<u>Latest Amendment On SVDP 2.0: Time To Get It Right With Zero Penalty</u>

The Malaysian government has introduced a program called **Special Voluntary Disclosure Program 2.0 (SVDP 2.0)** runs from June 6, 2023, to May 31, 2024 that allows taxpayers to sort out their financial matters. However, some common worries arise when talking about SVDP 2.0, like:

"I would not be so lucky being audited?"
"Can I trust that the IRBM will accept voluntary disclosures in good faith?",
"Will they be able to track all my financial transactions if I don't tell them everything?"

Inland Revenue Board Malaysia (IRBM) has a powerful data system that uses a wide range of data sources like Companies Commission of Malaysia (SSM), the Royal Malaysian Customs Department (RMCD), immigration records, and even social media like Facebook, Instagram, Road Transport Department (JPJ), insurance companies, the stamp duty office, banking institutes and third-party information providers.

Some taxpayers might think that their money in foreign bank accounts is beyond the reach of the IRBM. But Malaysia has implemented the Automatic Exchange of Financial Account (AEOI) with foreign authorities to share information about overseas assets, bank accounts, and tax-related data that can now be readily accessed by the IRB.

In the event that the IRBM identifies that the money you report doesn't match the taxes you pay, they can start an audit or investigation. These processes can take a long time and can be a hassle for businesses. The tax authorities have the right to look at your documents and records, which can be a bit intrusive.

A regular tax audit can be a lengthy process, often taking a minimum of six months to finish. This can be a hassle, especially for businesses, and it costs both time and money. Under Section 80 of the Income Tax Act 1967 (ITA 1967), IRBM is granted full and unrestricted access to lands, buildings and documents during an audit.

But now, there's a way to avoid all the complexities and time-consuming parts of a standard audit. Taxpayers can use SVDP 2.0 to proactively identify and assess their tax and transfer pricing risks. In cases where such risks are identified, taxpayers can take proactive measures to mitigate them without incurring penalties or surcharges. SVDP 2.0 is designed to accept submissions in **good faith and conducts mathematical or calculation error checks** instead of initiating traditional tax audits.

Common question often arises whether participation in SVDP 2.0 could be "an admission of guilt." Apart from the appeal process available under Section 99 - Right of Appeal of the ITA, taxpayers also have the option to seek relief under Section 131 of the ITA for errors or mistakes made in their Income Tax Return Forms (ITRF).

Section 131 already provides provisions for taxpayers to appeal regarding their submissions. However, the distinction in this scenario is that when taxpayers choose to go through the regular appeal process, they may be subject to penalties if errors are discovered. In contrast, under SVDP 2.0, penalties are waived.

Errors that can be addressed through this avenue include:
(a) Errors or omissions, such as the failure to deduct an allowable expense;
(b) Errors or omissions, such as computational or arithmetical errors;
(c) Errors resulting from a misunderstanding of the law;
(d) Erroneous statements of fact; **and/or**
(e) Omissions made unintentionally and not by design but due to oversight.

The conditions for relief applications include the taxpayer's obligation to furnish the ITRF and settle all taxes owed. Additionally, the taxpayer must submit a written application, either in the form of a letter or Form CP15C, within five years after the conclusion of the Year of Assessment (YA) in which the assessment is deemed.

This provision within the Income Tax Act ensures that taxpayers have the right to seek relief for errors or mistakes in their tax filings, ensuring fairness and due process in tax matters.

In conclusion, SVDP 2.0 should be considered and participated by all taxpayers. The IRBM shall accept voluntary disclosures made during the SVDP 2.0 period in **good faith.**

The key assurance here is that the IRBM will focus on reviewing for mathematical or calculation errors and will not burden taxpayers with additional document requests. Asking for more documents might give the impression of a tax audit, potentially discouraging taxpayers from participating in SVDP 2.0. This approach, compared to SVDP 1.0, ensures a smoother process and encourages greater participation.

As emphasised earlier, SVDP 2.0 offers a win-win situation;

- **Taxpayers** can regularise their financial affairs, reduce penalties, and avoid potential legal consequences.
- **IRBM** benefits from improved tax compliance and increased revenue
- **Government** gains additional resources to support public services and initiatives.

<u>Summary of SVDP 2.0</u>

1.0 Introduction

SVDP 2.0 provides taxpayers with an opportunity to put their financial matters in order. This initiative runs from June 6, 2023, to May 31, 2024, offering benefits by waiving penalties and surcharges associated with the Income Tax Act 1967, Real Property Gains Tax Act 1976, and Stamp Duty Act 1949, Sales Tax Act 1972, Service Tax Act 1975, Goods and Services Tax Act 2014, Tourism Tax Act 2017, Sales Tax Act 2018 and Service Tax Act 2018. In this article, we will explore the key aspects of SVDP 2.0 with respect to direct taxes administered by Inland Revenue Board of Malaysia (IRBM).

