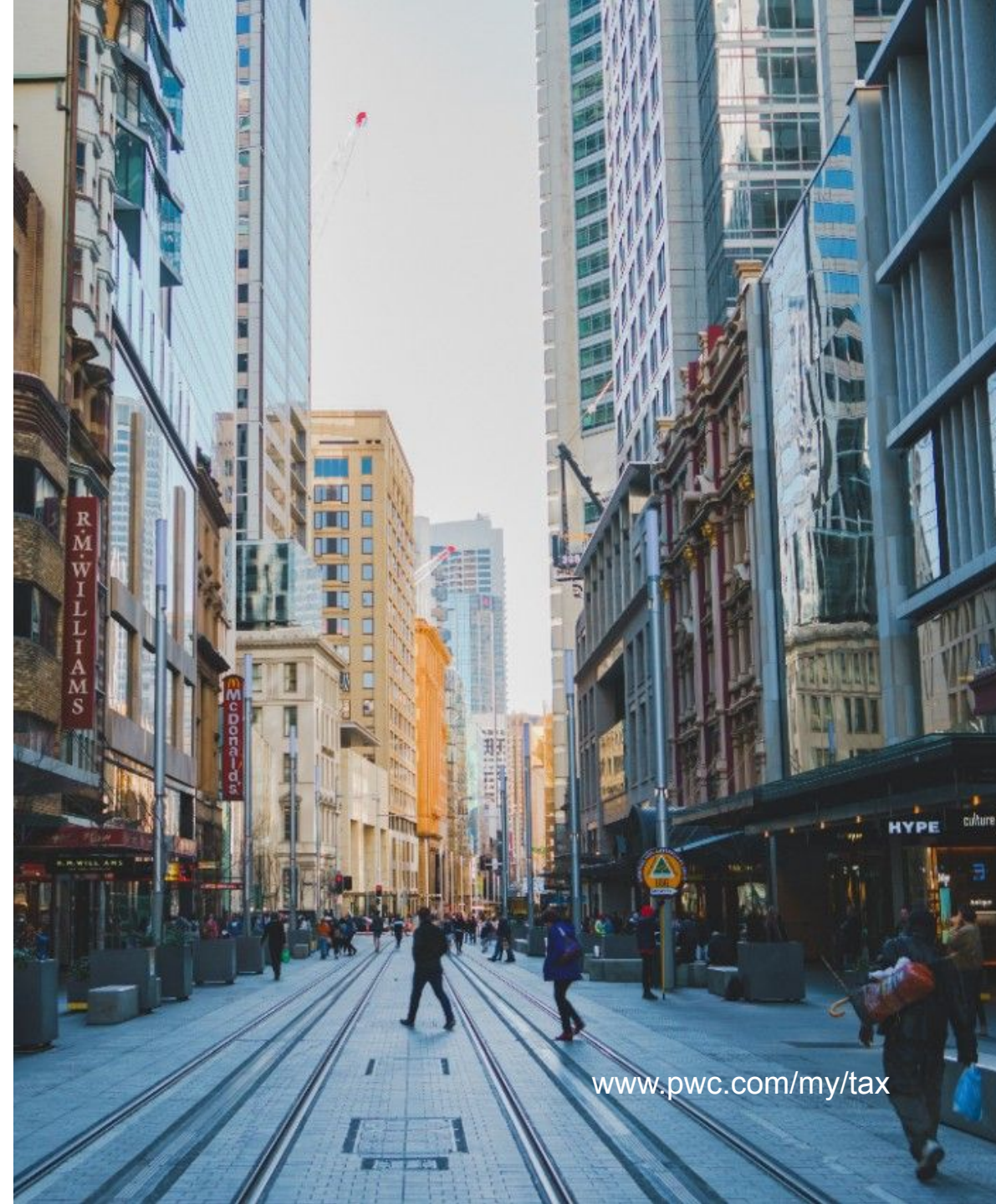




TaXavvy

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Employer Tax Audit Framework



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Employer Tax Audit Framework

The Inland Revenue Board of Malaysia (IRBM) issued the Employer Tax Audit Framework (Malay version only) (“The Framework”).

The Framework takes effect from 1 October 2021 and is issued to ensure that the employer tax audits are carried out in a fair, sincere and transparent manner. It outlines the rights and responsibilities of the tax officers, employers and appointed tax agents with the objective to help tax audit officers perform their duties more efficiently and effectively and assist employers to fulfil their tax obligations under the relevant provisions of the Malaysian Income Tax Act, 1967 (ITA).

This TaXavvy summarises the salient features of the Framework.



