



TAX AUDIT FRAMEWORK FINANCE AND INSURANCE

EFFECTIVE DATE: 18 NOVEMBER 2020

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 penalised in accordance with the provisions of the Income Tax Act 1967 (ITA).
- 1.2 Under the Self-Assessment System (STS), 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 Tax Audit Framework - Finance and Insurance issued by the IRBM aims to ensure that tax audits on taxpayers in the Finance and Insurance Industry are conducted fairly, transparently and equitably. This framework outlines the rights and responsibilities of audit officers, taxpayers and tax agents. In general, this framework aims to:
- a. assist audit officers to perform their duties more efficiently and effectively; and
 - b. assist taxpayers to fulfil their responsibilities
- 1.4 This Tax Audit Framework applies to the following industries:
- 1.4.1 Finance Industry
- a. Finance / Islamic Finance Industry

Consists of Financial Institutions / Islamic Finance Institutions regulated by Bank Negara Malaysia licensed under the Financial Services Act 2013, Islamic Financial Services Act 2013 or the Development Financial Institutions Act 2002.
 - b. Financial / Islamic Financial Intermediaries

Consists of financial leasing, factoring, credit card services, stock brokers, stocks and bonds, operations and financial market control services and other financial intermediaries.

1.4.2 Insurance Industry

a. Insurance Industry / Takaful Industry

Consists of life insurance and general insurance operator companies / life takaful and general takaful operator companies licensed under the Financial Services Act 2013 or the Islamic Financial Services Act 2013.

b. Insurance Intermediaries / Takaful Intermediaries

Consists of insurance / takaful brokerage companies, insurance / takaful (loss adjuster), and licensed insurance / takaful agent companies, registered and licensed by Bank Negara Malaysia.

2. STATUTORY PROVISIONS

2.1 The legal provisions under the ITA which are applicable to tax audits are:

- a. Subsection 39(1A) : Deduction is not allowed if information is not provided to the Director General of Inland Revenue (DGIR) pursuant to the notice under section 81 of the ITA within the time specified.
- b. Section 60 : Insurance business.
- c. Section 60A : Re-insurance: Chargeable Income, Reduced rate and Exempt Dividend.
- d. Section 60AA : Takaful business.
- e. Section 60AB : Chargeable income of life fund subject to tax.
- f. Section 60C : Banking business.
- g. Section 78 : Power to call for specific returns and production of books.

- h. Section 79 : Power to call for statement of bank accounts, etc.
- i. Section 80 : Power of access to buildings and documents, etc.
- j. Section 81 : Power to call for information.
- k. Section 82 : Duty to keep records and give receipts.
- l. Section 82A : Duty to keep documents for ascertaining of chargeable income and tax payable.
- m. Subsection 97A(2) : Right of appeal.
& Section 99
- n. Section 100 : Extension of time for appeal.
- o. Section 101 : Review by Director General.
- p. Section 102 : Disposal of appeals.
- q. Section 112 : Failure to furnish return or give notice of chargeability.
- r. Section 113 : Incorrect returns.
- s. Section 116 : Obstruction of officers.
- t. Section 119A : Failure to keep records.
- u. Section 120 : Other offences.
- v. Section 138 : Certain material to be treated as confidential.
- w. Section 138A : Public ruling
- x. Section 140 : Power to disregard certain transactions.
- y. Section 141 : Powers regarding certain transactions by non-residents.

- 2.2 The powers provided under the law in respect of tax audits for the Finance and Insurance Industry are not limited to the provisions of the above law. It also covers the entire ACP, the Real Property Gains Tax Act 1976, the Petroleum Income Tax Act 1967, Promotion of Investment Act 1986, Stamp Act 1949, Labuan Business Activity Tax Act 1990 and other acts administered by the IRBM.

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 should be declared and the right amount of tax calculated and paid are in accordance with tax laws and regulations. IRBM carries out two (2) types of audit, namely desk audit and field audit.

a. Desk Audit

- i. A desk audit is conducted at the IRBM's office. It involves issues or adjustments of incomes 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 ITRF.
- 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 wherever the taxpayer and IRBM have agreed upon. It involves reviewing business records. A taxpayer will be notified prior to the exercise of a field audit.

- 3.2 In general, this 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 on the Finance and Insurance Industry is to encourage voluntary compliance with tax laws and regulations and to ensure that compliance rate is achieved under the STS. As such, the audit officer is required to ascertain that the correct amount of income has been reported, and taxes have been paid in compliance with tax laws and regulations.

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

5. YEARS OF ASSESSMENT COVERED

- 5.1 A tax audit is carried out comprehensively and can cover 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 91(3) of the ITA.

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 and etc.

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 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.
- 7.1.4 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.
- 7.1.5 A *Surat Pemberitahuan Lawatan Pematuhan* (Compliance Visit Notification Letter) for an audit visit 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.
- 7.1.6 The taxpayer may contact the Director of Section of the Finance or Insurance Division, the Director of the Finance or Insurance Division or the Director of the Special Industry Branch for the purpose of confirming the audit visit.

7.1.7 The IRBM may visit any of the taxpayer's premises or related premises by notifying the taxpayer in advance.

7.1.8 An audit examination with due notice may be extended to related companies / businesses or companies / businesses controlled by the taxpayers.

7.1.9 In the absence of an audit visit, a *Surat Penentuan Permulaan Tempoh Penyelesaian Kes* (Letter of Determination of Commencement of Case Settlement Period) 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 a letter of authority 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 80 of the ITA, 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 / inspect 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 / inspection 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 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 one (1) to three (3) 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; or
- c. the extent of co-operation from the taxpayer.

