IRB TAX INVESTIGATION FRAMEWORK & MECHANISM

Investigation Department
Inland Revenue Board Malaysia
30 January 2018
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INTRODUCTION

INVESTIGATION ACTIVITIES 2017

OP PATUH
• non compliance by individual & corporate taxpayers

OP GEGAR
• real estate industry
• housing developer
• contractor

OP SAJI
• food industry

OP MEGA
• large scale tax enforcement activities

OP DAKWA
• prosecution notices
• summons

OP KUTIP
• arrears

OP NASIONAL 2017
OBJECTIVES OF TAX INVESTIGATION

- Deter tax evasion
- Collect the correct amount of tax
- Identify and prosecute tax evaders
- To be fair to compliant taxpayers
- To maintain confidence in the tax system and enhance voluntary compliance
WHO TO INVESTIGATE?
A case selected for investigation is not “a random arrow shot in the air” but one directly leveled at precise targets!
INVESTIGATION FOCUS

Civil Investigation

- Detection of tax evasion
- Recovery of tax loss and imposition of penalties

Criminal Investigation

- Focus on gathering admissible evidence towards prosecution and conviction of tax evader
INVESTIGATION STRUCTURE EFFECTIVE FROM 2016

- Criminal investigation is centrally handled by the Criminal Investigation Division under the Special Task Department

- Investigation branches will focus on civil investigations
INVESTIGATION SUPPORTING FUNCTIONS

- Intelligence & Profiling
- Forensic Laboratory Services
- Investigation Training Provider

Investigation (Civil & Criminal)
PERIOD OF INVESTIGATION

No limitation for the period covered in cases of fraud, wilful default and negligence
– subsection 91(3) ITA

In other circumstances, assessment / additional assessment has to be made within 5 years
– subsection 91(1) ITA

ITA – Income Tax Act 1967
INVESTIGATION PROCESS

- Preparation of case
- Inspection visit
- Examination of documents and records
- Finalisation of investigation
INSPECTION & SEARCH

- Identification of Officials (Sec 137 ITA)
- Power of Access to Buildings and Documents (Sec 80 ITA)
- Inspection Visit (Raid) & Search
- Seize Relevant Documents
- Interview/Record Statement

ITA – Income Tax Act 1967
METHODS OF PROOF IN INVESTIGATION

- Direct Method
- Indirect Method
METHODS OF PROOF IN INVESTIGATION

Direct Method (Specific Method)

- Involve examining and verification of accounting records to detect the evidence of tax fraud and quantify the amount of income and tax evaded.

- Use forensic accounting to detect tax evasion.
METHODS OF PROOF IN INVESTIGATION

Indirect Method (Net Worth Method)

• An indirect computational method of proving an individual’s actual income (legal/illegal)

Based on theory:
Total Income = Spending + Savings
CIVIL INVESTIGATION PROCESS

- Preparation of case
- Inspection visit
- Examination of documents and records
- Omission determined and investigation finalised

Civil Settlement with Agreement

DG’s Approval & Issuance of Notice of Assessment

Assessment to the Best of DG’s Judgment

Right to Appeal
CRIMINAL INVESTIGATION PROCESS

- Preparation of case
- Inspection visit
- Examination of documents, gather evidences and record statements
- Finalise investigation paper
- Submit to Prosecutor

Prosecute in court
RIGHTS AND RESPONSIBILITIES

IRBM

TAXPAYER

TAX AGENT
IRBM OFFICER

- Obey rules & codes of ethics
- Professional, courteous, trustworthy, honest & with integrity
- Inform the purpose of the investigation
- Inform taxpayer's rights & responsibilities
- Knowledgeable & fair in administering tax laws
- Respect the rights & responsibilities of taxpayer & tax agent

RIGHTS AND RESPONSIBILITIES
RIGHTS AND RESPONSIBILITIES

- **IRBM OFFICER**
  - Have any personal / financial interest
  - Disclose information to unauthorized person
  - Recommend taxpayer to appoint specific tax agent
  - Abuse his position / power (Sec 118 ITA)
Know the consequences of failing to submit information / documents requested
Ascertain the identity of IRBM officer
Appoint an authorized tax agent (Sec 153 ITA)
Bring interpreter during recording of statement

