



**REVENUE DIVISION
MINISTRY OF FINANCE
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INCOME TAX PUBLIC RULING

**TAX AUDIT
FRAMEWORK**

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1.0 INTRODUCTION

- 1.1 A fair, transparent and equitable tax administration system enhances public confidence in the tax system. Adherence to the tax laws must be strictly enforced and tax offences such as non-compliance and tax evasion should be penalized in accordance with the provisions of the Income Tax Act (Chapter 35).
- 1.2 The main aim for Tax Audit is to enhance voluntary compliance with the tax laws and regulations. A taxpayer can be selected for an audit at any time. However, being selected for a tax audit does not necessarily mean that such a taxpayer has committed an offence.
- 1.3 This framework will outline among others the rights and responsibilities of the audit officers, taxpayers and tax agents in respect of a tax audit with the aim to assist the audit officers to carry out their tasks efficiently and effectively as well as assisting the taxpayers in fulfilling their obligations.

2.0 OBJECTIVE OF A TAX AUDIT

The main objectives of a tax audit are to encourage voluntary compliance with the tax laws and regulations and ensure that the information provided in the income tax returns are accurate and in accordance with the tax laws and regulations.

3.0 STATUTORY PROVISIONS

3.1 The provisions of the Income Tax Act (Chapter 35) which are applicable to tax audits are as follows:

3.1.1 Section 3: Collector and other officers.

3.1.2 Section 4: Official secret.

3.1.3 Section 54: Collector may call for further returns.

3.1.4 Section 55: Power to call for returns, books.

3.1.5 Section 55A: Power to call for statements of bank etc.

3.1.6 Section 55B: Power of Collector to access and obtain information.

3.1.7 Section 56A: Keeping of books of account and giving of receipts.

3.1.8 Section 60A: Self-assessment.

3.1.9 Section 61: Collector to make assessments.

3.1.10 Section 61A: Audit.

3.1.11 Section 62: Additional assessment.

3.1.12 Section 65: Service of notices of assessment.

3.1.13 Section 66A: Board of Review.

3.1.14 Section 66B: Write of review.

3.1.15 Section 66C: Hearing and disposal of petitions of review.

3.1.16 Section 67: Appeals to High Court.

3.1.17 Section 67A: Appeals to Court of Appeal.

3.1.18 Section 67B: Rules as to Appeals.

3.1.19 Section 68: Assessment to be final and conclusive.

3.1.20 Section 70: Time within which payment is to be made.

3.1.21 Section 72: Penalty for non-payment of tax; and enforcement of payment.

3.1.22 Section 79: Penalty for making incorrect return.

3.1.23 Section 80: Penal provisions relating to fraud etc.

3.2 Statutory provisions relating to tax audit are not limited to the provisions cited above. Statutory provisions also include the Income (Petroleum) Tax Act (Chapter 119).

4.0 WHAT IS TAX AUDIT

A tax audit is conducted by examining a taxpayer's accounting books, business records and financial affairs to verify that the right amount of income has been declared, the right amount of tax has been calculated and paid and the income tax returns submitted are in compliance with the tax laws and regulations.

The Revenue Division, Ministry of Finance would carry out two (2) types of tax audit, namely **Desk Audit** and **Field Audit**.

4.1 Desk Audit

A desk audit is to be held at the Revenue Division's office. Desk audits are normally concerned with tax matters or adjustments that can be dealt with via correspondences. A taxpayer may be called for a meeting or discussion at the Revenue Division's office if further information is required.

4.2 Field Audit

A field audit takes place at the taxpayer's premises, which involves the examination of the taxpayer's accounting books, business records and financial affairs. The taxpayer will be given an official notice prior to the commencement of a field audit.

5.0 YEARS OF ASSESSMENT COVERED

5.1 A tax audit usually covers a period of one (1) year of assessment.

5.2 However, the tax audit may be extended to cover a period of up to six (6) years of assessment, pursuant to the issues uncovered during an audit. This six (6) year time limit is not applicable to cases involving tax evasion or fraud whether deliberate or unintentional.

6.0 SELECTION OF CASES

Audit cases are generally selected but not limited to the following:

1. Risk analysis;
2. Trend and other fundamental analysis;
3. Specific industries or specific group of companies;
4. Information received from third parties.

7.0 HOW A TAX AUDIT IS CARRIED OUT?

7.1 Audit Venue

7.1.1 Desk Audit

A Desk Audit is carried out through correspondences at Revenue Division's office.

