to the effect that any taxpayer, even one guilty of fraud, who voluntarily disclosed wrongdoing to the Treasury Department prior to investigation would not be prosecuted.").

[9] IRS, Announcement S-2930 (Jan. 10, 1952) (statement of Comm'r Snyder), *reprinted in* Jerome S. Horvitz & Henri L. Tallichet, *An examination of the IRS's voluntary disclosure policy*, 11 Tax Adviser 9 (1980).

criminal acts, with a means to come into compliance with the law and potentially avoid criminal prosecution."[10]

In recent years, the IRS has implemented a number of changes to the VDP, including requiring that taxpayers certify to the willfulness of their conduct[11] and generally make full payment of all tax, interest, and penalties owed for the disclosure period. As the National Taxpayer Advocate recently observed, these "changes have made the program less accessible and effective, which discourages taxpayers from participating."[12] Recent quantitative data bears out this observation. Both the number of VDP submissions and acceptances sharply declined from fiscal year 2023 to fiscal year 2024, from 281 pre-clearance requests and 220 acceptances in FY2023 to 175 pre-clearance request and 73 acceptances in FY2024.[13] In contrast, prior voluntary disclosure programs targeted at offshore financial accounts yielded more than 45,000 voluntary disclosures and tax payments totaling around $6.5 billion from 2009 to 2014.[14]

The Tax Section commends the IRS on the proposed updates, which mitigate some of the identified issues with the VDP and reflect a commitment to making the VDP more impactful and efficient for both taxpayers and the IRS in a new era of tax enforcement. The proposed updates

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[10] IRS, LB&I-09-1118-014 Memorandum (Nov. 20, 2018).
[11] The IRS has since eliminated the willfulness certification element but still emphasizes in its formal guidance that the VDP is intended only for taxpayers engaging in willful conduct. See Nat'l Taxpayer Advocate, *Criminal VDP: TAS Reports a Win For Taxpayers – IRS Agrees to Remove Willfulness Checkbox on VDP Application Form*, NTA Blog (June 24, 2025), available at https://www.taxpayeradvocate.irs.gov/news/nta-blog/criminal-vdp-tas-reports-a-win-for-taxpayers-irs-agrees-to-remove-willfulness-checkbox-on-vdp-application-form/2025/06/.
[12] Nat'l Taxpayer Advocate, Annual Report to Congress 134.
[13] *See* Table of IRS VDP Statistics (FY2019-FY2024), *reproduced in* Daniel N. Price, *Is the IRS Trying to Terminate the Voluntary Disclosure Practice?*, Tax Notes (Nov. 19, 2024).
[14] IRS, FS-2014-6: IRS Offshore Voluntary Disclosure Efforts Produce $6.5 Billion; 45,000 Taxpayers Participate (June 18, 2014).

offer a renewed opportunity to impact noncompliant taxpayers' behavior, facilitate efficient revenue collection, and provide a pathway back to compliance for noncompliant taxpayers. But to do so, the revised VDP must offer sufficiently reasonable terms to encourage taxpayers to come forward. When faced with potential penalty amounts that are at or near what might be imposed outside the VDP, many taxpayers may simply choose not to participate. Similarly, faced with tax bills that must be fully paid on an expedited timeline, taxpayers with a genuine inability to pay will be forced to walk away from the VDP and the opportunity to come into compliance. The Tax Section offers several recommendations that, if implemented, would facilitate a more robust and effective VDP in our view.

III. Summary of Recommendations

A. Eliminating or Mitigating the Full Payment Requirement

1. The Tax Section recommends that taxpayers participating in the revised VDP be allowed to request and qualify for traditional collection alternatives—such as installment agreements or offers in compromise—should they sufficiently demonstrate an inability to make full payment, consistent with prior VDP practice.

B. Providing for Extensions of the 90-Day Period for Submitting Original or Amended Returns

1. The Tax Section recommends that an automatic 90-day extension of the period to submit original or amended returns be provided to participating taxpayers upon request, with additional extensions being made available upon a showing of good cause.

