



## 马来西亚中国服务部税务月刊

### 2017年税务审计框架和外籍雇员税务管理措施

#### 概况

对于在马来西亚运营的中资企业而言，安排外籍雇员来马工作十分常见，因此中资企业应全面了解以下关于外籍雇员的相关政策变动。

马来西亚内陆税收局（MIRB）于2017年5月1日发布了修正的税务审计框架以代替2015年2月1日出台的税务审计框架。

修正后的税务审计框架的主要目的是确保税务审计基于公平、透明和公正的方式执行。此框架列出了：

- 税务审计官员，纳税人和税务代理在税务审计方面的权利和责任；和
- 为税务审计官员和纳税人提供了对税务审计处理方式的更加清晰理解和预期的审计流程。

#### 修正后框架的变化

主要的变化如下：

- **税务审计范围**

通常，对于不属于欺诈、故意过错或疏忽的案件，税务审计期间为3个课税年度。然而，基于初步的审计结果，所审计的课税年度可延长至5年。

税务审计也可延伸至拥有相同董事的关联公司/或商业组织，并且不会提前通知纳税人和该公司。

马来西亚内陆税收局可以在任何情况下安排对纳税人的场所或与该纳税人以及该公司相关的场所进行税务审计，且不会提前通知。

### • 减让的罚款率

作为减让，针对自提交所得税申报截止日期后 6 个月后所做出的自愿披露者，所给予减让的罚款率为 35%，前提是所得税申报已按时提交并且该自愿披露是在被选中进行税务审计之前做出。

需要注意的是，当税务审计工作开始进行以后，马来西亚内陆税收局将不再接受自愿披露。

根据 1967 年所得税法条款 113 (2)，如果纳税人通过遗漏或少报收入或就任何会影响其应纳税额的事项提供错误信息的方式进行错误申报，将会被征收同等于 100%少缴税款的罚款。

新的罚款率从 2017 年 5 月 1 日正式生效，自此马来西亚内陆税收局局长 (DGIR) 对于罚款可能采取的减免详情如下:-

自愿披露	自税务申报截止日期起	罚款率
在被选中进行税务审计之前自愿披露	少于等于 60 天;	10%
	超过 60 天但少于等于 6 个月;	15.5%
	超过 6 个月	35%
非自愿披露 (在税务审计发现税务遗漏)		对纳税人征收 100%罚款或由马来西亚内陆税收局局长 (DGIR) 确认; 第一次违规的纳税人征收 45%罚款

### 马来西亚内陆税收局对于征收 100%罚款的说明

2017 年 4 月 17 日，马来西亚内陆税收局颁布了“关于针对未能申报和正确申报个税征收 100%罚款的说明”，并将于 2018 年 1 月 1 日起施行。

根据条款 113 (2)，马来西亚内陆税收局有权对以下违规行为征收 100%的罚款：

- 多次在所得税申报表中未申报或错误申报收入；
- 拒绝在审计或调查过程中提供全面配合；
- 未能协助提供审计或调查所需的资料或文件；

- 实行有组织的逃税计划；
- 纳税人在被审计或调查后仍未能遵守税法。

### 未按规定缴纳税款的外籍员工将不得进入或离开马来西亚

马来西亚内陆税收局指出，自 2012 年以来离开马来西亚的外籍员工累计有超过 5000 万美元（或 2.13 亿马币）的税务欠款尚未缴纳。其中大部分人来自服务业（前五个行业包括建筑业、制造业、服务业、石油 / 天然气/能源行业和教育业），他们在申请表中伪造其实际工资，或者以低于实际工资的金额申报。

还有的外国人滥用学生签证在境内开展业务，并没有向马来西亚内陆税收局申报其收入。

目前，马来西亚内陆税收局正在与 75 个签署双重征税协议的国家进行谈判，以追踪并追回来自这些国家的外籍人士未缴纳的税款。

### 关于追回未缴纳税款的额外措施

- **加强追回税款的行动**

2017 年，马来西亚内陆税收局一直采取各种行动追回未缴纳的税款。所采取的行动包括对在外国工人返回其各自的派遣国或母国之前，未履行其扣除税款责任的雇主或赞助人列入黑名单、处以罚款或实施监禁。