7.4 Record Review / Examination

7.4.1 During the audit process the audit officer should be allowed to review important and risky transactions as well as obtain supporting documents as audit evidence. The review will not involve records for the year of assessment that have expired.

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

- 7.4.3 Under the provisions of section 80 of the ITA, the audit officer is allowed to have full access to the taxpayer's records. 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 officers will review all relevant documents and records to determine that the correct amount of income has been reported. The records are generally as follows:
- a. Business Records
- Taxpayer can obtain guidance on record-keeping from the guidebooks as well as the Public Rulings issued by the IRBM.
- Pursuant to Section 138A of the ITA, the DGIR is empowered to issue public rulings on the interpretation of any provisions of the ITA.
- The Public Ruling related to record keeping that has been issued is the Public Ruling of the IRBM No. 4/2000 (Revised): Keeping Sufficient Records (Companies & Co-operatives).
- 7.4.7 Sections 82 and 82A of the ITA require the taxpayer to maintain sufficient and complete records to enable the income or loss of the business to be determined. Records and documents include:
- a. books of accounts which record receipts and payments or income and expenditure;

- b. financial statements;
- c. invoices, vouchers, receipts and other documents as are necessary to verify any of the items recorded in the books of accounts;
- 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 subsections 82(1), 82(3) and 82(5) of the ITA to maintain a sufficient and complete record is an offence under section 119A of the ITA.

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 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* 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*, 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 shall 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 Tax audit cases need to be resolved within the stipulated period as follows:

Finance / Islamic Finance	
Business Activity	Settlement Period
Commercial banks, investment banks, Islamic banks and other financial institutions	240 calendar days from the commencement date of the audit visit or the date of the <i>Surat Penentuan Permulaan Tempoh Penyelesaian Kes</i> (Case Settlement Period Determination Letter) is issued, whichever is applicable.
Finance / Islamic Finance	
Business Activity	Settlement Period
Financial leasing, factoring, credit card services, stock brokers, stocks and bonds, financial market services and operations / other financial intermediaries.	90 calendar days from the commencement date of the audit visit or the date of the <i>Surat Penentuan Permulaan Tempoh Penyelesaian Kes</i> (Case Settlement Period Determination Letter) is issued, whichever is applicable.

Insurance / Takaful	
Business Activity	Settlement Period
Insurance and Takaful business includes Re Insurance and Re Takaful	240 calendar days from the commencement date of the audit visit or the date the <i>Surat Penentuan Permulaan Tempoh Penyelesaian Kes</i> (Case Settlement Period Determination Letter) is issued, whichever is applicable.
Business as a broker, agent and adjuster	90 calendar days from the commencement date of the audit visit or the date the <i>Surat Penentuan Permulaan Tempoh Penyelesaian Kes</i> (Case Settlement Period Determination Letter) is issued, whichever is applicable.

If there are cases that exceed the period stated above to be resolved, the taxpayer will be notified by the IRBM.

7.5.11 Completed audit cases will not be re-audited for the same year of assessment and issue. However, in the event of other issues or new information are received for the 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 ITRF (for ITRF 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 All voluntary disclosures must 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 has 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 the optimal use of time;
- 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 of 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 118 of the ITA.

8.2 Taxpayer

8.2.1 Taxpayer Responsibilities:

- a. provide 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 in Public Ruling No. 7/2000 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 guilty of an offence under the ITA 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 116 of the ITA. 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 80 of the ITA;
 - ii. obstructing an audit officer from performing his functions and duties under the provisions of the ITA;
 - 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 138(1) of the ITA).

8.3.4 Approved tax agent is prohibited from:

- a. giving wrong advice and working with taxpayer 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 113(2) of the ITA equivalent to the undercharged tax amount (100%). However, for the purposes of this Tax Audit Framework, penalty imposed under subsection 113(2) of the ITA is at a rate of 45% of the tax undercharged. Nevertheless, the DGIR may exercise his discretion in accordance with subsection 124(3) of the ITA to reduce or eliminate penalties imposed.

10.2 If the taxpayer commits a repeated offence after being audited or investigated, the penalty will be imposed under subsection 113(2) of the ITA at a rate of 55% of the tax undercharged.

10.3 Repeated offence means:

10.3.1 The taxpayer has been audited or investigated and the original / additional / composite assessment with the penalty under subsection 113(2) of the ITA has been raised; and

10.3.2 The first offence is taken into account from the date of the notice of assessment which was raised from 1 January 2020.

10.4 Concession rate penalties may apply for cases where taxpayers voluntarily make a disclosure. Taxpayers are not eligible for voluntary disclosure once audit has begun.

- 10.5 The penalty rates under subsection 113(2) of the ITA for voluntary disclosure cases are as follows:

Duration of voluntary disclosure	Rate
Within 60 days from the due date for submission of ITRF	10%
More than 60 days but not later than six (6) months from the due date for submission of ITRF	15.5%
More than six (6) months from the due date for submission of ITRF	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 / the Director of the Tax Compliance Department / the Deputy Director General / the 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 / the 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 relevant IRBM 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 executed on the unpaid tax balance.

13. APPEALS

- 13.1 Subsection 97A(2) and section 99 to 102 of the ITA 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 shall be made through a completed Form Q to the respective Branch Director.

14. EFFECTIVE DATE AND CANCELLATION

This Tax Audit Framework - Finance and Insurance is effective from 18 November 2020 and revokes Tax Audit Framework - Finance and Insurance dated 1 Jun 2015.

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

18 November 2020