



德勤马来西亚中国服务部刊物

税务审计和调查 (“A&I”)

概况

这是我们针对 2017 年 7 月发表的文章的延伸。

(<https://www2.deloitte.com/content/dam/Deloitte/my/Documents/tax/my-tax-csg-publication-july2017.pdf>).

马来西亚内陆税收局 (“IRBM”) 在日益积极开展税务审计与调查活动，对纳税人进行详细审查。内陆税收局还针对特定的纳税人/行业群体，例如房地产开发商、承包商、投资控股公司、银行和保险公司进行了特殊的税务审计。展望未来，随着税务审计框架的日趋严格，这些活动预计将会加强。

2018税务审计框架

2018年的框架于2018年4月1日生效，并取代了2017年的税务审计框架。两者之间的主要区别在于：

(a) 审计之前的行动

纳税人将通过官方电子邮件/传真/邮寄的方式收到文件及信息索取函。在某些案头审计案件中，信函将不会发出。相反，纳税人将收到评估通知以及税务调整细节（如2018年税务审计框架7.1.1和7.1.2中所述）。

(b) 税务审计期间检查的记录范围。

“该检查将不涉及已超过法定期限的评估年度的记录”（2017年税务审计框架的7.4.1）这一表述已被删除。这表明内陆税收局可能会要求检查已超过法定期限的记录。

(c) 注册税务代理

该框架强调“注册税务代理”（2018税务审计框架第8.3条）可能意味着马来西亚内陆税收局不会与任何受委托税务代理的代表来处理相关事项，而只会与注册税务代理来交涉。

(d) 更短的期限

描述	截至日期	
	2018 税务审计框架	2017 税务审计框架
自收到信函起的多少天期限内提交文件与资料（如 7.1.3 所述）	14 天内	21 天内
对马来西亚内陆税收局提议的税务调整提出书面异议 • 书面异议应提交额外的文件及证据来支持异议的理由（如 7.5.6 所述）	18 天内	21 天内
审计完结期限 • 如果马来西亚内陆税收局无法在规定的期限内解决审计，纳税人将会被告知（如 7.5.10 所述）	3 个月（90 天）	4 个月（120 天）

除上所述，还应强调的是，马来西亚内陆税收局局长（“DGIR”）根据1967年《所得税法案》第124(3)条（“ITA”）的规定，可酌情减轻对ITA(除定罪处罚以外)的罚款。如在2018框架的10.1中所述，如果审计结果发现存在的任何少申报或漏申报收入，则将根据《ITA》第113(2)条的规定处以相当于少缴的应纳税额（100%）的罚款。然而，DGIR可能会利用他的自由裁量权，根据ITA的第124(3)条对其少缴的税款部分征收45%的罚款。

我们了解到，一旦DGIR作出决定对违反规定的行为作出100%处罚的决定，即DGIR不会根据ITA的第124(3)条行使其酌情权，那么2018审计框架将相应被修改。

税务审计选择

马来西亚内陆税收局针对税务审计的选择是基于纳税人及行业的内在因素、税务申报及外部信息来源，可能包括:-

- (a) 长期维持低利润。这与一般企业的宗旨背道而驰，因为企业的目的是创造股东价值（即利润），因此这表明可能存在着减少收入，虚增成本或利润转移。
- (b) 与享受税收优惠的集团内部实体公司或非居民实体公司发生的关联交易。
- (c) 纳税人的财务比率及其与行业基准的一致性。

- (d) 报纸和社交媒体平台等媒体提供的有价值的信息，从商业交易到利益相关人的生活方式。
- (e) 政府机构拥有的大量信息。例如，移民部门颁发工作准证，由地方当局批准的营业执照，众多公司的股东登记，在土地局登记的多项房地产交易等。
- (f) 根据法律要求，马来西亚内陆税收局有权强制马来西亚企业提供所需信息。这些信息包括客户的姓名和身份证号码，采购的类型和金额。
- (g) 马来西亚内陆税收局从举报人获得的信息对于帮助查明犯罪行为和获取确凿的证据也具有特别价值。

结论

马来西亚内陆税收局一直在积极审查其现有的工作流程，并利用大数据分析和审计工具来提高其执法战略的有效性。随着惩罚率的提高，纳税人需要主动管理税务风险。

税务审计之前：

纳税人应复查他们的所得税申报并确保拥有足够的文件支撑其重要的税务处理。当纳税人在进行税务审计之前发现错误或文件不足时，如果进行自愿披露，将可能适用较低的罚款。

税务审计期间：

在任何税务审计/调查案件中，纳税人得到适当的专业团队的支持是十分重要的，这些团队了解税务审计和税务调查过程在管理案件和保护纳税人权利方面的重要细节。

税务审计之后：

应采取主动措施，进行事后收集和评估关键反馈，从而制定计划方向并采取适当的纠正措施以减轻其税务风险。

欢迎随时联系我们

无论是之前，之后或是在税务审计/调查的过程中，我们都致力于协助您应对税务审计和调查。我们的方法是切实可行的，以您的利益为出发点，且旨在为您节省时间，成本和资源。



Deloitte Malaysia Chinese Services Group Publication

Tax Audit & Investigation (“A&I”)

Introduction

This is an extension of our article published in July 2017 (<https://www2.deloitte.com/content/dam/Deloitte/my/Documents/tax/my-tax-csg-publication-july2017.pdf>).

