INSIGHTS FROM TAX CORPORATE GOVERNANCE (TCG) PILOT PROGRAMME:
ADVANCING TOWARDS THE FUTURE

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Contrary to widely held belief, taxes are no longer a year-end affair. Since the year 2021, the global trend has shifted towards increased transparency and tax disclosure, especially for listed issuers. The Environmental, Social, and Governance (ESG) index has included tax transparency as a component of their index. Within the same year, the Malaysian Institute of Accountants (MIA) and the Malaysian Institute of Certified Public Accountants (MICPA) issued the Tax Governance Guide, with the aim to guide the directors of listed issuers in reporting the management of tax matters affecting the business and annual reports. Following this, the Inland Revenue Board of Malaysia (HASiL) has also introduced the Tax Corporate Governance Framework (TCGF) to provide guidance to taxpayers on meeting HASiL standards in terms of tax governance practice and reporting.

Change is not always easy, but it is inevitable. This scenario has not only changed the taxpayer's customary practice but also HASiL's approach from enforcement to cooperative compliance. One way to accomplish this is by introducing a pilot programme entailing small-scale experiments that assess the feasibility and effectiveness of a change before rolling it out to the whole organisation. It is hoped that by applying the lessons learned and the best practices developed from the pilot programme, HASiL can make any necessary adjustments or modifications to the plan. This article discusses the lessons learned along the pilot programme journey and the expectations moving forward.

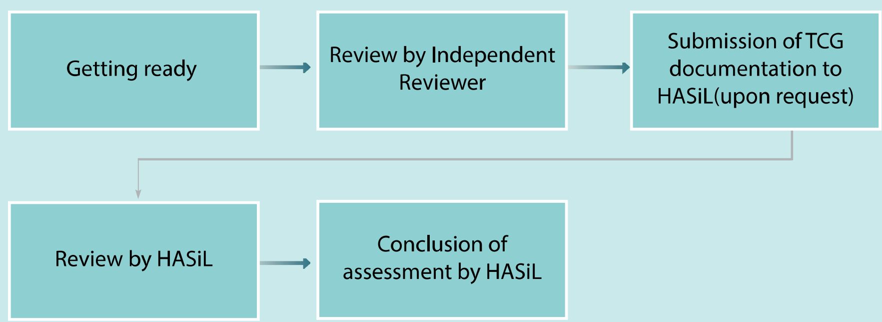
INTRODUCTION TO TAX CORPORATE GOVERNANCE FRAMEWORK (TCGF)

HASiL's TCGF states that corporate governance encompasses the rules, relationships, systems, and processes under which decisions are made and authority is exercised and controlled within an organisation. It also states that a good tax governance is a subset of good corporate governance. An effective framework for tax governance establishes the methods and procedures throughout the organisation for identifying and evaluating tax risks as well as outlining the best course of action to mitigate the impact of these risks. In developing a good TCGF, HASiL places emphasis on the 6 basic principles proposed by the Organisation for Economic Co-operation and Development (OECD), consisting of: (1) tax strategy established, (2) applied comprehensively, (3) responsibility assigned, (4) governance documented, (5) testing performed, and (6) assurance provided. The TCGF covers various scopes such as income tax, petroleum tax, real property gains tax, transfer pricing/advanced pricing arrangement (APA), withholding tax, tax payments (CP204, CP 250, CP204A, CP250A, instalments, RPGT, and withholding tax), monthly tax deduction of employees (CP39, CP39A), additional monthly deduction (CP38), stamp duty, taxation on Labuan business activities, tax incentives, tax strategies, public ruling compliance, tax rules and regulations, and advanced rulings (TCGF, 2022).

To encourage the TCGF adoption, HASiL has introduced the Tax Corporate Governance (TCG) Programme, which is currently being implemented as a pilot programme. Under the TCGF programme, an organisation's TCG status will be valid for 3 years upon acceptance into the programme, subject to the terms and conditions as stated in the offer letter.

