

CUSTOMS e-Alert

11 JULY 2019

Insights Into Customs' Audit Compliance Framework

On 30.4.2019, the Royal Malaysian Customs Department (**Customs**) published its audit compliance framework (**Audit Framework**) which covers various aspects of Customs audit, such as:

- the enforcement powers of Customs officers
- documentation required for audit purposes
- the Round Table Discussion process.

Contact persons:



Datuk D. P. Naban
Senior Partner
Tax, SST & Customs Practice
T: +603 6208 5858
E: dpn@lh-ag.com



S. Saravana Kumar
Partner
Tax, SST & Customs Practice
T: +603 6208 5813
E: sks@lh-ag.com

Stages Of Audit

The Audit Framework describes four stages of audit, which can be summarised as follows:

No	Stages of Audit	Customs' Audit Procedure
I	Pre-audit	Customs will determine the best audit approach
II	Audit	Customs initiates the audit by conducting early interviews through the phone, meetings in person at the taxpayer's office premises or at the Customs office. Taxpayers are required to provide documentation and/or information upon request by Customs.
III	Audit report	Throughout the audit process, Customs will record and document all audit findings discovered for evidentiary purposes. Customs will also prepare an audit report to support the audit finding.
IV	Review	At the end of the audit, Customs will conduct a review towards the audit process to ensure that:

**CHAMPIONING
TAXPAYERS**

We represent taxpayers. Be it tax litigation, advisory or structuring,
we focus on clarity, certainty and solutions.
Make us your confidante today.

		<p>(a) the audit has been conducted in accordance with the relevant procedures;</p> <p>(b) provisions have been rightly invoked and applied; and</p> <p>(c) all audit findings have been reported.</p>
--	--	--

Documentation Required For Audit Purposes

Customs has provided a list of documents required for audit purposes, which Customs expects to be readily available for inspection during audit:

- Summary of duties/taxes/levy paid and filed
- Management accounts
- General ledgers
- Records of sales and purchases

Round Table Discussion

Once an audit is completed, a Round Table Discussion (**RTD**) will be organised by Customs to inform taxpayers of the audit findings. If Customs alleges any shortfall of duties or taxes, a bill of demand will be issued to taxpayers after the RTD.

Under the law, taxpayers are required to settle the amount levied within 14 days, notwithstanding any appeal. If the amount levied is not paid, Customs claims that it may take the following enforcement measures:

- Trade restrictions
- Travel restrictions on the director(s) of the taxpayer
- Enforcement of bank guarantee
- Claim from relevant third parties
- Commencing civil recovery action for non-payment of duties

Our sub-specialisation includes:

INCOME TAX <ul style="list-style-type: none"> • Tax Litigation & Dispute Resolution Proceedings • Tax Advisory & Planning • Tax Audit & Investigation • Transfer Pricing & Thin Capitalisation 	SALES & SERVICE TAX <ul style="list-style-type: none"> • SST Litigation • SST Legal Advisory • SST Audit & Investigation • Anti-Profitteering 	TRADE FACILITATION & INCENTIVES
INTERNATIONAL TAX <small>(Including Cross-border Transaction Tax & Withholding Tax)</small>	CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY	REAL PROPERTY GAINS TAX
		PETROLEUM INCOME TAX
		SALES & SERVICES TAX
		STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
 Solaris Dutamas
 No. 1, Jalan Dutamas 1
 50480 Kuala Lumpur
 Malaysia
 Tel: +603 6208 5888
 Fax: +603 6201 0122
 Email: tax@lh-ag.com

Our Comments

The Audit Framework emphasises more on Customs' enforcement powers during an audit and the consequences of non-compliance than on providing insight into audit procedures. Our views are summarised as follows:

- (a) Customs may take action against a taxpayer who fails to settle the bill of demand. However, Customs is an arm of the executive and its enforcement powers are not unfettered. It is bound to exercise its powers reasonably and act in accordance with the law. If Customs acts in excess of its authority, for instance, demanding that disputed duties are paid when the taxpayer enjoys a stay order from the High Court, then taxpayers may challenge Customs before our courts.
- (b) In the event that the taxpayer fails to settle the bill of demand within 14 days, Customs may:
 - (i) impose trade restrictions, for instance, by refusing port clearance and seizure of goods. However, taxpayers can challenge such trade restrictions by filing a judicial review application, if the case permits, or appeal to the Customs Appeal Tribunal;
 - (ii) impose travel restrictions on the director(s) of the taxpayer until the bill of demand is settled in full. Be that as it may, a taxpayer can also challenge the arbitrary imposition of travel restrictions by way of a judicial review application on the basis that travel restrictions should be uplifted when the director is not an individual with the risk of absconding; and
 - (iii) collect the amount due under an unpaid bill of demand from a third party who is a debtor of the taxpayer or a third party who holds money for the taxpayer under Section 29 of the Sales Tax Act 2018 and Section 29 of the Services Tax Act 2018. These provisions allow Customs to circumvent the formal requirements and lengthy garnishee proceeding under Order 49 of the Rules of Court 2012. Hence, it is important for taxpayers to challenge bills of demand if they do not wish to pay the disputed taxes.

