



PETROLEUM TAX AUDIT FRAMEWORK

EFFECTIVE DATE: 15 DECEMBER 2019

INLAND REVENUE BOARD OF MALAYSIA

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1. INTRODUCTION

- 1.1 A fair, transparent and equitable tax administration system will enhance the public's confidence in the tax system. Adherence to tax law should be strictly enforced and taxation offences such as non-compliance and tax evasion should be penalized in accordance with the provisions of the Petroleum (Income Tax) Act 1967 (PITA).
- 1.2 Under the Self-Assessment System (SAS), a tax audit is the main activity of the Inland Revenue Board of Malaysia (IRBM) to enhance voluntary tax compliance. A taxpayer may be selected for audit at any time. However, if the taxpayer has been selected for audit, it does not mean that the taxpayer has committed an offence.
- 1.3 The Petroleum Tax Audit Framework (PTAF) issued by the IRBM aims to ensure that tax audits on all taxpayers in the petroleum industry are carried out fairly and transparently. The PTAF outlines the rights and responsibilities of audit officers, taxpayers and tax agents. In general, the PTAF aims to:
 - a. assist audit officers to perform their duties more efficiently and effectively; and
 - b. assist taxpayers to fulfil their responsibilities.

2. STATUTORY PROVISIONS

- 2.1 The legal provisions under the PITA which are applicable to tax audits are:
 - a. Subsection 18(1A) : Deduction is not allowed if information required by the Director General of Inland Revenue (DGIR) through a notice under section 34 of the PITA is not provided within the time specified.
 - b. Section 31 : Power to call for specific returns and production of books
 - c. Section 32 : Power to call for the statement of bank accounts, etc.

- d. Section 33 : Power of access to buildings and documents, etc.
- e. Section 34 : Power to call for information
- f. Section 34A : Duty to keep records
- g. Section 43 : Right of appeal
- h. Section 44 : Extension of time for appeal
- i. Section 45 : Review by Director General
- j. Section 46 : Disposal of appeals
- k. Section 51 : Failure to furnish Petroleum Return Form
- l. Section 52 : Incorrect returns
- m. Section 54 : Obstruction of officers
- n. Section 58 : Other offences
- o. Section 71 : Certain material to be treated as confidential
- p. Section 72 : Power to disregard certain transactions

2.2 Statutory provisions relating to tax audit are not limited to the provisions cited above. They also include the entire Petroleum (Income Tax) Act 1967.

3. WHAT IS A TAX AUDIT?

3.1 A tax audit is a review / examination of taxpayer's business records and financial affairs to ensure that the right amount of income which should be declared and the right amount of tax which should be calculated and paid are in accordance with tax laws and regulations. IRBM carries out two (2) types of audits, namely desk audit and field audit.

a. Desk Audit

- i. A desk audit is conducted at the IRBM's office. It involves issues on or adjustments of income and taxes that can be resolved by correspondence. Taxpayer may be called for an interview at the IRBM's office if further information is needed.
- ii. In general, a desk audit involves a review / examination of all income and expenditure information as well as the various types of claims which are made by the taxpayer in the Petroleum Returns Form (PRF).
- iii. In certain circumstances, a desk audit case may be referred for a field audit action. Under such circumstances, the taxpayer will be informed through a field audit notification letter as part of the normal process of commencing the field audit.

b. Field Audit

A field audit is carried out either at the taxpayer's premises, the IRBM's office or any places the taxpayer and IRBM have agreed upon. It involves reviewing business records. The taxpayer will be notified first before any field audit action is taken.

3.2 In general, this Petroleum Tax Audit Framework is applicable to both types of audits, which are desk audit and field audit.

4. OBJECTIVES OF A TAX AUDIT

4.1 The main objective of a tax audit is to encourage voluntary compliance with the tax laws and regulations and to ensure that compliance rate is achieved under the Self-Assessment System. As such, the audit officer is required to ascertain that the right income has been reported and the tax has been paid in compliance with the tax laws and regulations.

4.2 A tax audit activity is an approach by the IRBM to educate as well as to provide exposure to the taxpayer on his rights and responsibilities under the provisions of the PITA.

5. YEARS OF ASSESSMENT COVERED

5.1 A tax audit is carried out comprehensively and may cover a period up to three (3) years of assessment.

- 5.2 However, the years of assessment covered to raise the assessment may be extended to five (5) years of assessment depending on the audit issues found. The limit for this coverage period does not apply to audit cases involving fraud, wilful default or negligence as provided under subsection 39(3) of the PITA.
- 5.3 In the case of an audit that involves an exploratory stage, since the underlying period is not yet available, the tax audit is then carried out according to the accounting period which has been submitted. The tax audit conducted is the same as at the production stage (paragraphs 5.1 and 5.2).

