



# TaXavvy

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## Operational Guideline 1/2019 - Special Voluntary Disclosure Programme

The Inland Revenue Board (IRB) has issued a new [Operational Guideline 1/2019 – Special Voluntary Disclosure Programme](#) (“the new guideline”) on 24 April 2019. The new guideline supersedes the Operational Guidelines 1/2018 dated 29 March 2019, and takes into account the Ministry of Finance’s press release on 7 April 2019 in relation to the extension of the Special Voluntary Disclosure Programme (SVDP) period from June 2019 to 30 September 2019.



### Additional situations in which the SVDP applies

- Previously the superseded guideline had stated that the SVDP applied only to “income reported” for year of assessment (YA) 2017 and before. The new guideline now states “income or gains from disposal of assets *not previously declared*” for YA 2017 and before.
- Companies with financial year ending on 31 January, 28 February or 31 March of 2018 which had:
  - i) previously requested to participate in the SVDP but were declined by IRB, or
  - ii) failed to submit their income tax return form for YA 2018.

Such companies were excluded from the SVDP in the superseded guideline.

[Paragraphs 5.3.1 & 5.3.2]

### Non-application of SVDP’s reduced penalty rates

For voluntary disclosures involving group relief claims, the surrendering company may still be required to pay a penalty at 100% of the tax undercharged in the claimant’s tax computation as specified in section 44A(9)(b) of the Income Tax Act 1967.

[Paragraph 6.3]

### Verification & accuracy of the voluntary disclosures

Taxpayers must make sure *all* taxable income has been accounted for in the voluntary disclosure made.

IRB will accept information voluntarily disclosed under the SVDP in good faith. *However, the computation of tax will be checked to ensure the accuracy of the voluntary disclosure made.*

Nevertheless, the IRB maintains that audit / investigation will not be carried out on the years of assessment where voluntary disclosure has been made.

[Paragraphs 5.8, 5.9 & 5.10]

### Penalty rates applicable to voluntary disclosure as stated in the new guideline

	During SVDP		Post SVDP (after 30 September 2019)
	Disclosure made in the period from 3 November 2018 to 30 June 2019	Disclosure made in the period from 1 July 2019 to 30 September 2019	
<b>Incorrect returns</b>	10%	15%	Minimum rate of 45%
<b>Non-filing of returns</b>	10%	15%	Minimum rate of 45%
<b>Late stamping (for instruments not stamped 6 months after the due date)</b>	10% or minimum of RM50	15% or minimum of RM100	As per section 47A of Stamp Act 1949

## Guideline on Dispute Resolution Proceeding

The IRB has issued a [guideline on Dispute Resolution Proceeding](#) (DRP). The guideline aims to provide guidance to taxpayers on the DRP mechanism which can be used to resolve disputes from an appeal against an assessment or application for relief.

The DRP is an alternative platform to resolve appeals or application for relief whereby the Dispute Resolution Department or State Director's Office of IRB acts as a neutral party to facilitate the negotiation process in an effort to reach an out of court settlement.



A DRP may be requested by the taxpayer in the following situations:

### Appeal

#### Income Tax Act 1967

- Section 99 – appeal on an assessment made
- Section 97A – appeal on a notification of non-chargeability made
- Section 109H – appeal on the non-applicability of withholding tax

#### Petroleum Income Tax Act 1967

- Section 43 – appeal on an assessment made

#### Real Property Gains Tax Act 1976

- Section 18 – appeal on an assessment made

### Application for relief

#### Income Tax Act 1967

- Section 131 – relief in respect of error or mistake
- Section 131A – relief other than in respect of non-error or mistake

#### Petroleum Income Tax Act 1967

- Section 66 – relief in respect of error or mistake

#### Real Property Gains Tax Act 1976

- Section 19 – relief in respect of error or mistake

The process for a DRP involves:

1. The taxpayer requests in writing to the IRB for a DRP after receiving IRB's confirmation letter of acceptance of his appeal or application for relief.
2. IRB issues an invitation for DRP to the taxpayer.
3. If the taxpayer is represented by a lawyer or tax agent, the representative must submit a signed authorisation letter to the IRB before commencement of the DRP.
4. DRPs are handled by the Dispute Resolution Department for taxpayers with files under the Multinational Tax, Special Industry, Large Taxpayer branches, as well as the Investigation branch, Special Operation, and Special Task Departments. For all other cases, the State Director's Offices will handle the DRP.

