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Special Voluntary Disclosure Programme 2.0

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Following the Ministry of Finance's announcement on 2 June 2023 that the Special Voluntary Disclosure Programme is to be reintroduced commencing from 6 June 2023 to 31 May 2024 ("SVDP 2.0"), the Inland Revenue Board (IRB) has issued the Operational Guideline No. 2/2023 (Guideline) and Frequently Asked Questions (FAQ) for the Special Voluntary Disclosure Programme 2.0 in relation to taxes administered by the IRB.

Please refer to our Indirect Tax Alert for information on SVDP 2.0 in relation to taxes administered by the Royal Malaysian Customs Department (subscribe here).

Background

The Special Voluntary Disclosure Programme (SVDP) which was first introduced in Budget 2019, offered taxpayers the opportunity to declare their unreported or under-reported income for the year of assessment (YA) 2017 and before at reduced penalty rates as follows:

SVDP	First Phase	Second Phase
Period of voluntary disclosure	3 November 2018 to 30 June 2019	1 July 2019 to 30 September 2019
Reduced penalty rate	10%	15%

It was reported that the additional taxes and penalties collected by the IRB from the SVDP amounted to over RM7.8 billion from over 280,000 taxpayers.

Under SVDP 2.0, a full remission of specified penalties will be offered.

SVDP 2.0

The IRB has issued the Guideline and FAQ for SVDP 2.0 to provide the implementation details and guidance on the programme.

The Guideline and FAQ are available on the IRB's website www.hasil.gov.my [Home > Service > Special Voluntary Disclosure Programme (SVDP) 2.0].

Primary objective and desired outcome of SVDP 2.0

SVDP 2.0 aims to encourage taxpayers to improve their tax compliance based on the Awareness, Education and Services (AES) concept practised by the IRB.

The programme allows taxpayers to voluntarily declare their unreported or under-reported income in previous years without incurring any penalties.

The IRB has implemented the Tax Identification Number (TIN) and has automatically registered a total of 7.8 million citizens and permanent residents with a TIN. Those who have automatically received their TIN include Malaysian citizens aged 18 years and above. The IRB encourages newly-registered taxpayers who have unreported income to participate in the SVDP 2.0.

Under the SVDP 2.0, the IRB is targeting 50,000 new and existing taxpayers with a total assessment of RM1 billion.

How long is the period of SVDP 2.0?

Following the announcement by the Ministry of Finance on 2 June 2023, SVDP 2.0 will run from **6 June 2023 until 31 May 2024**.

What are the incentives for taxpayers to come forward?

No penalties will be imposed
The following penalties imposed as a result of non-compliance in prior years will be remitted in full for voluntary disclosures made within the programme period:

Provisions under the legislation	Penalty / surcharge rate (remitted in full under SVDP 2.0)
Section 112(3) of Income Tax Act 1967 (ITA 1967) - *Failure to submit a tax return*	300% of the tax payable
Section 113(2) of ITA 1967 - *Understatement of income*	100% of the tax undercharged ***(Note)***
Section 140A(3C) of ITA 1967 - *Transfer pricing adjustments*	5%
Section 29(3) of Real Property Gains Tax Act 1976 - *Failure to submit a tax return*	300% of the tax payable
Section 47A(1) of Stamp Act 1949 - *Late stamping*	Up to RM100 or 20% of the amount of the deficient duty, whichever is greater

Note: *Following the Tax Audit Framework, the IRB may impose the penalty at the following rates for understatement of income:*

Offence	*Penalty rate*
First offence	*15%*
Second offence	*30%*
Third and subsequent offence	*45%*

What are the incentives for taxpayers to come forward (cont'd)?

No further audit in the future
Voluntary disclosures made under the programme will be accepted by the IRB in good faith. However, a review of the calculation will be performed to ensure there is no mathematical/calculation error in the submission.

No further review whether through an audit or investigation will be performed in the future on the YA where the voluntary disclosure has been made.

Who can participate?

