

TECHNICAL

Direct Taxation

TAX AUDIT FRAMEWORK – WITHHOLDING TAX (WHT)

Further to our [e-CTIM TECH-DT-62-2015](#) dated 11 August 2015, the following is a summary of the Contents of the [Tax Audit Framework - WHT](#) (which is in Bahasa Malaysia):

Contents	Summary of subject matter
1. Introduction	<p><i>Purpose of WHT audits</i></p> <p>The purpose of this Tax Audit Framework (TAF) is to ensure that tax audits on WHT are carried out justly and fairly, in a transparent manner. The rights and responsibilities of audit officers, taxpayers and tax agents are highlighted.</p>
2. Legal Authority	<p><i>Legal authority accorded by tax legislation</i></p> <p>Para. 2 lists the sections in the ITA that form the basis for the authority invested by law to carry out a WHT audit. In general, the authority for tax audit is also vested in the Real Property Gains Tax Act 1976, Petroleum Income Tax Act 1967, Promotion of Investments Act 1986, Stamp Act 1949, the Labuan Offshore Activities Tax Act 1990 and other Acts administered by the Inland Revenue Board of Malaysia (LHDNM).</p>
3. WHT Audit	<p><i>What is WHT audit?</i></p> <p>A WHT audit is the examination of business and financial records of the taxpayer to ascertain whether appropriate amounts of WHT on expenses claimed has been properly deducted and paid in accordance with the law.</p> <p>The two types of tax audits carried out by the LHDNM are (1) the desk audit, and (2) the field audit. In general, this TAF applies to both types of audits.</p>
4. Objectives of WHT Audit	<p><i>Objectives of a WHT audit</i></p> <p>The main objective is to promote voluntary compliance with the tax laws (in particular, laws relating to WHT) by taxpayers and to achieve a higher standard of compliance under the SAS by educating and ensuring taxpayers have the right understanding on their duties and responsibilities under the law.</p>
5. Years of Assessment Covered	<p><i>Years of assessment (YA) covered</i></p> <p>In general, a WHT audit usually covers 3 years of assessment (YA), but may be extended to the 5 preceding years, depending on the issues uncovered. The 5 years period is not applicable for cases of fraud, willful default or negligence.</p>
6. Selection Of Cases	<p><i>Selection of cases</i></p> <p>Selection of cases are based on the risk assessment criteria, but may also be based on other sources of information (Some of the basis of</p>

	selection are listed in para. 6.2).
<p>7. How the WHT Audit is Carried Out</p> <p>7.1 Venue of Audit</p> <p>7.2 Initiation of Audit Process</p> <p>7.3 Audit Visits</p> <p>7.4 Examination of Records</p> <p>7.5 Timeframe for Field Audit</p> <p>7.6 Finalisation of Audit</p>	<p><i>The audit process</i></p> <p>A description of the audit process is given. The information provided relates to the following:</p> <ul style="list-style-type: none"> • Venue of the audit – LHDNM office (desk audit) or taxpayer’s business premise (field audit). • The initiation process – taxpayer is notified by letter issued 14 days before the date of the audit visit. The taxpayer can request for the date to be deferred on the grounds of unavoidable circumstances which are reasonable. • Types of records (business and non-business) required to be produced for examination (with reference to the various Public Rulings issued on the subject of record keeping, as well as S.82 and S.82A of the ITA that relate to record-keeping); • Time-frame for field audit – 1 to 3 days but may be extended depending on circumstances; • Procedures to be followed in closing the audit and submission of the Audit Report by the audit officer to Branch Audit Manager for approval:- The taxpayer will be informed of the findings of the audit. If the taxpayer is dissatisfied with the findings, an official objection may be lodged within 21 days from the date of the notification letter of audit findings together with additional information and evidence to support the objection. If no objection is received within that period, the taxpayer is deemed to have agreed to the findings. Thereafter, a letter of settlement of audit case will be issued with increase of taxes under sections 107A(2)/ 109(2)/ 109B(2)/ 109D(3)/ 109E(4)/ 109F(2)/ 109G(2) of the ITA. If there are no findings, a letter of settlement will also be issued. <p>The whole audit process should be completed within a period of 6 months from the commencement of the audit.</p> <p>Audit cases which have been settled will not be audited again for the same YA and issue unless there are other issues or new information received for that YA.</p>
<p>8. Rights And Responsibilities</p> <p>8.1 LHDNM</p> <p>8.2 Taxpayers</p> <p>8.3 Tax Agents/ Representative s of Taxpayers</p>	<p><i>Rights and responsibilities</i></p> <p>The rights and responsibilities of (1) officers of the LHDNM, (2) taxpayers, and (3) tax agents, are enumerated.</p> <ul style="list-style-type: none"> • Officials of the LHDNM carrying out the audit are expected to comply with the rules and code of ethics drawn up by the LHDNM which provides guidance on standards of professionalism and ethical behavior. • Taxpayers are expected to be cooperative, courteous, fair and honest. They are also expected to render reasonable facilities and assistance to the audit team, as set out in Public Ruling No. 7/2000. They are prohibited from making any gifts including any forms of payment to any audit officers, or to obstruct them from carrying out their duties, which constitutes an offence under S.116 of the ITA. • If tax agents are newly appointed for the purposes of the audit, the taxpayer must present the letter of appointment. Tax agents are