2.0 Understanding SVDP 2.0

This programme aims to encourage taxpayers to come forward and voluntarily disclose their previously undisclosed income, incorrect returns, or other tax-related discrepancies.

Here are the specific penalties that are waived under the SVDP 2.0:

Income Tax Act 1967 (ITA)

- **Subsection 112(3)** - Failure to furnish a return or give notice of chargeability (maximum penalty up to 45%).
- **Subsection 113(2)** - Incorrect returns by omitting or understating any income (maximum penalty up to 100%).
- **Subsection 140A(3C)** - Surcharge on Transfer Pricing Adjustment (surcharge of not more than 5% of the any increase of income or reduction of any deduction or loss.

Real Property Gains Tax Act 1976 (RPGT)

- **Subsection 29(3)** - Failure to complete Form RPGT 1A/1B within 60 days from the date of disposal of assets (Penalty can be charged up to 3 times the amount of tax charged)

Stamp Duty Act 1949

- **Subsection 47A(1)** - Penalties for deficient duty (maximum penalty up to 20% of deficient duty).

2.1 SVDP 2.0 Penalty Waive Scenario

	Without SVDP 2.0	**With SVDP 2.0**
Chargeable Income	RM100,000.00	RM100,000.00
Tax Payable @ 24%	RM24,000.00	RM24,000.00
(+) Penalty under S.113(2) @100%	RM24,000.00	**RM0 (Waived)**
Total Tax Payable	RM48,000.00	RM24,000.00

2.1.1 Without SVDP 2.0

A taxpayer in this situation would be required to pay RM48,000.00, which includes a significant penalty under Section 113(2) amounting to RM24,000.00.

2.1.2 With SVDP 2.0

If the taxpayer participates in SVDP 2.0, the penalty under Section 113(2) will be waived. Therefore, the total tax payable would only be RM24,000.00. This results in tax savings of RM24,000.00.

3.0 Categories of Taxpayers Under SVDP 2.0

SVDP 2.0 is not just for Malaysians; it's for everyone, including individuals, companies, and partnerships. To be considered a Malaysian taxpayer, there are specific conditions you need to meet, in accordance with section 7 of ITA 1967 like staying in Malaysia for minimally 182 days.

Who can use SVDP 2.0:

3.1 New Taxpayers (Declaration of Income by New Taxpayers for YA2022 and Preceding YA)

3.2 Existing Taxpayers (Declaration of Income by Existing Taxpayers for YA2021 and Preceding YA)

- Taxpayers Who Haven't Submitted Income Tax Returns or Real Property Gains Tax Returns
- Taxpayers with Unreported Additional Income

3.3 Taxpayers Who Haven't Declared Asset Disposal for YA2022 and Preceding YA

3.4 Duty Payers Who Fail to Stamp Documents/Agreements (Stamping of Documents/Agreements Executed on or Before May 1, 2023)

4.0 Period of Completion and Review Process

It's crucial to be aware of the timeframes for completion and the review process that will be carried out under this program, so that taxpayers have a clear understanding of the process involved in disclosing their information.

4.1 Transfer Pricing – Within 30 Working Days

For taxpayers dealing with transfer pricing cases, their SVDP 2.0 applications will be processed within 30 working days from the date of receiving their complete applications.

4.2 Others – Within 14 Working Days

For all other taxpayer categories not falling under transfer pricing cases, the processing time for SVDP 2.0 applications will be shorter, with completion within 14 working days from the date of receiving complete applications.

4.3 Review of Tax Computation (Mathematical/ Calculation Error)

As part of the SVDP 2.0 process, a review of the tax computation for any mathematical or calculation errors will be carried out.

5.0 Payment Options and Conditions Under SVDP 2.0

When participating in the SVDP 2.0, taxpayers have specific payment options and conditions to consider. These options aim to facilitate the settlement of outstanding taxes and provide flexibility to taxpayers.

The available payment methods and the conditions under SVDP 2.0;

5.1 Full Settlement Within 30 Days

Taxpayers who opt for full settlement are required to do so within 30 days from the date of the notice provided to them. This option allows their tax liabilities to be cleared promptly.

5.2 Instalment Payment Until May 31, 2024

For those who find it challenging to make a lump-sum payment, SVDP 2.0 offers the option of paying instalments. Taxpayers can choose this method, which allows them to make payments until May 31, 2024, without the need to submit supporting documents initially.

5.2.1. Conditions for Instalment Payment:

- **Period of Instalment**
  Taxpayers can opt for instalment payments from June 6, 2023, to May 31, 2024, providing a more extended time for settling their tax liabilities.

- **Application Deadline**
  Taxpayers can apply for the instalment plan either upon submission of the SVDP 2.0 application form or within 30 days from the date of the notice of assessment.