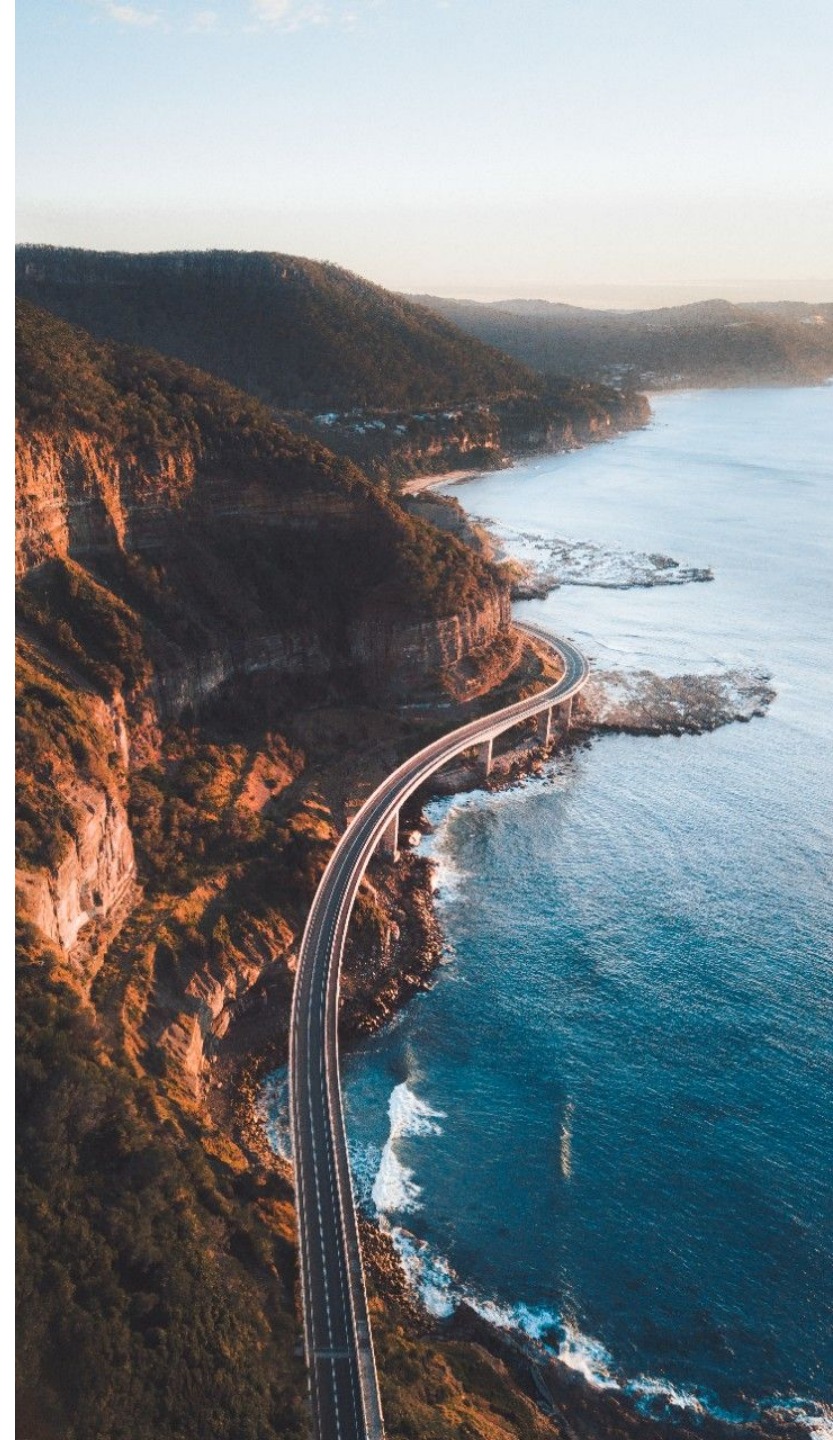
Employer’s obligations subjected to IRBM audit under the Employer Tax Audit Framework

Income Tax Act 1967 (ITA)	Employer’s Tax Obligations
<i>Section 83(1)</i>	Submission of annual employer tax return (Form E) by 31 March following the year of assessment (YA)
<i>Section 83(1A)</i>	Preparation of the employee’s annual income statement (Form EA) and distribution to employee by the last day of February following the YA
<i>Section 83(2)</i>	Notification of new employee (Form CP22) within 30 days from commencement of employment
<i>Section 83(3)</i>	Notification of cessation of employment (Form CP22A) at least 30 days before date of cessation (unless the employee is subjected to Monthly Tax Deductions (MTD) and is not retiring from employment)
<i>Section 83(4)</i>	Notification of employee’s departure from Malaysia (Form CP21) for a period of more than 3 months
<i>Section 83(5)</i>	Withholding of monies from employee about to cease employment or depart Malaysia for more than 3 months until further instruction from the IRBM (tax clearance) or 90 days from submission of the Form CP22A / Form CP21, whichever is the earlier
<i>Section 107, and Income Tax (Deduction From Remuneration) Rules 1994 (“MTD Rules”)</i>	Deduction of monthly tax from emoluments and pension by employer, including relevant rules / sub-rules of the MTD Rules

