



# Tax Chat

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Audit / Tax / Advisory

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# **Withholding Tax on Special Classes of Income**

## PR10/2019

### Withholding Tax on Special Classes of Income

#### Previous Position

The previous position on withholding tax of special classes of income under Section 4A of the Income Tax Act 1967 (ITA) was laid out in PR11/2018 which was published on 5 December 2018.

#### New Position

The Inland Revenue Board of Malaysia (IRBM) issued [PR10/2019 – Withholding Tax on Special Classes of Income](#) on 10 December 2019 to replace PR 11/2018.

#### Details of Changes

The objective of this PR is to explain:

- (a) special classes of income that are chargeable to tax under Section 4A of the ITA;
- (b) deduction of tax from special classes of income; and
- (c) consequences of not deducting and remitting the tax from special classes of income.



## PR10/2019

### Withholding Tax on Special Classes of Income

#### Details of Changes (cont'd)

The new PR is essentially similar to the earlier PR. The following updates were made to incorporate changes to the law since the earlier PR was issued:

#### Amendment to Section 4A(ii) of the ITA

Pursuant to the Finance Act 2018, the new PR has removed the word “technical” from Section 4A(ii) of the ITA. This amendment means that withholding tax is applicable to any advice, assistance and services rendered by a non-resident person, be it technical or non-technical in nature.

#### Withholding tax borne by payer

The earlier PR mentioned that the practice of re-grossing of payments to calculate the withholding tax amount would no longer be required effective from 5 December 2018. The new PR clarifies that the effective date i.e. 5 December 2018 refers to the date the payment has to be made by a payer to a non-resident. That date of payment must be in accordance with a contractual agreement and agreed between the parties to the agreement.

## PR10/2019

### Withholding Tax on Special Classes of Income

#### Details of Changes (cont'd)

##### Consequences of not deducting and remitting tax

The new PR also provides an explanation on the consequences to the taxpayer for not deducting and remitting tax within the stipulated deadline. Under such situation, the taxpayer will not be allowed a deduction on the expense pursuant to paragraph 39(1)(j) of the ITA even if the taxpayer paid or remitted the withholding tax to the IRBM before the due date of submission of the income tax return. This implies that the IRBM is reiterating the position that taxpayers should revise the relevant tax returns by virtue of Section 131A(1)(c) of the ITA once the payments are paid or credited to the non-resident and the withholding tax provision is complied with.



##### Late payment penalty paid to a non-resident

The new PR now clarifies that any late payment penalty paid to a non-resident will be considered as income under Section 4(f) of the ITA and is subject to withholding tax under Section 109F of the ITA. This refers to situations where there is no Double Taxation Agreement (DTA) between Malaysia and the country of residence of the non-resident or where there is no mention in the relevant DTA of whether the penalty is interest.

# PR11/2019 – Benefits In Kind

# PR11/2019 - Benefits In Kind

## Previous Position

The IRB had issued PR 3/2013 concerning taxability of benefits in kind which was published on 15 March 2013.

## New Position

The IRBM issued [PR11/2019 – Benefits In Kind](#) on 12 December 2019 to replace PR3/2013.

## Details of Changes

The objective of this PR is to explain:

- a) The tax treatment in relation to benefits in kind received by an employee from his employer for exercising an employment, and
- b) The method of ascertaining the value of the benefits in kind to be taken as gross income of an employee.





## PR11/2019 - Benefits In Kind



### Details of Changes (cont'd)

There are no significant differences in the new PR as compared to the earlier PR except for the incorporation of the following key changes:

- Inclusion of an example in the PR to illustrate that the benefits in kind that are taxable in the hands of an employee would include the output tax borne by the employer which is pursuant to the provisions of Section 13(1A) of the ITA; and
- The list of traditional medicine which qualifies for exemption has been expanded to include homeopathy, chiropractic, osteopathy and Islamic medical practice treatments.

*“Benefits in Kind” are benefits not convertible into money, even though they have monetary value. The phrase not convertible into money means that when the benefit is provided to the employee, that benefit cannot be sold, assigned or exchanged for cash either because of the employment contract or due to the nature of the benefit itself.*

# **PR12/2019 – Tax Treatment of Foreign Exchange Gains and Losses**

# PR12/2019 - Tax Treatment of Foreign Exchange Gains and Losses

## Previous Position

There was no PR to explain on the tax treatment of foreign exchange gains and losses.

## New Position

The IRBM issued a new [PR12/2019 – Tax Treatment of Foreign Exchange Gains and Losses](#) on 13 December 2019.