The Inland Revenue Board of Malaysia (“IRBM”) has been increasingly active in conducting A&I, subjecting taxpayers to detailed scrutiny under their microscope. IRBM has also conducted special tax audits targeting a particular group of taxpayers / industries, e.g. property developers, contractors, investment holding companies, banking and insurance. Going forward, these activities are expected to be intensified and goes in tandem with increasingly stringent tax audit framework.

Tax Audit Framework 2018

The 2018 Framework comes into effect on 1 April 2018 and it supersedes the Tax Audit Framework 2017. The key differences between the frameworks are:-

(a) Action before audit

The taxpayer will be notified via a Document and Information Requisition Letter (“Letter”) either through official email / fax / post. In certain desk audit cases, the Letter will not be issued. Instead, the taxpayer will receive the notice of assessment together with the details

of tax adjustments (as stated in 7.1.1 and 7.1.2 of the Tax Audit Framework 2018).

(b) Record checking during a tax audit

The sentence “The checking will not involve records for the year of assessment which statutory time limit has lapsed” (in 7.4.1 of the Tax Audit Framework 2017) has been removed. This indicates that the IRBM may request for time-barred records.

(c) Registered tax agent

The Framework’s emphasis on a “registered tax agent” (in 8.3. of the Tax Audit Framework 2018) may signify that the IRBM would not deal with any representative of the appointed tax agent but only a registered tax agent.

(d) Shorter timeframes

Description	Deadline under the	
	Tax Audit Framework 2018	Tax Audit Framework 2017
Submission of documents and information from the date of receipt of the Letter [as stated in 7.1.3]	14 days	21 days
Submission of written objection to IRBM’s proposed tax adjustment <ul style="list-style-type: none"> ▪ The written objection should be submitted along with the additional documents and evidence which support the grounds of objection. [as stated in 7.5.6] 	18 days	21 days
Audit settlement period <ul style="list-style-type: none"> ▪ The taxpayer would be informed if the IRBM is unable to settle the audit case within the stipulated period. [as stated in 7.5.10] 	3 months (90 days)	4 months (120 days)

Aside from the above, it should be emphasised that the Director General of Inland Revenue (“the DGIR”) holds the discretion under Subsection 124(3) of the Income Tax Act 1967 (“the ITA”) to abate / remit any penalty imposed under the ITA (other than a conviction penalty). As stated in 10.1 of the 2018 Framework, in the event of an understatement / omission of any income arising from the audit findings, a penalty will be imposed under Subsection 113(2) of the ITA equal to the amount of tax payable (100%). However, the DGIR may use his discretion to impose a penalty under Subsection 124(3) of the ITA at a rate of 45% on the understated tax.

We were made to understand that once a decision is made by the DGIR on the type of offences where a 100% penalty will be imposed, i.e., offences where the DGIR will not exercise his discretion under Section 124(3) of the ITA, the 2018 Framework will be revised accordingly.

Audit selection

IRBM could rely on factors inherent to the taxpayer and its industry, disclosures in the tax return form and external information sources to select cases for audit. These may include:-

- (a) Low profits for extended period. This runs contrary to general business acumen as the purpose of a business is to create shareholder value (i.e. profits) and may be indicative of deflated revenue, inflated expenditure or profit shifting.
- (b) Related party transactions with entities within the group that enjoy tax incentives or non-resident entities.
- (c) Financial ratio of the taxpayer and its consistency with industry benchmark.
- (d) Media outlets such as newspaper and social media platform provide valuable information ranging from business dealings to lifestyle of persons of interest.
- (e) Government agencies possess a trove of information. For example, the grant of work permit by immigration department, grant of business permit by the local authority, registration as shareholder of numerous companies, multiple property transactions registered with the land office etc.
- (f) Malaysian businesses are compelled by law to provide information requested by IRBM. Such information may include name and identification number of the customers, type of purchases and amount.
- (g) Information obtained from whistleblowers may also be especially valuable in assisting IRBM to pinpoint the exact offences and accumulate proof.

Conclusion

The IRBM has been proactively reviewing its existing work processes and utilising big data analytics and audit tools to enhance the effectiveness of its enforcement strategies. This, along with the increased penalty rate, means taxpayers need to proactively manage their tax risks.

Pre-tax audit action:

Taxpayers should review their income tax declarations and check that significant claims are supported by sufficient documentation. If mistakes or insufficient documentation are discovered before a tax audit, a voluntary disclosure may be made so that a lower tax penalty may apply.

During the tax audit:

In any tax audit / investigation cases, it is important that taxpayers are supported by the right professional team which understand the key nuances of tax audits and tax investigations process in managing the case and protecting taxpayers' rights.

Post-tax audit action:

Taxpayers should take proactive measures by conducting a post-mortem to gather and evaluate critical feedback and thereafter, to plan for the way forward and formulate appropriate corrective actions to mitigate their tax risks.

Feel free to reach out to us

Whether pre, post or during the tax audit / investigation process, we are committed to support you in your tax audit and investigation journey. Our approach is practical and has your interest at heart. It is aimed at saving you time, cost and resources.

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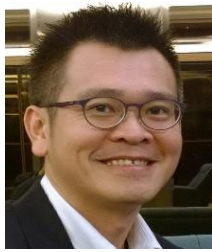


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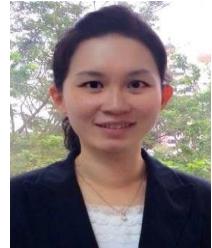


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