



**Baker
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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.

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Welcome & Introduction



Yaeko Hodaka

Co-chair, Asia Pacific IMT Industry Group,
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Speakers

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Agenda

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Yaeko Hodaka

2 Key Business & Legal Trends In Malaysia

Jason Liang

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Kelvin Hong

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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

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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

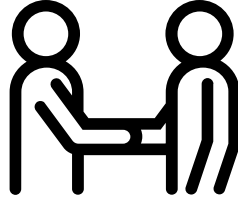
Adoption of electrification strategies

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

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Malaysian Customs Audit 101



Kelvin Hong
Senior Associate, Tax
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Introduction to the RMCD



**Royal Malaysian
Customs Department
(RMCD)**

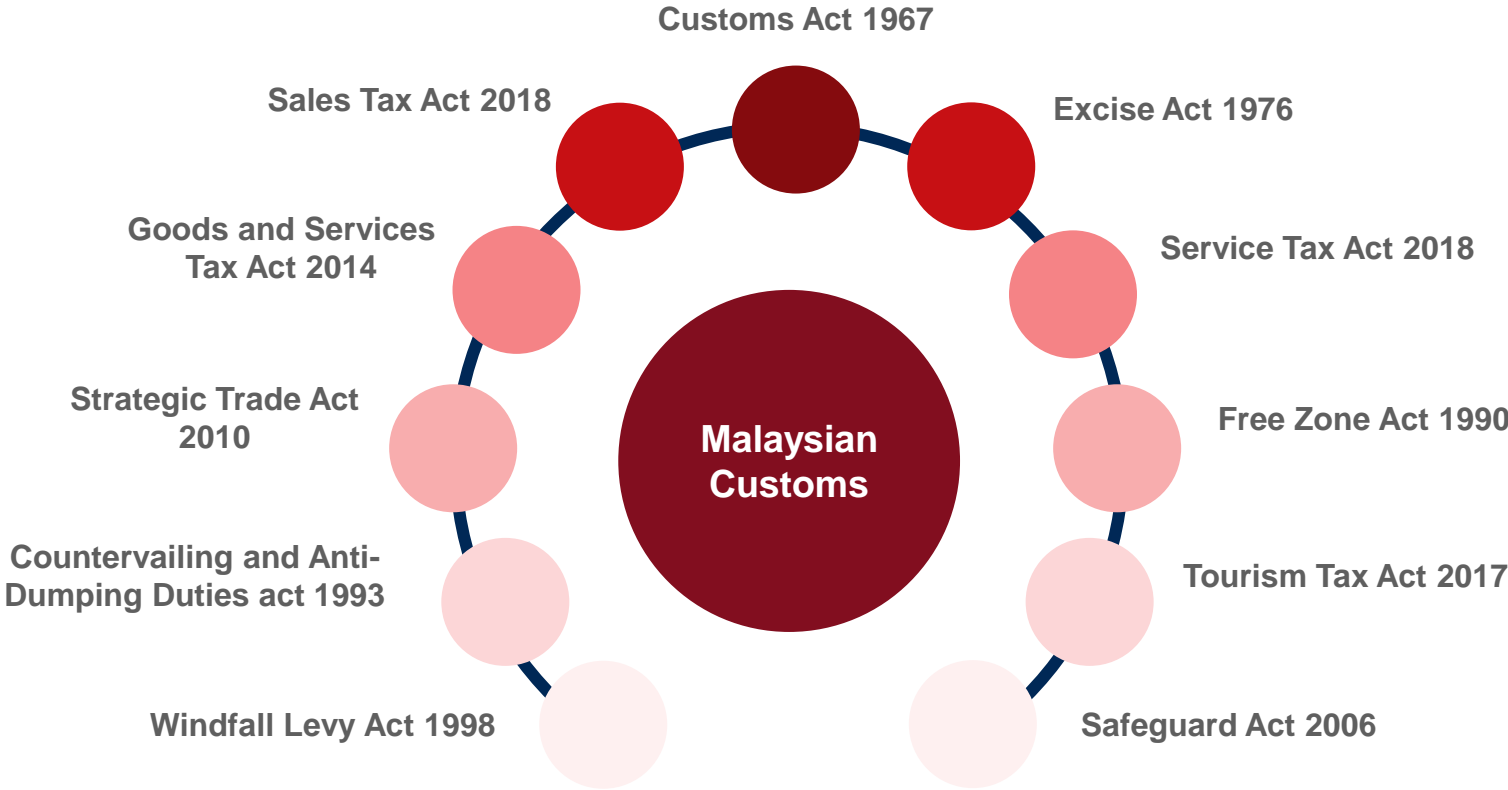


**Headquarter at Putrajaya
State-level branches**



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

