



Managing tax and transfer pricing disputes

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Managing tax and transfer pricing disputes

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Managing tax and transfer pricing disputes

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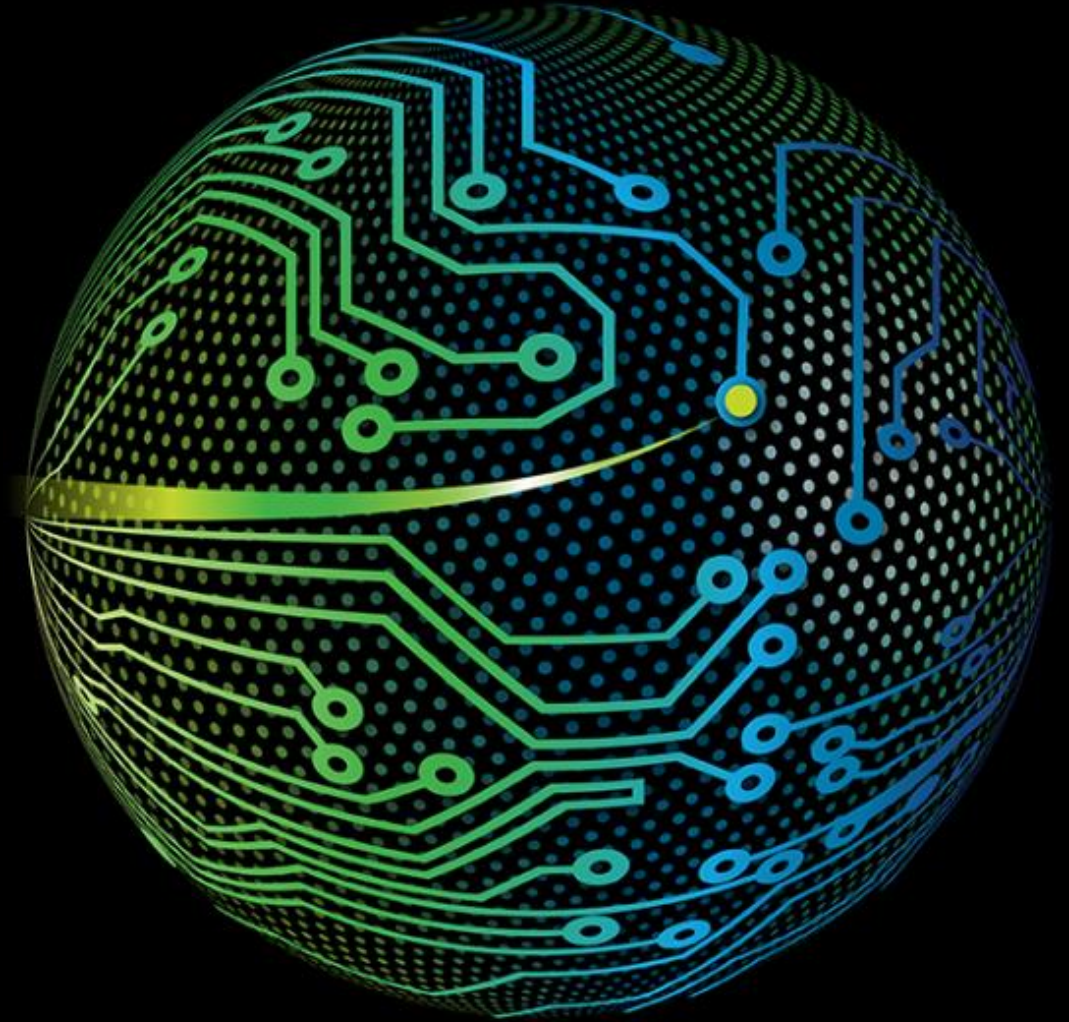
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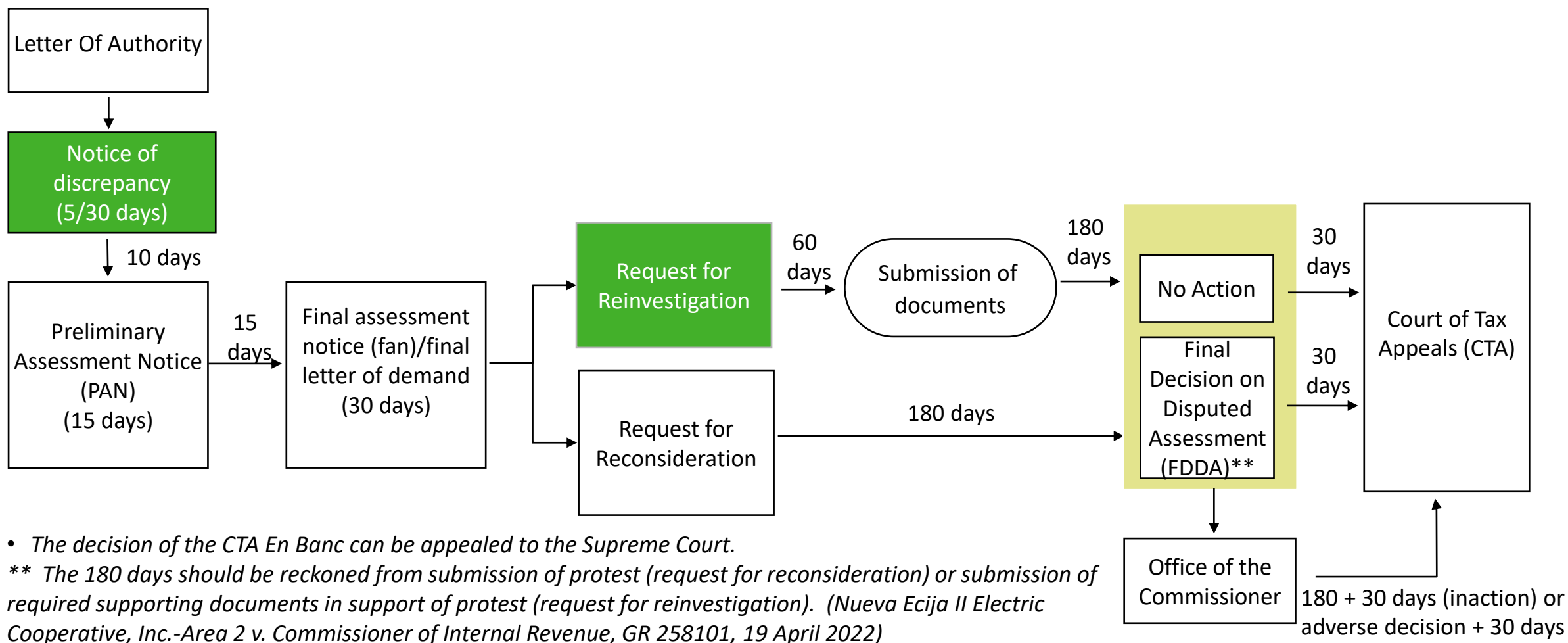
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Tax Disputes Country lens