Generally a desk audit involves checking all information on income and expenses as well as various types of claims made by a taxpayer in his or her income tax return. The Revenue Division will request for more information and supporting documents from the taxpayers with regards to the desk audit if necessary through a tax query letter. The taxpayer has to reply to the tax query letter within thirty (30) days from the date of the letter.

Specific desk audit cases can be referred for field audit action. Under such circumstances, the taxpayer will be informed through a field audit notification letter as part of the normal process of commencing the field audit.

7.1.2 Field Audit

A Field Audit is carried out at the taxpayer's business premises. Where the business premises are not suitable, the taxpayer may suggest an appropriate alternative for Revenue Division's agreement.

7.2 Commencement of an Audit

Upon receipt of returns, audit cases will be selected for either desk or field audit.

7.2.1 Desk Audit

Taxpayers who are selected for a desk audit will be through a tax query letter.

7.2.2 Field Audit

A taxpayer who is selected for a field audit will be notified by the Revenue Division through an official letter. The period from the date of notification of audit to the audit commencement is usually fourteen (14) days. However, a shorter or longer period of notification may be given by the Revenue Division with the agreement of the Revenue Division and the taxpayer.

A taxpayer on reasonable grounds or unavoidable circumstances may request for the field audit to be postponed, with approval of the Director of Revenue Division.

The official letter notifying on the field audit shall include the commencement date, the records to be made available for the field audit, the years of assessment covered and the names of the audit officers.

Taxpayer may contact the Director of the Revenue Division to confirm on the field audit visit.

7.3 Field Audit Visit

The Field Audit usually starts off with a meeting. The purpose of the meeting is to meet the taxpayer, obtain an understanding of the taxpayer's business activity and to discuss on the audit.

The taxpayer will brief the audit officers among others on the business activities, accounting policies, record keeping policies as well as the internal control system.

7.4 Examination of Records

Taxpayer should keep and retain sufficient records for a period of seven (7) years when carrying on a business in order to enable the income or loss from the business to be readily ascertained. "Records" includes

- (a) books of account recording receipts, payments, income and expenditure;
- (b) invoices, vouchers, receipts and such other documents as in the opinion of the Collector are necessary to verify the entries in any book of account; and
- (c) any records relating to any trade, business, profession or vocation. Failure to keep sufficient records is an offence.

7.4.1 Desk Audit

The examination of records will be performed at the Revenue Division's office. The taxpayers will have to send the documents and records to the Revenue Division's office based on the information required in the tax query letter.

The audit officers will examine all the relevant documents and records to ascertain that the correct amount of income has been reported and all other information provided in the returns are accurate.

7.4.2 Field Audit

The audit officers will examine all the relevant business accounts and records and perform physical sighting on the selected inventories and assets.

Examination of records will only be carried out at the taxpayer's business premises including places such as warehouses, lands, buildings, workshops, offices and centres. If it is deemed necessary, the audit officers should be allowed to make copies of the relevant records.

In the event that the work place provided by the taxpayer is not appropriate or conducive to carry out the audit or where photocopier is not available, the audit officers, with the consent of the taxpayer, may bring back the records for examination at the Revenue Division's Office.

The documents that are to be taken back to the Revenue Division will be listed down and signed by the relevant audit officers and taxpayer concerned. The documents will be returned to the taxpayer once the examination is completed.

For any electronic documentations and records kept by the taxpayers, hard copies of such records should be made available for examination. If the taxpayer is unable to provide the hard copies for examination, the taxpayer will have to facilitate and assist the audit officers to access the electronic documentations and copy the electronic records into any forms of secondary storage such as compact disks, hard disks or hard drives of the audit officers.

7.5 Audit Time Frame

7.5.1 Desk Audit

The desk audit will take approximately fourteen (14) weeks to complete.

7.5.2 Field Audit

The time taken to complete an on-site examination of records is between one (1) to five (5) days, and to be kept minimal to lessen the interruption on the taxpayer's daily business operations.

However, the time frame may be extended depending on the following factors:

- The volume and the complexity of the business transactions;
- The form in which records are kept; and
- The availability and level of cooperation of the taxpayer.

The field audit will take approximately eighteen (18) weeks to complete.

7.6 Settlement of Audit

7.6.1 Desk Audit

After the desk audit is completed, the Revenue Division will issue a notice of assessment or additional assessment to the taxpayer.