C. Providing Clarity and A More Tailored Approach to Imposition of Penalties

1. The Tax Section recommends that the FBAR penalty structure be reevaluated to incentivize participation in VDP, while maintaining sufficient penalties to deter noncompliance.

2. The Tax Section recommends that international information return penalties not be imposed on any year where an FBAR penalty is imposed, consistent with current VDP practice.

3. The Tax Section recommends that the penalty framework for estate and gift tax disclosures be clarified, potentially by imposing 20% accuracy-related penalties consistent with treatment of income tax returns under the proposed updates.

IV. Recommendations

A. The Full Payment Requirement

The proposed updates provide, for the first time, that within three months of receiving conditional approval participating taxpayers must pay taxes, penalties, and interest in full for the years within the disclosure period.[15] Thus, the benefit of obtaining predictable resolution terms and a pathway to full compliance without risk of a criminal referral is conditioned on full payment of taxes, penalties, and interest shortly after conditional approval.

Yet not all taxpayers wishing to participate in the VDP have the ability to pay taxes, penalties, and interest in full on an expedited timeline. A taxpayer may have become a victim of a scam or other fraud, payments may have been made to an ex-spouse upon termination of a

[15] We comment below on the three-month time frame for filing "all required amended or delinquent returns and reports."

marriage, businesses may have failed, and numerous other unanticipated circumstances may have arisen. Indeed, the IRS experienced this dynamic frequently in its targeted offshore voluntary disclosure programs of a decade past; many taxpayers were significantly impacted by the 2008 financial crisis and recession and lacked ability to pay. In recognition of these facts, the IRS did not preclude taxpayers who participated in prior iterations of the VDP from seeking an installment agreement or making an offer in compromise with respect to the voluntarily disclosed liability.

Requiring immediate full payment represents a significant change in practice, which will almost certainly discourage some taxpayers from making a voluntary disclosure. This will not only reduce revenue to the government and leave taxpayers in limbo as to the risk of a criminal referral, but it may also result in an unintended consequence of continued noncompliance.

The Tax Section recommends that a taxpayer in the VDP framework be permitted to seek an installment agreement or offer in compromise on the same basis as other taxpayers, but without the benefit of equity and public policy considerations, which in limited circumstances play a role in traditional collection cases. [16] When doing so, the taxpayer is already required to make full disclosure of the taxpayer's assets and earning capacity. Circumstances that ordinarily preclude an installment agreement or an accepted offer in compromise ("**OIC**"), such as willful dissipation of assets or an ability to fully pay the entire balance within the remaining statute of limitations on collection, should preclude such relief in this context as well. The payment schedule or compromise amount to which the IRS agrees need not be, and should not be, more

[16] *See* IRM pt. 5.8.11.3.2 (Apr. 11, 2024) (setting out circumstances where the IRS may generally compromise a liability on public policy or equity grounds).

generous to the taxpayer than would be the case outside of the VDP. However, the possibility of eligibility for a VDP should not be denied on the grounds of a taxpayer's short-term inability to pay.

Utilizing the IRS's already existing and robust procedures for alternative payment arrangements s (i.e., an OIC or installment payment agreement) would ensure that participating taxpayers are treated consistently and fairly. A taxpayer's claimed inability to pay in full should be properly vetted through these programs' existing procedures and doing so does not create any added administrative burden to the IRS. To the extent the IRS believes that in the context of the VDP even further safeguards are needed, the Tax Section respectfully submits that implementing the additional safeguards listed below would improve the VDP's efficiency, while striking an appropriate middle ground between a full payment requirement and an unlimited ability to seek collection alternatives. For taxpayers participating in the VDP, one or more of the following additional requirements may be appropriate:

1. Review under the Collection Due Process ("**CDP**") framework of a denial of an installment agreement or offer in compromise, to the extent otherwise available, must be waived.
2. Misrepresentation, whenever discovered, of net worth and earnings potential information will vitiate the taxpayer's entire VDP relief, in addition to any civil or criminal penalties applicable to the misrepresentation itself.

