

SST e-Alert

2 NOVEMBER 2018

DG's Decision On SST 1/2018

On 7.9.2018, the Royal Malaysian Customs Department (**Customs**) issued the "DG's Decision on SST 1/2018", a guideline outlining the department's policy with respect to the issuance of tax invoices on or after 1.9.2018. Item 1(i) states that with the repeal of the Goods and Services Tax Act 2014 (**GST Act**), a business is not allowed to issue a tax invoice after 1.9.2018. It may only do so for the supply of services performed or goods made available before 1.9.2018. Yet, the business is still required to account for and pay GST on the supply in its return for the last taxable period, i.e. no later than 120 days from 1.9.2018.

The Customs' policy is that a GST registered supplier is not allowed to issue a tax invoice from 1.9.2018 onwards even if the supply in question was made before the repeal of the GST Act but GST is still required to be accounted in its last GST return (i.e. return for August 2018).

Our view

The wording of Item 1(i) seems to suggest that Customs has taken the position that due to the repeal of the GST Act, no tax invoice should be issued from 1.9.2018 onwards. With respect, we would take a different view. The liability to issue a tax invoice is provided under s 33(1) of the GST Act, which provides that every registered person who makes a taxable supply of goods or services shall issue a tax invoice containing the particulars in respect of the supply.

Section 33(2) of the GST Act adds that any registered person who fails to issue a tax invoice or issues a tax invoice that does not contain any of the prescribed particulars commits an offence.

Further, s 3 of the Goods and Services Tax (Repeal) Act 2018 (**Repeal Act**) prescribes scenarios where the GST Act will be treated as if it had not been repealed. In particular, it is stated under s 4 of the Repeal Act that any liability incurred before the appointed date of 1.9.2018 may still be enforced, and any GST

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due, overpaid or erroneously paid may still be collected, refunded or remitted after the repeal of the GST Act as if it had not been repealed.

Accordingly, if the service was performed or goods were made available before 1.9.2018, pursuant to s 33(1) of the GST Act, the GST registered supplier has a legal obligation to issue a tax invoice, unless there is any provision to the contrary in law. Although the law is silent on when the tax invoice should be issued, it is clear that such legal obligation to issue a tax invoice exists and failure to comply with such legal obligation amounts to an offence under the GST Act. On the contrary, there is no provision under the Repeal Act to say that no tax invoice shall be issued by a GST registered person after the repeal of the GST Act.

Can A Tax Invoice Be Issued?

Generally speaking, the legal obligation to issue a tax invoice under s 33(1) of the GST Act would constitute a liability that may continue to be enforced under the Repeal Act. Hence, taxpayers may still be required to issue tax invoices for goods sold and services rendered before the abolishment of GST despite the repeal of the GST Act. It is trite law that taxing statutes must be interpreted strictly. The (then) Supreme Court in *National Land Finance Co-operative Society Ltd v Director-General of Inland Revenue* [1993] 4 CLJ 339 held that:

“... there is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

As the Repeal Act did not stipulate that tax invoices are not allowed to be issued after 1.9.2018, Customs cannot restrict or prevent a GST registered person from issuing a tax invoice after 1.9.2018, given that such obligation subsists.

Customs' interpretation is akin to rewriting the statute and imposing its will against the spirit of the legislation. In any event, the guidelines issued by Customs have no legal effect, as held by the Court of Appeal in *Ketua Pengarah Hasil Dalam Negeri v Success Electronics and Transformer Manufacturers Sdn Bhd* (Appeal No W-429-2011).

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Given that there is no such legal obligation imposed on a GST registered supplier, and reading s 33(1) together with s 4 of the Repeal Act, it is clear that the legal obligation to issue a tax invoice imposed under s 33(1) could still be enforced against a GST registered supplier for any tax invoice not yet issued, but where a service was supplied or goods were made available before 1.9.2018. Item 1(i) of the Director General's Decision which states that a business is not allowed to issue a tax invoice after 1.9.2018 with the repeal of the GST Act is wrong in law as this interpretation conflicts with the provision of the GST Act and the Repeal Act.

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