Deloitte.

MAKING AN IMPACT THAT MATTERS since 1845

Malaysia |Tax | 7 June 2023

Tax Espresso – Special Alert

Special Voluntary Disclosure Program 2.0 from 6 June 2023 to 31 May 2024

Greetings from Deloitte Malaysia Tax Services.

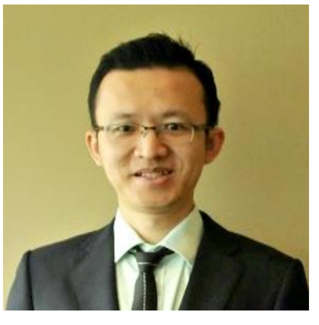
On 2 June 2023, the Inland Revenue Board (IRB) of Malaysia announced the commencement of the Special Voluntary Disclosure Program 2.0 (SVDP 2.0) effective from 6 June 2023 until 31 May 2024.

Alongside the announcement, the IRB has issued the Operational Guidelines No. 2/2023 on SVDP 2.0 and its Frequently Asked Questions (FAQs).

What is SVDP 2.0?

The SVDP 2.0 is one of the Malaysian government's efforts to encourage taxpayers to come forward voluntarily and declare their income/duty accordingly during the program implementation period. In return, the IRB offers 0% penalty/surcharge on any tax/additional tax arising from income declared under the program.

Mohd Fariz Mohd Faruk
Executive Director
Tax Audit & Investigation



Wong Yu Sann
Director
Tax Audit & Investigation

The SVDP 2.0 involves voluntary disclosure made within the implementation period along with payments of tax within the stipulated period for:

- Reporting undeclared / under-declared income, overclaimed / disallowed expenses / claims, overclaimed relief / deductions / rebates and overclaimed capital allowances / incentives;
- Reporting assets disposal (properties and shares in real property companies) which are subject to the Real Property Gains Tax Act 1976; and
- Stamping of documents / agreements that are not stamped within the stipulated period.

Who is eligible to participate in the SVDP 2.0?

- SVDP 2.0 is offered to all categories of taxpayers (except the employer file category) as follows:

Voluntary disclosure category	Year(s) of Assessment (YA) eligible for SVDP 2.0
New taxpayers who do not yet have or already have a Tax Identification Number (TIN) and are reporting income for the first time	YA 2022 and preceding YAs
Existing taxpayers who have previously declared income to IRB but have not submitted Income Tax Return Form (ITRF) / Real Property Gains Tax Return Form (RPGTRF) for any YA	• ITRF - YA 2021 and preceding YAs • RPGTRF - YA 2022 and preceding YAs
Existing taxpayers who have previously declared income to IRB but still have unreported additional income	YA 2021 and preceding YAs
Duty payers who failed to stamp documents/agreements within the stipulated stamping period	Documents/agreements that have been executed (signed) on or before 1 May 2023 for stamping from 6 June 2023 to 31 May 2024.

- The SVDP 2.0 is also available for voluntary disclosure for transfer pricing issues where the handling of this voluntary disclosure is subject to the Voluntary Disclosure Criteria and Procedures of Transfer Pricing Cases as set out in the Transfer Pricing Audit Framework that is currently in force. The Operational Guidelines and the FAQs provide specific clarity on transfer pricing, reiterating the evident focus of the IRB on this topical tax issue as well as acknowledging the underlying complexities. Some key callouts for taxpayers contemplating this program for intragroup transactions are as follow:

- It is timely to re-assess RPGT positions taken for mergers and acquisitions (M&A); there has been a significant increase in M&A activities in recent years, driven by cost-rationalisation and supply chain security.

- The practical need to stamp intragroup agreements should be re-assessed; agreements form the starting point of accurate delineation of intragroup transactions for transfer pricing purposes, and the increasing number of disputes being appealed in Court make it imperative to re-evaluate the benefit of stamping.

- Tax positions (relative to substance) taken for Labuan entities subject to the preferential tax rate under the Labuan Business Activity Act 1990 and transacting with entities subject to the Income Tax Act 1967, should be evaluated.

- Permanent establishment positions should be re-assessed, considering the Double Taxation Agreement (if any), the Multilateral Instrument (MLI), and the domestic law (for non-treaty situations).

- An ambitious timeline of 30 working days has been proposed for processing applications under the program, compared to routine transfer pricing audits that can stretch anywhere between three months to one year. This would yield significant resource and cost savings for taxpayers.

- Voluntary disclosure is possible for domestic controlled transactions, as long as the net outcome is not tax neutral.

- Taxpayer can opt for instalment payment arrangement for the additional tax. This is particularly useful to preserve cash flow position, as the income tax accruing from transfer pricing issues can be significant, due to the materiality of the base considered for the adjustment (commonly, the net sales or total cost of the taxpayer).

- While YAs already under audit are not eligible for the program, taxpayers should take this opportunity to expedite closure of ongoing cases and roll back/forward the agreed positions to other open YAs to save on the surcharge.

- The FAQs clarify that it is not necessary to submit supporting documents together with voluntary disclosure. Subject to the IRB's concurrence, this may be particularly helpful if the voluntary disclosure involve intragroup service/royalty payments, because the benefits test, need test, and rendition test documentations are otherwise extremely onerous under routine audit circumstances with high risk of disallowance.

