Sills Cummis & Gross P.C.

Client Alert Tax Litigation

Is Federal Tax Amnesty Coming? IRS May Be Considering Major Changes to Its Voluntary Disclosure Program

On December 22, 2025, the Internal Revenue Service announced that it is considering a major revision to its current Voluntary Disclosure Practice ("Current VDP") which went into effect on September 1, 2018. The Current VDP replaced the IRS' Offshore Voluntary Disclosure Initiative (OVDI)[1] first announced in 2009 to deal with the thousands of U.S. citizens and residents who had undisclosed foreign bank accounts and other assets abroad. However, the current VDP has attracted few applicants since 2018, which many attribute to its burdensome administrative processes and often unpredictable penalty structure.

While the announcement (IR-2025-124) provides a very general outline of what changes IRS is considering and solicits public input for a 90-day comment period ending March 22, 2026, the initial reaction from many practitioners was skepticism. However, IR-2025-124 expressly states that this new program was intended to "incentivize non-compliant Taxpayers to come into compliance and to improve" the current application process. If so, IRS may be considering moving away from its historic voluntary disclosure practices in favor of the 'quasi-amnesty' approach used by many states which IRS historically has resisted.

[1] The OVDI went through several iterations between 2009 and 2014 and brought more than $6 billion into the Treasury.

Jan 20
2026

I. Potentially Expanded Eligibility and Limited Required Upfront Disclosure

The voluntary disclosure practice used by New York is an example of such a 'quasi-amnesty' approach. The Taxpayer can apply online without fearing self-incrimination and simply fix their problem. Only people already under audit or criminal investigation or involved in promoting abusive tax schemes would be ineligible and one does not need to worry about whether the tax authority has information about the Taxpayer but hasn't yet acted on it. This is a big difference from historic IRS voluntary disclosure practice where the real question was always whether the Taxpayer's disclosure was 'triggered' by fear that IRS knew or would soon know about their noncompliance.

Accordingly, under the Current VDP, the Taxpayer takes a risk in applying because they do not know if IRS is aware of their non-compliance and thus do not know if they are already ineligible until after they have made at least some incriminating disclosures, and "the cat is out of the bag."

Adding to the uncertainty was the fact that IRS historically utilized somewhat nebulous criteria for evaluating whether a potential Taxpayer's voluntary disclosure was 'triggered' and they are thus, ineligible. This added a huge degree of risk to a Taxpayer considering entering the program and limited the number of those Taxpayers who were willing to take that risk. Among the things considered in determining if a disclosure was 'triggered' were:

- Was the Taxpayer already under or soon to be under Internal Revenue Service Criminal Investigation (IRS-CI) or other IRS audit or collection investigation?
- Even if not, was there some other Taxpayer under IRS-CI or other IRS investigation which might inevitably lead IRS to discover the Taxpayer's non-compliance?
- And even if not, was there some other non-IRS matter (a matrimonial action or a business dispute) in which the Taxpayer's tax noncompliance might become public knowledge?

In 2009, IRS adopted the formalized two-step preclearance process it uses currently to address these concerns in the context of thousands of Taxpayers seeking to avoid criminal prosecution for maintaining offshore closed foreign bank accounts because it was impractical to have individual hypothetical discussions for such a large number of Taxpayers.

In the first step, the Taxpayer sends a fax to a designated IRS-CI office to request preclearance and only discloses their name and identifying information. IRS-CI then checks this information against various databases to verify it has no information suggesting that the proposed disclosure is 'triggered' or otherwise ineligible. If so, IRS-CI faxes the Taxpayer a letter saying they are 'precleared' to proceed with the voluntary disclosure process. However, by applying for preclearance, the Taxpayer is notifying IRS that they have done something significant enough in their tax reporting that has prompted them to seek VDP protection. After being precleared, the Taxpayer must then make a second fax submission, also to a designated IRS-CI office, disclosing details of their actual non-compliance (under penalty of perjury) and admitting to willfully filing their original returns. Only after that, will IRS-CI issue a 'preliminary acceptance' letter to the Taxpayer formally.

In the Current Program and in IRS' historic VDP practice, IRS-CI's role is as the gatekeeper.

IR-2025-124 indicates that while the application is still made electronically by submitting Form 14457-Voluntary Disclosure Practice Preclearance Requests and Application, it does not appear to have to be submitted in two parts and IR-2025-124 does not mention sending it to IRS-CI. IR-2025-14 says only that it "must identify all years of non-compliance and provide a full and accurate description of the taxpayer's willful non-compliance," after which (if approved/ "precleared") the taxpayers will receive a conditional approval letter directing them to file all amended/delinquent returns and fully pay what is owed within three months.

This application/entry process appears to focus on specific concrete ineligibility criteria rather than on whether the Taxpayer's attempt to disclose was 'triggered'.

As noted, in the New York program, there is only a limited group of per se ineligible Taxpayers. Everyone else and any type of tax, currently or previously imposed under the [New York] tax law or any other law is eligible. There are no potential 'triggering' events which might disqualify the Taxpayer from participating in the New York program.[2]

Moreover, the New York program expressly states that the application is confidential and if found to be ineligible, the Taxpayer is expressly assured that the department cannot use the disclosure against the Taxpayer in a proceeding or share information with any other agency.