Make copies of documents
Allow access to documents
Allow IRBM officers to take possession of document
Furnish a translation

Provide all information (orally/written)
Cooperate with IRBM officer
TAXPAYER

- Appoint unapproved tax agent
- Give any gift and transact any business
- Make any form of payment which can be construed as a bribe
- Obstruct / hinder IRBM officer in the exercise of his functions (Sec 116 ITA)
Professional & fully conversant with tax laws & practices

Act with integrity, honest, trustworthy & transparent

Give the best advice

Give accurate feedback

Safeguard confidentiality

Notify IRBM immediately upon cessation as tax agent to taxpayer
RIGHTS AND RESPONSIBILITIES

TAX AGENT

- Use information for personal advantage
- Delay the investigation process
- Give any gift or payment which may be construed as a bribe
CONFIDENTIALITY OF INFORMATION

All information obtained from the taxpayer during investigation and use the information ONLY for the purposes of Income Tax Act or another tax law.
## Failure to Furnish Return

### Section: 112 ITA

### Offence:
Failure to furnish return or give notice of chargeability

### Punishment/Penalties

#### Prosecution
- **Subsection 112(1)**
  - Fine RM200 - RM20,000 or
  - Imprisonment ≤ 6 months
  - Or both
- **Subsection 112(1A)**
  - Fine RM1,000 – RM20,000 or
  - Imprisonment ≤ 6 months
  - Or both and
  - Special penalty – treble the amount of tax determined (300%)

#### No Prosecution
- Penalty - treble the amount of tax which, before any set-off, repayment or relief under the act, payable for that year (300%)
### Incorrect Returns

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<thead>
<tr>
<th>SECTION</th>
<th>OFFENCE</th>
<th>PUNISHMENT/PENALTIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>113</td>
<td>Incorrect returns</td>
<td><strong>Prosecution</strong>&lt;br&gt;• Fine RM1,000 – RM10,000 and&lt;br&gt;• Special penalty – double the amount of tax undercharged (200%)</td>
</tr>
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<td><strong>No Prosecution</strong>&lt;br&gt;• Penalty equal to the amount of tax undercharged (100%)</td>
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### WILFUL EVASION

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<th>SECTION</th>
<th>OFFENCE</th>
<th>PUNISHMENT/PENALTIES</th>
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<tbody>
<tr>
<td>114 ITA</td>
<td>Wilful evasion</td>
<td><img src="#" alt="Prosecution" /></td>
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**Prosecution**
- Fine RM1,000 – RM20,000 or
- Imprisonment ≤ 3 years
- Or both, and
- Special penalty – treble the amount of tax undercharged (300%)
PAYMENT PROCEDURE

**CIVIL SETTLEMENT**

- Taxpayer is encouraged to make full payment of taxes and penalties assessed in one single payment
- Installment payment plan - 25% of the total tax liability is required as initial payment
- Failure to settle tax liability will be subjected to being increased according to subsections 103(7) and 103(8) ITA

**PROSECUTION ACTION**

- On conviction the accused is required to pay a fine and/or special penalty according to court’s decision
- Tax liability must be paid to IRBM
Sections 99 to 102 of the ITA lay the ground rules for appeals relating to assessment raised by IRBM
ITA & AMLATFPUAA

Offences under Sections 112, 113 & 114 ITA

Gazetted as **serious offences** under Schedule 2 of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA)

Effective: 7 October 2010
## OFFENCE OF MONEY LAUNDERING

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| 4 AMLATFPUAA 2001 | Offence of money laundering | **Prosecution**  
  - Imprisonment ≤ 15 years; and  
  - Fine ≥ 5 times the sum or value of the proceeds of an unlawful activity or RM5 million, whichever is higher |
PROVISIONS UNDER AMLATFPUAA

- Section 44
- Section 45 & 46 – Movable property
- Section 50 - Moveable property in financial institution
- Section 51 - Immovable property
- Section 52 - Business
- Section 55 – Criminal proceeding
- Section 56 – Civil forfeiture proceeding
Tax Investigation Framework

Available in the IRBM’s official website:

http://www.hasil.gov.my
In tax investigation the possibilities are limitless, the only limitation, is the imagination of the investigator.
THANK YOU

www.hasil.gov.my

1-800-88-5436