

Federal Sentencing Guidelines for Tax Crimes



Understanding the Range of Punishment for Tax Offenses

Tax crimes are serious offenses that can result in significant penalties, including imprisonment, fines, and restitution.

The Internal Revenue Service (IRS) is responsible for investigating and prosecuting tax crimes, and the Department of Justice (DOJ) is responsible for prosecuting tax crimes in federal court.



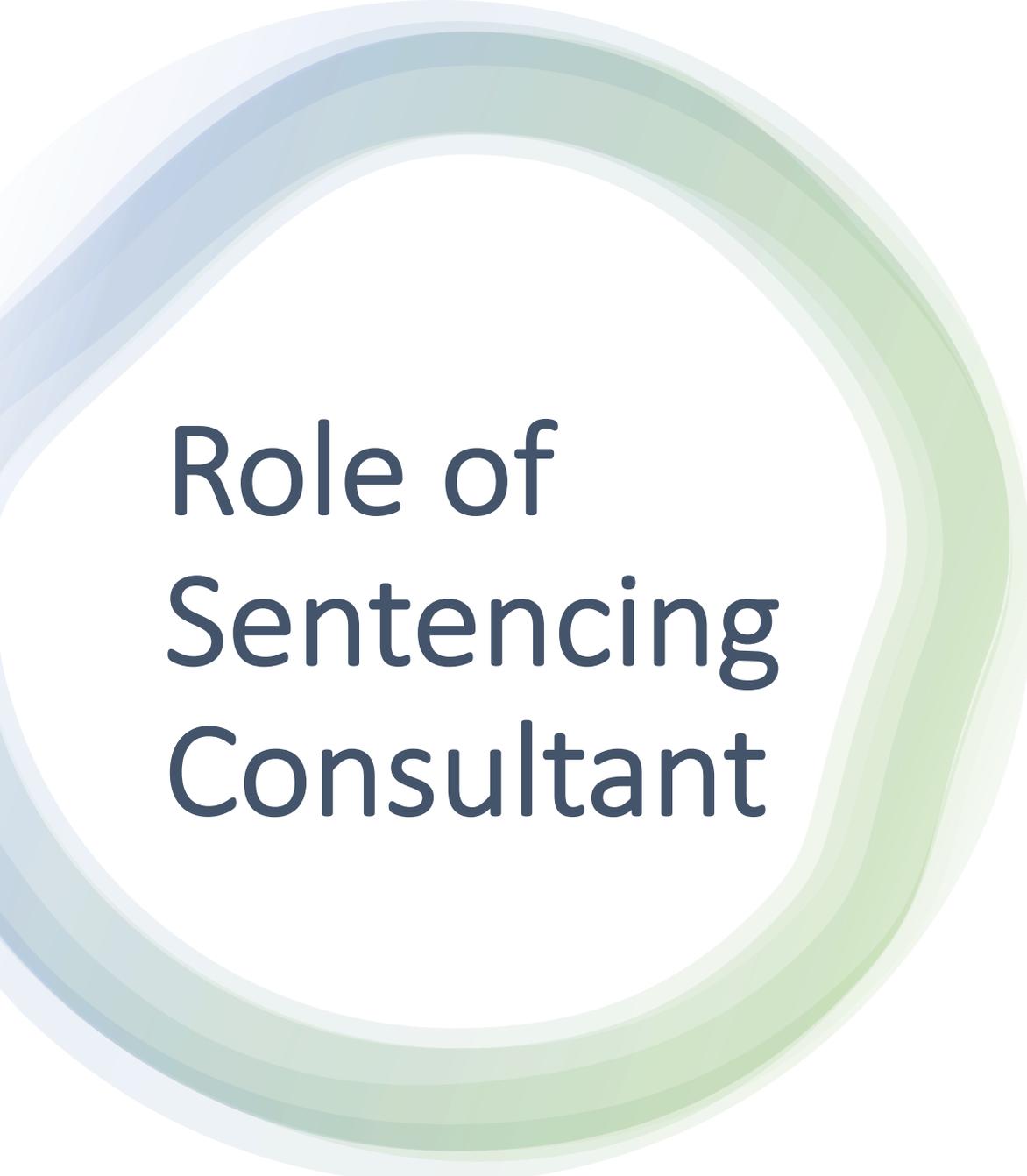
Role of Probation Office

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The Probation Office conducts a presentence investigation and prepares a report (PSR) for the court with:

- defendant's background, criminal history, education, employment, finances;
- analysis of sentencing factors and guidelines;
- victim impact statements;
- recommended sentencing options;
- this report assists the court in determining the appropriate sentence.

Probation Officers Interview Defendants and provide information to the court.



Role of Sentencing Consultant

Sentencing consultants are typically former Probation Officers, BOP staff, or attorneys. They provide services such as:

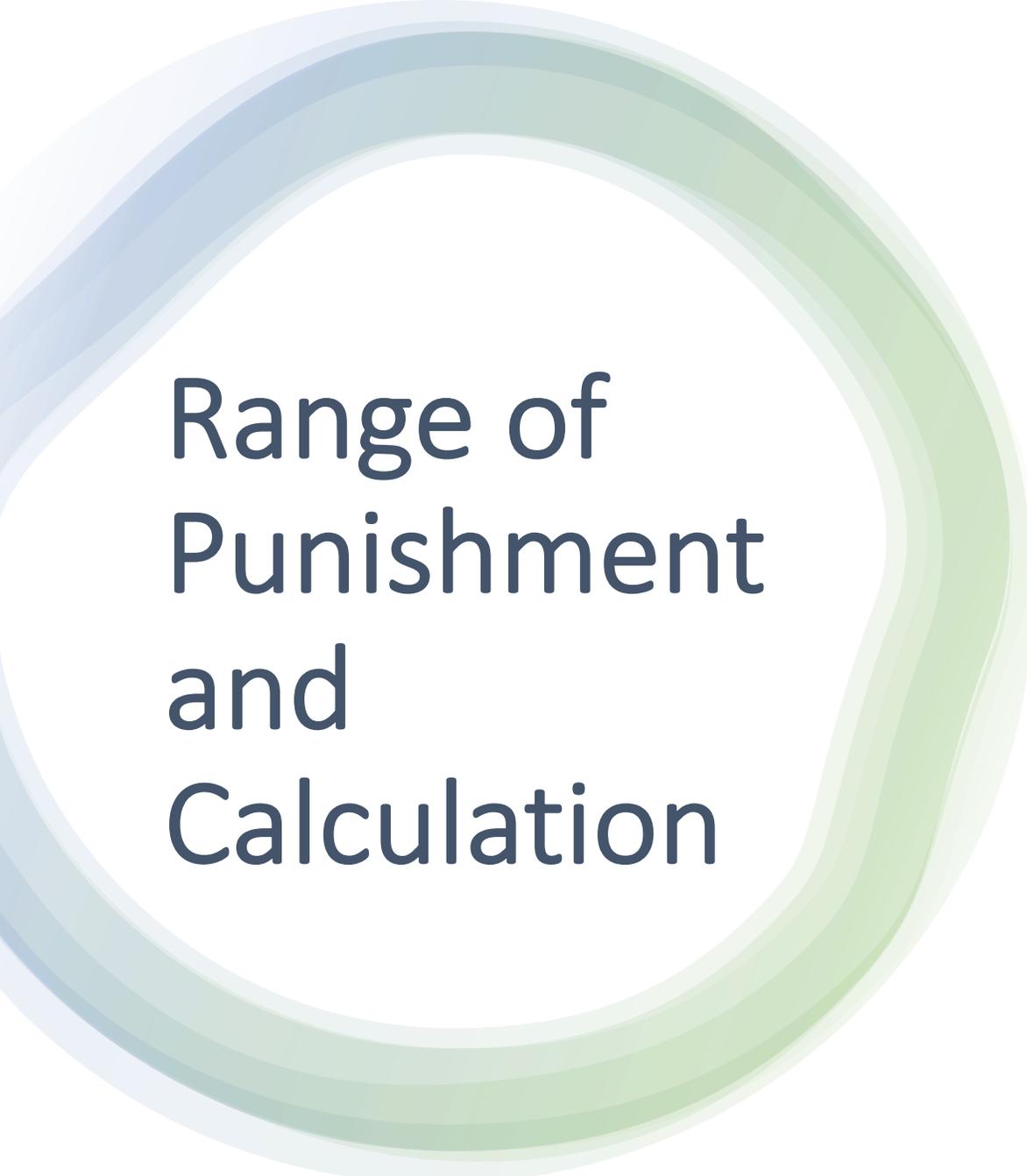
- interviewing the defendant to gather background information;
- identifying potential mitigating factors;
- advising on programs to reduce sentencing;
- drafting objections to PSR and sentencing memos;
- sentencing consultants are hired after charges are filed to help develop the defense strategy and prepare for sentencing.



Applicable Tax Crimes

The following are some of the most common tax crimes:

- tax evasion—26 U.S.C. § 7201;
- failure to file a tax return—26 U.S.C. § 7203;
- willful failure to pay taxes—26 U.S.C. § 7203;
- fraudulent tax returns—26 U.S.C. § 7206;
- failure to collect or pay over tax—26 U.S.C. § 7202;
- failure to deposit collected taxes—26 U.S.C. § 7512