To participate in the programme, taxpayers shall follow the process illustrated in **Figure 1** below:

FIGURE 1: TAX CORPORATE GOVERNANCE (TCG) PROCESS FLOWCHART



In essence, this programme reviews and assesses the execution of tax governance from 2 distinct perspectives, namely, the adequacy review (adherence to the 6 basic principles) and the effectiveness review [effectiveness of the organisation's tax control framework (TCF)]. Participation in the programme is entirely voluntary.

TCG FRAMEWORK & GUIDELINES

The objective of the TCG framework and guidelines is to outline HASiL's expectations when applying the TCG principles in an organisational setting. As stated in the framework, the document aims to help organisations understand the focus areas of HASiL with respect to tax corporate governance. This is to enable businesses to (1) develop or improve their tax governance and internal controls framework, (2) promote tax compliance and reduce tax risks, (3) test the robustness of their framework, (4) understand how to demonstrate the operational effectiveness of their key internal controls to stakeholders (including HASiL), and (5) ensure that the financial, regulatory, and reputational risks associated with taxation are fully identified and evaluated. The main highlights of the document are the benefits of implementing the TCG framework in the business setting, the key focus areas, the importance of establishing a robust control framework and how control is exercised, and finally the TCG programme implementation. The guidelines are an extension of HASiL's TCGF, and were introduced to ensure clarity of the TCGF's contents. The guidelines place emphasis on the Tax Control Framework (TCF), which is the most important component of the TCG implementation.

PILOT PROGRAMME

As of the date of this publication, participants in the pilot programme consist of 11 groups of companies with over 30 entities. The pilot programme commenced in June 2022 and will end in June 2024. Since the targeted group for the pilot programme is the large taxpayers group, the pilot programme is primarily carried out by HASiL's Special Industry Branch, Multinational Tax Branch, and Large Taxpayer Branch. During the pilot programme phase, participation was initially opened to invited taxpayers who were selected from organisations with good compliance records. Further, the programme was also opened to any taxpayers who were interested and "ready".

Since the initiative is voluntary, not all the taxpayers who were offered the opportunity to participate in the pilot programme accepted the offer to do so. Despite having a strong control system in place, some taxpayers found that their system was not properly integrated. There were also taxpayers who lacked the necessary resources to prepare the TCG documentation. Hence, these taxpayers would rather hold off on joining the TCG programme until they are ready or until it becomes compulsory. On the contrary, there were taxpayers who were not invited but were still eager to participate, and these taxpayers have pledged to fully abide by the guidelines.

The difference between the pilot programme and the mainstream programme is that the pilot programme has a longer processing time, since the engagement with HASiL commences before the taxpayer has even prepared the documentation. This approach is taken to enable both the taxpayers and HASiL to learn by going through the process, thus helping both parties develop an understanding of business routines, how the tax control framework is embedded in the system and how it should be reported. After this pilot phase ends, taxpayers in the mainstream programme will be required to have their documentation prepared before they can submit the application form to HASiL. The suggested time period between the date of HASiL's acceptance of the participant and the issuance of participation status is 8 to 12 months.

Taxpayers have raised questions and issues, such as whether the organisations participating in the TCG programme will be subjected to audit/investigation. To our knowledge, the biggest reason for participating in the TCG programme, like any cooperative compliance initiative, is to attain greater certainty through reduced information asymmetries between taxpayers and the tax administration. The guidelines state that the organisations participating in the programme can benefit from reduced scrutiny pertaining to compliance activities, such as lesser tax audits. HASiL has stressed that only "qualified organisations" that fulfil the requirements and criteria listed by HASiL shall be exempted from audit/investigation. It is clear that this benefit will be offered to taxpayers that fulfil the terms and conditions stated upon the award of the participation status.

Another issue is regarding the appointment of an Independent Reviewer (IR) due to concerns over an additional compliance cost. According to HASiL, the IR can be appointed from either an approved tax agent, an internal auditor with suitable qualifications, or any qualified independent person. The appointment of an IR is crucial for the purposes of providing an independent opinion through the Independent Review Report (IRR) after the taxpayer has prepared the Self-Review Report.

