

# Crowe Perspectives

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## **TAX: Successful Appeal at High Court on Exceptional Claim for Input Tax**

By Chong Mun Yew, Executive Director of Crowe KL Tax Sdn Bhd

## Successful Appeal at High Court on Exceptional Claim for Input Tax



Due to the abolishment of the Goods and Services Tax (GST) regime effective 1 September 2018, one of our clients was denied a full input tax claim. Through collaboration with a law firm, we filed for an appeal on the decision made by the Customs Appeal Tribunal at the High Court.

We are happy to announce that the High Court has ruled in favour of our client and has ordered the Royal Malaysian Customs Department (RMCD) to allow the input tax claim in full without apportionment.

Our Tax Partner, Chong Mun Yew acted as the Consultant for a client at the High Court. The case was decided in favour of our client.





## Background facts of the Case

The Company is principally engaged in the business of leasing land and properties. The Company had constructed a warehouse and capitalised the construction costs as its fixed assets. The Company entered into a tenancy agreement to lease out the warehouse commencing from 1 March 2018. Since the taxable supplies would exceed the registration threshold of RM500,000, the Company applied for GST registration. The Company was GST-registered effective 1 May 2018.

On 2 May 2018, the Company submitted an application to the Director General of RMCD to obtain the approval for the claiming of input tax on the construction costs of warehouse incurred prior to the GST registration under Regulation 46.

Unfortunately, the GST Act was abolished from 1 September 2018.

Regulation 46(1) of the GST Regulations authorises the RMCD to treat the GST paid prior to the GST registration date as an “exceptional claim for input tax”.

## The RMCD’s and Customs Appeal Tribunal’s Decision

In September 2018, the Company received an approval letter from the Director General of RMCD on the entitlement to claim for input tax. However, the approved amount was reduced to approximately 3.36% of the total GST amount incurred by the Company in constructing the warehouse. The input tax claim was reduced on the basis that the taxpayer was a GST registered person only for four (4) months (i.e. from 1 May 2018 to 31 August 2018). When GST is abolished, the taxpayer would cease to be a taxable person under the GST Act. Arising therefrom, the RMCD was of the view that it would be unreasonable to allow the taxpayer’s input tax claim in full.

In July 2019, the Customs Appeal Tribunal agreed that the calculation used by the RMCD to determine the approved amount is reasonable and in accordance with the GST legislation.

In August 2019, the Company filed an appeal to the High Court against the decision of the Customs Appeal Tribunal.

## Issue before the High Court

Whether the Director General of RMCD has the power to use his own internal policy to apportion and reduce the claiming of input tax incurred before the GST registration date under Regulation 46 of the GST Regulations 2014.

## High Court's Findings

With reference to Regulation 46, there is no expressed provision that allows the Director General to discriminatively apportion the entitled amount for the claim. If the Director General is indeed granted the authority to apportion the claimable amount for applications made under Regulation 46 or if the Minister had intended to give the Director General such power and authority, the authority and power should have been provided explicitly similar to other sections of the same Act.



## High Court's Decision

The decision by the Customs Appeal Tribunal is set aside. The High Court ordered that the Company's exceptional claim for input tax under Regulation 46 should be allowed in full and without any apportionment or reduction.



## Contact us

Crowe KL Tax Sdn Bhd  
C15-5 Level 15, Tower C  
Megan Avenue 2  
12, Jalan Yap Kwan Seng  
50450 Kuala Lumpur  
Malaysia

Chong Mun Yew  
Executive Director  
munyew.chong@crowe.my  
+603 2788 9898 , Ext 2523

Fam Fui Chien  
Manager, Indirect Tax  
fuichien.fam@crowe.my  
+603 2788 9898 , Ext 2504

Norhayati binti Ruslan  
Manager, Indirect Tax  
norhayati.ruslan@crowe.my  
+603 2788 9898 , Ext 2597

## About us

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