TaXavvy

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Tax Corporate Governance Framework

Tax Corporate Governance Framework (TCGF)

On 1 March 2022, the Inland Revenue Board (IRB) has launched the TCGF during the opening ceremony of the IRB's *26th Hari HASiL* celebration. Following that, the IRB has issued a media release on 15 April 2022 announcing the publication of the framework and its accompanying guidelines.

The media release is available on the IRB's website www.hasil.gov.my (Home > Media Release 15 April 2022).

The introduction of the TCGF is part of the IRB's initiative towards adopting a co-operative tax compliance process that is both fair and effective in Malaysia.

Co-operative tax compliance and the role of TCGF

Corporate governance encompasses the rules, relationships, systems and processes under which decisions are made and authority is exercised and controlled within an organisation. It comprises the mechanisms by which businesses, office holders and those in control are held to account. TCGF is a subset within the broader corporate governance framework.

According to the OECD's 2016 report on Co-operative Tax Compliance: Building Better Tax Control Frameworks ("OECD 2016 Report"), a Tax Control Framework provides assurance to the accuracy and completeness of tax returns and disclosures made by an enterprise. The building blocks of a Tax Control Framework should be capable of **providing assurance** to stakeholders that tax risks are subject to proper control and that outputs such as tax returns can be relied upon. In other words, providing assurance that the right amount of tax is paid when it is due.

Similarly, tax authorities have the duty to collect the right amount of tax that is due when it is due. According to the OECD's 2013 report on Co-operative Tax Compliance: From Enhanced Relationships to Co-operative Compliance ("OECD 2013 Report"), compliance risk management by tax authorities is essential in achieving this goal and tax authorities can benefit from compliance risk management only if they distinguish areas that represent high risk from areas that represent low or negligible risk, and respond and influence compliance appropriately. In a self-assessment regime in Malaysia, the enforcement of tax compliance is primarily carried out through tax audits. The selection of tax audit cases is conducted through computerised systems based on risk assessment criteria and / or based on various sources of information received. Co-operative tax compliance will provide the opportunity to further refine this process when the same assurance provided by the taxpayer's tax corporate governance is shared / disclosed / made transparent to the IRB. This sharing represents one of the key pillars of a "co-operative" compliance programme.

According to the OECD 2013 Report, when Tax Control Framework of participants in a co-operative compliance programme is determined to be effective, and when the participants provide complete disclosures and is transparent to the tax authority, the extent of reviews and audits of tax returns can be reduced significantly as the tax authority can rely on the returns submitted and trust that uncertain tax positions taken will be brought to its attention.

Implementation of TCGF

With the IRB's launch of the TCGF in March 2022, Malaysia will be joining various jurisdictions which have adopted the co-operative compliance framework such as Australia, Hong Kong, Japan, Singapore and the United Kingdom.

Following the launch of the TCGF, the IRB has published the following documents on its website on 15 April 2022:

1. **Tax Corporate Governance Framework dated 11 April 2022 (TCG Framework)**

   The TCG Framework provides an overview of the IRB's expectations on the Tax Corporate Governance (TCG) process and structure that should exist in organisational settings. The TCG Framework sets out the 6 principles of a good TCGF which are based on the OECD 2016 Report.

   The TCG Framework also sets out the processes and timeframe for TCGF Programme.

2. **Guidelines to the Tax Corporate Governance Framework (Guidelines)**

   The Guidelines provide guidance to organisations in designing and implementing their TCGF. It is intended to supplement the TCG Framework through a more in-depth explanation of the items and processes in TCG practice.

Both the TCG Framework and Guidelines are available on the IRB's website www.hasil.gov.my (Home > Legislation > Tax Audit > Tax Corporate Governance Framework).

Key principles of a sound TCGF

The IRB drew guidance from the OECD 2016 Report on the key principles that constitute a good TCGF. The six identified principles are:

01 Tax Strategy Established
The tax strategy should be clearly documented and owned by the Board of Directors / senior management of the enterprise.

02 Applied Comprehensively
All transactions entered into by an enterprise are capable of affecting its position in one way or another, which means that the TCGF needs to be able to govern the full range of the enterprise's activities and ideally should be embedded in day-to-day management of business operations.

03 Responsibility Assigned
The board of an enterprise is accountable for the design, implementation and effectiveness of the tax control framework of that enterprise. The role of the enterprise's tax department and its responsibility for the implementation of the TCGF should be clearly recognised and properly resourced.

