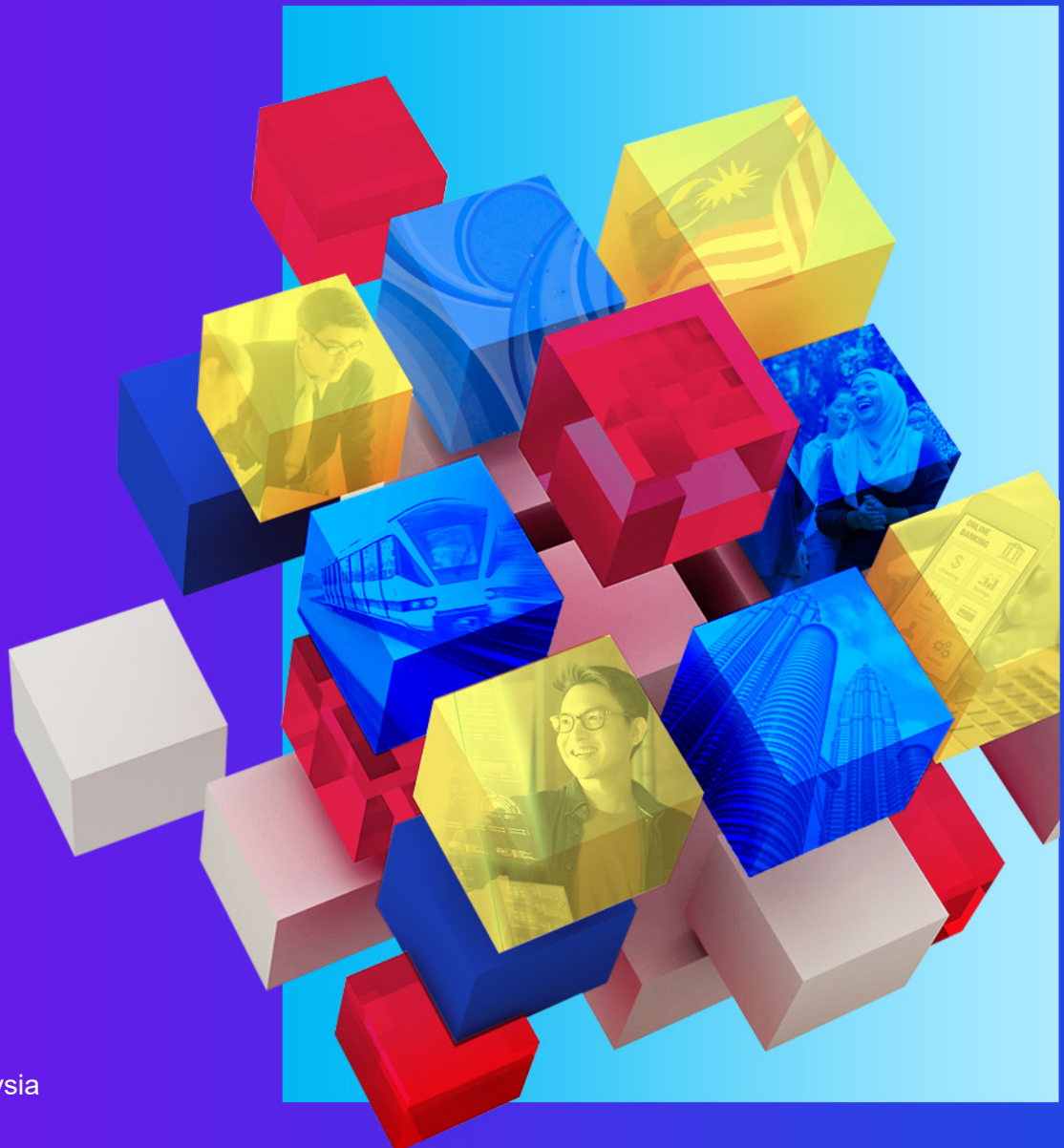




Fighting Corruption Through Tax Investigation?

February 2023 update



February 2023

KPMG in Malaysia

Overview and Commentary



Soh Lian Seng
Executive Director
Head of Tax and Tax
Dispute Resolution

Key Message

“With the recent release of the updated Tax Investigation Framework, it seems that the IRB is taking all tax investigation towards criminal prosecution. This may be a good avenue for the IRB to detect corruption through tax evasion activities which is in line with the GOM’s vision to implement institutional reforms and good governance.”