Finally, conditioning participation in the VDP on a taxpayer's ability to pay, when considered in the context of the VDP's main benefit – avoidance of criminal prosecution – is likely to have, in

most cases, the effect of unfairly prejudicing those who genuinely cannot pay in favor of those who can.[17]

Because a principal, if not primary, motivation for making a voluntary disclosure is avoiding criminal prosecution, participation should not be conditioned on ability to pay. Participation in the VDP, should be, as it has historically been, conditioned solely[18] on (1) the IRS not already having information about the taxpayer's noncompliance; (2) the absence of any illegal source income; and (3) the timeliness and completeness of the disclosure; (4) the taxpayer's full cooperation; (5), and the taxpayer's *good faith efforts* to pay the amount due.

B. The 90-Day Period for Submitting Original or Amended Returns

Under the proposed changes to the program, taxpayers must file "all required amended or delinquent returns and reports, pay taxes, penalties, and interest in full, and sign required agreements" within three months of receiving conditional approval. While the policy behind this proposed change is likely meant to improve efficiency in the program, this short timeline may deter participation with little added benefit.

The VDP already places a premium on timeliness. After all, to be eligible, a taxpayer "must come forward before the IRS has information about [a taxpayer's] noncompliance." With the proposed timeline, the time from when a taxpayer files Part I of IRS Form 14457, *Voluntary*

[17] Moreover, conditioning relief from the immediate-full-payment requirement on any evaluation of subjective factors would be counter-productive as a practical matter, because it would inject uncertainty into a process that requires certainty for it to be accessible to previously noncompliant taxpayers wanting to become compliant.

[18] Subject to the IRS's discretion to establish eligibility criteria for the VDP.

Disclosure Practice Preclearance Request and Application, through to the due date for filing all required returns, making all required payments, and signing all required agreements, could be as low as approximately six months. Practically speaking, this timeline may make participating in the program untenable for many taxpayers. At the outset when submitting a pre-clearance request, a taxpayer and their representatives may not be fully aware of certain logistical challenges that often arise in the course of the tax return preparation process.

Gathering all the required information to prepare accurate tax returns takes time. Taxpayers may not have immediate access to all of the necessary information to complete their tax returns. They may be seeking years' worth of records from third-party financial institutions, including foreign financial institutions subject to different laws and recordkeeping practices, many of which may require translation. Financial institutions have procedures in place for such requests, especially requests for closed or aged accounts, which may delay access to necessary records. An institution may even refuse to provide such documents if it believes that it is not obligated to do so. Such events, which are beyond the taxpayer's control, could certainly delay a taxpayer beyond the three-month period. Similarly, a taxpayer may need to gather records from prior employers, service providers, former business partners, business vendors, and the like. Some of these sources of information may be dissolved, transformed, or uncooperative.

Further, the preparation of accurate returns may require significant amounts of forensic accounting work. Take the extreme example of a business that received significant unreported receipts of cash during the disclosure period and maintained no books and records. Tracing cash receipts and reconstructing the books and records may take considerable time and effort, potentially forcing taxpayers to compromise the accuracy of a return in order to meet the

timeliness requirement. Similarly, taxpayers with extensive digital asset transactions often need time to undertake intensive forensic accounting efforts. Such taxpayers may have numerous transactions in a six-year disclosure period—some of which will need to be manually reviewed by professionals and/or adjusted within a commercial cryptocurrency tax software to determine the appropriate tax treatment on often-novel issues of tax law. Allowing for limited additional time to prepare returns will facilitate accuracy and completeness at minimal expense to the efficiency of the VDP.

Importantly, taxpayers are likely to utilize competent professional tax return preparers to prepare their returns. Most tax return preparers have limited availability during the active tax season and are unlikely to take on new clients. As such, the preparation of tax returns may be delayed by at least six to eight weeks. If the clock starts running three months from the time of conditional approval and that happens to be close to filing season, it may be impossible, as a practical matter, to have the returns properly prepared within the allotted three months.