Types of employer tax audits carried out by IRBM that are covered under this Framework

	Desk audit of section 83 of the ITA (employer obligations other than MTD)	External audit of section 107 of the ITA (MTD remittances)
<i>Purpose</i>	Determine and ensure that the employer complies with tax obligations set out in section 83 of the ITA	Conducted by IRBM to determine and ensure that employer is deducting MTD and remitting to the IRBM within the designated period
<i>Process</i>	<p>Involves the inspection and verification of records and documents (e.g., sample payroll records), and the comparison of the various notification forms (e.g., Forms CP22A, CP21, etc) against the Form E and CP8D / <i>data praisi</i>.</p> <p>Employers could also be requested to be present in IRBM office to verify or discuss about audit findings during the audit process.</p>	Involves the inspection and verification of records and documents (e.g., payroll records) as well as related employee information to ensure MTD has been accurately deducted from employee and remitted to the IRBM within the designated period
<i>Location of audit activity</i>	IRBM office premises	<ul style="list-style-type: none"> • Employer’s premises • IRBM offices • Any other location as agreed by both employer and IRBM

The Framework also details the procedures to be taken by the IRBM before, during, and after the audit is completed, along with duration of IRBM visits to the employer (if applicable).



Coverage of employer audit

A full and complete audit can encompass two (2) remuneration years.

However, the number of years can extend beyond 2 years when there have been case(s) of :

- failure to remit MTD
- under-deduction of MTD
- repeated failures to comply with the tax laws, and
- complaint(s) lodged.

Additionally, years subjected to audit will not be reopened by the IRBM for audit in future, unless complaints (pertaining to failure to remit / under-remittance of MTD) are lodged.

Audit selection process

An employer is selected for audit by computer based risk assessment criteria and / or based on various information received.

Among the basis used in the selection are:

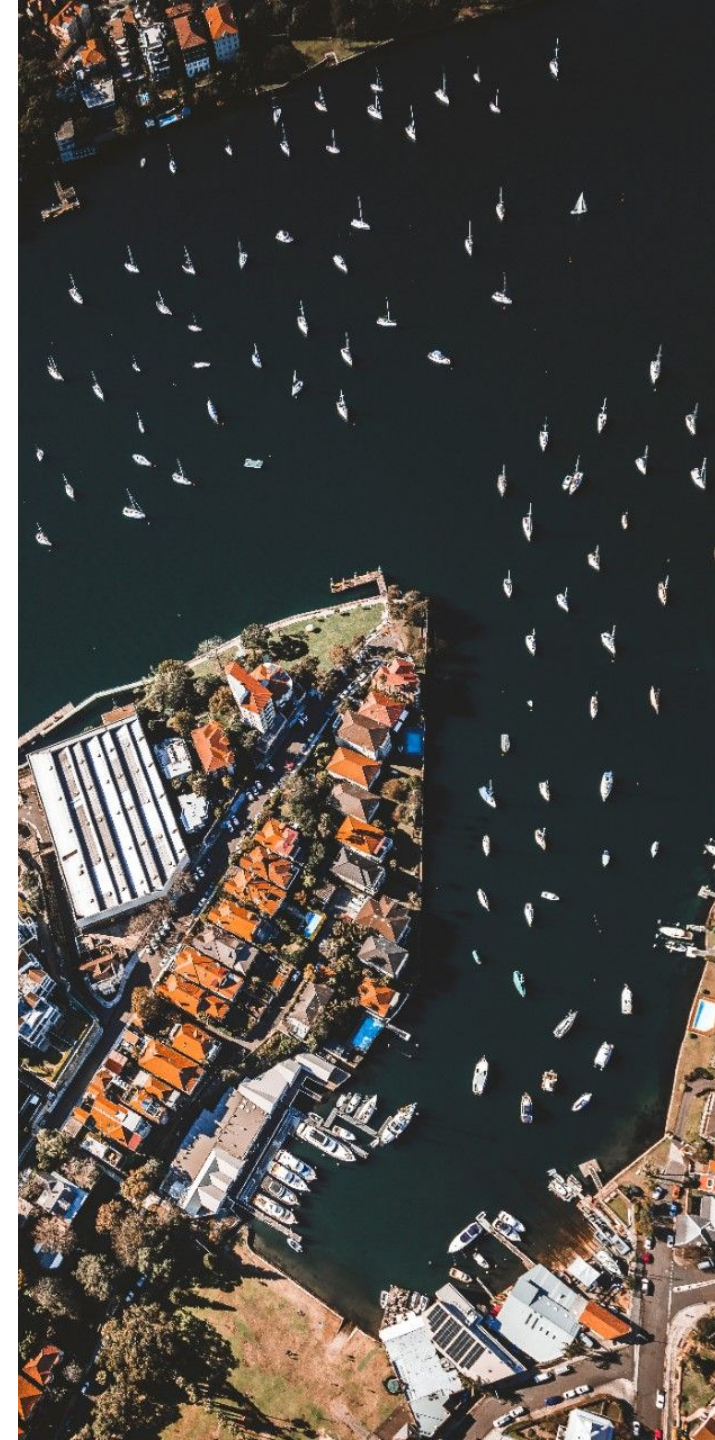
- Selection through risk assessment criteria
- Selection based on industry
- Selection based on specific issues for certain groups of employers
- Selection based on location, and
- Information received from third parties.

