

SST e-Alert

18 SEPTEMBER 2018

Repeal Of The Goods And Services Tax Act 2014

On 28.8.2018, the following five Acts were gazetted with effect from 1.9.2018, namely:

- Goods and Services Tax (Repeal) Act 2018;
- Sales Tax Act 2018;
- Service Tax Act 2018;
- Customs (Amendment) Act 2018; and
- Free Zones (Amendment) Act 2018.

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One of the most notable Acts in the list is the Goods and Services Tax (Repeal) Act 2018 (**Repeal Act**), which paves the way for the implementation of the sales tax and service tax (**SST**) under the Sales Tax Act 2018 and Service Tax Act 2018.

This alert discusses five matters arising from the Repeal Act in giving effect to the transition from the GST to the SST regime:

- continuance of liability under the GST Act 2014;
- review applications pending the decision of the Director General of Customs;
- appeals pending before the GST Appeal Tribunal;
- last filing of the GST return and its payment;
- last claim of input tax and its refund.

Continuance of liability under GST Act 2014

Section 4 of the Repeal Act provides that any liability incurred before the appointed date may still be enforced and any GST due, overpaid or erroneously paid may still be collected, refunded or remitted after the repeal of the GST Act 2014 as if it had not been repealed. It also states that the provisions in respect of the claim for special refund of sales tax for goods held on hand continue to remain in operation after the repeal of the GST Act 2014.

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Review of applications pending by Director General of Customs

Section 5 of the Repeal Act provides that the review applications made under Section 124(1) of the GST Act 2014 shall continue to be dealt with after the repeal of the GST Act 2014. Any decision made by the Director General under Section 124(2) of the GST Act 2014 which is appealable to the GST Appeal Tribunal is appealable to the Customs Appeal Tribunal, provided that the appeal is made within 30 days.

In simpler terms, any decisions that may be made by the Director General in relation to GST at any point in time would continue to be appealable, notwithstanding the repeal of the GST Act.

Appeals pending before the GST Appeal Tribunal

Section 5 of the Repeal Act adds that the appeals pending before the GST Appeal Tribunal shall continue to be heard and decided by the Customs Appeal Tribunal. Correspondingly, Section 11 of the Customs (Amendment) Act 2018 allows the taxpayers to conduct the appeal himself or be represented by any person duly authorised by him. With this amendment, an appellant before the Customs Appeal Tribunal may now be represented by an advocate and solicitor in respect of appeals for GST, sales tax, service tax and Customs' duties.

Last filing of the GST return and payment

Section 6 of the Repeal Act provides that the last taxable return needs to be filed and payment of GST due and payable be made to the Director General of Customs no later than 120 days from the appointed date (which would be announced by the Minister subsequently).

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Input tax and refund

Section 8 states that input tax which has not been claimed by a GST registered person shall be claimed in the final GST return within 120 days from the appointed date (which would be announced by the Minister subsequently), and this claim shall be considered as the final claim for all input tax.

It is also stated that the Director General will refund the final claim for all input tax and any previous input tax claimed which has not been refunded within six years from the appointed date subject to verification, audit or investigation.

Our analysis

Although any liability incurred under the GST Act 2014 may continue to be enforced after the repeal of the GST Act 2014, the input tax entitlement would end after 120 days of the appointed date. Upon the passing of the Repeal Act, GST registered businesses need to ensure that all input tax must be claimed in the last GST return within the prescribed timeline above, failing which, the input tax incurred would no longer be claimable.

We note that the claim of bad debt relief under Section 58 of the GST Act 2014 is not expressly addressed in the Act. Thus, it remains unclear whether a GST registered business is subsequently allowed to claim any bad debt relief after the repeal of the GST Act 2014.

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The amendment to allow a taxpayer to be represented by an advocate and solicitor before the Customs Appeal Tribunal is no doubt a long-awaited and welcome reform as it is a manifestation of the constitutional right accorded to all taxpayers to have access to legal counsel and representation. Such a move is a step in the right direction in pursuit of a fairer and more transparent tax system.

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