A related concern is that the elimination of a mandatory examination phase (which the Tax Section supports) will minimize the opportunity to discuss a filing position with the IRS prior to finalizing and filing the returns. When preparing tax returns, participating taxpayers and their representatives often have to determine how to characterize an item or transaction for which there is no clear authority or IRS guidance. A taxpayer may have questions about positions and may wish to reach an agreement with the IRS on said positions before submitting the returns, paying the liability, and signing closing agreements. Under the current VDP, the examination stage often provides an opportunity for the taxpayer's representatives to work collaboratively

with an IRS agent to determine the correct tax treatment.[19] The examination phase thus often provides the taxpayer with comfort that the IRS did not view any of the uncertain positions on the returns as inaccurate or contrary to law—a possibility that could expose a taxpayer to removal from the VDP. Without a mandatory examination to air out and resolve these potential areas of disagreement, taxpayers and their representatives need the ability to take additional time to ensure that accurate tax returns are submitted.

In short, as proposed, the stringent three-month submission deadline is unworkable in many situations. As such, the Tax Section recommends that taxpayers be allowed, at minimum, one automatic three-month extension, with the ability to request additional extensions for demonstrated good cause. These provisions will alleviate much of the concerns raised above.

C. The Penalty Structure

1. Introduction

Overall, the proposed updates to the VDP penalty structure represent a clear and laudable improvement on the current practice. However, areas for improvement remain. As a general matter, the Tax Section suggests that the IRS (1) provide additional clarity as to how certain penalties will be computed and applied under the revised VDP; and (2) consider altering certain penalties and/or applying a more tailored approach toward taxpayers.

[19] *See* Andrew Velarde, *IRS Underscores Wrongful Uses of Streamlined Filing Procedures*, Tax Notes (Nov. 23, 2020) (quoting Chief Counsel attorney that VDP examinations can be viewed "as a collaboration more than a standard adversarial process . . . [in] reaching the right tax due and having the mutual goal of closure . . . often by means of a closing agreement").

2. Income Taxes

Under the existing VDP, a single 75% civil fraud penalty under section 6663 is imposed on the tax year in the disclosure period (usually six years) with the single highest income tax deficiency. *See* IRM pt. 4.63.3.18.2(1) (Apr. 21, 2025). The proposed updates would instead provide for a uniform 20% accuracy-related penalty under section 6662(a) to be imposed on each tax year in a disclosure period, along with an addition to tax for failure to file under section 6651(a)(1) for any delinquent returns in the disclosure period.

The Tax Section generally supports these proposed updates to the penalty structure for income taxes. The single 75% penalty framework often led to odd, asymmetric outcomes that discouraged some taxpayers from proceeding with a VDP. Taxpayers with a single, outlier tax year with a high-dollar deficiency paid far more in penalties and interest than taxpayers with similar deficiency amounts spread out across multiple tax years. Further, the 75% penalty (paired with accrual of underpayment interest on the penalty amount) often provided a financial deterrent, particularly for taxpayers with a highest balance tax year early in the disclosure period from proceeding with a VDP at all. These financial considerations often pushed taxpayers into making quiet disclosures by simply filing amended tax returns with their applicable Service Center—a process which yields neither penalty certainty for the taxpayer nor efficient processing by the IRS. In contrast, the current VDP allows taxpayers with similar deficiencies over six years to pay just a single 75% penalty for one year, leading to an effective penalty rate of only 12.5%. This effective rate is actually lower than the 20% accuracy-related penalty the IRC imposes on taxpayers whose actions were simply negligent. Ultimately, a uniform 20% accuracy-related

penalty provides equitable treatment to similarly situated taxpayers and delivers certainty as to the financial consequences of a VDP submission.

