



**INLAND REVENUE BOARD OF MALAYSIA**

**TAX INVESTIGATION FRAMEWORK**

**EFFECTIVE DATE : 15 MAY 2018**

## 1. INTRODUCTION

- 1.1 A fair, transparent and equitable tax administration will increase public confidence in the tax system. Compliance with tax laws must be strictly enforced. Tax offences such as non-compliance and tax evasion will be dealt with in accordance with the provisions of the Income Tax Act 1967 (ITA) and other acts administered by the Inland Revenue Board of Malaysia (IRBM) such as the Real Property Gains Tax Act 1976, Petroleum (Income Tax) Act 1967, Promotion of Investments Act 1986, Stamp Act 1949 and Labuan Business Activity Tax Act 1990.
- 1.2 One of the methods of enforcement carried out by IRBM is tax investigation. A taxpayer who is convicted of an offence is liable to a penalty, fine and / or imprisonment.
- 1.3 The purpose of this investigation framework is to inform taxpayers about IRBM's tax investigation procedures. In general, this framework:
- 1.3.1 Outlines the rights and responsibilities of officers, taxpayers and tax agents;
  - 1.3.2 Assists taxpayers to fulfil their obligations; and
  - 1.3.3 Informs taxpayers of the legal provisions relating to tax investigation.

## 2. LEGAL PROVISIONS

- 2.1 Among the legal provisions of ITA applicable to tax investigation are as follows:
- 2.1.1 Subsection 39(1A) : Deductions not allowed if information required by the Director General through a notice under section 81 ITA is not provided within the time specified.
  - 2.1.2 Section 68 : Power to appoint agent
  - 2.1.3 Section 75A : Director's liability
  - 2.1.4 Section 78 : Power to call for specific returns and production of books
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- 2.1.5 Section 79 : Power to call for statement of bank accounts, etc.
- 2.1.6 Section 80 : Power of access to buildings and documents, etc.
- 2.1.7 Section 81 : Power to call for information
- 2.1.8 Section 82 : Duty to keep records and give receipts
- 2.1.9 Section 90 : Assessments generally
- 2.1.10 Section 91 : Assessments and additional assessments in certain cases
- 2.1.11 Section 96A : Composite assessment
- 2.1.12 Subsection 97A(2) & Section 99 : Right of appeal
- 2.1.13 Section 100 : Extension of time for appeal
- 2.1.14 Section 101 : Review by Director General
- 2.1.15 Section 102 : Disposal of appeals
- 2.1.16 Section 103 : Payment of tax
- 2.1.17 Section 104 : Recovery from persons leaving Malaysia
- 2.1.18 Section 106 : Recovery by suit
- 2.1.19 Section 112 : Failure to furnish return or give notice of chargeability
- 2.1.20 Section 113 : Incorrect returns
- 2.1.21 Section 114 : Wilful evasion
- 2.1.22 Section 116 : Obstruction of officers
- 2.1.23 Section 118 : Offences by officials
- 2.1.24 Section 120 : Other offences
- 2.1.25 Section 121 : Additional provisions as to offences under sections 113, 115, 116, 118 and 120

- 2.1.26 Section 124 : Power to compound offences and abate or remit penalties
  - 2.1.27 Section 138 : Certain material to be treated as confidential
  - 2.1.28 Section 140 : Power to disregard certain transactions
  - 2.1.29 Section 141 : Powers regarding certain transactions by non-residents
  - 2.1.30 Section 142 : Evidential provisions
- 2.2 The legal provisions relating to tax investigation listed under paragraph 2.1 are not exhaustive. They also include other provisions of the ITA and the provisions of the Real Property Gains Tax Act 1976, Petroleum (Income Tax) Act 1967, Promotion of Investments Act 1986, Stamp Act 1949 and Labuan Business Activity Tax Act 1990.

### **3. INVESTIGATION ACTIVITY**

- 3.1 Tax investigation is examination of books, documents, objects, articles, materials and things (hereinafter referred to as 'documents') relating to a taxpayer's business and financial matter, including personal documents. This examination is carried out to determine that the correct amount of income is reported and the tax thereon is charged and paid in accordance with the tax laws and regulations.
- 3.2 IRBM officers may obtain evidence / documents from any related person to assist in the investigation.
- 3.3 A taxpayer may be prosecuted in court for tax offences.
- 3.4 IRBM officers may also conduct investigation in accordance with the provisions of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA) as the offences under sections 112, 113 and 114 of the ITA are listed as serious offences under the Second Schedule of the AMLATFPUAA. Action may be taken by IRBM to freeze, seize and forfeit movable and immovable properties obtained using proceeds from tax evasion.

