

Inland Revenue Board Issues Updated Tax Investigation Framework in 2018

IN THIS ARTICLE, SHARON LAU FOONG YEE HIGHLIGHTS THE KEY CHANGES IN THE TAX INVESTIGATION FRAMEWORK 2018.

Introduction

“**Tax investigation**” entails an examination of a taxpayer’s business books, records and documents as well as his personal documents to ensure that the correct amount of income is reported and tax is calculated as well as paid by the taxpayer. The revised Tax Investigation Framework (“**2018 Framework**”) issued by the **Malaysian Inland Revenue Board (“Revenue”)** took effect from 15 May 2018 and replaced the **Tax Investigation Framework** issued in 2013 (“**2013 Framework**”). Some of the more pertinent changes are highlighted below.

I. **Revenue officers can obtain assistance from any relevant/connected persons**

The 2018 Framework allows Revenue officers to record statements or documents from any person who is connected to the case under investigation to assist the tax investigation. The 2018 Framework generically states that a taxpayer can be charged in court for tax evasion.

II. **Safeguards when recording statements from relevant/connected persons**

An additional safeguard is that a qualified lawyer can be present during the recording of such statements.

III. **Taxpayer’s rights during tax investigations**

The 2013 Framework stipulated and allowed the taxpayer’s right to appoint a lawyer during the investigation process and/or the prosecution following a tax investigation. The 2018 Framework has surprisingly omitted any reference to this right.

The 2013 Framework allowed the taxpayer to appoint a tax agent or a group of qualified advisors “at any time” whereas the 2018 Framework only stipulates that the taxpayer can appoint a tax agent “for the purposes of investigations”.

Previously, the 2013 Framework allowed the taxpayer to apply for copies of investigation documents held by the Revenue while under the 2018 Framework the taxpayer is allowed to make copies of the taxpayer’s documents that are under investigation and within the Revenue’s control.

IV. **Completion of investigations**

After the tax investigation, the Revenue will issue a settlement or confirmation letter to the taxpayer. The taxpayer who accepts the settlement will sign an agreement or a letter of undertaking.

The 2018 Framework states that taxpayers who have been subjected to a tax investigation will be monitored by the Revenue. However, the 2018 Framework did not elaborate further on the specifics of the monitoring by the Revenue. It is not stated if this monitoring program

would be similar to the Monitoring Deliberate Tax Defaulter Program stipulated in the Tax Audit Framework issued in April 2018.

The 2018 Framework stipulates that even where the taxpayer disputes the tax investigation findings, the Revenue retains the discretion to issue tax assessments with penalties. Under the 2013 Framework, assessments are only raised after a successful prosecution in court.

V. Lump sum payment as general rule

Payment procedures are more elaborate under the 2018 Framework. The 2013 Framework merely stated that the fine imposed by court is to be satisfied in accordance with the court's decision.

The 2018 Framework stipulates the full payment of tax and penalties in one payment. The taxpayer may request to pay in instalments. If allowed, the first instalment must be at least 25% of the total taxes and penalties and remitted on the date of the agreement. The balance is payable in accordance with a Revenue approved instalment plan. Higher penalty rates would be imposed in cases with longer instalment payment periods.

In the event of any default in meeting the instalments, the usual 10% and 5% increase in accordance with section 103(7) and (8) of the Income Tax Act 1967 ("ITA 1967") will be applied.

VI. Taxpayer's rights of appeal

The 2013 Framework only stated that the taxpayer has a right to appeal to a higher court against a conviction in court. The 2018 Framework further stipulates that under the ITA 1967, the taxpayer can appeal against assessments raised by the Revenue following a tax investigation by submitting a Form Q to the Director of the relevant Investigation Branch and refers to section 99(1) of the ITA 1967 which gives a taxpayer the right to appeal to the Special Commissioners of Income Tax within 30 days after service of the notice/notices of assessment raised by the Revenue.

Conclusion

The changes under the 2018 Framework are primarily intended to reflect relevant legislative changes to date but reveals further emphasis towards a more robust tax investigation and enforcement process.

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