What Does DOJ's New Department-Wide Corporate Enforcement and Voluntary Self-Disclosure Policy Mean for Corporate Criminal Tax Disclosures?

By Sandra R. Brown

On March 10, 2026, the Department of Justice (DOJ) launched its first department-wide Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP), standardizing how prosecutors handle corporate criminal cases.[iii] This move consolidates decades of subject matter-specific guidance into one unified framework for how the DOJ will handle all corporate criminal cases, with the exception of antitrust violations under 15 U.S.C. §§ 1–38, *regardless of subject matter*.

In the world of tax controversy, the IRS's Voluntary Disclosure Practice[iii] has been on the top of the list for bringing in, not only individuals, but also corporations and entities that have willfully failed to comply with tax laws. The DOJ Tax Division, under its Voluntary Disclosure Policy, was also at the top of that same list. However, now, noting that DOJ officially dissolved the Tax Division on November 30, 2025, moving its criminal functions into the Criminal Division under the newly created "Tax Section", one might wonder what the new DOJ CEP means for criminal tax cases and whether the IRS's Voluntary Disclosure Policy ("VDP") is no longer applicable, or for that matter, the most optimal program, for corporate or entity taxpayers seeking to correct their intentional non-compliance with reporting of income, pay taxes, or other tax related reporting obligations under the Internal Revenue Code.

What's New under the Department-Wide CEP?

The DOJ's new CEP contains 3 Parts, or "levels", which address not only the incentives for self-disclosure, but the requirements for each of the 3 levels.

Part I, "Declination Under the CEP", is the most beneficial as it directs that prosecutors *will* provide a prosecution declination, if the company meets the following conditions:

- Voluntarily self-disclose misconduct to an appropriate component[iv] before the government learns of it
- Fully cooperate with DOJ investigations
- Timely and appropriately remediate the underlying issues
- Lacks certain aggravating factors like pervasive misconduct or repeat offenses.

At Appendix B, the CEP provides a definition of what qualifies as *Voluntary Self-Disclosure* for purposes of the CEP:

1. The company must make a good faith disclosure of the misconduct to the appropriate Department component;

2. The misconduct is not previously known to the Department;

3. The company had no preexisting obligation to disclose the misconduct to the Department;

4. The voluntary disclosure occurs "prior to an imminent threat of disclosure or government investigation";[v] and,

5. The company discloses the conduct to the Department within a reasonably prompt time after becoming aware of the misconduct, with the burden being on the company to demonstrate timeliness.

Notably, even if a whistleblower submits to the Department before the company self discloses, the company still qualifies as a Voluntary Self-Disclosure provided that the company: (1) self-reports the conduct to the Department as soon as reasonably practicable but no later than 120 days after receiving the whistleblower's internal report; and (2) meets the other requirements for voluntary self-disclosure and a declination under the policy.

Appendix B also addresses the type of information that must be submitted as a threshold for any cooperation credit, referencing the Justice Manual ("JM") Chapter 9-28.000, which in essence requires the timely, truthful and accurate disclosure of all facts and non-privileged evidence relevant to the conduct at issue, including but not limited to identification of all individuals involved or responsible for the misconduct and attribution of fact to specific sources rather than a general narrative of facts.

Even where aggravating factors are present, self-disclosure and cooperation may yield substantial benefits, including non-prosecution agreements and significant penalty reductions, subject to prosecutors retaining discretion to *recommend* a CEP declination.

At Part II, "'Near Miss' Voluntary Self-Disclosures or Aggravating Factors Warranting Resolutions", which is not as generous as Part I, there are still substantial reductions in punishment as well as economic burdens, for company that would otherwise qualify for Part I but have one of the following disqualifying facts: (1) its good-faith self-report did not qualify as a voluntary self-disclosure (VSD) or (2) there are aggravating factors that warrant a criminal resolution. Under Part II, the CEP directs that prosecutors *shall*: (a) provide a Non-Prosecution Agreement (NPA) (absent "particularly egregious or multiple aggravating circumstances") for a term of less than three years; (b) not require an independent

compliance monitor; and (c) reduce the applicable fine by 50% to 75% from the low end of the range established by the U.S. Sentencing Guidelines.

Lastly, is Part III, which applies to companies that are not eligible for Part I or Part II. As can be expected, under Part III, prosecutors retain discretion to determine the appropriate resolution, including form, term, compliance obligation and monetary penalty, provided the fine reduction is not more than 50%. But for companies that fully cooperate and timely and appropriately remediate, there will be a presumption that the reduction will be taken from the low end of the Guidelines range. In all other situations, prosecutors will have discretion to determine the starting point for a corporate resolution based on the facts and circumstances of the case, including (but not limited to) the company's recidivism.

Part III, "Resolution in Other Cases", can be expected to be a rub to the CEP focus on "standardizing" how prosecutors across various components handle their retained discretion and whether underlying components like the IRS and the Tax Section will influence such discretion.

Implications and Coordination of the CEP with the IRS Voluntary Disclosure Program[vi]

As set forth in footnote 5 of the CEP, "Disclosures made only to federal regulatory agencies, state and local governments, or civil enforcement agencies generally do not qualify. However, good faith disclosures to such entities may qualify if appropriate under the circumstances. This will be determined based on the particular facts and at the discretion of the Department. In all cases, such disclosures may be considered as part of a company's cooperation and remediation."

So, is there an incentive to approach both DOJ and the IRS?

Part I requires the company to timely and appropriately remediate the underlying issues. For a tax violation, would this require paying all tax, penalty and interest before approaching the Tax Section of the Criminal Division? Will the CEP limit the IRS's ability to pursue a parallel civil fraud investigation or to mitigate penalties? Or would the IRS find that remedial actions, credible compliance, early disclosure to DOJ along with a formal declination from DOJ are sufficiently mitigating reasons to focus its resources instead on non-compliant taxpayers?

Would DOJ need the cooperation from CI or the IRS Office of Fraud Enforcement Unit or at least a cooperating revenue agent, who is normally the person with the technical expertise to conduct an audit and determine the tax due? Or would the Tax Section handle and resolve such CEP matters akin to the success of the Swiss Bank Program initiated in 2013, under the then Deputy Attorney General James M. Cole.[vii]

Where the client meets Part I or II, then the guarantee of non-prosecution under the CEP, versus the lack thereof under the IRS's VDP, may be the incentive that also saves the company. Particularly, as the IRS's VDP has always come with the warning that, unlike DOJ components, it doesn't have the legal authority to provide immunity, e.g., a declination of criminal charges.

Even with DOJ's new CEP focus on a single framework to govern voluntary self-disclosure, it may be that for corporations considering such self-disclosures, one size may not fit all. Companies navigating such disclosure decisions, particularly for tax non-compliance, should consult with a qualified tax controversy professional.

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[i] https://www.justice.gov/opa/pr/department-justice-releases-first-ever-corporate-enforcement-policy-all-criminal-cases

[iiii] https://www.justice.gov/dag/media/1430731/dl?inline

[iii] https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice

[iv] Under this Policy, disclosure must be made to the appropriate component of the Department. Good faith disclosure to one component where the matter is later brought to another appropriate component for

investigation will also qualify. Disclosures made only to federal regulatory agencies, state and local governments, or civil enforcement agencies generally do not qualify.

[v] U.S.S.G. § 8C2.5(g)(l).

[vi] The IRS VDP is currently undergoing a 90-day public comment period, focused on proposed updates and a more streamlined penalty framework. See, https://www.irs.gov/newsroom/irs-seeks-public-comment-on-voluntary-disclosure-practice-proposal

[vii] https://www.justice.gov/archives/tax/swiss-bank-program