



# Tax Audits and Investigations

## *Know What to Do When In The Spotlight*

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*Facilitated by:*  
Ms Tham Siok Peng and Mr Yang Shi Yong

**R**eceived a query letter from the Inland Revenue Authority of Singapore (IRAS)? The last thing a business should do is to disregard the letter or provide a hasty reply.

“It is important that businesses examine the contents of the query letter carefully,” highlighted Tham Siok Peng, Consultant, and Yang Shi Yong, Director, Drew & Napier LLC, at a webinar organised by the [Singapore Chartered Tax Professionals](#). “The scope and type of queries, and other information such as the tax division that issued the letter, may provide an indication of whether the authorities are simply seeking clarification about the business’ tax returns, or that the business is under a tax audit or investigation”.

Sometimes, IRAS may also send letters requesting businesses to perform self-reviews. Where tax errors are uncovered during the self-review, businesses should voluntarily disclose these errors promptly through IRAS’ voluntary disclosure programme to minimise any penalties.

### ***How Are Cases Selected For Tax Audits and Investigations?***

Cases for tax audits and investigations are picked out by IRAS through several ways. For example, they may be selected through data analytics on specific risk areas. IRAS may also pick out certain cases based on tip-offs from informants, non-replies from self-review letters, or where unsatisfactory replies were provided for prior audits.

Different industry sectors or specific areas are routinely selected by IRAS for audit. In 2021, renovation-related and funeral services were among the industries under IRAS’ scrutiny. In relation to Goods and Services Tax (GST), the current area of focus for audit is on businesses involved in missing trader fraud arrangements.

### ***Differences Between Tax Audit and Investigation***

#### **TAX AUDIT**

A tax audit is less serious than a tax investigation. Generally, in a tax audit, a business’ tax declarations, accounts and documents are examined to determine if there are any tax errors.

The business is informed prior to an intended visit by letter, email, or a phone call from IRAS. Such visits would usually be conducted by IRAS’ tax auditors who would typically provide details of the visit (such as the date and time of the visit, the documents they wish to examine, and the relevant years of assessment to be audited).

## TAX INVESTIGATION

Conversely, a tax investigation is more serious and detailed, with the objective of determining if there was any evasion of taxes. Often, the investigation ends up in court when sufficient evidence is obtained to prosecute the taxpayer for tax evasion.

Unlike a tax audit where prior notice is given by IRAS before visiting, IRAS' tax investigators may conduct dawn raids during a tax investigation. Such surprise visits may be carried out simultaneously, not only on the business but also its auditors, tax agents, customers and suppliers, to obtain relevant documents and records.

### *What Are IRAS' Powers in Tax Investigation?*

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#### **POWER TO CONDUCT RAIDS**

IRAS has the power to raid businesses, tax agents or accountants and even arrest if they are seen as in cahoots or abetting a tax offence. To conduct a search, tax investigators need not produce a search warrant, only their authority card. During the search, tax investigators have the powers to make copies or seize any document or record, obtain passwords to phones and computers, and image computers and mobile phones.

If a person is suspected to have committed a serious tax offence or attempts to obstruct or hinder the investigations, he may be arrested and be detained for up to 48 hours, following which he may be charged in court or released on bail or bond pending further investigations.

#### **POWER TO INVESTIGATE TAX CRIMES**

The powers of tax investigators were enhanced in late 2018. Authorised IRAS officers now have the power of forced entry, the power to carry out body searches, and the power to arrest without warrant.

#### **POWER TO CONDUCT INTERVIEWS**

As part of the investigations, tax investigators have the power to interview business owners and employees on the day of the surprise visit and record their statements. Such interviews could also extend to any relevant third parties (such as ex-employees, suppliers, and customers), including obtaining or verifying information with third parties (such as financial institutions and other government agencies).

This would mean that if entry cannot be gained to a building or place for the purpose of investigating serious types of tax offences (such as tax evasion or improperly obtaining a GST refund), tax investigators can break open any door or window or use any other reasonable means. This power may also be exercised if tax investigators reasonably believe that there is, in a building or place, any item that may be relevant to the investigation or is required as evidence in proceedings and that item is likely to be destroyed or deleted.

In the interview, tax investigators are allowed to ask and gather all information as long as it is relevant to their investigations or prosecution of a person for an offence under the Income Tax Act (ITA) or Goods and Services Tax Act (GSTA).

Tax investigators, upon gaining entry into the premises, may search any person for any item which may be relevant to the investigation or required as evidence in any proceedings for the tax offence. A woman can only be searched by female investigators.

It should be noted that it is mandatory for a person to personally attend the interview with IRAS once a notice under section 65B of the ITA or section 84 of the GSTA is issued. Failure to comply is an offence and if found guilty, the person would be liable to a fine of up to S\$10,000 or to imprisonment for a term not exceeding 12 months or to both.

At the conclusion of the interview, a written statement would usually be taken.

## ***Outcome of a Tax Audit or Tax Investigation***

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### **TAX AUDIT**

Upon conclusion of a tax audit, IRAS would notify the business of the outcome via writing or through a meeting with the business' representative. Where discrepancies are found, adjustments would be made to the business' tax assessments for the relevant year of assessment. IRAS may offer to compound minor offences, such that the business would instead pay a composition fee.

### **TAX INVESTIGATION**

There are four possible outcomes arising from a tax investigation – no further action, stern warning or conditional warning in lieu of prosecution, composition of minor offences, and prosecution.

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

In some cases, stern warnings or conditional warnings may be issued in lieu of court prosecutions. When a conditional warning is issued, the business or person is warned that the prosecution of the offence, for which IRAS is of the view has been committed, is withheld for a period of time, during which the business or person warned undertakes not to commit any other offences. Upon the expiry of this period and fulfilment of the condition, no further actions would be taken in respect of the case.

There may also be cases where 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 pay a composition fee instead. 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 severity of the offence, the composition sum can be up to 400% of the additional tax payable.

The most serious outcome of a tax investigation is prosecution where the business or person(s) related to the business is/are charged in court. This happens when IRAS has established a prima facie case that offences have been committed, and is of the view that Court proceedings should be initiated to prosecute the business or abettors for tax evasion or tax-related offences.

## ***What Are the Penalties for Tax Offences?***

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The prescribed sentencing range and mandatory penalties for common income tax and GST offences are stipulated in the ITA and GSTA respectively. Section 95 of the ITA covers incorrect tax returns, while Sections 96 and 96A deal with tax evasion and serious fraudulent tax evasion respectively.

Similar provisions are found in the GSTA. Specifically, Section 59 of the GSTA covers penalties for incorrect GST returns, while Sections 61 and 62 cover penalties for failure to register for GST and fraud respectively.

It is noted that since June 2021, the High Court has endorsed a new sentencing framework for income tax evasion, where the sentencing range has been expanded and imprisonment terms increased.

As the saying goes, "It is always better to be over prepared than under prepared". If the tax auditors or investigators come knocking on your door, knowing what to expect and what to do will definitely make it a less stressful experience.

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## Facilitators

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**Ms Tham Siok Peng**  
Consultant, Tax & Private Client Services  
Drew & Napier LLC  
E: [siokpeng.tham@drewnapier.com](mailto:siokpeng.tham@drewnapier.com)



**Mr Yang Shi Yong**  
Director, Tax & Private Client Services  
Drew & Napier LLC  
E: [shiyong.yang@drewnapier.com](mailto:shiyong.yang@drewnapier.com)

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Angelina Tan is Technical Specialist, Singapore Chartered Tax Professionals.

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