- 3.5 IRBM officers will inform the taxpayer whether an investigation is being carried out under the ITA, AMLATFPUAA or both. An investigation under the ITA, will not be a hindrance for an investigation under the AMLATFPUAA to be carried out on that case.

#### **4. OBJECTIVES OF INVESTIGATION**

The main objectives of investigation are to:

- 4.1 Deter tax evasion;
- 4.2 Identify and prosecute tax evaders;
- 4.3 Enhance voluntary tax compliance;
- 4.4 Be fair to compliant taxpayers; and
- 4.5 Collect the correct amount of tax.

#### **5. PERIOD OF INVESTIGATION**

There is no limitation to the period of investigation in cases of fraud, wilful default or negligence. Assessment can be raised at any time in accordance with subsection 91(3) of the ITA.

#### **6. SELECTION OF CASES**

Investigation case may be selected using various methods, such as:

- 6.1 Risk analysis;
- 6.2 Information from informer;
- 6.3 Review of Income Tax Return Form (ITRF);
- 6.4 Intelligence information; and
- 6.5 Information from other law enforcement agencies.

## 7. INVESTIGATION PROCEDURES

### 7.1 Inspection Visit

Investigation is carried out by making an inspection visit without notice to the taxpayer's business premises, residences, tax agent's and third party's premises and other premises as may be necessary. The inspection will be conducted in a professional and ethical manner.

During the inspection, an IRBM officer is required to:

- 7.1.1 Introduce himself and show the authority card bearing his name and photograph;
- 7.1.2 Inform the purpose of the visit to the taxpayer at the onset of the visit;
- 7.1.3 Read and explain to the taxpayer / representative / resident of the premises that under Section 80 of the ITA the IRBM officer has the following powers:
  - 7.1.3.1 to have full and free access to all land, buildings and places; all books, documents, objects, articles, materials and other matters;
  - 7.1.3.2 to search all land, buildings and places as well as examine, make copies of or extracts from any books, documents, objects, articles, materials and other matters without making any payment; and
  - 7.1.3.3 seize and take possession of the relevant documents.
- 7.1.4 Access, download and take the relevant information from any electronic media;
- 7.1.5 Take photos of the locations where the documents are seized;
- 7.1.6 Inform the scope and duration of the examination as well as documents that should be taken for investigation purposes;

- 7.1.7 Inform the name, office telephone number and official email of the IRBM officer and the Director of IRBM Investigation Branch in charge of the investigation;
- 7.1.8 Inform the taxpayer of his rights and responsibilities during the examination process;
- 7.1.9 Interview and record statements from taxpayers and other related people at the premises;
- 7.1.10 Provide written acknowledgement of the receipt of documents duly signed by the IRBM officer and the taxpayer or his representative.

## 7.2 Examination of Documents

During examination of documents, the IRBM officer will:

- 7.2.1 Inspect the taxpayer's business documents and / or personal documents. The inspection is to gather evidence of tax evasion; and
- 7.2.2 Request any party to produce documents in his custody or control.

## 7.3 Recording of Statement

- 7.3.1 At least two (2) IRBM officers will be present during the recording of statement from persons related to the case being investigated.
- 7.3.2 Qualified lawyers can be present during the recording of statements.

## 7.4 Finalisation of Investigation

- 7.4.1 After completion of the investigation procedures, IRBM will issue a letter to the taxpayer confirming the finalisation of the investigation.
- 7.4.2 If a settlement is agreed upon, an agreement or letter of undertaking will be signed. The investigation is considered finalised after the case is approved by the Director General of

Inland Revenue (DGIR) and an assessment is raised. Taxpayers who have been investigated will be monitored by the IRBM.

- 7.4.3 If a taxpayer does not agree with the investigation findings, the DGIR may, according to the best of his judgement raise an assessment with penalty.
- 7.4.4 Cases which are to be prosecuted will be forwarded to the Legal Department. Failure of a taxpayer to attend court proceedings after a summon has been served may result in a warrant of arrest being issued.