Key Laws



Snapshot of Key Customs Hot Topics



Tariff Classification

Challenges on tariff classification | Implications on licensing and certificate of origin | Sales tax consideration



Customs Valuation

Interaction with transfer pricing | Supply chain planning



Rules of Origin

Cross-border origin audit | NPCO | Access to preferential duty | Anti-dumping, countervailing duty etc.



Customs Facilities

LMW and MIDA exemption | Drawback facilities | Sales and service tax exemptions | AEO



Industry Targets

Audit conducted based on industry targets | Industry with higher duty rates



Sales & Services Tax

Transitional issues | Automatic exemptions | Imported service tax



Goods & Services Tax

Closure audits | Pending review applications | Input tax credit application



Import / Export Restrictions

Tariff code and product description | Israeli trade embargo | Approved permits for vehicles | Waste



Export Control & Sanction

Brokering | Controlled Items | Restricted and Prohibited End-Users | Trade Embargo



Penalties & Time Bars

Anti-money laundering | Compounding of offences | Potential voluntary disclosure regime under CPTPP



Free Trade Agreement

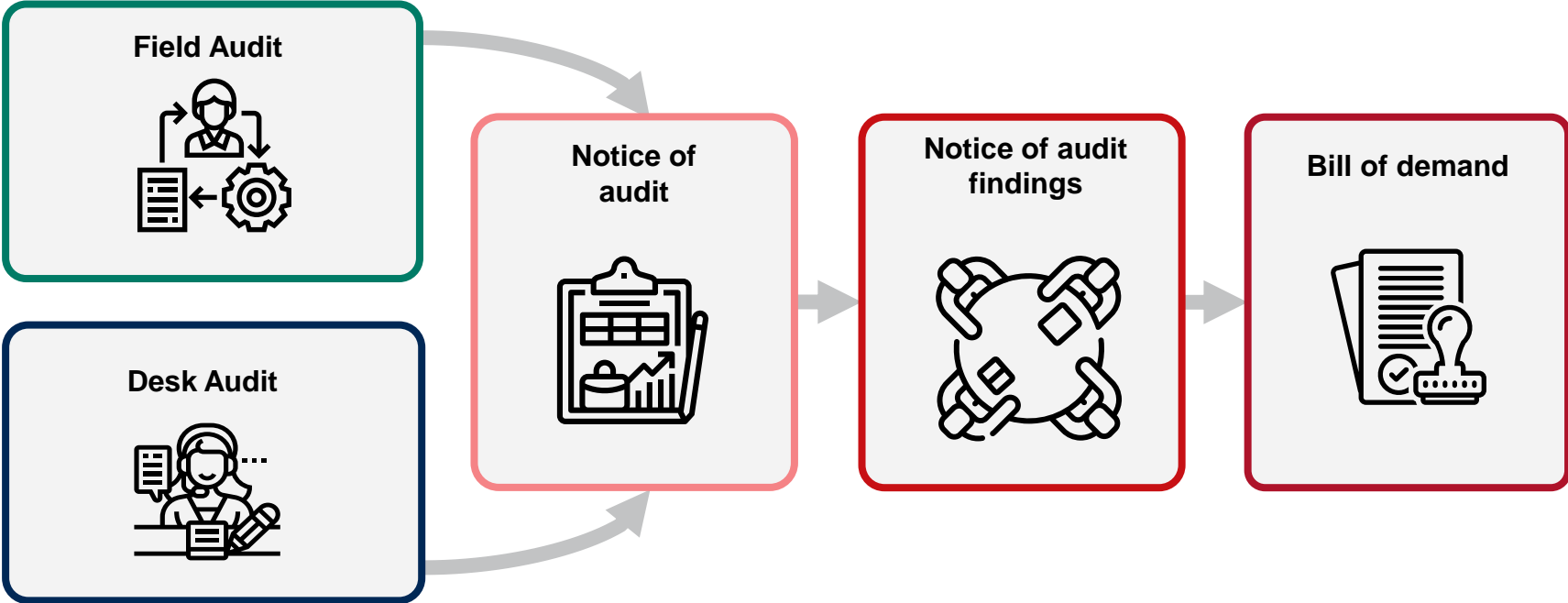
Cross-border enforcement | CPTPP | RCEP | Regional supply chain planning