## Operational Guideline 3/2019 – Procedure for submission of amended tax return form

The IRB has recently uploaded an [Operational Guideline 3/2019 – Procedure for submission of amended tax return form](#) on 22 April 2019. This guideline supersedes the Operational Guideline (GPHDN) 1/2010 dated 30 November 2010.

### Purpose of the guideline

To provide guidance to taxpayers who wish to make a self-amendment to the Income Tax Return Form (ITRF) under section 77B of the Income Tax Act 1967. Section 77B provides for self-amendment to be made which results in:

- a tax payable position (for a taxpayer which was previously not taxable), or
- additional tax payable.

### Situations where self-amendment can be made

The taxpayer is allowed to make a self-amendment to correct mistakes in the ITRF in relation to:

- (i) income under declared / not declared
- (ii) expenses / other claims over claimed
- (iii) capital allowances / incentives / reliefs over claimed

### Timeframe for making a self-amendment

- The self-amendment is to be made within 6 months from the statutory due date for submission of the ITRF.

#### **Conditions**

- The ITRF has been submitted to the IRB on time.
- The IRB has not issued an amended assessment within 6 months from submission of the ITRF.
- Self-amendment is allowed *only once for each YA*.

### Timeframe for making a self-amendment (con't)

- As an illustration, for taxpayers with a basis period for YA 2018 ending on 31 December, the due dates to submit an Amended Return Form (ARF) for YA 2018 are as follows:

Category of taxpayers	Due date for submission of the ITRF	Period when the ARF may be submitted
Companies, Co-operative Societies and Trust bodies (Forms C, CS, TA, TC and TR) *	31 July 2019	1 August 2019 to 31 January 2020
Where there is no business source income (Forms BE, M TP, TJ and TF)	30 April 2019	1 May 2019 to 31 October 2019
,Where there is business source income (Forms B, M, TP, TF and TJ)	30 June 2019	1 July 2019 to 31 December 2019

\* Includes Limited Liability Partnership

### Increase in tax

There will be an increase in tax as a result of the self-amendment made as follows:

Submission of ARF	Amount of increase in tax
<i>Within 60 days</i> from the due date of submission of the ITRF	10% of tax payable or additional tax
<i>After 60 days but within 6 months</i> from the due date of submission of the ITRF	Effective rate of 15.5% based on the following formula:  $B + [(A + B) \times 5\%]$ Where: A = tax payable / additional tax, and B = 10% of A

## Green Technology Investment Tax Allowance – Expansion of qualifying green technology assets list

Following the announcement made in Budget 2019, the Malaysian Green Technology Corporation (MGTC) has recently uploaded the expanded list of qualifying green technology assets on their [MyHIJAU directory](#).

The original list of 9 assets have been expanded to include an additional list of 40 assets that would qualify for the Green Technology Investment Tax Allowance incentive for applications made from 1 January 2019 to 31 December 2020. An investment tax allowance will be granted on qualifying green assets purchased, to be offset against 70% of the company's statutory income.

### Additional qualifying green assets

Sector / Area	Technology	Product
<b>Application to be made to MGTC for issuance of validation letter</b>		
1. Energy Efficiency	Chiller	Energy Efficiency Chiller
2.	Heat Operated Air Conditioners	High Efficiency Absorption and Adsorption Air Conditioner
3.	Cooling Tower	High Efficiency Cooling Tower
4.	Air Compressor	High Efficiency Air Compressor
5.	Industrial Furnaces	Energy Efficient Industrial Furnace
6. Renewable Energy	Energy Storage	Battery
7. Waste	Waste Collection	Trash Compactor with Energy Efficient Motor
8. Water	Water Pump	Energy Efficient Pump
<b>Application to be made to MIDA for evaluation and issuance of an interim approval letter, and thereafter apply to MGTC for issuance of validation letter</b>		
9. Energy Efficiency	Cogeneration System	Cogeneration System
10. Renewable Energy	Solar Thermal	Solar Thermal System and Collector
11.	Biomass-Combustion/ Gasification/Combined Heat Power	Biomass Gasification Furnace/Combustion Chamber
12.		Biomass Gas Engine
13.		Biomass Reciprocating Engine
14.		Biomass Combustion/Gas Turbine
15.		Biomass Steam Turbine
16.		Biomass Oil Recovery System