- SVDP 2.0 does not apply to voluntary disclosures involving cases where:

    - Audit action taken on taxpayers has commenced for the YA(s) involved;
    - Non-taxable, reduced assessment or tax repayment **except for transfer pricing cases**; or

- Investigation action has been initiated or prosecution proceedings following a criminal investigation have been filed in court.

How to participate in the SVDP 2.0?

- Taxpayers who wish to participate in the SVDP 2.0 will need to follow the implementation methods provided in the Guidelines on SVDP 2.0 issued by the IRB as follow:

Voluntary disclosure category	Methods of implementation
New taxpayers	• Check for TIN availability • If do not have a TIN, register via e-Daftar or at any nearest IRB service counter • Submit the ITRF/RPGTRF either by e-Filing/e-CKHT or manual ITRF/RPGTRF
Existing taxpayers who have previously declared income to IRB but have not submitted ITRF / RPGTRF for any YA.	Submit the ITRF/RPGTRF either by e-Filing/e-CKHT or manual ITRF/RPGTRF
Existing taxpayers who have previously declared income to IRB but still have unreported additional income.	• Submit a voluntary disclosure via SVDP 2.0 link on the IRB official portal/MyTax regarding undeclared income together with the Appendix of the SVDP 2.0 Additional Income Reporting Form and tax computation. • The tax computations are only required to be submitted by taxpayers under the companies, businesses and partnerships file category. • Taxpayers who have made voluntary disclosure for transfer pricing issues within the SVDP 2.0 implementation period need to fill in the Voluntary Disclosure Form for Transfer Pricing Case.
Duty payers who failed to stamp documents/agreements within the stipulated stamping period	• Duty payers have to submit documents/agreements to be stamped via Stamp Assessment and Payment System (STAMPS). • Upon receiving the Notice of Assessment, appeal applications for the penalty must be submitted online via STAMPS to be qualified for a

	penalty offer under SVDP 2.0.

- SVDP 2.0 participants shall settle the tax payment on the voluntary disclosure made either in full within 30 days from the date of the notice of assessment/additional assessment raised by the IRB or in instalments based on the agreed instalment payment arrangements with the IRB. Instalment payment is allowed to be made until 31 May 2024 without having to submit supporting documents.

- If the SVDP 2.0 participant fails to settle the tax payment within the stipulated period, penalties will be imposed based on the provisions of the respective tax laws in force. In addition, legal action may be taken and taxpayers can be audited/investigated in the future for the YA where voluntary disclosure has been made.

- Payment of stamp duty as prescribed on the Notice of Assessment shall be made within the stipulated period allowed in the Penalty Appeal Approval Letter.

What are the benefits of SVDP 2.0?

- The penalty and surcharge rate offered by the IRB under the SVDP 2.0 is 0%, i.e. equivalent to a waiver of penalty/surcharge.

- The IRB shall accept the voluntary disclosure made in good faith, provided the voluntary disclosures made are accurate and orderly, in line with the IRB rulings in effect, and have taken into account all taxable income (i.e. full disclosure). A review of the tax computation (mathematical/calculation error) will be carried out to ensure the accuracy of the voluntary disclosures submitted.

- Tax audit/investigation will not be carried out in the future on the relevant YA(s) relating to the income declared voluntarily. However, tax audit/investigation action can be taken for the relevant YA(s) relating to the income declared voluntarily, if the tax payment on the voluntary disclosure has not been settled within the stipulated timeline.

What's next?

It is given that recalcitrant taxpayers are encouraged to come forward and make full use of the limited time offered by the IRB. However, SVDP 2.0 should not be viewed as exclusively applicable to those that are recalcitrant.

Taxpayers should also use the opportunity of the SVDP 2.0 to increase their level of tax compliance and governance. Taxpayers may consider looking into their internal tax processes and tax returns submitted to assess if there are any tax risks and gaps that need to be addressed.

Deloitte Malaysia offers a wide range of services in relation to the SVDP 2.0, including, but are not limited to:

- Assistance with the preparation and submission of voluntary disclosure documents to the IRB.
- Liaison with the IRB following the submission made under the SVDP 2.0 to secure an amicable tax position.

- Assistance with the application for instalments of tax payable per the notice of assessment/additional assessment raised under the SVDP 2.0.
- Assistance with the appeal against notice of assessment/additional assessment raised under the SVDP 2.0, where the assessment/additional assessment raised by the IRB is not in accordance with the submission made.
- Review of tax return(s) submitted and transfer pricing documentation(s) to identify any potential tax risk areas.
- Review of internal tax processes to identify any gaps or touchpoints for improvement, including tax governance framework.

Please do not hesitate to reach out to any of our tax consultants listed below should you be keen to explore how you can leverage on the opportunity from the SVDP 2.0:

Name	E-mail	Contact number
Mohd Fariz Mohd Faruk Executive Director Tax Audit & Investigation Leader	mmohdfaruk@deloitte.com	+603 7610 8153
Subhabrata Dasgupta Executive Director National Transfer Pricing Leader	sudasgupta@deloitte.com	+603 7610 8376
Wong Yu Sann Director Tax Audit & Investigation	yuwong@deloitte.com	+603 7610 8176
Anil Kumar Gupta Director Transfer Pricing	anilkgupta@deloitte.com	+603 7610 8224