

# IRS Updates Voluntary Disclosure Form With Electronic Bent

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By Nathan J. Richman

The IRS's newest version of the two-part letter for taxpayers seeking to voluntarily disclose past noncompliance not only expands the section for cryptocurrency reporting but also embraces the move away from paper filing.

On February 15 the IRS released a revised version of Form 14457, "Voluntary Disclosure Practice Preclearance Request and Application," highlighting the expanded virtual currency section, the ability of users to file both parts of the form via fax using electronic signatures, a check box for taxpayers concerned that they won't be able to fully pay their liabilities, and new penalty structures for employment and transfer tax violations.

"This is an important form and process for people who recognize it's better to step forward and address their tax situations head-on, before facing IRS enforcement action," Douglas O'Donnell, deputy IRS commissioner for services and enforcement, said in [a release](#). "The revised form includes a number of updates, and we encourage people to review the guidelines and consult a trusted tax professional," he added.

An IRS official [hinted at the updates](#) in October 2021, predicting several of the developments touted in the release.

The IRS's voluntary disclosure program is a way for taxpayers fearing potential criminal tax exposure to disclose their noncompliance to the agency. If the disclosure satisfies several requirements, notably including timeliness such that the filing comes before the IRS has taken an interest in the relevant taxpayer, the agency promises not to refer the case for criminal prosecution.

Form 14457 covers the two main stages of voluntary disclosure practice. Taxpayers send in Part I for preclearance, during which the IRS determines if the submissions are timely. If they are, taxpayers then send in Part II for the full disclosure.

In prior versions of Form 14457, only Part I could be faxed to the IRS. Taxpayers had to mail in Part II. The new Form 14457 allows taxpayers to scan their signatures onto Part II and fax the form to the IRS.

Don Fort of Kostelanetz & Fink LLP told *Tax Notes* the decision to allow electronic signatures

and electronic fax submissions will always receive a positive reception, especially in the current environment.

The IRS [has been wrestling](#) with a paper correspondence backlog to the point that the national taxpayer advocate called paper returns the agency's "kryptonite."

Fort, a former chief of the IRS Criminal Investigation division, added that taxpayers contemplating voluntary disclosure are already anxious, so waiting a month or longer at the preclearance stage can be especially nerve-racking. If the intake process could be improved, that would be a positive step, he said.

Zhanna A. Ziering of Moore Tax Law Group LLC also highlighted the timeliness of the preclearance process. "Anecdotally, initial preclearance these days takes a lot longer than 60 days. This raises a question of whether these timelines are aspirational or a statement of the IRS's intent to adhere to them," she said.

The inclusion of additional examples as well as other expansions in the instructions were welcome developments, according to Ziering. While earlier versions of Form 14457 seemed preoccupied with offshore income issues, the new version seems to offer a roadmap for curing a wider variety of noncompliance, she said.

## Crypto Section

The prior version of Form 14457 had check boxes for taxpayers to indicate potential cryptocurrency noncompliance as one of the issues they wanted to resolve by voluntary disclosure. However, they had to try to fit information about their holdings into the box for general financial institution reporting.

The new version has a separate set of boxes for reporting cryptocurrency below the ones for financial institution reporting. The new boxes call for some information more appropriate to cryptocurrency holdings like acquisition and disposition dates as well as the identifying number or designation for the holding. In other words, there's now a field for entering a public key.

According to Fort, the blocks for reporting cryptocurrency under the old form "did not always apply well to virtual currency holdings." The newer form with its more specific section will help clarify how taxpayers should identify their cryptocurrency holdings, he said.

Josh O. Ungerman of Meadows, Collier, Reed, Cousins, Crouch & Ungerman LLP said that the requirement to perfectly report, especially cryptocurrency, on returns filed as part of voluntary disclosure can be a trap for the unwary. "With the updated voluntary disclosure preclearance form, the IRS is specifically prompting and identifying the inclusion of virtual currency transactions. A taxpayer taking advantage of the voluntary disclosure program excludes virtual currency transactions at their peril, especially after this revision," he said.

Guinevere M. Moore of Moore Tax Law Group welcomed the cryptocurrency reporting boxes. But she added that some taxpayers may have difficulty answering the question about whether their holdings are domestic or offshore.

## Paying Penalties

The new version of Form 14457 now includes a check box at the top of Part II labeled as “Inability to pay in full (Note: The burden is on the taxpayer to establish inability to pay).” This seems like a nod to concerns [the IRS heard](#) about taxpayers wanting to come clean but being unable to repay in full what they owe.

IRS officials have said inability to pay isn’t fatal to a voluntary disclosure, but taxpayers need to raise that issue early in the process and may have to waive their collection due process rights.

The IRS has been promising to clarify the penalties it plans to impose on taxpayers disclosing employment tax or [gift and estate tax](#) noncompliance. The instructions attached to the new form include three new penalty sections.

Taxpayers disclosing estate tax noncompliance will face a civil fraud penalty under either [section 6651\(f\)](#) or [section 6663](#), but the rate will be reduced from 75 percent to 50 percent. Since the revision of the voluntary disclosure program came after the expiration of the offshore voluntary disclosure program, the IRS has imposed one year of civil fraud penalties on taxpayers with income tax return noncompliance.

The gift tax or generation-skipping transfer tax penalty regime follows the new estate tax regime (one lower civil fraud penalty) if there’s just one year of noncompliance but an expanded version of the income tax regime if there are multiple years (full civil fraud penalty for one year but no six-year disclosure limit).

“Practitioners welcome the clarification of the voluntary disclosure program penalties with respect to estate, gift, and generation-skipping transfer taxes. The clarification of penalties in the estate and gift tax arena provides more comfort to estates, and many practitioners expect to see an increase in voluntary disclosures by estates in the coming years,” Ungerman said.

For employment tax noncompliance, the new form clarifies that the civil fraud penalty will only apply to the quarter with the highest tax liability, although the [section 6656](#) failure-to-deposit penalty will still apply as normal.

“Applying the civil fraud penalty to the biggest quarter provides more comfort to taxpayers with employment tax noncompliance that needs to be remediated through the voluntary disclose process. Many practitioners expect to see an increase in voluntary disclosures by estates in the coming years in light of the clarification of penalties in the employment tax arena,” Ungerman said.

“The establishment of the penalty regime, with respect to non-income-tax compliance issues, such as gift, estate, and employment tax, is a long-awaited addition. Taxpayers faced with these issues can now seek participation in the program with an improved certainty with respect to the program’s price tag,” Ziering said. Unfortunately, there’s still some uncertainty, particularly for information return penalties, because of the discretion examiners have over those, she added.

Moore also highlighted the lack of further information return penalty guidance while appreciating the other new details. “I do not understand why the IRS wants to provide a bright-line rule that taxpayers who filed false tax returns for six years will face only one year of fraud penalties while

at the same time providing no clarity at all on how taxpayers who failed to file a [Form] 1094-C, 5471, or 3520 would fare under the same voluntary disclosure practice,” she said.