04 Governance Documented
There needs to be a system of rules and reporting that ensure transactions and events are compared with the expected norms and potential risks of non-compliance identified and managed. This governance process should be explicitly documented and sufficient resources deployed to implement the TCGF and review its effectiveness periodically.

05 Testing Performed
Compliance with the policies and processes embodied in the TCGF should be the subject of regular monitoring, testing and maintenance.

06 Assurance Provided
The TCGF should be capable of providing assurance to stakeholders, including external stakeholders such as a tax administration, that tax risks are subject to proper control and that outputs such as tax returns can be relied upon. This is accomplished by establishing the entity's "risk appetite" and then by ensuring that their Risk Management Framework is capable of identifying departures from that with mechanisms for mitigating/eliminating the additional risks.

The OECD 2016 Report states that this building block can be seen as the overall result of having put in place all the other building blocks; if they are there it is possible to provide the desired assurance.

TCGF Programme at a glance

- TCGF Programme is an arrangement between the IRB and the taxpayer, particularly the large businesses to work together to improve an organisation's corporate tax compliance matters with the aim to establish a transparent relationship in approaching tax matters (paragraph 6.1 of the TCG Framework).

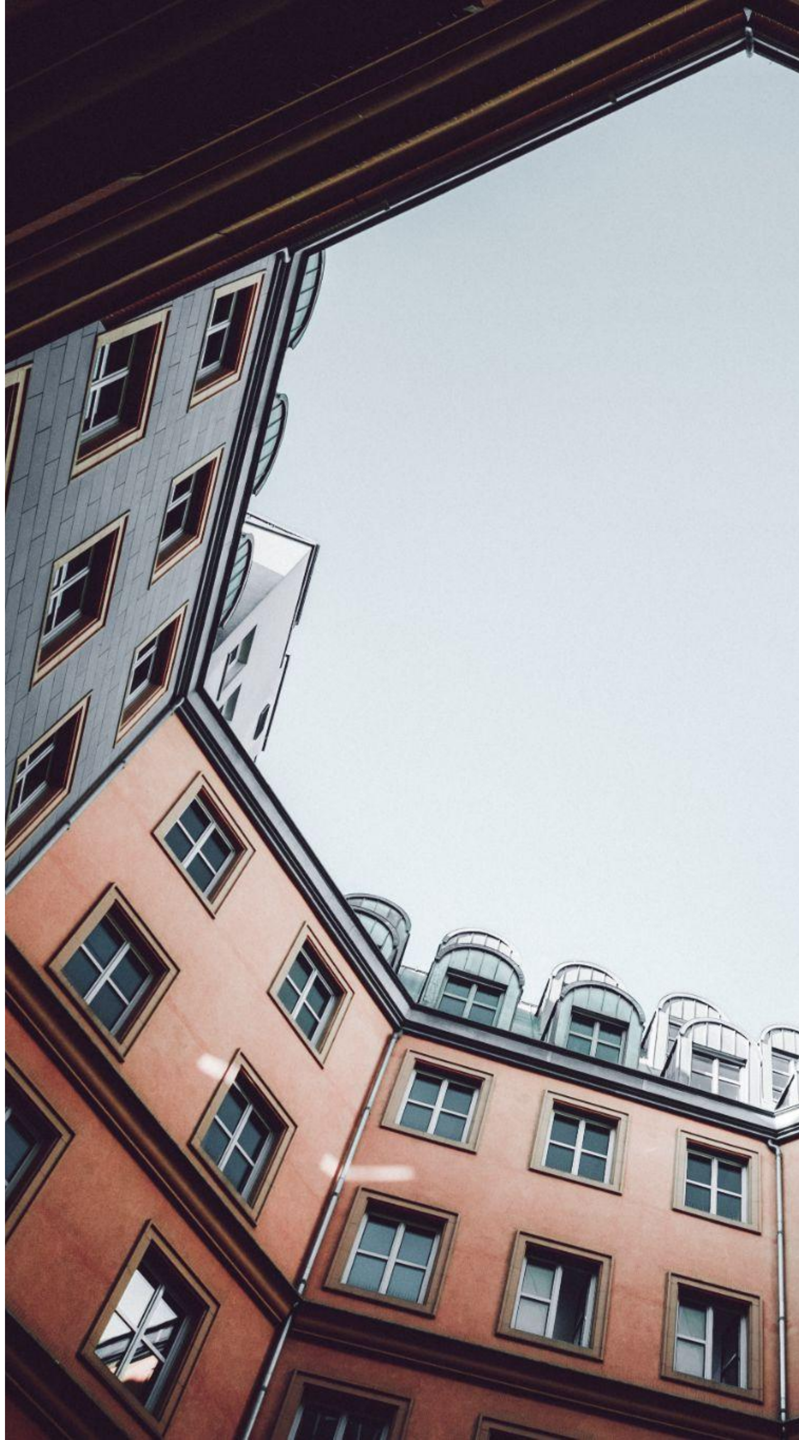
- The IRB encourages organisations to develop their TCGF accordingly in relation to the direct tax matters under the IRB's purview such as income tax, petroleum income tax, real property gains tax, transfer pricing, withholding tax, stamp duty, etc (paragraph 3 of the TCG Framework).