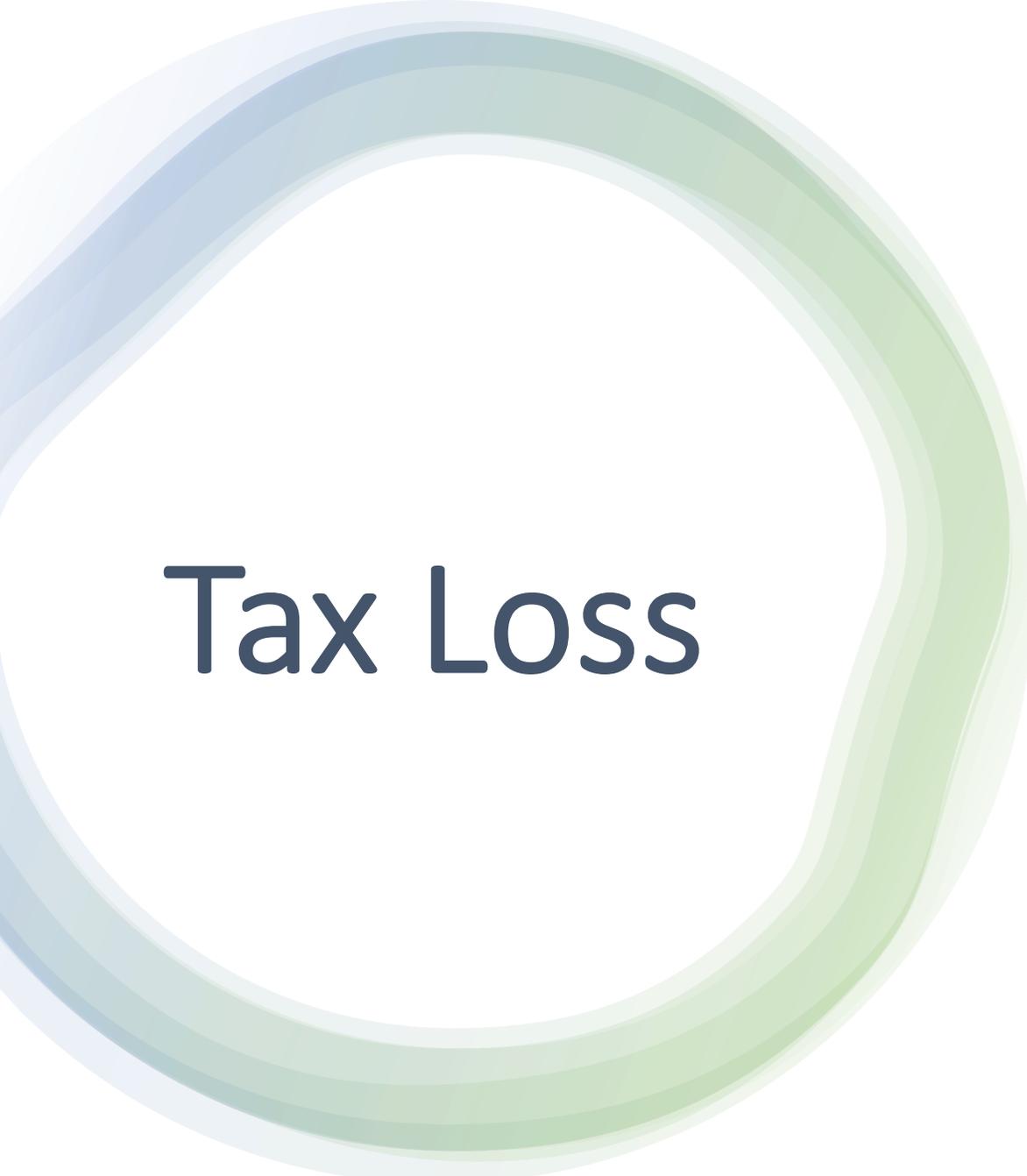
Range of Punishment and Calculation

The range of punishment for tax crimes is determined by the Federal Sentencing Guidelines, specifically Chapter 2T1 of the United States Sentencing Guidelines Manual. These guidelines are a set of rules used by federal judges to determine the appropriate sentence for a defendant. The range of punishment is calculated by considering factors such as:

- the amount of tax loss;
- the defendant's role in the offense;
- acceptance of responsibility;
- aggravating factors, and
- mitigating factors.

The sentencing range is calculated using the base offense level assigned to the crime, which is then increased or decreased based on specific offense characteristics such as tax loss amount, role in the offense, etc.

For example, a tax loss of \$100,000 would result in a base offense level of 16. Adding increases for sophisticated means (+2), abusing a position of trust (+2), and obstruction of justice (+2) would result in a final offense level of 22. For a first-time offender, this equates to a sentencing range of 41-51 months.

