

What's next on Tax Audits and Investigations after the SVDP?

By Wong Man Yee, Executive Director of Corporate Tax Compliance

How can the IRBM achieve this new target in view that the Government is not planning to continue with the SVDP and that various industry sectors have been affected by the Covid-19 outbreak?

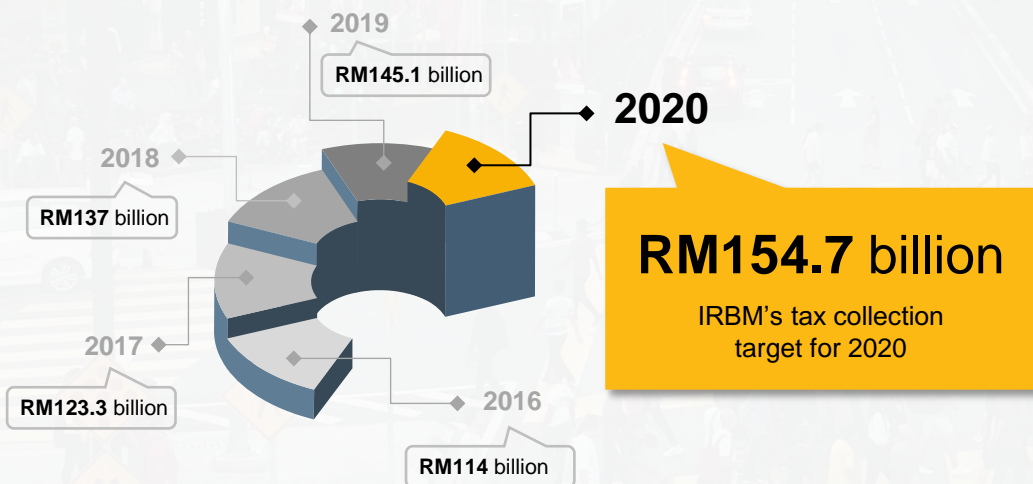


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The IRBM collected RM145.1 billion from direct taxes in 2019 which was the highest tax collection recorded by the IRBM to-date. It was RM8.08 billion or 5.89% more than the tax collection in the previous year. This was aided by the Special Voluntary Disclosure Program (SVDP) whereby a total of 286,428 Malaysians made voluntary tax declarations that contributed total tax collections and penalties of RM7.88 billion to the IRBM.

As announced recently, the tax collection target for 2020 is set at a record RM154.7 billion. The question is, how can the IRBM achieve this new target in view that the Government is not planning to continue with the SVDP and that various industry sectors have been affected by the Covid-19 outbreak?



Under the 2020 Budget, the Government is seen to be rationalising tax incentives, seeking to reduce tax leakages and improve on compliance via more effective auditing. Amongst others, below are the notable initiatives taken by the IRBM in the past few months:

- The IRBM announced that it has increased its staff allocation for enforcement activities from 60% to 80% of its staff strength;
- The IRBM issued a set of new Operational Guidelines - GPHDN 5/2019 which took effect from 1 October 2019 that set out the revised penalty rates for late filing of tax returns and failure to file tax returns. Under the New Guidelines, a higher penalty rate of 45% is imposed for income tax returns filed after 24 months from the statutory filing deadline;
- The IRBM uploaded the Taxpayer Roadmap in its website on 24 January 2020 to describe the flow of audit, appeal, collection and litigation procedures; and
- The IRBM issued the following revised tax audit and investigation frameworks recently with the aim to inform taxpayers about the IRBM's procedures in tax audits and investigations:

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IRB's revised framework

Tax Audit Framework 2019

15 December 2019



Petroleum Audit Framework 2019

15 December 2019



Tax Audit Framework for Transfer Pricing 2019

15 December 2019




Tax Investigation Framework 2020

1 January 2020



From the above, one can see that the IRBM has exerted additional efforts to tighten its tax administration with the aim of achieving higher tax compliance by taxpayers. With these initiatives, will the number of tax audit and investigation cases be increased in 2020?





**What is new
in the revised
Tax Audit
Framework
2019?**

What is new in the revised Tax Audit Framework 2019?

The new Tax Audit Framework 2019 is broadly similar to the earlier tax audit framework issued on 1 April 2018. Amongst others, the three (3) salient points to take note under the new Tax Audit Framework are:

- **Taxpayers may not be given a chance to respond to IRBM's audit findings prior to the issuance of the notice of assessment by the IRBM**

With the introduction of the new Tax Audit Framework, taxpayers may not be given a chance to explain, respond, justify or provide supporting document to the IRBM on their audit findings. The only avenue for taxpayers to appeal will be through submission of the Form Q following the receipt of the notice of assessment from the IRBM. Also, one has to bear in mind that the tax payable shown in the notice of assessment is due and payable by taxpayers within 30 days from the date of the notice of assessment, whether or not the taxpayers are appealing against the notice of assessment.

