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PAC Report Reveals Intentional Delay In Making GST Refunds

On Monday, the media reported that the former Director General of Customs has admitted to the Public Accounts Committee (**PAC**) that the department had wilfully delayed processing the goods and services tax (**GST**) refund claims. He was quoted as saying:

“The reasons why? Itu saya akui memang ada kelewatan. Kita tidak hendak proses cepat sebab kalau kita proses cepat, kita luluskan dan taxpayer boleh lihat dalam sistem. Ours is very transparent. Mereka boleh lihat, “Ha, Kastam sudah lulus. Mana duitnya?” Padahal duitnya tidak ada.”^[1]

Based on the PAC Report, it appears that the previous government was unjustly enriched at the expense of the taxpayers by reason of this delay. Currently, Section 8(2) of the GST (Repeal) Act 2018 provides that the GST refunds due under the GST Act 2014 which remain unpaid as at 1 September 2018 shall be paid within six years. Section 8(2) adds that any refund is subject to verification, audit or investigation by Customs, which suggests that taxpayers may face further delay in obtaining the GST refunds due to them.

Suffice to say that under the GST law principles, taxpayers are entitled to their GST refunds. A denial of the refunds for other purposes to which taxpayers are otherwise legitimately entitled is contrary to the law and results in unjust enrichment to the government. This principle had been recognised in the *Power Root* case, where the High Court ordered Customs to refund the sales tax due to the taxpayer, with interest.

Customs has a legal and moral responsibility to make the GST tax refunds without any further delay. As such, if your GST refund is due and has been delayed, you may have a cause of action against Customs.

If you wish to recover your GST refund, please contact our Tax, SST & Customs partners, **Datuk D P Naban** or **S Saravana Kumar**, at tax@lh-ag.com

Saravana also successfully represented the taxpayer in the *Power Root* case, where the High Court accepted the unjust enrichment principle.

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