



**Tax controversy in Asia Pacific:
Implications and takeaways (Part 3)**
The Dbriefs Corporate Income Tax series

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7 April 2021

Agenda

- Australian tax authority approach to disputes and controversy
- Indonesia
- The organizational structure of tax authorities in the mainland China
 - Common types of tax inspection and processes in mainland China
 - Solutions of tax disputes
- India
 - Faceless tax regime
 - Alternate dispute resolution framework – some modifications
 - Other relevant amendments in timelines
- Panel session
- Questions and answers

Polling question 1

How many countries have you experienced tax audits or reviews in the last (12) months in Asia Pacific?

- One to two countries
- Three to five countries
- More than five countries
- Everywhere we do business
- Don't know/not applicable

Australian tax authority approach to disputes and controversy

Australian Taxation Office (ATO) approach

The ATO has made significant changes to its approach to tax compliance over the last 5 years. Some key background factors to understand include

1. ATO's compliance programs - fully funded via pre-COVID federal budgets
2. Large scale changes to resourcing – commercial and chartered experiences from top down; a large number of contract roles offered in 2021
3. Significant uptake of data analysts – which is indicative of approach to reviews
4. ATO has a view as to the tax collection “gap” as it reports to parliament – hence a need to “close the gap”
5. ATO also has a view relating to BEPS to “change behaviours” for undesirable structures
6. A large number of targeted programs focussing on “assurance”
7. Public rulings and practical compliance guides (PCG) informing taxpayers of ATO views on issues
8. Use of PCGs and CIT disclosures to gather information to perform analytics
9. Next steps – anticipated use of CBC data
10. Litigation – cases still get taken to litigation and up through to the high court; now comprises former tax barristers
11. APA program – still going but may required “sign-off” under a ATO program before agreement

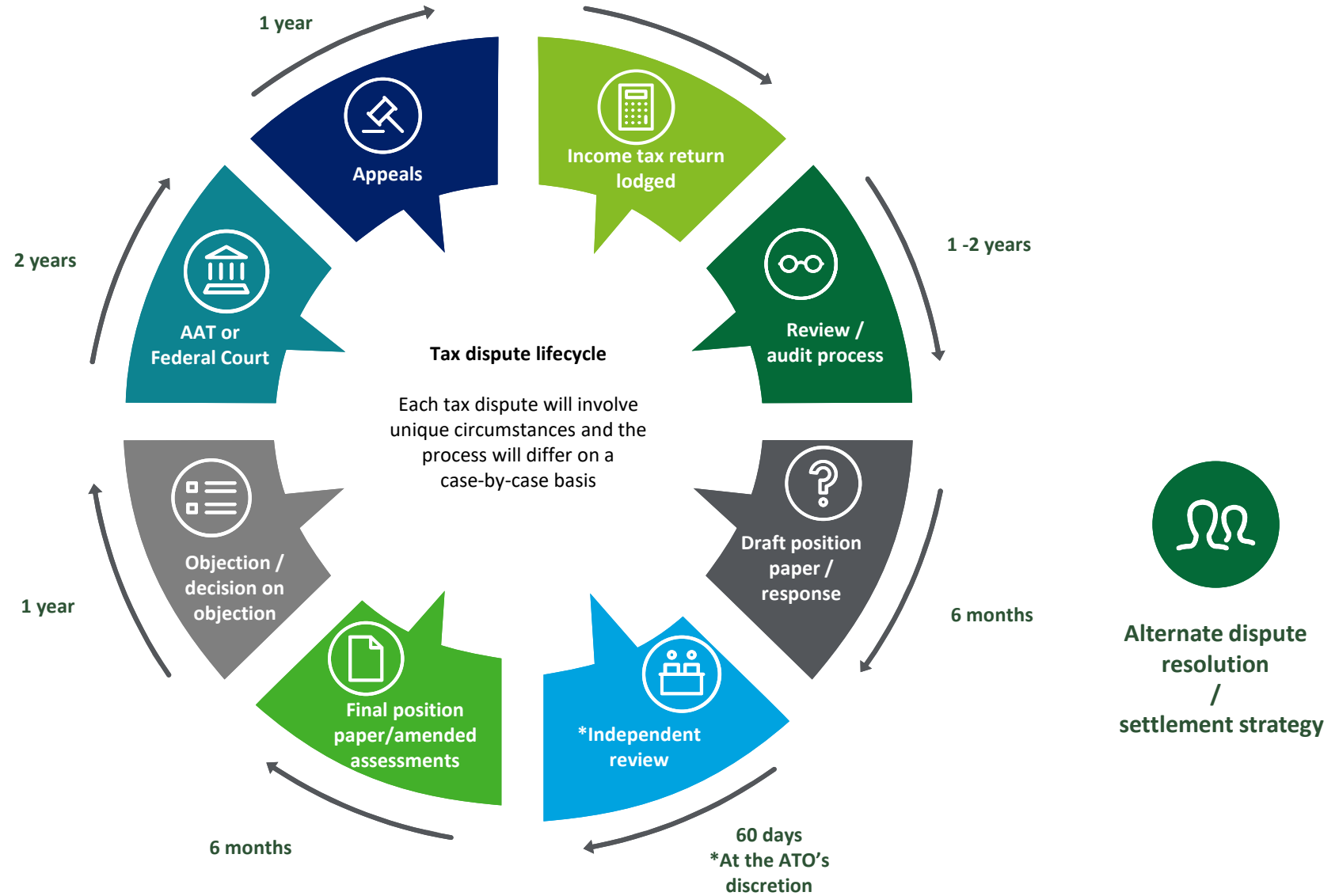
Australian Taxation Office (ATO) approach