All categories of taxpayers (including non-residents) who:

- Are new taxpayers (regardless of whether the person has a TIN) and are reporting income for the first time.
- Are existing taxpayers and have reported their income to the IRB but have undeclared or under-declared income.
- Have unreported disposal of assets (real property and shares in a real property company).
- Have executed instruments which are not duly stamped after the time for stamping.
- Have transfer pricing adjustment which is subject to the surcharge under Section 140A(3C) of the ITA 1967, even if the adjustment does not result in additional tax payable. The IRB has clarified in FAQ no. 35 that where the controlled transaction involves persons which are both taxable in Malaysia and where the adjustment under the voluntary disclosure will not change the amount of tax payable by both persons, the voluntary disclosure is not applicable.

In summary, SVDP 2.0 is generally only applicable for voluntary disclosures which will result in assessment / additional assessment raised by the IRB. Cases which result in a non-taxable assessment, a reduced assessment or repayment will not be accepted.

Who cannot participate?

- Taxpayers are not eligible to participate in the SVDP 2.0 for any YA in which an audit / investigation action by the IRB has commenced.
- Employers, in respect of their employer obligation matters (e.g. failure to comply with employees' Monthly Tax Deductions).

What type of taxes are covered?

- SVDP 2.0 covers the following taxes / duty but excludes petroleum income tax:

Types of taxes	Period covered
Income tax	• New taxpayers: YA 2022 and before • Existing taxpayers: YA 2021 and before
Real property gains tax	Disposal of assets in 2022 and before
Stamp duty	Instruments executed on or before 1 May 2023

- Voluntary disclosure for transfer pricing issues are subject to the criteria and procedures outlined in the prevailing Tax Audit Framework for Transfer Pricing.
- For cases where estimated assessments have been raised, if the income / gain on disposal of assets reported during the SVDP 2.0 is higher, the difference will be regarded as voluntary declaration.

How do taxpayers make the voluntary disclosure?

Taxpayer must sign a declaration that the reported income is true, correct and complete. Documents which are to be submitted to the IRB include:

- SVDP 2.0 Additional Income Reporting Form
- The relevant tax returns via e-Filing / e-CKHT or manual forms
- Tax computation
- For transfer pricing cases, Voluntary Disclosure Form for Transfer Pricing Case together with the relevant documentation
- For stamping of instruments, the submission must be done online via Stamp Assessment and Payment System (STAMPS) at MyTax portal

How long will the IRB take to process the application?

Applications will be processed within 14 working days (30 working days for transfer pricing cases) from the date of receipt of duly completed applications.

When is payment due?

Tax payments for voluntary disclosures made under SVDP 2.0 **must** be settled:

- In one lump sum within 30 days from the date of notice issued by the IRB; or
- In instalments, application to be submitted to the IRB through MyTax Portal using the SVDP 2.0 Instalment Payment Application Form:
  - Instalments until 31 May 2024: No supporting document is required.
  - Instalments beyond 31 May 2024: Supporting documents include: (i) recent 3 months bank statements, (ii) cash flow analysis for the next 12 months including the current month, and (iii) latest property details.

Failure to settle the tax payments within the stipulated period will result in the imposition of a tax increase based on the prevailing provisions of the law. If the outstanding tax remains unpaid, legal action can be taken against the taxpayer and audit/investigation may be conducted in the future.

Other notable points of the FAQ

Voluntary disclosure based on management accounts	• Permissible if the audited accounts are not ready. When the accounts are audited and there are differences giving rise to additional tax, the differences should be reported and the penalty remission under SVDP 2.0 would apply.
Malaysian-sourced income deposited in a bank account abroad	• Such income is subject to tax in Malaysia notwithstanding that it is deposited in bank accounts abroad. • The taxpayer is responsible to report such income. • Taxpayers who have not reported such income can make a voluntary disclosure under SVDP 2.0.
Voluntary disclosure on unreported foreign-sourced income (FSI) received in Malaysia	• Effective from 1 January 2022, FSI remitted into Malaysia is subject to income tax (*Note 1*). • A new taxpayer is eligible to participate in SVDP 2.0 in respect of FSI received in Malaysia from 1 January 2022 which: (1) does not meet the tax exemption conditions (*Note 2*), and (2) the FSI received was not reported in its tax returns. *Note 1: Except for resident companies carrying on the business of banking, insurance, sea or air transport which are subject to tax on income from wherever derived.* *Note 2: Subject to conditions, FSI received in Malaysia from 1 January 2022 to 31 December 2026 is exempt from tax (refer to TaXavvy 13-2022 and TaXavvy 19-2022).*

Key takeaways

- The Government recognises the importance of giving taxpayers the opportunity to set their tax affairs in order. Hence, taxpayers are encouraged to regularise their tax affairs without incurring penalties during the SVDP 2.0 period from 6 June 2023 to 31 May 2024. Otherwise, penalty rates between 15% - 300% could apply post 31 May 2024.

