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Tax audit and investigation

Penalties imposed under voluntary disclosure programme

PERIOD	PENALTY RATE (%)
Nov 3, 2018 to March 31, 2019	10
April 1, 2019 to June 30, 2019	15
After June 30, 2019 - Failure to submit Income tax return form	Up to 300
After June 30, 2019 - Failure to report the correct income	Up to 100



Generally, IRB will accept the volunteer disclosure from taxpayers in good faith without any further review



by Raymond Liew

A tax audit and/or investigation is defined as an examination of a taxpayer's business records and financial affairs to ascertain that the right amount of income is declared and the right amount of tax is calculated and paid in accordance with the laws and regulations.

The tax investigation will only be carried out in cases where it is suspected, based on precise and definite evidence, that the taxpayer is deliberately trying to avoid paying tax and/or has committed an act of wilful evasion.

There are two categories of investigation – civil and criminal. The probes will be carried out by Inland Revenue Board (IRB) officers and include a surprise visit to the business premises of the taxpayer, personal agents/representatives, and the premises of various third parties, including their homes, simultaneously.

Civil investigation involves detection of tax evasion and the primary concern is to recover any tax loss and impose heavy penalties.

With criminal investigation, the focus is on gathering admissible evidence with a view to prosecution and conviction under the Income Tax Act, Penal Code (Act 574), Criminal Procedure Code (Act 593), Evidence Act 1950 (Act 56) and other relevant Acts. Where there

is fraud, wilful default and negligence, the statutory limitation is not applicable.

Cases selected will be based on the provisions and regulations for investigation purposes are many and varied. Some methods are selection through risk analysis, and review of income tax returns. Believe it or not, much of the information is derived from third-party sources such as ex-wife, girlfriend and also from social media publicity. So, beware!

Written settlement

The investigation officer is required to review and examine records and documents of the taxpayer who is expected to fully cooperate with the IRB officer(s). There will be an interview process and certainly, a taxpayer's

agent is recommended to be present.

Upon finalisation of a civil tax investigation case, a written settlement agreement will be entered into between the Director-general of Inland Revenue (DGIR) and the taxpayer.

If no findings are made, the IRB shall issue a confirmation letter to the taxpayer that no findings have been made during the investigation.

The DGIR has the power to compound any offences and abolish or remit penalties imposed under the Income Tax Act 1967 with the exception of penalties imposed on conviction. The taxpayer can appeal against an assessment issued under the tax investigation. The appeal must be made to Special Commissioners of Income Tax within 30 days after the notice is served. After the Special Commissioners level, further appeal can be made to the High Court, followed by the Court of Appeal.

If a composite assessment is issued, no appeal is allowed.

For civil tax investigation, it will be deemed to have been settled upon approval by the DGIR and a composite assessment under Section 96A of the Income Tax Act is issued. Criminal investigation will be deemed settled when judgment has been duly granted by the court.

Taxpayer's rights are rather extensive, such as right to the identification of officer(s) and appoint his tax agent to be present during the tax audit. However, the taxpayer must be made aware not to give any form of gifts/payments to the investigation officer.

Special voluntary disclosure programme

On Nov 2, 2018, a Special Voluntary Disclosure Programme (SVDP) was announced for the period Nov 3, 2018 to June 30, 2019.

Under this programme, reduced penalty rates on additional tax payable will be imposed on voluntary disclosure of unreported income.

As reported in the media, the Sabah IRB has collected over RM10.1 mil from 156 taxpayers under the SVDP to-date.

The programme is not applicable to cases once a criminal investigation has commenced or

prosecution has proceeded as a result of a criminal activity which has been instituted in the courts.

Generally, as per the guidelines, IRB will accept the volunteer disclosure in good faith without any further review.

Whatever the situation, be it a normal tax audit and/or investigation, the provision of this amnesty period is a commitment by the government in recouping the outflow of tax money and has given an avenue for tax evaders with their ill-gotten money and/or undisclosed income to voluntarily disclose these profits with a minimum penalty of only 10% up to March 31. The rate increases after this date.

It is to the taxpayer's advantage to voluntarily disclose these undisclosed incomes to enjoy not only a lower tax penalty but also get the privilege where the tax payment is on a "no question asked" basis. What is most important is that the additional disclosure and payment of these tax payments will avoid a tax audit in the year of assessment itself unless, of course, fraud can be proven.

As a tax practitioner with over 40 years of experience and taking into account the amnesty experience in Indonesia, where such a tax amnesty programme was introduced back on July 18, 2016, it is advisable for errant taxpayers to come forward to fairly disclose their undisclosed income before March 31, instead of facing the onslaught of the tax authority after this grace period with tougher tax penalties which can be as high as 300% and not forgetting the restriction from travelling overseas.

To me, it is prudent for these errant taxpayers to come forward as many can be seen seeking publicity and trying to impress their friends in social media on their "high-class" lifestyle, a lavishness that does not commensurate with their income disclosure.

I would emphasise that the biggest fear of any taxpayer is the shift from an income-based to expenditure-based source of taxation regime, as such a move will certainly capture any expenditure incurred from the shadow economy. **FocusM**

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What a tax audit entails

A tax audit is a random check by the Inland Revenue Board (IRB) under the Self-Assessment System.

There are two types of tax audit, namely desk audit and field audit. A desk audit is conducted in the IRB office while a field audit is conducted in the business premises of a taxpayer.

A tax audit can cover a period of one year and up to five years. Cases are selected through the computerised system based on risk analysis criteria or on information from various other sources, including third-party informants.

A taxpayer selected for an audit shall be notified by the IRB officer via an audit notice letter. The period from the date of the audit notification to the audit visit shall be within 14 days. However, the IRB officer may fix a shorter notification period. Nonetheless, a taxpayer may request that the audit visit be postponed because of inevitable circumstances.

In addition to the intended date of the visit, the audit notice letter will indicate the records that should be made available for the tax audit, including the years of evaluation to be audited and the names of the audit officer(s) who will carry out the tax audit, as well as the expected timeframe for the checks.

A tax audit visit applies exclusively to field audit activity. The audit usually begins with an interview to allow tax audit official(s) to meet the targeted taxpayer, obtain an overview of his business activities and to discuss the tax audit per se.

The taxpayer will be asked to explain his busi-

ness activities, accounting procedures and registration. The person(s) in charge of handling the business records of the taxpayer will also be interviewed during the tax audit process. In most cases, tax agents are allowed to be present during the field tax audit subject to the discretion of the IRB.

During a tax audit, the audit officer(s) must be allowed to examine all business records and physically inspect the inventory to verify the claims made in the accounts. Records relating to evaluation years that are already time-limited will not be examined unless fraud is proven.

The tax audit officer shall prepare a tax audit finding report for the approval of the branch audit manager after the audit work has been completed. Under certain circumstances, the taxpayer must be present to discuss the proposed tax adjustments to the officer(s) at the IRB office. The tax audit officer(s) shall discuss the proposed adjustments with the taxpayer together with at least one senior tax audit officer.

The taxpayer shall be informed of the results of the audit covering the issues raised, reasons and justifications for raising tax audit issues; and the amount of tax adjustments proposed (if any) and the years involved in the assessment.

With effect from Jan 1, 2014, the time bar for tax audits has been reduced from six years to five years from the date of assessment. The time bar is not applicable for cases involving fraud. The mandatory requirement to keep records still remains at seven years.