

# “Director General Review” as a Viable Mechanism to Safeguard Malaysia’s Revenue Through Tax Justice

Rizal Ahmad Kamal\*, Muhammad Fathi Yusof  
*Universiti Teknologi Malaysia, Kuala Lumpur, Malaysia*

\*Corresponding author: rizal.akamal@customs.gov.my

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## Abstract

The Revised Kyoto Convention (RKC) serves as a guide for Customs procedures in the modern era, and Malaysia has signed on as a participating country. One crucial element of the RKC, outlined in Chapter 10 of the text of the convention, is the requirement for national legislation to include a right of appeal in Customs matters. Subsection 143(1) of the Customs Act 1967 empowers the Director General (DG) of Customs to review his own previous decisions, and the Royal Customs Malaysian Department (RMCD) has devised a systematic process referred to in this research as the "DG review." This provision was enacted to comply with the RKC's standards. Subsection 143(1) was amended in 2020 to allow aggrieved parties to submit their applications for "DG review" within 30 days from any DG decisions in the indirect taxes. Despite the amendment, no prior research has been conducted on its effectiveness. This study aims to evaluate the viability of the DG review mechanism in promoting fair and efficient tax implementation. The research employs both doctrinal legal analysis and qualitative methods to scrutinize the laws and regulations governing the right of appeal for indirect tax in Malaysia, as well as the fairness of the DG review process for taxpayers. The outcome of this study is pivotal in proposing legal solutions and validating the amended mechanism outlined in subsection 143(1) of the Customs Act 1967.

*Keywords: Mechanism, Indirect Tax, Right of Appeal, Review*

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## ■ 1.0 INTRODUCTION

The Federal Constitution is the supreme law of the nation and according to Article 96, taxation cannot be imposed unless derived from a valid law. In compliance with the Revised Kyoto Convention (RKC), of which Malaysia is a signatory country, the Customs Act 1967's section 143 was amended to subsection 143(1) which came in force in 1.1.2020 to provide the Director General of Customs with the power to review his own previous decisions. RKC also required its signatory countries to include the right of appeal in their domestic laws, particularly within the laws under the administration of Customs. As a result, the process and procedures of appeal are now recognized under national law, providing a more equitable and just approach than the previous lengthy, costly, and complex procedures. Prior to this amendment, disputes and appeals could only be resolved via the courts of law. Otherwise, the aggrieved taxpayer, through the appeal for remission to the minister of finance, where the aggrieved party admitted the tax, penalty, and surcharge without dispute, but appealed based on the principle of equity and justice. This newly amended provision, consistent with the RKC, aligns with the ancient principle of the right of appeal as in Article 135(2) and supports Article 13 of the Federal Constitution, which endorses the right to properties for all residents of the country in line with the principles of natural justice and the right to be heard.

## ■ 2.0 LITERATURE

The discussions about taxation focal point are normally on fairness as its main concern. Therefore, tax legislation must be in its framework-fair in nature by using certain good guideline principles by adopting the

recommendation by AICPA. The fair nature must not only be actualised, but it must also be perceived as fair to maintain the public's trust and confidence in our indirect tax system. This is in line with the legal principle that *justice must not only be done but must also be seen to be done*. While the power to levy taxes is expressly provided by Article 96 of Malaysia's Federal Constitution, the balance must be struck between the efficiency of the administration of taxes and the fair treatment of the taxpayers. One possible check and balance tool is by providing taxpayers with accessible avenues to challenge, appeal or dispute the decisions of the DG of Customs, with fewer technicalities, costs, and bureaucracy. By doing so, their constitutional right to property, as protected by Article 13 of the Federal Constitution is upheld. Malaysia as a signatory country in the RKC is a step in the right direction, showing our commitment to implement fair taxation policies.

Previous studies conducted on the right of appeal in tax are as in the following table 1:

Table 1: Previous Study on the Similar Scope of Research

Citation	Research Title	Scope of research	Laws/ Rules/ Regulations/ Treaties involved
O.Yu. Drofich., (2023)	Administrative appeal of decisions, actions and inaction of customs authorities: problems and prospects	The paper <b>does not</b> : <ul style="list-style-type: none"> <li>provide an in-depth analysis of the challenges and limitations faced in the administrative appeal process of customs decisions.</li> <li>explore the practical implementation and outcomes of the progressive aspects of the customs legislation.</li> <li>discuss the perspectives and experiences of stakeholders such as individuals filing complaints or customs authorities handling the appeals.</li> </ul>	Article 493 grants the <b>right of appeal</b> to any person, including their representatives. Article 494 outlines the procedures for filing an appeal. Article 495 specifies that an appeal can be filed within one year from: The date the person discovers infringement of their rights or obstacles to their realization. The expiration of the time limit set by customs legislation for making a decision by the customs authority or customs official
Matabudul, R. (2022)	Tax Treaty dispute resolution: lessons from the law of the sea	This comparative analysis proposed reform expands the Mutual Agreement Procedure system by introducing three new mechanisms to form a legal framework for addressing tax treaty-related disputes.	International laws and treaties
(IDE) JETRO. (2022)	Alternative dispute Resolution in Thailand	This is a comparative study on the possible alternative dispute resolutions on several subject matters (not oy tax)	The scope of research is on the avenues for disputes in any subject matters instead of by way of court proceeding
Hamutumwa, L (2021).	Improving the procedure for resolving tax disputes in Namibia	There are procedural, legal and practical loopholes in the Namibian tax system leads to unfairness -no permanent courts and lengthy procedural tax disputes.	Article 18 of the Namibian Constitution.
Hamutumwa, L, (2019)	Improving the tax dispute resolution in Nigeria: Case study on taxpayers' right to a fair hearing within a reasonable time	The research is about the lack of proper courts and tribunal to conduct fair hearing procedures	Constitution of the Federal Republic of Nigeria 1999 (as amended) (Specific sections relevant to fair hearing rights, e.g., Section 33) Federal Inland Revenue Service (Establishment) Act 2007 (Relevant sections regarding tax dispute resolution mechanisms)
Panngam, K. (2018)	An analysis of fairness in tax dispute resolution processes in Thailand and proposals for policy and legislative reform	Analysing avenues for any dispute resolution on tax matters	Revenue law