Key ATO programs

1. STAR/next actions and CAR in top 1000 (cross border MNCs)
2. Top 500 – large private groups
3. Next 5000 – smaller private groups
4. Medium and emerging private groups
5. Private equity owned
6. Specific issues programs
7. Overriding role of tax governance and assurance

Tax dispute lifecycle at a glance

From returns to appeals



Secrecy provisions and information-gathering powers

Policy

- In *Consolidated Press Holding Ltd v Federal Commissioner of Taxation* (1995) 57 FCR 348, Lockhart J said the following about the purpose of s 16 (at 350-1):
 - Section 16 is designed to ensure that officers of the Australian Taxation Office maintain secrecy regarding the affairs of taxpayers. The section reflects the **intent of the Parliament to balance two competing areas of public interest**: on the one hand the interests of taxpayers in having the privacy of their financial information respected; and on the other hand, the facilitation of the administration of governmental business. Taxpayers are responsible for reporting their income and outgoings. It is essential if the confidence of taxpayers is to be maintained that private information concerning their finances and affairs will not be disclosed except in the special circumstances mentioned in the various subsections of s 16. The **voluntary disclosure by taxpayers of this confidential information concerning their assessable income and outgoings is vital to the efficient operation of Australia's taxation laws**. If taxpayers lack this confidence, reluctance may develop to disclose voluntarily the requisite information

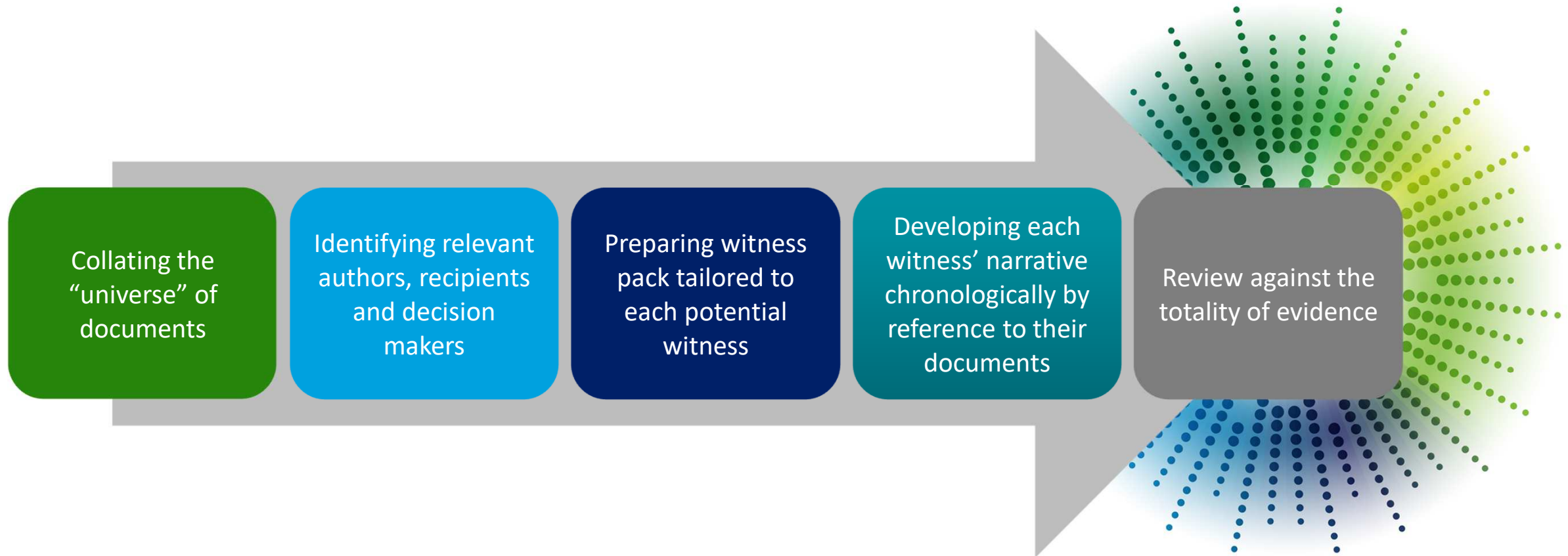
Information-gathering powers

Formal notices

Notice	Details
s 353-10	<ul style="list-style-type: none">• Produce documents in your custody or under your control ATO may also issue a notice to attend and give evidence in a formal interview – taxpayer or third parties
s 353-15	<ul style="list-style-type: none">• ATO may enter premises and take information or documentation
s 353-25	<ul style="list-style-type: none">• Offshore information notice
Legal professional privilege	<ul style="list-style-type: none">• Confidential communications for the dominant purpose of providing legal advice between a lawyer and a client, or in anticipation of or during litigation
Failure to comply	<ul style="list-style-type: none">• ss 8C-8E: offences and penalties• Evidence inadmissible if requested under s 353-25 notice and not produced