6. SELECTION OF CASES

- 6.1 The selection of tax audit cases is conducted through computerised systems based on risk assessment criteria and / or based on various sources of information received.
- 6.2 Some of the basis used in tax audit case selection are as follows:
- a. selection based on risk assessment;
 - b. information received from third party; and
 - c. selection based on specific issues.

7. TAX AUDIT IMPLEMENTATION

- 7.1 Initial Audit Action
- 7.1.1 A *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter) will be issued to the taxpayer by official e-mail or fax or mail to acquire documents and information.
 - 7.1.2 In cases where the taxpayer is required to submit documents and information, the taxpayer is required to provide feedback within 14 calendar days from the date of the *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter). If the taxpayer fails to provide feedback within the time specified, the audit action will be resumed using the appropriate method.

- 7.1.3 In the case of a desk audit, the *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter) will not be issued in certain cases, but taxpayer will be notified of any income and tax adjustments that will be issued together with the Notice of Assessment.
- 7.1.4 In the case of a field audit, a *Surat Pemberitahuan Lawatan Pematuhan* (Compliance Visit Notification Letter) will be issued to the taxpayer at least 14 calendar days prior to the date of visit.
- 7.1.5 If a *Surat Pemberitahuan Lawatan Pematuhan* (Compliance Visit Notification Letter) has been issued, the taxpayer may apply to postpone the date of the audit visit on reasonable grounds and unavoidable circumstances.
- 7.1.6 A *Surat Pemberitahuan Lawatan Pematuhan* (Compliance Visit Notification Letter) shall contain the following:
- a. date of visit;
 - b. records that should be made available;
 - c. year of assessment to be audited;
 - d. name of the audit officer; and
 - e. duration of the audit visit.
- 7.1.7 The taxpayer may contact the Section Director or the Director of the Upstream Division or the Director of the Special Industry Branch for the for the purpose of confirming the audit visit.
- 7.1.8 The IRBM may visit any of the taxpayer's premises or related premises by notifying the taxpayer in advance.
- 7.1.9 An audit examination with due notice may be extended to related companies / businesses controlled by the taxpayer.
- 7.1.10 In the absence of an audit visit, a *Surat Penentuan Permulaan Tempoh Penyelesaian Kes* (Determination of Commencement of Case Settlement Period Letter) will be issued to the taxpayer to inform the commencement date for computation of the audit case settlement period.

7.2 Audit Visit

7.2.1 An audit visit is only applicable to a field audit activity. The audit examination can be performed in the following places:

- a. business premises of the taxpayer / tax agent;
- b. office of the IRBM; or
- c. other appropriate places as agreed upon by both parties.

7.2.2 During the audit visit, the audit officer will:

- a. introduce himself and produce an authority card bearing the name and photograph of the officer or an authority letter issued by the IRBM;
- b. inform the taxpayer on the purpose of the visit at the beginning of the visit;
- c. notify the taxpayer / tax agent that under section 33 of the PITA the officer at all times has full and free access to:
 - i. enter and inspect all lands, buildings and places; and
 - ii. view all books, documents, objects, articles, materials and things and examine, retrieve, make copies or extracts of any document without any payment charges.
- d. inform the scope and duration required for the audit to review / examine documents;
- e. inform the names, telephone numbers of the office and senior officer in charge of the audit;
- f. notify the taxpayer's rights and responsibilities during the audit;
- g. conduct document review / examination at the places visited;
- h. access, download and retrieve relevant information from any electronic media equipment; and

- i. interview the taxpayer as well as the person concerned.

7.2.3 During the audit, the officer who handled the taxpayer's business records will also be interviewed.

7.2.4 In certain circumstances, an audit visit will not be made at the taxpayer's premises and document review is only performed at the IRBM's office.

7.3 Duration of Field Audit Visit

The time required to carry out an audit visit is between two (2) to five (5) days. However, the period may be extended depending on the following factors:

- a. the size and the complexity of business transactions which are carried out;
- b. the form in which records are kept;
- c. the extent of co-operation from the taxpayer; or
- d. the number of partners in different locations.

