



DOJ Directive 26-12: Incorporating IRS Criminal Investigation into DOJ's Broader Anti-Fraud Strategy

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On October 8, 2026, Assistant Attorney General Colin M. McDonald, who leads the U.S. Department of Justice's National Fraud Enforcement Division (NFED), announced the division's comprehensive anti-fraud strategy pursuant to the newly issued [Directive 26-12: Corporate Enforcement in the Fight Against Fraud](#).ⁱ

Directive 26-12 and NFED's "Full-Fledged Law Firm" Model for Fraud Enforcement

Directive 26-12, issued October 1, 2026, sets out DOJ guidance for NFED's expanded enforcement priorities in four principal fraud areas:

- Health care fraud
- Government contracting and public trust
- Tax evasion and internal revenue
- Tariff evasion, global trade, and forced labor

AAG McDonald's remarks and Directive 26-12 highlight the following points on tax evasion and internal revenue enforcement:

- **Emphasis on Tax Evasion.** Because illicit proceeds frequently go unreported to the IRS, prosecutors should evaluate criminal tax-evasion charges and penalties in addition to the underlying fraud counts.
 - The failure to report or pay tax on illicit proceeds can supply an additional basis for prosecution, show the full extent of the conduct, and support greater recoveries for the public fisc.
- **Coordinated Enforcement:** When tax evasion is suspected, NFED prosecutors are encouraged to coordinate closely with IRS investigators. They must also consult subject-matter experts and assess whether tax charges would materially strengthen the case.
 - If tax charges could materially advance the investigation, prosecution, or recovery of assets, prosecutors should request that IRS-CI examine the conduct for tax noncompliance.



- When IRS-CI participates, the assigned attorney will consult experts in the Division's Tax Section—formerly trial attorneys in the Tax Division's Criminal Enforcement Section—to evaluate and pursue appropriate tax charges. Those charges must comply with the *Principles of Federal Prosecution* and reflect the priority of recovering unpaid taxes on fraudulently obtained or unreported income.

The Directive's mandate will be familiar to former tax prosecutors and tax-controversy defense attorneys who routinely advise taxpayers on compliance. It directs prosecutors to coordinate with IRS investigators and DOJ tax attorneys and, when warranted, bring tax-evasion charges—including when proceeds from a fraudulent scheme were not reported to the IRS. Prosecuting notable offenders through tax charges—most famously Al Capone in 1931—remains one of the federal government's oldest and most dependable enforcement methods.

This established strategy rests on several recurring features of criminal activity:

- Individuals who commit fraud often do not report income derived from unlawful schemes to the IRS.
 - This is not true in every instance. Some fraud is not financially motivated, and experience shows that certain individuals report illicit proceeds despite engaging in other criminal conduct.
- Complex white-collar fraud and cybercrime allegations can be difficult to prove to a jury; a more straightforward tax-evasion charge may offer prosecutors an alternative path.
 - The outcome remains case-specific. Tax evasion carries its own demanding standard because prosecutors must prove beyond a reasonable doubt that the taxpayer willfully intended to violate the tax laws.ⁱⁱ

Familiar or not, DOJ's directive is unequivocal: while using the “full arsenal of criminal statutes” to combat fraud, prosecutors must examine possible internal revenue law violations “in every case.”

Consequences for Companies and Individuals Across Sectors



Companies and executives in every industry—including technology, financial services, healthcare, retail, manufacturing, and government contracting—should remain especially vigilant. DOJ’s increased use of data analytics, interagency coordination, and overlapping liability theories make tax-compliance failures more likely to be identified quickly, investigated aggressively, and charged with related offenses.

Against this backdrop, companies should consider these practical measures:

- **Involve tax counsel early in internal investigations—and safeguard privilege.** Once an investigation reveals possible fraud, a company should promptly retain a tax-defense or controversy attorney with IRS-CI experience and deep tax-law knowledge. Early involvement enables counsel to evaluate exposure, preserve applicable privileges, and recommend remediation before positions become fixed or disclosure is compelled.
- **Anticipate overlapping criminal, civil, and regulatory theories—and preserve records with each in mind.** The same tax issue may be framed as criminal tax fraud, civil fraud, a False Claims Act violation, or a regulatory offense. Retention and litigation-hold protocols should therefore account for parallel proceedings with distinct burdens, schedules, and disclosure requirements.
- **Assess remediation, cooperation, and voluntary self-disclosure with care.** DOJ says it credits organizations that self-disclose voluntarily, cooperate, and remediate. The decision whether and how to disclose depends on DOJ and IRS policies, the conduct’s nature and scope, the available evidence, and the company’s overall legal position. Experienced counsel should evaluate these choices deliberately rather than reactively.
- **Perform an enterprise-wide tax-fraud risk assessment.** Tax-compliance risk should not sit exclusively with the tax department. Leaders in legal, compliance, internal audit, finance, and operations should jointly identify facts—including misclassified income, overstated deductions, or unreported foreign accounts—that could create exposure under multiple enforcement theories.
- **Analyze tax and financial data for irregularities.** Companies should respond to DOJ’s analytics capabilities by examining payroll-tax filings, information



returns (Forms 1099, W-2, and K-1), withholding duties, transfer-pricing records, and revenue-recognition practices for outliers, unexplained differences, and patterns likely to draw government scrutiny. Knowing the data before the government asks about it can significantly reduce exposure.

- **Scrutinize third-party preparers, promoters, payroll providers, and information-reporting systems.** By targeting “abusive promoters” and falsified returns, the memorandum extends potential risk beyond taxpayers to the service providers around them. Companies should perform and document due diligence on return preparers, payroll processors, and outside advisers that promote aggressive strategies.
- **Put privilege protections in place before allowing access to data.** Work performed by internal or external CPAs and forensic accountants is not automatically covered by attorney-client privilege. A tax-controversy attorney may retain those professionals through a Kovel arrangement, potentially extending privilege to qualifying work and work papers, helping protect vulnerability assessments from DOJ discovery, and facilitating a comprehensive internal investigation.

Key Takeaway

Directive 26-12 does more than identify enforcement priorities; it provides a framework for a more forceful, data-driven, and coordinated tax-enforcement system. Companies that view tax compliance as merely a back-office responsibility may be caught unprepared if a tax irregularity prompts a multi-agency investigation involving fraud, false statements, trade offenses, and corporate misconduct.

The strongest response to this changing enforcement environment is to assess risks proactively, coordinate internal diligence, and engage tax-controversy counsel at an early stage.

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This article provides general information and is not legal or tax advice.

ⁱ <https://www.justice.gov/opa/pr/assistant-attorney-general-colin-m-mcdonald-issues-memorandum-national-fraud-enforcement-1>

ⁱⁱ *Cheek v. United States*, 498 U.S. 192 (1992)(A good-faith misunderstanding of the tax laws or a good faith belief that one is not violating the tax law can negate the “willfulness” requirement for criminal tax evasion, even if that belief is objectively unreasonable.)