- As the IRB has given assurance that the disclosures made under SVDP 2.0 will be accepted in good faith *(suci hati)* and that future audit / investigation action will not be taken on the YAs where voluntary disclosures have been made, it must be reminded that participants of the programme have the responsibility to prepare an accurate submission of information.

Connect with us

Kuala Lumpur
Jagdev Singh
jagdev.singh@pwc.com
+60(3) 2173 1469

Penang & Ipoh
Kang Gaik Hong
gaik.hong.kang@pwc.com
+60(4) 238 9225

Melaka & Johor Bahru
Benedict Francis
benedict.francis@pwc.com
+60(7) 218 6000

Kuching
Lee Yuien Siang
yuien.siang.lee@pwc.com
+60(8) 252 7202

Cynthia Ng
cynthia.hh.ng@pwc.com
+60(3) 2173 1438

Labuan
Jennifer Chang
jennifer.chang@pwc.com
+60(3) 2173 1828

Corporate Tax Compliance & Advisory

Consumer & Industrial Product Services
Margaret Lee
margaret.lee.seet.cheng@pwc.com
+60(3) 2173 1501

Steve Chia
steve.chia.siang.hai@pwc.com
+60(3) 2173 1572

Emerging Markets
Fung Mei Lin
mei.lin.fung@pwc.com
+60(3) 2173 1505

Energy, Utilities & Mining
Lavindran Sandragasu
lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Financial Services
Jennifer Chang
jennifer.chang@pwc.com
+60(3) 2173 1828

Services & Infrastructure
Lim Phaik Hoon
phaik.hoon.lim@pwc.com
+60(3) 2173 1535

Technology, Media, and Telecommunications
Heather Khoo
heather.khoo@pwc.com
+60(3) 2173 1636

Specialist services

Corporate Services
Lee Shuk Yee
shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Dispute Resolution
Tai Weng Hoe
weng.hoe.tai@pwc.com
+60(3) 2173 1600

International Tax Services / Mergers and Acquisition
Gan Pei Tze
pei.tze.gan@pwc.com
+60(3) 2173 3297

Individual Tax
Michelle Chuo
michelle.sy.chuo@pwc.com
+60(3) 2173 1289

Indirect Tax
Raja Kumaran
raja.kumaran@pwc.com
+60(3) 2173 1701

Geeta Balakrishnan
geeta.b.balakrishnan@pwc.com
+60 (3) 2173 1652

Workforce Tax
Kartina Abdul Latif
kartina.a.latif@pwc.com
+60(3) 2173 0153

Lee Shuk Yee
shuk.yee.x.lee@pwc.com
+60(3) 2173 1626

Mohammad Iesa Morshidi
iesa.morshidi@pwc.com
+60(3) 2173 3136

Tax Technology
Yap Sau Shiung
sau.shiung.yap@pwc.com
+60(3) 2173 1555

Tax Reporting & Strategy
Lavindran Sandragasu
lavindran.sandragasu@pwc.com
+60(3) 2173 1494

Transfer Pricing
Anushia Soosaipillai
anushia.joan.soosaipillai@pwc.com
+60(3) 2173 1419

China Desk
Lorraine Yeoh
lorraine.yeoh@pwc.com
+60(3) 2173 1499

Japanese Business Consulting
Yuichi Sugiyama
yuichi.sugiyama@pwc.com
+60(3) 2173 1191

Clifford Yap
clifford.eng.hong.yap@pwc.com
+60(3) 2173 1446

Korea Desk
Keegan Ong
keegan.sk.ong@pwc.com
+60(3) 2173 1684

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