In the 2023 Budget Speech themed *Membangun Malaysia Madani*, Dato’ Seri Anwar Ibrahim announced that Malaysia’s Corruption Perceptions Index (“CPI”) has fallen drastically to rank 61 as compared to rank 29 in 1998.

One of the main factors attributable to the drop in CPI as identified by Transparency International Malaysia is the failure in curbing corruption activities.

Enforcement agencies including the IRB, Malaysia Anti-Corruption Commission as well as the Royal Malaysia Police is actively investigating corruption misconducts in an effort to fight

corruption. This includes investigating the individuals as identified in the Pandora Papers as well as those with extraordinary wealth.

With the recent release of the updated Tax Investigation Framework, it seems that the IRB is taking all tax investigation towards criminal prosecution. This may be a good avenue for the IRB to detect corruption through tax evasion activities which is in line with the GOM’s vision to implement institutional reforms and good governance.

So, what can taxpayers expect if they are being investigated by the IRB now under the recent updated criminal-focused Tax Investigation Framework?

Examination of Documents

The IRB has the right to examine books, documents, objects, materials and things relating to a taxpayer’s business and financial matter, even including personal documents. The IRB may also obtain evidence or documents from any related person, not being limited to the taxpayer only.

Right to Summon

The IRB has the right to summon the taxpayers or any related persons for the purpose of obtaining statement which can be done in the taxpayers' office or residence, tax agent or third parties' premises or IRB's office. Nevertheless, the taxpayers, tax agents, representatives or the witnesses will be allowed to take their own notes while obtaining statement.

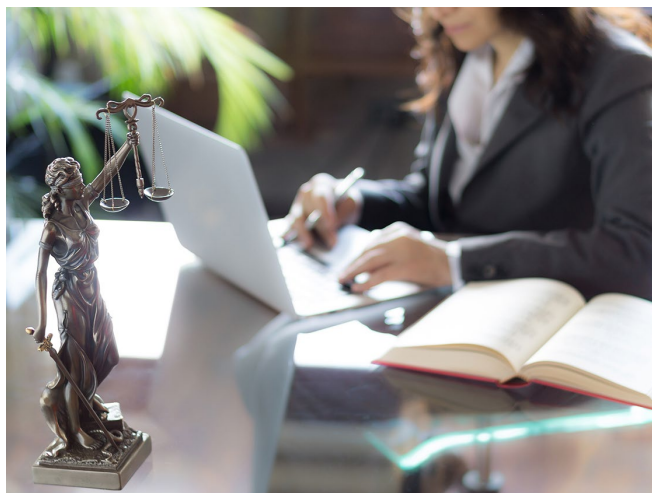
Prosecution in Court

Taxpayers can be prosecuted in court if there is a proof that a fraudulent offence has occurred in accordance with the provisions of the relevant act. Arrest warrants may also be issued should the taxpayers fail to present at the court proceeding.

If the taxpayers are not satisfied with the criminal offence convicted, the taxpayers would need to appeal to the higher courts.

Punishment

Taxpayers who are guilty of a willful evasion shall, on conviction be fined an amount not less than One Thousand Ringgit Malaysia (RM1,000) and not more than Twenty Thousand Ringgit Malaysia (RM20,000) or to imprisonment for a term not exceeding three (3) years or to both and shall pay a special penalty of treble (3 times) the amount of tax which has been undercharged.



Extraordinary Wealth

The IRB may compel ultra-high-net-worth individuals, particularly the owners or directors of a company being investigated to submit a capital statement to detect any under-reported taxable income. In simple terms, a capital statement lays out the individuals' total assets as well as total liabilities to arrive at their net worth. Any increase in the individuals net worth should be supported by the individual's taxable income, non-taxable income or personal spending.

Getting Ready

Taxpayers who find themselves under the IRB's microscope may need to consider the following in order to take control and manage the tax investigation and resolution process towards an amicable end:-

- i) What protocols do you have in place to actively manage and address the tax risk?
- ii) Have you proactively and thoroughly documented your uncertain tax positions and your tax transactions?
- iii) Are your analyses of your tax positions well stated, complete and supported by relevant documentation?
- iv) Have you formulated a broad-ranging strategy for engaging with the tax authorities in the event of tax investigation?