In the event the taxpayer disputes on the notification of assessment, he or she is allowed thirty (30) days from the date of the notification to file an official objection. Additional information and copies of evidence should be provided to support the objection.

If no objection is made within thirty (30) days from the date of the notification or where an objection is found to have no basis, the taxpayer shall be deemed to have agreed to the tax adjustments.

Expenses claims or other claims, for example capital allowance, may be disallowed in the event of insufficient supporting documents.

If no findings were observed, the Revenue Division will send a letter to the taxpayer to notify the taxpayer.

7.6.2 Field Audit

After the completion of the field audit, the Revenue Division will issue a letter to the taxpayer. The taxpayer will be informed through the letter on the audit findings which will cover the following areas:

1. Audit issues highlighted;
2. Reasons and rationale for highlighting the audit issues;
3. The amount of proposed tax adjustments (if any) and the years of assessment covered.

The taxpayer is then required to be present at the Revenue Division's Office for the discussion on the proposed tax adjustments. The taxpayer will be given the opportunity to provide explanations on the audit findings with all the relevant supporting documents.

Expenses claims or other claims, for example capital allowance, may be disallowed in the event of insufficient supporting documents.

If there are tax adjustments to be made, a notification of assessment or additional assessment will be issued.

In the event the taxpayer disputes on the notification of the tax adjustments, he or she is allowed thirty (30) days from the date of the notification to file an official objection. Additional information and copies of evidence should be provided to support the objection.

If no objection is made within thirty (30) days from the date of the notification or where an objection is found to have no basis, the taxpayer shall be deemed to have agreed to the tax adjustments.

Once the audit case is settled, the audit would not be repeated on the same issues for the same year of assessment. However, if there are new information received, an audit can be repeated for the same or different issues for the same year of assessment.

If no findings were observed, the Revenue Division will send a letter to the taxpayer to notify the taxpayer.

8.0 RIGHTS AND RESPONSIBILITIES

8.1 Revenue Division

8.1.1 An audit officer should carry out his or her duties in the following manner:

- Professional, knowledgeable, well mannered, trustworthy, honest and with high integrity;
- Fair in administering the tax laws;
- Provide explanations on any matters pertaining to the tax audit to the taxpayer when the need arises;
- Ensure the documents and records of the taxpayers and tax agents are properly kept and safeguarded.

8.1.2 Identification of an audit officer.

- Audit officers will show identification to the taxpayer at the commencement of the audit;
- Taxpayer may verify with the Director of Revenue Division if they have doubts on the authenticity of the audit officers.

8.1.3 An audit officer is prohibited from:

- Having any personal or financial interest in the business of a taxpayer being audited;
- Recommending a certain tax agent to the taxpayer to be appointed for the audit case; and
- Misusing his or her power or position in carrying out the official duties.

8.2 Taxpayer

8.2.1 Responsibilities of a taxpayer:

- Cooperative, well mannered, fair, honest and with high integrity;
- Provide reasonable facilities and assistance to the audit officers to carry out their duties which includes the following:
 - I. Allowing access to all the taxpayer's business premises;
 - II. Making available all documents and records required for examination;

- III. Letting the audit officers to examine and make copies of records, documents and books of accounts;
- IV. Permitting the use of photocopiers and printers, communication equipment, electricity and water, office space, furniture with no charge.

8.2.2 Cooperate in providing complete responses to all queries.

- Providing explanation and all the relevant supporting documentations on all the queries raise by the audit officers;
- If questions or queries raised are vague, the taxpayer may seek for clarification from the audit officers;
- If a taxpayer fails to cooperate or provide the required information, he shall be deemed to have committed an offence under the provisions of the Income Tax Act (Chapter 35).

8.2.3 The taxpayer is prohibited from:

- Giving any form of gifts or payment to the audit officers or transacting any business with the audit officers during the audit process; and
- Obstructing or deterring the audit officers in the exercise of his or her functions. Obstruction includes the following:
 - I. Refusing audit officers from entering the business premises including places such as lands, buildings, warehouses, workshops, offices or centres to perform his or her duties under the provisions of the Income Tax Act (Chapter 35);
 - II. Obstructing audit officers from carrying out their functions and duties under the provisions of the Income Tax Act (Chapter 35);
 - III. Declining to provide books of accounts, or other documents in the custody of or under the control of the taxpayer when required by the audit officers;
 - IV. Failing to provide reasonable assistance to the audit officers in carrying out their duties and
 - V. Refusing to answer or give responses to questions or queries raised during the course of the audit.

