



The Corporate Voluntary Self-Disclosure Policy of the Tax Division

A. Introduction

The following sets forth the Tax Division’s policy¹ on voluntary self-disclosures by companies (the “Policy”).² Any voluntary self-disclosure related to matters arising under the internal revenue laws must be made to the Tax Division. *See* JM § 6-4.010; 28 C.F.R. § 0.70.

When a company becomes aware of criminal misconduct by employees or agents, it may disclose that misconduct to the Tax Division, thereby enabling the government to more quickly investigate and hold wrongdoers accountable. In determining the appropriate criminal resolution for any company, the Tax Division will appropriately credit the company’s voluntary self-disclosure based on its timeliness and the entire nature of the self-disclosure. *See* Memorandum from Deputy Attorney General Lisa Monaco, “Further Revisions to Corporate Criminal Enforcement Policies Following Discussion with Corporate Crime Advisory Group,” Sept. 15, 2022 (referred to herein as the “Monaco Memo”).

A company that voluntarily self-discloses misconduct to the Tax Division pursuant to this Policy will receive a more favorable resolution than if the government learns of the misconduct through other means.³ *See* Section C – Benefits of Voluntary Self-Disclosure. A company is encouraged to make a disclosure to the Tax Division even if it believes the government may already be aware of the misconduct. A prompt self-disclosure will be considered favorably, even if it does not satisfy all the criteria for a voluntary self-disclosure as set forth below.

This Policy supplements the Tax Division’s existing voluntary disclosure policy, *see* Criminal Tax Manual 4.01[1], with respect to companies. A corporate voluntary self-disclosure will not confer immunity upon any individual.

B. Voluntary Self-Disclosure

The Tax Division will determine, at its sole discretion, whether a disclosure constitutes a voluntary self-disclosure based on a careful, case-by-case assessment. To be a voluntary self-disclosure under this Policy, the following criteria must be met:

¹ The contents of this memorandum provide internal guidance to prosecutors on legal issues. Nothing in it is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by prospective or actual witnesses or parties.

² The terms corporation and company apply to all types of business organizations, including but not limited to partnerships, government entities, and unincorporated associations. *See* Justice Manual (“JM”) § 9-28.200. This policy does not, however, apply to sole proprietorships.

³ The policy applies to all companies, including those that have been the subject of prior resolutions. Tax Division prosecutors will weigh and appropriately credit all voluntary self-disclosures on a case-by-case basis, pursuant to this policy and applicable Department guidance.

1. *Voluntary*: The disclosure of criminal misconduct must be voluntary. A disclosure is not voluntary where there is a preexisting obligation to disclose, such as pursuant to regulation, contract, or a prior Department resolution (*e.g.*, non-prosecution agreement or deferred prosecution agreement).
2. *Timing of the Disclosure*: The voluntary disclosure must be made to the Tax Division:
 - a. “prior to an imminent threat of disclosure or government investigation,” U.S. Sentencing Guidelines (“U.S.S.G.”) § 8C2.5(g)(1);
 - b. prior to the criminal misconduct being publicly disclosed or otherwise known to the government (except in cases where prior disclosure was made to the Internal Revenue Service (“IRS”) or other appropriate regulatory authority, in which case disclosure, absent good cause shown, must be made to the Tax Division within 15 days of the prior disclosure); and
 - c. within a reasonably prompt time after the company becomes aware of the criminal misconduct, with the burden being on the company to demonstrate timeliness.
3. *Substance of the Initial Disclosure and Accompanying Actions*: For a disclosure to be deemed a voluntary self-disclosure under this Policy, the disclosure must include all relevant facts concerning the misconduct that are known to the company at the time of the disclosure. The Tax Division recognizes that a company disclosing soon after becoming aware of the misconduct may not know all of the relevant facts at the time of the voluntary self-disclosure. Therefore, a company should make clear that its disclosure is based upon a preliminary investigation or assessment of information, but it should nonetheless provide a fulsome disclosure of the relevant facts known to it at the time. In addition:
 - a. *Preservation of Documents*: The company must timely preserve, collect, and produce relevant documents and/or information, and provide timely factual updates.
 - b. *Cooperation and Remediation*: To receive full credit for a voluntary disclosure, the company must provide full cooperation and timely and appropriate remediation, as described in Parts C and D of this policy.
 - c. *Disclosure of Returns and Return Information*: A voluntary disclosure to the Tax Division must be accompanied by a written consent by the company, pursuant to 26 U.S.C. § 6103(c), authorizing the IRS to disclose to the Tax Division all relevant returns and return information. The consent must also authorize that the Tax Division may make use of the information to the extent otherwise permitted under § 6103(h), including applicable regulations. The Tax Division may consult with and obtain the assistance of the IRS in evaluating and investigating the voluntary self-disclosure.
4. *Method of Disclosure*: A company interested in making a voluntary self-disclosure to the Tax Division should submit a request to CorpTax.Disclosures@usdoj.gov.