3. FBARs

Under the existing VDP, taxpayers with Reports of Foreign Bank Accounts ("FBAR" Form FinCEN 114) non-compliance are subject to a penalty under 31 U.S.C. § 5321(a)(1) equal to 50% of the highest aggregate balance of all unreported foreign financial accounts during the disclosure period. *See* IRM pt. 4.63.3.18.2(7) (Apr. 21, 2025); IRM pt. 4.26.16.5.5.3 (June 24, 2021). Subject to approval from IRS counsel, an examiner is empowered to instead apply the non-willful FBAR penalty in "rare and extraordinary cases" where the taxpayer presents "clear and convincing evidence" as to why a deviation is appropriate. IRM pt. 4.63.3.18.2.1 (Apr. 21, 2025).[20] The FBAR penalty imposed under the existing VDP is identical to the willful FBAR penalty imposed on taxpayers in the ordinary course of a civil examination—or even after a criminal prosecution. The Tax Section supports a reevaluation of the appropriate FBAR penalty to be imposed in VDP. However, the IRS guidance issued to date lacks clarity regarding the FBAR penalty structure.

The proposed updates state that FBAR "penalties apply *per year* and are subject to annual inflation adjustments." (emphasis added). The Tax Section seeks clarity as to whether a willful FBAR penalty will continue to be imposed in its current form under the proposed updates to the VDP. In addition, language in the IRS news release states that FBAR penalties under the VDP will be "subject to annual inflation adjustments." That statement is generally inconsistent with

[20] However, because only those taxpayers whose conduct was willful are encouraged to use the VDP, there are few, if any, instances where a non-willful penalty may be imposed under the current VDP.

the IRS's current computational approach toward willful FBAR penalties, which is based upon the highest aggregate balance of all unreported foreign financial accounts during the disclosure period and thus is not inflation-adjusted.[21] In recent comments at a tax conference, an IRS official described the revised VDP as imposing "one inflation adjusted non-willful FBAR penalty for each year."[22]

The Tax Section respectfully requests clarity as to the FBAR penalty framework to be implemented under the proposed updates. While we do not propose any particular penalty rate, our experience is that the current penalty framework significantly deters taxpayers from entering the VDP and is out of step with the IRS's past approach to voluntary disclosure, which relied upon lower penalties to incentivize participation while still maintaining a sufficient level to deter noncompliance.[23]

Historically, the IRS has exercised its statutory discretion to tailor FBAR penalty amounts to the current tax enforcement landscape. Prior to 2009, both FBAR compliance by taxpayers and enforcement by the IRS were minimal.[24] The IRS's 2009 Offshore Voluntary

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[21] The exception is for accounts where the highest aggregate balance does not exceed $100,000, triggering the application of the $100,000 penalty, which is subject to inflation adjustment (currently set at $165,353 for penalties assessed on or after January 17, 2025). *See* 31 C.F.R. § 1010.821(b).

[22] Caroline D. Ciraolo & Daniel N. Price, *Proposed Voluntary Disclosure Practice Changes Need More Specificity*, Tax Notes (Feb. 6, 2026) (reprinting quote from the incoming chief of IRS-CI at the 44th Annual International Tax Conference in Miami).

[23] See, e.g., Daniel N. Price, *Modifying VDP FBAR Penalties Will Promote Voluntary Compliance*, Tax Notes (June 28, 2023) ("[I]f the IRS wants to encourage U.S. taxpayers with undisclosed foreign financial assets to come into compliance, it should modify the FBAR penalty structure of the VDP. The 50 percent FBAR penalty does not provide economic incentives to taxpayers.").

[24] *See* Dep't of Treasury, Report to Congress: *Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act)*

Disclosure Program ("**2009 OVDP**") provided for a miscellaneous penalty of 20% of the value of a taxpayer's foreign income-generating assets. The next iterations of the program incrementally increased this amount: the 2011 Offshore Voluntary Disclosure Initiative ("**2011 OVDI**") to 25% and then the 2012 Offshore Voluntary Disclosure Program ("**2012 OVDP**") to 27.5%.[25] The IRS later increased the penalty to 50% for taxpayers holding accounts at financial institutions publicly identified on the IRS "bad bank" list as under investigation or cooperating with an investigation, prior to the submission of a taxpayer's pre-clearance request.[26] In 2015, the IRS issued guidance that formalized a new mitigating computational approach, which was implemented into the current VDP in 2018. *See* IRS, *Interim Guidance for FBAR Penalties*, SBSE-04-0515-0025, (May 13, 2015); IRM pt. 4.63.3.1.1.3(2) (Apr. 21, 2025).