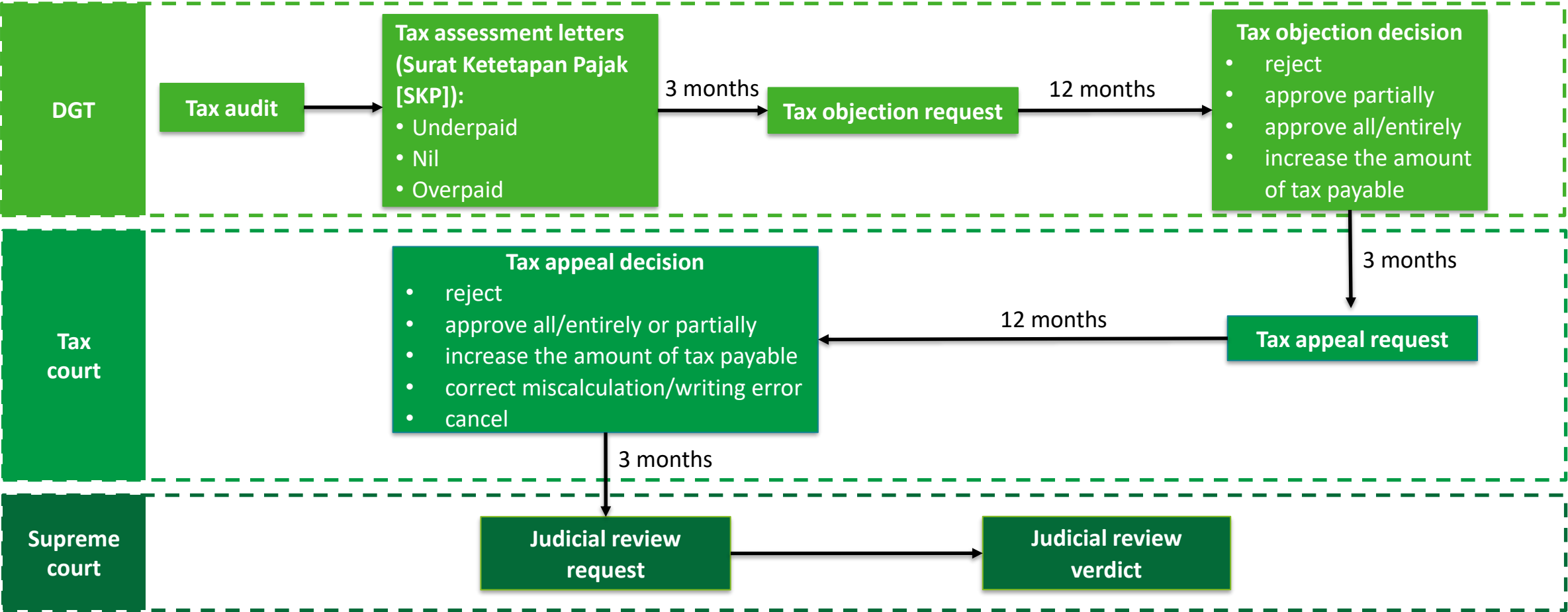
Tax Controversy—Philippines

Stages of Tax Assessment

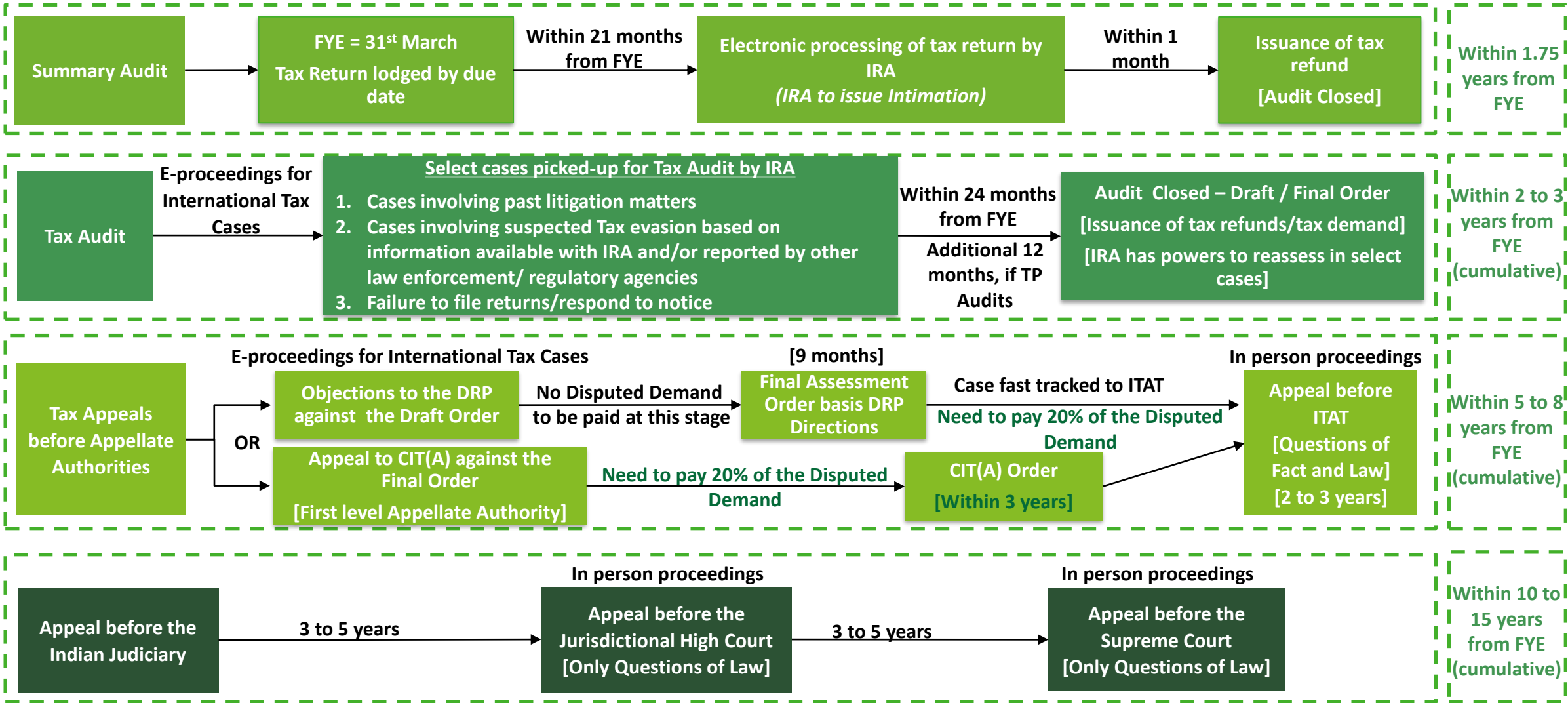


Tax Controversy—Indonesia

Key observations and developments

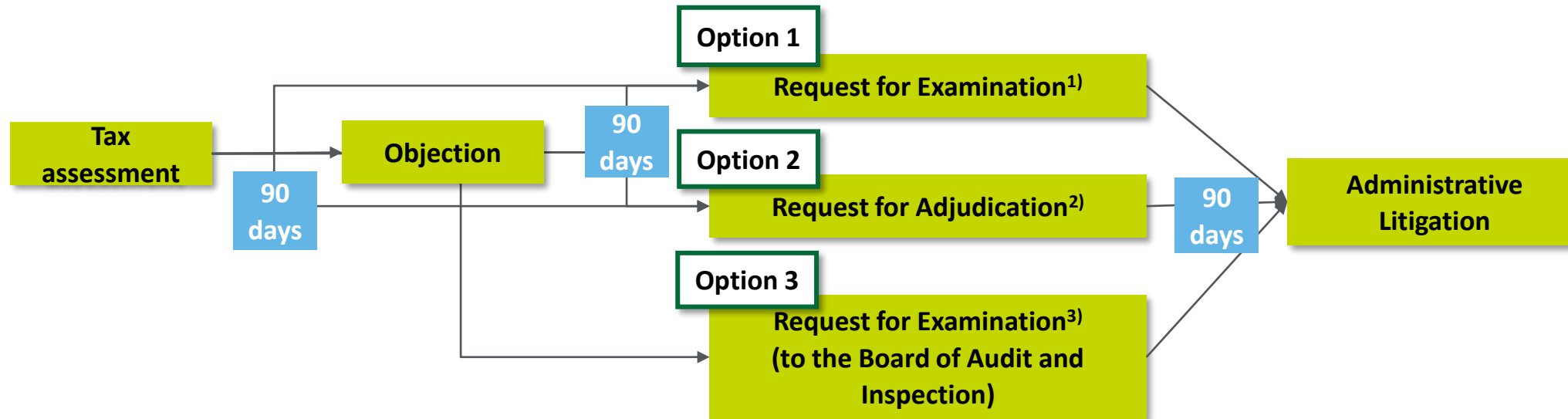


Tax Controversy—India



Tax Controversy—South Korea

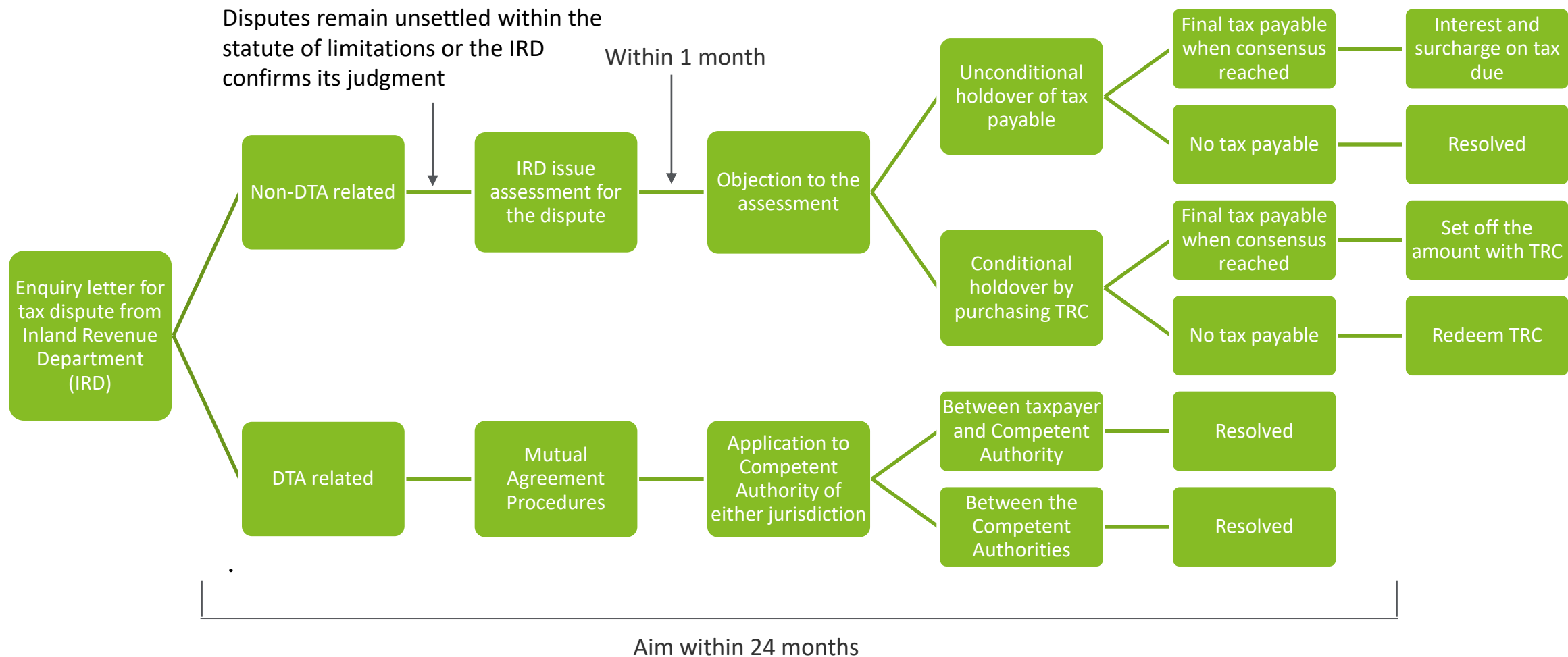
Administrative Litigation



- Decision for each request will be made by:
 - 1) The Commissioner of the National Tax Service
 - 2) The Adjudicators of the Tax Tribunal specialising in tax and independent from the National Tax Service → **Preferred in practice**
 - 3) The Commissioner of the Board of Audit and Inspection

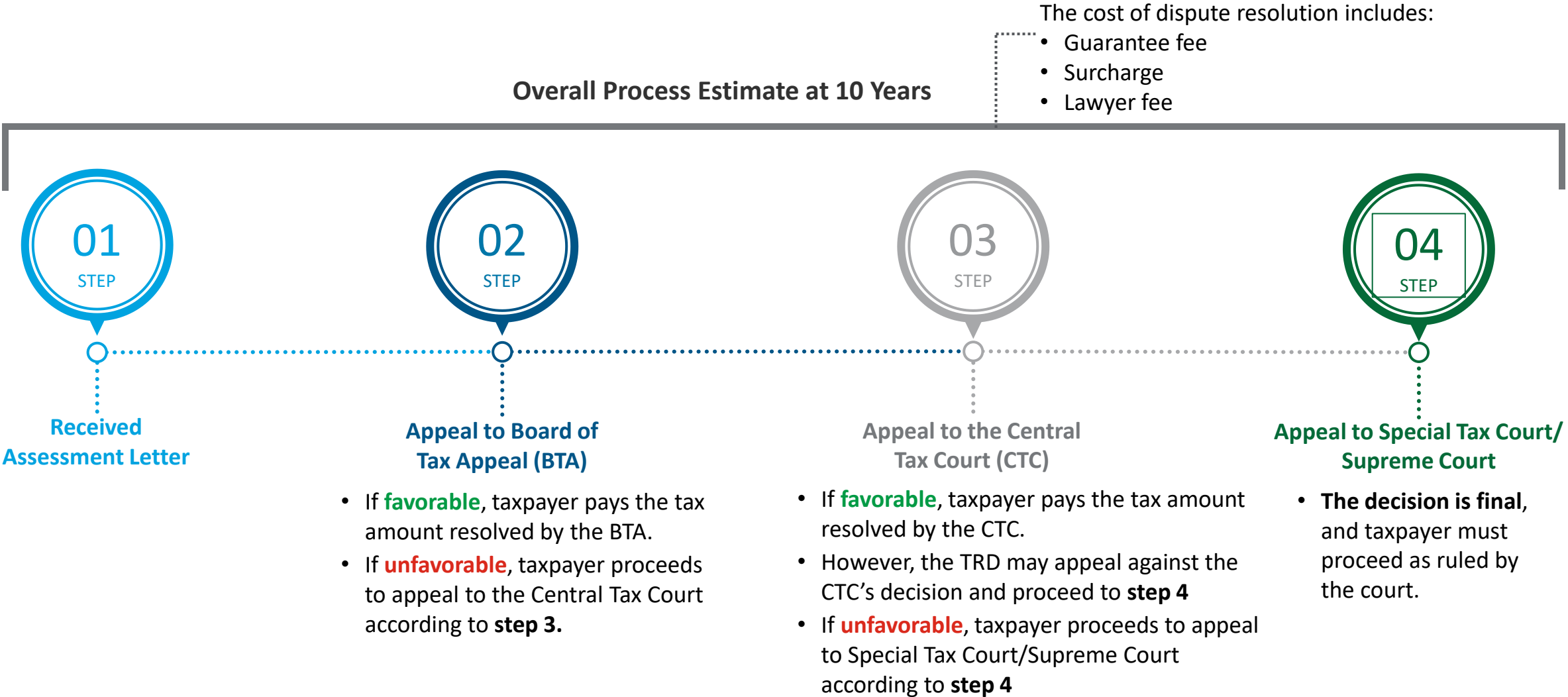
Tax Controversy—Hong Kong

Tax dispute resolution



Tax Controversy—Thailand

Tax Audit Dispute Resolution Process



Tax Controversy—Malaysia

Appeal against an assessment



Timeline for taxpayer:

Within:

30 days (Form Q)

> 30 days (Form N)

Timeline for IRBM:

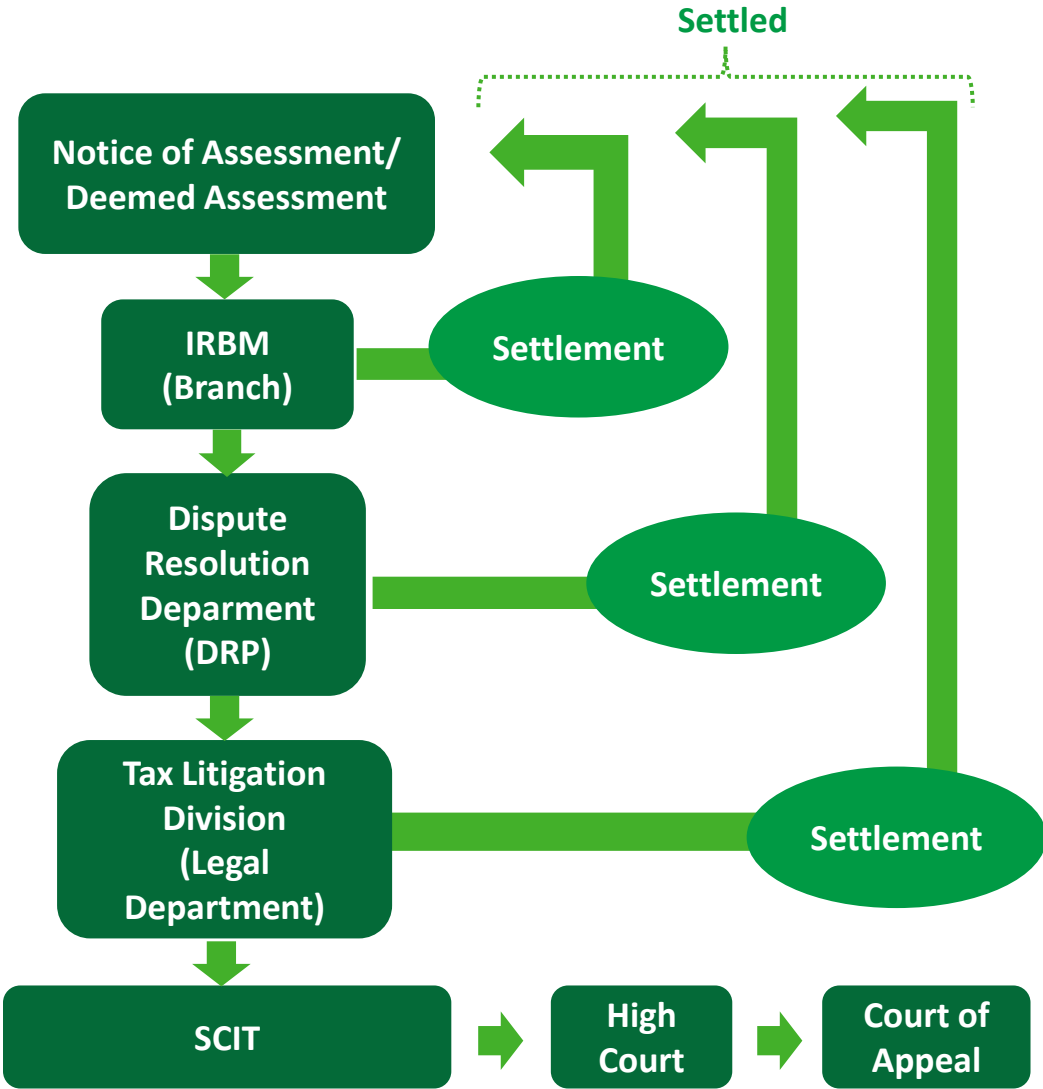
60 - 90 days to forward the appeal to DRP.

