



LEMBAGA HASIL DALAM NEGERI MALAYSIA

**TAX INVESTIGATION
FRAMEWORK**

Translation from the original Bahasa Malaysia text.

EFFECTIVE DATE: 1 JANUARY 2007

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1. INTRODUCTION

- 1.1 To create and maintain public confidence in the tax administration system, the tax system must be fair, transparent and equitable. Compliance with the tax legislation must be strictly enforced and tax offences such as non-compliance and tax evasion should be penalised as provided for in the Income Tax Act 1967 (ITA).
- 1.2 The Inland Revenue Board of Malaysia (IRBM) carries out tax investigation (civil investigation) as one of its measures of enforcement. In addition, a Criminal Investigation Division (CID) has been established by the IRBM with the main objective being to prove, where deemed necessary, that an offence has been committed, to ascertain the person responsible for the offence and to pursue criminal prosecution in accordance with the provisions of the ITA.
- 1.3 This framework is issued by IRBM to ensure that tax investigation is carried out in a fair, transparent and impartial manner. This framework outlines the rights and responsibilities of an investigation officer, the taxpayer and the tax agent/representative in respect of a tax investigation. Generally, this framework aims to:
 - 1.3.1 Assist investigation officers to carry out their tasks efficiently and effectively; and
 - 1.3.2 Assist taxpayers in fulfilling their obligations.

2. STATUTORY PROVISIONS

- 2.1 The provisions of the ITA which are applicable to tax investigation are as follows:
 - 2.1.1 Section 68 : Power to appoint agent.
 - 2.1.2 Section 75A : Director's liability.
 - 2.1.3 Section 78 : Power to call for specific returns and production of books.
 - 2.1.4 Section 79 : Power to call for statement of bank accounts etc.

2.1.5	Section 80	:	Power of access to buildings and documents etc.
2.1.6	Section 81	:	Power to call for information.
2.1.7	Section 82	:	Duty to keep records and give receipts.
2.1.8	Section 90	:	Assessments generally.
2.1.9	Section 91	:	Assessments and additional assessments in certain cases.
2.1.10	Section 96A	:	Composite assessment.
2.1.11	Section 99	:	Right of appeal.
2.1.12	Section 100	:	Extension of time for appeal.
2.1.13	Section 101	:	Review by Director General.
2.1.14	Section 102	:	Disposal of appeal.
2.1.15	Section 103	:	Payment of tax.
2.1.16	Section 104	:	Recovery from persons leaving Malaysia.
2.1.17	Section 106	:	Recovery by suit.
2.1.18	Section 112	:	Failure to furnish return or give notice of chargeability.
2.1.19	Section 113	:	Incorrect returns.
2.1.20	Section 114	:	Wilful evasions.
2.1.21	Section 116	:	Obstruction of officers.
2.1.22	Section 118	:	Offences by officials.
2.1.23	Section 120	:	Other offences.
2.1.24	Section 121	:	Additional provisions as to offences under sections 113, 115, 116, 118 and 120.
2.1.25	Section 124	:	Power to compound offences and abate or remit penalties.
2.1.26	Section 138	:	Certain material to be treated as confidential.
2.1.27	Section 140	:	Power to disregard certain transactions.

- 2.1.28 Section 141 : Powers regarding certain transactions by non-residents.
- 2.1.29 Section 142(5) : Evidential provisions

2.2 Statutory provisions relating to tax investigation are not limited to the provisions cited above. Statutory provisions also include other provisions in the ITA, Real Property Gains Tax Act 1976, Petroleum (Income Tax) Act 1967, Promotion of Investments Act 1986, Stamp Act 1949, Labuan Offshore Business Activity Tax Act 1990 and other acts administered by IRBM.