C. Benefits of Voluntary Self-Disclosure

Absent the presence of an aggravating factor, the Tax Division will not seek a guilty plea where a company has (a) voluntarily self-disclosed in accordance with this Policy, (b) fully cooperated, and (c) timely and appropriately remediated the criminal misconduct. Aggravating factors include, but are not limited to:

1. involvement by executive management of the company in the criminal misconduct;
2. criminal misconduct that is long-standing or pervasive throughout the company;
3. prior civil findings of misconduct by the IRS (including assessment of unpaid taxes or imposition of civil penalties) where such civil findings were related to or similar to the criminal misconduct being disclosed; or
4. criminal recidivism.

The presence of an aggravating factor does not necessarily mean that a guilty plea will be required. The Tax Division will assess the relevant facts and circumstances to determine the appropriate resolution.⁴

Where a company satisfies all criteria of this voluntary self-disclosure Policy, including full cooperation and timely and appropriate remediation, the Tax Division may choose not to impose a criminal penalty, and in any event will not impose a criminal penalty that is greater than 50% below the low end of the U.S.S.G. fine range. Regardless of whether a criminal penalty is imposed, the Tax Division will nonetheless generally require all resolutions to include payment of appropriate disgorgement, forfeiture, and/or restitution.

Where an aggravating factor is present for a company that has voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated the criminal misconduct, the Tax Division will accord, or recommend to a sentencing court, a reduction of at least 50%, and up to 75%, off the low end of the U.S.S.G. fine range, after any applicable reduction under U.S.S.G. § 8C2.5(g). However, in the case of a criminal recidivist, the reduction will generally not be from the low end of the U.S.S.G. fine range, and Tax Division prosecutors will have the discretion to determine the starting point for the reduction based on the particular facts and circumstances of the case.

⁴ Regardless of whether a disclosure meets the standards of a voluntary self-disclosure, prosecutors will continue to consider the corporation's pre-indictment conduct, *e.g.*, voluntary disclosure or cooperation, in determining whether to seek an indictment. JM § 9-28.400. Separate from this formal voluntary self-disclosure policy, the Department continues to encourage corporations, as part of their compliance programs, to conduct internal investigations and to disclose the relevant facts to the appropriate authorities. *See* JM § 9-28.900. A corporation's timely and voluntary disclosure of wrongdoing is among the factors prosecutors will consider in reaching a decision as to the proper treatment of a corporate target in conducting an investigation, determining whether to bring charges, and negotiating plea or other agreements. *See* JM § 9-28.300. Prosecutors may also consider a corporation's timely and voluntary disclosure, both as an independent factor in evaluating the company's overall cooperation and the adequacy of the corporation's compliance program and its management's commitment to the compliance program. *See* JM § 9-28.900.

Where a company did not voluntarily self-disclose its misconduct to the Tax Division, but later fully cooperated and timely remediated in accordance with this Policy, then the Tax Division will generally accord, or recommend to a sentencing court, a reduction of at most 50% off the low end of the U.S.S.G. fine range. However, in the case of a criminal recidivist, any reduction will generally not be from the low end of the U.S.S.G. fine range, and Tax Division prosecutors will have discretion to determine the specific percentage reduction and starting point in the range based on the particular facts and circumstances of the case.

The Tax Division will not require appointment of a monitor if the company has, at the time of resolution, demonstrated that it has implemented and tested an effective compliance program.

D. Cooperation

In addition to the provisions contained in the Principles of Federal Prosecution of Business Organizations to satisfy the threshold for any cooperation credit, *see* JM § 9-28.000, the following actions will be required for a company to receive credit for full cooperation for purposes of this Policy (beyond the credit available under the U.S.S.G.):

1. Timely disclosure of all non-privileged facts relevant to the criminal misconduct at issue, including:
 - a. facts gathered during a company's independent investigation;
 - b. attribution of facts to specific sources, where such attribution does not violate the attorney-client privilege, rather than a general narrative of the facts;
 - c. timely updates on a company's independent investigation, including but not limited to rolling disclosures of information; and
 - d. identification of all individuals involved in or responsible for the criminal misconduct at issue, regardless of their position, status, or seniority, including the owners, shareholders, partners, employees, agents, contractors, or consultants of the company or its subsidiaries and third parties, and all non-privileged information relating to the criminal misconduct and involvement by those individuals.