Trade Remedies

Anti-dumping duties | Countervailing duties | Safeguard duties

Customs Audit Flow



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



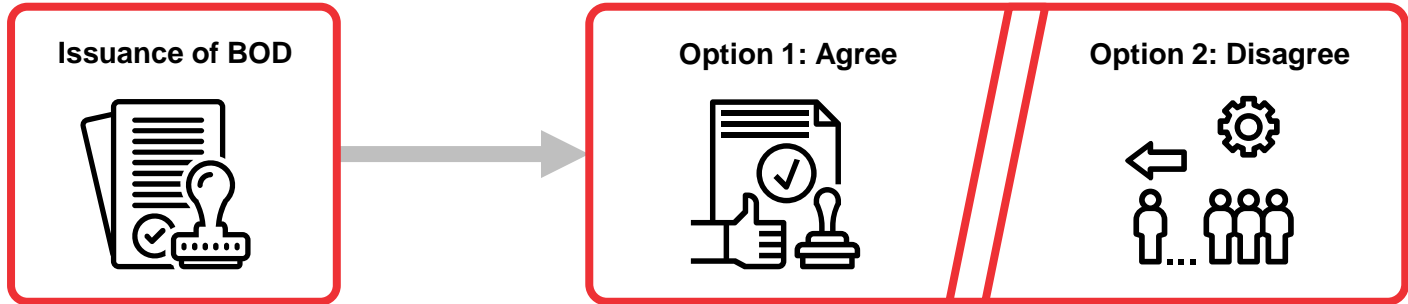
Notice of assessment



Letter of notification of audit results

- **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.

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Case Study: Can I Be Your Hiro?



Jason Liang
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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...

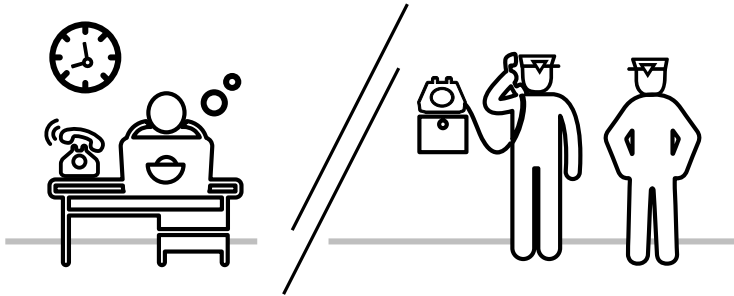


... the company paid all the demanded sum in one lump sum payment

Dawn Raid!

3

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

4

Hiro panicked...

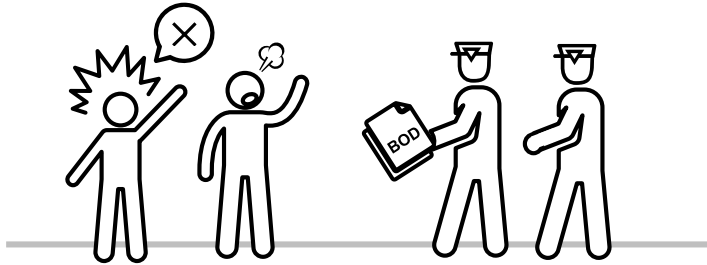


...he complied and shared all documents requested by the RMCD

The Business Dilemma...

