

Take5

for business

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Reintroduction of
Voluntary Disclosure
Programmes, Malaysia

6 June 2023 to 31 May 2024



Building a better
working world

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The Voluntary Disclosure Programmes serve as a window of opportunity for taxpayers to take stock of their tax positions, rectify errors, and settle additional taxes, without incurring any penalties.

Participating in the programmes will allow taxpayers to enhance their levels of tax compliance and move forward on a clean slate while contributing towards bolstering the nation's tax revenue collections.

Opportunity to regularize tax positions

Taxpayers, corporates and individuals, now have a window of opportunity to regularize their tax positions in Malaysia. In the retabling of Malaysia's Budget 2023 speech, the Finance Minister announced that the Government will reintroduce Voluntary Disclosure Programmes (VDPs) to allow taxpayers to report their correct tax positions and rectify errors made in the past.

The VDPs launched by the Inland Revenue Board of Malaysia (IRBM) and the Royal Malaysian Customs Department (RMCD) are open to all taxpayers in Malaysia. Under these programmes, penalties will be fully waived for voluntary disclosures made between 6 June 2023 and 31 May 2024, with limited exceptions.

Quick Facts

- ▶ Two VDPs launched by the tax authorities in Malaysia:
 - ▶ Special Voluntary Disclosure Programme 2.0 by the IRBM
 - ▶ Voluntary Disclosure Programme (VDP) by the RMCD
- ▶ Implementation period: **6 June 2023** until **31 May 2024**
- ▶ Key benefits:
 - ▶ **Penalties will be fully waived**
 - ▶ Acceptance in **good faith**
 - ▶ **No audit or investigation** will be undertaken by the IRBM or RMCD for the year(s) of assessment (direct tax) or taxable periods (indirect tax) for which the voluntary disclosures are made



IRBM's Special Voluntary Disclosure Programme (SVDP) 2.0

IRBM: Special Voluntary Disclosure Programme 2.0

1 What areas are covered under SVDP 2.0?

- ▶ Income tax
- ▶ Real property gains tax (RPGT)
- ▶ Stamp duty

2 Who is eligible to participate in SVDP 2.0?

Who is eligible?	Scope
New taxpayers who have not submitted Income Tax Return Forms (ITRF) or Real Property Gains Tax Return Forms (RPGTRF)	Years of assessment (YAs) up to YA2022
Existing taxpayers who have not submitted ITRF or reported the correct taxable income	YAs up to YA2021
Existing taxpayers but have not submitted RPGTRF	YAs up to YA2022
Late submitter of instrument(s) for stamping	Instrument(s) executed (signed) on or before 1 May 2023

3 What can be disclosed? (Non-exhaustive)

- ▶ Income not previously declared/under-declared, over-claimed expenses and over-claimed reliefs/deductions/rebates/capital allowances/incentives
- ▶ Transfer pricing - related party transactions not at arm's length, subject to the "Voluntary Disclosure" criteria and procedures outlined in the Transfer Pricing Audit Framework
- ▶ Income derived from Malaysia deposited in offshore bank accounts and not reported for Malaysian tax purposes
- ▶ Foreign-sourced income received in Malaysia (new taxpayers only)
- ▶ Gains on disposal of properties and shares in real property companies not previously declared
- ▶ Stamping of unstamped instruments

4 What are the documents required for submission?

- ▶ Voluntary disclosure (other than transfer pricing cases):
 - ▶ Non-submission of returns: ITRF, RPGTRF
 - ▶ Incorrect returns: SVDP 2.0 Additional Income Reporting Form and income tax computations (for companies, businesses and partnerships only)
- ▶ Voluntary disclosure for transfer pricing cases: Voluntary Disclosure Form for Transfer Pricing Case and attachment as required under the Transfer Pricing Audit Framework

5 What is the duration of review by IRBM?

- ▶ Voluntary disclosure (other than transfer pricing): 14 working days
- ▶ Voluntary disclosure for transfer pricing: 30 working days

IRBM: Special Voluntary Disclosure Programme 2.0

6 100% waiver of surcharge and/or penalty*

*Applicable for voluntary disclosures resulting in an assessment or additional assessment

Situation	Penalty or surcharge rates before SVDP 2.0		
	Legislative provisions	Penalty rates under the legislation	Concessionary rates provided in frameworks issued by the IRBM
Failure to furnish ITRF	Section 112(3) of the Income Tax Act 1967 (ITA)	300% of tax payable	45% of tax payable
Failure to make a return / declaration on the disposal of a chargeable asset under the RPGTA	Section 29(3) of the Real Property Gains Tax Act 1976 (RPGTA)	300% of tax payable	N/A
Incorrect return due to understatement of income	<ul style="list-style-type: none"> ▶ Section 77B of the ITA ▶ Section 113(2) of the ITA 	<ul style="list-style-type: none"> ▶ Within six months from the statutory due date for ITRF filing: 10% ▶ Otherwise, 100% of tax undercharged 	<ul style="list-style-type: none"> ▶ First offence: 15% ▶ Second offence: 30% ▶ Thereafter: 45% ▶ Voluntary Disclosure: 10% or 15%
Incorrect return due to transfer pricing adjustments	<ul style="list-style-type: none"> ▶ Section 113(2) of the ITA ▶ Section 140A (3C) of the ITA 	<ul style="list-style-type: none"> ▶ 100% of tax undercharged ▶ Surcharge of up to 5% of the adjustments 	
Unstamped instruments	Section 47A(1) of the Stamp Act 1949 (SA)	RM 25 to RM100 or 5% to 20% of deficient duty, whichever is greater	