7.4 Record Review / Examination

7.4.1 During the audit process, the audit officer should be allowed to review taxpayer's business records as well as transactions that are important and at risk and to obtain supporting documents as evidence of the audit. Reviews do not include records for years of assessment which are time barred.

7.4.2 In certain circumstances, the audit officer may also need to review records other than the taxpayer's business record.

7.4.3 Under the provisions of section 33 of the PITA, the audit officer is allowed to have full access to the taxpayer's record. Records review will only be done at the taxpayer's premises / any premises related to the taxpayer / IRBM's office. Where necessary, the audit officer should be allowed to make copies of the relevant records and documents.

7.4.4 If there is a need for the collection of the taxpayer's original documents and records by the audit officer, the audit officer shall provide a list and an acknowledgement of the receipt of the documents and records and the list shall be signed by the audit officer and the taxpayer or tax agent.

The taxpayer can review the documents and records and make copies of the lists (if necessary).

7.4.5 If accounting books and records are stored electronically, the audit officer is allowed to access computer systems, servers or gadgets and to download accounting data into a compact disc, pen drive, portable hard disk or any other storage media.

7.4.6 The audit officer will review all relevant documents and records to determine that the correct amount of income has been reported. Taxpayer can obtain guidance on record-keeping from the handbook issued by the IRBM.

7.4.7 Section 34A of the PITA requires the taxpayer to maintain sufficient and complete records to enable income or loss from business to be determined. Records and documents include:

- a. books of account which record receipts and payments or income and expenditure;
- b. financial statement;
- c. invoices, vouchers, receipts and such other documents as are necessary to verify any of the items recorded in the account book;
- d. documents, objects, materials, articles and objects which are handled and stored in any form of electronic medium; and
- e. any other records as may be specified by the DGIR.

7.4.8 Failure to comply with section 34A of the PITA to maintain a sufficient and complete record is an offence under section 57A of the PITA.

7.4.9 If the taxpayer fails to maintain a sufficient and complete record, the audit officer will use the best method or approach to determine whether the income has been properly reported.

7.5 Audit Settlement

7.5.1 Taxpayer may be called to the IRBM's office to discuss audit findings issues.

- 7.5.2 In addition, the taxpayer himself may be present at the IRBM's office to seek clarification on the progress of the audit process or to provide further information to expedite the settlement of the audit.
- 7.5.3 The taxpayer shall be notified in writing through the *Surat Penemuan Semakan Kes* (Case Review Findings Letter) covering the following matters:
- a. the audit issues raised; and
 - b. the reasons and rationale of the issues raised.
- 7.5.4 The taxpayer will be given the opportunity to provide feedback and clarification regarding the audit findings.
- 7.5.5 If the taxpayer is dissatisfied with the audit findings which are issued, the taxpayer may formally make an objection within 18 calendar days from the date of the *Surat Penemuan Semakan Kes* (Case Review Findings Letter) by submitting additional information and supporting evidence to support his objection.
- 7.5.6 The taxpayer's objections will be reviewed and the taxpayer will be informed accordingly of the final audit findings.
- 7.5.7 If no objection is received within 18 calendar days from the date of the *Surat Penemuan Semakan Kes* (Case Review Findings Letter), the taxpayer is deemed to have agreed to the audit findings.
- 7.5.8 Amount of income, tax and penalty adjustments (if any) and the years of assessment involved will be notified by the *Surat Penyelesaian Kes* (Case Settlement Letter). Subsequently, Notice of Assessment or Notification of Non-chargeability will be issued.
- 7.5.9 If no adjustment is made, a letter notifying of an audit settlement without adjustment will be issued.
- 7.5.10 In certain desk audits case, the *Surat Penemuan Semakan Kes* (Case Review Finding Letter) will not be issued to the taxpayer. Taxpayer will be notified of income and tax adjustments with the notice of assessment.
- 7.5.11 The audit case must be completed within 240 calendar days for exploration / 450 calendar days for production from the commencement

of the audit visit or the date of the *Surat Penentuan Permulaan Tempoh Penyelesaian Kes* (Determination of Commencement of Case Settlement Period Letter). If the case is not resolved within 240 calendar days (exploration) / 450 calendar days (production), taxpayer will be notified by the IRBM.

7.5.12 Completed audit cases will not be re-audited for the same year of assessment and issue. However, in the event other issues or new information are received for the respective year of assessment, a re-audit may be carried out.