Timeline for IRB:

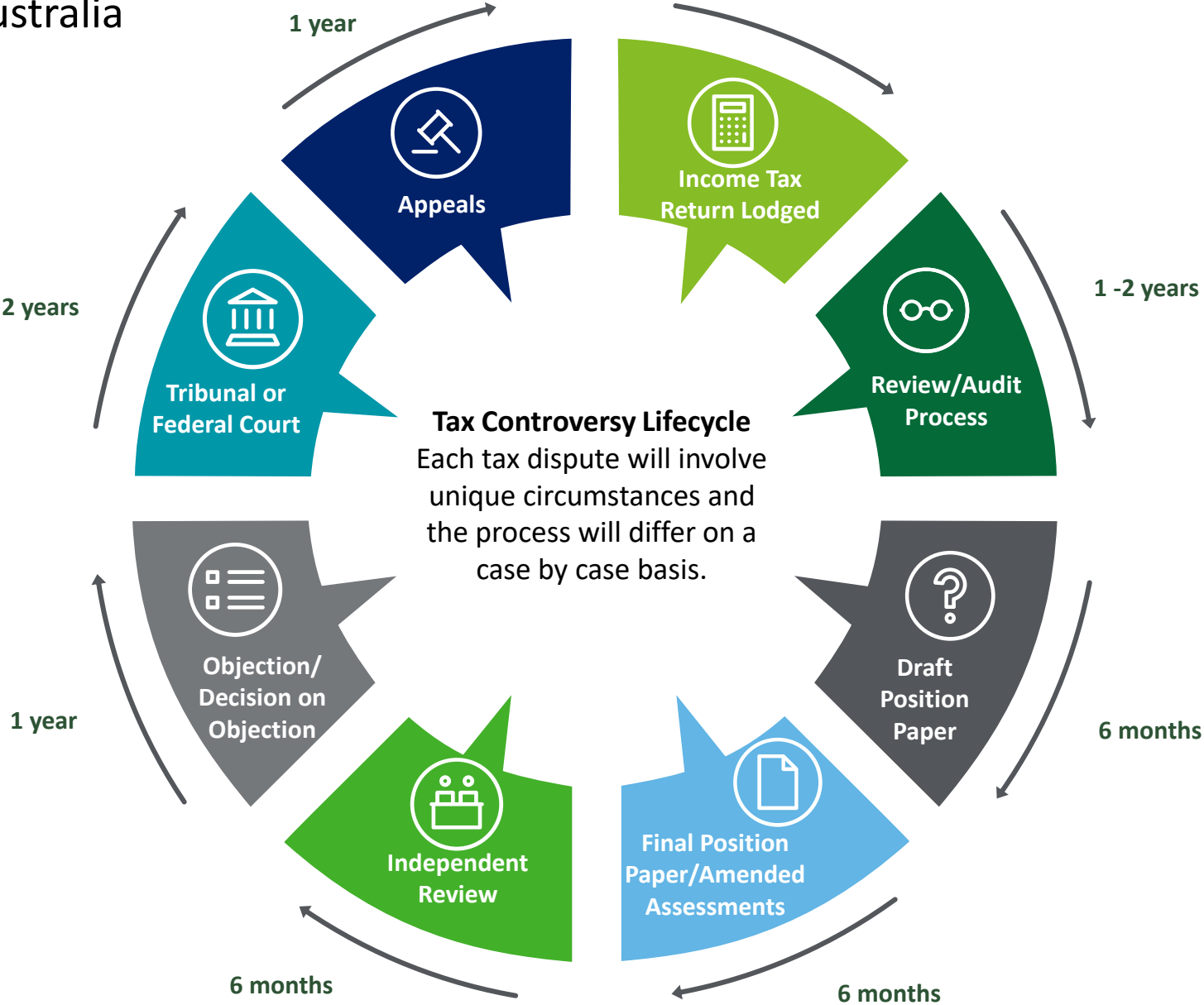
12 to 18 months to register the Form Q with the SCIT.

Timeline for IRBM/taxpayer:

Out of court settlement is possible even after the hearing date has been fixed.



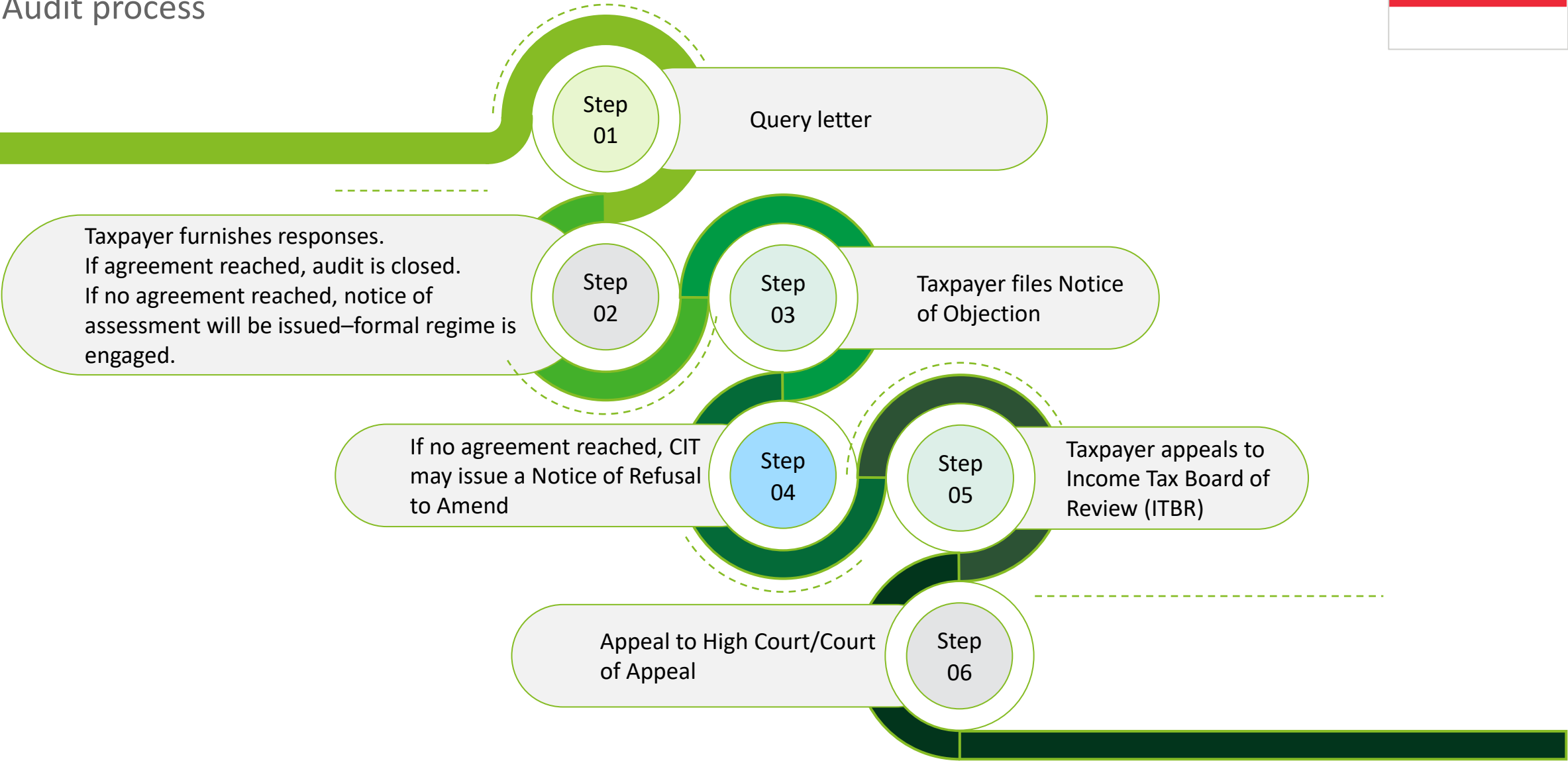
Tax Controversy—Australia



**Alternate Dispute Resolution/
Settlement Strategy**

Tax Controversy—Singapore



Audit process



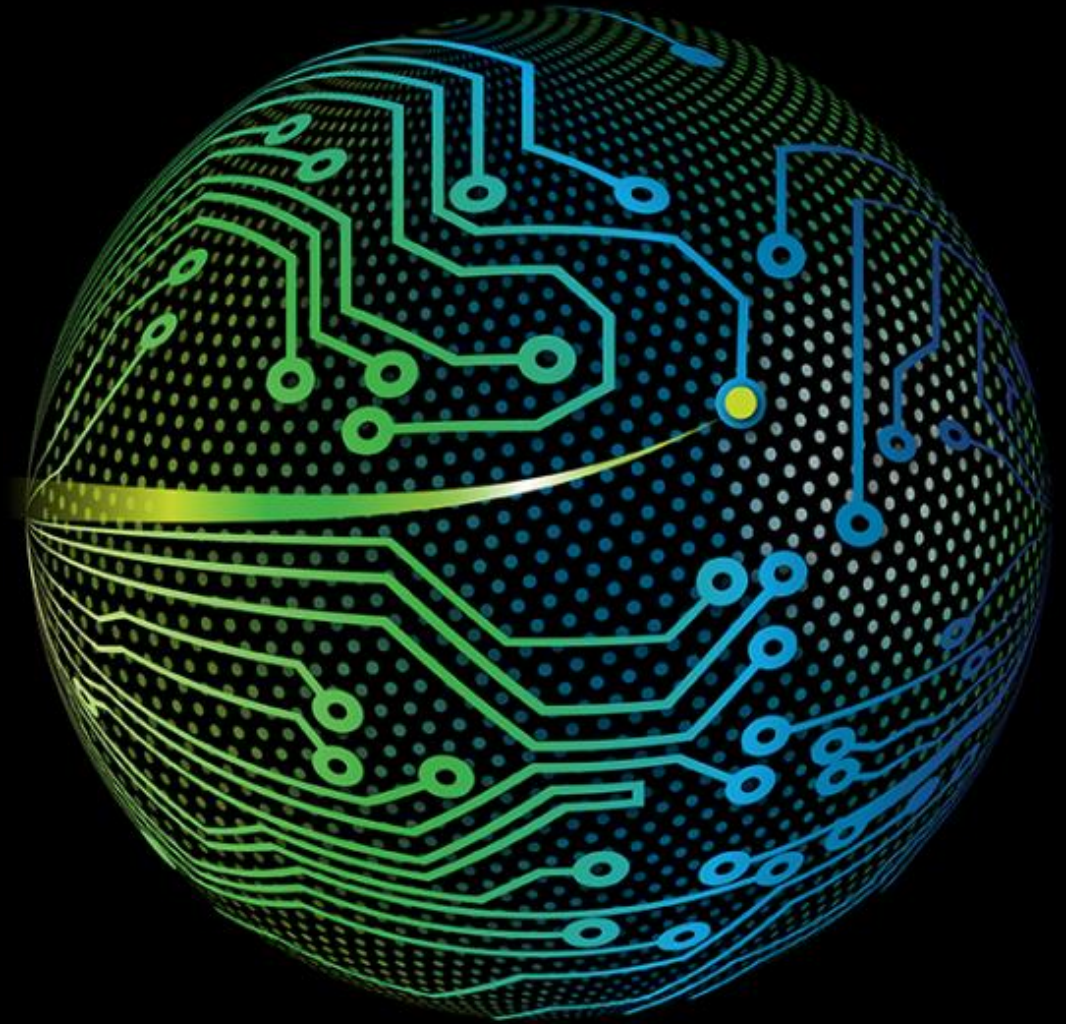
Tax Controversy—Vietnam

Approach from the tax authorities to challenge disputable tax issues



	Disputable tax issues			Tax issues requiring more concrete guidance	
	Slowing down value added tax (VAT) refund	Tax risks of upward/downward transfer pricing (TP) adjustments	Tax deductibility of intercompany services charges		Tax treaty relief dispute for offshore indirect transfer:
General approach from the tax authorities	<ul style="list-style-type: none"> Assessment of administrative tax procedures; Requesting additional documents 	<ul style="list-style-type: none"> Assessment of substances/relevance of the TP adjustments; Requesting additional documents which are not available in the reported period. 	<ul style="list-style-type: none"> Assessment of necessity, benefits and basis for fees calculations; Requesting additional documents which are not required to locate at the tax-payer's site. 		<ul style="list-style-type: none"> Most cases are not accepted by the tax authorities for applying tax treaty reliefs. Lack of detailed guidance or clear definitions and criteria for cases exempted from Vietnamese taxation
Focus Areas to challenge	<ul style="list-style-type: none"> Outstanding unreconciled tax debts; Invoices from the run-away vendors; 	<ul style="list-style-type: none"> Unclear reasons for TP adjustments; No customs declarations documents supported; Lack of detailed calculations; 	<ul style="list-style-type: none"> Lack of justifications for benefits/ necessities; Less evidences of services performances; Unclear documents for arm's length basis for fees calculation. 		Practicability of applying APA/MAP <ul style="list-style-type: none"> No case of MAP/APA is approved so far; Lack of practical guidance for negotiations and conclusions; Aligning with international practices should be considered by the Vietnamese Government as soon as possible, to attract more foreign investments.