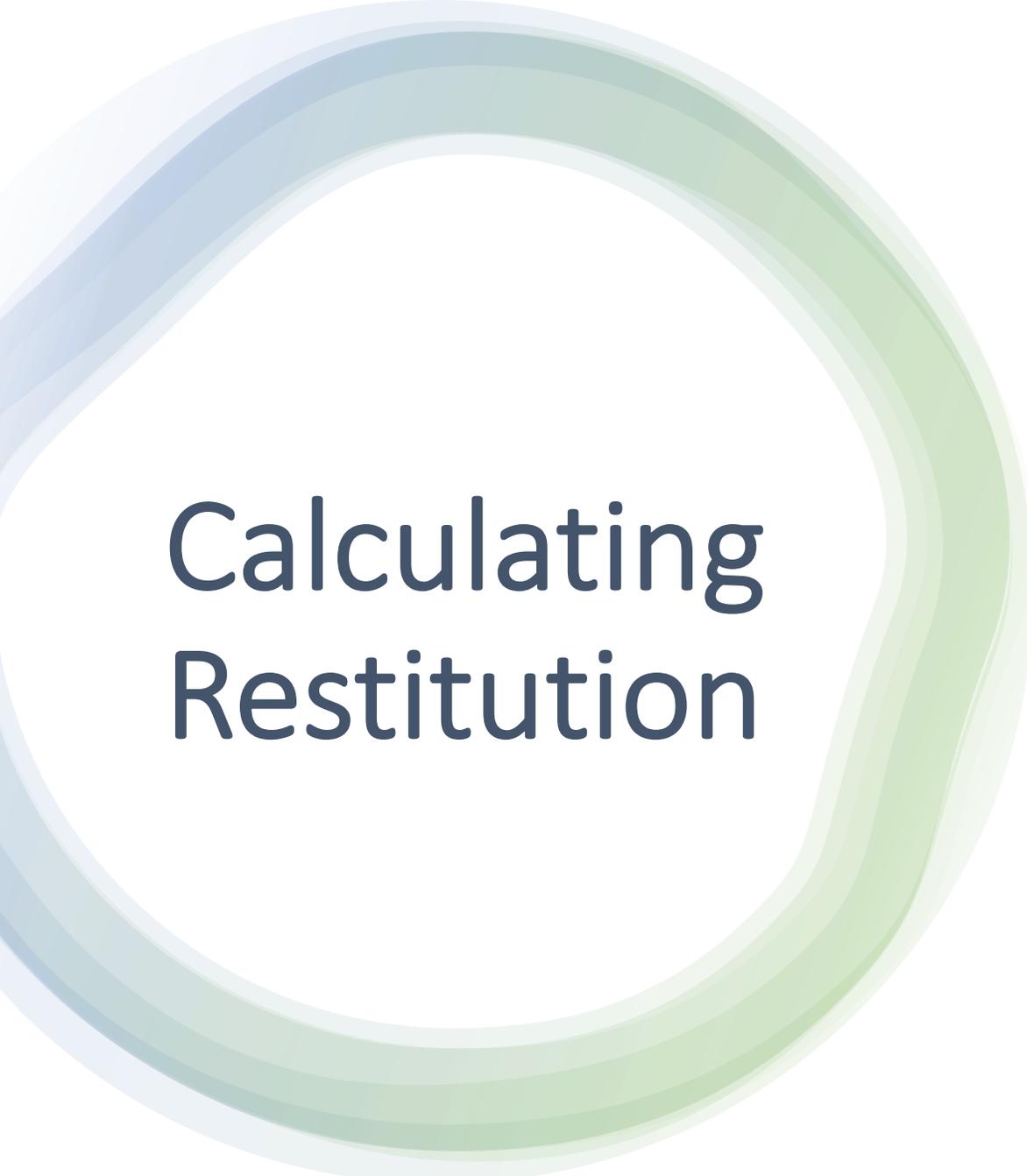


Tax Loss

Tax loss refers to the amount of money that the government lost because of the defendant's crime. It is a significant factor in determining the range of punishment for tax crimes.

Representative Example:

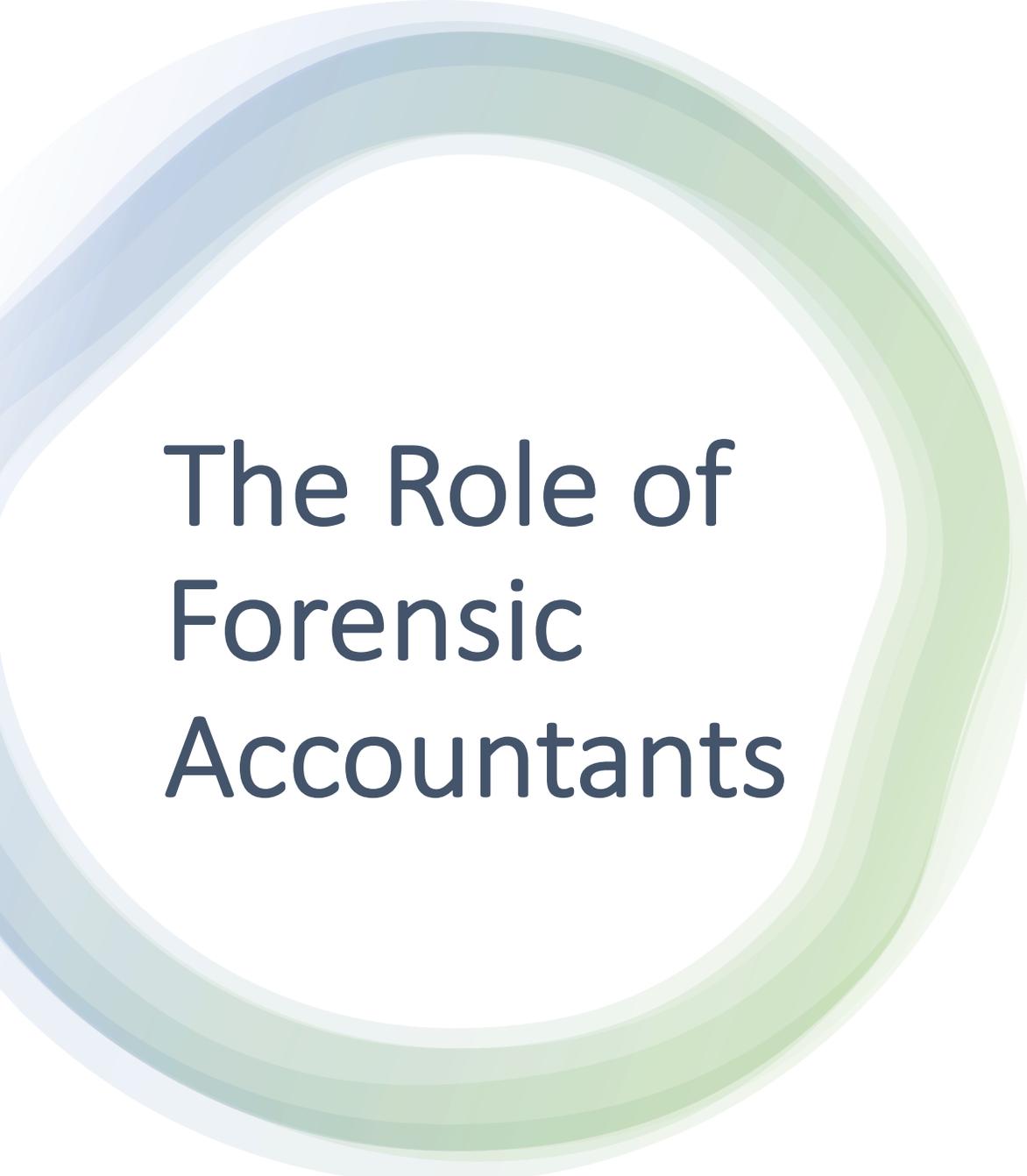
In one case, the defendant's unreported taxable income resulted in a tax loss of \$3.5 million. Based on the tax loss table, this added 22 levels to the base offense level, dramatically increasing the sentencing range. The defendant was ultimately sentenced to 96 months in prison.