- **Tax clearance letter will be issued upon finalization of the tax audit**

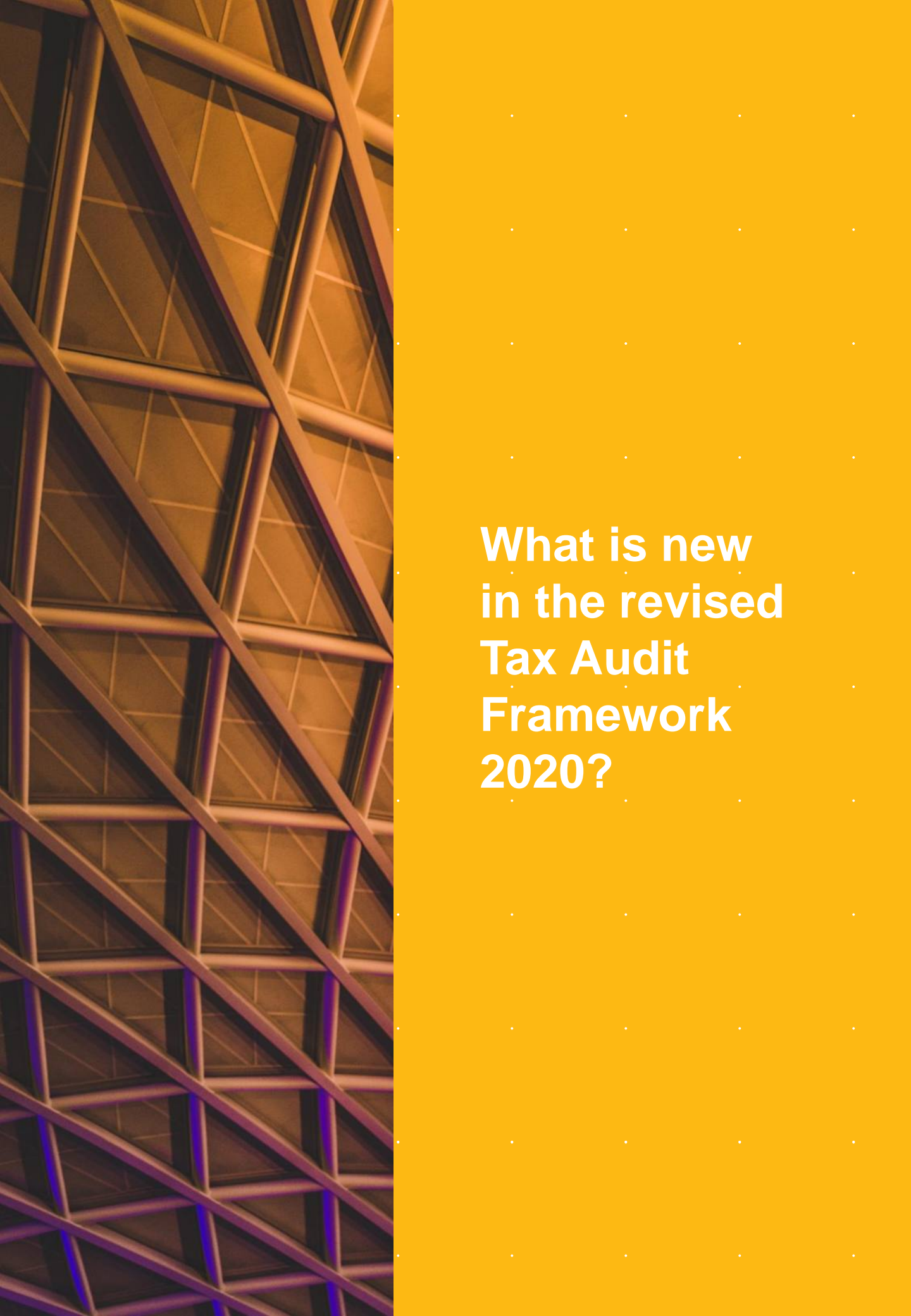
If there is no proposed tax audit adjustment after the tax audit, the IRBM will issue a tax clearance letter for the relevant years of assessment.

