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Tax Espresso
A snappy delight

April 2018

Greetings from Deloitte Malaysia Tax Services

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Takeaways:

1. [Tax Audit Framework 2018](#)
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Upcoming events:

1. [GST Academy - A series of practical and informative workshops](#)
2. [Deloitte International Tax Symposium 2018](#)

Important deadlines:

Task	2018 Due Date	
	30 April	1 May
1. 2019 tax estimates for companies with May year-end		√
2. 6 th month revision of tax estimates for companies with October year-end	√	
3. 9 th month revision of tax estimates for companies with July year-end	√	
4. Statutory filing of 2017 tax returns for companies with September year-end	√	
5. Due date for 2018 CbCR notification for companies with April year-end	√	

Tax Audit Framework 2018

The Inland Revenue Board of Malaysia (IRBM) has issued the [Tax Audit Framework 2018](#) (currently only Bahasa Malaysia version is available), which is effective from 1 April 2018. It supersedes the [Tax Audit Framework 2017](#) issued on 1 May 2017.

The key differences as compared to the Tax Audit Framework 2017 are:

1) 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*].

2) 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.

3) 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.

4) 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 [<i>as stated in 7.1.3</i>]	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. [<i>as stated in 7.5.6</i>] 	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. [<i>as stated in 7.5.10</i>] 	3 months (90 days)	4 months (120 days)

Aside from the above, it should be emphasised that the Director General of Inland Revenue (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 at a rate of 45% on the understated tax.

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Practice Note No. 1/2018

As highlighted in our “Special Alert” on 30 March 2018, the IRBM had recently issued the Practice Note No. 1/2018 on 16 March 2018 with a view to providing guidance on the withholding of tax on income from the provision of digital advertising by a non-resident. You may view our “[Special Alert](#)” here.

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Keysight Technologies Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (High Court)

Issue:

Whether the application for judicial review by the taxpayer was premature and should thereby be dismissed as the taxpayer should have proceeded with the appeal process statutorily provided by the ITA.

Decision:

The High Court dismissed the appeal by the taxpayer on the issue with the following grounds of judgement:

1. The contents of the letter dated 9 June 2017 were merely to state the findings by the DGIR and could not be regarded as imposing any liability on the taxpayer. The letter could not be enforced against the taxpayer as it was subject to the issuance of an assessment on additional tax by way of notice of additional assessment under the ITA. As such, the taxpayer should have waited for the notice of additional assessment before it filed the application for judicial review. In fact, the taxpayer was only aggrieved when the DGIR raised the additional taxes vide notice of additional assessment dated 13 June 2017.
2. The liability of the taxpayer would only be triggered upon the service of the notice of additional assessment pursuant to the ITA, and only then would the taxpayer be liable to pay the sum due and payable under the ITA. The application to review the letter issued by the DGIR on 9 June 2017 was premature and should be dismissed.
3. There were also no exceptional circumstances as enumerated in Jagdis Singh’s case that would merit the case to be reviewed by the High Court under Order 53 of the Rules of Court 2012, when there is already an appeal process under Section 99 of the ITA. In Jagdis Singh’s case (*Government of Malaysia & Anor v. Jagdis Singh [1987] 2 MLJ 185*), the Supreme Court

held that the exceptional circumstances are lack of jurisdiction, or a blatant failure by the DGIR to perform some statutory duty or there was a serious breach of natural justice.

The taxpayer's submission that the appeal to the Special Commissioners of Income Tax (SCIT) under Section 99 of the ITA was not a reasonable or legitimate route as it would be required to pay the high additional taxes which would cause irreparable damages to the taxpayer did not fall within the "exceptional circumstance" that merit a judicial review.

4. Since the taxpayer had filed an appeal to the SCIT under Section 99 of the ITA on 10 July 2017, it would be an abuse of the court process to maintain the taxpayer's application for judicial review.

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Magnum Holdings Sdn Bhd, Magnum Berhad v KPHDN (High Court)

Issues:

1. Whether the application for leave to commence judicial review by the taxpayer should be dismissed as the taxpayer should have proceeded with the appeal process statutorily provided under Section 99 of the ITA; and
2. Whether the DGIR can segregate the taxpayer's investment in portfolio of shares, i.e., segregate investment in TVSB from investment in MCSB on the premise that the investment in TVSB did not produce any income.

Decision:

The taxpayer's application on all issues was allowed with the following grounds of judgement:

1. The High Court held that where there is an appeal procedure available to the taxpayer, judicial review should not normally be considered unless in exceptional circumstances. The exceptional circumstances required to be established by the taxpayer were that there was: a) clear lack of jurisdiction by the DGIR; b) blatant failure on the part of the DGIR to perform statutory duty; or c) serious breach of natural justice.
2. In the present application for judicial review by the taxpayer, the DGIR had failed to apply the legal position in *Multi-Purpose Holdings Bhd v. KPHDN [2001] 8 CLJ 462* (involving the same parties). Where the facts and the law of the taxpayer's case fell squarely within the case of Multi-Purpose, the decision in the Multi-Purpose case will be binding on both the SCIT and the DGIR. Since the Multi-Purpose case was binding on the DGIR and the DGIR had refused to apply the decision in Multi-Purpose, then the DGIR had **exceeded his jurisdiction**.

In the Multi-Purpose case (supra), the issue was whether the sources of income mentioned in Section 4 of the ITA were indivisible and hence not open to further subdivision. The SCIT had decided that "*in respect of share income, all counters of shares relating to the case whether income-producing or non-income-producing are a single source of income under Section 4(c) of the ITA and that the same principle equally applied to interest income*". Thus the SCIT had allowed deductions in respect of dividend income and interest income. This decision by SCIT was affirmed by the High Court and DGIR did not appeal against the decision.

3. In the case of *KPHDN v Mudah.My Sdn Bhd [2017] 5 CLJ 283*, the Court of Appeal held that if the taxpayer can demonstrate illegality, then it would be wrong to insist on the exhaustion of an alternative remedy, i.e., an appeal to the SCIT. In addition, if the DGIR was seeking to revisit the legal position in the Multi-Purpose case, then the proper forum was the court, as both the SCIT and the DGIR are equally bound to apply the High Court's decision in Multi-Purpose. The High Court thereby allowed the application for leave by the taxpayer.

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We invite you to explore other tax-related information at:

<http://www2.deloitte.com/my/en/services/tax.html>

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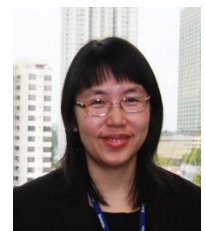
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