[2] New Jersey currently does not have a formal Voluntary Disclosure Program and Taxpayers potentially interested in coming clean to New Jersey must engage knowledgeable counsel to engage in a series of discussions with the State to get the State to allow the Taxpayer to make a form of voluntary disclosure.

II. Changed Penalty Structure and Payment Terms

Under the Current Program, the penalty structure for a Taxpayer disclosing offshore bank accounts is draconian, requiring a 50% forfeiture of the highest foreign account balance over the six-year disclosure period plus a 75% civil fraud penalty on the tax due for the largest year in the six-year disclosure period. For non-foreign account cases, the Current Program's penalty structure – only a single 75% fraud penalty on the highest year – often was better than annual 20% accuracy or 25% delinquency penalties typically imposed civilly outside VDP.

The outline of the new penalty structure described in IR-2025-124 appears to be a mixed bag – there will be "per year," "inflation adjusted" (apparently non-willful) FBAR penalties as opposed to the single willful 50% FBAR penalty based on the highest balance in the six-year period. The penalty structure for income tax violations also will change. Under the new program, accuracy (20%) or delinquency (25%) penalties will be imposed on each of the income tax deficiencies (not a single 75% fraud penalty as required under the Current Program). As noted, the total of those per year penalties may be more in practice than the single year 75% fraud penalty.

IR-2025-124 indicates that full payment of the total tax, penalties and interest is still required in all cases (as it is under the Current Program) and indicates that the Taxpayer will be required to sign a closing agreement "waiving the statute of limitation" and an "FBAR agreement," if applicable.

In this regard, the new program diverges from the New York 'quasi-amnesty' program. New York only requires the Taxpayer to pay tax and interest on the tax.

The New York program also requires the Taxpayer to fully pay the tax due plus interest but, in limited cases, allows for the Taxpayer to enter into a part payment agreement.

III. Potential Limitation on Post-Filing Audit Review

The new program also appears to contemplate that few of the disclosures will be subjected to audit review, unlike the Current VDP where the Taxpayer, once preliminary accepted, must await the case being assigned to a Revenue Agent to submit their amended or delinquent returns. Because of staffing issues at IRS, many Current Program users endured a lengthy delay after being 'preliminary accepted' – often a year or more while interest continued to run.

Once an agent was assigned, those returns would be subjected to an audit before the agent will accept them as accurate. Only after that was complete did the agent initiate a multi-layer process within IRS to generate a Closing Agreement for the Taxpayer to sign. In contrast, the New York program does not contemplate any audits of the corrected filings. The Taxpayer is sent a form agreement to sign to complete the process. IR-2025-124 suggests IRS is considering something like this simplified New York process but the details of what/when/how are not yet clear.

IV. What About Taxpayers Who Have Already Been Preliminarily Accepted into the Current VDP?

One additional point that needs to be clarified is whether a Taxpayer already preliminarily accepted into the Current Program can elect to switch to the new program if its terms are more favorable or simply to speed up the conclusion of the whole process. In 2014, when IRS announced the Streamlined Filing Compliance Procedure (SFCP) as an alternative to the OVDI for Taxpayers who were 'non-willful', it offered such Taxpayers already in OVDI a limited opportunity to exit OVDI and participate in the much less onerous SFCP.

V. What's in It for IRS to Liberalize the VDP Process? There's Nothing to Lose.

- IRS has suffered staff loses through retirements and layoffs approaching 40% in some areas, including examination of tax returns and enforced collection of the ever-larger tax gap, which limits its ability to divide its remaining manpower to do audits or collect unpaid taxes to generate revenue.
- Essentially no one is using the Current Program and paying the higher penalties required under it.

Conclusion

As they say, "the devil is in the details" and IR-2025-124 is short on details. Those 'details' must be clarified before any knowledgeable advisor would recommend that a client participate in it.

For now, while it appears IRS institutionally is willing to make major changes to its voluntary disclosure practice to generate more revenue and to get more Taxpayers to apply to participate, whether this will be a 'quasi-amnesty' isn't yet clear because the full terms of the new program are still to be announced. There are sure to be internal discussions within IRS about whether the changes proposed are good tax policy or not.

Client Alert Tax Litigation

Knowledgeable sources say that IRS will schedule at least one public meeting before the comment period ends on March 22, 2026 to solicit public reaction to the proposed revisions. The ABA Tax Section and other stakeholders will likely be submitting detailed comments by March 22, 2026, which IRS will consider before issuing a new draft with more specifics.

We will provide an update on the new agreement after the public comment period ends on March 22, 2026.

If you would like additional information, please contact:

Richard J. Sapinski, Esq.
Client Alert Author; Member, White Collar Practice Group
rsapinski@sillscummis.com | (973) 643-5975

Robert A. Stern, Esq.
Client Alert Author; Counsel, White Collar Practice Group
rstern@sillscummis.com | (973) 643-6788