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# Taxavvy

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## *Reduction of penalty and waiver of increase in taxes*

Pursuant to the recent announcement by the Prime Minister during the Budget 2016 recalibration, the Inland Revenue Board (IRB) has issued a guideline and media release, both dated 10 February 2016, to explain the offer to reduce penalty and waive increase in taxes.

The offer for reduction / waiver is valid from **1 March 2016 to 15 December 2016**. Each application will be considered based on the facts, merits of each case, and conditions as prescribed by the IRB.

The salient points of the guideline are as follows:

### **1. Reduction in penalty**

The offer for reduction in penalty applies to the following situations:

- taxpayers who have not submitted income tax returns (i.e. income tax return forms (ITRF) or petroleum return forms (PRF)) for backlog years of assessment,
- taxpayers who have submitted incorrect ITRFs or PRFs,
- disposers who have failed to report disposal of real property within the prescribed period,
- payers of stamp duty who have failed to submit the instruments for stamping within the prescribed timeframe,
- tax audit and investigation cases.

The conditions for reduction in penalties are as follows:

Situation	Condition	Reduced penalty rate	Payment period
Voluntary disclosure	<ul style="list-style-type: none"> <li>• Applicable to all categories of tax files.</li> <li>• Voluntary disclosure before commencement of tax audit / investigation.</li> <li>• Voluntary disclosure, via submission of backlog ITRFs / PRFs or amendment to incorrect ITRFs / PRFs, must be made within the offer period (i.e. 1 March 2016 to 15 December 2016).</li> <li>• Taxpayer must sign the letter of undertaking and agreement to pay.</li> </ul>	15%	Full settlement within 30 days from the date of notice of assessment or signing of letter of undertaking, for audit case or investigation case respectively.
		20%	Settlement via not more than 6 instalments from the date of notice of assessment or signing of letter of undertaking, for audit case or investigation case respectively.

Situation	Condition	Reduced penalty rate	Payment period
Tax audit case	<ul style="list-style-type: none"> <li>Applicable to all categories of tax files.</li> <li>Applicable to audit cases which are settled during the period <u>1 January 2016 to 15 December 2016</u>.</li> <li>Taxpayer receives offer letter for penalty reduction and agrees to sign letter of undertaking and agreement to pay.</li> </ul>	25%	Settlement of additional tax and penalty within 30 days from the date of notice of assessment.
		35%	Settlement of additional tax and penalty via not more than 6 instalments.
Investigation case	<p>Applicable to the following:</p> <ul style="list-style-type: none"> <li>Cases under investigation as at 31 December 2015 and settlement agreed via signed agreement / letter of undertaking on or before 31 July 2016, or</li> <li>Investigation cases which commence from 1 January 2016 and settlement agreed via signed agreement / letter of undertaking on or before 15 December 2016, or</li> <li>Best judgement assessments due to disagreement by taxpayers on the rate of penalty imposed under subsections 112(3) or 113(2) of ITA. Settlement agreed via signed agreement / letter of undertaking on or before 15 December 2016. This offer is valid even though Form Q may have been submitted.</li> <li>Predicated cases investigated together with <i>Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001</i> case which meet the conditions of the above paragraphs.</li> </ul>	25%	Full settlement on the date of agreement / signing of letter of undertaking by the taxpayer.
		35%	Upfront payment of 50% on the date of agreement / signing of letter of undertaking by the taxpayer, and balance to be settled via not more than 6 instalments.

Situation	Condition	Reduced penalty rate	Payment period
Investigation case	Voluntary disclosure within 14 days from the date of inspection visit	20%	Full settlement on the date of agreement / signing of letter of undertaking by the taxpayer.
		25%	Upfront payment of 50% on the date of agreement / signing of letter of undertaking by the taxpayer and balance to be settled via not more than 6 instalments.
Real property gains tax	<ul style="list-style-type: none"> <li>• Applicable to disposers who failed to report disposals within the prescribed timeframe.</li> <li>• Application must be made within the offer period.</li> <li>• Disposers must sign letter of undertaking and agreement to pay.</li> </ul>	5%	Full settlement within 30 days from the date of signing of letter of undertaking.
		8%	Settlement via not more than 6 instalments from the date of signing of letter of undertaking.
Stamp duty	The instrument must be submitted for stamping within the offer period.	5%	Stamping (i.e. payment of duty) is made between 1 March 2016 to 30 June 2016.
		10%	Stamping (i.e. payment of duty) is made between 1 July 2016 to 15 December 2016.

## 2. Waiver of increase in tax

- The offer for waiver of increase in tax is applicable to taxpayers who settle the increase in income tax, petroleum income tax, real property gains tax or withholding tax by 15 December 2016.
- The conditions of the offer for waiver of increase in tax are as follows:
  - a) Taxpayer has tax in arrears, or
  - b) Taxpayer has failed to remit withholding tax together with its corresponding increase in tax, or
  - c) Taxpayer has balance of tax in arrears and not just the increase in tax, or
  - d) Taxpayer who has been granted a similar waiver previously but have yet to make full settlement,
  - e) Taxpayer has not been issued with liquidation / bankruptcy notices by the Courts.

- The waiver will be implemented as follows:
  - a) Only the increase in taxes under the provisions as listed under paragraph 4 of the guideline will be eligible for consideration.
  - b) Settlement via lump sum payment or in equal instalments will be considered until 15 December 2016
  - c) If a particular case is under civil suit, the waiver will be subject to full settlement of cost or interest (if any) imposed by the courts.
  - d) Waiver of increase in tax will only be given after full settlement of taxes in arrears.
- The guideline also provides examples to illustrate various scenarios.

The guidelines is available on IRB's website [www.hasil.gov.my](http://www.hasil.gov.my) (Internal Link > Operational Guidelines). The guideline is only available in the Malay language.

### ***Special personal tax relief***

The *Income Tax (Exemption) Order 2016* was gazetted on 17 February 2016. The gazette order provides a special relief of RM2,000 to individuals with monthly income of RM8,000 (aggregate income of RM96,000 or less) as proposed in the Budget Recalibration.

### ***Tax finalisation letter for employee***

IRB has issued an operational guideline dated 12 February 2016 which explains the application procedure by an employer for tax finalisation of an employee upon cessation of employment, retirement, death or leaving Malaysia.

The guideline is available on IRB's website [www.hasil.gov.my](http://www.hasil.gov.my) (Internal Link > Operational Guidelines). The guideline is only available in the Malay language.

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