## Details of Changes

The objective of this PR is to explain the tax treatment in respect of foreign exchange gains and losses, which arise from cross border transactions denominated in foreign currency

- for businesses.

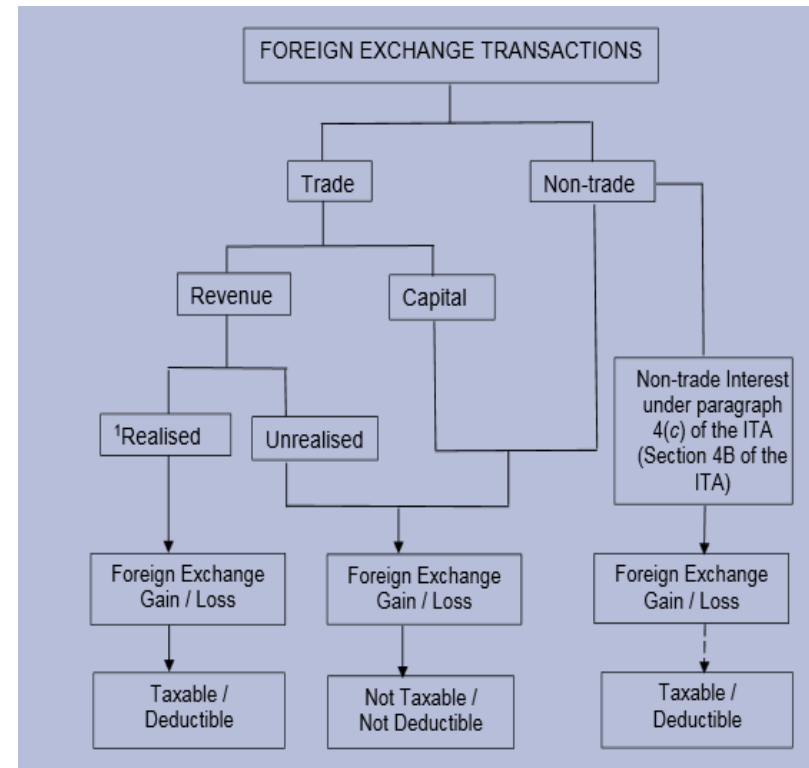


# PR12/2019 - Tax Treatment of Foreign Exchange Gains and Losses

## Details of Changes (cont'd)

The main issues highlighted in this PR are:

- Realised means settlement of payment when the equivalent amount in RM is determined.
- Where an amount is settled in foreign currency via a foreign currency account, no physical conversion of the currency is necessary before the amount is treated as realised.
- When an entity translates its financial statements from functional currency into presentation currency, any foreign exchange differences arising due to the translation are not taxable nor deductible for the purpose of tax.



**Summary of the tax treatment of foreign exchange gains and losses**

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

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

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.

**RM154.7**  
**billion**

**IRBM's tax collection target for 2020**

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?

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

Measures announced in the 2020 Budget included the rationalising of tax incentives, reduction of tax leakages and improvement of tax compliance via more effective auditing techniques. 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;

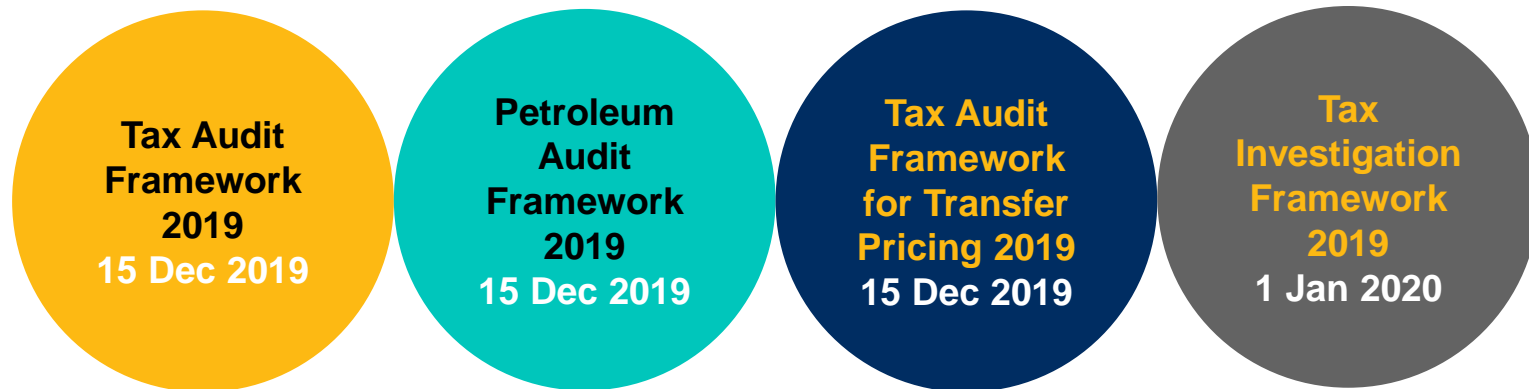
The IRBM issued a set of new Operational Guidelines - GPHDN 5/2019 which took effect from 1 October 2019 that set out the revised penalty rates for late filing of tax returns and failure to file tax returns. Under the New Guidelines, a higher penalty rate of 45% is imposed for income tax returns filed 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 revised tax audit and investigation frameworks recently with the aim to inform taxpayers about the IRBM's procedures in tax audits and investigations.