Nevertheless, it is still paramount that taxpayers are aware of the rights of each party involved to ensure there are no abuse of position or powers and the tax investigation process is conducted in a professional and courteous manner. Taxpayers are advised to appoint approved tax agents as their representative to make certain the tax agents are professional and fully conversant with tax laws and practices which will act in their best interest.

Authors



Ng Wei Wei
Executive Director
Tax Dispute Resolution
wwng@kpmg.com.my



Wong Sue Ann
Tax Manager
Tax Dispute Resolution
sueannwong@kpmg.com.my



Bernice Lim
Senior Tax Consultant
Tax Dispute Resolution
shoukhuanglim@kpmg.com.my



Soh Lian Seng
Executive Director
Head of Tax and Tax Dispute
Resolution
lsoh@kpmg.com.my



Sazali Sazlinda
Executive Director
Tax Dispute Resolution
sazlindasazali@kpmg.com.my

Contact Us

Petaling Jaya Office

Soh Lian Seng

Executive Director –
Head of Tax and Head of Tax Dispute Resolution
lsoh@kpmg.com.my
+603 7721 7019

Tai Lai Kok

Executive Director – Head of Corporate Tax
ltai1@kpmg.com.my
+603 7721 7020

Bob Kee

Executive Director – Head of Transfer Pricing
bkee@kpmg.com.my
+603 7721 7029

Long Yen Ping

Executive Director –
Head of Global Mobility Services
yenpinglong@kpmg.com.my
+603 7721 7018

Ng Sue Lynn

Executive Director – Head of Indirect Tax
suelynng@kpmg.com.my
+603 7721 7271

Outstation Offices

Penang Office

Evelyn Lee

Executive Director – Penang Tax
evewflee@kpmg.com.my
+604 375 1800 (ext. 299)

Kota Kinabalu Office

Titus Tseu

Executive Director – Kota Kinabalu Tax
titustseu@kpmg.com.my
+6088 363 020 (ext. 2822)

Ipoh Office

Crystal Chuah Yoke Chin

Associate Director – Ipoh Tax
ycchuah@kpmg.com.my
+605 253 1188 (ext. 320)

Kuching & Miri Offices

Regina Lau

Executive Director – Kuching Tax
reglau@kpmg.com.my
+6082 268 308 (ext. 2188)

Johor Office

Ng Fie Lih

Executive Director – Johor Tax
flng@kpmg.com.my
+607 266 2213 (ext. 2514)

KPMG Offices

Petaling Jaya

Level 10, KPMG Tower,
8, First Avenue, Bandar Utama,
47800 Petaling Jaya, Selangor
Tel: +603 7721 3388
Fax: +603 7721 3399
Email: info@kpmg.com.my

Penang

Level 18, Hunza Tower,
163E, Jalan Kelawei,
10250 Penang
Tel: +604 375 1800
Fax: +604 238 2299
Email: info@kpmg.com.my

Kuching

Level 2, Lee Onn Building,
Jalan Lapangan Terbang,
93250 Kuching, Sarawak
Tel: +6082 268 308
Fax: +6082 530 669
Email: info@kpmg.com.my

Miri

1st Floor, Lot 2045,
Jalan MS 1/2,
Marina Square, Marina Parkcity,
98000 Miri, Sarawak
Tel: +6085 321 912
Fax: +6085 321 962
Email: info@kpmg.com.my

Kota Kinabalu

Lot 3A.01 Level 3A,
Plaza Shell,
29, Jalan Tunku Abdul Rahman,
88000 Kota Kinabalu, Sabah
Tel: +6088 363 020
Fax: +6088 363 022
Email: info@kpmg.com.my

Johor

Level 3, CIMB Leadership Academy,
No. 3, Jalan Medini Utara 1,
Medini Iskandar,
79200 Iskandar Puteri, Johor
Tel: +607 266 2213
Fax: +607 266 2214
Email: info@kpmg.com.my

Ipoh

Level 17, Ipoh Tower,
Jalan Dato' Seri Ahmad Said,
30450 Ipoh, Perak
Tel: +605 253 1188
Fax: +605 255 8818
Email: info@kpmg.com.my

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