From the table above showed there is no previous study specifically on the mechanism of "DG Review" which is the main focal point in this article. Furthermore, it very rare an article on the taxation from the legal or socio-legal approach had been written, in particular within the research conducted in Malaysia and research conducted after the abolishment of the Goods and Services Tax Act 2014.

The conduct of examining the accessibility and user-friendly features in the "DG Review" process is very significant for the taxpayers and tax authorities. International Agreements and Domestic Policies: The OECD (2015) provides comparative information on tax administration practices. Research on how other countries with similar legal systems balance the efficiency and fairness in tax dispute resolution mechanisms could offer valuable insights for Malaysia. Providing fair avenues for taxpayers to review the DG decisions, may strengthen the ruling governance by gaining the public trust in its tax system and promote a more socio-legally just environment. Further research on the effectiveness of the "DG Review" process and the impact of the RKC on Malaysian tax administration would be valuable contributions to this field.

Subsection 143(1) of the Customs Act 1967 (Act No. 235) empowers the Director General of Customs (DGC) to review his own decisions, which is referred to in this article as the "DG Review." This mechanism serves as an internal dispute resolution process for the aggrieved taxpayers who intend to contest, dispute or appeal against the decisions related to indirect taxes. However, the DG's power to review his own previous decisions may raise the perception of potential bias practice hence the effectiveness of this internal review system is put to test here. Despite the possibility of the existing element of bias, this new mechanism may contribute to a more efficient and potentially more expedited process of resolution of disputes compared to the conventional way, the court proceedings.

To assess the "DG Review" as an efficient mechanism, further examination and research are needed. In addition, avenues for enhancement should also be considered. Searching for various other avenues as alternatives for dispute and appeal resolution, that is subjected to a thorough examination of public perceptions and global best practices, may lead to better results and a more equitable framework for the resolution of tax disputes in Malaysia. The RMCD treats the RKC as the fundamental guiding principle. The top management of the RMCD must strike a balance between revenue maximization for the ruling governance and the promotion of fairness for the taxpayers.

Subsection 143(1) of the Customs Act 1967 (Act No. 235) vested the power for the Director General of Customs to review his own previous decisions, referred to in this article as the "DG Review". This mechanism works as an internal procedure for the DG to settle any review applications from taxpayers who appeal or dispute the decisions related to indirect taxes. This article examines the process of the "DG Review" within the context of the indirect tax laws framework, specifically referring to the Customs Act 1967, Sales Tax 2018, Service Tax Act 2018 and Goods and Services Tax Act 2014 (repealed). Both of its strengths and limitations shall be also reflected in the finding and conclusion.

This paper also explored the relevant literatures to comprehend the whole process of "DG Review" mechanism, evaluate the possibility and tendency of bias occurrence, and consider alternative dispute resolution (ADR) options. Alm and McLure (1990) highlighted the importance of public confidence in tax administration. Perceptions of unfairness may result in reduced taxpayer compliance (Levi, 1997). If the "DG Review" process is perceived as a viable avenue for an equitable and accessible, then it would contribute to a fairer tax system. While this internal review mechanism offers advantages such as expedited manner and cost-effectiveness compared to the court proceedings (Clotfelter, 2004), the fear factor of the impartiality decision may appear when the same entity conducts the reviews processes and produces new decisions on its own without the involvement of an independent party (Brooks & Auerbach, 2012).

In contrast, Pogge (1989) stresses the necessity of an independent and unbiased review process to safeguard taxpayer rights of appeal and the right to be treated fairly. Studies by Faure and Petersen (2014) indicated that conduct such as internal reviews may be inclined to confirmatory bias, where reviewers tend to uphold their original decisions. According to global standards, the Revised Kyoto Convention (2012) from the World Customs Organization (WCO) stressed on the right of appeal mechanism in chapter 10 of the text of the Revised Kyoto Convention to be applied by Malaysia, as a signatory country in that convention. In this instance, the "DG Review" can contribute to the RKC objectives by providing the correct avenue for resolving tax appeals and disputes. Useful references from similar legal systems in other countries in addressing the internal reviews by way of tax administration are valuable insights. For instance, research by Lang (2013) on the German system emphasises the importance of clear directives and timelines for internal reviews. Alternative Dispute Resolution (ADR) is similar with the process of mediation or arbitration that may offer a more flexible and potentially faster resolution to tax disputes (Nguyen & Rees, 2018).