In the heyday of the 2009 OVDP (and accompanying U.S. investigative efforts aimed at holders of Swiss bank accounts at UBS and other institutions), offering lower FBAR penalties for disclosing taxpayers made sense. The IRS and Department of Justice were aware that many taxpayers were failing to report foreign accounts but faced resource and legal constraints in identifying, investigating, and imposing FBAR penalties against all accountholders. Offering reduced penalties collected additional revenue with less administrative burden/cost and incentivized future compliance. Over time, as the IRS repeatedly publicized the 2009 OVDP and

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6–8 (Apr. 26, 2002) (estimating the rate of FBAR compliance by U.S. taxpayers as less than 20% and noting the lack of criminal prosecutions or civil enforcement actions for failure to disclose accounts on an FBAR).

[25] The programs also allowed for various forms of reduced penalties, including for passive accountholders that paid U.S. income tax on all deposits into the account.

[26] IRS News Release IR-2014-73, *Revisions to Offshore Voluntary Disclosure Program* (June 18, 2014).

its successors (as well as indictments and convictions of various foreign bank accountholders and financial institutions), the penalty offer became less favorable—the theory being that recalcitrant taxpayers should not benefit from dragging their heels on a disclosure. While one could argue that the FBAR penalty should be increased for taxpayers who continue to hold unreported foreign accounts given the passage of time, such an increase undermines efforts to revitalize the VDP and fails to consider the significant change in landscape since the heyday of the OVDP and OVDI.

Today's pool of potential VDP participants with unreported foreign accounts is likely far different than it was in 2009. Since then, numerous foreign governments and foreign financial institutions ("**FFIs**") have entered into Foreign Account Tax Compliance Act ("**FATCA**") agreements with the Department of Treasury, agreeing to provide the IRS with information about foreign bank accounts held by U.S. persons.[27] Put simply, there are far fewer places left for U.S. taxpayers to willfully hold funds undetected, at least with respect to banks and other traditional financial institutions. The next wave of potential unreported foreign financial accounts may well come from more novel institutions. New forms of foreign account noncompliance—by taxpayers who may be unaware of a reporting obligation—will require the IRS to raise awareness and to calibrate its penalty framework again so as not to deter voluntary disclosure. Imposing a lesser FBAR penalty than the current 50% penalty as part of the VDP would further that objective.

[27] *See* Dep't of Treas., *Foreign Account Tax Compliance Act*, available at https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act (listing active FATCA agreements between the U.S. and foreign governments) (last accessed Feb. 4, 2026).

Continually increasing FBAR penalties over time would result in exorbitant penalty amounts. In its historical practice, the IRS has at times recalibrated voluntary disclosure penalties to respond to changing trends in tax enforcement and encourage new pools of taxpayers to come into compliance. While incremental increases in penalty amounts over time make sense when establishing limited-duration programs to target specific forms of tax noncompliance (particularly in conjunction with IRS educational campaigns),[28] a stable, lower penalty baseline is more appropriate for the VDP as a general program designed to last indefinitely and target a wide variety of tax noncompliance.