Sector / Area	Technology	Product
<b>Application to be made to MIDA for evaluation and issuance of an interim approval letter, and thereafter apply to MGTC for issuance of validation letter</b>		
17.	Renewable Energy	Biomass-Combustion/ Gasification/Combined Heat Power
18.		Biomass Fuel Preparation System (Press & Shredding Machine)
19.		Biomass Fuel Feeding System (Rotary Drum/ Conveyor Belt/Screw Conveyor)
20.		Biomass Heat Recovery System Generator
21.	Mini Hydro	Condensing Biomass Boiler
22.		Hydro Turbine
23.		Mini Hydro Generator
24.		Hydro Pump and Motor
25.	Biogas	Penstock (Pipe/Tunnel)
26.		Biogas Pre-treatment System/Biogas Purifying System/Biogas Scrubber System
27.		Biogas Dewatering System
28.		Biogas Digestion System (Covered Lagoon/ Digester Tank/ Gas Well)
29.	Building	Biogas Analyser
30.		Energy Management System
31.		Single or Double Glazing Windows
32.		Heat Barrier
33.		Low Radiation Window Curtain System
	Office Equipment	Efficient Server System
	Energy Saving Lighting	LED & Energy Saving Lighting



Sector / Area	Technology	Product
<b>Application to be made to MIDA for evaluation and issuance of an interim approval letter, and thereafter apply to MGTC for issuance of validation letter</b>		
34. Waste	Waste Recycling/ Recovery	Energy Efficient Baler
35.		Plastic Recycling Machine
36.		Magnetic Separator
37.	Waste Treatment	Composing Equipment
38.		Energy Efficient Incinerator
39.	Waste Disposal	Energy Efficient Landfill Compactor
40.		Methane Gas Recovery System



## Extension of special deductions for issuance cost of sukuk, retail debenture and retail sukuk

Pursuant to the Budget 2019 proposals, the following gazette orders have been issued to extend the qualifying period for these incentives for another 2 YAs, i.e. YA 2019 to YA 2010:

1. [Income Tax \(Deduction for Expenditure on Issuance of Sukuk\) Rules 2019](#)
2. [Income Tax \(Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk\) Rules 2019](#)

Previously the incentives were granted from YA 2016 to YA 2018.



The salient points of the abovementioned gazette orders are as follows:

### **Income Tax (Deduction for Expenditure on Issuance of Sukuk) Rules 2019**

A single deduction is given for expenditure incurred on the issuance of sukuk which are structured pursuant to the principle of *Ijarah*, or *Wakalah* (comprising a mixed component of asset and debt). The sukuk has to be approved or authorised by, or lodged with, the Securities Commission (SC) under the Capital Markets and Services Act 2007 (CMSA) or approved by the Labuan Financial Services Authority.

### **Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk) Rules 2019**

A double deduction is given for additional expenditure incurred on the issuance of:

- a) Retail debenture approved or authorised by the SC under the CMSA
- b) Retail sukuk structured pursuant to the principle of *Murabahah* or *Ba' Bithaman Ajil* (based on the concept of *Tawarruq*), *Mudharabah*, *Musarakah*, *Istisna'* or any Shariah principle other than the principle of *Ijarah*, or *Wakalah*, and approved or authorized by the SC under the CMSA.

Single deduction is given for additional expenditure incurred on the issuance of retail sukuk which are structured pursuant to the principle of *Ijarah*, or *Wakalah* (comprising a mixed component of asset and debt), and approved or authorized by the SC under the CMSA.

The additional expenditure qualifying for single or double deduction are:

- Professional fee relating to due diligence drafting and preparation of prospectus
- Printing cost of prospectus
- Advertisement cost of prospectus
- SC prospectus registration fee
- Bursa Malaysia processing fee and initial listing fee
- Bursa Malaysia new issue crediting fee
- Primary distribution fee

## Guideline on the Establishment of Labuan Marketing Office

The Labuan FSA has issued a newly rewritten [Guideline on the Establishment of Labuan Marketing Office](#) (“the guideline”) dated 12 April 2019. It supersedes the earlier guideline dated 5 March 2014. The guideline aims to provide clarification on the regulatory requirements for establishment of a Labuan Marketing Office (LMO) outside of Labuan island.

