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## **Deloitte TaxMax- the 42<sup>nd</sup> series**

**Brave decisions, Brave actions.**

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# **Before the Judge**

What's in a GST Tribunal

# GST Dispute Resolution Mechanism

## Appellate Hierarchy



- Aggrieved by decision of tax officer below rank of Director General (“DG”)
- Aggrieved by decision of DG
  - Appeal to be lodged within thirty (30) days from the date of notification of such decision
  - Recently, decisions are not notified through e-mail or post but merely uploaded on TAP. Hence it is advisable to regularly check TAP for recent decisions
- Aggrieved by decision of Tribunal
  - On question of law or of mixed fact and law
- Aggrieved by decision of the High Court (“HC”)

# GST Dispute Resolution Mechanism

## Important Points

- Any GST determined by Customs to be payable would have to be paid even though appeal is lodged at Tribunal
- Tribunal dispute can be settled on mutual agreement between taxpayer and Customs
- The Tribunal does not have jurisdiction to admit certain types of disputes (non-appealable matters)
- Non-appealable matters can be challenged only before the High Court by way of judicial review

# Legal Relevance of GST Guides and DG's Decision

## Following the law or Customs Practice

- The Royal Malaysian Customs Department ("RMCD") issues various GST Guides and GST DG's Decisions
- GST Guides and DG's Decisions are not legally binding, merely indicative of RMCD's views and practices
- In practice, RMCD through GST Guides & DG's decisions may grant or make concessions / relaxations or impose additional / more onerous requirements, as compared to GST law

### Concessions / Relaxations

- Businesses may rely on concessions or relaxations provided in the GST Guides and DG's Decisions
- Applicability of principle of legitimate expectation for businesses to rely on concessions/ relaxations
- Monitor modifications or revocations of concessions / relaxations

### Additional / More Onerous Requirements

- Businesses may be deterred from taking a beneficial tax position due to various additional / more onerous requirements imposed by RMCD through GST Guides or DG's Decisions
- Businesses may defend their tax positions by following the GST law and challenging the legality of the GST Guides and DG's decisions as being inconsistent with the GST law
- Less onerous GST law will supersede more onerous RMCD practice

# Contentious GST Issues

Denial of voluntary registration  
(12-month rule )

Denial of refund of ITC (e.g.  
no taxable supplies)

Whether pre-GST contract  
qualifies as zero rated non-  
reviewable contract



Rejection of special sales tax  
refund

Imported goods must belong to  
holder of ATS (Approved Trade  
Scheme) for GST suspension to  
take effect

Denial of bad debt relief



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