- **与马来西亚移民局合作**

个人纳税人-马来西亚内陆税收局一直与马来西亚移民局（MID）紧密合作。移民局相关数据可以很简便地从马来西亚移民局的外籍专业雇员服务中心（ESD）获取，这使得马来西亚内陆税收局在外籍员工将要离开马来西亚，为其开具税务清缴证明之前，可以调查每个外籍员工的纳税状态。税务不合规状态将使外籍员工被扣留并禁止离开马来西亚，直到税款完全清缴。

雇主/视同雇主 - 相同的信息将被用于确认雇主/视同雇主的每月预扣（MTD）合规性。

马来西亚内陆税收局分部 - 从 2017 年 7 月 1 日起，所有马来西亚内陆税收局的分部都会使用该信息，以确保所有在马来西亚工作的外籍员工都按规定报告其收入并且缴纳税款。

### 德勤观点

税务审计框架所规定的减让罚款率旨在鼓励纳税人自愿遵守税法，特别是针对严重的税务违规者。

从 2018 年 1 月 1 日起将未缴税款或未如实申报个税罚款率提高至 100% 的提案是强制纳税人按规定履行纳税义务的重要一步。

鉴于马来西亚内陆税收局采取的新措施，我们建议纳税人审阅其所得申报的正确性，并在规定的时间内提交任何遗漏的文件或更改不正确的申报，以减轻处罚。

此外，通过与马来西亚移民局合作，马来西亚内陆税收局目前能够更加容易地确定外籍纳税人的合规状态。我们建议雇主和外籍雇员尽快审阅其合规方案。为确保纳税人履行其义务，中国和马来西亚的税务机关都已经加大了监管力度。因此，中资企业需要建立健全的内控系统以确保雇主和雇员纳税义务的全面合规。

Malaysia | Tax | July 2017



## **Deloitte Malaysia Chinese Services Group Publication**

### **Tax Audit Framework 2017 and Expatriate Tax Related Administration**

#### Overview

Most of Chinese companies that operate in Malaysia hire expatriates, hence the Chinese companies should be fully aware of the highly relevant changes stated below.

The Malaysian Inland Revenue Board (MIRB) has issued an amended Tax Audit Framework on 1 May 2017, which supersedes the Tax Audit Framework 2015 issued on 1 February 2015.

The amended framework aims to ensure that tax audits are carried out in a fair, transparent and impartial manner. The framework outlines:

- Rights and responsibilities of tax audit officers, taxpayers and tax agents in respect of a tax audit; and

- General audit process which provides clearer expectation to tax audit officers and taxpayers on the manner of a tax audit will be conducted.

### Changes under the amended framework

The key changes are:

- **Scope of tax audit review**

Generally, for cases not attributable to fraud, wilful default or negligence, the tax audit review period is up to three (3) Years of Assessment (YAs). However, the review period can be extended up to five (5) YAs depending on the findings of the aforesaid initial review.

A tax audit can be also extended to any related company / business which has the same director without prior notification to the taxpayer and the company.

The MIRB can, in any condition, organise a tax audit visitation to any premise of the taxpayer or premises in connection with the taxpayer and the company without prior notification.

- **Concessionary penalty rate**

As a concession, the penalty rate for a voluntary disclosure after 6 months from the due date of submitting the income tax return form (ITRF) is now 35%, provided that the ITRF was submitted by the stipulated deadline and the voluntary disclosure is made before the case is selected for audit.

It is worth to note that voluntary disclosure is no longer given any consideration once tax audit has commenced.

Pursuant to Section 113(2) of the Income Tax Act, 1967, a penalty equivalent to 100% of the tax undercharged will be imposed if a person makes an incorrect return by omitting or understating any income or gives incorrect information in relation to any matter affecting his own chargeability to tax.

Effective 1 May 2017, the Director General (DG) may abate or remit the penalties as follows:-

<b>Voluntary disclosure</b>	<b>Period from the prescribed deadline of submission</b>	<b>Penalty rate</b>
Voluntary disclosure before case is selected for audit	≤ 60 days	10%
	>60 days to ≤6 months	15.5%
	> 6 months	35%
Non-disclosure (Discovery of omission during audit)		100% or as directed by the DGIR, a penalty of 45% for the 1st offence

## MIRB's clarification on the imposition of 100% penalty

On 17 April 2017, the MIRB issued a "**Clarification Regarding the Imposition of 100% Penalty for Failure to Declare Income and Correct Information**", which will be implemented from 1 January 2018 onwards.