Transfer pricing adjustments under SVDP 2.0 can be subject to a surcharge of up to 5% of the adjustments even if there is no additional assessment raised.

7 Payment

The tax payment must be remitted within the implementation period:

- ▶ Full payment within 30 days after the service of the notice of assessment or additional assessment
- ▶ Installment payment scheme for tax payments available, based on the agreed installment scheme
- ▶ Failure to pay within the stipulated time period will result in an increase of tax / legal actions and audits / investigations

8 Non-application

- ▶ Period (YAs) where the IRBM has commenced a tax audit or investigation
- ▶ Non-taxable, reduced assessment or tax repayment cases, except for transfer pricing cases
- ▶ Taxpayers who are under criminal investigation or prosecution proceedings initiated by the IRBM
- ▶ Employer file category
- ▶ For transfer pricing:
 - ▶ Taxpayers who carry out controlled transactions between persons who are both assessable and taxable in Malaysia, and where it can be proved that any adjustments made will not change the amount of tax payable or incurred by both parties
 - ▶ Taxpayers who are currently being audited by the IRBM



RMCD's Voluntary Disclosure Programme (VDP)

RMCD: Voluntary Disclosure Programme

1 What does the VDP cover?

The VDP covers mistakes or omissions related to indirect taxes which were previously unknown or undiscovered by the RMCD, including any undeclared or underdeclared tax liability, incurred on or before 28 February 2023.

2 What indirect taxes are covered under the VDP?

- ▶ Sales Tax and Service Tax (SST), including the SST that was repealed on 1 April 2015
- ▶ Goods and Services Tax (GST)
- ▶ Tourism tax

*Note: Departure levy, customs duties, excise duties and any other import-related duties and taxes are **not in scope** of this VDP.*

3 What benefits are available in this VDP for participating taxpayers?

The RMCD will provide the following incentives under the VDP:

- ▶ Blanket approval for 100% remission of penalties
- ▶ No compound will be imposed
- ▶ Activities or audit coverage periods on or before 28 February 2023 that have been disclosed in the VDP will not be audited. Those that have not been disclosed may be audited by the RMCD starting 1 June 2024. For taxable periods after 28 February 2023, the RMCD will conduct audits starting 1 June 2025.

4 Who is eligible to participate in the VDP?

- ▶ Persons currently not registered, but who are liable to register, under existing indirect tax laws
- ▶ Persons already registered under existing indirect tax laws with undeclared or underdeclared indirect taxes
- ▶ Persons who have collected indirect taxes but are not registered under the existing indirect tax laws
- ▶ Persons who have acquired imported taxable services but have-not self-accounted for service tax
- ▶ Persons not complying with the rules of valuation

RMCD: Voluntary Disclosure Programme

5

Who is not eligible to participate in the VDP?

Any person who has indirect tax liabilities up to 28 February 2023 that:

- ▶ Is being or has been investigated by the Enforcement Division of the RMCD.
- ▶ Has been issued with a Bill of Demand (BOD) by the RMCD.
- ▶ Is undergoing trial in the tribunal / court.
- ▶ Is under audit by the Compliance Division of the RMCD.

6

What is the duration of the processing of application by the RMCD?

Approval will be granted within a period of three (3) working days upon receiving complete registration and application and VDP-03 (i.e., VDP approval letter) will be issued to participants within 14 days after the applicant has fulfilled all the prescribed conditions including making payments.

7

When and how can taxpayers furnish payment under the VDP?

The final payment date is 31 May 2024.

Such payment can be made using the following methods:

- ▶ One off - lump sum payment of the tax due
- ▶ Installment - payment of tax can be made based on the prescribed installment schedule

8

Can the RMCD revoke the benefits under the VDP?

If the RMCD determines that there is an element of fraud on the taxpayer's disclosures, the RMCD will revoke the incentive under the VDP and will issue a BOD to claim any tax and /or penalty from the taxpayer.

5 considerations

1

Undertake a comprehensive review and tax health checks/ assessments, including personal tax positions

2

Review tax issues raised in past audits or investigations and assess whether similar issues arose in other YAs / taxable periods

3

Consider whether voluntary disclosures are necessary and if so, prepare to make such disclosures

4

Ensure sufficient funds to make the relevant tax payments and apply for installment plans where needed

5

Develop a robust framework to ensure compliance going forward

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