IRS Investigations & Practices Subcommittee Report

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Mr. Villa’s practice concentrates on resolving federal tax controversies and white collar crime such as securities, tax and bank fraud. He represents individuals, closely-held businesses, and large corporations in IRS audits, appeals, and litigation. Mr. Villa represents individuals and entities in business disputes and lawsuits involving fraud, breach of contract, breach of fiduciary duty, deceptive trade practices act violations, non-compete violations, business torts, and other commercial disputes.

In 2010-2013, Mr. Villa was named a Texas Rising Star, and in 2013-2017 he was named a Texas Super Lawyer as listed in Texas Monthly and Texas Super Lawyer Magazine, and on the web at superlawyers.com.

Prior to joining the firm in 2007, he worked in Washington, D.C. as a Congressional intern to U.S. Senator John Breaux (Retired) and worked as an Associate with a regional law firm in New Orleans, Louisiana. In 2004-2005, he served as a Judicial Clerk to the Honorable James J. Brady, U.S. District Court, Middle District of Louisiana.

Mr. Villa was admitted to practice in Louisiana in 2004 and in Texas in 2005.
On November 20, 2018, the IRS issued a Memo on updated voluntary disclosure practice.

The memorandum addresses the process for all voluntary disclosures (domestic and offshore) following the closing of the Offshore Voluntary Disclosure Program (2014 OVDP) on September 28, 2018.

Updated Voluntary Disclosure Process

In general, voluntary disclosures will include a six-year disclosure period. The disclosure period will require examinations of the most recent six tax years. Disclosure and examination periods may vary as described below:

- In voluntary disclosures not resolved by agreement, the examiner has discretion to expand the scope to include the full duration of the noncompliance and may assert maximum penalties under the law with the approval of management.
- In cases where noncompliance involves fewer than the most recent six tax years, the voluntary disclosure must correct noncompliance for all tax periods involved.
- With the IRS’ review and consent, cooperative taxpayers may be allowed to expand the disclosure period. 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).
Taxpayers must submit all required returns and reports for the disclosure period.

Examiners will determine applicable taxes, interest, and penalties under existing law and procedures. Penalties will be asserted as follows:

- Except as set forth below, 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 apply to the one tax year with the highest tax liability. For purposes of this memorandum, both penalties are referred to as the civil fraud penalty.
- In limited circumstances, examiners may apply the civil fraud penalty to more than one year in the six-year scope (up to all six years) based on the facts and circumstances of the case, for example, if there is no agreement as to the tax liability.
- Examiners may apply the civil fraud penalty beyond six years if the taxpayer fails to cooperate and resolve the examination by agreement.

Willful FBAR penalties will be asserted in accordance with existing IRS penalty guidelines under IRM 4.26.16 and 4.26.17.

A taxpayer is not precluded from requesting the imposition of accuracy related penalties under I.R.C. § 6662 instead of civil fraud penalties or non-willful FBAR penalties instead of willful penalties. Given the objective of the voluntary disclosure practice, granting requests for the imposition of lesser penalties is expected to be exceptional.

Where the facts and the law support the assertion of a civil fraud or willful FBAR penalty, a taxpayer must present convincing evidence to justify why the civil fraud penalty should not be imposed.
Updated Voluntary Disclosure Process

- Penalties for the failure to file information returns will not be automatically imposed. Examiner discretion will take into account the application of other penalties (such as civil fraud penalty and willful FBAR penalty) and resolve the examination by agreement.

- Penalties relating to excise taxes, employment taxes, estate and gift tax, etc. will be handled based upon the facts and circumstances with examiners coordinating with appropriate subject matter experts.

- Taxpayers retain the right to request an appeal with the Office of Appeals.

Cryptocurrency - IRS Enforcement Efforts To Ensure Compliance

- IR-2018-71, March 23, 2018
- IRS reminds taxpayers to report virtual currency transactions
- Taxpayers who do not properly report the income tax consequences of virtual currency transactions can be audited for those transactions and can be liable for penalties and interest.
- In more extreme situations, taxpayers could be subject to criminal prosecution for failing to properly report the income tax consequences of virtual currency transactions.
On February 23rd, 2018, Coinbase notified a group of approximately 13,000 customers that it was ordered to respond to an IRS summons for records on its customers.

The Court ruled that Coinbase must produce the following documents for accounts with at least the equivalent of $20,000 in any one transaction type (buy, sell, send, or receive) in any one year during the 2013 to 2015 period:

1) the taxpayer ID number,
2) name,
3) birth date,
4) address,
5) records of account activity including transaction logs or other records identifying the date, amount, and type of transaction (purchase/sale/exchange), the post transaction balance, and the names of counterparties to the transaction, and
6) all periodic statements of account or invoices (or the equivalent).
New Large Business and International Compliance Campaign

- July 2, 2018
- Virtual Currency
- Practice Area: Withholding & International Individual Compliance
- U.S. persons are subject to tax on worldwide income from all sources including transactions involving virtual currency. IRS Notice 2014-21 states that virtual currency is property for federal tax purposes and provides information on the U.S. federal tax implications of convertible virtual currency transactions. The Virtual Currency Compliance campaign will address noncompliance related to the use of virtual currency through multiple treatment streams including outreach and examinations. The compliance activities will follow the general tax principles applicable to all transactions in property, as outlined in Notice 2014-21. The IRS will continue to consider and solicit taxpayer and practitioner feedback in education efforts, future guidance, and development of Practice Units. Taxpayers with unreported virtual currency transactions are urged to correct their returns as soon as practical. The IRS is not contemplating a voluntary disclosure program specifically to address tax non-compliance involving virtual currency.