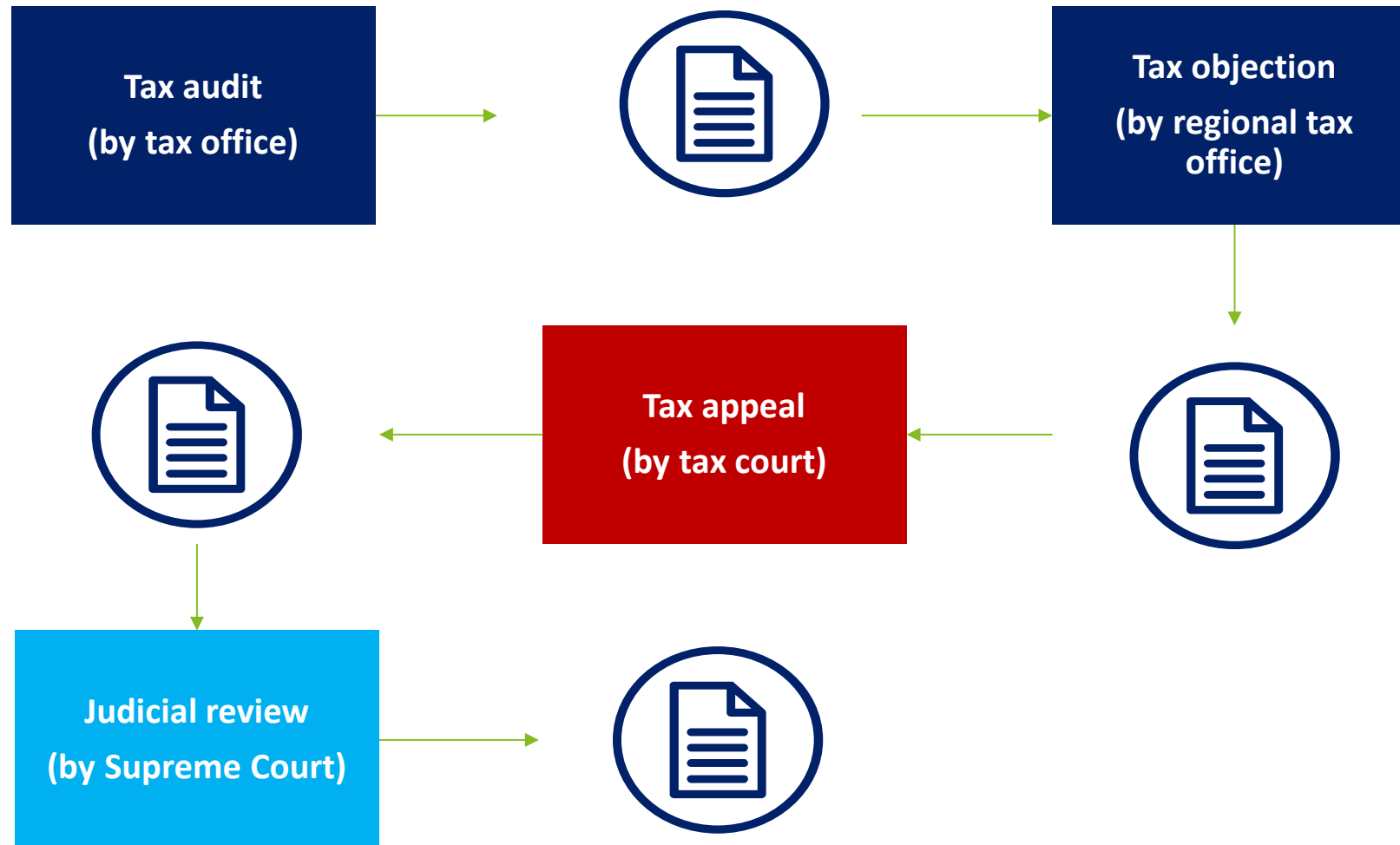
Evidentiary considerations and evidence gathering prior to litigation

Collation, analysis, and preparation



Indonesia

Tax audit and dispute resolution process Indonesia perspective



Tax audit and dispute resolution process

Taxpayers' experiences

- Tax audit is perceived to be uncertain and unpredictable. Thus, will lead to increase in tax dispute

- The whole tax audit and tax dispute require efforts, costly and slow/time consuming domestic resolution process

- Rising volume of tax disputes, one of the major concerns



- Repetitive and continuous process, same tax audit corrections for subsequent year for the same disputed items