Exploring the feasibility and potential benefits of incorporating ADR options within the Malaysian tax framework could be beneficial. Studies by Alm, McClelland, and Tuttle (1992) and Slemrod (2007) highlighted the importance of public perception in tax administration. Examining public perceptions on the "DG Review" process through surveys or interviews could provide valuable insights for improvement. Analysing relevant cases of laws in Malaysia on appeals and disputes against the decisions made from the "DG Review" can contribute to the enrichment in the light of judicial interpretations and areas for reformation can be identified. Reviewing recent policy changes related to the "DG Review" process can provide a clearer understanding of its current implementation. Conducting an empirical study to assess the effectiveness of the "DG Review" process in terms of timeliness, cost, and outcomes for taxpayers could provide valuable data for policymakers.

## 2.1 The Revised Kyoto Convention

The Revised Kyoto Convention (RKC), also known as the International Convention on the simplification and harmonization of Customs procedures (as amended), is a critical blueprint for modernizing and streamlining Customs procedures in the 21st century. The Convention delineates several governing principles that serve as a guiding framework for Customs administrations worldwide. These principles include, but are not limited to, the facilitation of trade, enhanced security, transparency, predictability, and standardization of Customs procedures. By adhering to the RKC's principles, Customs administrations can improve their effectiveness and efficiency, achieve greater compliance with international standards, and promote economic growth and development. Among these are the principles of:

- 1) transparency and predictability of Customs actions;
- 2) standardization and simplification of the goods declaration and supporting documents;
- 3) simplified procedures for authorized persons;
- 4) maximum use of information technology;
- 5) minimum necessary Customs control to ensure compliance with regulations;
- 6) use of risk management and audit-based controls;
- 7) coordinated interventions with other border agencies;
- 8) partnership with the trade.

The RKC was effectively implemented on February 3rd, 2006. It aims to simplify trade while maintaining efficient procedures through legally binding provisions. Additionally, the updated Convention includes new mandatory rules that all Contracting Parties must accept without exception. The RKC Convention is overseen by a Management Committee comprised of participating members with voting rights rather than mere observers. However, the Committee does not possess the authority to enforce or arbitrate disputes in the event of a contracting party's noncompliance with the RKC's standards. Any country that becomes a party to this Convention is granted a three-year period to adopt the standards and a five-year period to implement the transitional standards outlined in both the General Annex and the specific annexes agreed upon.

The World Customs Organization (WCO) is actively working to promote the implementation of the Convention through constructive means such as awareness-raising, training, and capacity-building initiatives. It's great to know that as of October 2013, 91 contracting parties have shown their commitment to this important cause. The text of the convention and additional information on the RKC is available on its website.

## 2.2 Right of Appeal

The right of appeal for taxpayers is very significant to sustain a fair tax implementation while at the same time maintaining the efficiency of the tax rulers. The greater number of avenues for the taxpayers to have their right of appeal to be heard means that the greater chance for them to be not treated unfairly under the tax law in force. Under the RKC, the rights were spelled out under chapter 10 of its Guideline.

Table 2: Chapter 10 of the Guideline of Kyoto's Convention on Appeal in Customs Matters

<b>RIGHT OF APPEAL</b>	
10.1	National legislation shall provide for a right of appeal in Customs matters.
10.2	Any person who is directly affected by a decision or omission of the Customs shall have a right of appeal.
10.3	The person directly affected by a decision or omission of the Customs shall be given, after having made a request to the Customs, the reasons for such decision or omission within a period specified in national legislation. This may or may not result in an appeal
10.4	National legislation shall provide for the right of an initial appeal to the Customs.
10.5	Where an appeal to the Customs is dismissed, the appellant shall have the right of a further appeal to an authority independent of the Customs administration.
10.6	In the final instance, the appellant shall have the right of appeal to a judicial authority.
10.7	An appeal shall be lodged in writing and shall state the grounds on which it is being made.

<b>FORM AND GROUNDS OF APPEAL</b>	
10.8	A time limit shall be fixed for the lodgement of an appeal against a decision of the Customs, and it shall be such as to allow the appellant sufficient time to study the contested decision and to prepare an appeal.
10.9	Where an appeal is to the Customs they shall not, as a matter of course, require that any supporting evidence be lodged together with the appeal but shall, in appropriate circumstances, allow a reasonable time for the lodgement of such evidence.
<b>CONSIDERATION OF APPEAL</b>	
10.10	The Customs shall give its ruling upon an appeal and written notice thereof to the appellant as soon as possible.
10.11	Where an appeal to the Customs is dismissed, the Customs shall set out the reasons therefor in writing and shall advise the appellant of his right to lodge any further appeal with an administrative or independent authority and of any time limit for the lodgement of such appeal.
10.12	Where an appeal is allowed, the Customs shall put their decision or the ruling of the independent or judicial authority into effect as soon as possible, except in cases where the Customs appeal against the ruling.