## **8. RIGHTS AND RESPONSIBILITIES**

### **8.1 IRBM**

- 8.1.1 An officer must adhere to rules and code of ethics drawn up by IRBM and is required to carry out his duties in the following manner:
  - 8.1.1.1 Professional, courteous, trustworthy, honest and with integrity;
  - 8.1.1.2 Able to explain the objectives of the investigation and the rights and responsibilities of the taxpayer;
  - 8.1.1.3 Knowledgeable and fair in administering tax laws; and
  - 8.1.1.4 Respect the rights and responsibilities of the taxpayer and the tax agent.
- 8.1.2 The officer is prohibited from:
  - 8.1.2.1 Having any personal or financial interest in a business being investigated;
  - 8.1.2.2 Recommending to the taxpayer to appoint a certain tax agent as a representative for the case investigated;



- 8.1.2.3 Abusing his position or power in carrying out his duties which are offences under section 118 of the ITA; and
- 8.1.2.4 Disclosing information obtained during the investigation to unauthorized persons.

## 8.2 Taxpayer

- 8.2.1 A taxpayer has the right to know the consequences of failing to submit the necessary information requested by the IRBM officer;
- 8.2.2 A taxpayer has the right to ascertain the identity of the IRBM officer;
- 8.2.3 A taxpayer has the right to appoint an approved tax agent under section 153 of ITA for purposes of investigation. Letter of appointment of the approved tax agent must be submitted to IRBM;
- 8.2.4 A taxpayer is allowed to bring an interpreter during interview / recording of statement if the taxpayer is not conversant in the national language or English;
- 8.2.5 A taxpayer is allowed to make copies of his own documents in the possession of IRBM during the investigation; and
- 8.2.6 A taxpayer as provided under section 80 of the ITA is required to:
  - 8.2.6.1 Provide the IRBM officers with access to (including passwords) and make copies or extractions of documents under the control of / in the custody of / owned by / belonging to the taxpayer;
  - 8.2.6.2 Permit the IRBM officers to take possession of documents under the control of / in the custody of / owned by / belonging to the taxpayer;
  - 8.2.6.3 Furnish a translation in the national language of records and documents maintained in a language other than the national language within a period of not

less than thirty (30) days from the date of service of the notice by the DGIR. For East Malaysia, the translation is permitted either in the national language or English;

8.2.6.4 Provide all information when requested either orally or in writing; and

8.2.6.5 Give full cooperation to the IRBM officers.

8.2.7 A taxpayer is prohibited from:

8.2.7.1 Appointing an unqualified lawyer / unapproved tax agent;

8.2.7.2 Giving any form of gifts and transacting any business with the IRBM officer;

8.2.7.3 Making any form of payment which can be construed as a bribe to the IRBM officer; and

8.2.7.4 Obstructing or hindering the IRBM officer in the exercise of his functions. Such obstruction is an offence under section 116 of the ITA. Upon conviction, the person guilty of the offence shall be liable to a fine of not less than one thousand Ringgit Malaysia (RM1,000) and not more than ten thousand Ringgit Malaysia (RM10,000) or to imprisonment for a term not exceeding one year or to both.

### 8.3 Tax Agent

8.3.1 The conduct of a tax agent is governed by the Code of Ethics for Tax Agents issued by the IRBM which is based on the principles of integrity, accountability, transparency and efficiency. "Tax agent" in this framework refers to a tax agent as defined by Section 153 of the ITA.

8.3.2 A tax agent is expected to carry out his duties in the following manner:

- 8.3.2.1 Professional and fully conversant with tax laws and practices;
  - 8.3.2.2 Act with integrity, be honest, trustworthy ,and transparent, and fully cooperate with the taxpayer and IRBM;
  - 8.3.2.3 Give the best advice to the taxpayer and inform the taxpayer of his responsibilities under the tax laws;
  - 8.3.2.4 Give accurate feedback on the progress of the investigation and advise the taxpayer based on the true facts of the case;
  - 8.3.2.5 Safeguard the confidentiality of all information and ensure that information is not disclosed to any unauthorized person; and
  - 8.3.2.6 Notify IRBM immediately upon cessation as tax agent to the taxpayer.
- 8.3.1 A tax agent is prohibited from:
- 8.3.3.1 Using information obtained in his position as a tax agent for personal advantage;
  - 8.3.3.2 Delaying the investigation process or failing to perform his responsibilities; and
  - 8.3.3.3 Giving any gift or payment which may be construed as a bribe to the IRBM officer.

