Asia Pacific Industrials, Manufacturing & Transportation Webinar Series

7 April 2022 | 11:00 - 12:00 pm (KL)
Webinar Housekeeping Reminders

The session is being recorded; all webinar materials will be shared post-event.

Please use the Q&A function at the bottom of your screen to submit your questions. Questions will be answered at the end of session or post-event.
Welcome & Introduction

Yaeko Hodaka
Co-chair, Asia Pacific IMT Industry Group,
Baker McKenzie, Tokyo
Agenda

1. Welcome & Introduction  
   Yaeko Hodaka

2. Key Business & Legal Trends In Malaysia  
   Jason Liang

3. Malaysian Customs Audit 101  
   Kelvin Hong

4. Case Study: Can I Be Your Hiro?  
   Jason Liang & Kelvin Hong

5. Voluntary Disclosure & Amnesty Program (VA)  
   Wong Wei Lit

6. Q&A  
   Jason Liang, Kelvin Hong & Wong Wei Lit

7. Closing & Wrap Up  
   Yaeko Hodaka
Key Business & Legal Trends in Malaysia

Jason Liang
Partner, Tax
Wong & Partners, Kuala Lumpur
Key Business Trends

Growth in regional hubs
Regional hubs to fulfil demands in South East Asia

Shift in distribution formats
Removal of intermediaries
Boom in e-commerce

Supply Chain Resilience
Optimisation of supply chain to build resilience

Emphasis on environmental
Adoption of electrification strategies
Key Legal Trends

Environmental, Social & Governance (ESG)
- Introduction of carbon tax
- Regulation of waste management

Free Trade Facilitation
- RCEP came into force on 18 March for Malaysia
- CPTPP to be ratified

Aggressive audits
- Compensation for reduced tax revenue
- Increased frequency of routine audit

Emphasis on compliance
- Tax compliance certificate
- Voluntary disclosure and amnesty program
Malaysian Customs Audit 101

Kelvin Hong
Senior Associate, Tax
Wong & Partners,
Kuala Lumpur
Introduction to the RMCD

Royal Malaysian Customs Department (RMCD)

Headquarter at Putrajaya State-level branches

RM 42.5 billion collection in 2021 exceeding RM 40 billion target
**Key Laws**

- Customs Act 1967
- Sales Tax Act 2018
- Excise Act 1976
- Goods and Services Tax Act 2014
- Service Tax Act 2018
- Strategic Trade Act 2010
- Free Zone Act 1990
- Tourism Tax Act 2017
- Countervailing and Anti-Dumping Duties Act 1993
- Windfall Levy Act 1998
- Safeguard Act 2006
## Snapshot of Key Customs Hot Topics

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<tr>
<th>Tariff Classification</th>
<th>Customs Valuation</th>
<th>Rules of Origin</th>
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<td>Interaction with transfer pricing</td>
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<td>Anti-dumping, countervailing duty etc.</td>
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<th>Customs Facilities</th>
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<td>Imported service tax</td>
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<tr>
<th>Goods &amp; Services Tax</th>
<th>Import / Export Restrictions</th>
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<td>Restricted and Prohibited End-Users</td>
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<td>CPTPP</td>
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<td>Potential voluntary disclosure regime under CPTPP</td>
<td>RCEP</td>
<td>Safeguard duties</td>
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<td>RCEP</td>
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<td>Regional supply chain planning</td>
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Diagram:

- Tariff Classification
- Customs Valuation
- Rules of Origin
- Customs Facilities
- Industry Targets
- Sales & Services Tax
- Goods & Services Tax
- Import / Export Restrictions
- Export Control & Sanction
- Penalties & Time Bars
- Free Trade Agreement
Customs Audit Flow

Field Audit

Desk Audit

Notice of audit

Notice of audit findings

Bill of demand
Desk Audit vs. Field Audit

**Desk Audit**
- Primarily conducted through emails
- Taxpayer may be required to attend interviews at the RMCD’s office
- Requested documents must be submitted to the RMCD office for audit

**Field Audit**
- The RMCD visits taxpayer’s premises
- Notice would typically be given but surprise field audit is possible
- Company would be required to provide requested documents for audit
Notice of Audit Findings

- **Audit period** – In practice, an audit by the RMCD would generally cover 3 years.