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

IRBM's Revised Framework and Effective Dates:



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?

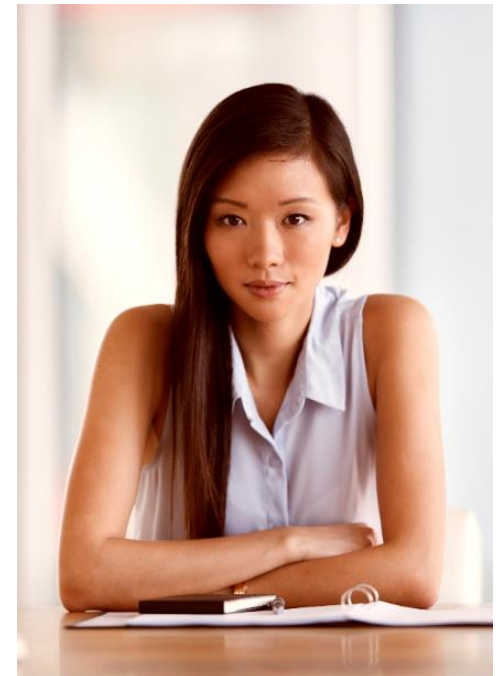


## What is new in the revised Tax Audit Framework 2019?

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:

### 01. | **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**

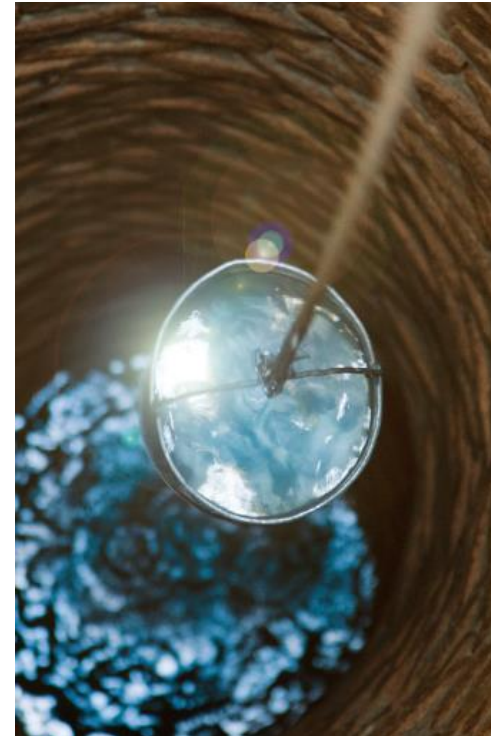
With the introduction of the new Tax Audit Framework, taxpayers may not be given a chance to explain, respond, justify or provide supporting documents to the IRBM on their audit findings. The only avenue for taxpayers to appeal will be through submission of the Form Q following the receipt of the notice 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.



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

### 02. 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.



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

### 03. 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.



## What is new in the revised Tax Investigation 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 visits!**

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.

**Penalties 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:

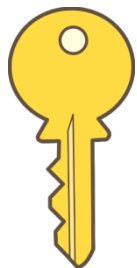
Tax Investigation Case		
Period of settlement	Investigation	Repetitive
≤ 6 months	45%	60%
> 6 - 12 months	50%	65%
> 12 - 18 months	55%	70%
≥ 18 months	60%	75%

Additionally, we understand that the IRBM has begun applying the above penalty rates in current tax investigation cases. This is in spite 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. For example, 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:



- Conducting periodic “health checks” is critical to assessing your level of compliance and identifying potential tax issues for remedial action;
- Implement appropriate tax internal controls on the identified gaps;
- Obtain technical confirmation from tax professionals or IRBM on uncertain tax positions; and
- Ensure proper documentation is readily available to substantiate the tax positions adopted.

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