



INLAND REVENUE BOARD MALAYSIA

TAX INVESTIGATION FRAMEWORK

Translation from the original Bahasa Malaysia text

EFFECTIVE DATE : 1 OCTOBER 2013

| CONTENTS | PAGE |
|---|-------------|
| 1. INTRODUCTION | 1 |
| 2. LEGAL PROVISIONS | 1 |
| 3. INVESTIGATION ACTIVITY | 3 |
| 4. OBJECTIVES OF INVESTIGATION | 4 |
| 5. PERIOD OF INVESTIGATION | 4 |
| 6. SELECTION OF CASES | 4 |
| 7. INVESTIGATION PROCEDURES | 5 |
| 7.1 Inspection Visit | 5 |
| 7.2 Examination of Documents | 6 |
| 7.3 Record Statement | 6 |
| 7.4 Finalisation of Investigation | 6 |
| 8. RIGHTS AND RESPONSIBILITIES | 7 |
| 8.1 IRBM | 7 |
| 8.2 Taxpayer | 8 |
| 8.3 Tax Agent | 9 |
| 9. CONFIDENTIALITY OF INFORMATION | 10 |
| 10. OFFENCES AND PENALTIES | 10 |
| 11. PAYMENT PROCEDURES | 11 |
| 12. APPEALS | 11 |
| 13. INVESTIGATION UNDER ANTI- MONEY LAUNDERING AND ANTI TERRORISM FINANCING ACT 2001(AMLATFA) | 12 |
| 14. EFFECTIVE DATE | 14 |

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 [Act 53] (ITA) and other acts administered by the Inland Revenue Board of Malaysia (IRBM) such as Real Property Gains Tax Act 1976 [Act 169], Petroleum (Income Tax) Act 1967 [Act 543], Promotion of Investments Act 1986 [Act 327], Stamp Act 1949 [Act 378] and Labuan Business Activity Tax Act 1990 [Act 445].
- 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 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 appeals |
| 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 evasion |
| 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 : 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 ITA and the provisions of Real Property Gains Tax Act 1976, Petroleum (Income Tax) Act 1967, Promotion of Investments Act 1986, Stamp Act 1949, Labuan Business Activity Tax Act 1990 and Anti-Money Laundering And Anti-Terrorism Financing Act 2001 [Act 631] (AMLATFA).

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 Investigation is conducted to gather admissible evidence with a view towards prosecution and conviction of tax offences in court in accordance with the provisions of ITA (or other acts in paragraph 2.2), Penal Code [Act 574], Criminal Procedure Code [Act 593], Evidence Act 1950 [Act 56], Whistleblower Protection Act 2010 [Act 711] and other relevant acts.
- 3.3 IRBM officers may also conduct investigation in accordance with the provisions of AMLATFA as the offences under sections 112, 113 and 114 of the ITA are listed as serious offences under Schedule 2 of AMLATFA. Action may be taken by IRBM to freeze, seize and forfeit movable and immovable properties obtained using proceeds from tax offences.
- 3.4 IRBM officers will inform taxpayers whether an investigation is being carried out under ITA, AMLATFA or both. An investigation under the ITA, will not be a hindrance for an investigation under AMLATFA 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 To 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 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;
- 6.4 Intelligence information; and
- 6.5 Information from other law enforcement agencies.

7. INVESTIGATION PROCEDURES

7.1 Inspection Visit

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

During the inspection, an 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 officer has the following powers :
 - 7.1.3.1 Full and free access to search all land, buildings and places; and
 - 7.1.3.2 Full and free access to all documents and may examine, take possession, make copies of or extracts from any document without making any payment.
- 7.1.4 Inform the scope and duration of the examination as well as documents that should be taken for investigation purposes;
- 7.1.5 Inform the names and telephone numbers of the officer and the senior officer in charge of the investigation;
- 7.1.6 Inform the taxpayer of his rights and responsibilities during the examination process;
- 7.1.7 Take photos of the locations where the documents are seized;
- 7.1.8 Conduct search in the premises visited;

7.1.9 Access, download and take the relevant information from any electronic media;

7.1.10 Interview and record statements from taxpayers and other people at the premises;

7.1.11 Seize and take relevant documents; and

7.1.12 Provide written acknowledgement of receipt of the documents duly signed by the officer and the taxpayer or his representative.

7.2 Examination of Documents

During examination of documents, an officer is required to:

7.2.1 Inspect 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 Record Statement

At least two officers will be present during the recording of statement from persons relevant to the case investigated.

7.4 Finalisation of Investigation

7.4.1 After completion of the investigation procedures, a case which is to be prosecuted will be forwarded to the Legal Department.

7.4.2 For cases that are prosecuted in court, failure of a taxpayer to attend court proceedings after summon has been served, may result in a warrant of arrest being issued.

7.4.3 Cases that are not prosecuted will be finalised out of court by way of civil settlement in accordance with the procedures and provisions of ITA and other relevant acts.

- 7.4.3.1 For a civil settlement, taxpayer has to submit an agreement in writing. The investigation is finalised after the case is approved by the Director General of Inland Revenue and an assessment is raised.
- 7.4.3.2 IRBM will issue a letter to the taxpayer confirming the finalisation of the investigation if there were no findings for the period investigated.

