TAX CORPORATE GOVERNANCE FRAMEWORK

INLAND REVENUE BOARD OF MALAYSIA

(As at 11 April 2022)

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Abstract

This Tax Corporate Governance Framework ("TCGF") intends to provide an overview of the IRBM'sexpectations on the Tax Corporate Governance process and structure that should exist in organisational settings. It provides a set of guidance on the application of tax risk management principles and the management of tax risks such as the identification and treatment of tax compliance risks, in meeting an organisation's tax obligations.

Besides promoting good governance practices, these initiatives are also relevant in enabling both the organisation and the IRBM to implement the TCGF Programme in Malaysia.

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TAX CORPORATE GOVERNANCE FRAMEWORK

1. INTRODUCTION

1.1. Overview

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.

In Malaysia, there is a growing expectation for organisations to have a level of governance that ensures accountability, transparency and integrity of the tax system.

Depending on the size and nature of the business, the organisation may already have governance arrangements in place to meet the expectations of various stakeholders and the Inland Revenue Board of Malaysia (“IRBM”).

1.2. Tax governance framework

Good tax governance is a subset of good corporate governance.

A strong tax governance framework establishes the techniques and processes within the organisation to identify tax risks, assess risks and sets out the appropriate actions to mitigate the impact of those tax risks. An effective tax governance framework can cultivate a level of confidence that the organisation is reporting and paying the right amount of tax, enabling organisations to achieve greater certainty in relation to its tax affairs.

The introduction of the Tax Corporate Governance Frameworks (“TCGF”) is part of the IRBM’s initiative towards adopting a cooperative tax compliance process that is both fair and effective in Malaysia.

An effective TCGF can assist an organisation:

(a) Articulate its attitude towards tax risks by providing a level of comfort to all stakeholders that tax risks are maintained at an acceptable level as tax strategies, policies and processes are standardised and integrated within the wider organisation;
(b) Achieve greater certainty with respect to its tax affairs, where in the absence of a clear tax compliance control framework, there may result in various parts of the organisation pursuing different and possibly conflicting strategy;
(c) Promote early resolution of tax issues as and when the tax risks are identified via the internal controls established;
(d) Save time, money and effort in managing tax affairs.

2. OBJECTIVE OF TCG FRAMEWORK

2.1. Purpose

This framework sets out the IRBM's expectation on the application of the principles of Tax Corporate Governance within an organisational setting. Organisation for Economic Co-operation and Development (OECD) through its publication on Co-operative Tax Compliance identifies the following six principles in developing a good TCGF which are as follows:

(a) Tax strategy established
(b) Applied comprehensively
(c) Responsibility assigned
(d) Governance documented
(e) Testing performed
(f) Assurance provided

Note: Please refer to Appendix 1 for further details with respect to the six principles set out above.

IRBM recognises that different organisations may adopt different governance practices based on a range of factors, including their size, complexity, history and corporate culture. While the IRBM expects that all organisations will have a level of Tax Corporate Governance, the IRBM also recognises a need for flexibility in application of the principles of Tax Corporate Governance. For these reasons, the components outlined should be regarded as an indication of the IRBM's views of better practices in relation to the TCGF as opposed to a rigid set of rules.

The components of the TCGF that can be applied by an organisation in developing its TCGF may include:

(a) Articulating tolerance for tax risk
(b) Defining the tax risks to be covered
(c) Segregation of duties and identification of who is responsible for tax related tasks
(d) The process of managing tax risks
(e) Intended outcome - ***Eventual desired outcome*** *of improved image and reputation, increased tax authority confidence, better management of tax affairs, reduced enquiries and tax audits, reduction in costs and resource needs.*

IRBM recommends organisations to consider adopting a TCGF appropriate to their circumstances and the requirements of the relevant local corporate rules and legislation when assessing the robustness of their TCGF.