- **Key contents** – The letter / notice would generally state the amount of shortfall and the general basis and for the computed shortfall. Depending on the value at stake, the RMCD may conduct roundtable conference to discuss the audit findings.

- **Key timeline** – The RMCD will usually give 7 days to the taxpayer to respond to the audit findings.
Bill of Demand (BOD)

- **Key timeline** – The RMCD will usually give 14 days to the taxpayer to pay the demanded sum.
- **If company agrees** – Payment by instalment is possible subject to approval by the RMCD.
- **If company disagrees** – Consider appeal options. Some options will require payment of the demanded sum first.
- **Other potential exposure** – If offence is compoundable, an offer compound letter will typically be issued after payment of the BOD. Note potential anti-money laundering risks.
Case Study: Can I Be Your Hiro?

Jason Liang
Partner, Tax
Wong & Partners, Kuala Lumpur

Kelvin Hong
Senior Associate, Tax
Wong & Partners, Kuala Lumpur
Closure Audit

1. Hiro was instructed by management to close down one of the many factories owned by the company in Malaysia...

   … upon surrendering certain trade license, a closure audit was triggered

2. The RMCD issued a bill of demand to the company for non-compliances identified during the closure audit...

   … the company paid all the demanded sum in one lump sum payment
One morning, Hiro was having breakfast at his desk and the RMCD came unannounced for a field audit on other sister companies…

…the receptionist initially stopped the officers and asked for COVID test clearance

Hiro panicked…

…he complied and shared all documents requested by the RMCD
The Business Dilemma…

5 The RMCD found further non-compliances by the sister companies…

…an audit findings result was issued by the RMCD but the company does not fully agree with the findings

6 Hiro also discovered additional non-compliances not detected by the RMCD…

…what should the company do?
Customs Audit Key Trends

Aggressive Audits
- RM 40.7 billion collection target
- Domino effect
- Multiple audits by different departments within the RMCD
- Cross-agency collaborations
- Personal liability

Audit Hot Topics
- Closure audits
- Compliance with exemption facilities
- Classification
- Sales and service tax
- Origin verification

Industry Audits
- Automotive industry → classification and valuation
- Steel and E&E → Compliance with exemption facilities
- FMCG → Classification as well as sales and service tax

The government is in need to collect revenue to offset the economic impact of COVID-19

2. The RMCD issued a bill of demand to the company for non-compliances identified during the closure audit...
   … the company paid all the demanded sum in one lump sum payment

5. The RMCD found further non-compliances by the sister companies...
   … an audit findings result was issued by the RMCD but the company does not fully agree with the findings

The government is in need to collect revenue to offset the economic impact of COVID-19

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   … an audit findings result was issued by the RMCD but the company does not fully agree with the findings
### Managing Dawn Raids

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
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| 1    | Contact legal  
   - Inform legal  
   - Communication with licensed lawyers is legally privileged |
| 2    | Check ID  
   - Stay polite and cooperative  
   - Check the ID cards and photocopy search warrant |
| 3    | Manage officers  
   - Escort the officers to a meeting room  
   - Do not let the officers wander around the office |
| 4    | Refrain and note  
   - Try not to answer any questions before legal counsel arrives  
   - Note down all requests in detail |
| 5    | Limit and record  
   - Do not provide more than what was requested  
   - Create a detailed list or photocopy all documents handed over |
| 6    | Internal report  
   - Prepare internal report with all questions posed  
   - Conduct internal checks to identify any potential non-compliance |

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3. One morning, Hiro was having breakfast at his desk and the RMCD came unannounced for a field audit on other sister companies... 