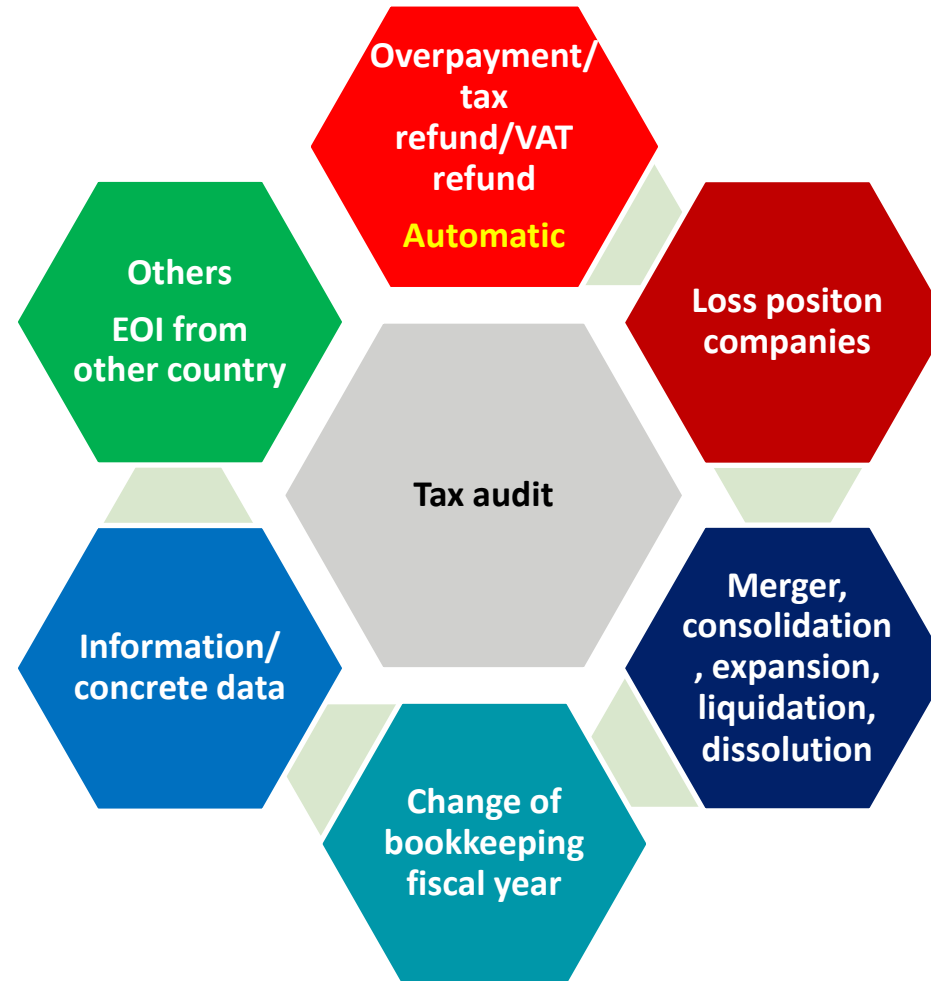
- Corrections were made by DGT with regard to analytical testing/formalities/detailed documentation

- Practically must pay in advance for the disputed cases, or at risk to significant penalty amount when fail to win the disputed case

- **Tax Appeal (Tax Court) plays very important role for taxpayers**
- **Many dispute process results in favour of taxpayers only later at the tax court**

Tax audit

Triggering points



- Also, there is increased trend of letters request for clarification issued by tax office to taxpayers
- May potentially result with a trigger for tax audit

Relevant recent changes

Indonesia's measures on global economy downturn and COVID-19

1. Gradual reduction of **corporate income tax rates** by 22% (2020 and 2021) and 20% (2022 and so forth)
2. Decrease in income tax rates for listed taxpayers (general rate - 3%)

Governed under Law Number 2/2020

3. Abolition of **domestic income tax on dividends**
4. Certain income (including dividends) from abroad is **not subject to income tax** as long as it is invested in Indonesia
5. **Non-income tax object** on:
 - a) Shares of profit/proceeds of cooperative,
 - b) Hajj funds managed by BPKH
6. Adjustment of **Article 26 Income Tax** rates on Interest
7. Equity participation in the form of assets (**inbreng**) is **not subject to VAT**

8. Relaxation of **input tax credit rights** for Taxable Entrepreneurs

9. Rearrangement of:

- a) Tax administrative sanctions
- b) Interest rewards

10. Determination of individual tax subjects:

- a) Indonesian citizens and foreigners living > 183 days in Indonesia become domestic tax subjects,
 - b) The imposition of income tax for foreigners who are domestic tax subjects with certain expertise is only on income from Indonesia,
 - c) Indonesian citizens residing in Indonesia < 183 days can become foreign tax subjects with certain conditions
11. The delivery of coal is deemed as includes the delivery of Taxable Goods
 12. Consignment does not include delivery of Taxable Goods
 13. **Non-income tax object** for the remaining funds of Social & Religious Institutions (similar as Educational Institutions)
 14. Tax Crime that has been decided **is no longer issued with tax assessment**
 15. **STP** is expired in 5 (five) years
 16. STP can be issued to collect interest remuneration that should not be granted