- The participation in the TCGF Programme is on a voluntary basis. Taxpayers who are interested and satisfy the pre-requisites of TCGF will need to submit an application to the IRB. The IRB will review the application and confirm the applicant's eligibility to participate in the programme.

- Taxpayer will need to perform a self-review assessment on its TCGF. The completed self-review assessment report and report findings by an independent reviewer will have to be submitted to the IRB for review within 6 months from approval of participation..

- Qualified participants will be eligible to enjoy the benefits of the TCGF Programme.

- The TCGF Programme process flowchart and timeframe are illustrated in the following page.



TCGF Programme process flowchart and timeframe

1 Getting ready

- Satisfy pre-requisites. The suggested pre-requisites needed are:
  - Review tax strategy
  - Develop or update tax policy
  - Review current tax risks
  - Determine key tax procedures and controls
  - Document key tax procedures
  - Develop a testing program
- Preliminary self-assessment using self-review assessment template (refer to Appendix).
- Submission of participation form

2 Review by Independent Reviewer

Appointment of an independent reviewer (public accounting entity or independent in-house internal auditor team whose members are accredited tax practitioners) by the participants to perform a review assessment on the TCGF.

3 Submission to the IRB

Submission of self-review assessment report and report findings prepared by the independent reviewer to the IRB (within 6 months from approval of participation).

4 Evaluation by the IRB

- Review the documents submitted and conduct assessment
- Meetings between the applicant and the IRB
- The IRB to conduct an assessment based on the information received.

5 Conclusion of assessment by the IRB

Award of participation status of the TCGF Programme. The validity of the status is for a period of **3 years**.

Timeframe
From the date of acceptance of the participant by the IRB (Step 1) to the award of participation status (Step 5) is 8 - 12 months.

Who can join the TCGF Programme?

Based on the Guidelines, the IRB is looking for companies which meet the following criteria:

- Large companies / public listed companies (with turnover of RM100 million and above)
- Companies which have won the Best Taxpayer Award
- Government-linked companies / State-owned enterprises
- Compliant taxpayers (return form submission and tax payment)

Participation is also encouraged for organisations which:

- Have medium to complex structures and business models
- Engage in voluminous transactions
- Place emphasis on tax risk management as part of their corporate governance
- Rely on extensive in-built controls in their systems and processes to generate timely and accurate data for financial and tax reporting
- Cultivate transparency and openness in engaging the IRB.

What's required from taxpayers?

Taxpayers would need to ensure that the documented and approved Tax Control Framework (TCF) meets the IRB's requirements and criteria and is in place for review by the IRB.

Please refer to the following page for more information on TCF, evaluation of TCG by the IRB and the IRB's key focus areas.

Tax Control Framework

TCF is an internal control instrument which focuses specifically on a business' tax processes, which is also a system to identify, overcome, control and report tax risks.

There are no specific formats to follow as each business has different levels of need. However, the IRB has recommended the following building blocks for the TCF:

- **Tax Organisation**
  Understand the taxation process in each subsidiary organisation, business, and division besides knowing the duties and responsibilities of the employees involved.

- **Tax Planning**
  Control over the effects of taxation for each business activity should be in accordance with the organisation's risk appetite. Taxpayers are advised to obtain consultancy services from suitably qualified professionals and where necessary, seek an advance ruling from the IRB.

- **Tax Risk Management**
  Identify and assess the risks of each situation/activity, make comparisons with the organisation's risk appetite and implement controls.

- **Communication**
  Communicate taxation strategies to all related personnel.

- **Information Strategy**
  Automate control in the organisation's system.