4. International Information Returns

Under the existing VDP, "[p]enalties for the failure to file information returns will not be automatically imposed," and examining agents retain discretion as to whether or not to impose such penalties "based upon the facts and circumstances of each case." IRM pt. 4.63.3.18.2(8) (Apr. 21, 2025). In particular, the IRS has effectively recognized that international information return ("**IIR**") penalties are particularly inappropriate "[i]n a VDP case involving previously unreported foreign financial accounts where material FBAR penalties are applied." IRM pt. 4.63.3.18.13.2(2) (Apr. 21, 2025). In such instances, IIR penalties are often duplicative to a significant FBAR penalty already imposed with respect to similar conduct (i.e., a failure to

[28] For a useful recent example, see the IRS Employee Retention Credit Voluntary Disclosure Program ("ERC-VDP"). The first iteration of the ERC-VDP allowed participating taxpayers to retain 20% of any ERC-related refunds received, while the second allowed only 15% retention. Logically, as the IRS increased enforcement efforts and educated the public about the wave of dubious ERC claims being submitted, the VDP offer became less appealing. *See, e.g.*, IRS IR-2024-198, News Release: *Warning Signs of Incorrect Claims for ERC* (July 26, 2024).

disclose a foreign asset).[29] Consequently, IIR penalties are rarely applied under the existing VDP.[30]

The proposed updates provide simply that IIR "penalties up to $10,000 per return, per year, apply." The proposed updates provide little clarity about how IIR penalties will be imposed and suggest that IIR penalties will be imposed in all relevant cases. The Tax Section respectfully suggests that consistent with the general rule in IRS guidance, the revised VDP provide that IIR penalties not be imposed in any instance where an FBAR penalty is imposed. Such a rule would avoid doubly penalizing taxpayers and save IIR penalties for the rare circumstances when a taxpayer is not already subject to an FBAR requirement.

5. Estate & Gift Taxes

Under the existing VDP, "[o]ther applicable Title 26 penalties for Specialty Issues will be subject to penalties with a structure similar to income tax penalties and will be handled based upon the facts and circumstances of the case." IRM pt. 4.63.3.18.2(9) (Apr. 21, 2025). For estate taxes, a single 50% civil fraud penalty is generally imposed with respect to the deficiency. IRM pt. 4.63.3.18.14.1(1) (Apr. 21, 2025). For gift taxes, if only one tax year involves fraudulent activity, a 50% civil fraud penalty is imposed with respect to the deficiency for that year. IRM pt. 4.63.3.18.14.1.1(3) (Apr. 27, 2021). But if multiple tax years are involved, the disclosure period

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[29] *See* Nat'l Taxpayer Advocate, *2025 Annual Report to Congress* 108 ("FBAR and FATCA reporting is often duplicative. U.S. taxpayers with foreign accounts and assets are subject to two sets of information reporting requirements – one for the IRS and one for the Financial Crimes Enforcement Network (FinCEN).").

[30] *See* IRS, *Voluntary Disclosure Practice Examiner Guide* at 43 ("We anticipate application of IIR penalties in rare situations to provide penalty consistency among similarly situated taxpayers holding foreign assets. Specifically, in some unusual cases where taxpayers hold foreign assets not reportable on FBARs, examiners may use IIR penalties to ensure consistency among taxpayers making voluntary disclosures.").

encompasses *all* applicable tax years (with no limited look back), with a 75% civil fraud penalty being imposed on the year with the highest liability. IRM pt. 4.63.3.18.14.1.1(2) (Apr. 27, 2021).

The proposed updates do not provide guidance specific to estate and gift taxes. The Tax Section seeks clarity as to the penalty structure for these other Title 26 taxes. In our collective experience, estate and gift VDP submissions are uncommon, as compared to income tax submissions. Given the current estate and gift tax exemption—$15,000,000 for 2026—that infrequency is expected with respect to estate and gift taxes. However, the infrequency of submissions may also be related to the unlimited disclosure period for gift tax, should multiple years of fraudulent activity be reported or determined. Under the current VDP, taxpayers seeking to make disclosures with respect to estate and gift tax face the possibility of an examination and assessments of tax reaching far back far into the past—with massive corresponding accruals of underpayment interest. For estate tax, the high tax rate, paired with the fraud penalty and underpayment interest accrual, can effectively exhaust a decedent's estate. The Tax Section submits that applying the 20% accuracy-related penalty to deficiencies of estate and gift tax would be appropriate and incentivize a higher participation rate among the limited pool of taxpayers subject to estate and gift tax.