7.6 Voluntary Disclosure

7.6.1 Voluntary disclosure means the taxpayer makes a voluntary disclosure after the due date for submitting PRF (for PRF already submitted) in writing by letter or electronic media at any time before the audit action commences.

7.6.2 An audit action commences on the date of the *Surat Memohon Dokumen dan Maklumat* (Request for Documents and Information Letter). The letter will be issued to the taxpayer by official e-mail or fax or mail for the purpose of inquiring or obtaining information or documents related to the audit issue.

7.6.3 Attendance for voluntary disclosure will only be given to the taxpayers submitting tax returns on or before the due date of submission.

7.6.4 All voluntary disclosures shall be made in writing to the IRBM Special Industry Branch Director.

8. RIGHTS AND RESPONSIBILITIES

8.1 IRBM

8.1.1 The audit officer is required to adhere to the rules and code of ethics set forth by the IRBM in performing his duties:

- a. professional, well mannered, trustworthy, honest and with integrity;
- b. always ready to give explanations on the objectives of the tax audit and the rights and responsibilities of the taxpayer;
- c. knowledgeable and fair in administering tax laws;

- d. co-operative and is always ready to give advice and guidance to the taxpayer;
- e. ensure that the audit is carried out smoothly with minimal disruption to the taxpayer;
- f. request for documents, books of accounts and information that are relevant to the audit only;
- g. explain the proposed tax adjustments and provide reasonable time for the taxpayer to give responses on issues raised; and
- h. ensure the rights and interest of taxpayer and tax agent as well as documents of taxpayer, are safeguarded.

8.1.2 Identification an audit officer:

- a. each audit officer is given an authority card bearing his name and photograph. This card also contains a statement that the officer is authorised to review the book of accounts, documents and records at the taxpayer's premises;
- b. taxpayer is advised to check the authority card in order to verify the authenticity of the audit officer's identity; and
- c. taxpayer is advised to check with the IRBM Special Industry Branch Director if there are any doubts on the authenticity of the audit officer.

8.1.3 An audit officer is prohibited from:

- a. having any personal or financial interest in the business of a taxpayer being audited;
- b. recommending to the taxpayer to appoint a particular tax agent for the audit case; and
- c. abusing his position or power in carrying out his duties as provided under section 56 of the PITA.

8.2 Taxpayer

8.2.1 Taxpayer Responsibilities:

- a. give co-operation, courteousness, fairness, honesty and integrity;
- b. provide reasonable facilities and assistance to enable the audit officer to carry out his duties as outlined under section 33 PITA which includes the following:
 - i. provide access to business premises to the audit officer, provide information and make available documents and records required for examination;
 - ii. provide explanation regarding the business, the accounting and information systems;
 - iii. allow examination and copying of records, documents and books of accounts whether in the physical and / or electronic medium;
 - iv. assist in the provision of or provide access to records, documents and books of account in the physical and / or electronic medium; and
 - v. allow the use of copiers, telephone or other communication devices, electrical equipment, office space, furniture and electronic copy system facilities such as compact discs, pen drives, portable hard disks or any other storage media.
- c. Co-operate in providing complete responses to all queries:
 - i. if the question posed is unclear, the taxpayer may request further clarification from the audit officer.
 - ii. taxpayer will be considered to have committed of an offence under the PITA provisions if he fails to co-operate in providing the required information.

8.2.2 The taxpayer is prohibited from:

- a. giving any form of gifts to the audit officer and transacting any business with the audit officer during the audit process;
- b. making any form of payments to the audit officer; and
- c. obstructing the audit officer from exercising his functions. Such obstruction is an offence under section 54 of the PITA. Obstruction includes the following:
 - i. obstructing or refusing to allow an audit officer from entering lands, buildings, places and premises to perform his duties in accordance with section 33 of the PITA;
 - ii. obstructing an audit officer from performing his functions and duties under the provisions of the PITA;
 - iii. refusing to provide book of accounts, or other documents in the custody of or under his control when required by the audit officer;
 - iv. failing to provide reasonable assistance to the audit officer in carrying out his duties; or
 - v. refusing to answer or give responses to questions raised during the course of an audit.

8.3 Approved Tax Agent

8.3.1 Taxpayer must submit a letter of appointment of an approved tax agent who is representing him. Taxpayer may request the tax agent to be present during the interview session. Taxpayer is also allowed to use the services of an interpreter during an interview or discussion session if the taxpayer is not fluent in Bahasa Malaysia or English.

8.3.2 Approved tax agent is subjected to the code of conduct issued by the IRBM based on principles related to integrity, accountability, transparency and social responsibility.