Based on the pilot programme, HASiL shall carefully assess the potential implementation strategy and its effects. HASiL shall also review the design or development of the implementation strategy through a series of engagements with taxpayers, tax professionals, and other stakeholders.

CHALLENGES

Under the TCG programme, taxpayers who voluntarily provide relevant tax information may ideally receive financial certainty on their tax liabilities ahead of time and are, in theory, saved the effort and time from tax audits, penalties, fines, offences, and any legal action. Like any cooperative compliance initiative, the success of the TCG is based on mutual understanding, trust and transparency between taxpayers and the tax authority. This trust-based relationship is established over time based on the performance of both parties during the relationship. Building this trust has been one of the challenges of this programme. Some organisations have faced difficulties in obtaining approval from their board of directors to disclose certain information due to fear of adverse effects from the disclosure. Moreover, a lack of trust or confidence amongst tax personnel in carrying out the TCG evaluation will jeopardise the programme's cooperative approach.

Integrated reporting is another challenge faced by taxpayers throughout the programme - the TCG guidelines do not provide a reporting template. Although it is common for large businesses to have robust internal controls and risk management, because this information may be spread across several levels and locations, producing an integrated report for programme reporting purposes may take time. Some organisations have expressed concerns over the cost and resource management that they will need to invest for the TCG programme.

LESSONS LEARNED

During the pilot programme, the TCG Committee in collaboration with the Branches (Special Industry Branch, Multinational Tax Branch, and Large Taxpayer Branch) has issued guidelines, FAQs, and manuals to guide the implementation of the TCG Programme by taxpayers and the review process by HASiL. The primary concern constantly raised by taxpayers and tax agents is pertaining to the standard of disclosure. Early in the pilot phase, HASiL's stance as stated in the FAQs is:

> *"The organisation may refer to any tax governance, internal control frameworks, or generally accepted risk management principles which are applicable to tax matters. When reporting how compliance with the tax governance and control framework is evaluated, the organisation can describe the process through which the tax governance and control framework is monitored, tested, and maintained."*

However, this flexibility leaves taxpayers with questions about the extent of reporting required for the TCG. During both TCGF practice and TCG review, we have learnt that the measures taken should be objective and backed up by evidence to ensure reliability and validity. Given that TCG reporting is the most significant aspect of the TCG implementation, it has been proposed that this detail should be included in the updated version of the guidelines, which includes reporting elements such as (1) control testing and (2) tax governance, control, and risk management.

For the control testing reporting, as suggested by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (2013), the reporting format and content may vary depending on the type of testing, the size and complexity of the organisation, and the maturity of the internal control process. However, it typically includes the following elements:

(a) A description of the processes and controls to be tested, including a description of the risks to be mitigated by the identified controls.
(b) A list of personnel involved in the testing, including control performers, process owners, and testers.
(c) A description of the tests performed, results, and determination of control deficiencies.
(d) Rating of control deficiencies to facilitate prioritising remediation actions and plans.
(e) A summary of management remediation plans, personnel responsible for remediation, and deadlines.

Note: In determining the extent of documentation to be prepared and retained, the organisation may consider what is necessary in order to provide an understanding of the work performed. The results of control testing may be presented to management either verbally or in writing.

In reporting tax governance, control, and risk management, the format and the content of the report may differ. HASiL has not set any specific requirements for reporting tax governance, control, and risk management. However, organisations are encouraged to follow some of the best practices as a guide. The Global Reporting Initiative (GRI) organisation has launched a global reporting standard, GRI 207: Tax 2019, which requires the reporting organisation to report the following information:

(a) A description of the tax governance and control framework, including:
  (i) the governance body or executive-level position within the organisation accountable for compliance with the tax strategy;
  (ii) how the approach to tax is embedded in the organisation;
  (iii) the approach to tax risks, including how risks are identified, managed, and monitored;
  (iv) how compliance with the tax governance and control framework is evaluated.
(b) A description of the mechanisms for

reporting concerns about unethical or unlawful behaviour and the organisation's integrity in relation to tax.

(c) A description of the assurance process for disclosures on tax and, if applicable, a reference to the assurance report, statement, or opinion.