17. Taxation on electronic transaction:

- a) Appointment of VAT collector platform,
- b) Tax imposition on foreign tax subject on electronic transaction in Indonesia

Governed under Law Number 2/2020

18. **Stipulation of identity number of purchaser** having no tax identification number in tax invoice

- **The various tax incentives will result with reduction of "tax revenues" for the tax office**

Key takeaways

Indonesia



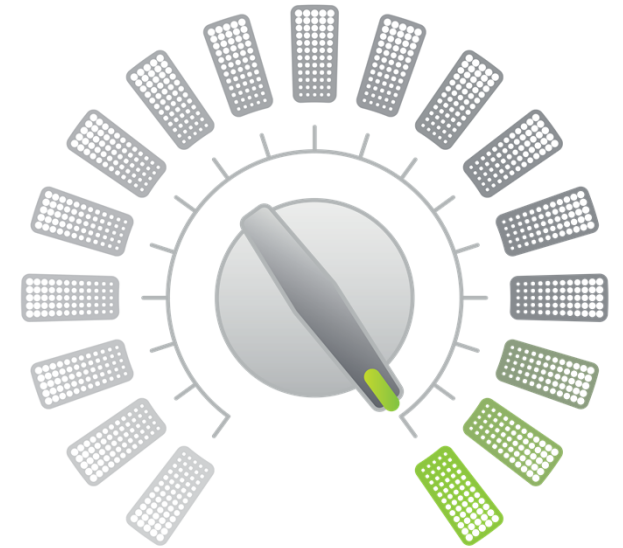
- Tax audit and dispute process are generally challenging tasks for taxpayers
- Be aware about the triggering points for tax audit



- Recent downturn on global and domestic economy may systematically trigger taxpayers to be in tax overpayment/tax refund position
- Potential increased trend of tax audit