- **Penalty for Late Payment**
  Instalment applications received after 30 days from the date of assessment may incur penalties under Section 103 of the Income Tax Act (ITA) and Section 21 of the Real Property Gains Tax (RPGT) Act. These penalties are associated with late payment. If tax arreas (debts) are still not paid, legal action may be taken and taxpayers can be audited/investigated in future for the year of assessment where voluntary disclosure has been made.

6.0 Financial Statements and Amendments Under SVDP 2.0

If taxpayers are taking part in SVDP 2.0, they should also know about financial statements and why they matter. These statements will help ensure that everything is clear and correct when it comes to their tax disclosures.

- **Audited Report**
- **Management Account**

But here's the important part: If the audit report is not available at the moment then the management account will be required. If there are any differences of figure between the audit report and management accounts, taxpayers will need to make the necessary changes and SVDP 2.0's penalty rules will still apply.

7.0 Inclusions of SVDP 2.0: Tax Scenarios Covered

The SVDP 2.0 covers a wide range of scenarios, making it a flexible solution for individuals and businesses looking to regularise their financial affairs. Here are the tax scenarios covered:

7.1 Voluntary Disclosure (VD) Resulting in an Assessment/Additional Assessment Raised on Taxpayer

SVDP 2.0 allows taxpayers to make voluntary disclosures in various scenarios, including:

- Declaration of under-declared income;
- Rectification of overclaimed or disallowed expenses or claims;
- Correction of overclaimed relief, deductions, or rebates; **and/or**
- Adjustments for overclaimed capital allowances or incentives.

7.2 Voluntary Disclosure (VD) for Transfer Pricing Issues

Transfer pricing issues can be complex, and SVDP 2.0 recognizes the need for a specific approach. The handling of voluntary disclosures related to transfer pricing follows specific criteria and procedures outlined in the Transfer Pricing Audit Framework. It ensures the matters are appropriately addressed.

8.0 Exclusions of SVDP 2.0: Tax Scenarios Not Covered

While the SVDP 2.0 provides a broad platform for taxpayers to rectify various tax-related issues, it has some exclusions to consider that are not eligible for participation. Here are the situations:

8.1 Audit Action Commenced

SVDP 2.0 is not applicable if audit action has already commenced for the year of assessment (YA) involved, as indicated by the issuance of a Tax Audit Letter.

8.2 Non-Taxable, Reduced Assessment, or Tax Repayment (Except TP Cases)

Tax situations that involve non-taxable income, reduced assessments, or tax repayments are generally not covered by SVDP 2.0, except for cases related to transfer pricing.

8.3 Investigation Action or Prosecution Proceedings Initiated

SVDP 2.0 does not apply when investigation action has been initiated or prosecution proceedings have been filed in court. These exclusions are based on provisions under:

- The Income Tax Act 1967 (ITA 1967), Real Property Gains Tax Act 1976 (RPGT 1976), and Stamp Act 1949 (SA 1949).
- The Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act 2001.

8.4 Tax Rate Amendment Not Part of Reportable Claims

If a tax rate amendment is not related to the income or expenses that can be reported or claimed under SVDP 2.0, it falls outside the scope of the program.

8.5 Taxpayers with Recorded Tax Transactions

SVDP 2.0 is not applicable to taxpayers who have tax transactions recorded in the Inland Revenue Board of Malaysia's (IRBM) records in the following scenarios:

- Estimated assessments have already been raised.
- Taxpayers have made Monthly Tax Deductions (MTD), where the taxpayer is regarded as having opted not to submit Income Tax Return Forms (ITRF), and the MTD is considered as final tax.

Understanding these exclusions is essential for taxpayers considering participation in SVDP 2.0. By being aware of the limitations of the program, taxpayers can make informed decisions about whether their specific tax scenarios are eligible for a review through SVDP 2.0.

9.0 Outcome of Voluntary Disclosures Under SVDP 2.0

After taxpayers made a voluntary disclosure under SVDP 2.0, they might wonder what happens next. Well, the outcome can depend on a few things, like timing of tax payments, the nature of the disclosures, and potential audit or investigation actions. Here's a breakdown:

9.1 No Audit for the Year of Assessment with Voluntary Disclosure if You Pay on Time

If you make a voluntary disclosure for a specific tax year (YA) and make sure to pay the taxes you owe on time, you generally won't face an audit for that YA. It's like a clean slate.

9.2 Potential Audit for Transfer Pricing Issues

In cases if your voluntary disclosure is only about non-transfer pricing issues, but later it is suspected there might be transfer pricing issues, they (IRBM) could decide to audit or investigate those transfer pricing matters.

9.3 Potential Audit for Non-Transfer Pricing Issues

Conversely, if your voluntary disclosure is all about transfer pricing, they (IRBM) might still decide to audit or investigate other tax matters besides transfer pricing. It depends on what they find.

The outcome can vary depending on the specifics of your situation, but it's good to know that making a voluntary disclosure can help you avoid some audits and investigations.

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