3. WHAT IS TAX INVESTIGATION

Tax investigation is an examination of taxpayer's business and / or individual books, records and documents. This examination is to ensure that the correct amount of income has been reported and tax thereon paid in accordance with the tax laws and provisions. The investigation will only be carried out in cases where it is suspected based on precise and definite evidence that the taxpayer is deliberately trying to avoid paying tax or has committed an act of wilful evasion under ITA and other Act such as Real Property Gains Tax Act 1976, Petroleum (Income Tax) Act 1967, Promotion of Investments Act 1986, Stamp Act 1949 and Labuan Offshore Business Activity Tax Act 1990. Investigation activity carried out is of two categories which are as follows:

3.1 Civil Tax Investigation

Civil tax investigation activity involves detection of tax evasion. The primary concern being recovery of tax loss and imposition of heavy penalties.

3.2. Criminal Tax Investigation

Functions and work procedures involving criminal tax investigation are similar to that of civil investigation. However with criminal investigation, focus is on gathering admissible evidence with a view towards prosecution

and conviction of the tax evader for commission of offences pursuant to ITA, Penal Code (Act 574), Criminal Procedure Code (Act 593), Evidence Act 1950 (Act 56) and other relevant Acts.

4. OBJECTIVE OF TAX INVESTIGATION

Tax investigation activities act as a deterrent against tax evasion, and

- 4.1 Ensure the correct amount of tax is collected;
- 4.2 Ascertain the person responsible for the offence, to pursue criminal prosecution; and
- 4.3 Enhance voluntary compliance with tax laws and regulations.

5. YEARS OF ASSESSMENT COVERED

Where there is fraud, wilful default and negligence, the statutory limitation is not applicable for investigation cases as provided under subsection 91(3) ITA.

6. SELECTION OF CASES

Cases selected for investigation will be based on the provisions and regulations of the relevant Acts. Case selection methodologies for investigation purposes are many and varied. Some methods employed are:

- 6.1. Selection through risk analysis;
- 6.2. Information from informers and / or the public;
- 6.3. Review of income tax return; and
- 6.4. Information based on intelligence.

7. HOW A TAX INVESTIGATION IS CARRIED OUT

7.1 The Visit

The tax investigation carried out by IRBM will be a surprise visit to taxpayer's business premises, personal residences, agent / representatives and various third parties' premises. The investigation will

be conducted in a professional, courteous, fair and reasonable manner in accordance with the provisions and regulations of the ITA.

During the visit, the investigation officer is required to:

- 7.1.1 Introduce himself, show the authority card bearing his name and photograph. The authority card contains a statement authorizing the officer to have full and free access to all places and to all books and other documents and may search such places and may inspect, copy or make extract from any such books or documents without making any payment by way of fee or reward;
- 7.1.2 Explain the purpose of the visit to the taxpayer at the outset of the visit;
- 7.1.3 Inform the taxpayer the scope and period of investigation and the documents and records needed for purposes of investigation;
- 7.1.4 Inform the taxpayer the name, telephone number of the investigation officer, including senior officers who would be overseeing the investigation during the visit;
- 7.1.5 Outline the rights and responsibilities of taxpayer during the visit;
- 7.1.6 Conduct a search at all the places visited;
- 7.1.7 To access, download and take possession of relevant information from all electronic storage media ;
- 7.1.8 Interview and take statements from taxpayer and relevant persons during inspection visits.
- 7.1.9 Provide reasonable time for taxpayer to collate documents, records and papers to assist in; and are relevant to tax investigation;
- 7.1.10 Seize and take possession of books, records and documents relevant to investigation; and

- 7.1.11 Provide a written acknowledgement of receipt of the documents, books of accounts and records, duly confirmed by the investigation officer and taxpayer.

7.2 Examination of Records

The investigation officer is required to:

- 7.2.1 Examine taxpayer's business or individual books, records and documents;
- 7.2.2 Examine taxpayer's personal books, records and documents. This examination is conducted to assist IRBM to ascertain the amount of taxable income evaded, if any, through direct or indirect methods of proof; and
- 7.2.3 Request a person to provide information, documents, records or other papers in the custody of or under the control of that person.