In determining whether a company has timely disclosed all relevant, non-privileged facts, the Tax Division will consider whether the company has taken adequate steps to uncover such facts, including whether the company undertook a thorough, unbiased inquiry, such as an independent internal investigation of the misconduct.⁵

2. Proactive, not reactive, cooperation, including (a) timely disclosure of all facts that are relevant to the investigation even when not specifically asked to do so, and (b) timely

⁵ As set forth in JM § 9-28.720, eligibility for cooperation or voluntary self-disclosure credit is not in any way predicated upon waiver of the attorney-client privilege or work product protection, and none of the requirements above require such waiver. Nothing herein alters that policy, which remains in full force and effect.

disclosure of opportunities for the Tax Division to obtain relevant evidence not in the company's possession and not otherwise known to the Tax Division;

3. Timely voluntary preservation, collection, and disclosure of relevant documents and information relating to their provenance, including (a) disclosure of foreign documents,⁶ the locations in which such documents were found, their custodians, and individuals who authored and/or located the documents; (b) facilitation of third-party production of documents; and (c) where requested, provision, at the company's expense, of translations of relevant documents in foreign languages;
4. De-confliction of witness interviews and other investigative steps that a company intends to take as part of its independent investigation, to prevent the independent investigation from conflicting or interfering with the Tax Division's investigation;
5. Use of the company's best efforts to promptly secure the attendance and truthful statements or testimony or information of any current or former owner, shareholder, partner, employee, agent, contractor, or consultant of the company or its subsidiaries, including, where appropriate and possible, individuals located abroad, at any meeting or interview or before any grand jury or at any trial or other court proceeding;
6. Provision of testimony of a competent witness, as needed, to enable the Department and any designated federal law enforcement agency to use the information and evidence obtained pursuant to the company's cooperation with the Department before a grand jury or at any trial or other court proceeding regarding matters arising out of or related to the company's criminal misconduct; and
7. Full and continuing cooperation in any criminal or civil investigation by the Tax Division or IRS related to the criminal misconduct, even if such cooperation extends beyond the term of any resolution.

E. Timely and Appropriate Remediation

The following steps will be required for a company to receive full credit for timely and appropriate remediation for purposes of this voluntary self-disclosure Policy:

1. Demonstration of thorough analysis of the causes of the criminal misconduct and, where appropriate, remediation to address the root causes;
2. Implementation of an effective compliance and ethics program;
3. Disgorgement of the proceeds of the criminal misconduct and payment of any restitution or forfeiture;

⁶ Where a company claims that disclosure of foreign documents is prohibited or restricted due to data privacy, blocking statutes, or other reasons related to foreign law, the company bears the burden of establishing the existence of such a prohibition or restriction and identifying reasonable and legal alternatives to help the Tax Division preserve and obtain the necessary facts, documents, and evidence for its investigations and prosecutions. *See also* Monaco Memo at 8.

4. Appropriate discipline of employees, including those identified by the company as responsible for the criminal misconduct, either through direct participation or failure in oversight, as well as those with supervisory authority over the area in which the criminal misconduct occurred;
5. Appropriate retention of business records, and prohibiting the improper destruction or deletion of business records, including implementing appropriate guidance and controls on the use of personal communications and ephemeral messaging platforms that undermine the company's ability to appropriately retain business records or communications or otherwise comply with the company's document retention policies or legal obligations; and
6. Any additional steps that demonstrate recognition of the seriousness of the company's criminal misconduct, acceptance of responsibility for it, and the implementation of measures to reduce the risk of recidivism of such conduct, including measures to identify future risks.

F. Civil Penalties

A voluntary self-disclosure to the Tax Division under this Policy is made solely to the Department of Justice and, as such, does not address any potential or outstanding civil liability.

G. Mergers & Acquisitions Provision

Where a company (1) undertakes a bona fide, arms-length merger or acquisition; (2) uncovers misconduct through thorough and timely due diligence or, in appropriate instances, through post-acquisition audits or compliance integration efforts; (3) voluntarily self-discloses the misconduct within six months⁷ from the date of closing of the merger or acquisition; and (4) takes action consistent with this Policy, including, among other requirements, timely implementation of an effective compliance program at the merged or acquired entity, full remediation within one year⁸ of the date of closing, full cooperation, and payment of appropriate disgorgement, forfeiture, and/or restitution, there will be a presumption of a declination for the acquiring company in accordance with and subject to the other requirements of this Policy.⁹ The presence of aggravating factors at an acquired entity will not impact in any way an acquiring company's ability to receive a declination.¹⁰ Misconduct disclosed under this provision will not factor into a criminal recidivist analysis in the current or any future voluntary self-disclosure made by the acquiring company.

⁷ This deadline may be extended in the sole discretion of the Tax Division following a reasonableness analysis depending on the specific facts, circumstances, and complexity of a particular merger or acquisition. Conversely, a company that possesses evidence of misconduct that endangers national security or presents an ongoing or imminent harm is expected to disclose such misconduct expeditiously, and failure to do so may disqualify it from receiving a presumption of declination under this provision.

⁸ This deadline may be extended in the sole discretion of the Tax Division following a reasonableness analysis depending on the specific facts, circumstances, and complexity of a particular merger or acquisition.

⁹ The Tax Division will consult with the Antitrust and National Security Divisions prior to issuing a declination under this provision.

¹⁰ In the absence of aggravating factors, an acquired entity may also qualify for benefits described in Section C above, including potentially a declination.