2.2. Aim

This document aims to help organisations understand the focus areas of the IRBM with respect to tax corporate governance to enable businesses to:

(a) Develop or improve an organisation's tax governance and internal control framework;
(b) Promote tax compliance and reduce tax risks;
(c) Test the robustness of an organisation's framework;
(d) Understand how to demonstrate the operational effectiveness of an organisation's key internal controls to its stakeholders, including the IRBM; and
(e) To ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

3. THE SCOPE OF TCGF

The IRBM encourages organisations to develop their TCGF accordingly pertaining to:

(a) Income tax
(b) Petroleum tax
(c) Real Property Gains tax
(d) Transfer pricing/Advanced Pricing Arrangement (APA)
(e) Withholding tax
(f) Tax payment (CP204, CP 250, CP204A, CP250A, instalments, RPGT and Withholding Tax)
(g) Monthly tax deduction of employees (CP39, CP39A), additional monthly deduction (CP38)
(h) Stamp duty
(i) Taxation on Labuan Business Activities
(j) Tax incentives
(k) Tax strategies
(l) Public Ruling compliance
(m) Tax rules and regulations
(n) Advanced Ruling.

If reasons arise that certain items be excluded from the TCGF, IRBM will discuss any issues with the organisation to determine the extent to which such items can be covered in the TCGF as practical. For example, where a particular tax is not relevant or has a remote / low level of materiality to the organisation and the IRBM, then such item may be considered to be excluded from the TCGF.

For organisations with an existing TCGF which covers limited items, the organisation may consider to include further items, thereby allowing organisations to achieve a complete TCGF.

4. BENEFITS OF HAVING A FRAMEWORK

In general, implementation of the TCGF will bring benefits to both the organisation and the IRBM in various ways.

For your business, these benefits may include:

(a) Better tax risk management
(b) Promotion of operational efficiency for businesses
(c) Creation a platform for managing tax risks
(d) Encouragement of proactive risk identification procedures to be performed
(e) Enhancement of business confidence in managing tax
(f) Protection of the reputation of the organisation's management team and stakeholders
(g) Ensuring accurate tax reporting and reinforcing the integrity of business records
(h) Potential reduction of compliance costs
(i) Greater certainty in relation to tax exposure.

In turn, an organisation's TCGF will assist the IRBM:

(a) Acquire a better understanding of the organisation's business and its tax governance procedures and tax risk management procedures
(b) Enhance its relationship with the taxpayer
(c) Drive co-operative compliance which is business-friendly and in line with International standard and Government initiative
(d) Increase efficiency and effective use of resources
(e) Provide the ability to focus on audits and enforcement for high-risk cases
(f) Receive correct tax returns and payments on time

5. KEY FOCUS AREAS

For each focus area, organisations can present evidence that show their tax corporate governance is in place and effective. The types of evidence provided will be in the context of the respective businesses. Below are the key focus areas and some examples of the types of evidence required by the IRBM.

5.1. Roles and responsibilities

The IRBM focuses on the accountability of decision makers. Clear roles and reporting lines of authorization promote decision making that is transparent and adequately addresses tax risks.

In assigning the roles and responsibilities of each of the stakeholders with respect to tax risk management in an organisation, the Board of Directors or Senior Management would need to be adequately informed to make decisions.

The table below provides an overview and guidance on the assignment of the roles and responsibilities of each stakeholder in managing tax risks.

No.	Stakeholders	Roles and responsibilities
1.	Board of Directors (BOD)	(a) Sets the tone from the top (b) Tax risk awareness (c) Advisory role and judgement (d) Consideration of the organisation's tax risk appetite (e) Possess general understanding of internal controls in carrying out their roles and responsibilities
2.	Tax Risk Committee / Audit Committee (Head of Department)	(a) Defines tax risk framework, policies and controls (b) Defines the roles and responsibilities (c) Oversight of internal controls environments (d) Risk oversight (e) Systematic review and proper documentation of internal controls and procedures for quality assurance purposes, on a periodic basis
3.	Group Finance Department (CFO / Head of Finance), or Group Tax Department (Head of Tax / Regional Head of Tax)	(a) Review of tax risks (b) Assessment of tax issues (c) Identify and/or drafting of tax policies, standards and guidelines (d) Responsible for review of tax reports to be submitted (e) Authority to seek external advice when required (f) Responsible for engaging with the IRBM
4.	Tax managers/ Finance Manager/ Accountant	(a) Implement tax risk controls (b) Perform tax risk monitoring (c) Highlight possible tax issues (d) Conduct assurance and testing (e) Maintain documentation to support tax positions taken and filings with the IRBM
5.	Business / Departmental functions	(a) Establish and maintain Standard Operating Procedures (SOP) which document business/departmental functions' area of processes where tax implications are concern, including proper recording of transactions into the ledger for data extraction i.e. covers:

No.	Stakeholders	Roles and responsibilities
		i) Process ii) Posting iii) Invoicing (b) Ensures to the best knowledge that there are no significant deficiencies or material weaknesses in the design or operation of the internal controls in respect of the above. (c) Prepare documentation of end-to-end process (d) Maintain documentation to support tax positions taken and filings with the IRBM (e) Staff training. (f) Staff reviews, KPIs and performance agreements that incorporate tax corporate governance and risk management elements.