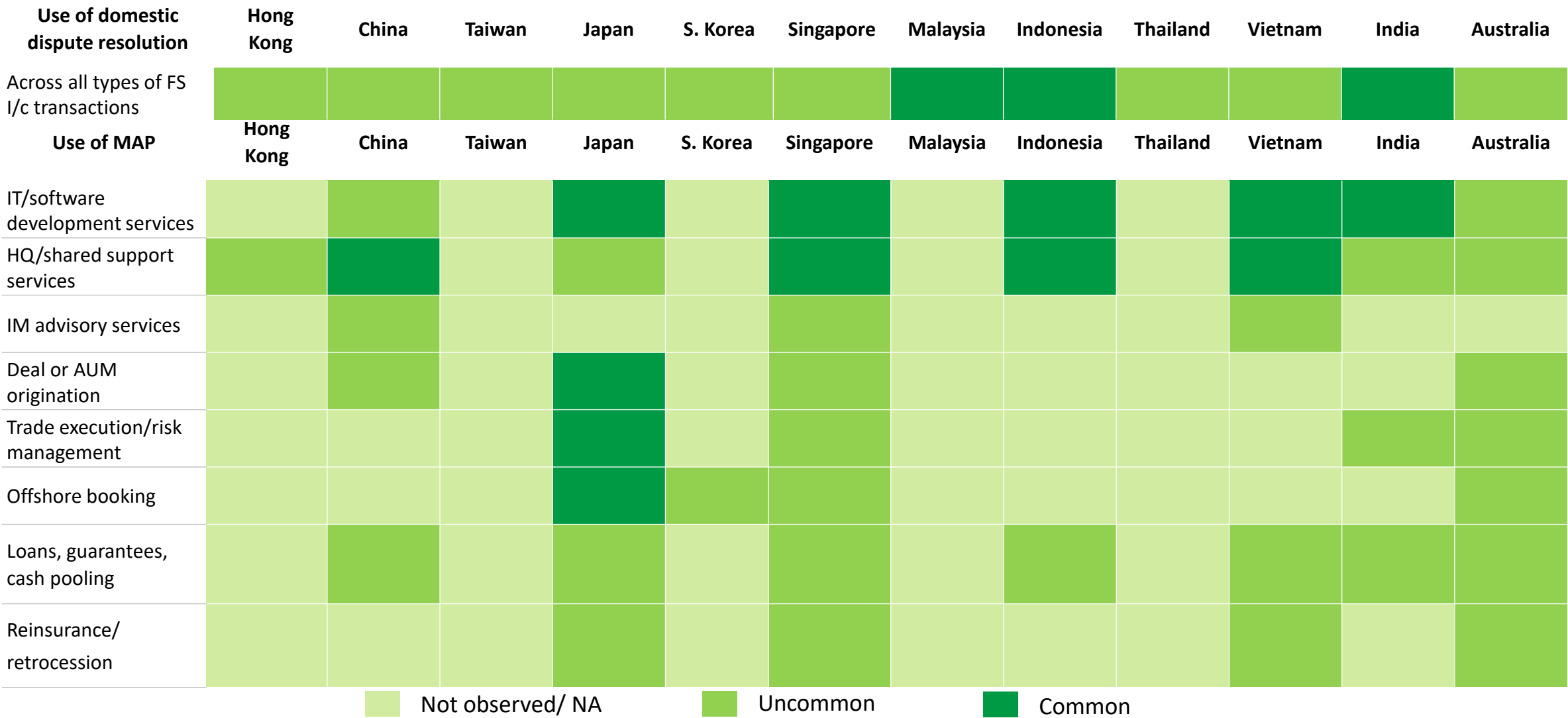
Transfer Pricing Dispute management



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FSTP controversy heatmap—Indicative views on domestic dispute resolution/MAP dispute resolution



Proactive APA strategies—Indicative APA intelligence common FS Intercompany transactions

	Hong Kong	China	Taiwan	Japan	S. Korea	Singapore	Malaysia	Indonesia	Thailand	Vietnam	India	Australia
IT/software development services												
HQ/shared support services												
IM advisory services												
Deal or AUM origination												
Trade execution/risk management												
Offshore booking												
Loans, guarantees, cash pooling												
Reinsurance/retrocession												

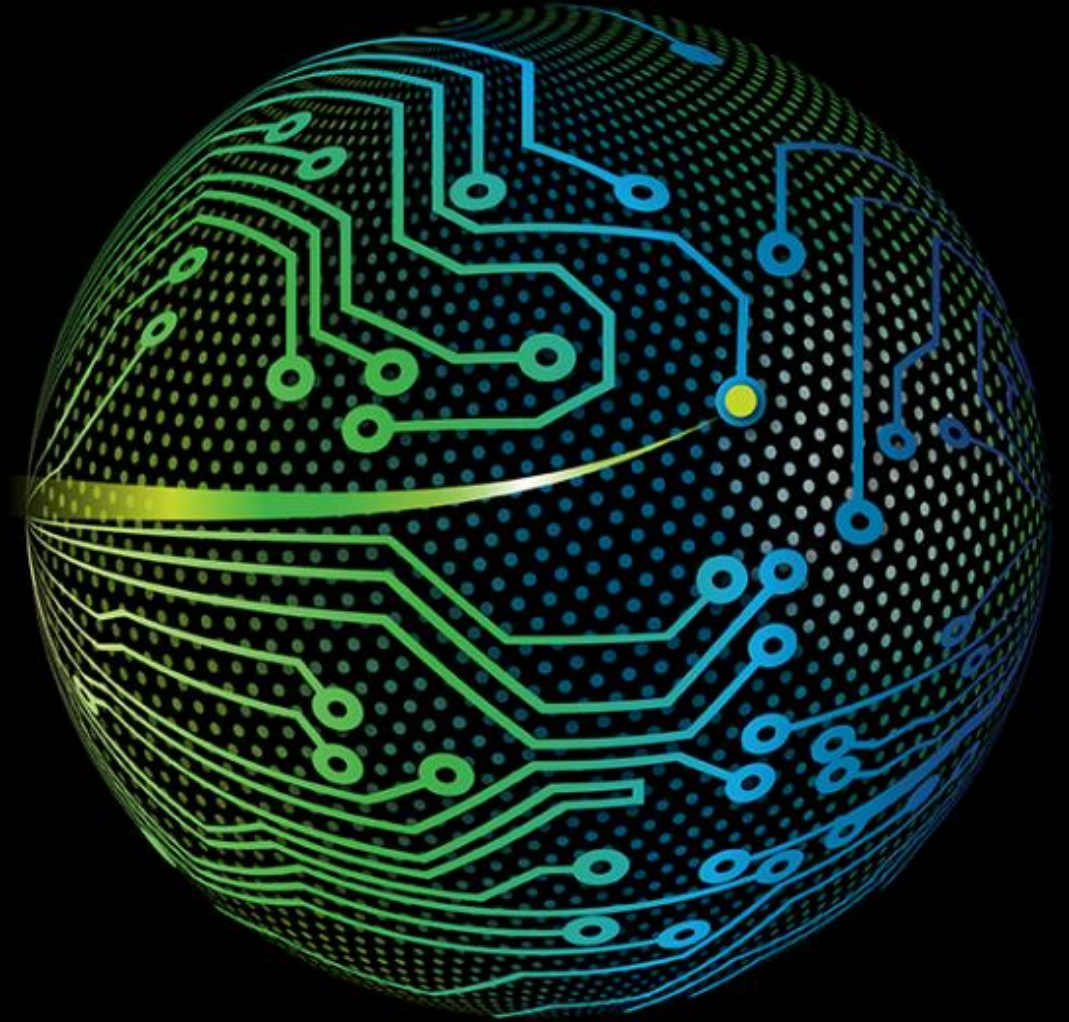
Not observed/ NA

Unilateral APA observed in the country

Bilateral APA observed in the country

Both unilateral and Bilateral observed In the country

Tax Controversy Strategic Considerations



Tax Controversy Lifecycle



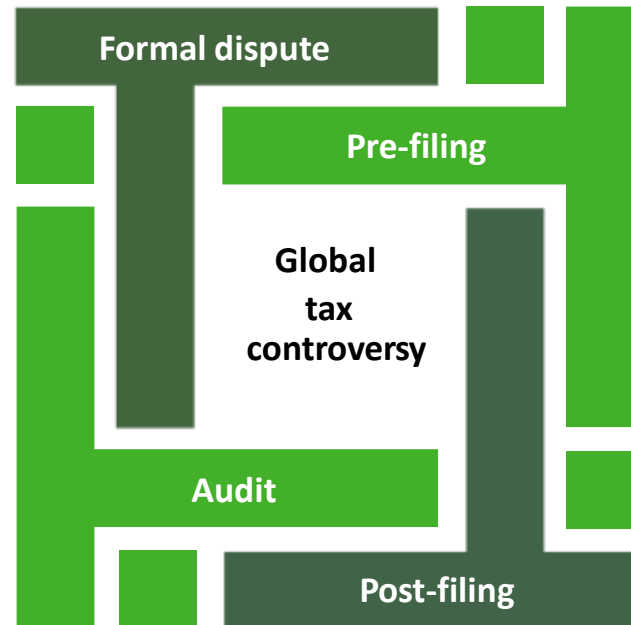
Formal dispute

- Formal closure and appeals
- Continuing settlement discussions
- Litigation preparation and filings in courts
- Conduct formal proceedings in courts



Audit

- Information notices
- Technical discussion
- Strategy and tactics
- Competent Authority



Pre-filing

- Advice
- Evidence
- Implementation
- Adequate Disclosure



Post-filing

- Revenue Authority Risk Reviews
- Late claims, elections and amendments
- Record retention
- Voluntary Disclosures

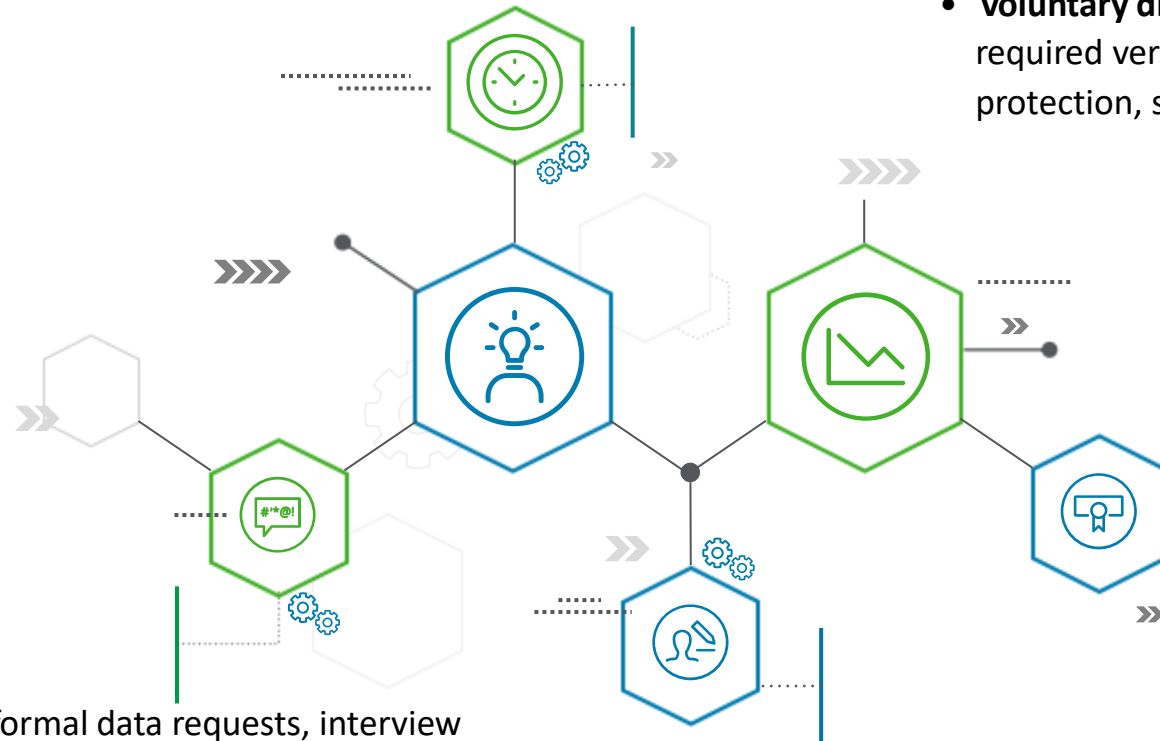
Revenue Authority Approaches

- **Resolution**

- **Settle:** strategy and tactics, negotiation, escalation, importance (or not) of Revenue Authority relationships, timing, Alternative Dispute Resolution (ADR)
- **Litigate:** strategy and timing, formal procedures
- **Mutual Agreement Procedure:** strategy and timing

- **Managing audits**

- **Information requests:** extensive formal data requests, interview staff/customers, email server review, raids
- **Penalties:** increase in automatic or common penalties, increasingly pushing for bad behavior penalties, penalties used to create jeopardy for taxpayer in not settling (e.g., amnesty schemes or disclosure regimes)



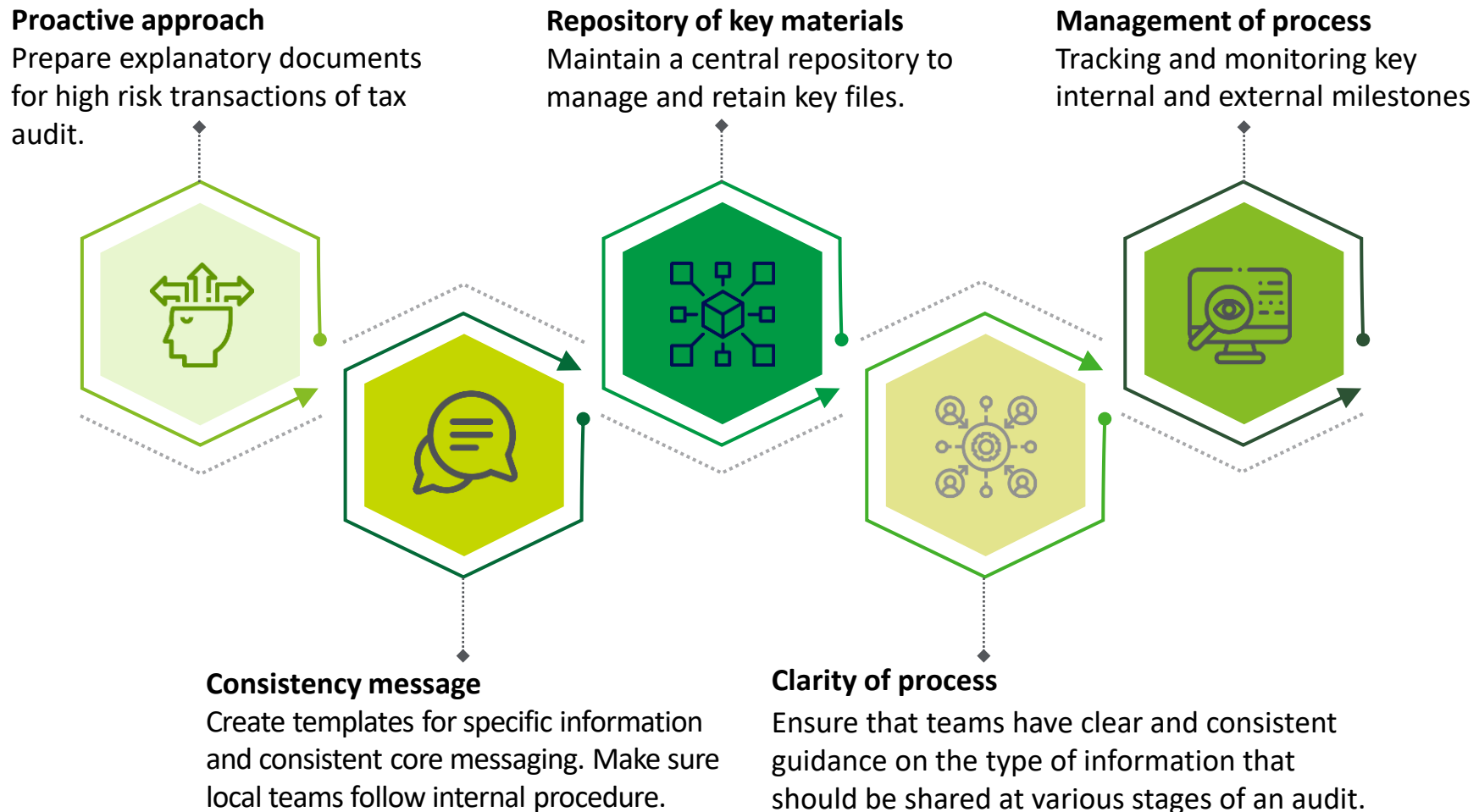
- **Voluntary disclosure regimes:** required versus optional, penalty protection, standards required