Source: World Customs Organization Official Website

### 2.3 Elaboration of Chapter 10 of Kyoto’s Revised Convention and the Application in Our Domestic Law

#### Standard 10.1.

According to the RKC mandate, national laws must ensure that individuals have the right to appeal in matters related to Customs without any confusion. The legal framework should clearly define the legal proceedings and make it easy for the public and trade community to access information regarding the legal requirements and procedures for submitting an appeal.

The following figure 1 provides an overview of the avenue for appealing matters related to indirect taxes, including SST and GST, as well as other indirect taxes managed by the Royal Malaysian Customs Department (RMCD). This avenue, referred to as the "DG review" in this paper, is based on subsection 143(1) of the Customs Act 1967. In 2020, this enabling section was amended to meet the requirements of the Revised Kyoto Convention, making the appeal process and procedures more recognized under national law. Prior to this amendment, all appeals had to be referred administratively to the Ministry of Finance and were subject to the finance minister's administrative power.

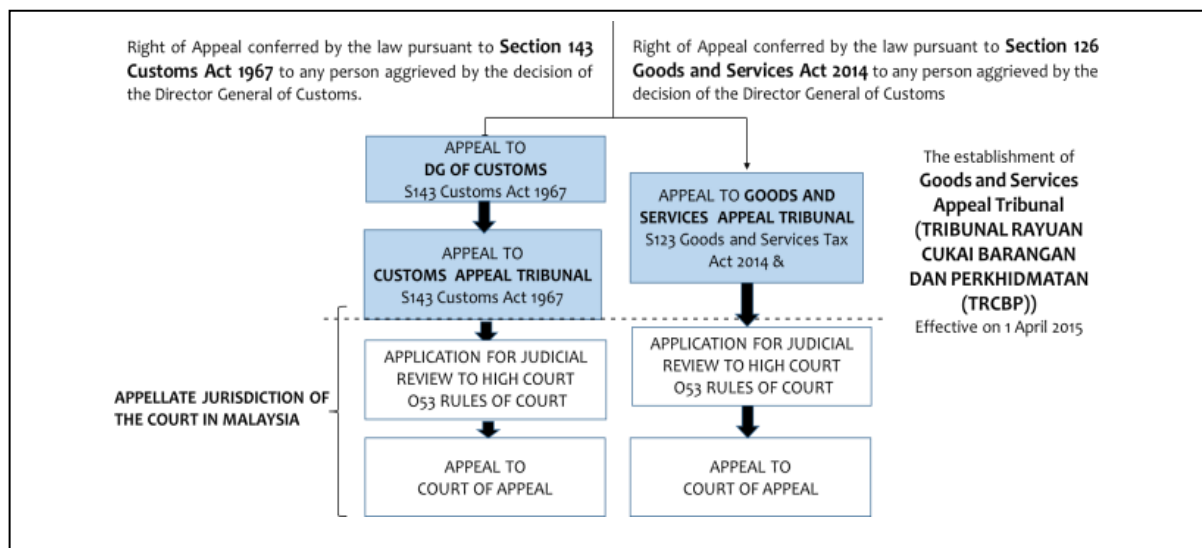


Figure 1 Right of Appeal on Indirect Tax Matters (SST and GST)

Previously, it normally took a quite lengthy time for the minister to arrive at any decision to an appeal made. This was since an appeal on tax matters may not be given priority compared to other much more urgent matters concerning the government administration matters. In the past, it could take a considerable amount of time for a decision from the minister, as appeals were often not given priority over other urgent matters concerning government revenue. As a result, many disputes had to be referred to the court of law, which involved lengthy, costly, and complex procedures that were not feasible for everyone. This was particularly true for cases that could have been resolved quickly and economically.

Initially, the "DG review" was not seen as an option for GST-related matters due to the absence of any enabling power covering repealed laws. However, there are still a significant number of pending cases related to GST, including claims from both taxpayers and governing tax authorities. Therefore, the Customs administration has taken a less mischievous approach in interpreting the power and is now accepting all applications for "DG review," including appeals and disputes raised under repealed GST laws. revenues. Therefore, to avoid any disputing matters being prolonged, most of the time the matter had to be referred by the aggrieved parties to the court of law and this shall involve lengthy, costly, and more complex procedures which are not affordable for everyone particularly when it is not worthy to spend more money and more time on matters which may practically resolve in a brief and more economical way.

Originally, the "DG review" avenue was interpreted as not available for matters pertaining to the GST as the enabling power does not cover any repealed law. The problem is that there are still a significant number of pending cases on GST, whether the claim comes from the taxpayers or the claim comes from the governing tax authority. Therefore, the Customs administrative had to interpret the power in a less mischievous end-result approach and decide to entertain all the applications for "DG review" including the appeal and disputes raised under the repealed GST laws.

### **Standard 10.2.**

Individuals such as importers, exporters, agents, and travellers who are impacted by a decision or lack thereof by Customs are entitled to file an appeal. The definition of "directly affected" persons shall be determined by the Customs administration for appellate purposes. National laws must specify the types of appealable decisions and omissions, typically including decisions regarding valuation and classification, rules of origin, and matters that affect travellers.