3. The receptionist initially stopped the officers and asked for COVID test clearance. 

4. Hiro panicked... 

4. He complied and shared all documents requested by the RMCD.
Mapping Out All Key Avenues

Assess your options thoroughly before you determine strategy on next steps

Appeal to director of the state customs branch
Review by the Director General or HQ
Apply for cancellation of liability to the Ministry of Finance
Appeal to the Customs Appeal Tribunal (CAT)
Submit judicial review application with the High Court
Accept findings of non-compliances

5 The RMCD found further non-compliances by the sister companies...

…an audit findings result was issued by the RMCD but the company does not fully agree with the findings

6 Hiro also discovered additional non-compliances not detected by the RMCD...

...what should the company do?
Case Experience: AIMSBB v DG of Customs (2021)

Taxpayer was a call center service provider who made zero-rated GST supplies under GST Zero-Rated Order. Customs sought to disallow the zero-rating treatment.

Desk audit and audit visit.

1. Meetings and roundtable discussions.

2. Audit findings issued.

3. DG's review under Section 124 of the GST Act.

4. Re-submission for DG's review.

5. Bill of Demand issued.

6. Taxpayer filed appeal to the Customs Appeal Tribunal. Won.

7. Customs filed appeal to the High Court. Taxpayer successfully struck out the Customs appeal on procedural grounds.

8. *Notwithstanding AIMSBB being a GST case, the same audit, review and appeal procedures are similarly contained under the SST legislation and will apply in a SST dispute (Sales Tax Act 2018, Service Tax Act 2018, Customs Act 1967 and Customs (Appeal Tribunal) Regulations 2007).*
Practical Tips & Considerations

**Understand the total exposure at stake**
- Financial → i.e., duties and taxes, penalties, compounds
- Non-financial → i.e., directors’ liabilities, reputation, audit risk
- Anti-money laundering, asset freeze, travel ban etc.

**Assess likelihood of success**
- Does the assessed likelihood of success justify appeal?
- Assess any internal financial constraints
- Consider possibility of amnesty program

**Identify chain of command**
- Identify all functions which will need to provide input and clearance
- Assign key person to front communications with the RMCD

**Manage audit and timelines**
- Understand timelines and scope of request
- Get the defense strategy right
- Extension of time is possible

**Mobilise connections**
- Industry associations
- Investment promotion agencies
Managing an Audit can be Stressful…

CONDUCT HEALTHCHECKS
- Identify compliance gaps and risks.
- Helps identify issue at an early stage for correction and to contain exposure.

ASSESS EXPOSURE
- Understand big picture implication arising from identified gaps.
- Start preparing defence documents in anticipation of audit.

DETERMINE STRATEGY
- Consider possibility of voluntary disclosure.
- Understand risks as well as uncertainties and devise strategy.
5 Voluntary Disclosure & Amnesty Program (VA)

Wei Lit Wong
Legal Assistant, Tax
Wong & Partners,
Kuala Lumpur
Voluntary Disclosure & Amnesty Program

Phase 1
- 100% penalty remission
- XX% tax remission

Option 1

Option 2

Scope of Tax Covered
- Import Duty
- Export Duty
- Excise Duty
- Sales Tax
- Services Tax
- Goods & Service Tax
- Tourism Tax
- Departure Levy

Phase 2
- 50% penalty remission
- X% tax remission

1 January 2022

30 June 2022

30 September 2022

7 April
Key "Incentives"

- Tax remission
- Penalty remission
- Compound
- Audit immunity
Should Hiro recommend the company to participate in the VA program?
Key Considerations

**Audit risks**
- SVDP for direct taxes
- Audit immunity?
- Cross-department collaboration (e.g., IRB)

**Existing dispute**
- Audit findings / bill of demand issued
- Remission rate vs. appeal success rate

**Disclosure amount**
- Can demand generally up to 6 years
- 3 years audit coverage
- 1 year audit immunity from VA Program
Questions
Closing & Wrap-up

Yaeko Hodaka
Co-chair, Asia Pacific IMT Industry Group,
Baker McKenzie, Tokyo