Calculating Restitution

Restitution is based on the loss to the victim, not the defendant's gain. For tax crimes, it is typically the unpaid tax liability plus interest and penalties. Restitution is paid to the IRS.

The tax loss for sentencing purposes can differ from restitution if there are disputed legal issues affecting the tax loss calculation.



The Role of Forensic Accountants

Forensic accountants may assist in verifying the tax loss calculation, especially if it is contested. They can:

- audit books and records to confirm unreported income or fraudulent deductions
- trace funds to uncover undeclared assets
- assess the reliability of a defendant's financial statements
- their analysis provides evidence to support or dispute the tax loss amount for sentencing purposes.



Relevant t Conduct

Relevant conduct includes other related tax crimes such as state tax offenses, tax crimes of co-conspirators, and offenses like mail/wire fraud and money laundering connected to the tax violation.

United States v. Watts, 519 U.S. 148
(1997)

In this case, the Supreme Court held that a sentencing court may consider conduct of which a defendant has been acquitted, so long as that conduct has been proven by a preponderance of the evidence. This case is relevant because it shows that relevant conduct for sentencing purposes can include other criminal activity, even if the defendant was not convicted of that activity.



Acceptance of Responsibility

Defendants who accept responsibility for their crimes may receive a reduced sentence. Acceptance of responsibility can be shown through

- remorse;
- cooperation with the investigation, and
- pleading guilty.

Acceptance of responsibility usually leads to a 2-3 level reduction in sentencing. Cooperation for purposes of acceptance of responsibility is distinct from cooperating with the government for a 5K1.1 departure motion. Defendants can accept responsibility without cooperating, and vice versa. The court evaluates each factor separately in determining the sentence.



Compromise of Criminal Liability/Civil Settlement

Statutory authority exists to compromise criminal tax cases without prosecution after referral to DOJ. However, as a matter of policy this authority is rarely exercised.

- any decision to forgo prosecution where the taxpayer will pay a fixed sum could be viewed as preferential treatment;
- proposed criminal tax cases are reviewed without consideration of civil liability or tax collection;
- settlement of civil liability generally occurs after sentencing, unless the court defers sentencing pending such settlement;
- plea agreements may include civil admissions by the defendant regarding unreported income and fraud penalties.



Aggravating Factors

Aggravating factors are circumstances that make the offense more serious. They can include:

- Using sophisticated means;
- endangerment of public safety, and
- the defendant's prior criminal history.

Aggravating factors that can increase sentences include:

- harming a large number of victims;
- being a leader/organizer of criminal activity;
- obstructing justice during the investigation;
- engaging in extreme conduct like violence or bribery

Courts have considered the use of sophisticated means and the defendant's prior criminal history as aggravating factors in sentencing for tax evasion. This shows that these factors can significantly increase the severity of the punishment for tax evasion.

In *United States v. Nash*, the court applied a 2-level enhancement for sophisticated means in a tax evasion scheme involving offshore accounts and shell companies. The defendant's criminal history of fraud offenses also increased the sentence.



Mitigating Factors

Mitigating factors are circumstances that make the offense less serious. They can include:

- the defendant's lack of criminal history;
- mental or emotional health problems, and
- cooperation with the investigation.

Note that while these mitigating factors can influence the court's decision, they do not guarantee a lesser sentence. The court will consider these factors in conjunction with the severity of the offense, the defendant's intent, and other relevant factors.



The 3553 Factors

Federal judges also consider:

- the nature and circumstances of the offense;
- the history and characteristics of the defendant, and
- the need for deterrence and public protection when sentencing for tax crimes.

United States v. Booker, 543 U.S. 220 (2005)

Here, the Supreme Court held that the Federal Sentencing Guidelines, which federal judges must consider when sentencing defendants, are advisory rather than mandatory. The court emphasized that judges must consider the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for deterrence and public protection when sentencing. This case is often cited in tax crime cases as it sets the standard for sentencing considerations.