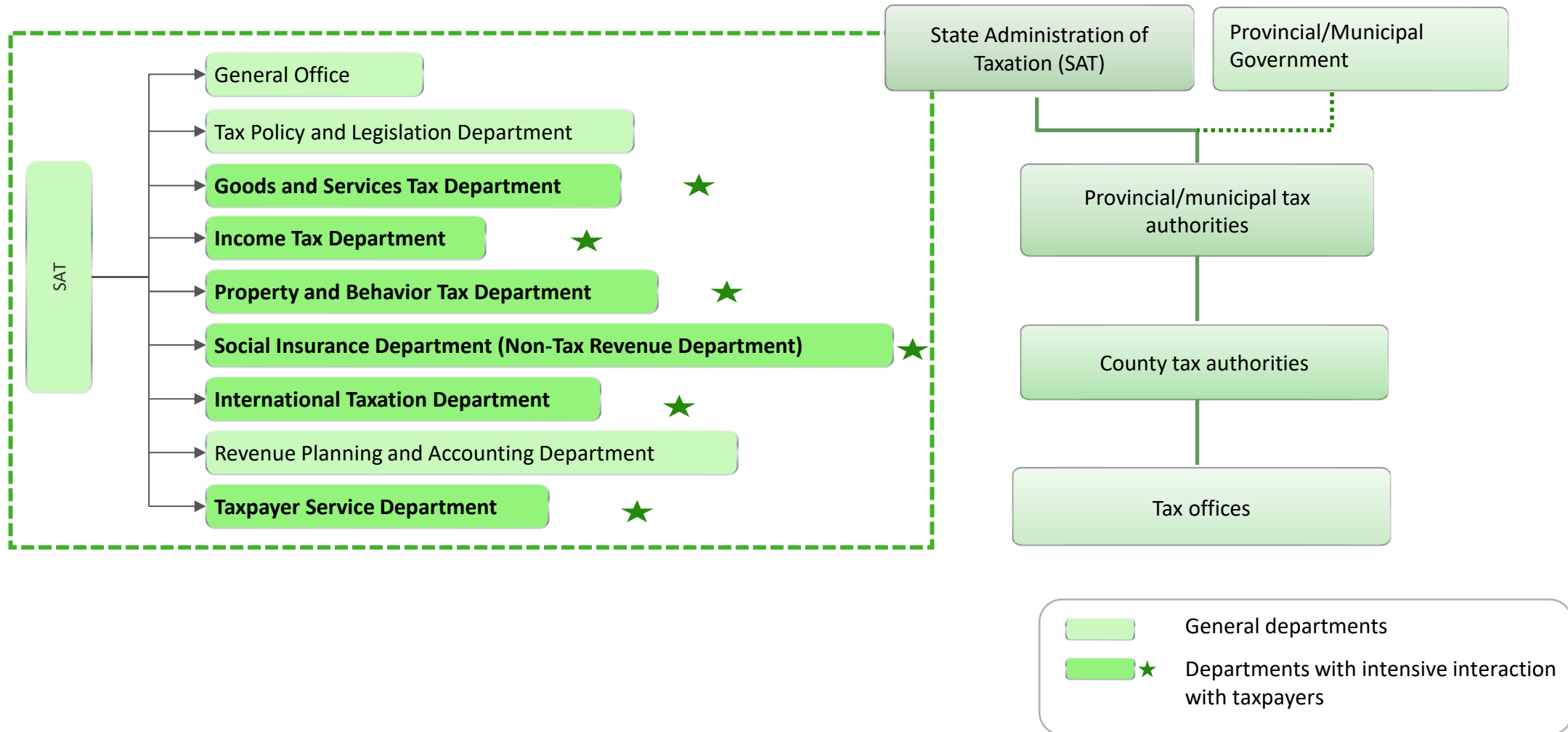


- Prior to tax audit - make the best preparation for the unavoidable tax audit
- Review the various submitted tax compliances (CIT/WHT/VAT) and analyze the impact of new incentive regarding lower interest penalties on voluntary amendment vs correction during course of tax audit



The organizational structure of tax authorities in the mainland China

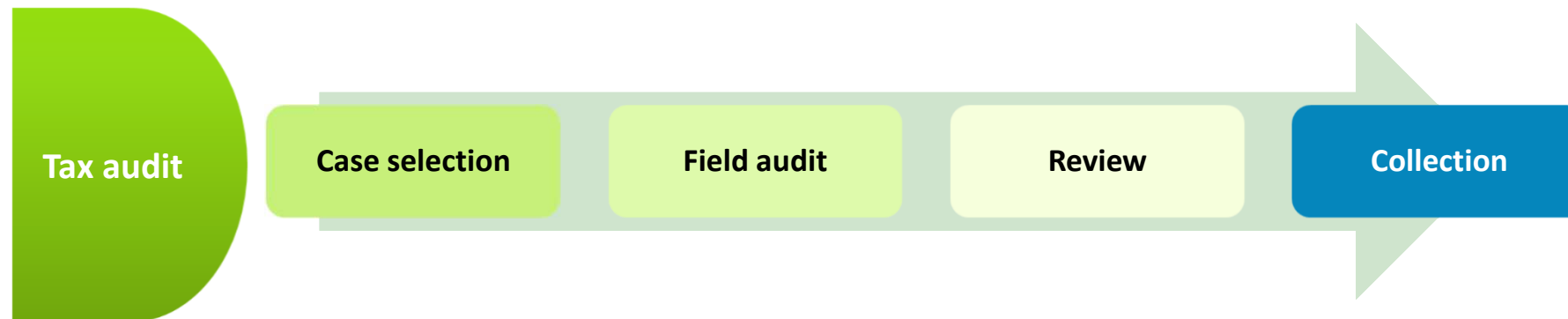
Organizational structure of tax authorities in mainland China



Common types of tax inspection and processes in mainland China

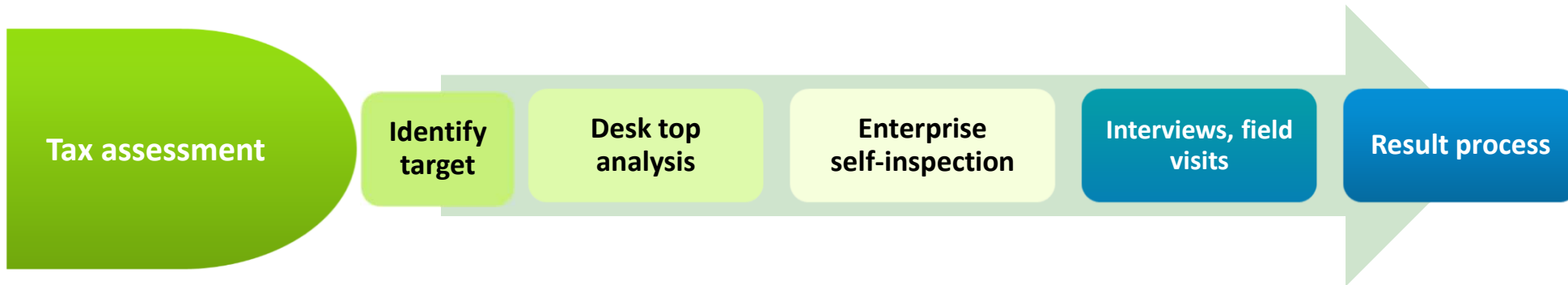
Tax audit

- A comprehensive and integrated inspection aided by big data analytics and “internet +” on the taxpayers or withholding agents with respect to their fulfilment of tax obligations and withholding obligations respectively within a certain period of time, usually covering the compliance of all types of tax (including fraudulent invoices) in the last 3-5 years



Tax assessment

- “Desk top” assessment of the tax authorities about the truthfulness and accuracy of the tax information provided by the taxpayers or withholding agents via risk assessment model of the tax authorities
- Particular attention will be paid on abnormal tax related transactions
- If necessary, the tax authorities will take further inquiries, on-site inspections and other measures to ascertain the situation
- It usually covers the current tax year or a single tax year of the preceding period