The MIRB is empowered under Section 113(2) to impose a 100% penalty for offences such as:

- Undeclared or incorrectly declared income received by way of a ITRF in a repeated manner;
- Refusal to give full cooperation during an audit or investigation process;
- Failure to give information or documents requested to assist in an audit or investigation process;
- Carrying out an organised tax evasion scheme; and
- Failure to comply with the tax law even though the tax payer has been audited or investigated before.

## Expatriates who fail to pay tax will not be allowed into or out of Malaysia

The MIRB noted that more than USD50 million (or RM213 million) in tax arrears have not been collected from expatriates who have left Malaysia since 2012. Majority of them were from the services sector (top five sectors which include construction, manufacturing, services, oil/gas/energy and education) and had either falsified their real wages in the application form or had declared a lower wage from what they actually received.

There were also foreigners who abused the Student Pass to carry out businesses in the country and did not declare their income to the MIRB.

The MIRB is currently in talks with 75 countries where Double Taxation Agreements have been signed to track these underpayments and to recover the taxes due from the expatriates.

## Extra measures to recover non-payment of taxes

### • **Intensify tax recovery action**

In 2017, the MIRB has been taking various actions to recover non-payment of taxes. Recovery actions taken include blacklisting, fines or imprisonment against employer or sponsors who fail to carry out their responsibilities to deduct tax due of its foreign workers before they are released to their respective sending or home countries.

### • **Collaboration with Malaysian Immigration Department**

Individual taxpayer - The MIRB has been working closely with the Malaysian Immigration Department (MID). Immigration-related data can be easily extracted from the

Expatriate Services Division (ESD) of MID to allow the MIRB to check the status of each foreigner's tax status before a tax clearance is issued prior to one leaving Malaysia. Failure in tax compliance will result in the expatriate being detained and prohibited from leaving the country until his taxes are fully settled.

Employer / Deemed employer - The same information will be used to verify against Monthly Tax Deductions (MTD) compliance of an employer/deemed employer.

MIRB branches – From 1 July 2017, such information is used in all MIRB's branches nationwide to ensure that all foreign employees working in Malaysia are reporting their income and paying taxes.

### **Deloitte's view**

The concession penalty rate provided in the tax audit framework aims to encourage voluntary compliance amongst taxpayers, in particular dealing with taxpayers who are hard core tax defaulters.

The proposal to increase the rate of penalty to 100% of tax unpaid or under-declared of income beginning 1 January 2018 is a step forward to enforce tax compliance in taxpayers.

In view of the new measure to be adopted by the MIRB, tax payers are strongly encouraged to review the correctness of their income declaration and come forward on any omission or incorrect submission within the stipulated time to mitigate penalties.

Further, in collaboration with the MID, the MIRB is now in a better position to identify compliance gaps amongst foreign taxpayers. The tax authorities, whether in Malaysia or China, have stepped up their efforts to ensure taxpayers fulfil their tax obligations. It is imperative for the Chinese companies to have a robust internal programme to fully comply with the employer and employee tax requirements.

