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Managing the Aftermath of a Tax Audit or Investigation

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LEGAL UPDATE

In this Update

There can be several possible outcomes after the Inland Revenue Authority of Singapore (“**IRAS**”) concludes a tax audit or investigation.

In this update, Siok Peng shares her expertise on the various possible outcomes of a tax audit or investigation and what can be done to improve the outcome. This update is the last of a four-part series providing insight into the various aspects of tax audits and investigations and how best to deal with encounters with the tax authority.

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INTRODUCTION

When a business undergoes a tax audit or investigation, the following can happen. In a tax audit, a business' tax declarations, accounts and supporting documents are examined to determine if there are any errors in its tax declarations. In comparison, a tax investigation is more detailed, with the aim of determining if there had been any evasion of taxes.

When all the relevant questions have been asked during the interviews conducted. All the statements of the individuals related to the matters under review have been taken. All the information from third parties such as customers, suppliers and financial institutions have been obtained and collated and all relevant documents and accounting records have been examined. At the conclusion of a tax audit or investigation – what's next?

TAX AUDITS

Based on the IRAS' guidelines, most tax audits are completed within 12 months. However, the actual progress of the audit would depend on the business' standard of record keeping, the scope of the audit, and the support and cooperation of the business and its tax representatives.

Upon completion of the audit, the IRAS will usually communicate the outcome of the audit in writing or through a meeting with a representative of the business. If any discrepancies are uncovered, adjustments may be made to the business' tax assessments for the relevant years of assessment. Should the audit conclude that errors have been committed, the IRAS may offer the business a chance to instead pay a sum of money, known as a composition sum, to compound the minor offences, such as simple errors in the business' declarations.

If the business disagrees with the adjustments by the IRAS which is made by the raising of a Notice of Additional/Amended Assessment ("**NOA**"), the business must object in writing before the statutorily prescribed deadline, stating the grounds of such objection. Notwithstanding that an objection to the NOA has been made by the business, the tax payable must still be paid within 1 month from the date of the NOA.

TAX INVESTIGATIONS

Based on the IRAS' guidelines, a tax investigation may take 15 to 24 months to complete, depending on the scope of the investigation, the number of as well as the complexity of the issues and the level of cooperation rendered by the taxpayer during the investigation.

The investigation may cover a spectrum of issues such as an individual's or a company's income tax, a business' goods and services tax and other taxes or schemes administered by the IRAS. The aim of an investigation is to ascertain the facts and to determine whether any offences have been committed under the various Tax Acts administered by the IRAS.

Upon the completion of a tax investigation, there can be several possible outcomes. There could also be a combination of the possible outcomes, depending on the type and the number of discrepancies uncovered.

In cases where no evidence of wrongdoing is found, such as one where the irregularities arose from different technical interpretations, a case may simply be closed without any further action required after the appropriate tax adjustments have been made.

In terms of severity, a less serious outcome would be one where a stern warning or a conditional warning is administered in lieu of prosecution in court. Such warnings are usually given when the tax investigations reveal that an offence has been committed but the circumstances do not warrant any further, more severe, action to be taken. In such cases, adjustments could still be made to the relevant tax assessments and the additional taxes made payable by the business.

When a stern warning is administered, the business or person is given a written warning that the IRAS' investigations have shown that a certain tax offence has been committed. No further action in respect of the offence will be taken after the stern warning is given.

For a conditional warning, the business or person is additionally warned that the prosecution of the offence, for which the IRAS is of the view has been committed, is withheld for a period of time (e.g. 24 months), on condition that the business or person warned undertakes not to commit any other offences. Upon the expiry of this period, and provided that the business or person did not commit any offences during that period, no further action will be taken in respect of the offence.

Another possible outcome of a tax investigation could be one where the IRAS is of the view that certain offences have been committed but instead of prosecution in court, the business or person is offered a chance to instead pay a sum of money, known as a composition sum, to compound the alleged offence. If the offer of composition is accepted, and full payment of the additional tax payable as well as the composition sum is made, no further prosecution action will be taken against the business or person. Depending on the type and the severity of the offence, the composition sum can be up to 400% of the additional tax payable.

Records of warnings and compositions are kept by the IRAS and may be taken into consideration should the same business or person be found to

have again infringed on any of the various Tax Acts administered by the IRAS.

The most serious outcome of a tax investigation is prosecution, which results in the business and/or persons related to the business being charged in court. This occurs when the IRAS is of the view that the business has committed a tax offence or offences and that the circumstances which led to the commission of the offence warrant charges to be preferred against the business and/or the abettors of the tax offences. This could mean prosecution is brought against a company as well as its directors or other related persons. In this regard, directors and persons holding positions of control in the business may be construed as abettors in the offences committed by the business.

With effect from 1 January 2020, convictions for the more serious offences under the various Tax Acts will be registered under the Registration of Criminals Act (Cap. 268). This means that a court conviction for the more serious tax offences could become a permanent criminal record for the offender.

WHAT CAN BE DONE TO IMPROVE THE OUTCOME?

An experienced tax professional can significantly assist a business to improve the outcome of an audit or investigation, even before its conclusion. Measures that can be taken include making representations on the facts of the case to the IRAS and helping to consider acceptable sound explanations to be made to the IRAS. In addition, an experienced tax professional can also assist in preparing the business owner, the employees and directors of the business for their interviews with the IRAS.

By devoting resources, giving timely responses to queries from the IRAS and making available the employees for interviews, a business can demonstrate cooperation, a factor which the IRAS takes into consideration when deciding on the outcome of an audit or investigation.

In addition, by showing remorse for any wrongdoing, taking remediation steps and undertaking future compliance with the relevant tax laws, a business may also improve the outcome of an audit or investigation. For example, a business may discipline its errant staff involved, engage new and competent staff to improve compliance, implement controls to improve compliance and highlight to the IRAS that the past deficiencies have since been resolved.

WHAT IF CHARGES ARE PREFERRED IN COURT?

If, despite best efforts, the business owner is informed that charges will be preferred and a summons to attend court is issued, that is not the end. Representations can be made for the composition of the charges instead of prosecution or a reduction of the charges to less serious ones. Alternatively, if there are multiple charges involved, representations can be made to request that only some of the charges be proceeded on, instead of all the preferred charges.

During the court proceedings, submissions on the appropriate sentencing as well as requests for the penalties to be paid by instalments can be made. In addition, it might also be critical to manage any possible negative publicity of the court proceedings and ensure the accuracy of any reports which may be made to the respective professional bodies.

COMMENTS

KEYPOINT

Should a business find itself being audited or investigated by the IRAS, the aftermath can be substantially improved with the early help of a competent advisor.

In addition, having an experienced tax professional guide you through the audit or investigation process can help make the experience of being audited or investigated less distressful.

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If you have any questions or
comments on this article, please
contact:



Tham Siok Peng

Consultant, Tax & Private Client
Services

T: +65 6531 4140

E: siokpeng.tham@drewnapier.com

Drew & Napier LLC

10 Collyer Quay
#10-01 Ocean Financial Centre
Singapore 049315

www.drewnapier.com

T : +65 6535 0733

T : +65 9726 0573 (After Hours)

F : +65 6535 4906

 **DREW & NAPIER**