- **Introduction of 55% penalty for repeated offences**

The term "repeated offence" is introduced in the new Tax Audit Framework whereby taxpayers will be subject to a penalty of 55% for any repeated offence. A repeated offence refers to an offence committed by taxpayers who have been audited or investigated previously and for whom an assessment, additional assessment or composite assessment has been raised together with penalties under Section 113(2) of the ITA. The first offence refers to any notice of assessment issued from 1 January 2020 onwards.



55%



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What is new in the revised Tax Audit Framework 2020?

The new Tax Investigation Framework 2020 is also broadly similar to the earlier tax investigation framework issued on 15 May 2018. The major points in the revised Tax Investigation Framework 2020, amongst others, are:

- **IRBM will recommence surprise visit**

Under the revised Tax Investigation Framework 2020, inspection visits could be carried out by the IRBM without prior notice being given to the taxpayer. With this change, taxpayers can expect surprise visits from the IRBM's investigation teams in the near future. Notwithstanding the above, it is understood that the new approach is that IRBM will be "softer and friendlier" with no raids being carried out at taxpayers' homes in the middle of the night or by officers wearing masks or using M16 rifles.

- **Penalty for tax investigation cases could be as high as 75%, depending on the period of settlement and whether it is a repeated offence**



We noted that the IRBM has indicated in various public forums and seminars that the penalty for tax investigation cases will be increased depending on the period of settlement as shown below:

Tax Investigation Case	
≤ 6 months	45% / 60%
> 6 - 12 months	50% / 65%
> 12 - 18 months	55% / 70%
≥ 18 months	60% / 75%

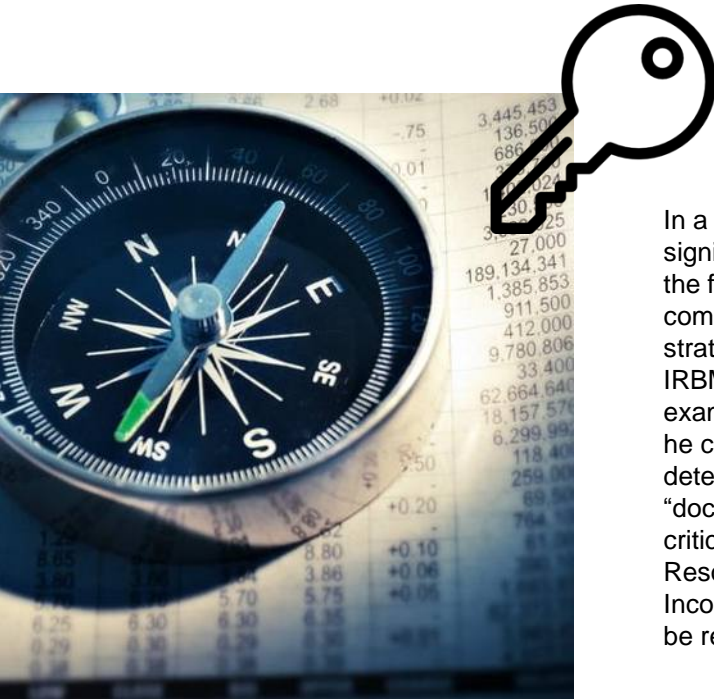
Period of settlement

Investigation

Repetitive

Additionally, we understand that the IRBM has begun applying the above penalty rates in current tax investigation cases. This is inspite that these penalty rates are not stated in the new Tax Investigation Framework which only provides for general penalty rates, i.e. on conviction, the fine is not less than RM1,000 and not more than RM10,000 plus a special penalty of double (200%) the amount of tax which has been under-charged. If there is no prosecution, the penalty will be equal to the amount of tax (100%) which has been under-charged.

Key Takeaways



In a nutshell, the IRBM has undertaken significantly intensified activities for tax recovery in the form of tax audits or tax investigations of companies or individuals. To mitigate this, proper strategies should be employed in responding to the IRBM during tax audits and investigations. As examples, how the taxpayer responds and whether he can provide the necessary documents can determine the outcome of the cases. The “documentary evidence” available may also be critical when an appeal is made to the Dispute Resolution Panel or the Special Commissioners of Income Tax if the tax audit or investigation cannot be resolved at the IRBM level.



The adage, prevention is always better than cure, is true for tax audits and investigations. Here are some recommended ways to manage your tax concerns:

1. Conducting periodic “health checks” is critical to assessing your level of compliance and identifying potential tax issues for remedial action

3. Obtain technical confirmation from tax professionals or IRBM on uncertain tax positions

Implement appropriate tax internal controls on the identified gaps

Ensure proper documentation is readily available to substantiate the tax positions adopted



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