## 9. CONFIDENTIALITY OF INFORMATION

IRBM will ensure the confidentiality of all information obtained from the taxpayer during the investigation and use the information only for the purpose of income tax and other related tax laws.

## 10. OFFENCES, PUNISHMENTS AND PENALTIES

### 10.1 Failure to furnish return or give notice of chargeability

10.1.1 Failure to furnish the ITRF is an offence under Section 112 of the ITA. Under subsection 112(1) of the ITA, a taxpayer who fails to furnish the ITRF for one (1) year of assessment shall, on conviction, be liable to a fine of not less than two hundred Ringgit Malaysia (RM200) and not more than twenty thousand Ringgit Malaysia (RM20,000) or to imprisonment for a term not exceeding six (6) months or to both.

10.1.2 Whereas under subsection 112(1A), a taxpayer who fails to furnish the ITRF for a period of two (2) years of assessment or more shall, on conviction, be liable to a fine of not less than one thousand Ringgit Malaysia (RM1,000) and not more than twenty thousand Ringgit Malaysia (RM20,000) or to imprisonment for a term not exceeding six (6) months or to both. The taxpayer shall also pay a special penalty of treble (3 times) the amount of tax charged.

10.1.3 If no prosecution has been instituted in respect of failure to furnish a return or give notice of chargeability, the DGIR may require the taxpayer to pay a penalty equal to treble (3 times) the amount of tax payable as provided under subsection 112(3) of the ITA.

### 10.2 Incorrect returns

10.2.1 Making an incorrect return by omitting or understating any income of which the taxpayer is required to make a return on behalf of himself or another person; or giving any incorrect information in relation to any matter affecting his own chargeability to tax or of any other person is an offence under subsection 113(1) of the ITA. If the taxpayer is guilty of the offence, he shall, on conviction, be liable to a fine of not less than one thousand Ringgit Malaysia (RM1,000) and not more than ten thousand Ringgit Malaysia (RM10,000) and shall pay a special penalty of double (2 times) the amount of tax which has been undercharged.

10.2.2 If no prosecution has been instituted in respect of the incorrect return or incorrect information, the DGIR may impose a penalty equal to the amount of the tax which has been undercharged as provided under subsection 113(2) of the ITA.

### 10.3 **Wilful evasion**

Wilful evasion is an offence under subsection 114(1) of the ITA. If the taxpayer is guilty of the offence, he shall, on conviction be liable to a fine of not less than one thousand Ringgit Malaysia (RM1,000) and not more than twenty thousand Ringgit Malaysia (RM20,000) or to imprisonment for a term not exceeding three (3) years or to both and shall pay a special penalty of treble (3 times) the amount of tax which has been undercharged.

## 11. **PAYMENT PROCEDURES**

11.1 Tax and penalty should be made in one payment to the DGIR.

11.2 However, a taxpayer may apply to settle the tax and penalty by instalments. If a taxpayer is allowed to pay by instalments, an initial payment of at least twenty-five per cent (25%) of the total tax and penalty shall be submitted on the date of signing of the agreement / letter of undertaking. The remaining balance shall be paid in accordance with the amount and period of instalment allowed by the DGIR with the following conditions:

11.2.1 All post-dated cheques for instalment payment must be submitted together with the agreement / letter of undertaking.

11.2.2 Higher penalty rates will be imposed on longer instalment period compared to full payment or shorter instalment period.

11.2.2 A taxpayer who fails to comply with the agreed instalment payment schedule will be subject to tax increases as provided under subsections 103(7) and 103(8) of the ITA.

11.3 On conviction, a taxpayer has to settle the fine / special penalty imposed by the court in the manner decided by the court. Assessment will be raised after the judgment is obtained and the taxpayer is required to make payment of the tax due to IRBM.

## 12. APPEALS

### 12.1 Appeal on assessment

Subsection 97A(2) and sections 99 to 102 of the ACP provide avenues for taxpayers to make appeals in respect of the tax raised by the IRBM.

12.1.1 The taxpayer may appeal against the assessment raised as a result of investigation.

12.1.2 All appeals against the assessment shall be made to the Director of the relevant Investigation Branch by completing the Form Q.