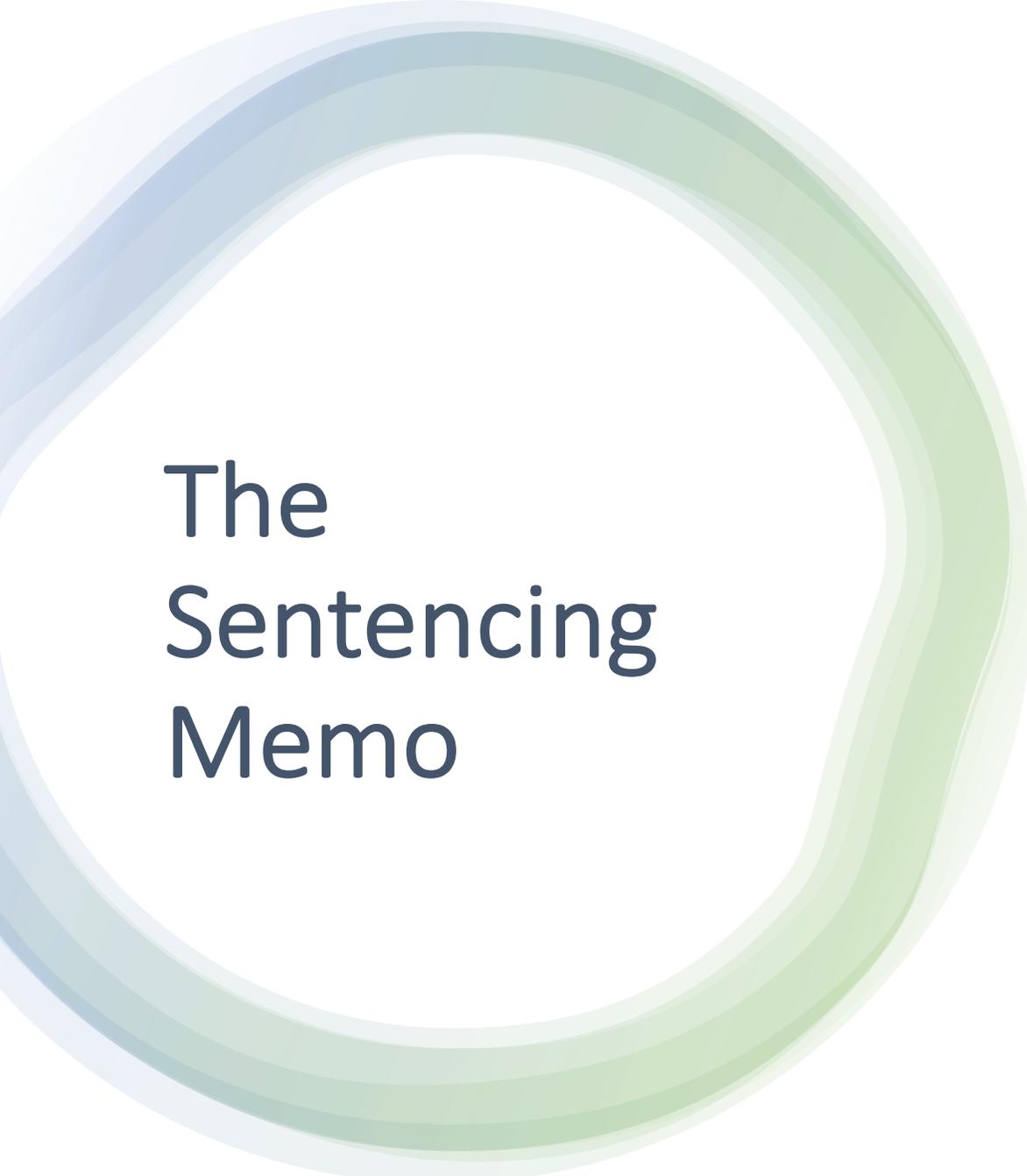
Role of Prosecutors

The U.S. Attorney's Office or Tax Division of the DOJ prosecutes tax crimes and makes sentencing recommendations to the court based on:

- Applicable guidelines and policies

Deterring others from violating the tax laws is a primary consideration in criminal tax prosecutions. A sentencing recommendation advocating for a term of imprisonment is almost always warranted in a criminal tax case. Probation rarely constitutes a satisfactory resolution. (Source: Department of Justice, Justice Manual 6-4.340)

- nature and severity of the offense;
- mitigating and aggravating factors;
- benefits of pleas and cooperation;
- while non-binding, prosecutors' sentencing recommendations can influence the court's decision.