Notwithstanding the above, the Labuan FSA has indicated that all approvals, decisions, directions or exemptions granted under the superseded guideline shall continue to remain valid unless revoked.

An LMO is permitted to facilitate meetings with existing clients and establish contacts with potential clients. It is not permitted to use its premises to maintain books and records, or to undertake trading activities.

	<b>Salient points from the 12 April 2019 guideline</b>	<b>Differences from the 5 March 2014 guideline</b>
<b>Applicability</b>	<p>All Labuan companies may establish an LMO except those with Labuan Co-Located Office under the following:</p> <ul style="list-style-type: none"> <li>• Guideline on Co-Location of Labuan Bank</li> <li>• Guideline on Co-Location of Labuan Insurance and Takaful Licensee, and</li> <li>• Guideline on Co-Location of Labuan Holding Company.</li> </ul>	There was previously no restriction for Labuan companies with Labuan Co-Located Offices to establish LMOs.
<b>Location of LMO</b>	Outside of Labuan island.	Kuala Lumpur and / or Iskandar Malaysia.
<b>Operational requirements</b>	<p>The following are new requirements:</p> <ul style="list-style-type: none"> <li>• Provide notification to Labuan FSA within 30 days on any changes to the address of the LMO.</li> <li>• Comply with the relevant directives, guidelines and reporting requirements issued by Labuan FSA, including submitting a half-yearly marketing office activity report and other statistical information as may be required.</li> </ul>	There was previously a limit of four staff to each LMO.

	<b>Salient points from the 12 April 2019 guidelines</b>	<b>Differences from the 5 March 2014 guidelines</b>
<b>Fees payable</b>	<p>The annual fee remains at RM7,500 / year and payable not later than 15 January of each year.</p> <p>Non-refundable processing fees are now specified as follows:</p> <ol style="list-style-type: none"> <li>1. Labuan company: <ul style="list-style-type: none"> <li>• Normal application - RM300</li> <li>• Fast track application - RM1,300</li> </ul> </li> <li>2. Labuan Licensed entity: <ul style="list-style-type: none"> <li>• Normal application - RM1,000</li> <li>• Fast track application - RM4,500</li> </ul> </li> </ol>	<p>The fast track processing fees were not specified.</p>
<b>Application requirements</b>	<ul style="list-style-type: none"> <li>• All Labuan companies must submit the application through a Labuan trust company.</li> <li>• Labuan licensed entities may also submit a completed application form through a Labuan licensed entity, Labuan insurance manager / underwriting manager, or Labuan takaful manager / underwriting manager.</li> </ul> <p>Applications are to be accompanied with a marketing plan and 3 years financial projection.</p> <p>Applicants are reminded that they are required to comply with the substance requirements as specified in the relevant regulations.</p>	<p>Previous application requirements were essentially the same.</p>

## Connect with us

### **Kuala Lumpur**

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

### **Penang & Ipoh**

**Tony Chua**  
tony.chua@pwc.com  
+60(4) 238 9118

### **Johor Bahru**

**Benedict Francis**  
benedict.francis@pwc.com  
+60(7) 218 6000

### **Melaka**

**Benedict Francis**  
benedict.francis@pwc.com  
+60(7) 218 6000

### **Tan Hwa Yin**

hwa.yin.tan@pwc.com  
+60(6) 283 6169

### **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

#### **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

#### **Global Mobility Services**

**Sakaya Johns Rani**  
sakaya.johns.rani@pwc.com  
+60(3) 2173 1553

#### **Hilda Liow**

hilda.liow.wun.chee@pwc.com  
+60(3) 2173 1638

#### **International Tax Services / Mergers and Acquisition**

**Frances Po**  
frances.po@pwc.com  
+60(3) 2173 1618

#### **Tax Reporting & Strategy**

**Pauline Lum**  
pauline.ml.lum@pwc.com  
+60(3) 2173 1059

#### **Dispute Resolution**

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

#### **Indirect Tax**

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

#### **Yap Lai Han**

lai.han.yap@pwc.com  
+60(3) 2173 1491

#### **Chan Wai Choong**

wai.choong.chan@pwc.com  
+60(3) 2173 3100

#### **Tax Technology**

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

#### **Transfer Pricing**

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

#### **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



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