- **Risk assessment:** Multiple sources of data available to Revenue Authorities, automated risk analysis increasingly the norm, translates to higher hit rate and more targeted questions

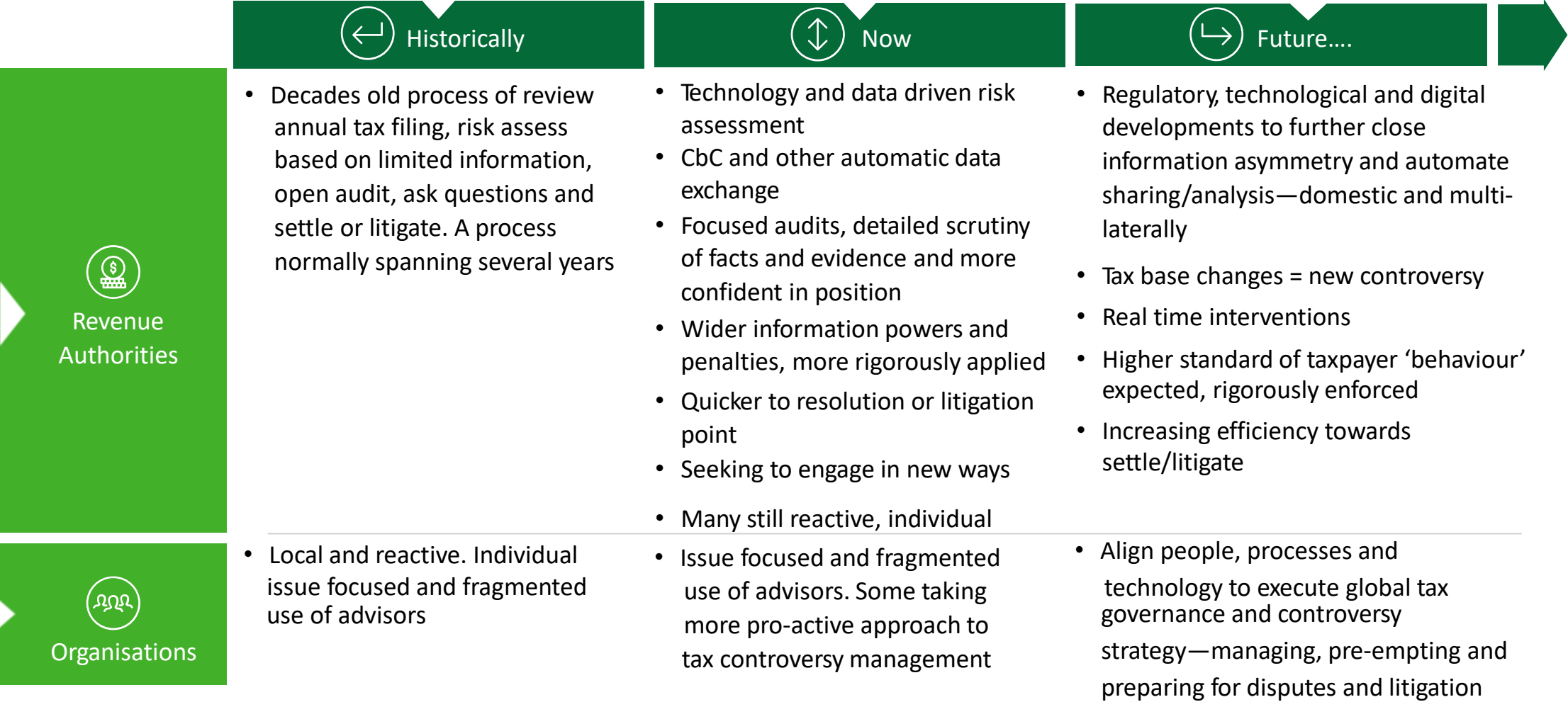
- **Taxpayer relations:** Varies between jurisdiction, from cooperative compliance to outright aggression

- **Agent relations:** Increased focus on Agent behavior, increased risk profile on tax controversy engagements

What are the key aspects of a defence readiness strategy?

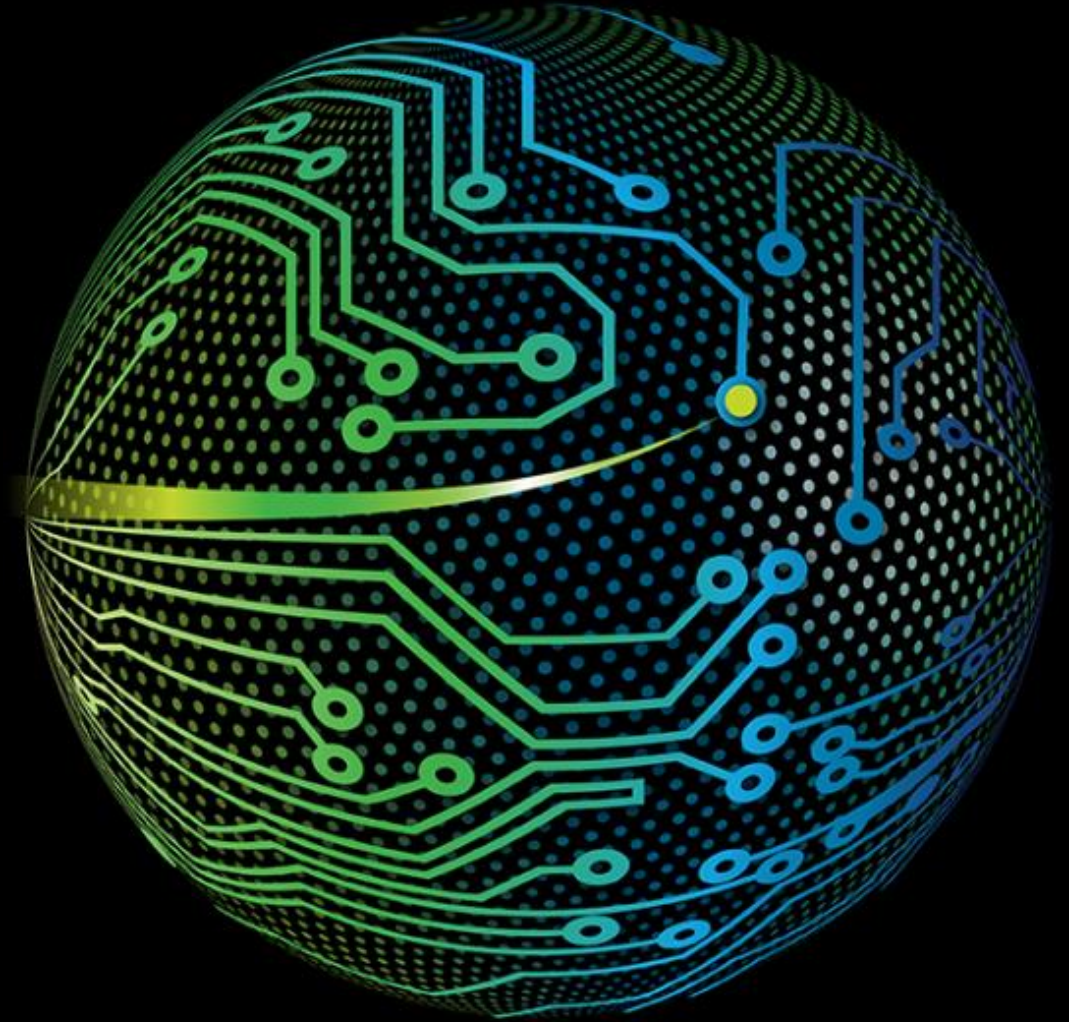


Creating the tax controversy department of the future



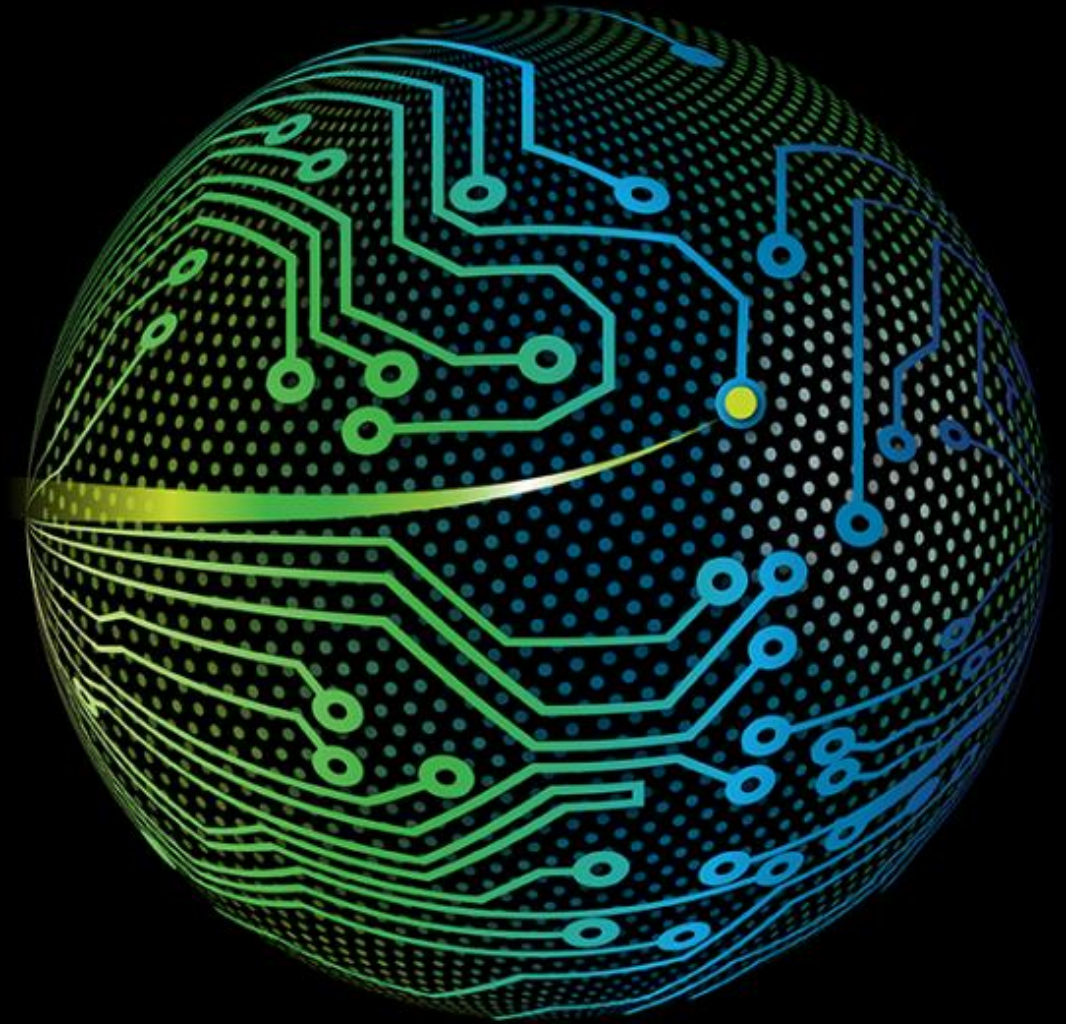
Q&A

Key Jurisdictions



Appendix A

Country updates



Country update—Australia

Key observations and developments



General outlook

- The ATO has specialist teams focused on Financial Services (FS).
- The ATO recently commenced Combined Assurance Reviews (CARs) on Top 1000 taxpayers as part of its Justified Trust review framework and will be undertaking fresh reviews for Top 100 taxpayers in the 2024 year.

Review trends and focus

- The ATO has a specialist FS GST team and two distinct FS strategy teams for direct tax matters:
 - Banking & Finance (B&F)
 - Investments, Superannuation and Insurance.
- In late 2023, the ATO issued CAR questionnaires to banks, insurers and Collective Investment Vehicles (including MITs, AMITs and CCIVs).
- The Justified Trust review is focused on four pillars, which may be tailored to the specific industry subsector:
 1. Tax governance (for CIVs, the focus is on third party data governance);
 2. Book-to-tax differences;
 3. New or significant transactions; and
 4. Tax risks flagged to the market.

Country update—Australia

Key observations and developments



- For the B&F sector, common income tax issues flagged by the ATO as preventing “high assurance” include:
 - Insufficient information and documentation provided with respect to transfer pricing and branch profit attribution;
 - Interpretation and application of the hybrid mismatch rules, and also meeting ATO expectations in relation to compliance and reporting;
 - Lack of information on attribution of Risk Weighted Assets to the Australian branch for thin capitalisation purposes;
 - Offshore Banking Unit (OBU) transitional issues;
 - Application of mark-ups on interbranch allocations of management expenses, duplication of costs and nexus between the cost and any benefit derived by the Australian taxpayer; and
 - Application of an appropriate ceiling to intra-bank payments of interest on internal funding under Part IIIB (regime to recognise notional loans and derivatives between offshore resident banks and their Australian branches).
- For MITs/AMITs, tax risks include eligibility, unders/overs and cost bases.
- Areas with “low assurance” may be flagged for a Next Actions Review and subsequent audit.