8.3.3 In performing duties, the approved tax agent must:

- a. act with integrity, high professionalism and knowledge of tax law and tax practice;
- b. be honest, trustworthy, transparent and always give full co-operation to taxpayer and IRBM, such as notifying termination of service as tax agent and adhering to the procedures and guidelines set by IRBM;
- c. refrain from misusing information acquired or refrain from abusing position as a tax agent for personal gain;
- d. always provide accurate feedback on the progress of the audit process and advise the taxpayer based on accurate and correct facts; and
- e. safeguard the confidentiality of all information and ensure that the information is not disclosed to any unauthorised party (subsection 71(1) PITA).

8.3.4 Approved tax agent is prohibited from:

- a. giving wrong advice and working with taxpayers to reduce the amount of tax due;
- b. delaying the process of completing a tax audit or giving up entrusted responsibility; and
- c. offering any form of gift to the audit officer including on behalf of the taxpayer.

9. CONFIDENTIALITY OF INFORMATION

IRBM will ensure that all information obtained from the taxpayer whether through interviews, discussions, correspondence or examination of records and documents are confidential and being used for income tax purposes only.

10. OFFENCES AND PENALTIES

10.1 In the event of an understatement or omission of any income as a result of the audit findings, penalty may be imposed under subsection 52(2) of the PITA equivalent to the undercharged tax amount (100%). However, for the purposes of this Tax Audit Framework, penalty imposed under subsection 52(2) of the PITA

is at a rate of 45% of the tax undercharged. Nevertheless, the DGIR may exercise his discretion in accordance with section 63 of the PITA to reduce or eliminate penalties imposed.

- 10.2 Concession penalty rates may apply for cases where taxpayers voluntarily make a disclosure. Taxpayers are not eligible for voluntary disclosure once audit has begun.
- 10.3 The penalty rates under subsection 52(2) of the PITA for voluntary disclosure cases are as follows:

Period of voluntary disclosure	Rates
Within 60 days from the due date for submission of PRF	10%
More than 60 days but not later than six (6) months from the due date for submission of PRF	15%
More than six (6) months from the due date for submission of PRF	35%

11. COMPLAINTS

- 11.1 Taxpayer may complain if he is dissatisfied with the attitude of the audit officer or the manner in which the tax audit is being carried out to the Director of the Special Industry Branch / Director of the Tax Compliance Department / Deputy Director General / Director General of Inland Revenue.
- 11.2 The IRBM will take decisive, fair and just action in handling complaints received.
- 11.3 The IRBM will not entertain any complaint which is found to have no basis and not made in good faith.
- 11.4 The IRBM will lodge a complaint against a tax agent or its representative who is uncooperative or acting unprofessionally and contrary to the code of ethics to the relevant authorities such as the Ministry of Finance Malaysia / Chartered Tax Institute of Malaysia / Malaysian Institute of Accountants / Malaysian Institute of

Certified Public Accountants / Malaysian Association of Tax Accountants / Bar Council.

12. PAYMENT PROCEDURES

- 12.1 If there are any tax and penalties arising from the audit adjustments, payments shall be made through the designated agent or IRBM Payment Counter.
- 12.2 The taxpayer is required to make full payment of the tax imposed and the penalties arising from the audit adjustments.
- 12.3 The IRBM may consider the taxpayer's application for payment of additional tax and penalties through instalments for a specified period.
- 12.4 Application for instalments scheme must be submitted to the IRBM Special Industry Branch Director for approval.
- 12.5 If the taxpayer fails to make the payment within the period allowed or the agreed instalments period, a tax increase will be imposed on the unpaid tax balance.

13. APPEALS

- 13.1 Sections 43 to 46 PITA lay down the ground rules for appeals relating to assessment raised by the IRBM.
- 13.2 Taxpayer who is dissatisfied with the Notice of Assessment / Notification of Non-chargeability, may submit an appeal to the Special Commissioner of Income Tax within 30 days after service of the Notice of Assessment / Notification of Non-chargeability.
- 13.3 All appeals against the assessment must be made through a completed Form Q to the Director of the IRBM Special Industry Branch.

14. EFFECTIVE DATE AND CANCELLATION

The Petroleum Tax Audit Framework is effective from 15 December 2019 and revokes the Petroleum Tax Audit Framework dated 1 April 2013.

**Director General of Inland Revenue,
Inland Revenue Board of Malaysia.**

15 December 2019