By virtue of section 143(1) of the Customs Act 1967, the "person who is directly affected" is termed as "an aggrieved party". Despite it being termed clearly as "an aggrieved party" there is not yet a conclusive definition in any of the decided cases which defined the meaning of "an aggrieved party". There is not yet any serious avenue which needs to determine the elements that shall fit the criteria of "aggrieved". On the other hand, an omission occurs when Customs fails to fulfil its obligations under national legislation such as a delay by Customs in processing a transaction within the established time may cause the importer to be liable to additional duties and taxes due to changes in exchange rates that vary from one period to another and must pay additional demur rage or other storage charges. Omissions can take various forms depending on the procedure or operation involved. Whether Customs has committed an omission will have to be evaluated concerning its obligations under Customs law and the provisions of the General Annex of the Kyoto Convention.

### **Standard 10.3.**

Upon application, individuals affected by a decision or omission of Customs are entitled to receive a detailed explanation within a timeframe specified by national legislation. This crucial piece of information could potentially be used as grounds for an appeal. However, the decision to pursue an appeal is not automatic and will depend on the specific circumstances of the case. Therefore, not every instance of this information would lead to an appeal subsequently. The purpose of this provision is to ensure that those affected can file an appeal in a timely and effective manner. However, some decisions may not be eligible for appeal, which could result in a lengthier process.

The administration, too, has a right not to be unduly burdened with requests not related to an appealable decision or omission, for example, when the "DG review" application matter was not covered under this provision such as not under the power of Director General (DG) of Customs to make a decision, or the decision was prematurely applied for a "DG Review" whereby it was not the decision by the DG of Customs that may be reviewed by the DG himself upon application by any aggrieved party.

### **Standard 10.4.**

The national legislation should ensure that individuals have the right to appeal to Customs as a first step. This allows affected parties to address any decisions or oversights made by Customs at an administrative level, without needing to turn to an external judicial body immediately. This principle, outlined in Standard 10.4, has the potential to resolve matters more quickly and cost-effectively for both the person involved and Customs. Individuals may appeal to the Customs office responsible for the decision or to a higher authority within Customs. Customs should provide information about the appeal process in public notices and within their offices.

Due to the amendment of subsection 143(1) of the Customs Act 1967, all the tasks that needed to be carried out were completed. However, some cases raised a question about whether the "aggrieved party" could bypass this process and proceed directly to an independent judicial authority. Before this amendment, the matter was referred directly to the Tribunal of Customs. During the short reign of the Goods and Services Tax (GST) era, there was also a Tribunal of GST under the Goods and Services Tax Act 2014. This Tribunal was conducted under the same administration, officer, and physical office and building as the Tribunal of Customs.

In some other countries, persons affected by a decision or omission may choose to file their initial appeal with either Customs or an independent authority, excluding courts of law. The independent authority may take the form of an

administrative tribunal with the power to fully adjudicate appeals, despite not being part of the judicial system. In many cases, filing an initial appeal with the Customs office responsible for the decision or omission may prove the most efficient and cost-effective means of rectifying any errors.

### **Standard 10.5.**

When an applicant files an appeal with the Customs Administration, there may be instances where the appeal is dismissed. In such cases, the applicant is entitled to a further appeal to an independent authority. The objective of this appeal process is to ensure that a fair and unbiased review of the appeal is conducted. Standard 10.5 outlines that the right to appeal to an independent authority is essential for an affected person to receive a fair and impartial review of their appeal. The independent authority may vary depending on the country, and it could be a court of law, a special tribunal with the power to settle Customs disputes or part of an established arbitration procedure. It is important to note that the constitution and jurisdiction of the independent authority must be independent of the Customs administration that initially examined the appeal. This requirement ensures that the appeal process is unbiased and provides a fair outcome for the appellant.

In applying this standard, *Nobuyasu Sdn. Bhd. v Tribunal Rayuan Kastam Diraja Malaysia & Anor [2020] MLJU 728* was one sample case, where the appellant appealed to the Tribunal of Customs Appeal, which is under a different administration body, that is under the combination of the Ministry of Finance and the officers from the Attorney General Department. This Tribunal of Customs Appeal (*Tribunal Rayuan Kastam*) is recognised under the law and its verdict is legally recognised as a decision by the sessions court.

### **Standard 10.6.**

In the final instance, the aggrieved taxpayer shall have the right of appeal to an independent judicial authority empowered to hear such appeals. Many administrations allow this appeal at any stage in the whole process. The costs involved in this course of action usually result in aggrieved taxpayer following a stage-by-stage process. However, in certain cases, such as involving with the large multinational corporations, the aggrieved taxpayer may choose to submit the matter to the highest authoritative body as early as possible. Some international traders may have a large volume of transactions or a high amount of investment and many clients. This would be affected by the outcome especially if the decision is not in the favour of aggrieved taxpayer. Therefore, some aggrieved taxpayers prefer to expedite the entire process of disputes and appeals in order to obtain the earliest definitive ruling.