Examples of evidence that the IRBM may look for:

(a) roles and responsibilities are clearly documented.
(b) clear lines of authorisation and sign-off for tax decisions and administration.
(c) business owners, board of directors, senior management and tax functions understand their respective tax obligations, including registrations, lodgement, reporting, payment and record keeping.
(d) BOD induction pack for directors to incorporate briefings on key accounting and tax issues.

For example:

Where a Board of Directors is present, the roles of the Board may include:

(a) An outline of the roles and responsibilities of the company directors and any associated delegation (e.g. to the audit committee).
(b) Develop a Board level skills matrix –this outlines the financial / tax literacy and tax knowledge at the Board level.
(c) Formal endorsement of the TCGF (including the development of a Tax Strategy and the Code of Practice).
(d) Perform an annual review of the organisation’s tax risk areas, internal control systems and any on-going significant tax issues being monitored, together with any additional information that may be necessary.

The roles of the senior management may include:

(a) Management to set responsibility for managing compliance with all types of tax which the organisation is liable for.

(b) Management should ensure sufficient capacity and capability in the tax function and other responsible areas to enable effective management of all taxes and tax risk.
(c) Assurance of TCGF and internal controls in identifying, assessing and managing tax risks.
(d) Sign off of significant and material transactions.
(e) Review and consideration of tax reporting and tax risk issues escalated.
(f) Management to provide ongoing support and briefings for directors regarding tax risk management strategies.

“Senior management” refers to the personnel of an organisation who are members of its core management team (other than the Board of Directors) who are involved in the day-to-day operations of managing the organisation. This would typically include all members of the management one level below the executive directors, including all the functional heads.

5.2. Control framework

Systems and controls are in place to ensure accurate reporting and transparency of decision making. An illustration of a control framework is depicted in the diagram below.

Risk identification and evaluation

Organisations may wish to explicitly define “tax risk” in order to create a common understanding of tax risks being discussed within the organisation. The key tax risks identified would need to be categorized and graded for risk prioritisation. For example, tax risks can be assessed based on both qualitative (e.g. may adversely impact the brand image or reputation of the organisation) and quantitative (e.g. a specific threshold) measures. Note that it is not a necessity for all the tax risks identified to be resolved in entirety at a single point in time.

Implementing controls activities / function / process

Following the category of the tax risks identified, appropriate control procedures would need to be implemented to mitigate such risks. Tax controls should be applied comprehensively to cover all transactions that have a tax impact on the organisation.

Reporting and continuous monitoring

Control procedures implemented would require regular attention and testing to ensure it meets the organisation’s needs. Ongoing monitoring of the control procedures and regular reporting to the Board and other stakeholders (depending on the significance of the tax risks) would be essential to ensure that tax risks are continually monitored and reviewed.

Examples of evidence that the IRBM may look for:

(a) Formalise the organisation’s tax strategy by the Board, encompassing the “Tone at the Top” approach. Generally, the tax strategy document would comprise the following key topics: Code of practice, how the organisation manages tax risks, the organisation’s attitude to tax planning, the level of risk the organisation can tolerate with respect to tax risks, the organisation’s relationship with IRBM, etc.).
(b) Document controls and processes that identify, assess and mitigate tax risks.
(c) Develop controls to identify and manage tax risks integrated into IT systems and processes.
(d) Ascertain decision points and communication processes to escalate tax risks.
(e) Develop a control list of tax documents for record keeping.
(f) Maintain a tax sensitive event trigger list to track potential tax issues with respect to the organisation’s activities.

(g) Maintain a tax risk register, as well as remediation plan to document mitigation steps in resolving the tax risks identified.
(h) Introduce standards with respect to the development of the tax technical knowledge and capabilities of the personnel of the tax functions (e.g. qualification and experiences of the tax functions, training requirements, etc.).
(i) Review and update the TCGF annually.

In addition, various control tools such as flowcharts and controls walkthrough templates can be developed as part of an organisation’s internal controls.