7.3 Findings and Discussions

The investigation officer is required to:

- 7.3.1 Interview and conduct meetings at all times at IRBM's offices except during inspection visits. For criminal tax investigation cases however, meetings, interviews and witness statement recordings can be conducted at any suitable location provided the proceedings are at all times attended by two investigation officers;
- 7.3.2 Allow the taxpayer to choose a tax agent / representative to act on his behalf;
- 7.3.2.1 Permit the tax agent / representative to attend interview with the taxpayer with the express condition that the letter of authority be duly submitted. Where the existing tax agent is representing the taxpayer, a separate letter of authority is required to liaise with the IRBM; and

- 7.3.2.2 Tax agent / representative statements taken during interviews / meetings with IRBM can be used in criminal tax investigation court proceedings.
- 7.3.3 Ensure all correspondence between IRBM and tax agent / representative be on "Without Prejudice" basis, with the exception of criminal tax investigation cases;
- 7.3.4 Allow the taxpayer to take notes of any conversation or interview;
- 7.3.5 Permit copies of interview or discussion notes on request, such copies will bear the signatures of both parties and the investigation officer should explain all evidence, agreements, matters discussed is confidential between IRBM and the taxpayer or the appointed agent.
- 7.3.6 For criminal tax investigation cases however, copies of interview / discussion notes and recordings of witness statements cannot be given to the taxpayer, representative or witness.
- 7.3.7 Formally explain the findings and state the basis for any adjustments as a result of the investigation;
- 7.3.8 Explain to the taxpayer the penalty structure and the installment payment scheme;
- 7.3.9 Where there is no agreement as to the findings and the adjustments IRBM seeks to make as a result of the investigation, IRBM will:
- 7.3.9.1 State the issues and basis for the adjustments formally and give the taxpayer a reasonable period to respond;
- 7.3.9.2 Upon the expiration of the stipulated period, issue notice/s of assessment/s to the best of Director General's judgment with a penalty equal to the amount of tax which has been undercharged;

7.4 Finalisation of Tax Investigation

- 7.4.1 Upon finalisation of a civil tax investigation case, a written settlement agreement will be entered into between the Director General of Inland Revenue (DGIR) and the taxpayer. The following information should be included:
- 7.4.1.1 Name, identity card / company registration number;
 - 7.4.1.2 Period covered by the tax investigation;
 - 7.4.1.3 The amount of tax undercharged and penalties; and
 - 7.4.1.4 Initial payment and the installment payment / scheme in respect of the tax undercharged and penalties, where applicable.
- 7.4.2 If no findings are made, the IRBM will issue a letter of confirmation to the taxpayer stating that no findings were made for the period investigated.

7.5 Conclusion of Tax Investigation

- 7.5.1 Civil tax investigation cases are deemed settled upon the approval by DGIR. Where the DGIR and taxpayer have come to an agreement, a composite assessment under section 96A ITA will be issued;
- 7.5.2 Criminal tax investigation cases are deemed settled when judgment has been duly granted by the court; and
- 7.5.3 Assessments will be issued upon approval / judgments obtained.

7.6 Quality Standards for Tax Investigation

7.6.1 Civil Tax Investigation

Settlement of civil tax investigation cases are subject to co-operation from taxpayer and tax agent. The standards for settlement of civil tax investigation cases are as follows:

7.6.1.1 Capital statement cases within 24 months from the date of issue of notice.

7.6.1.2 Accounts cases within 18 months from the date of commencement.

7.6.2 Criminal Tax Investigation

Settlement of criminal tax investigation cases is dependent upon court decisions.