Tax risk management on large enterprises

- Over 2,000 mega-sized group companies covering MNC, SOE, and POE hand-picked by the SAT
- Administered by a newly set up “large enterprise bureau” with branches in key province, municipality or city
- Adopted full and comprehensive tax risk assessment approach and benchmarked with the KPIs developed and maintained by the SAT
- Involved expert in the assessment



Solutions of tax disputes

Solutions of tax disputes – tax communication

- There are three main ways to deal with tax-related disputes when facing different understanding and viewpoints with tax authorities pertaining to the transaction facts and regulations



Tax communication



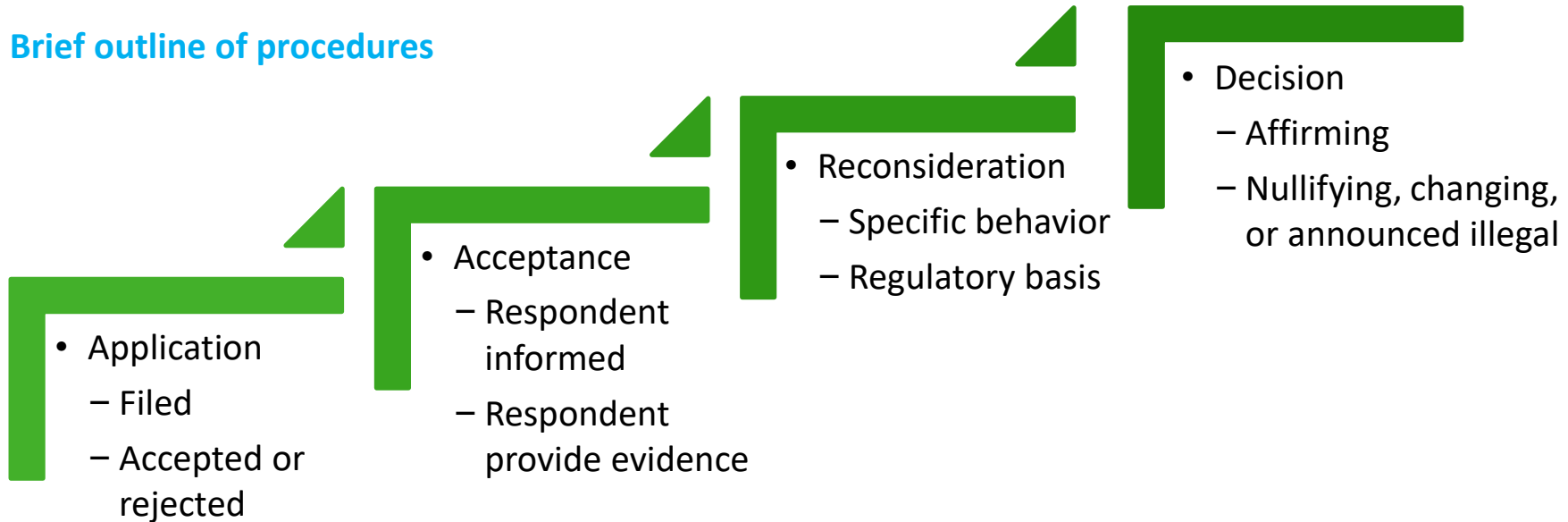
**Tax administrative
appeal**



**Tax administrative
litigation**

Solutions of tax disputes – tax administrative appeal

- **Brief outline of procedures**



- **Our observation:**

- Higher level tax authority usually proceeds with caution and pays more attention to the fairness of the enforcement of the applicable regulations during the review process
- Taxpayers have their rights to fully state their views and opinions and discuss with the higher-level tax authority in order to seek to overturn the original tax administrative decision

- **Our reminder:** for administrative decisions involving **additional tax payments**, taxpayers need to pay taxes or provide guarantees before applying for administrative appeal

Solutions of tax disputes – tax administrative litigation

- **Brief outline of procedures**



- **Our observation:**

- Taxpayers can ask the court to review the legality of the regulations on which the tax authority refers to, and if some regulations are manifestly unfair, they can consider resolving the dispute through litigation
- The court will respect the **discretion** of the tax authorities, for example, the decisions on the magnitude of penalty

- **Our reminder:** for the administrative decision involving additional tax payments, tax administrative appeal is the **antecedent procedure**, before the taxpayers can proceed with litigation

India

Faceless tax regime

Faceless assessments/penalty

1

The tax department had first initiated the “paperless assessment” in October 2015 in case of select non-corporate taxpayers and using email communication as a pilot project across 5 locations in India

The Finance Act, 2018 introduced faceless and paperless assessment scheme

2

3

In August 2018, the Central Board of Direct Taxes (CBDT) mandated “e-proceedings” for all regular assessment cases, with certain exceptions

In September 2019, the CBDT issued notification to introduce “E-assessment Scheme, 2019” and directions for applicability of the said Scheme, to eliminate personal interaction between the taxpayer and tax department