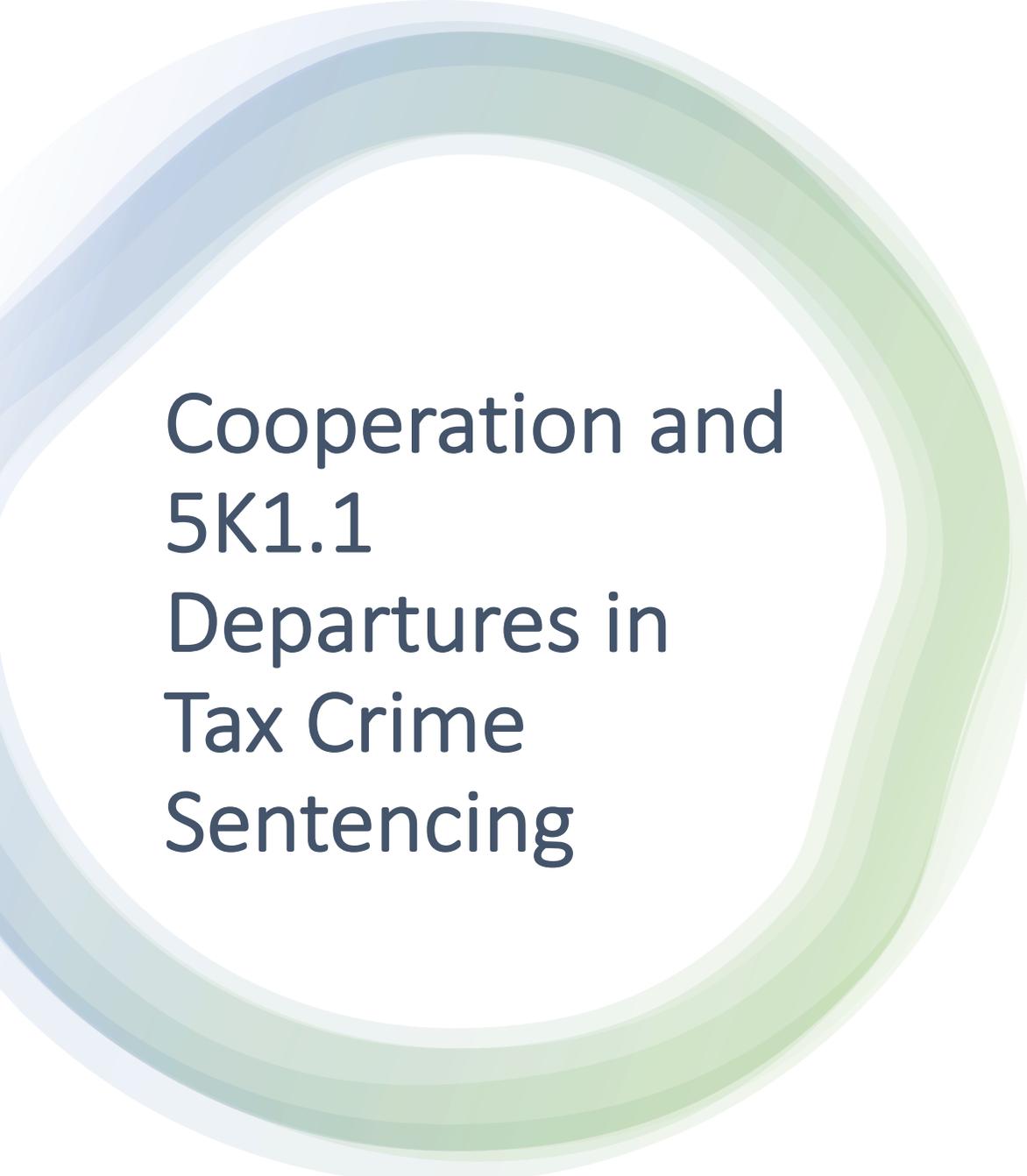


The Sentencing Memo

The sentencing memo is a document submitted by both parties before sentencing that covers:

- objections to presentence report;
- accounts of the offense conduct;
- applicable guidelines and enhancements;
- mitigating or aggravating factors;
- departure motions;
- recommended sentence

The memo highlights key issues and arguments to persuade the court. It is typically filed 1-2 weeks before the sentencing date.



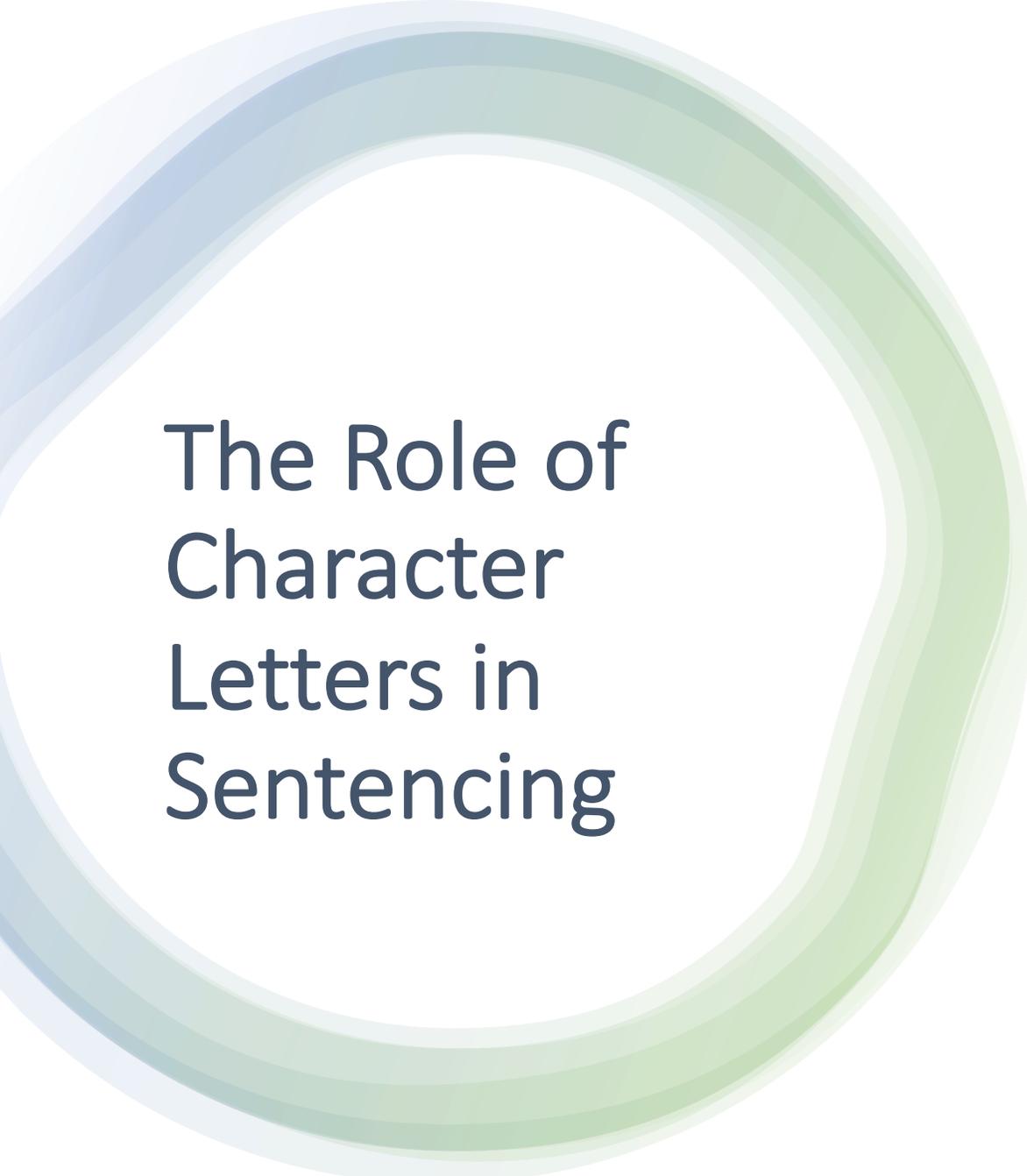
Cooperation and 5K1.1 Departures in Tax Crime Sentencing

In federal tax crime sentencing, cooperation with the government can significantly affect the outcome. Under the Federal Sentencing Guidelines, specifically Section 5K1.1, a defendant who provides substantial assistance in the investigation or prosecution of another person who has committed an offense may be eligible for a sentence below the guideline range. This departure is at the discretion of the court, based on the government's motion acknowledging the defendant's cooperation.