8. RIGHTS AND RESPONSIBILITIES

8.1 IRBM

8.1.1 An investigation officer must adhere to rules and code of ethics drawn up by IRBM and is required to carry out duties in the following manner:

8.1.1.1 Professional, well mannered, trustworthy, honest and with integrity;

8.1.1.2 Always ready to give explanations on the objectives of investigation and the rights and responsibilities of taxpayer;

8.1.1.3 Knowledgeable and fair in administering tax laws;

8.1.1.4 Respect the rights and responsibilities of the taxpayer and tax agent / representative.

8.1.2 The investigation officer is prohibited from:

8.1.2.1 Having any personal or financial interest whatsoever in a business being investigated;

8.1.2.2 Proposing and suggesting to taxpayer that a certain tax agent / representative be appointed as the tax agent / representative of the case; and

8.1.2.3 Abusing his position or power in carrying out his duties as provided under section 118 of the ITA.

8.1.3 Payments to investigation officer

Taxpayer is forbidden from making any form of payment to the investigation officer. All payments towards back duty have to be made payable to DGIR.

8.2 Taxpayer

- 8.2.1 The taxpayer has the right to know the consequences of failing to submit the necessary information. Disclosure of any information obtained from a tax return or during the course of an investigation by the investigation officer to any unauthorized person is strictly prohibited;
- 8.2.2 The taxpayer has the right to the identification of officers;
- 8.2.3 The taxpayer has the right to appoint an approved tax agent / representative or a team of advisers / spokespersons acting individually or collectively. However a proper written authorisation letter to act on the taxpayer's behalf must be submitted to IRBM;
- 8.2.4 Tax agent / representative is allowed to be present during the interview / discussion. The taxpayer will be given reasonable opportunity to consult with tax agent / representative during the interview / discussion session;
- 8.2.5 The taxpayer is allowed to bring along interpreter/s during the interview / discussion session if the taxpayer is not conversant in Bahasa Malaysia or English;
- 8.2.6 The taxpayer has the opportunity to state views on any relevant issue, including any proposed adjustment, taking into account that the business practices and commercial reasons for the specific action taken by him are within the provisions of the regulation and law concerned;

- 8.2.7 The taxpayer has the right to request return of all non-essential documents taken during an investigation visit. Where the taxpayer requires documents still in the possession of the IRBM, the investigation officer should allow the taxpayer to make relevant copies. Acknowledgment slips will be given;
- 8.2.8 The taxpayer is required to:
- 8.2.8.1 Provide the investigation officers with access to and make copies of; records and documents in the custody of or under the control of or belonging to the taxpayer;
 - 8.2.8.2 Permit investigation officers to take possession of records and documents in the custody of or under the control of or belonging to the taxpayer;
 - 8.2.8.3 Where records and documents are maintained in a language other than the national language, to render a translation in the national language of the said records and documents within the time specified not being less than thirty (30) days from the date of service of notice by the DGIR. Where East Malaysia is concerned, translation is permitted either in the national language or in English, as the case maybe;
 - 8.2.8.4 Provide complete responses for request of information either in writing or orally;
 - 8.2.8.5 Co-operate with the investigation officers; and
 - 8.2.8.6 Attend interviews / discussions.
- 8.2.9 The taxpayer is prohibited from:
- 8.2.9.1 Giving any form of gifts to the investigation officer and transacting any business with the investigation officer;
 - 8.2.9.2 Making any form of payments to the investigation officer;

- 8.2.9.3 Obstructing or hindering the investigation officer in the exercise of his functions. Such obstruction is an offence under section 116 of the ITA. Obstruction includes the following:
- i. Obstructing or refusing an investigation officer from entering lands, buildings, places and premises to perform his duties in accordance with section 80 of the ITA;
 - ii. Refusing to provide books of accounts, or other documents in the custody of or under his control when required by the investigation officer;
 - iii. Failing to provide reasonable assistance to the investigation officer in carrying out his duties; and
 - iv. Refusing to answer or give responses to questions raised during the course of an investigation.