- **Monitoring**
  Ensure that the control plan is implemented.

- **Tax Accounting**
  Tax component must be identified in the financial statements (income statement, balance sheet and cash flow statement).

- **Tax Compliance**
  Tax registration, tax filing, tax reporting and tax payment requirements are complied with.

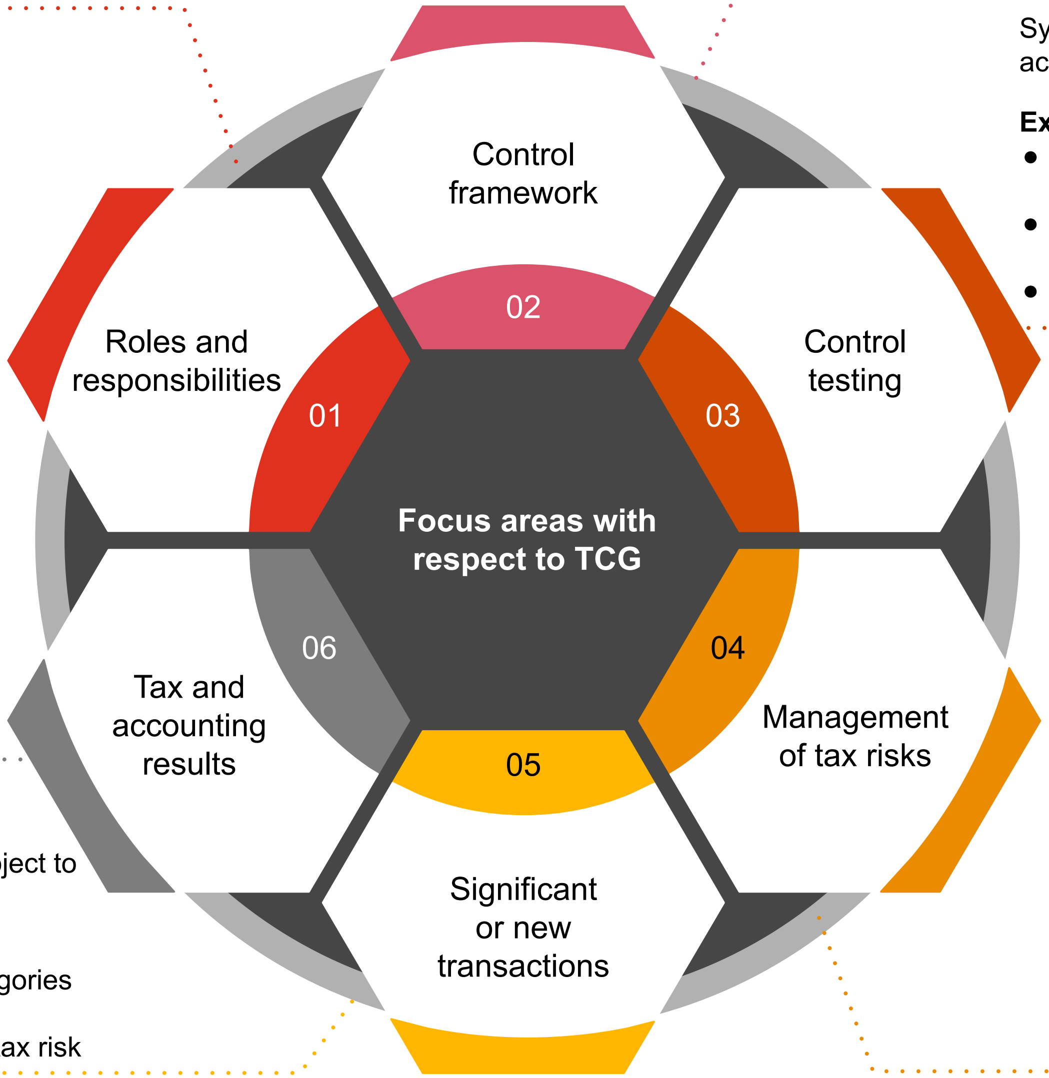
Evaluation of TCG by the IRB

The effectiveness of an organisation's TCG will be evaluated upon TCG review. Evaluation will be based on how the following functions influence the organisation's tax compliance:

1. Engagement and guidance of top management
2. Organisation and functions of accounting and audit divisions
3. Tax and accounting procedures with internal checks and balances
4. Dissemination of information and recurrent prevention measures
5. Measures to control inappropriate acts

IRB's key focus areas

Below are the key focus areas of the IRB with respect to TCG and some examples of the types of evidence that the IRB may look for:



Roles and responsibilities

Clear roles and responsibilities of each of the stakeholders with respect to tax risk management in an organisation.