Note: Please refer to Appendix 2 for an example of an organisation’s internal control flowchart.

5.3. Control testing

Processes exist to regularly test the effectiveness of the organisation’s internal controls and rules to manage and report on business risks.

Examples of evidence that the IRBM may look for:

(a) develop plans for testing systems and controls relating to tax functions.
(b) document process for retaining working papers, reconciliation processes and error exception processes.
(c) Set audit committee reviews of the effectiveness of controls and procedures in place.
(d) Documented evidence of the operationalization of the TCGF.

5.4. Management of tax risks

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

A reasoned approach would need to be adopted when assessing tax risks and when making decisions, including considerations with respect to the risk of dispute.

Examples of evidence that the IRBM may look for:

(a) document a detailed review process to consider IRBM's published view and identify potential difference in law or factual interpretation that may give rise to a dispute.
(b) for early identification of potential risk of dispute that may potentially have significant tax implications, to document communication protocols to management and formulate steps taken to manage the risk identified, (e.g. by engaging external advisors or discuss with IRBM).
(c) identify gaps between "as-is" and the desired ideal state for consolidating and highlighting tax risks, follow-ups, validation, assessment and on-going improvements to tax management process.
(d) develop templates with key details of identified tax risks to be reported to the Board for decision making.

5.5. Significant or new transactions

Significant or new transactions are identified, well documented and subject to a review and sign-off for tax risk purposes.

Examples of evidence that the IRBM may look for:

(a) document process to identify and map major categories of transactions to relevant tax classifications (e.g. how capital and disallowable items are identified in the ledger).
(b) assess the potential impact due to the change of tax landscape (e.g. from the announcement of annual budget in Malaysia, etc.).
(c) determine parameters of a significant or material tax risk (e.g. materiality, approval limits, level of tax risks, etc.).
(d) ascertain impact of the tax risks to the business.
(e) plans to manage commercial and tax risks, limiting the impact on your business.
(f) internal guidance on when significant or new transactions should be escalated within the organisation and/or external advice sought.

5.6. 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 that the IRBM may look for:

(a) Reconciliations of tax computation to financial statement and explanations for any variances which may have tax impact.

(b) Audit reports.

6. IMPLEMENTATION

This framework is to be read together with the Programme Guide (or any other accompanying guidelines) for the implementation of the TCGF in Malaysia.

Broadly, the key elements of the TCGF Programme comprise the following:

6.1 The need for a TCGF Programme

The TCGF Programme is an arrangement between the IRBM and the taxpayer to work together to improve an organisation's corporate tax compliance matters in an open and honest manner.

The IRBM would encourage taxpayers to participate in this TCGF Programme with the aim to establish a transparent relationship in approaching tax matters moving forward. Both parties will commit to cultivate and grow mutual trust.

This Programme also establishes a platform to encourage on-going discussions on tax risk management matters between IRBM and participants. Both parties can learn and gather more insights on managing tax risks and implementing controls for the overall business operations. At the same time, this allows the IRBM to understand the commercial reasons on business decisions being made by taxpayers.

6.2 Participation in the TCGF Programme

Presently participation encouraged for organisations that:

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

Further encouragement for large businesses to participate in the TCGF Programme.

6.3 Processes of the TCGF Programme

Step 1: Getting ready

- (a) Satisfy pre-requisites
- (b) Preliminary self-assessment
- (c) Submission of participation form (notice of acceptance within 14 days from submission of participation form)

Step 2: Review by Independent Reviewer

- (a) Appointment of independent reviewer by the participants to perform a review assessment on the TCGF
- (b) The independent reviewer can be a public accounting entity or independent in house internal audit team, as long as the respective team members are accredited tax practitioners.

Step 3: Submission to the IRBM

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

Step 4: Evaluation by the IRBM

- (a) Review documents submitted
- (b) Meetings with IRBM
- (c) IRBM to conduct assessment (within 6 months from the date of submission)

Step 5: Conclusion of assessment by the IRBM

- (a) Award of participation status of the TCGF Programme

6.4 TCGF Programme Timeframe

Proposed timeframe from the date of acceptance of the participant by the IRBM (Step 1) to the award of participation status (Step 5): 8 - 12 months, with a potential extension of time application subject to IRBM's approval.