8.2.9.4 Appointing unapproved tax agent / representative.

8.3 Tax Agent / Representative

- 8.3.1 The conduct of a tax agent / representative is governed by the code of ethics formulated by IRBM which based on principles of integrity, accountability, transparency and social responsibility;
- 8.3.2 A tax agent / representative is expected to carry out his duties in the following manner:
- 8.3.2.1 Professional, be fully conversant with tax laws and practices;
 - 8.3.2.2 Be honest, trustworthy, transparent, act with integrity and give fullest co-operation when dealing with taxpayer and IRBM;

- 8.3.2.3 Refrain from using information acquired or abusing his position as tax agent / representative to his advantage;
- 8.3.2.4 Always give complete and accurate feedback relating to the progress of an investigation and advise taxpayer correctly based on the true facts of the investigation case;
- 8.3.2.5 Safeguard the confidentiality of all information and ensure that information is not disclosed to any unauthorized party; and
- 8.3.3 The tax agent / representative is prohibited from:
 - 8.3.3.1 Giving wrong advice to taxpayer and collaborating with taxpayer to avoid paying the correct amount of tax;
 - 8.3.3.2 Delaying investigation work or acting irresponsibly towards entrusted duties; and
 - 8.3.3.3 Offering inducements to the investigation officer.

9. CONFIDENTIALITY OF INFORMATION

IRBM will ensure confidentiality of all information obtained from the taxpayer during an inspection, interview, discussion, through correspondence or examination of records and that it is utilized for tax purposes only.

10. OFFENCES AND PENALTIES

10.1 If there is omission or understatement of income as a result of investigation, penalties will be imposed based on the provisions of Sections 112, 113 and 114 of the ITA.

- 10.1.1 Under section 112(3), a penalty treble to the amount of tax undercharged (300%) is exigible;

- 10.1.2 Under section 113(1) be liable to a fine of not less than RM1,000 and not more than RM10,000 and shall pay a special penalty of double the amount of tax which has been undercharged (200%);
- 10.1.3 Or as provided for under section 113(2), a penalty equal to the amount of tax undercharged (100%) can be impose; and
- 10.1.4 Section 114 ITA stipulates a fine of not less than RM1,000 and not more than RM20,000 or to imprisonment for a term not

exceeding 3 years or both, and shall pay a special penalty of treble the amount of tax.

- 10.2 DGIR has the power to compound any offences and abate or remit penalties imposed under ITA 1967 with the exception of penalties imposed on conviction.

11. COMPLAINTS

- 11.1 If the taxpayer is dissatisfied with the issues investigated or the manner in which the investigation is conducted, he should make the complaint known to:
 - 11.1.1 The Director of the Investigation Centre;
 - 11.1.2 State Director;
 - 11.1.3 Director of the Investigation Department;
 - 11.1.4 Deputy Director General of Inland Revenue; and
 - 11.1.5 Director General of Inland Revenue.
- 11.2 IRBM will take an objective, fair and balanced approach to all complaints made;
- 11.3 IRBM will not entertain any complaint judged to be done not in good faith; and

- 11.4 IRBM may take action and file a complaint with the relevant authority such as Ministry of Finance / Malaysian Institute of Taxation / Malaysian Institute of Accountants / Malaysian Institute of Certified Public Accountants / Malaysian Association of Tax Agents / Bar Council, if tax agent / representative do not co-operate or behave unprofessionally which is inconsistent with their code of ethics.

12. PAYMENT PROCEDURES

- 12.1 All payments towards back duty taxes should be made payable to the DGIR;
- 12.2 Taxpayer is encouraged to make full payment of taxes and penalties assessed in one single payment;
- 12.3 However, where taxpayer is unable to do so, the DGIR will consider allowing taxpayer to settle the total tax liability by installments for a predetermined period;
- 12.4 If taxpayer seeks an installment payment plan, then an amount representing twenty five percent (25%) of the total tax liability is requested as initial payment; the balance outstanding will then be settled by installments, the settlement period will be determined by the DGIR;
- 12.5 Where a taxpayer has been allowed to settle back duty liability by way of an installment plan, he is encouraged to forward post dated cheques to cover the balance of taxes. This facility initiated by IRBM is to assist taxpayer, ensuring installment payments are made on due dates;
- 12.6 Where a taxpayer seeks a longer installment payment scheme than usually permitted, the penalties exigible will be much higher compared with a taxpayer who opts to settle in one lump sum payment or requests for an installment payment scheme of a shorter duration;

(Refer to Appendix A - Penalty Schedule effective for civil tax investigation cases taken from 1st March 2002 onwards); and

- 12.7 Taxpayer is reminded to adhere strictly to the payment scheme agreed upon; failure to do so will entail imposition of late payment penalties on the balance of tax outstanding as provided for under subsections 103(7) and 103(8) of the ITA.