Voluntary disclosures

A voluntary disclosure means that employers voluntarily declare to the IRBM of any non-compliance of employer obligations prior to the IRBM initiating any employer tax audit detailed on page 3.

All voluntary disclosures are to be performed in writing to the IRBM branch that holds the employer tax file.

The Framework does not indicate whether there are any concessionary treatment or penalty rates provided by IRBM in relation to voluntary disclosures.



Offences and Powers to Compound

The Framework lists down the offences of non-compliance to sections 83 and 107 of the ITA, which can be compounded under section 124 of the ITA:

Failure to comply with:	Offences per legislation	What does it mean to be compounded?
Section 82 of the ITA - Keeping records	Guilty of an offence and shall, on conviction, be liable to a fine of not less than RM300 and not more than RM10,000, or to imprisonment for a term not exceeding one (1) year, or to both - <i>under section. 119A (Failure to keep records) of the ITA</i> .	The IRBM can choose to compound an offence prior to prosecution / conviction. The offence must be admitted in writing and a request must be made to the IRBM to deal with said offence under section 124 of the ITA.
Subrule 10(1) and 13 under MTD Rules - MTD Remittance, Submission of Form CP39 and Cessation of Remuneration Payment	Guilty of an offence and if convicted, may be liable to a fine of not less than RM200 and not exceeding RM20,000, or to imprisonment not exceeding six (6) months, or both - <i>under Rule 17 of MTD Rules</i> .	The compound amount to be paid will not exceed the maximum fine to be paid should a conviction occur.
Section 83 of the ITA- Submission of Forms E, CP22, CP21, CP22A/ CP22B, preparation/ distribution of Form EA, and/or withholding of monies	Guilty of an offence and if convicted, may be liable to a fine of not less than RM200 and not exceeding RM20,000, or to imprisonment not exceeding six (6) months, or both - <i>under section 120 (Other Offences) of the ITA</i> .	Upon payment of the compound, the person will not be liable to prosecution / further prosecution.
Section 107 of the ITA - MTD		The IRBM may abate or remit any penalty imposed under the ITA unless it is a penalty imposed upon conviction.

In the case of non-compliance occurring subsequent to the completion of the audit, these are considered as repeated offences and will be taken into account when the IRBM determines the quantum of the compound imposed under Rule 17 of the MTD Rules or section 120 of the ITA.

The Framework provides clarity in how such repeated offences are treated by the IRBM:

Offences	Remarks
Under-deduction and / or failure to deduct MTD	For purposes of determining the compound amount, the “first offence” is taken from the date of the audit findings previously issued by the IRBM to the employer.
Under-remittance and / or failure to remit MTD	Prosecution action will be launched.

The Framework is available on IRBM’s website www.hasil.gov.my (Legislation > IRBM Tax Audit Framework).



Employers should periodically review their payroll and employment tax processes to mitigate and manage any risks arising from non-compliance of employer obligations

Key Takeaways

The Employer Tax Audit Framework released by the IRBM sets out how employer tax audits are conducted, and provides clarity and transparency on the scope and coverage of the audit process.

The Framework also emphasizes the importance of complying with employer's tax obligations and the consequences of non-compliance by employers. To mitigate compliance risks and penalty exposure, employers are strongly encouraged to do the following:

- Stay current and updated on any legislation involving employer's tax obligations;
- Schedule periodic payroll health checks regularly to ensure that the employment tax reporting processes and procedures are current and compliant;
- Document policies and procedures to support the employer tax reporting positions; and
- Manage and communicate with appointed external payroll / third party vendors to ensure that their embedded processes are clearly documented and reliable in meeting the employer's tax obligations.

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