Country update—Hong Kong

Tax dispute resolution



General outlook

- The IRD have become increasingly assertive in querying taxpayers and seeking to raise additional assessments.

Audit trends and focus

- **AOA:** The IRD continue to query taxpayers and make challenges across a range of issues. One of the most notable issues of recent years has been net negative adjustments under the AOA. A number of these queries are still ongoing.
- **General strategy of IRD:** The IRD employs a common strategy of dragging out the query process and pushing taxpayers to provide more detailed information through the query process. Generally, taxpayers are reluctant to go to court and as the annual numbers are often not particularly large, they may give in.
- **Possible benefit to taxpayers of long query process:** While taxpayers have tended to submit to the tax authorities rather than going to court, delaying the payment of tax can have some value. Interest generally won't be charged until an assessment is made, so if the IRD are slow to raise an assessment, it can benefit the organisation.
- **Advocacy through industry bodies:** Industry body lobbying has been effective. Deloitte recently assisted the CMTC in obtaining a change in law with respect to foreign tax deductibility and putting a freeze on audit activity. If a sufficient number of large organisations are affected by the same issue, this can be an effective strategy. However, it depends in part on access to the correct level of Government seniority.
- **MAP:** The MAP process in HK is being taken advantage of by taxpayers, but the team dealing with MAP cases appear to be overloaded. They are not well equipped to deal with taxpayer positions and require a lot of assistance and hand holding.

Court proceedings

- Tax barristers tend to hold the view that the Board of Review will often rule in favour of the tax authorities. This is because the Board of Review consists of a rotating panel of professionals, many of which may not have a tax background.

Country update—India

Key observations and developments



General outlook

- The IRA has specialist teams focused on International Tax and Transfer Pricing matters. Over the years, the officers have gained a broad understanding of Financial Services (FS).
- Overall Tax Reportings have increased. For example: TDS, TCS, SFTs to be reported by Banks and other Financial Intermediaries, Remittance based reporting, Mandatory quoting of PANs on documents.
- The IRA are heavily invested in Technology. Through Digitalisation have access to all Tax Payer Information. For example: Annual Information Statement, Annual Tax Statement, Pre-filled Income-Tax Returns, etc.

Review trends and focus

- Number of Tax cases being audited has increased
- Increase in the level of information being sought in relation to tax claims
- Increase in enquiry notices sent to banks regarding client transactions - 133(6) notices
- Rule 14 – Tax payers being asked to “Verify” all information filings are “Correct, Complete, and Truly Stated”
- In-person hearings are replaced with E-Proceedings for International Tax Matters
- Faceless Assessments Scheme 2021 and Faceless Appeal Scheme 2021—To impart greater efficiency, transparency, and accountability
- GAAR proceedings being involved in select cases. For example: Reverse Age Health Services Pte Ltd case [Delhi ITAT] (2023)
- IRA are increasingly invoking Exchange of Information Article of DTAA: India-Mauritius DTAA, India-Cayman Islands TIEA

Country update—India

Key observations and developments



Current Industry Issues—Tax Audits and Dispute Process

Banking

- Interest on on-shore FCU Loans to Indian Corporates—Whether taxable on a gross basis u/s 115A?
- Interest on Sub-Debt from HO—Taxability and Deductibility?
- Direct HO Charges—Deductibility u/s 44C?
- NRI Marketing Expenses—Deductibility?
- TDS on RHQ Payments—FTS/Make Available/Payment to Self?
- Representative Offices—Whether PE in India?
- TP Adjustments on Attribution of Marketing Fees on Derivative Contracts

Investment Manager:

- Increased Focus on Tax Treaty Claims—Mauritius, Singapore
- Treaty benefits granted where strong substance in home country, meet beneficial ownership test, commercial substance test
- Queries around Head and Brain, Financial Control, Operational Control, Bank Account Operations
- Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd (2023 and 2024)

Insurance:

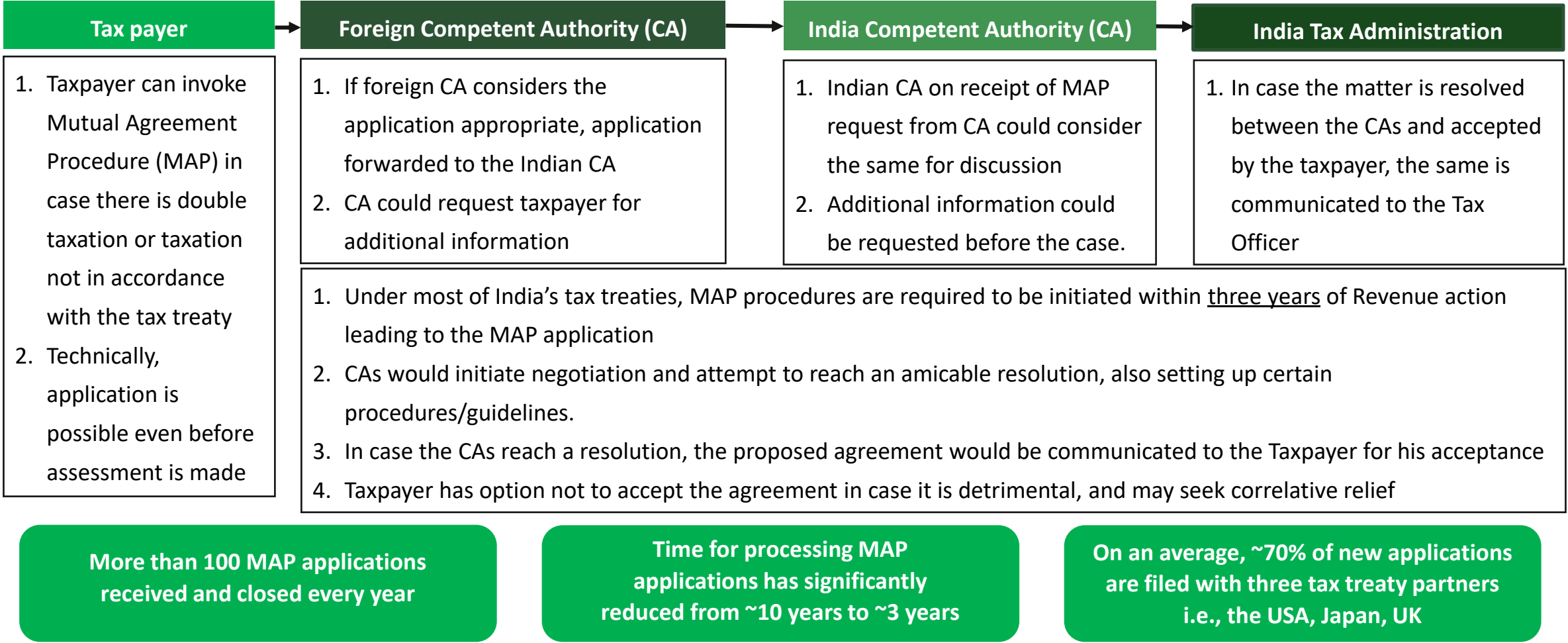
- GST Audits of Agent's Commission
- Deductibility of Agent's Commission for Insurance Companies

General—Dividends/Royalty/FTS:

- Nestle SA Ruling—Accessing MFN Clause (458 ITR 756) (SC) (2023)

Country update—India

Alternative Dispute Resolution Panels: Mutual Agreement Procedure (MAP)



Country update—India

Alternative Dispute Resolution (APA)



Types of APA	Optional pre-filing	Period of APA coverage	When to apply—in case of existing transactions	When to apply—in case of new transactions
<ol style="list-style-type: none">1. Unilateral APA;2. Bilateral APA; or3. Multilateral APA	<ol style="list-style-type: none">1. Pre-filing is optional2. It is possible on a “no-name” basis.	<ol style="list-style-type: none">1. 5 perspective years (advance years)2. Maximum 4 rollback year immediately preceding the advance APA years.	<ol style="list-style-type: none">1. For continuing transactions, APA application is required to be filed before the first day of the financial year which is part of the advance years.	<ol style="list-style-type: none">1. For new transactions, APA application should be filed before the commencement of such transaction.
A total of 1659 APA applications in the last 11 years until FY 2023	Annual APA filings are around 150. FY 2023 received 193 APA applications	Concluded total of 516 APA cases and 315 cases disposed of for other reasons—This is 50% closure ratio	APA has covered almost 3,200 cases in number of years and managed to prevent litigation in 1,600 TP cases	Avg time in concluding unilateral APA is around 3.5 years and bilateral APAs is 5 years.

Country update—Indonesia

Key observations and developments



General outlook

- Fiscal year 2022 was record breaking for Indonesian tax revenues, for which the target was exceeded, being more than 115% of IDR 1,716 trillion. For fiscal year 2023, the Indonesian tax office is targeting state revenues from tax of IDR 1,718 trillion (USD 115.5 billion) or 0.6% growth from that achieved in fiscal year 2022.
- In late 2022, the Indonesian Government issued several Government Regulations which affirm the position of the the Harmonisation of Tax Law. The main topics of the new regulations are General Tax Provision and Procedure, Income Tax and Value Added Tax (VAT). However, the regulations appear to be silent in relation to the implementation procedures and requirements. Therefore the Ministry of Finance and Directorate General of Taxation (DGT) intend to issue regulations for implementation. The update dregulation will affect fiscal year 2023 tax strategy and focus.
- Indonesia is also introducing a new format for Tax Identification Numbers (TIN). Particularly for individual taxpayers, the National Identity Number will replace the TIN effective from 2024. Meanwhile, for corporate taxpayers the TIN will have 16 digits, by adding 0 at the front of the existing TIN.

Audit trends and focus

- The Indonesian tax office appears to be more aggressive in issuing taxpayers (corporates and individuals) with tax clarification and data request letters with respect to the fiscal year in which the amendment period expires (i.e., 5 years after the end of fiscal year). This is essentially one of the strategies of the Indonesian tax office to obtain potential state revenue, or it can be the beginning of the tax audit process if there is no response from the taxpayer, or the response is insufficient. The typical clarification and/or information request is mostly related to revenue equalisation, withholding tax (WHT) equalisation and tax payment confirmation.
- The current tax audit trend is similar to the past year, which is quite aggressive, and transfer pricing is becoming one of the hot topics for the past years.

Country update—Indonesia

Key observations and developments



Audit trends and focus

- We have seen many tax cases advance to the Court. There have been many tax treaty implementation cases since the Indonesian tax office requires a valid certificate of residence and DGT form to prove the beneficial owner and pass the business purpose test.
- Currently the Indonesian Government offers two types of transfer pricing dispute resolution (other than the usual tax audit and dispute procedures):
 - Mutual Agreement Procedure (MAP)
 - Advance Pricing Agreement (APA)

Latest developments on VAT

- Indonesia has amended the VAT Law with the Harmonization of Tax Law, effective from FY 2022.
- The new 11 % VAT rate is effective from April 2022, and 12% starting from FY 2025.
- Foreclosed assets are subject to VAT - the foreclosed assets which arise due to default are considered as taxable goods. Therefore, the transfer of foreclosed assets (i.e., auction to the end customer) may be subject to VAT. However, the Indonesian tax authorities are still in discussion to determine the tariff and tax base amount.
- Transfer of foreclosed assets (AYDA) is subjected to VAT of 1.1%, if the bank re-purchases the foreclosed assets.
- The VAT classification of services provided by the financial services Industry has shifted from non-VATable services to VAT exempted services.
- VAT on financial services may not be collected or exempted from VAT; however, until now there has been no specific guidelines issued by the Ministry of Finance and/or Indonesian tax authorities on the type of income from financial services which is exempted from VAT, and the limitations.

Country update—Indonesia

Key observations and developments



Potential impacts on the financial industry

- Whether banks shall issue VAT invoices for each transactions, since according to the regulations for VAT exempted services, the taxpayer remains the issuer of the tax invoice:
 - If yes, significant administrative burden for the banks.
 - Currently, banks in Indonesia are awaiting implementation regulations pertaining to the obligation to issue VAT invoices. In the absence of implementing regulations, banks have not yet started issuing VAT invoices.
- AYDA cases before FY 2022 are still being corrected by the Tax Office:
 - The new regulations provide more clarity for the financial industry; the tax office has provided confirmation that AYDA is subject to VAT at 1.1% (10% x 11%) during the sales transaction if the bank re-purchases the AYDA.

Country update—Indonesia

Progress of Indonesia VAT Legislation



Issues still being discussed

- The format of VAT invoices for VAT exempted transactions
- VAT imposition for the foreclosed assets (AYDA) which are still owned by debtors

VAT focus areas during tax audit process

- Revenue equalisation between the amount reported in FS/CIT compared to VAT return
- Sale on AYDA before FY 2022

Country update—Indonesia

Progress of updates on loan provision and loan write-off regulations



Updates on loan provision calculations according to the tax regulations

- Indonesian tax authority has socialised the DRAFT implementation regulations pertaining to loan provisions, and intend to issue regulations in FY 2024.
- The main updates (as per what has been socialised) are as follows:
 - Loan provisions will be calculated according to the applicable Accounting Standards;
 - Loan provisions are only applicable for loan credits and/or financing, including the sharia scheme (not all the financial assets);
 - Formula: Probability of Default (PD) x Loss Given Default (LGD) x Exposure (EAD); and
 - Provision percentage calculation will be changed.

Collectability	PMK-81/2009 jo. PMK-219/2012	Draft Implementation Regulation*
Collectability 1—Performing	1%	0% / 0,5% / 1%
Collectability 1—Under Special Attention	5%	3% / 5%
Collectability 1—Non-performing	15%	10% / 15%
Collectability 4—Doubtful	50%	50%
Collectability 5—Bad	100%	100%

* Banks and Business Entities that provide financing based on Sharia principles or private entities and micro, small, and medium enterprises

Country update—Indonesia

Progress of updates on loan provision and loan write-off regulations



Updates on loan provision calculations according to tax regulations (cont'd)

- The main updates according to what has been socialised are as follows. For the first year of implementation, the draft regulation stipulates:
 - Beginning Balance: The closing balance of the reserve for uncollectable receivables from the previous tax year, calculated in accordance with PMK-81;
 - Closing Balance: Calculated using the new formula according to the implementation regulations; and
 - Increasing Provision Expense should be amortised within 3 years.