13. APPEALS

Section 99 to 102 of the ITA lay the ground rules for appeals relating to assessment raised by IRBM.

- 13.1 A taxpayer can appeal against an assessment as a result of a tax investigation;
- 13.2 The appeal must be made to the Special Commissioners of Income Tax within 30 days after the service of the notice of additional assessment;
- 13.3 Should either party be dissatisfied with the decision of the Special Commissioners of Income Tax, the aggrieved party may apply to have the case heard in the High Court and henceforth the Court of Appeal; and
- 13.4 There is no appeal against a composite assessment.

14. EFFECTIVE DATE

The Tax Investigation Framework is effective from 1 January 2007.

HASMAH BINTI ABDULLAH
Director General of Inland Revenue Malaysia

Date: January 2007

PENALTY SCHEDULE

INSTALLMENT PERIOD NOT EXCEEDING (B)

MONTH	3	6	9	12	15	18	21	24	27	30	33	36
3	45+0	45+0	45+5	45+10	45+15	45+15	45+20	45+20	45+25	45+25	45+30	45+30
6	45+0	45+0	45+5	45+10	45+15	45+15	45+20	45+20	45+25	45+25	45+30	45+30
9	50+0	50+0	50+5	50+10	50+15	50+15	50+20	50+20	50+25	50+25	50+30	50+30
12	55+0	55+0	55+5	55+10	55+15	55+15	55+20	55+20	55+25	55+25	55+30	55+30
15	60+0	60+0	60+5	60+10	60+15	60+15	60+20	60+20	60+25	60+25	60+30	60+30
18	60+0	60+0	60+5	60+10	60+15	60+15	60+20	60+20	60+25	60+25	60+30	60+30
21	65+0	65+0	65+5	65+10	65+15	65+15	65+20	65+20	65+25	65+25	65+30	65+30
24	65+0	65+0	65+5	65+10	65+15	65+15	65+20	65+20	65+25	65+25	65+30	65+30
27	70+0	70+0	70+5	70+10	70+15	70+15	70+20	70+20	70+25	70+25	70+30	70+30
30	70+0	70+0	70+5	70+10	70+15	70+15	70+20	70+20	70+25	70+25	70+30	70+30
33	75+0	75+0	75+5	75+10	75+15	75+15	75+20	75+20	75+25	75+25	75+30	75+30
36	75+0	75+0	75+5	75+10	75+15	75+15	75+20	75+20	75+25	75+25	75+30	75+30
39	80+0	80+0	80+5	80+10	80+15	80+15	80+20	80+20	80+25	80+25	80+30	80+30
42	80+0	80+0	80+5	80+10	80+15	80+15	80+20	80+20	80+25	80+25	80+30	80+30
45	85+0	85+0	85+5	85+10	85+15	85+15	85+20	85+20	85+25	85+25	85+30	85+30
48	85+0	85+0	85+5	85+10	85+15	85+15	85+20	85+20	85+25	85+25	85+30	85+30
51	90+0	90+0	90+5	90+10	90+15	90+15	90+20	90+20	90+25	90+25	90+30	90+30
54	90+0	90+0	90+5	90+10	90+15	90+15	90+20	90+20	90+25	90+25	90+30	90+30
57	95+0	95+0	95+5	95+10	95+15	95+15	95+20	95+20	95+25	95+25	95+30	95+30
60	95+0	95+0	95+5	95+10	95+15	95+15	95+20	95+20	95+25	95+25	95+30	95+30
												(A+B)

SETTLEMENT PERIOD NOT EXCEEDING (A)

"A" = Rate of penalty on additional tax

"B" = Rate of penalty on the balance after payment into account