

Client Alert

March 2017

GST Update - Challenging the Royal Malaysian Customs on Director General of Customs' Decisions

Introduction

The Goods and Services Tax Act ("GST Act") 2014 came into force on 1 April 2015. Since its implementation almost 2 years ago, issues that surfaced in the early stages still remain with respect to the enforcement by the Royal Malaysian Customs Department ("Customs"), resulting in significant challenges for a number of taxpayers to comply with the GST requirements.

While Customs has made some effort to address some of the issues faced by taxpayers, the number of cases litigated on GST issues continues to rise.

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Many of these issues pertain to differing interpretations of the GST Act, the role of guidelines ("Guidelines") and Director General's ("DG") Decisions issued by Customs, in aiding the interpretation of the law. Many aspects and details relating to the GST regime are not provided for expressly under the GST Act or subsidiary legislation, but are instead found in these various Guidelines and DG's Decisions. Are they absolute? Can they be challenged?

Wong & Partners have successfully represented clients before the GST Tribunal on this issue, and drawing from the Firm's experience, this client alert will focus on the viability of challenging the DG's Decisions.

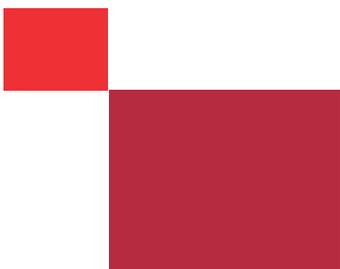
Background

The DG's Decisions are issued by Customs to help clarify and interpret certain provisions of the GST Act and also the many GST Orders. They are intended to help taxpayers comply with the GST requirements by providing more information on how Customs interprets specific legislative provisions. There are numerous DG Decisions issued and published by Customs on a wide range of GST issues.

Of late, a number of taxpayers have disagreed with the DG's Decisions and sought to challenge them in court. Wong & Partners have represented among the first of these cases. In challenging the Customs on the legal status of the DG's Decisions, taxpayers had sought the GST Tribunal's ruling against such DG's Decisions.

GST Tribunal: DG's Decisions are Not Law

The GST Tribunal held that Customs cannot widen or narrow the scope of GST legislation or attach additional conditions through the issuance of Guidelines or DG's Decisions. As such, if the DG seeks to attach additional stipulations to the GST Act and/or its accompanying Orders, it is illegal, and the DG is prohibited from doing so.





For example, if a specific supply of goods or services fulfils conditions stipulated under the Goods and Services Tax (Zero-rated Supplies) Order 2014 ("**Zero-rated Supplies Order**") to qualify as a zero-rated supply, the DG of Customs cannot seek to attach additional conditions through the issuance of Guidelines or DG's Decisions, which in turn would deny certain taxpayers from the benefit of the Zero-rated Supplies Order.

What is pertinent is that the GST Tribunal has effectively outlined the parameters of the DG's powers: whilst the DG has extensive powers to enforce the GST Act, the DG may not exceed that power by expanding on or adding on to the stipulations within the GST Act. Only Parliament or the Minister of Finance (in exercising his delegated powers) have the power to do so.

Further, the GST Tribunal had also confirmed that DG's Decisions do not have the force of law and only provisions under GST legislation are legally enforceable.

Conclusion

The position taken by the GST Tribunal on this matter is a much welcomed one. In light of its recent decisions, the GST Tribunal has established that it would be illegal for the DG to impose additional requirements outside the express provisions of the GST Act and the GST Orders.

Further, the GST Tribunal reaffirmed that any power of authority should only be exercised within the limits set by statute. Any enforcement authority exercising statutory powers must act within the law, and must not encroach into the legislative realm that falls under the jurisdiction of Parliament.

In view of the increased intensity of GST-related audits, it is important to note that:

- (1) Taxpayers may challenge the DG before a court of law, and this trend appears to be on the rise; and
- (2) The GST Tribunal provides a reassuring safeguard against any overreach in legal authority by an increasingly collections aggressive Customs.

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