Our sub-specialisation includes:

INCOME TAX	SALES & SERVICE TAX	TRADE FACILITATION & INCENTIVES
• Tax Litigation & Dispute Resolution Proceedings	• SST Litigation	
• Tax Advisory & Planning	• SST Legal Advisory	REAL PROPERTY GAINS TAX
• Tax Audit & Investigation	• SST Audit & Investigation	
• Transfer Pricing & Thin Capitalisation	• Anti-Profitsteering	PETROLEUM INCOME TAX
INTERNATIONAL TAX	CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY	SALES & SERVICES TAX
(Including Cross-border Transaction Tax & Withholding Tax)		STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122
Email: tax@lh-ag.com

- (c) The Audit Framework fails to answer the queries to the RTD:
- (i) What is the flow of the RTD?
 - (ii) Who can participate in the RTD?
 - (iii) What are the taxpayers' rights during the RTD?
 - (iv) What are the differences between the RTD minutes and audit finding report?
 - (v) Whether it is mandatory for taxpayers to sign the RTD minutes?
- (d) The Audit Framework provides that Customs will prepare an audit report which records all the audit findings. However, it is unclear whether the taxpayer would be privy to such audit report. Ideally, the audit report should be made available to the taxpayer in order to allow the taxpayer to provide explanations or clarifications on the audit findings.
- (e) Recently, GST closure audits conducted by Customs are nearing completion or have been completed. However, it is observed that Customs has not been consistent in its audit approach and did not follow the procedures set out in the Audit Framework.
- (f) In summary, the following are the major inconsistencies observed from the various audits conducted by Customs:
- (i) Provide short timeline to furnish documents and information
 - (ii) Taxpayers are only given a one-day notification for the on-site audit at their premises
 - (iii) Request for documentation through tele-communication only
 - (iv) Asking the original documents for audit purposes;
 - (v) Not providing acknowledgment for the list of documents taken
 - (vi) Imposing penalty and offsetting input tax credit without any notification
 - (vii) Questioning and refusing to acknowledge the authority of the company's representative who participated in the RTD
 - (viii) Not providing the audit findings letter
 - (ix) Refusing to provide the RTD minutes

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

SALES & SERVICE TAX

- SST Litigation
- SST Legal Advisory
- SST Audit & Investigation
- Anti-Profitfiltering

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

SALES & SERVICES TAX

STAMP DUTY

www.lh-ag.com

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122
Email: tax@lh-ag.com

Conclusion

In recognising the inconsistencies in the audit approaches adopted by Customs, we suggest the following steps be taken during the different stages of an audit:

No	Stages of Audit	Recommended Steps
I	Pre-audit	<ul style="list-style-type: none"> Log on to the relevant portal system (e.g. GST TAP system/ MySST portal) on a daily/weekly basis to check for any notices, letters and changes to the accounts. Prepare the documentation required for audit in advance and ensure that such documentation is updated. Maintain a record of all documentation/information for at least seven years.
II	During audit	<ul style="list-style-type: none"> Verify the details of the Customs officers who will be conducting the audit with the Customs' respective branch. Ensure that the Customs officers provide a letter of identification and verification of presence of the audit team during the on-site audit. Make a copy of each document submitted to Customs and obtain acknowledgment from the Customs for the documents submitted. Check with the auditor, tax agent and company secretary on whether Customs has requested any documents and information from them. Consult a reputable tax lawyer especially if the taxpayer disagrees with Customs.

Our sub-specialisation includes:

INCOME TAX <ul style="list-style-type: none"> Tax Litigation & Dispute Resolution Proceedings Tax Advisory & Planning Tax Audit & Investigation Transfer Pricing & Thin Capitalisation 	SALES & SERVICE TAX <ul style="list-style-type: none"> SST Litigation SST Legal Advisory SST Audit & Investigation Anti-Profitteering 	TRADE FACILITATION & INCENTIVES
INTERNATIONAL TAX (Including Cross-border Transaction Tax & Withholding Tax)	CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY	REAL PROPERTY GAINS TAX
		PETROLEUM INCOME TAX
		SALES & SERVICES TAX
		STAMP DUTY

III	RTD	<ul style="list-style-type: none"> • Ensure that all the attendees signed on the RTD attendances list. • Obtain proper professional advice from the tax agent and tax solicitors. • If the question posed cannot be answered immediately, taxpayers can request for another RTD session or request to write in to provide explanation on the question raised. • At the end of the RTD, if taxpayers are not agreeable to the audit findings, taxpayers must write on the RTD minutes that they disagree with the audit findings before signing the RTD minutes. • After signing the RTD minutes, taxpayers should request for a copy of the RTD minutes. • Always reserve your legal rights even if you are resolving the matter with Customs.
IV	Bill of Demand Issued	<ul style="list-style-type: none"> • Immediately consult your tax solicitors if you wish to challenge the bill of demand. • If the case permits, quickly file for a stay order. • Simultaneously, engage with Customs to explore an out-of-court settlement without compromising your legal rights.

Contact persons:

Datuk D. P. Naban

Senior Partner
Tax, SST & Customs Practice
T: +603 6208 5858
E: dpn@lh-ag.com

S. Saravana Kumar

Partner
Tax, SST & Customs Practice
T: +603 6208 5813
E: sks@lh-ag.com

Our sub-specialisation includes:

INCOME TAX

- Tax Litigation & Dispute Resolution Proceedings
- Tax Advisory & Planning
- Tax Audit & Investigation
- Transfer Pricing & Thin Capitalisation

INTERNATIONAL TAX

(Including Cross-border Transaction Tax & Withholding Tax)

SALES & SERVICE TAX

- SST Litigation
- SST Legal Advisory
- SST Audit & Investigation
- Anti-Profitsteering

CUSTOMS DUTY, EXCISE DUTY, SAFEGUARD DUTY & ANTI-DUMPING DUTY

TRADE FACILITATION & INCENTIVES

REAL PROPERTY GAINS TAX

PETROLEUM INCOME TAX

SALES & SERVICES TAX

STAMP DUTY

www.lh-ag.com

Please contact our tax partners **Datuk D P Naban** or **S Saravana Kumar** at tax@lh-ag.com if you have any further queries or wish to challenge any additional levies that Customs has imposed.

**Published by the Tax, SST & Customs Practice,
Lee Hishammuddin Allen & Gledhill**

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122
Email: tax@lh-ag.com