12.1.3 As provided under subsection 99(1) of the ITA, a taxpayer who is not satisfied with the assessment made by the DGIR may appeal to the Special Commissioners of Income Tax (SCIT) against the assessment within thirty (30) days after the service of the notice of assessment.

12.1.4 If either the IRBM or the taxpayer is not satisfied with the decision of the SCIT, the aggrieved party may appeal to a higher court.

12.1.5 However, section 99 of the ITA does not apply to a composite assessment which is provided under section 96A of the ITA because the assessment is issued after an agreement is reached between the taxpayer and the DGIR.

### 12.2 Appeal on conviction

Taxpayers who have been convicted and are not satisfied with the conviction may appeal to a higher court.

## 13. INVESTIGATION UNDER THE ANTI-MONEY LAUNDERING, ANTI-TERRORISM FINANCING AND PROCEEDS OF UNLAWFUL ACTIVITIES ACT 2001 (AMLATFPUAA)

13.1 Failure to furnish ITRF (Section 112 of the ITA), incorrect returns (Section 113 of the ITA) and wilful evasion (Section 114 of the ITA) are listed as serious offences under the Second Schedule of the AMLATFPUAA. As a law enforcement agency, IRBM may take action to deter, detect and investigate cases of money laundering related to serious offences.

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- 13.2 Upon conviction of a money laundering offence under Section 4 of the AMLATFPUAA, a person shall be liable to imprisonment for a term not exceeding fifteen (15) years and shall also be liable to a fine of not less than five (5) times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or five million Ringgit Malaysia (RM5,000,000.00), whichever is the higher.
- 13.3 Investigation under the AMLATFPUAA and investigation under the ITA may be conducted separately or concurrently.
- 13.4 IRBM officers may exercise powers under the AMLATFPUAA such as:
- 13.4.1 Entering any premises without a search warrant;
  - 13.4.2 Searching the premises for any property, record, report or document;
  - 13.4.3 Inspecting, making copies of or taking extracts from any record, report or document;
  - 13.4.4 Taking possession of any property, record, report or document seized for a period deemed necessary;
  - 13.4.5 Searching any person who is in, or on such premises;
  - 13.4.6 Breaking open, examining and searching any article, container or receptacle;
  - 13.4.7 Stopping, detaining or searching any conveyance;
  - 13.4.8 Breaking open any outer or inner door of such premises or conveyance;
  - 13.4.9 Removing by force any obstruction to such entry, search, seizure, detention or removal;
  - 13.4.10 Detaining any person found on such premises, or in such conveyance until the search is completed;

- 13.4.11 Ordering any person believed to be acquainted with the facts and circumstances of the case to attend before the IRBM officer for examination;
  - 13.4.12 Arresting without warrant a person suspected to have committed or is committing any offence under the AMLATFPUAA; and
  - 13.4.13 Issuing an order to freeze any property, such as bank accounts, of any person who is suspected of committing a serious offence.
- 13.5 Responsibilities of a taxpayer investigated under the AMLATFPUAA:
- 13.5.1 Allow the IRBM officer to access any premises and submit to the search of his person;
  - 13.5.2 Attend before the IRBM officer for examination;
  - 13.5.3 Answer any question put to him by the IRBM officer;
  - 13.5.4 Furnish any information or statement as requested by the IRBM officer;
  - 13.5.5 Cooperate and comply with any lawful demands by the IRBM officer in the execution of his duties;
  - 13.5.6 Not to conceal and to give the IRBM officer any property, record or information which may reasonably be required of him and which he has in his power to give; and
  - 13.5.7 Not to destroy any property, record, report or document in order to prevent its seizure or the securing of the property, record, report or document.
- 13.6 A person who fails to comply with paragraph 13.5, if convicted under section 34 of the AMLATFPUAA, shall be liable to a fine not exceeding three million Ringgit Malaysia (RM3,000,000.00) or to imprisonment for a term not exceeding five (5) years or to both. In the case of a continuing offence, he shall be liable to a further fine not exceeding three thousand ringgit (RM3,000.00) for each day during which the offence continues to be committed.
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#### **14. EFFECTIVE DATE**

This Framework is effective from 15 May 2018 and replaces the Tax Investigation Framework issued on 1 October 2013.

**DATO' SRI SABIN BIN SAMITAH**

**Director General of Inland Revenue**

**Inland Revenue Board Malaysia**

**Date: 15 May 2018**