With regards to the legal interpretation of this matter, the case of *Man Truck & Bus (M) Sdn Bhd v Ketua Pengarah Kastam, Jabatan Kastam Diraja Malaysia [2020] MLJU 1653* had laid down the following principle:

*“It cannot be disputed that the threshold at leave stage is extremely low and as long as the application is not frivolous leave ought to be given (*OSR Brands Bhd v. Suruhanjaya Sekuriti & Anor [2006] 3 MLJ 164*). However, when there is an internal or domestic remedy or appeal provided by the relevant statute to review the said decision then the approach is different. It is settled that the applicant must demonstrate that his application meets one of the exceptions pronounced in *Government of Malaysia & Anor v. Jaqdis Singh [1987] 2MLJ 185* namely that there has been a clear lack of jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of the principles of natural justice. Further to that if the merits of the application involve disputes of facts then it should go before the tribunal established under the relevant legislation in which the impugned decision was made (*Ketua Pengarah Hasil Dalam Negeri v. Mudah.my Sdn Bhd [2015] 2 MLJ 197*).”*

The case of *Man Truck* is consistent with the decision made in *DDG Glass Manufacturing [2020] MLJU 1527*. In fact, it listed the details of the requirement for exhausting all the domestic avenues that had been provided by the laws unless, there case falls within one of the exceptions as laid down in *Jaqdis Singh* which defeat the natural justice or rights of the aggrieved person.

## **■ 3.0 REVIEW BY DIRECTOR GENERAL OF CUSTOMS: AN ADMINISTRATIVE POWER TO DECIDE A DISPUTE RESOLUTION**

### **■ 3.1. The new section 143(1) Customs Act 1967**

Since September 2020, the Royal Malaysian Customs has implemented a new mechanism called "DG review". This mechanism involves a permanent panel consisting of several high-ranking officers from the RMCD. The panel includes the Deputy Director General of Customs (Enforcement and Compliance), Deputy Director General of Customs (Customs and Internal Tax), Assistant Director General of Customs (Enforcement and Compliance), Assistant Director General of Customs (Customs and Internal Tax), Director of Customs Legal Division, Director Technical Service Division, Director of Customs Division, among others. The panel is chaired by the Director General himself.

The "DG Review" process is an efficient way for taxpayers to resolve issues without having to go through lengthy legal procedures. With the recent amendment of subsection 143(1) of the Customs Act 1967, this proactive measure has reduced the

number of disputes taken directly to the high court, making it as an effective alternative solution for resolving disputes and appeals. Additionally, all "DG Review" decisions will be personally signed by the DG, ensuring accountability and any further appeals will require justification for challenging the decision.

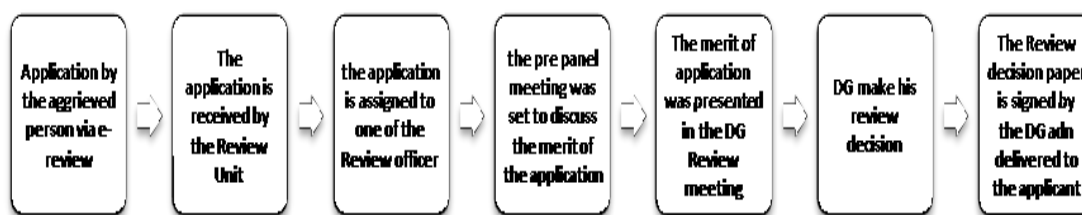


Figure 2: The process of ‘DG Review’.

This research aims to shed light on this new mechanism of the "DG Review" by examining the whole process involved. The whole process of this task was carried out by the RMCD's "DG Review" Unit. Based on Figure 2, the "Review Unit" receives the applications for the "DG Review" and the secretariat of this unit shall distribute and assign the applications made to the officers in the "DG Review" Unit in according with the applications filing numbers. The assigned cases are then assessed by senior officers and the officers shall, after completed the study on the merits of applications made, shall present the cases to a special panel consisting of top management (including all RMCD officers with the rank of Directors and above, as well as the Director of Legal Department from the Attorney General Chamber - a legal advisor officer who is posted in the office of RMCD). The panel is chaired by the Director General of Customs himself and all "DG Review" decisions are personally signed by the DG personally. For cases with technical and complexities, these decisions shall include the reasons and justifications with the decision paper.

The amendment made to the Customs Act 1967 with regards to the power of the Director General (DG) of Customs is a proactive and significant measure aimed at reducing disputes, especially at the court level. Subsection 143(1) of the Customs Act 1967 empowers the Director General of Customs to review his own decisions. As a result of this amendment, all decisions that were previously made by a Senior Customs officer through delegation of power will now be personally reviewed by a panel and endorsed by the DG who chairs the panel sessions. This naturally enhances the level of accountability and transparency in the decision-making process. This change is anticipated to bring positive impacts on the effectiveness of RMCD in the eyes of the government, providing greater confidence to stakeholders and the public at large. Technically and administratively speaking, the earlier decisions made by the DG of Customs were not decided by the DG himself personally, but rather by way of delegation of power (PART II (Section 3-10) of the Customs Act 1967), the decisions were decided by one of the Senior Customs officers, who was assigned to it.

