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### Legal Remedies to Challenge GST Bill of Demand After 1.9.2018



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Following the repeal of the Goods and Services Tax Act 2014 (**GST Act**) on 1.9.2018,<sup>1</sup> the GST Appeal Tribunal which was established under s 125 of the GST Act was correspondingly abolished. GST appeals that were pending before the GST Appeal Tribunal were subsequently transferred to the Customs Appeal Tribunal for decision.

Section 4(1) of the Goods and Services Tax (Repeal) Act 2018 (**GST Repeal Act**) allows the Royal Malaysian Customs Department (**Customs**) to enforce any GST liability incurred or underpaid under the repealed **GST Act** as if it had not been repealed. Accordingly, Customs can continue to conduct audits and investigations after the repeal of the GST Act on 1.9.2018. However, s 4(1) is silent on the rights of appeal for those who received a GST bill of demand after the repeal of the GST Act on 1.9.2018.



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Pursuant to s 141M(1) of the Customs Act 1967, the Customs Appeal Tribunal's jurisdiction in respect of a GST appeal is restricted to the scenarios expressly provided under s 5 of the GST Repeal Act. Section 5 of the GST Repeal Act states:



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*“(1) Any application for review under subsection 124(1) of the repealed Act **pending before the Director General for his decision immediately before the appointed date** shall, on or after the appointed date, be dealt with under the repealed Act as if the repealed Act had not been repealed.*

*(2) Any **decision made by the Director General under subsection 124(2) of the repealed Act before or after the appointed date, which is appealable to the Goods and Services Tax Appeal Tribunal, may be appealed by an aggrieved person to the Customs Appeal Tribunal provided that the appeal is made within thirty days from the date such decision was made known to the aggrieved person by the Director General.***

***(3) Any appeal before the Goods and Services Tax Appeal Tribunal which is pending immediately before the appointed date shall, on or after the appointed date, continue to be heard and decided by the Customs Appeal Tribunal.***

Note: The appointed date above is fixed as 1.9.2018 by the Appointment of Date of Coming Into Operation Order [PU(B) 510/2018].

Based on the above, our view is that for a GST bill of demand raised after 1.9.2018, GST registrants can no longer rely on s 5 of the GST Repeal Act to appeal before the Customs Appeal Tribunal. This is because the **right to appeal to the Customs Appeal Tribunal is restricted to a decision made** by the Director-General of Customs (**Customs DG**) **for a review application under s 124(2) of the GST Act**, while a bill of demand is a decision made pursuant to s 43 of the GST Act.

After 1.9.2018, the Customs DG can only make a decision under s 124(1) of the GST Act, **if such application was made before 1.9.2018 and pending for the DG's decision**.<sup>2</sup> Our view is that the Customs DG can no longer make a decision on a review application under s 124 of the GST Act if such application was filed after 1.9.2018. Section 124 of the GST Act was not preserved as s 4(2) of the GST Repeal Act has only preserved ss 178, 181 and 191 of the GST Act from being repealed.

Accordingly, we are of the view that the only legal remedy to appeal against a GST bill of demand after 1.9.2018 is to file a judicial review application in the High Court. Based on our experience, the Attorney-General's Chambers generally does not object to the leave application for judicial review against a GST bill of demand. However, an objection will normally be raised against any application for a stay of proceedings. The granting of stay for tax cases is generally premised upon whether the applicant can demonstrate special circumstances justifying the granting of stay.<sup>3</sup>

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<sup>2</sup> Ibid, s 5 (1)

<sup>3</sup> *Kosma Palm Oil Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1