Updates on the write-off of uncollectable account receivables

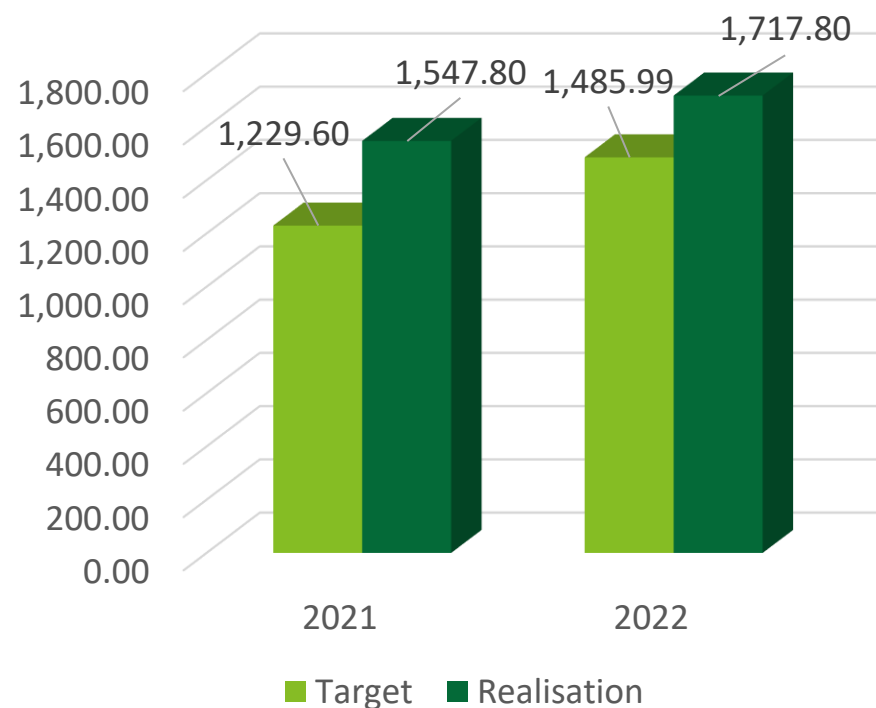
- Uncollectible account receivables should be considered as the deduction of loan provision beginning balance;
- Recovery of the uncollectable account receivables should be recognised as additional loan provision beginning balance instead of income; and
- The nominative list of WO AR should be submitted as an attachment to the corporate income tax return.

Country update—Indonesia

Tax audit and disputes



**Indonesia Tax Revenue outlook
(in Trillion Rupiah)**



Tax Development for FY 2023

- For FY 2023, Indonesia is targeting state revenues from tax of IDR 1,718 trillion (USD 115.5 billion) or 0.6% growth.
- In FY 2023, the Indonesia Tax Authority is preparing to issue several implementation regulations due to new updates on the Harmonisation of Tax Law (i.e., VAT on financial industries, implementation of new benefits-in-kind regulations, tax holidays and incentives etc.)
- In order to achieve the state revenue growth, the Indonesia Tax Authority may be quite aggressive in reviewing the remaining open tax year (i.e., not yet being tax audited) of the taxpayer.

Country update—Indonesia

Tax audit and disputes



Particular	Pros	Cons
Domestic Dispute Resolution	<ul style="list-style-type: none">• Despite the challenges in domestic law, several cases decided in favor of taxpayers (especially at the tax appeal stage)• Taxpayer has the right to provide the arguments firsthand before the tax court judges by representing and provide rebuttals to the DGT on technical matters	<ul style="list-style-type: none">• Recently concluded tax audits have showcased that the tax authorities have a very limited understanding of certain business models (tax audit/objection stage)• Lack of technical TP knowledge with some tax offices and highly inconsistent approach used year-on-year merely for the sake of making corrections (tax audit stage)• Precedence set in previous years’ audits are followed• Slow, costly and time-consuming domestic resolution process. No certainty on the outcome• Failure to win the disputed case will result in significant penalty amount (unless the taxpayer pays all the underpaid tax)• Long-drawn process for ultimate resolution

Country update—Indonesia

Tax audit and disputes



Particular	Pros	Cons
MAP	<ul style="list-style-type: none">• Provide effective relief from double taxation• Failure to achieve any conclusion results in no penalty• Would serve as a basis for future APAs• Time-bound process (24 months)	<ul style="list-style-type: none">• The taxpayer has to pay any underpaid tax before the MAP process is initiated• The objective of MAP is to help avoid double taxation and not arrive at an arm’s length price
APA	<ul style="list-style-type: none">• Multi-year proactive approach• Provides certainty for 5 years and can be renewed at the end of the APA period• Reduces compliance burden in the covered period• Cost savings in tax audits for covered transactions• Avoids double taxation in case of bilateral APAs	<ul style="list-style-type: none">• Negotiations may be time consuming (up to 2 years)• No guarantee that tax authorities will agree on the proposition• Reduced flexibility to re-arrange the transactions in the covered years

Country update—Indonesia

Tax audit and disputes



Current industry issues object during tax audit and dispute process

Banking

- Corporate income tax (CIT)—write off loan
- CIT—interest Income recognition due to non-performing loan
- CIT—provision
- VAT—foreclosed asset

Insurance

- CIT—claim expense
- CIT—joint cost allocation
- CIT—unit link reserve NDE
- VAT—ujrah fee

Investment Manager

- CIT—joint cost allocation
- CIT & Art. 26—intercompany transaction (arm’s length principal or existence)

Multifinance

- CIT—loss on foreclosed asset
- CIT—provision
- VAT—foreclosed asset
- VAT—insurance discount

Country update—Japan

Key observations and developments



General outlook

- Tax authority focus on transfer pricing, particularly financial transactions (e.g., intercompany loans and guarantees). Persistent losses may trigger queries from the tax authorities.

Audit trends and focus

- Major audits may commence after tax authority rotation (i.e., July 2022).
- Audit focus on transfer pricing. “Desk review” by international tax and transfer pricing experts performed to flag potential issues. It is expected that this will result in a greater number of transfer pricing audits with stronger tax authority positions where an audit is commenced. Requests for transfer pricing documentation at the commencement of all audits.
- Modernisation and digital transformation of the tax authority is resulting in more sophisticated data analytics.
- Taxpayers typically use the MAP/CA process, rather than appealing to a tribunal or litigating in court. Many peers in the financial services industry use the APA program.

Country update—Malaysia

Key observations and developments



General outlook

- Focus of local tax authority on transfer pricing: outbound payments e.g., management fees, offshore loan booking fee splits, equipment leasing rates. There needs to be commercial reasons for a change in transfer pricing policy, and documentation demonstrating need and impact, particularly if profit is affected.

Audit trends and focus

- 2024 is expected to be a year of significant audit and investigation focus into tax evaders with high-value assets and offshore accounts holders. The Inland Revenue Board (IRB) will prioritise individuals or businesses earning income from online activities, ensuring proper tax reporting for earnings through this channel.
- The IRB are also looking to scrutinise "shadow economy" activities that involve unregistered and unlicensed businesses that evade tax declarations, including part-time jobs paid in cash to avoid income reporting and tax payments.
- Audits expected if a taxpayer has not been audited in the last 3 years.
- The focus of tax audits continue to be transfer pricing (particularly in relation to outbound related party transactions) and expenses incurred for software development.
- Companies emerging from tax holiday periods are also likely to be subject to audits to verify compliance with incentive conditions.
- Litigation experience in Malaysia is growing but most financial institutions generally prefer to settle out of court if penalties can be waived and the matter expedited.
- Financial institutions need to be mindful of customer data protection laws and the limits of the tax authority's ability to request for personal information to avoid civil action.

Country update—Malaysia

Key observations and developments



Other notable developments

- IRB is focused on promoting compliance via awareness and education. For instance:
 - Courtesy visits to taxpayer offices to discuss industry issues and seek amicable resolution; and
 - Promotion of Tax Corporate Governance Framework (TCGF) and participation in the Special Voluntary Disclosure Program (6 June 2023 to 31 May 2024) as an option to reduce audits, and penalties can be waived.
- Tax Governance: The IRB has issued the TCGF and guidelines to assist organisations in designing and operating their TCGF and encourage voluntary participation in the TCGF Programme to improve an organisation's corporate tax compliance matters in an open and honest manner.
- The updated Tax Audit Frameworks (available in Bahasa Malaysia only) were issued by the IRB and are effective from 1 May 2022. They provide guidance to taxpayers on the latest tax audit policies adopted by the IRB.
- There is a growing preference for local comparable data in determining transfer price benchmarks.
- Industry issues are generally resolved collectively at industry association level, on occasion seeking Ministerial intervention on contentious audit issues.

Country update—Philippines

Key observations and developments



General outlook

- New Secretary of Finance announced that no new tax proposals will be introduced this year and they will recalibrate existing priority tax measures to guarantee that the reform measures are fairer, easier to collect, and more practical, and will not translate to unnecessary burden for Filipino consumers and taxpayers. The Secretary of Finance has called on the Bureau of Internal Revenue to intensify tax enforcement and compliance efforts to meet their revenue target.

Audit trends and focus

- Area of focus: cross-border services with the issuance of clarification on tax treatment of cross-border services.
- Conduct of related party transactions or transfer pricing audits as part of regular audits is increasing, although the scope of audit is still limited since the tax authority is still gaining experience as well as expertise and resources in transfer pricing.
- Conduct of audits: Given that tax audits take a while and due to pressures to meet revenue targets, there is a strong preference to settle audits at early stages without going through the usual audit process.

Court proceedings

- The CTA remains to be an alternative venue to resolve tax disputes. The CTA is considered fair in resolving tax disputes and based on experience, following the normal course, judgment can be obtained within two years from filing of an appeal.

Country update—Singapore

Key observations and developments



General outlook

- Overall, we have not observed an increase in specific audit activity. Detailed review of tax returns (in the form of detailed queries subsequent to the submission of tax returns) is part and parcel of assessment/compliance process for every taxpayer (essentially desktop audits).

Audit trends and focus

- Aside from tax return post submission review, IRAS continues to select taxpayers for specific compliance reviews and transfer pricing audits. These are mainly desktop audits (with occasional request for site visits/meetings) rather than field audits or raids. IRAS also periodically publishes its focus areas for audits.
- Use of audit is complimented with voluntary compliance initiatives, focusing on controls, including:
 - Tax Governance Framework (TGF): A voluntary compliance initiative that a company may participate in to demonstrate that it has good tax governance and tax risks management. Taxpayers are to establish a TGF based on specified building blocks and publish the framework on the company website. We have observed IRAS inviting larger taxpayers to participate.
 - Tax Risk Management and Control Framework for Corporate Income Tax (CTRM): CTRM is a voluntary compliance initiative that a company may participate in to demonstrate that it has good tax governance and tax risk management. Similar to Assisted Compliance Assurance Programme (ACAP) for Goods and Services Tax (GST). Some benefits include IRAS taking a calibrated approach and focusing only on key tax risk areas identified. Taxpayers can otherwise enjoy a step down in general tax queries for the next 3 consecutive years.
- Enforcement actions are focused on various tax fraud, use of tax shelters, corporatisation transactions, valuation of IP for Section 19B purposes and transfer pricing audits (e.g. ESOP costs), with IRAS setting up internal teams to develop expertise and resources in these areas under review.
- Penalty discussions complicated by surcharge for TP adjustments, which differs from the thresholds for general penalty.

Court proceedings

- There is no notable trend observed for litigation/appeal to BOR or High Court/Court of Appeal.

Country update—South Korea

Transfer pricing developments



General outlook

- The number of tax investigations in 2023 was reduced to the lowest ever, but the amount of tax levied increased. The target number of investigations in 2024 is expected to be similar to that of 2023, but the intensity of tax investigations is expected to increase as the National Tax Service creates three additional investigation teams within the organisation.
- As tax authorities conduct more in-depth scrutiny than before on various transactions performed by financial companies, Korean financial companies are preparing to establish transfer pricing policies.

Audit trends

- Most MNCs will have their Korean subsidiary/branch audited once every 4-5 years (especially if located in Seoul). The audits of financial service companies are similar to normal audits, although the Korean NTS tends to target companies in the same industry at around the same time so that they can leverage the issues that arise from one company to another.
- Recently, the National Tax Service has been intensively reviewing offshore tax evasion and it plans to increase the number of auditors to a temporary quota that will last until 26 February 2027, in order to collect and analyse information related to offshore tax evasion at local tax offices.

Country update—South Korea

Transfer pricing developments



Audit trends (cont'd)

- FSS issued intercompany transaction guidelines for local taxpayers that have an overseas financial services parent company (or HQ) in 2018; however, FSS still conducts in-depth investigations if the local taxpayer conducts service transactions with its overseas affiliates:
 - Types of service fees paid to overseas HQ: trademark royalty, advisory service fees, consignment/gains and IT service fees;
 - FSS' guideline was to minimise base erosion and profit shifting by thoroughly examining expenses paid to taxpayer's overseas affiliates;
 - Controversial debate over 'service transactions' as a means of profit shifting: payment of service fees to overseas affiliates is only subject to 10% VAT whereas payment of dividends is subject to 24.2% corporate tax as well as 15.4% dividend tax; and
 - Excessive service fees payment negatively affects local performance indicators, resulting in a large number of branch closures and downsizing/restructuring in Korea.
- Current tax audit cases of financial service companies indicate that the tax authority is still focused on loans, guarantees, and service transactions (e.g., HQ/shared support services) with increased attention to:
 - Cash pooling: adaptation of 2022 OECD TP Guidelines in local TP regulations in February 2022 stipulates arm's length method for cash pooling; and
 - IT/software development services: tax authority questions whether financial service companies receive fees from foreign related subsidiaries.
- Revenue TP vs Cost TP (TNMM vs CPM):
 - For non-routine functions such as deal origination, management, and distribution, a profit split method is applied depending on the contribution of the transaction parties, and a CUP is also applied.
 - TNMM is mainly applied to transactions such as investment advisory services, support services, and routine sales (low touch).