8.3 Tax Agent / Representative

8.3.1 The taxpayer can request for his or her tax agent to be present during any meeting pertaining to the tax audit. The taxpayer may also bring an interpreter to the meeting or discussion if necessary.

8.3.2 The taxpayer should submit a copy of the letter of appointment of the tax agent to handle his or her audit case to the Revenue Division.

8.3.3 The tax agent should carry out his or her duties in the following manner:

- Professional, fully conversant with tax laws and practices and with high integrity;
- Be honest, trustworthy, transparent and provide fullest cooperation when dealing with the taxpayer and the Revenue Division;
- Adhere to all the rules and guidelines laid down by the Revenue Division;
- Refrain from misusing information acquired or abusing position as a tax agent for own personal gain;
- Always advise the taxpayer accurately based on the true facts of the audit case; and
- Maintain the confidentiality of all the information and ensure that the information is not disclosed to any unauthorized party.

8.3.4 The tax agent is prohibited from:

- Giving inaccurate and inappropriate advice to taxpayers or collaborating with taxpayers to avoid paying the right amount of taxes;
- Acting irresponsibly or deliberately delaying the work of a tax audit;
- Offering any form of gifts or payments to the audit officers.

9.0 CONFIDENTIALITY OF INFORMATION

The Revenue Division, Ministry of Finance will ensure confidentiality of all the information acquired from the taxpayer during a tax audit through interview, discussion, correspondence or examination of records and that it is to be used for tax purposes only.

10.0 OFFENCES AND PENALTIES

- 10.1 Every person who without reasonable excuse makes an incorrect return by omitting or understating any income or gives any incorrect information in relation to any matter or thing affecting his or her own liability to tax, the persons shall be guilty of an offence and shall be liable on conviction to a fine of B\$10,000 and double the amount of tax which has been undercharged in consequence of the incorrect returns or information and in default of payment to imprisonment for 12 months.
- 10.2 Any person who willfully with intent to evade or to assist any other person to evade tax such as the omission of income which should be made in a return, making any false statements or entry in any return, giving false answers or information, falsifying any books of accounts or records, the person shall be guilty of an offence and for each such offence be liable on conviction to a fine of B\$10,000 and treble the amount of tax for which the person is liable for the year of assessment in which the offences was committed and to imprisonment for 3 years.

11.0 PAYMENT OR ADDITIONAL PAYMENT OF TAX

- 11.1 All tax payment should be made within thirty (30) days of the notice of assessment regardless if there is any objection or appeal against the assessment. Failure to make the payment within the thirty (30) days will subject the taxpayer to a penalty of 5% on the amount of tax payables.
- 11.2 If the amount of tax outstanding (principal and penalty of 5%) is not paid within 60 days of the imposition of the penalty of 5%, an additional penalty of 1% on the outstanding tax shall be payable for each completed month up to a maximum of 12 months.
- 11.3 If the taxpayers have strong justification for the late or underpayments, the taxpayer may apply to the Collector for the penalty waiver. However, it is at the Collector's full discretion on the waiver application. Kindly refer to the table below for the maximum percentage of penalty waiver for each application for each company:

Penalty Waiver Application for each Company	Maximum Waiver
1 st Application	50%
2 nd Application	30%
3 rd Application	10%

- 11.4 The Revenue Division will pursue or recover any outstanding amount of tax payables along with the penalty and full cost of suit through legal proceedings.

12.0 APPEAL

- 12.1 For any disputes on the assessment, the taxpayer may apply to the Collector by notice of objection in writing to review on the assessment made upon him within thirty (30) days of the notice of assessment. The notice of objection shall state the grounds of objection with all the relevant supporting documentations. If no valid objection or appeal has been lodged, the assessment shall be final and conclusive.
- 12.2 If the Collector agrees to the appeal or objection, the assessment will be amended accordingly. However, if the appeal or objection are not justifiable or not supported with valid or acceptable supporting documentations, the Collector shall issue a notice of refusal to amend the assessment as desired.
- 12.3 If the taxpayer still disagree with the assessment after the notice of refusal is being issued, the taxpayer must within thirty (30) days from the notice of refusal, requests for appeal to be heard by the Board of Review.
- 12.4 Should the taxpayer disagree with the outcome of the Board of Review, the taxpayer may appeal against the assessment to the High Court.

13.0 EFFECTIVE DATE

This ruling is effective from 1 March 2017.