Examples of cooperation include providing information leading to the conviction of others, testifying in court, and assisting in the recovery of assets. The extent and significance of the assistance are critical factors in determining the eligibility and extent of a 5K1.1 departure.

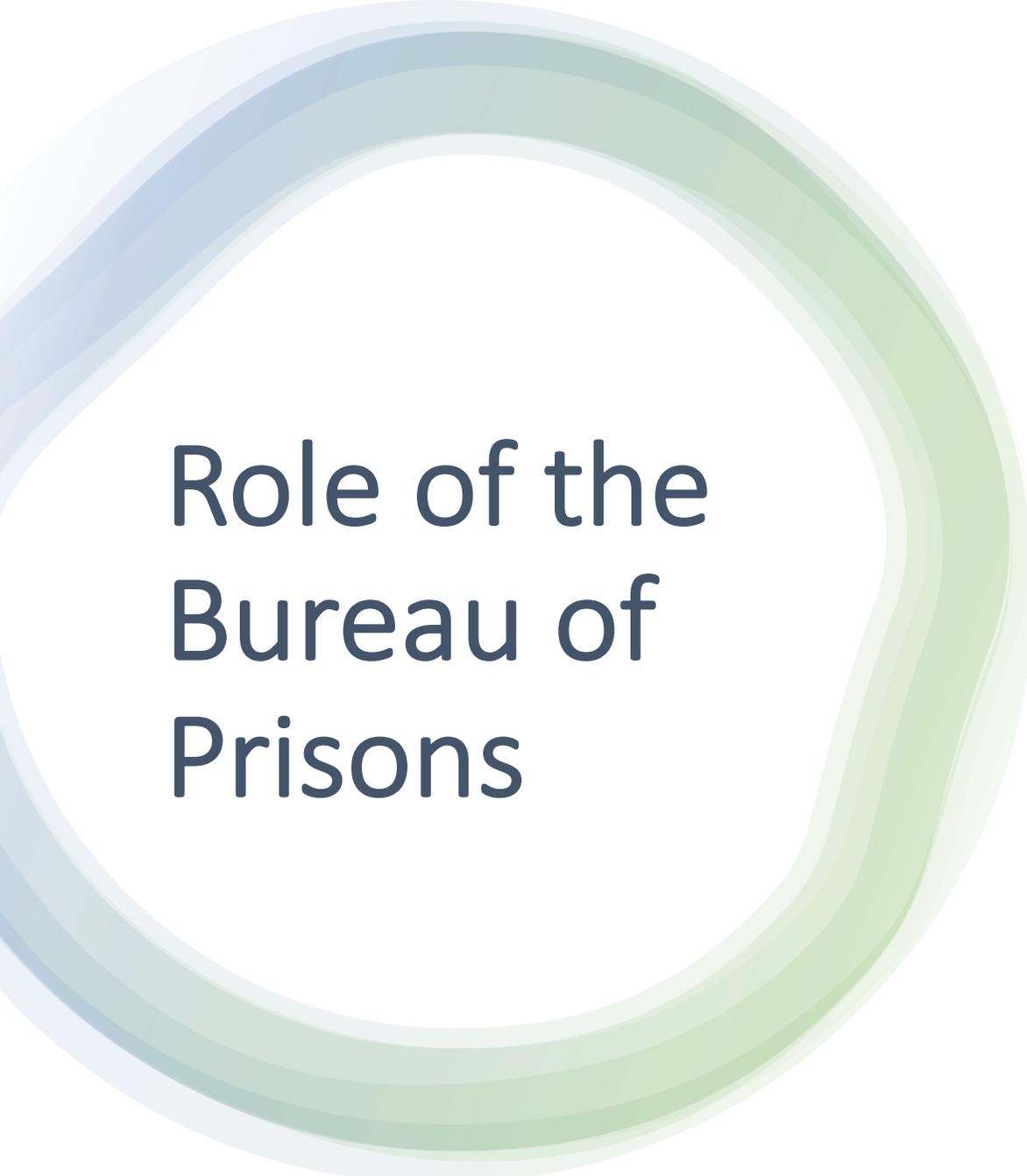
Representative Case: United States v. Cohen

In 2018, Michael Cohen cooperated extensively with prosecutors and testified against President Trump related to campaign finance violations. His substantial assistance led to a 5K1.1 departure resulting in a sentence of 3 years rather than 5 years.



The Role of Character Letters in Sentencing

Character letters from family, friends, employers, and community members help provide a full picture of the defendant's life and good deeds. These letters help humanize defendants and show mitigating factors like strong family values, charity work, and public service. Though not a determining factor, character letters can sway sentencing outcomes in close calls.



Role of the Bureau of Prisons

While the court determines the sentence length, the Bureau of Prisons (BOP) decides the facility where the sentence will be served based on:

- security level;
- program availability;
- medical/mental health needs;
- proximity to release residence;
- the BOP's designation impacts the conditions of confinement and rehabilitation opportunities;



Conclusion

The Federal Sentencing Guidelines for tax crimes are a complex system used to determine appropriate sentences. These guidelines aim to ensure fairness and consistency in sentencing while considering the severity of the offense and the defendant's criminal history.