

A BILL

*i n t i t u l e d*

An Act to amend the Sales Tax Act 2018.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Sales Tax (Amendment) Act 2020.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Amendment of section 17**

**2.** The Sales Tax Act 2018 [*Act 806*], which is referred to as the “principal Act” in this Act, is amended in subsection 17(1) by substituting for the words “immediately succeeding” the words “immediately preceding”.

**Amendment of section 27**

3. Subsection 27(1) of the principal Act is amended by substituting for the words “subsection 26(9)” the words “subsection 26(8)”.

**Amendment of section 31**

4. Paragraph 31(1)(b) of the principal Act is amended by substituting for the words “subsection 26(9)” the words “subsection 26(8)”.

**Amendment of section 32**

5. Subsection 32(2) of the principal Act is amended by substituting for the words “subsection 26(9)” the words “subsection 26(8)”.

**New section 35A**

6. The principal Act is amended by inserting after section 35 the following section:

**“Refund by deduction of sales tax**

**35A.** (1) The Director General may direct any registered manufacturer to deduct the amount of refund against the amount of sales tax to be paid from his return under section 26 if the registered manufacturer has been granted refund of sales tax under paragraph 35(3)(c) or has made a deduction under section 23 or 41A.

(2) Where after the deduction has been made under subsection (1), there is any balance in the amount of the refund, the balance shall be refunded to the registered manufacturer by the Director General.

(3) Notwithstanding subsection (2), the Director General may withhold the whole or any part of any amount refundable under subsection (2) to be credited to any following or subsequent taxable period and the Director General shall treat the amount credited as payment or part payment received from the registered manufacturer.”.

**Amendment of section 69**

7. Subsection 69(1) of the principal Act is amended by inserting after the word “place” the words “or premises”.

**New section 69A**

8. The principal Act is amended by inserting after section 69 the following section:

**“Power to seal**

**69A.** (1) Where by reason of its nature, size or amount it is not practicable to remove any goods, documents, articles or things seized under this Act, a proper officer of sales tax may, by any means, seal the goods, documents, articles or things, or the places, premises, receptacles, packages or conveyances in which the goods, documents, articles or things are found.

(2) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (1) or removes the goods, documents, articles, things, receptacles, packages or conveyances under seal, or attempts to do so, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.”.

**New section 72B**

9. The principal Act is amended by inserting after section 72A the following section:

**“Additional powers**

**72B.** (1) In addition to and without affecting the existing powers conferred under this Act, when escorting and guarding any person in custody, a proper officer of sales tax shall have all the powers of a police officer of the rank of Corporal and below and the powers of a prison officer of the rank of Sergeant and below under the Prison Act 1995 [*Act 537*].

(2) For the purposes of this Act—

- (a) where an order, a certificate or any other act is required to be given, issued or done by an officer in charge of a Police District under any written law, such order, certificate or act may be given, issued or done by a senior officer of sales tax, and for such purpose, the place where the order, certificate or act was given, issued or done shall be deemed to be a Police District under his charge; and
- (b) a proper officer of sales tax shall have all the powers conferred on an officer in charge of a police station under any written law, and for such purpose the office of such officer shall be deemed to be a police station.”.

#### **New section 74A**

**10.** The principal Act is amended by inserting after section 74 the following section:

#### **“Evidence of agent provocateur admissible**

**74A.** (1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, and that the agent provocateur is a police officer whatever his rank or an officer of sales tax, any statement, whether oral or in writing made to an agent provocateur by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.”.

**Amendment of section 88A**

**11.** Section 88A of the principal Act is amended by substituting for the words “section 41A” the words “section 23, 35A or 41A”.

**Amendment of section 97**

**12.** Subsection 97(1) of the principal Act is amended by substituting for the words “which is a registered manufacturer or an importer” the words “which is liable for any sales tax due and payable”.