8. RIGHTS AND RESPONSIBILITIES

8.1 IRBM

8.1.1 An IRBM 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 / representative.

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 taxpayer to appoint certain tax agent as 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 The taxpayer has the right to know the consequences of failing to submit the necessary information requested by the officer;
- 8.2.2 The taxpayer has the right to ascertain the identity of officer;
- 8.2.3 The taxpayer has the right to appoint an approved tax agent or qualified spokespersons / advisers at any time. However, a written authorisation letter to act on taxpayer's behalf must be submitted to IRBM;
- 8.2.4 The taxpayer has the right to appoint a lawyer during the investigation and / or prosecution;
- 8.2.5 The taxpayer is allowed to bring an interpreter during recording of statement if the taxpayer is not conversant in the national language or English;
- 8.2.6 The taxpayer may request to make copies of the documents in the possession of IRBM during the investigation; and
- 8.2.7 The taxpayer is required to:
 - 8.2.7.1 Provide the officers with access to (including passwords) and make copies of documents in the custody of / under the control of / belonging to the taxpayer;
 - 8.2.7.2 Permit the officers to take possession of documents in the custody of / under the control of / owned by / belonging to the taxpayer;
 - 8.2.7.3 Furnish a translation in the national language of records and documents maintained in a language other than the national language within a time specified not being less than thirty (30) days from the date of service of notice by the DGIR. For East Malaysia, translation is permitted either in the national language or English;

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

8.2.7.5 Cooperate with the officer.

8.2.8 The taxpayer is prohibited from:

8.2.8.1 Appointing unapproved tax agent;

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

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

8.2.8.4 Obstructing or hindering the officer in the exercise of his functions. Such obstruction is an offence under section 116 of ITA. Upon conviction, the person guilty of the offence shall be liable to a fine of not less than RM1,000 and not more than RM10,000 or to imprisonment of 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 IRBM which is based on the principles of integrity, accountability, transparency and efficiency. "Tax agent" in this framework refers to 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.

8.3.3 The 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 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 acts.

10. OFFENCES AND PENALTIES

10.1 Failure to furnish return or give notice of chargeability

Failure to furnish return or give notice of chargeability is an offence under Section 112 of the ITA. Any person guilty of the offence shall, on conviction, be liable to a fine of not less than RM 200 and not more than RM2,000 or to imprisonment for a term not exceeding six months or to both.

10.2 Incorrect returns

Making incorrect return is an offence under Section 113 of the ITA. Any person guilty of the offence shall, on conviction, 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 (200%) the amount of tax which has been undercharged.

10.3 Wilful evasion

Wilful evasion is an offence under Section 114 of the ITA. Any person guilty of the offence shall, on conviction be liable to a fine of not less than RM1,000 and not more than RM20,000 or to imprisonment for a term not exceeding three years or to both and shall pay a special penalty of treble (300%) the amount of tax which has been undercharged.

11. PAYMENT PROCEDURES

- 11.1 On conviction, taxpayer has to settle the fine / penalty imposed by the court in the manner decided by the court.
- 11.2 Assessment will be raised upon conviction and the taxpayer is required to make payments in accordance with the provisions of Section 103 of the ITA.

12. APPEALS

Taxpayer who is convicted by the court and is not satisfied with the conviction may appeal to a higher court.

13. INVESTIGATION UNDER ANTI-MONEY LAUNDERING AND ANTI-TERRORISM FINANCING ACT 2001 (AMLATFA)

- 13.1 Failure to furnish return (Section 112 of the ITA), make incorrect returns (Section 113 of the ITA) and wilful evasion (Section 114 of the ITA) are listed as serious offences under Schedule 2 of the AMLATFA. As a law enforcement agency under AMLATFA, IRBM may take action to deter, detect and investigate cases of money laundering related to serious offences.
- 13.2 Upon conviction of money laundering offence under Section 4 of the AMLATFA, a person shall be liable to a fine not exceeding RM5 million or to imprisonment for a term not exceeding five years or to both.
- 13.3 Investigation under AMLATFA and investigation under ITA may be conducted separately or concurrently.
- 13.4 An AMLATFA investigation officer may exercise powers under AMLATFA such as:
 - 13.4.1 Enter any premises without a search warrant;
 - 13.4.2 Search the premises for any property, record, report or document;
 - 13.4.3 Inspect, make copies of or take extracts from any record, report or document;
 - 13.4.4 Take possession of any property, record, report or document seized and detain it for a period deemed necessary;
 - 13.4.5 Search any person who is in, or on such premises;
 - 13.4.6 Break open, examine and search any article, container or receptacle;
 - 13.4.7 Stop, detain or search any conveyance;
 - 13.4.8 Break open any outer or inner door of such premises or conveyance;

- 13.4.9 Remove by force any obstruction to such entry, search, seizure, detention or removal;
- 13.4.10 Detain any person found on such premises, or in such conveyance until the search is completed;
- 13.4.11 Order any person whom he believes to be acquainted with the facts and circumstances of the case to attend before him for examination;
- 13.4.12 Arrest without warrant a person suspected to have committed or to be committing any offence under AMLATFA; and
- 13.4.13 Issue 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 taxpayer investigated under AMLATFA:
 - 13.5.1 Allow the officer to access any premises and submit to the search of his person;
 - 13.5.2 Attend before the officer for examination;
 - 13.5.3 Answer any question put to him by the officer;
 - 13.5.4 Furnish any information or statement as requested by the officer;
 - 13.5.5 Cooperate and comply with any lawful demands by the officer in the execution of his duties;
 - 13.5.6 Not to conceal and to give 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 AMLATFA, shall be liable to a fine not exceeding RM1 million or to imprisonment for a term not exceeding one year or to both. In the case of continuing offence, he shall be liable to a further fine not exceeding RM1,000 for each day during which the offence continues after conviction.

14. EFFECTIVE DATE

This Framework is effective from 1 October 2013 and replaces the Investigation Framework issued on 1 January 2007.

TAN SRI DR. MOHD. SHUKOR HJ.MAHFAR

Director General of Inland Revenue

Date: 1 October 2013