Application of FinCEN Regulations to Virtual Currency

- A user of virtual currency is not an MSB under FinCEN's regulations and therefore is not subject to MSB registration, reporting, and recordkeeping regulations.

- However, an administrator or exchanger is an MSB under FinCEN's regulations, specifically, a money transmitter, unless a limitation to or exemption from the definition applies to the person.

  - FIN-2-13-G001
What is a FinCEN Virtual Currency Enforcement Specialist?

- Analyze, research, describe, and assess financial institutions, or their partners, directors, officer, or employees, operating in convertible virtual currency for their compliance with the U.S. anti-money laundering/combating the financing of terrorism (AML/CFT) regulatory framework;

- Conduct research and build compliance and enforcement cases and organize their supporting evidence, as well as analyze and prioritize targets based on FinCEN priorities;

- Participate in the formulation, planning, development, and implementation of compliance and enforcement strategies related to virtual currency businesses that have industry-wide, national, or international impact, including those related to national security.

- Serve as a technical expert regarding cryptocurrency, blockchain analytics, and cyber intelligence gathering tools in order to produce sophisticated analyses, assess the darknet, and conduct blockchain analytics.
IRS-CI Evolution on Virtual Currency

- IRS-CI formed a team in 2013 to study the use of virtual currencies to avoid taxes by moving money in and out of offshore accounts.
- That team spent two years helping prepare the legal summons at issue in the Coinbase case.
- IRS-CI is forming specialized teams with expertise to develop high-impact cases.

Global Enforcement Efforts

- In 2018, IRS-CI teamed up with tax authorities from the United Kingdom, Canada, Australia, and the Netherlands. Together, they have formed the Joint Chiefs of Global Tax Enforcement (J5).
The Joint Chiefs of Global Tax Enforcement (known as the J5)

- The J5 are committed to combatting transnational tax crime through increased enforcement collaboration. The J5 will work together to gather information, share intelligence, conduct operations and build the capacity of tax crime enforcement officials.

The J5 & Cryptocurrency Enforcement

- IRS-CI will collaborate internationally to reduce the growing threat to tax administrations posed by cryptocurrencies and cybercrime and to make the most of data and technology.
International Collaboration

The J5 plans to:

- Develop shared strategies to gather information and intelligence that will strengthen operational cooperation in matters of mutual interest, and target those who seek to commit transnational tax crime, cybercrime and launder the proceeds of crime.

- Drive strategies and procedures to conduct joint investigations and disrupt the activity of those who commit transnational tax crime, cybercrime, and also those who enable and assist money laundering.

- Collaborate on effective communications that reinforce that J5 is working together to tackle transnational tax crime, cybercrime and money laundering.

Additional IRS Guidance Needed on Cryptocurrency?

In May 2018, AICPA suggested 12 topics and delivered 27 suggested FAQs that might provide additional guidance to Notice 2014-21.

1. Expenses of Obtaining Virtual Currency
2. Acceptable Valuation and Documentation
3. Computation of Gains and Losses
4. Need for a De Minimis Election
5. Valuation for Charitable Contribution Purposes
6. Virtual Currency Events
7. Virtual Currency Held and Used by a Dealer
8. Traders and Dealers of Virtual Currency
9. Treatment under Section 10312
10. Treatment under Section 453
11. Holding Virtual Currency in a Retirement Account
12. Foreign Reporting Requirements for Virtual Currency

Tax transcript distribution changes – faxing and third-party mailing

- Sometime around January 2019, the IRS plans to stop faxing transcripts to both taxpayers and to third parties. This change applies to both individual and business taxpayers. At that time, when taxpayers or third parties call the IRS with an individual or business transcript request, the transcript will be mailed to the taxpayer’s address of record. Reminder: Individual taxpayers may obtain transcripts immediately online via Get Transcripts Online and tax professionals with proper authorization may obtain transcripts via the e-Services Transcript Delivery Systems.

- Starting around May 2019, the IRS will stop mailing transcripts to third parties listed on Line 5a of the Form 4506-T and T-EZ. This field will be eliminated from the form. Transcript requests made on the Form 4506-T and T-EZ will be mailed to the taxpayer’s address of record, not to third parties. Generally, transcripts are delivered within five to 10 business days.

- As timeframes are finalized, the IRS will keep the tax preparation community aware of the proposed changes.

DISCLAIMER

The information included in these slides is for discussion purposes only and should not be relied on without seeking individual legal advice.