**Amendment of section 98**

**13.** Subsection 98(1) of the principal Act is amended—

- (a) by substituting for the words “a registered manufacturer or an importer” the words “any person who is liable for any sales tax due and payable”;
- (b) by substituting for the words “disposing of any of the assets of the registered manufacturer or importer” the words “disposing of any of the assets of the person”;  
and
- (c) by substituting for the words “in respect of the taxable goods that have been sold or manufactured by the registered manufacturer or importer” the words “in respect of the taxable goods that have been sold, manufactured, purchased or acquired by the person”.

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EXPLANATORY STATEMENT

This Bill seeks to amend the Sales Tax Act 2018 (“Act 806”).

- 2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.
- 3. *Clause 2* seeks to amend section 17 of Act 806 to provide for the historical method in calculating the total sale value of all of a registered manufacturer’s taxable goods who ceases to be liable to be registered in a period of twelve months. Currently, section 17 of Act 806 provides for the future method in calculating the total sale value of all his taxable goods in a period of twelve months.

4. *Clauses 3, 4 and 5* seek to amend subsection 27(1), paragraph 31(1)(b) and subsection 32(2) of Act 806 respectively as consequential amendments arising from the renumbering of subsection 26(8) as subsection 26(9) and subsection 26(9) as subsection 26(8) by the Sales Tax (Amendment) Act 2019 [Act A1596].

5. *Clause 6* seeks to introduce a new section 35A into Act 806.

The proposed subsection 35A(1) seeks to empower the Director General to direct any registered manufacturer to deduct the amount of refund from the amount of sales tax to be paid from his return under section 26.

The proposed subsection 35A(2) seeks to provide that where after a registered manufacturer makes a deduction under the proposed subsection 35A(1), there is any balance in the amount of the refund, the balance shall be refunded to the registered manufacturer by the Director General.

The proposed subsection 35A(3) seeks to empower the Director General to withhold the whole or any part of any amount of refund to be credited to any following or subsequent taxable period.

6. *Clause 7* seeks to amend subsection 69(1) of Act 806 to empower the proper officer of sales tax to make any seizure in any premises.

7. *Clause 8* seeks to introduce a new section 69A into Act 806.

The proposed subsection 69A(1) seeks to empower the proper officer of sales tax to seal any goods, documents, articles or things, or the places, premises, receptacles, packages or conveyances in which the goods, documents, articles or things are found where by reason of their nature, size or amount it is not practicable to remove the goods, documents, articles or things seized.

The proposed subsection 69A(2) seeks to make it an offence for any person who without lawful authority, breaks, tampers with or damages the seal referred to in subsection (1) or removes the goods, documents, articles, things, receptacles, packages or conveyances under seal, or attempts to do so and to provide punishments for such offence.

8. *Clause 9* seeks to introduce a new section 72B into Act 806 to provide that a proper officer of sales tax shall have all the powers of a police officer of the rank of Corporal and below and the powers of a prison officer of the rank of Sergeant and below under the Prison Act 1995 when escorting and guarding any person in custody. This *clause* also seeks to confer powers of an officer in charge of a police station on a proper officer of sales tax, and for such purpose the office of the proper officer of sales tax shall be deemed to be a police station.

9. *Clause 10* seeks to introduce a new section 74A into Act 806 to provide for the credibility of an agent provocateur's evidence and the admissibility as evidence of any statement given to an agent provocateur, by a person who is subsequently charged with an offence under Act 806.

10. *Clause 11* seeks to amend section 88A to make it an offence for any person who improperly obtains a deduction of sales tax under section 23 of Act 806 and under the proposed section 35A as introduced by *clause 6* of this Bill.

11. *Clause 12* seeks to amend section 97 of Act 806 to require a liquidator of a company which is liable for any sales tax due and payable to give notice of winding up of the company to the Director General. Currently, the obligation is imposed on a liquidator of a company which is a registered manufacturer, or an importer.

12. *Clause 13* seeks to amend section 98 of Act 806 to require a receiver of the property of any person who is liable for any sales tax due and payable to give notice of his appointment to the Director General and to set aside such sum out of the assets to provide for any sales tax that is or will thereafter become due and payable in respect of taxable goods that have been sold, manufactured, purchased or acquired by the person. Currently, the obligation is imposed on a receiver of a company which is a registered manufacturer, or an importer.

13. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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