	<p>subjected to the Code of Ethics issued by the LHDNM, which is based on principles of integrity, accountability, transparency and social responsibility. Tax agents are <i>not allowed</i> to give “wrong advice” and collaborate with the taxpayer to reduce the amount of tax which should be paid, to delay the audit settlement process, to relinquish responsibility for duties entrusted to them, or to make any gifts in any form to any audit officer.</p>
9. Confidentiality of information	<p><i>Confidentiality of information</i></p> <p>The LHDNM will ensure that all information obtained from taxpayers is used for tax purposes only.</p>
10. Offences and penalties	<p><i>Offences and penalties</i></p> <ul style="list-style-type: none"> • Failure to pay/ underpayment of WHT is subject to penalties (increase of tax) under sections 107A(2)/ 109(2)/ 109B(2)/ 109D(3)/ 109E(4)/ 109F(2)/ 109G(2) of the ITA. • From 1.1.2011, the DGIR is also empowered (in addition to the penalties mentioned above) to impose penalty under S.113(2) of the ITA under conditions stated in the proviso to S.39/ para. 2D of Sch. 3 of the ITA. • Concessional rates of penalty may be applied in cases of voluntary disclosure by taxpayers (which must be made in writing to the Director of the respective LHDNM Branch) before a tax audit is carried out.
11. Complaints	<p><i>Complaints</i></p> <p>Taxpayers who are dissatisfied with the manner in which a WHT audit is conducted (including the behavior of tax officers) may make a complaint (with basis) to the Director of the Branch/ State/ Compliance Department or the Deputy Director General/ Director General of Inland Revenue (DGIR).</p> <p>The LHDNM will take the necessary action and lodge complaints against the tax agent to the respective authorities if the tax agent or representative is not cooperative or behaves unprofessionally which is against the Code of Ethics.</p>
12. Payment Procedures	<p><i>Payment procedures</i></p> <p>Payments of tax and penalties arising as a result of a WHT audit are to be made at designated payment centres in accordance with the location of the taxpayer's income tax file. The addresses are stated in paragraph 12.1 (please refer).</p>
13. Appeals Against Assessments	<p><i>Appeals against assessments</i></p> <ul style="list-style-type: none"> • From 1.1.2013, taxpayers who have paid WHT under sections 109, 109B, or 109F of the ITA, may file an appeal with the Special Commissioners of Income Tax (SCIT) if the ground of appeal is that WHT is not chargeable under the ITA (as provided under S109H). The appeal is required to be submitted in the Form CP 15D within 30 days from the date the amount is due to be paid to the DGIR. However, an appeal may not be made under certain circumstances which are stated in paragraph 13.1(a) to (c). • An appeal to the SCIT may be appealed further to the High Court and onwards to the Court of Appeal.

14. Effective Date	<i>Effective date</i> This TAF is effective from 1 August 2015.
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Members may view the Framework at the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the [TAF](#) so that we may raise them to the LHDNM.

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