A Step Forward for Voluntary Disclosure: IRS Agrees to Remove Willfulness Checkbox from Form 14457 and Potentially Open the Program to Income Derived from Sale of Marijuana

By Steve Toscher, Michel R. Stein, and Philipp Behrendt

In a rare and welcomed victory for taxpayer rights and administrative fairness, the IRS has agreed to remove the willfulness checkbox from the next version of the Form 14457—the application form for the Voluntary Disclosure Practice (VDP). In addition, the program will make allowances not to preclude income derived from marijuana sales by changing its definition of illegal source income.

The Voluntary Disclosure Program (VDP)

The changes, first announced by National Taxpayer Advocate Erin Collins in her June 2025 blog post, come after multiple voices of concern were raised by practitioners and stakeholders. For tax professionals who regularly represent clients considering voluntary disclosure, this change eliminates a procedural landmine that was implemented with the last update of the Form 14457, a checkbox that was at odds with due process and basic fairness.

The willfulness checkbox, introduced as part of the 2024 overhaul of the VDP Form 14457, required applicants to declare, under penalties of perjury, that their prior noncompliance was willful. While the checkbox was presumably added to screen out those for whom the program was not intended (i.e., those without clear criminal exposure), it had the effect of coercing taxpayers to admit willful conduct on the record—even before their submission had been reviewed or accepted into VDP. This requirement posed a significant legal risk.

The IRS's agreement to eliminate the checkbox in the next revision of Form 14457 marks a meaningful improvement in how the agency handles sensitive disclosures. But this development, while important, does not fully resolve the broader structural issues facing the VDP.

Since its relaunch in 2018 following the end of the Offshore Voluntary Disclosure Program, the VDP has suffered from low participation and unclear incentives. As the National Taxpayer Advocate's 2024 Annual Report to Congress documented, the IRS had completed only 161 criminal VDP cases between fiscal year 2019 and August 2024 (see TAS response to recommendation 10-2, pdf p. 63.) That figure underscores what many tax professionals have observed anecdotally: the modern VDP is underutilized not because taxpayers do not want to comply, but because the program is viewed as opaque, overly punitive, and unreasonably risky.

In addition to the checkbox issue, the Taxpayer Advocate identified several other flaws in the current VDP structure:

1. **Excessive Penalties.** VDP participants are routinely assessed the 75% civil fraud penalty, without regard to whether their conduct warrants it in degree or scale (Recommendation 10-2).

2. **No Appeal Rights.** Taxpayers accepted into the program are not permitted to dispute the IRS's proposed assessment of tax, penalties, or interest. They must accept the IRS's determination or risk removal from the program (Recommendation 10-5).

3. **No Payment Flexibility.** VDP participation requires full payment, with no option for a partial installment agreement or offer in compromise. This creates a barrier for taxpayers who are willing to come forward but lack the liquidity to pay large assessments all at once (Recommendation 10-4).

4. **Undefined Terms.** Terms like "illegal source income" are left vague, and the IRS has provided limited guidance on how such cases will be handled, leaving taxpayers in limbo (Recommendation 10-1). Here, we have seen some movement as the IRS is in the process of reviewing and potentially making allowances for income derived or related to the sale of marijuana.

5. **Lack of Civil Disclosure Programs.** The IRS has not established other civil disclosure programs to encourage voluntary and future compliance for emerging issues such as digital assets where noncompliance may not rise to the level of criminal fraud (Recommendation 10-7).

While the IRS sees no need to implement a majority of the recommendation, the National Taxpayer Advocate made some recommendations in her June 2025 update to which the IRS has agreed to or will at least further review changes. Such recommendations are:

- The IRS will remove the willfulness checkbox in the next revision of Form 14457 (Recommendation 10-3).

- The IRS has, in part, agreed to conduct a review of the VDP, including data tracking, public engagement, and reconsideration of program terms, such as the treatment of marijuana-related income (Recommendation 10-1).

- The IRS committed to tracking the amounts of tax, penalties, and interest collected through the VDP—something it has not done previously (Recommendation 10-8).

These concessions reflect a willingness to reexamine aspects of the program that may be discouraging participation and undermining the IRS's broader compliance goals. At the same time, the IRS shows limited flexibility on other issues, including issues that has led many taxpayers and practitioners to pursue alternative strategies—including amended returns or prospective compliance, where appropriate.

One particularly troubling aspect of the current program is its rigidity in the face of taxpayers who do not have the ability to fully pay by the conclusion of the program. The Taxpayer Advocate rightly noted that requiring full payment or removing a taxpayer from the VDP is unnecessarily rigid and undermines the IRS's interest in encouraging disclosures. The IRS's refusal to allow payment flexibility may be understandable in cases involving ongoing fraud or bad faith, but it seems counterproductive when applied categorically to some taxpayers.

Illustrative Examples

Consider three scenarios that illustrate the complexities of the current VDP framework:

- A U.S. taxpayer with unreported staking rewards earned through an offshore cryptocurrency exchange seeks to disclose but is unable to pay the resulting tax liability because the foreign exchange went out of business and the taxpayer has no longer access to the funds. He is now unable to pay in full.
- A dual-national taxpayer inherits a foreign account from a deceased parent but fails to file FBARs due to lack of awareness. They worry that checking a willfulness box may invite prosecution if their application is denied.
- A marijuana dispensary owner operating legally under state law has tax exposure related to unreported cash sales but is unsure whether her income disqualifies her from using the VDP.

These fact patterns are increasingly common in today's tax landscape, and they highlight the pressing need for clearer guidance, calibrated penalties, and early-stage protections for taxpayers trying to do the right thing.

Policy Reflections: The Role of the National Taxpayer Advocate

The recent change is a testament to the influence of the National Taxpayer Advocate as an institutional check. By highlighting potential issues in VDP, the Advocate functioned as a guardian of due process within an enforcement-oriented agency.

It is worth emphasizing that changes to the program did not arise from court order, litigation, or regulation. It emerged through persistent oversight and advocacy from within the IRS's own accountability structure. That success should be seen as a model for how administrative reform can occur—even in a system as complex as federal tax administration. With this step—the removal of a single checkbox—the IRS has signaled that it is listening. The hope now is that it will keep listening, and that future reforms will reflect not just a response to criticism, but a proactive commitment to effective tax administration.

For practitioners, this is a moment to reengage with the VDP process, monitor changes to Form 14457, and contribute to the ongoing discussion about what a fair and functional disclosure regime should look like. For taxpayers, it is a small but an important sign that the IRS, while still formidable, is not entirely inflexible.

As we await further guidance and revisions, one thing is clear: when it comes to disclosure, clarity and fairness are not luxuries. They are necessities.

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