In detail, this new mechanism of "DG review" practised since September 2020, involves a permanent Panel consists of officers from the highest top management officers of Royal Malaysian Customs (RMCD). The quorum is the Deputy Director General of Customs (Enforcement and Compliance), Deputy Director General of Customs (Customs and Internal Tax), Assistant of Director General of Customs (Enforcement and Compliance) Assistant of Director General of Customs (Customs and Internal Tax), Director of Customs Legal Division, Director Technical Service Division, Director of Customs Division, among others, and chaired by the Director General himself.

Table 3 The Quorum of the Panel of the "DG Review" mechanism

Quorum	Rank	Function in the Panel meeting
1.	Director General of Customs	Chairperson of the panel members. Final decision maker
2.	(2) Deputy Director General (enforcement & Compliance)	Panel of DG Review
3.	(3) Deputy Director General (Internal Tax & Customs)	Panel of DG Review
4.	(4) Assistant of Director General (enforcement)	Panel of DG Review
5.	(5) Assistant of Director General (Internal tax)	Panel of DG Review
6.	(6) Director of Legal Department	Panel of DG Review. (Legal advisor to the panel members)
7.	(7) Director of Compliance Division	Panel of DG Review
8.	(8) Director of Technical Service Division	Panel of DG Review
9.	(9) Director of Customs division.	Panel of DG Review

Source: Internal Standard Operating Procedure of "DG Review" Unit, RMCD

Another dimension in the "DG Review" is the existence of a new avenue under the Customs Act 1967 which gives room for the taxpayers' right to be heard in an administrative way instead of directly having to go through the lengthy process of appeal and dispute under the law by way of judiciary. In short, it is a proactive measure to reduce the number of disputes particularly in courts of laws as practised previously before the amended subsection 143(1) of the Customs Act 1967 came into effect.



This new avenue was derived from the spirit of the Revised Kyoto Convention which shall be elaborated below. The power to review the earlier decisions by the DG, comes in handy when the taxpayers who are affected by the pandemic may be heard not only from the perspective of strict interpretation of laws but also from the natural justice issues which is more to the equity principles in nature.

Figure 3 describes the additional avenues derived from two different enabling sections. Subsection 143 (1) of the Customs Act 1967, application for review to the DG on the DG own’s decisions. Subsequently, there is also subsection 143(5) which empowers an appeal to be heard in the Appeal Tribunal of Customs, particularly if a decision of “DG Review” had been unfavourable to the applicant.

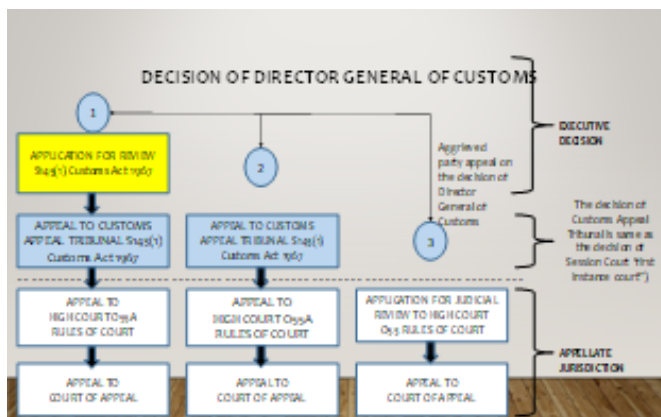


Figure 3: The current avenues for the rights of taxpayers to be heard

### 3.2. Technical problems being addressed under the “new review power”

The Malaysian government implemented the Goods and Services Tax (GST) on 1st April 2015, was governed by the Goods and Services Tax Act 2014 and the Malaysian Goods and Services Tax Regulations 2014. However, in September 2018, the GST was replaced by the Sales Tax 2018 and Service Tax 2018, which is publicly known as the SST2.0. The transition from GST to SST affected the method of tax paying as the two systems were different and not transferable through digital means, resulting in some shortfalls in tax payments due to technical and human intervention factors.

To address this issue, the Royal Malaysian Customs Department (RMCD) established a new unit known as the “DG Review Unit”, which acts as the secretariat to arrange all panel review meetings. Under subsection 143(1) of the Customs Act 1967, taxpayers, who are referred in the law provision as the “aggrieved person”, shall have the right to file applications for review if they believe that the DG’s decision was wrong, or they are dissatisfied with it. In 2020, during the first long period of the first Movement Control Order (MCO), 233 applications for review were filed, while after the MCO, up to October 2021, 619 applications were already filed for the review of DG’s decision (Table 4).

The successful review application numbers demonstrate the trustworthiness of the review process as a reliable channel for taxpayers to voice their opinions, in alignment with the RKC. Once approved, successful applicants' rights are reinstated, with no further action required. In contrast, if the attempt to review the DG decisions was not success, aggrieved taxpayers still have the option to further appeal to the tribunal and courts to contest the decision of DG on the tax concerns.