5

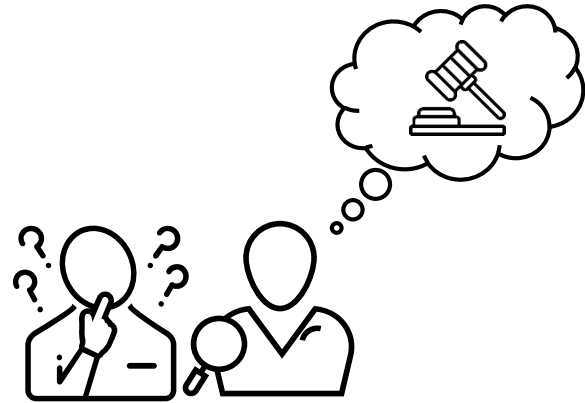
The RMCD found further non-compliances by the sister companies...



...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

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



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

Managing Dawn Raids


*Manage relationship positively.
Impression counts.*

3 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

4 Hiro panicked...



...he complied and shared all documents requested by the RMCD

Contact legal

1

- Inform legal
- Communication with licensed lawyers is legally privileged

Check ID

2

- Stay polite and cooperative
- Check the ID cards and photocopy search warrant

Manage officers

3

- Escort the officers to a meeting room
- Do not let the officers wander around the office

Refrain and note

4

- Try not to answer any questions before legal counsel arrives
- Note down all requests in detail

Limit and record

5

- Do not provide more than what was requested
- Create a detailed list or photocopy all documents handed over

Internal report


6

- Prepare internal report with all questions posed
- Conduct internal checks to identify any potential non-compliance

Mapping Out All Key Avenues


Assess your options thoroughly before you determine strategy on next steps

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?



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)



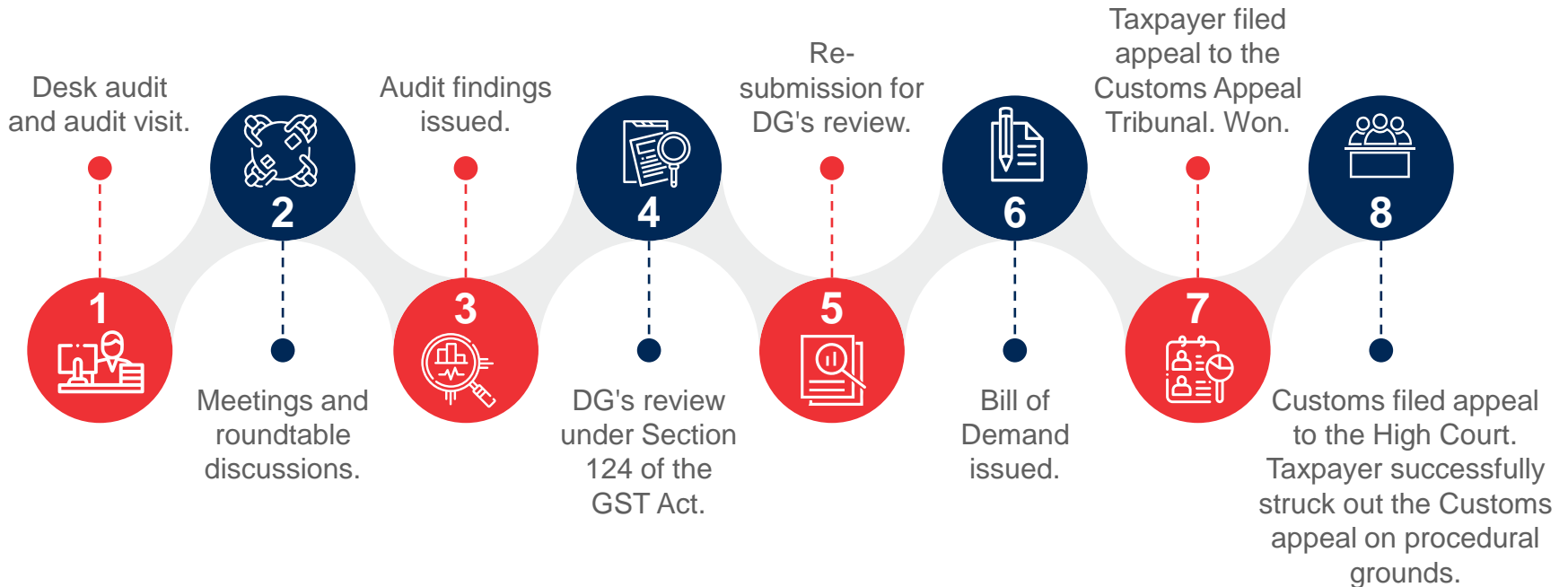
Submit judicial review application with the High Court



Accept findings of non-compliances

Case Experience: AIMS 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.