Other considerations:
(a) Validity of the awarded status (for 3 years).
(b) Renewal process

6.5 Benefits of the TCGF Programme

Participants will be able to enjoy the following benefits upon its participation in the TCGF Programme include:

- Reduced scrutinization of compliance activities
  - No/lesser tax audits will be conducted.
  - Higher materiality or reduced sample size.

- Expedite tax refunds
  - Accelerate tax refunds' process for compliant participants, provided no anomalies are noted and subject to management approval with best endeavour will be given to expedite refunds.

- Appointment of a dedicated tax officer
  - A single point of contact between taxpayer and IRBM
  - Expedite any on-going dialogue on technical matters

- Priority consideration
  - Eligible to be granted priority consideration for compliant participants with no penalty imposed.

7. CONCLUSION

The IRBM is committed to provide guidance to assist organisations to develop an effective tax governance to meet your obligations. Therefore, organisations are strongly encouraged to adopt and implement a robust TCGF within the organisation.

Appendix 1: The OECD's six principles of a TCGF

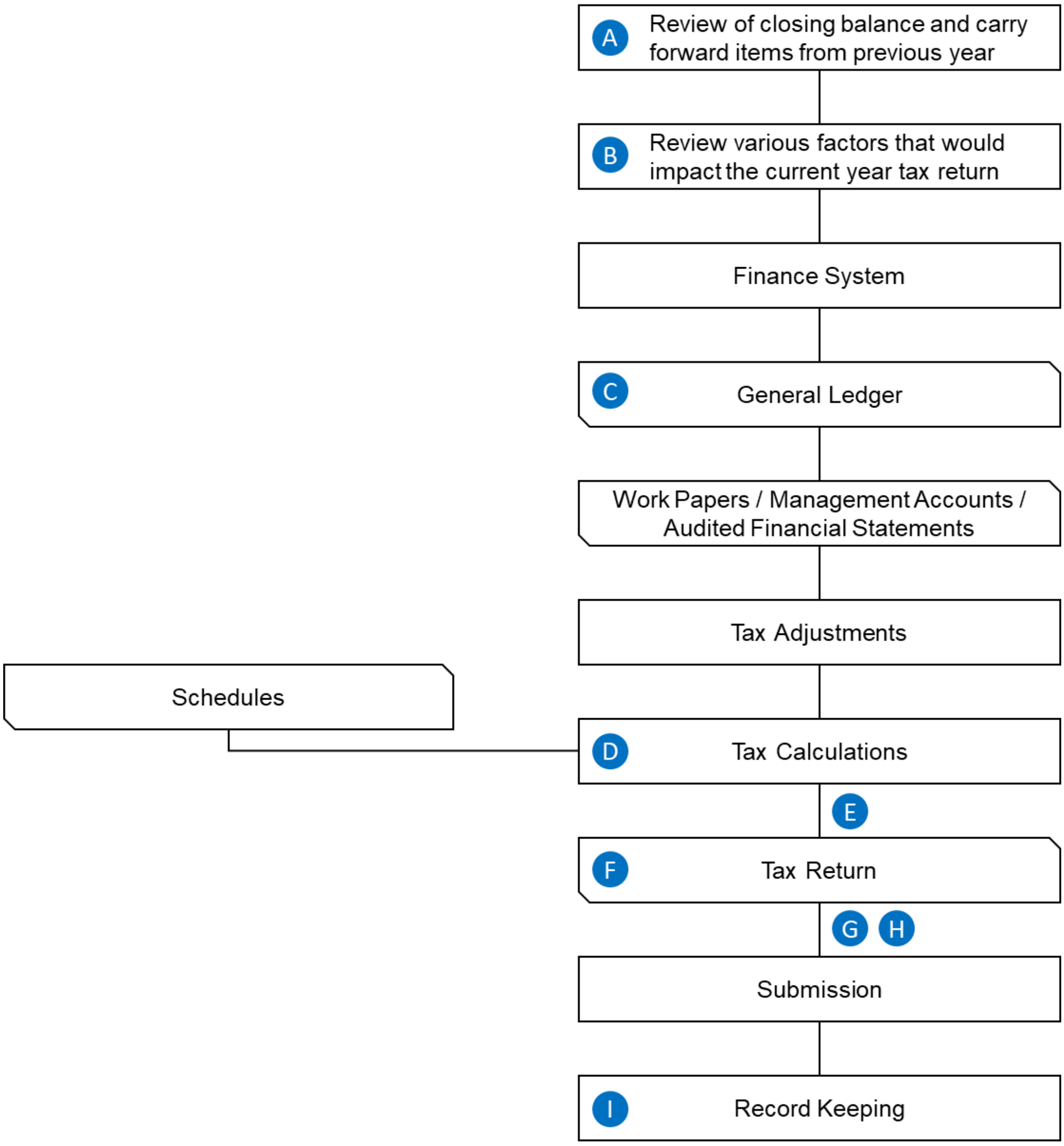
The OECD's six principles of the TCGF are summarized as follows:

No.	Principles	Description
1	Tax Strategy Established	The tax strategy should be clearly documented and owned by the Board of Directors / senior management of the enterprise.
2	Applies Comprehensively	All transaction 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' activities and ideally should be embedded in day-to-day management of business operations.
3	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 recognized and properly resourced.
4	Governance Documented	There needs to be a system of rules and reporting that ensures 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.
5	Testing Performed	Compliance with the policies and processes embodied in the TCGF should be the subject of regular monitoring, testing and maintenance.
6	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 risk.

Source: OECD (2016), Co-operative Tax Compliance: Building Better Tax Control Frameworks, OECD Publishing, Paris.

Appendix 2: Example of an organisation's corporate income tax preparation and submission flowchart

The flowchart and table below outline an example of how an organisation may document its income tax preparation and submission process to provide a clear view of the organisation's key control points. For organisations which automate or outsource its income tax compliance preparation work, IRBM acknowledge that the preparation and controls may be different.



Appendix 2: Example of an organisation's corporate income tax preparation and submission flowchart *(cont'd)*

Tax return preparation process flow description	Key Control(s)	Manual / automated controls	Frequency of control	Control evidence
Review closing balance and carry forward items from previous year's tax return	Control A	Manual	Annual	Sign-off of year end checklist by tax team member and review by tax team manager.
Export to Excel Spreadsheet or other systems, as relevant	Not a key control	N/A	N/A	N/A
Review various factors that would impact the current year tax return (including new tax laws, changes in accounting standards, internal accounting system upgrades, etc.)	Control B	Manual	Annual	Discussion memorandum or year-end checklist prepared by tax/finance team member and reviewed by tax/finance team manager.
Extract general ledgers from finance system for the relevant period (12 months ending, e.g. 31 December) by team member	Not a key control	N/A	N/A	N/A
Check the extractions of general ledgers	Control C	Manual	Monthly	Sign-off of month end checklist by team member and review by team manager.
Working papers are prepared for all manual adjustments	Not a key control	N/A	N/A	N/A
Adjustments are input into the tax calculation	Not a key control	N/A	N/A	N/A

Appendix 2: Example of an organisation's corporate income tax preparation and submission flowchart *(cont'd)*

Tax return preparation process flow description	Key Control(s)	Manual / automated controls	Frequency of control	Control evidence
Information inserted are reviewed by a second tax / finance staff member	Control D	Manual	Yearly (Income tax)	Sign-off of year end checklist by tax / finance team member and review by tax / finance team manager
Reconciliation of accounting profit/loss to taxable income/loss to ensure completeness, accuracy and incorporate explanatory for all differences	Control E	Manual	Annual	Sign-off of year end checklist by tax / finance team member and review by tax / finance team manager
Working papers are prepared for supporting schedules	Not a key control	N/A	N/A	N/A
Tax return and schedules are reviewed and signed off by tax / finance review team	Control F	Manual	Annual	Sign-off of year end checklist by tax / finance team member and review by tax / finance team manager
Executive memorandum is prepared and tabled to a governing committee summarising the analysis and findings as per tax return	Control G	Manual	Annual	Tax / finance manager to submit to Head of Tax / Finance
Final review and lodgement of tax return by company's Head of Tax / Head of Finance / Company Director	Control H	Manual / Automated	Annual	Head of Tax / Head of Finance / Company Directors' signed off on tax returns

Appendix 2: Example of an organisation's corporate income tax preparation and submission flowchart *(cont'd)*

Tax return preparation process flow description	**Key Control(s)**	**Manual / automated controls**	**Frequency of control**	**Control evidence**
Copy of the tax return, schedules and associated paperwork is stored and filed centrally	Control I	Manual	Annual	Copies of tax return, schedules and associated paperwork is retrieved

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