Examples of evidence:

- Clear lines of authorisation and sign-off for tax decisions and administration
- Board of Directors induction pack for directors to incorporate briefings on key accounting and tax issues

Tax and accounting results

Tax and accounting results are subject to review processes. Tax outcomes either reflect economic performance or variances, are understood and can be explained

Examples of evidence:

- Reconciliation of tax computation to financial statements
- Audit reports

Significant or new transactions

Transactions are identified, well documented and subject to a review and sign-off for tax risk purposes.

Examples of evidence:

- Document process to identify and map major categories of transactions to relevant tax classifications
- Determine parameters of a significant or material tax risk

Control framework

Systems and controls which are in place to ensure accurate reporting and transparency of decision making.

Examples of evidence:

- Tax strategy document which comprises code of practice, tax risks management, etc.
- Develop a control list of tax documents for record keeping
- Review and update the TCGF annually

Control testing

Processes exist to regularly test the effectiveness of the organisation's internal controls and rules.

Examples of evidence:

- Develop plans for testing systems and controls relating to tax functions
- Set audit committee reviews on the effectiveness of controls and procedures in place

Management of tax risks

Tax risks are managed with an understanding of the Malaysian tax law and regulations along with the IRB's view on tax treatments and published rulings.

Examples of evidence:

- Document communication protocols to management and formulate steps taken to manage the risks identified
- Develop templates with key details of identified tax risks to be reported to the Board for decision making

Benefits under TCGF Programme

Taxpayers who participate in the TCGF Programme and fulfil the requirement and criteria listed by IRB are eligible to be considered for the following benefits:

- Reduced scrutinisation of compliance activities
  - No/lesser tax audits will be conducted.
  - Higher materiality or reduced sample sizes.
- Best endeavour will be given to accelerate tax refund for compliant participants. This is provided that no anomalies are noted and it is subject to management's approval.
- Appointment of a dedicated tax officer to expedite any ongoing dialogue on technical matters.
- Non imposition of penalties.

Key takeaways

- **Mutual benefit**
  Against the backdrop of recovery from the COVID-19 pandemic, the Government would need to ensure the right amount of taxes are collected at the right time in order to finance the various expenditures in rebuilding the Malaysian economy. Similarly, businesses would need to optimise compliance costs and would benefit from measures which promotes tax certainty. Therefore, the IRB's introduction of co-operative tax compliance with the announcement of the TCGF is timely in meeting these mutual objectives. At the HASiL-CTIM Tax Forum 2022, the IRB has shared that the launch of the TCGF Programme on a voluntary basis (pilot) is a precursor to a full implementation in the near future.
- **Best practices**
  The TCGF which is based on international best practices developed is a useful reference for taxpayers to assess whether the organisation has a robust governance, control, and risk management framework in place for tax in producing the desired assurance for its stakeholders.
- **Building on best practices**
  The TCGF Programme offers an avenue for taxpayers the potential to leverage on or enhance their existing tax governance framework by voluntarily sharing them with the IRB which is prepared to offer benefits such as reduced audit activities and tax penalties upon being satisfied that the framework provides the desired assurance in ensuring the right amount of tax is reported and paid and significant transactions have been disclosed.

Appendix: Tax Control Framework - Self-review Assessment Checklist

No.	Items	Yes	No	N/A	Remark
A.	**Tax Strategy**				
1.	Strategy #1				
2.	Strategy #2				
B	**Tax Risk Management Controls**				
1.	Control environment				
2.	Systems and controls				
3.	Tax risk management				
4.	Change management				
5.	Information				
6.	Review assessment				
C.	**Transaction**				
1.	Tax classification of transactions				
2.	Provision movement				
3.	Capital allowances				
4.	Payment to non-residents				
5.	Transfer pricing				
6.	Record keeping				

No.	Items	Yes	No	N/A	Remark
D.	**Tax reporting**				
1.	Information extraction				
2.	Checks and approvals				
3.	Submission of returns				
E.	**Monitoring**				
1.	Tax Registration				
2.	Tax Filing				
3.	Tax Reporting				
4.	Tax Payment				

* This checklist template only serves as a guide and is not strictly enforced.

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