Country update—Thailand

Audit trends and focus



General outlook

- In 2024, the new Director General of the Revenue Department announced her vision for utilizing data from the global exchange i.e. CbCR and CRS to prevent tax evasion by MNEs and implementing a global minimum tax in alignment with Pillar Two of BEPS. She also emphasized on implementing artificial intelligence (AI) to enhance efficiency in tax collection.

Key developments

- On 1 March 2024, the Thai Revenue Department has released the summary of draft legislation ("Draft summary") on Pillar 2 and initiated a public hearing on its website, scheduled to take place from March 1 - 15, 2024. This marks a significant advancement by the Revenue Department on Pillar 2 since the cabinet resolution in March 2023. However, there is currently no clear indication of the timeline for the effectiveness of the legislation outlined in the draft summary, although the initial plan is set for 2025.
- On 23 December 2022, Thailand entered into The Multilateral Competent Authority Agreement for Exchange of Country-by- Country Reports ("CbC MCAA") to automatically exchange CbCR information annually. As of 13 February 2024, OECD's Automatic Exchange Portal shows that Thailand has activated bilateral exchange relationships with 77 jurisdictions.

Country update—Thailand

Audit trends and focus

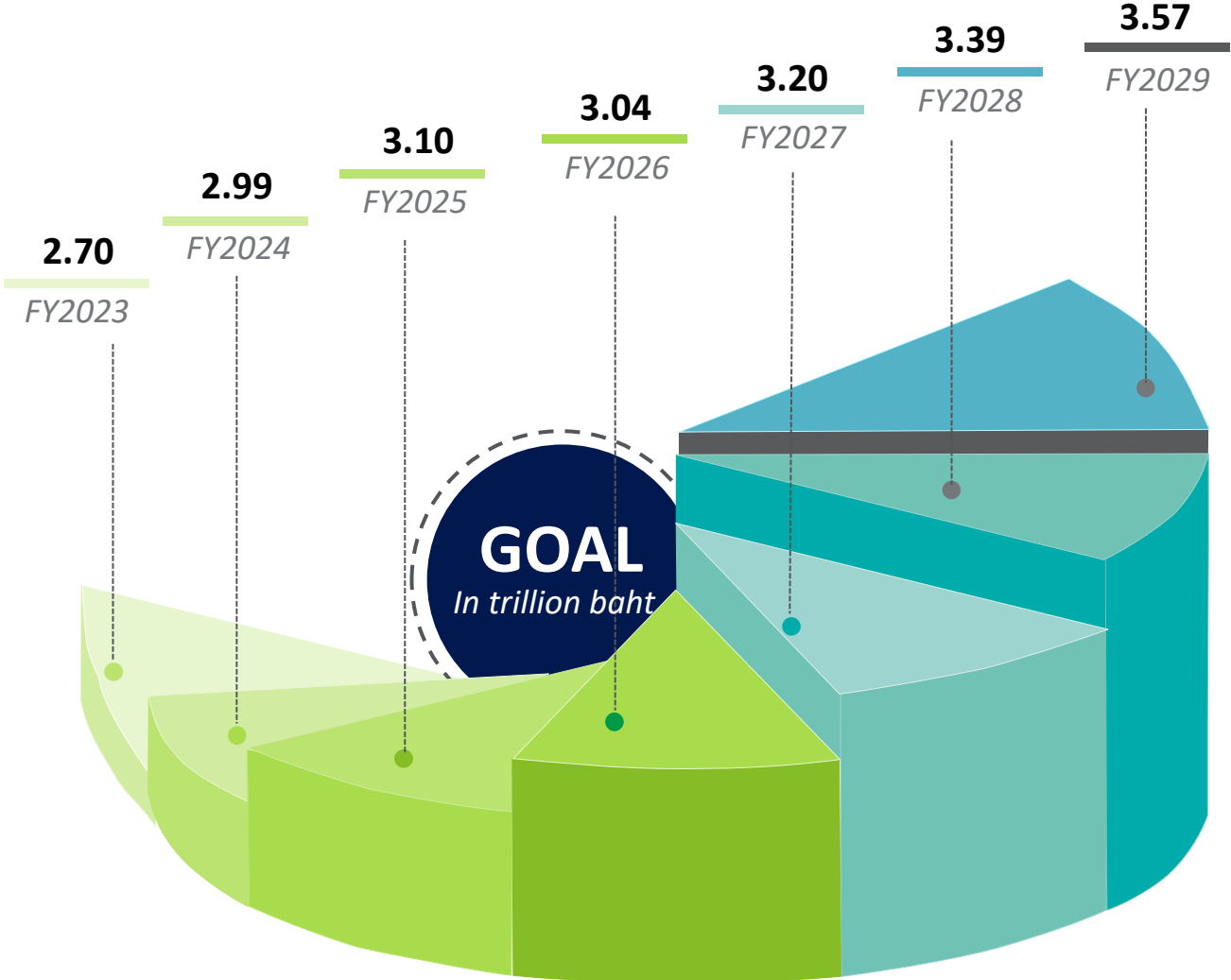


Key developments (Cont.)

- After Thailand joined Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (MCAA CRS), the Royal Decree for the Exchange of Information B.E. 2566 (“CRS Law”) was enacted on March 30, 2023, and has been in effect since 1 April 2023. The first exchange of information under the CRS in Thailand began on 15 September 2023 (Individual high-value account). The second exchange will be submitted on 30 June 2024.
- On 20 November 2023, the Revenue Department issued Instruction No. Paw.162/2566, stating that foreign-sourced incomes derived by the Thai tax resident from 1 January 2024 onwards is subject to Personal Income Tax in Thailand. The income is taxed in the year that such income is brought into Thailand.
- Following the approval of the draft Royal Decree to subject sales of securities traded on the Stock Exchange of Thailand (SET) to the Financial Transaction Tax (FTT) in late 2022, Thailand has indefinitely suspended its planned tax on stock trading in 2023. This decision comes after the Federation of Thai Capital Market Organisations (Fetco) objected to the move, citing concerns that it would deter foreign investors from the SET and diminish market liquidity.

Country update—Thailand

Audit trends and focus



Reference: Medium-Term Fiscal Policy for fiscal 2024-2027 dated 28 December 2023

Country update—Thailand

Audit trends and focus



- In 2024, the Revenue Department plans to:
- Utilise data from the global exchange i.e. CbCR and CRS to prevent tax evasion by multinational enterprises (MNEs) and aims to implement global minimum tax according to pillar two BEPS.
 - Implement artificial intelligence (AI) to enhance efficiency in tax collection.

Dr. Kulaya Tantitemit
Director general of the revenue department

The Government’s NET Income Collection Result

from October 2022 to September 2023(In billion Baht)

Source of Income	Actual Revenue	Estimation Budgeted	Comparison with Budgeted	
			Amount	%
Revenue Department	2,211.428	2,029.100	182.328	9
Excise Department	477.131	567.000	(89.869)	(15.8)
Customs Department	126.754	105.500	21.254	20.1
Total	2,815.313	2,701.600	113.713	4.2

According to the Finance Ministry’s official data, the revenue collected through key taxing department in fiscal year 2023, spanning from October 2022–September 2023, was THB 2,815 billion, beating the target by THB 114 million or 4.2%.

The Revenue Department collected THB 2,211 billion during the period, exceeding the target by more than THB 182 billion or 9%.

Country update—Thailand

Audit trends and focus

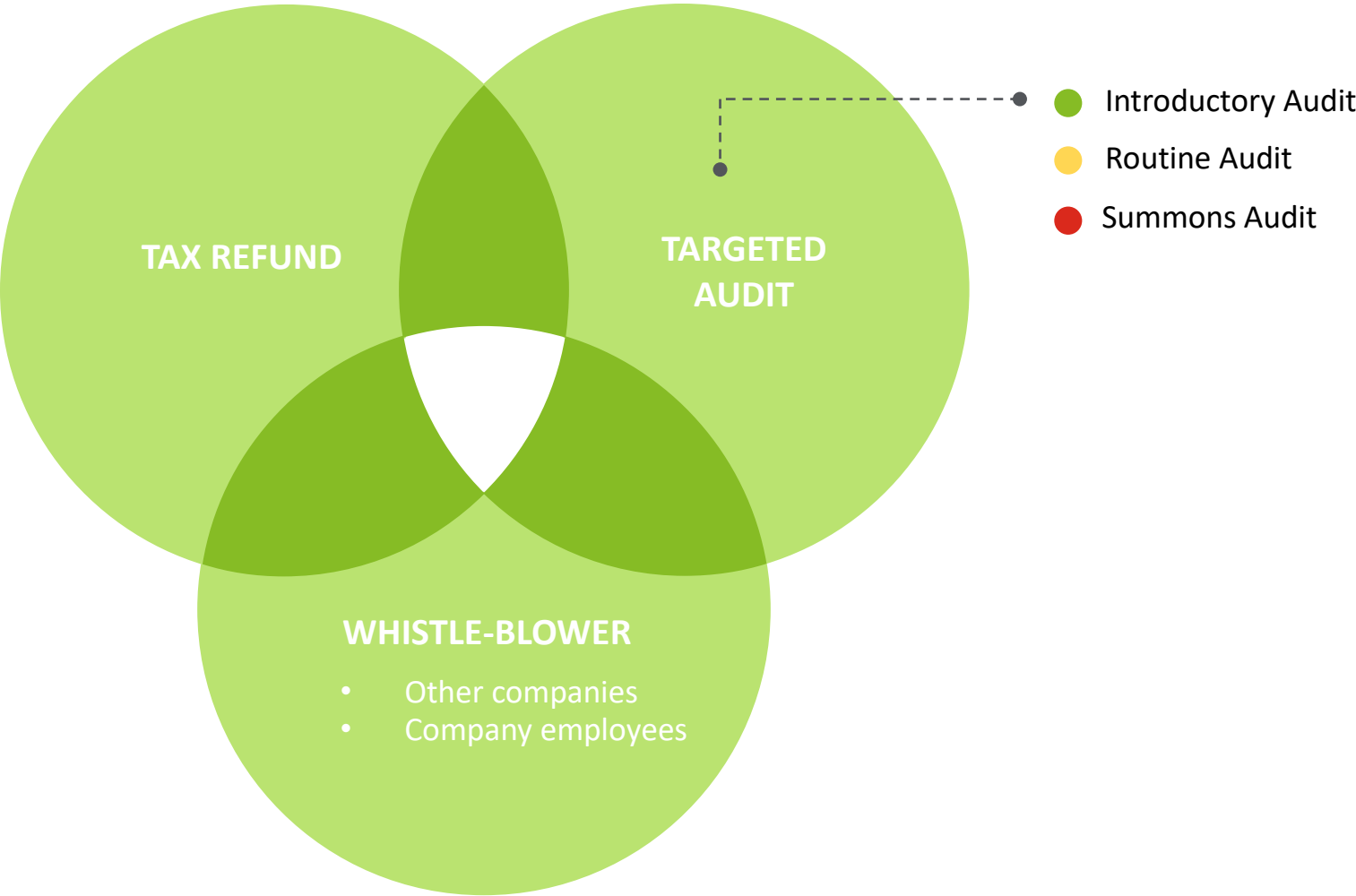


Audit trends and focus

- Any tax refund requested is subject to a mandatory tax audit before the tax is refunded to taxpayers. Other than tax refunds, the TRD also uses risk-based approach (RBA) to screen taxpayers for a tax audit. There are over 132 screening criteria and each criteria is given different scores. The criteria and score are revisited every year by the TRD depending on the economic situation and industry performances
- Most tax and TP audits are settled as voluntary submissions to avoid full-blown tax audits, which may result in tax liabilities, tax penalty and surcharge. There are secondary adjustments which result in withholding tax and value-added tax liabilities.
- Taxpayers rarely escalate tax disputes to court due to the time and resources consumed in the process.
- The TRD is familiar with the application of tax treaties; however, their interpretation of a treaty needs to be carefully analysed prior to proceeding with certain complicated transactions.
- The TRD has an increasingly use of Exchange Information mechanism for tax audit.

Country update—Thailand

Audit trends and focus—What triggers a tax audit?



Country update—Vietnam

Key observations and developments



General outlook

- Overall, the tax authorities have increased the number of tax audits and tax audits have become more aggressive due to increased budget pressure. There is a trend for the tax authorities' approach in respect of controversial tax issues to be more conservative, given there is no specific concrete guidance under the current tax regulations for such issues.

Audit trends and focus

- Tax audits can be conducted by several different departments of the tax authorities, including the provincial tax department, central tax department, and even the government inspectors and state auditors. There may be tax re-audits if there are any signs of significant violations that have not been identified by previous tax audit teams.
- The tax authorities have been enhancing desk audits (in combination with onsite audits/inspections), and extending tax audit timelines with respect to high-risk enterprises that have key tax issues with significant tax exposures.

Country update—Vietnam

Key observations and developments



- Focus areas include:

More aggressive approaches taken in the imposition of tax on capital transfers, especially for cases where losses arise, or offshore indirect transfers at grandparent level	Inspections of VAT refunds	Increased tax management for e-commerce activities
Denying tax deductibility with respect to intra-group services	Enterprises with high tax risk / high revenue and enjoying tax incentives	Transfer pricing for internal comparison of selling prices with respect to sales to related and third-party customers

Court proceedings

- Recourse to the courts continue to be uncommon for tax disputes in Vietnam.
- Appeals remain challenging since (i) cases subject to appeal are usually relate to areas of law which are ambiguous (i.e., supporting regulations are not clear, and thus subject to interpretation of the tax authorities), and (ii) the taxpayers have to form persuasive arguments with sufficient supporting documents to prove that the prior decision of the tax authorities is not in line with their facts and circumstances.



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