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

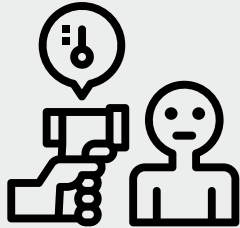
- Understand timelines and scope of request
- Get the defense strategy right
- Extension of time is possible



Mobilise connections

- Industry associations
- Investment promotion agencies

Managing an Audit can be Stressful...



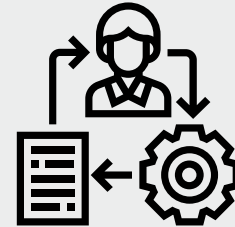
CONDUCT HEALTHCHECKS

- 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.

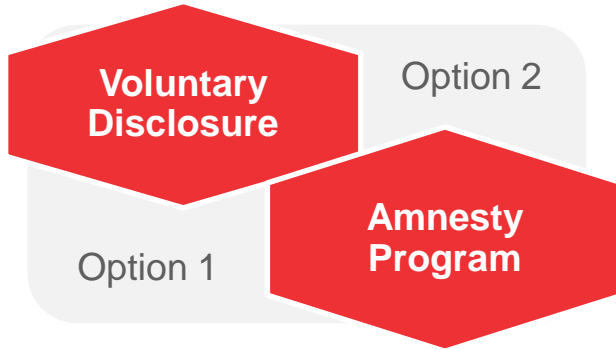
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Voluntary Disclosure & Amnesty Program (VA)



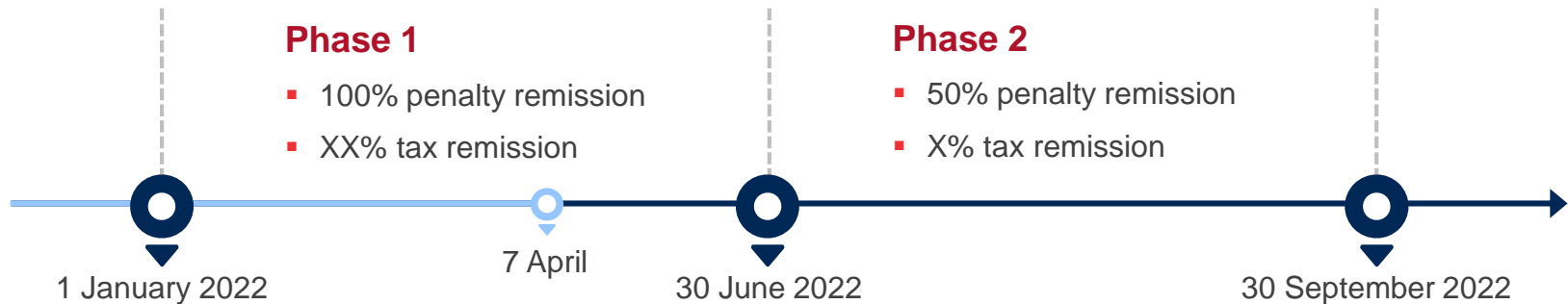
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Voluntary Disclosure & Amnesty Program



Scope of Tax Covered

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



Key "Incentives"



Tax remission



**Penalty
remission**

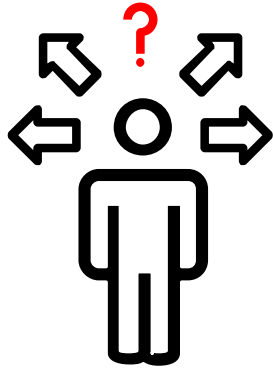


Compound



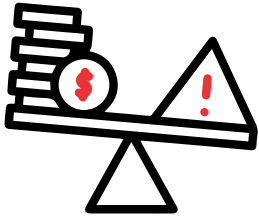
Audit immunity

Options for Hiro



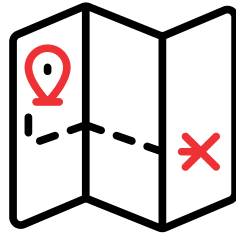
Should Hiro recommend the company to participate in the VA program?

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



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Closing & Wrap-up



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