## 联系我们

分支机构/名字	职务	邮箱	电话
吉隆坡 Kuala Lumpur			
余永平 <b>Yee Wing Peng</b>	董事经理	<a href="mailto:wpjee@deloitte.com">wpjee@deloitte.com</a>	(603) 7610 8800
谭丽君 <b>Tham Lih Jiun</b>	执行董事	<a href="mailto:litham@deloitte.com">litham@deloitte.com</a>	(603) 7610 8875
卓鸿培 <b>Toh Hong Peir</b>	执行董事	<a href="mailto:htoh@deloitte.com">htoh@deloitte.com</a>	(603) 7610 8808
徐莹晋 <b>Chee Ying Cheng</b>	总监	<a href="mailto:yichee@deloitte.com">yichee@deloitte.com</a>	(603) 7610 8827
郭川永 <b>Kok Soon Weng</b>	副总监	<a href="mailto:kekok@deloitte.com">kekok@deloitte.com</a>	(603) 7610 8157
颜杏蕊 <b>Gan Sin Reei</b>	高级经理	<a href="mailto:sregan@deloitte.com">sregan@deloitte.com</a>	(603) 7610 8166
刘晓劼 <b>Liu Xiao Jie</b>	经理	<a href="mailto:rogliu@deloitte.com">rogliu@deloitte.com</a>	(603) 7610 8970
郑顺民 <b>Tey Soon Meng</b>	副经理	<a href="mailto:sotey@deloitte.com">sotey@deloitte.com</a>	(603) 7610 8197
李岸营 <b>Li Anying</b>	高级助理	<a href="mailto:annanyli@deloitte.com">annanyli@deloitte.com</a>	(603) 7610 7843
戴蔚 <b>Vivian Dai</b>	高级助理	<a href="mailto:vdai@deloitte.com">vdai@deloitte.com</a>	(603) 7610 8646
黄尹羚 <b>Ooi Ying Ling</b>	助理	<a href="mailto:aooi@deloitte.com">aooi@deloitte.com</a>	(603) 7610 8241
张艾嘉 <b>Zhang Aijia</b>	助理	<a href="mailto:aijizhang@deloitte.com">aijizhang@deloitte.com</a>	(603) 7610 7872
马冰青 <b>Ma Bingqing</b>	助理	<a href="mailto:stelma@deloitte.com">stelma@deloitte.com</a>	(603) 7610 7787
陈宇骄 <b>Chen Yujiao</b>	助理	<a href="mailto:yuichen@deloitte.com">yuichen@deloitte.com</a>	(603) 7610 8271
胡程 <b>Hu Cheng</b>	助理	<a href="mailto:chhu@deloitte.com">chhu@deloitte.com</a>	(603) 7610 7614
王娟 <b>Wang Juan</b>	助理	<a href="mailto:juanwang@deloitte.com">juanwang@deloitte.com</a>	(603) 7610 8772

初俊啸 **Chu Junxiao**

助理

[junxchu@deloitte.com](mailto:junxchu@deloitte.com)

(603) 7610 8732

古晋 **Kuching**

蔡淑萍 **Chai Suk Phin**

高级经理

[spchai@deloitte.com](mailto:spchai@deloitte.com)

(608) 246 3311

黄俊程 **Kane Bong**

高级经理

[kbong@deloitte.com](mailto:kbong@deloitte.com)

(608) 246 3311

新山 **Johor\_Bahru**

吴玉凤 **Caslin Ng**

副总监

[caslinng@deloitte.com](mailto:caslinng@deloitte.com)

(607) 222 5988

陈莱玲 **Susie Tan**

高级经理

[susietan@deloitte.com](mailto:susietan@deloitte.com)

(607) 222 5988

怡保 **Ipoh**

梅皓然 **Terrence Mooi**

高级经理

[tmooi@deloitte.com](mailto:tmooi@deloitte.com)

(605) 254 0288

刘慧婷 **Loh Wai Teng**

高级经理

[wloh@deloitte.com](mailto:wloh@deloitte.com)

(605) 254 0288

槟城 **Penang**

黄兰卿 **Ng Lan Kheng**

执行董事

[lknq@deloitte.com](mailto:lknq@deloitte.com)

(604) 218 9888

钟艾玲 **Cheng Ai Ling**

副经理

[alcheng@deloitte.com](mailto:alcheng@deloitte.com)

(604) 218 9888

亚庇 **Kota\_Kinabalu**

张济妃 **Cheong Yit Hui**

经理

[yicheong@deloitte.com](mailto:yicheong@deloitte.com)

(608) 823 9601

吉隆坡 **Kuala Lumpur**



余永平



谭丽君



卓鸿培



徐莹晋



郭川永



颜杏蕊



刘晓劫



郑顺民



李岸营



戴蔚



黄尹羚



张艾嘉



马冰青



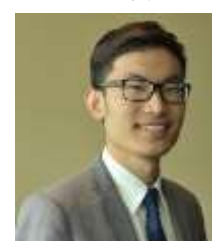
陈宇骄



胡程



王娟



初俊啸



古晋 **Kuching**



蔡淑萍



黄俊程

新山 **Johor Bahru**



吴玉凤



陈莱玲

怡保 **Ipoh**



梅皓然



刘慧婷

槟城 **Penang**



黄兰卿



钟艾玲

亚庇 **Kota Kinabalu**



张济妃



**Deloitte**

Level 16, Menara LGB  
1, Jalan Wan Kadir  
Taman Tun Dr. Ismail  
60000 Kuala Lumpur, Malaysia

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