4

Faceless tax regime

- Launch of “transforming taxation – honoring the honest” platform in August 2020
- Objective of simplifying the tax system and increasing trust between the taxpayers and the income-tax department
- Launch of “faceless assessments and faceless appeals scheme”
- The objective behind the introduction of the faceless mechanism is to reduce
 - Physical interface between the income-tax department and taxpayers
 - Enable optimal utilization of resources
 - Introducing team-based assessment (reducing arbitrary exercise of discretion by tax officers in concluding assessments and appeals)

- **Scope of faceless assessments extended to cover best judgement assessments, penalty proceedings and appellate proceedings before the Commissioner of Income-tax (Appeals) First Appellate Authority**

Faceless tax regime

- Additionally, the scope of the faceless tax regime has also been extended to other items - [scheme\(s\) for which are yet to be notified](#):

Reference to the transfer pricing officer	Faceless collection and recovery of tax
Faceless jurisdiction of income-tax authorities	Filing of departmental appeal to income-tax appellate tribunal
Faceless collection of information	Faceless revision of orders
Faceless inquiry or valuation	Faceless order giving effect
Reference to dispute resolution panel	Prosecution and compounding of offence
Faceless reassessment	Faceless approval or registration
Faceless rectification	


- Provision for faceless proceedings before the income-tax appellate tribunal in a jurisdiction less manner ~ [the Central Government may notify a scheme in due course](#)

Alternate dispute resolution framework – some modifications


Alternate dispute resolution framework – some modifications

Constituting the BFAR


Authority for Advance Rulings (AAR) to cease to operate with effect from a date to be notified - to be replaced by a newly constituted authority viz. the **Board for Advance Ruling (BFAR)**



Each such BFAR will consist of 2 Members each being an officer not below the rank of Chief Commissioner, as against the current provisions of Members consisting of revenue and law Members



Ruling(s) given by the BFAR shall not be binding on either parties i.e., either of the aggrieved parties can file appeals before the High Court(s) within the stipulated time - as opposed to the erstwhile AAR provisions



The existing pending AAR applications to be transferred to the BFAR along with all the records, documents, etc.



Other provisions with respect to the procedure on receipt of application, powers of the Authority, obtaining a Ruling by misrepresentation/fraud, etc. applicable mutatis mutandis to the BFAR

Alternate dispute resolution framework – some modifications

Constituting the BFAR (cont'd)

- In a recent ruling of the Apex Court, rereferring to the Deloitte Report on Advance Rulings in India: Delivering Greater Tax Certainty (Deloitte Tax Policy Paper 5, 2019), it has been observed by the Hon'ble Court that there is a substantial amount of pendency before the AAR due to its low disposal rate and lack of adequate number of presiding members, thus, defeating the entire purpose of forming an AAR
- While the intent of the Government of India is to give speedy Advance Rulings to the taxpayers/applicants, however, the effectiveness of BFAR would be tested in times to come
 - The following factors are necessary to achieve the desired success:
 - Approach and attitude of the Members of the BFAR
 - Time taken to dispose the matters
 - Consistency in orders
 - Success of the faceless mechanism for complex matters

Alternate dispute resolution framework – some modifications

Income-tax settlement commission

- The Income-tax Settlement Commission (ITSC) has been discontinued with effect from 1 February 2021
- An interim board of settlement for pending cases is being formed to settle the pending applications

Other relevant amendments in timelines

Other relevant amendments in timelines

- **Re-opening:**

- **Time-limit to re-open reduced from 6 years to 3 years if:**

- Assessing Officer in possession of information which suggests that the income chargeable to tax has escaped assessment (after complying 148A); and
- Approval by Principal Commissioner or Principal Director or Commissioner or Director

- However, time-limit increased to 10 years in cases where:

- Assessing officer has evidence (document/information) to demonstrate that **income has escaped assessment of more than INR 5 Million**; and
- Approval by Principal Chief Commissioner or Principal Director General **in their absence Chief Commissioner or Director General**

- Strict deadlines prescribed for responses on jurisdictional aspects, **taxpayer to reply within 7 days to 30 days**

Other relevant amendments in timelines

- Revised time limits for completion of regular assessment

FY	Time limit	Due date for completion	
		Cases not referred to TPO	Cases referred to TPO
2016-17	33 months from end of FY	AO order – 31 December 2019	TPO Order - 31 January 2021 Draft AO order - 30 April 2021
2017-18	30 months from end of FY	AO order – 30 April 2021	TPO Order - 31 July 2021 Draft AO order - 30 September 2021
2018-19	24 months from end of FY	AO order – 30 September 2021	TPO Order - 31 July 2022 Draft AO order - 30 September 2022
2019-20	24 months from end of FY	AO order – 31 March 2022	TPO Order - 31 January 2023 Draft AO order - 31 March 2023
2020-21	21 months from end of FY	AO order – 31 December 2022	TPO Order - 31 October 2023 Draft AO order - 31 December 2023

Panel session

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