Table 4: Statistic of Review Application Filed Under Section 143(1) Customs Act 1967 (Review application filed from January 2020 up to October 2021\*)

Year	Review filed	Review Hearing	Review approved
2021	619	213	122
2020	233	56	111

Source: Secretariat of DG Review Unit, RMCD

Since the establishment of the new Unit (DG Review Unit) in 2020, a total of 852 review applications have been filed up to October 2021. Table 4 shows that the industries (taxpayers) prefer to use this avenue which is less bureaucratic, less costly and the time frame is less lengthy than the time normally needed for the same issue to be brought into the courts of law. The negative side is, however, that the process of the panel meeting in arriving at a decision is less transparent to the applicant. This is against the principle, that *justice must be done and seemed to be done*. Unlike in the hearing or trial in the tax tribunal or the court, the applicant may follow or even be involved directly during the progress of the trial. In addition, the details of the trials on which cases are filed in the Courts are comprehensively reported in at least two law journals in this country: (1) Current Law Journal and (2) Malay Law Journal.

As regards to the inconsistent pattern of the decision made by the panel, this naturally happens as in the pattern of the decision by the courts which may also vary due to certain considerations, merits, and different perspectives of arguments by parties in the proceedings despite the application of the doctrine of judicial precedent at courts' level. A panel meeting is not binding to their own earlier decision, but administratively, the DG Review Unit of RMCD is doing their best to convince the panel to produce a more consistent pattern of decisions from time to time.

#### ■ 4.0 RESEARCH METHODOLOGY

Using the methodology of library research, this article delved into the analysis of legal documents, international treaties and conventions, as well as the provisions of laws such as Section 143(1) of the Customs Act 1967, and other indirect tax laws, including the Sales Tax Act 2018, Service Tax Act 2018 and the repealed Good and Services Tax Act 2014. These are the relevant sections of the indirect tax laws which relate to the power of the DG of Customs to review his own previous decision within 30 days as provided by the law. This article has also closely examined the Revised Kyoto Convention, with special attention paid to Chapter 10 of the Guidelines of the RKC. In addition, this article has identified several case laws and legal precedents related to the mechanism of "DG Review". This article also gathered data from the Review Unit at RMCD to justify the analysis. Ultimately, this article addresses the implications of the topic at hand in a comprehensive manner.

#### ■ 5.0 DISCUSSION

Coincidentally, the mechanism of "DG Review" was established and first conducted in concurrent with the spread of the COVID-19 pandemic. This mechanism consists of a specific process of work to redress many business entities that were struggling and at risk of collapsing. This new mechanism offers an alternative to the old way of tribunals and the court procedures. It legally empowers the Director General to make administrative decisions at the executive level. Practically, it saves aggrieved persons both time and money that otherwise would be spent to bring the disputes or appeals before the judiciary level. This mechanism is devised to streamline the process of resolving disputes and appeals and helps ensure that businesses can continue to operate smoothly without the additional cost burdens of lengthy legal proceedings. The overall performance was, that the "DG Review" mechanism has significantly proven as a very helpful tool for desperate business entities during those desperate moments.

Some problems attached to the "DG Review" mechanism are as follows: the perception of the impact of the integrity of the judicial system, the level of safeguarding the rights of taxpayers and the tendency of bias practise in the decision-making process. The first problem is on public perception towards the integrity of the established judicial system. The public, whether academicians, professional practitioners and in fact laymen may argue that the impact of the practice will reflect the integrity and credibility of the judicial system are irrelevant in the legal system concerning the tax dispute and appeal matters and should be altogether disregarded. This is because the "DG Review" mechanism involves non-judicial personnel in its decision-making process.

The second issue is about the quality of the legal protection and due process of law in the practice of the "DG Review" mechanism. Some legal experts may opine that this mechanism would not achieve the required standard level of legal safeguards that be achieved by resorting to the taxpayers' rights of appeal by going through the traditional court and tribunal procedures. As a result, this may put the rights of the parties involved in a compromised situation.

The third concern focuses on the susceptibility of the "DG Review" process to political influence or rather political pressure. As this process involves decision-making by administrative officials, some affected aggrieved taxpayers may worry that the influences based on political considerations or other biases will give an unfair advantage to the aggrieved taxpayers who have special relations, connections or personal interests with certain political coalitions. Hence the final decisions of "DG Review" depend on the applicants' networking rather than the merits of the case.

#### ■ 6.0 CONCLUSIONS

It is very important to sustain efficiency in administering tax. In return, the government needs to look after the farewell of the taxpayers and people who reside in this country. However, in tax implementation, the balance between the nation's interest and the people's interest had to be struck. The tax should be legally, clear, and fairly imposed. If taxes are imposed without any justification, it only benefits the rulers in power, while the interests of the nation and its people are disregard. This can result in unfair taxation policies that will burden citizens and hinder economic growth. Therefore, taxes must be imposed with sound reasoning and consideration for the greater good of the country and its citizens. In a desperate moment during the pandemic, the government needs to give some room for the taxpayers to be relieved. Redistributing the revenues from the tax to the people in a state of emergency is one of the criteria of a fair tax. However, the most important principle in natural justice, under the Federal Constitution, includes the right to have a fair trial, the right to be heard (Article 135(2)) and the right of properties, through various avenues for the taxpayers to appeal or rather dispute when they feel aggrieved on the decision of the DG of customs, on the tax to be paid.

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