Beyond establishing a documented sustainability reporting, it is more important for the organisation to have an effective internal control and tax control framework. This has been regularly highlighted during engagements with taxpayers and stakeholders throughout the pilot phase. The "substance over form" concept is not only applicable to financial reporting but is also emphasised in the TCG implementation. Any disclosure or reporting should reflect the underlying realities of transactions.

Since every business and taxpayer segment is unique, many have proposed a customised guideline to set a standard or benchmark for a more uniform practice. HASiL is also suggested to issue a template for TCG reporting to facilitate organising or structuring the reporting and ensuring all crucial details are included.

Another matter highlighted during the pilot programme is pertaining to the "cost of compliance" to be borne by organisations in the TCG reporting preparation. This has led to the introduction of new tax deduction. Effective from the year of assessment (Y/A) 2024 until Y/A 2027, a tax deduction of RM50,000 for each Y/A is introduced for the following ESG-related expenses:

TABLE 1: ESG TAX DEDUCTION

ESG RELATED EXPENSES	DESCRIPTION
Enhance the sustainability reporting framework	ESG reporting by companies listed on the Bursa Malaysia Stock Exchange
Climate risk management and scenario analysis	ESG reporting by financial institutions regulated by Bank Negara Malaysia
Tax corporate governance framework (TCGF) of HASiL	Preparation of reports related to TCGF by companies
Transfer pricing documentation	Preparation of transfer pricing documentation by companies
E-invoicing implementation	Consultation fees for implementing e-invoicing incurred by Micro, Small, and Medium Enterprises
Any reporting requirement related to ESG	ESG reporting by companies to approved regulator by the Ministry of Finance

Source: https://belanjawan.mof.gov.my/pdf/belanjawan2024/ucapan/ub24-BI.pdf

Once the programme is open to everyone, it is hoped that this deduction will lead to greater participation. Adaptability to change is not solely for taxpayers - the tax authority should also be adaptable in keeping up with global changes and stakeholder expectations. Hence, the TCG Committee and Branches continue to communicate HASiL's standards and benefits to a wider audience and address any questions or concerns to continuously improve the TCG framework and guidelines.

MOVING FORWARD

Although the participation in the programme is optional, taxpayers should see this as a means to demonstrate their accountability and responsibilities to their shareholders, including other stakeholders. In a report issued by OECD (2021), titled "Comparative Information on OECD and Other Advanced and Emerging Economies", the cooperative compliance initiative was also implemented to taxpayer segments such as high net worth individuals (HNWI) and other taxpayer groups. It is evident that TCG is suitable for businesses of all sizes and types that prioritise corporate governance matters. While the current program emphasises large taxpayers, it has the potential to be expanded and implemented for other groups as well. This is in line with the cooperative compliance approach practised by most countries. Moving forward, HASiL will align its goals pertaining to cooperative compliance and tax governance with expectations from stakeholders, both locally and globally. The TCG Committee is also working on getting more stakeholders involved to gain additional feedback for better TCG implementation. With many guidelines and best practices about tax governance being published, the adaptability to the context is possible. The pilot programme has enabled HASiL to learn from experience, and this has been beneficial in solidifying and enhancing the current standard of practice. In approaching the full implementation phase, HASiL will sustain the momentum necessary to ensure that the goal of effective tax governance is realised.

CONCLUSION

Currently, the pilot programme has successfully achieved its main goals, which are to provide preliminary evidence on the efficacy of the TCG implementation and supporting the choice of approach for the full-scale TCG Programme. Based on the feedback and comments received from participants thus far, the current plan is considered promising. Although some of the proposals shall need further consideration and study due to certain limitations, the recommendations are mostly in line with best practices. It is envisioned that as tax governance and cooperative compliance practices in Malaysia mature, the implementation of this initiative will be more effective and efficient in the future.

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NOTE:

The Malaysian TCG programme is still being run as a pilot project as of this publication date. Although the article discusses and shares insights from the pilot programme, it does not represent the entire conclusion of the programme because no in-depth research or analysis was done when producing this article.

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