

GOODS AND SERVICES TAX BILL 2014

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A BILL

i n t i t u l e d

An Act to provide for the imposition and collection of goods and services tax and for matters connected therewith.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Goods and Services Tax Act 2014.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different parts or different provisions of this Act.

(3) The Minister may, by notification in the *Gazette*, appoint the effective date for the imposition of the goods and services tax under this Act (hereinafter referred to as the “effective date”).

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“this Act” includes any subsidiary legislation made under this Act;

“consideration” in relation to the supply of goods or services to any person, includes any payment made or to be made, whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

“goods” means any kind of movable and immovable property but excludes money except—

- (a) a bank note or coin before it becomes legal tender in Malaysia or in any other country; or
- (b) a collector’s piece, investment article or item of numismatic interest;

“tax” means goods and services tax;

“input tax” means—

- (a) tax on any supply of goods or services to a taxable person; and
- (b) tax paid or to be paid by a taxable person on any importation of goods,

and the goods or services are used or are to be used for the purposes of any business carried on or to be carried on by the taxable person:

Provided that where the goods or services are used or are to be used partly for the purposes of any business carried on or to be carried on by the taxable person and partly for other purposes,

tax on the supply and importation shall be apportioned so that only so much as is attributable to the purposes of his business is counted as his input tax;

“output tax” means any tax on any taxable supply of goods or services made by a taxable person in the course or furtherance of his business in Malaysia;

“prescribed” means prescribed by regulations made under this Act;

“document” has the meaning assigned to it in section 3 of the Evidence Act 1950 [*Act 56*];

“excise duty” has the meaning assigned to it in section 2 of the Excise Act 1976 [*Act 176*];

“customs duty” has the meaning assigned to it in section 2 of the Customs Act 1967 [*Act 235*];

“electronic” has the meaning assigned to it in section 5 of the Electronic Government Activities Act 2007 [*Act 680*];

“import” has the meaning assigned to it in section 2 of the Customs Act 1967;

“invoice” includes any document similar to an invoice;

“tax invoice” means an invoice required to be issued by a taxable person under section 33;

“excise control” has the meaning assigned to it in section 2 of the Excise Act 1976;

“customs control” has the meaning assigned to it in section 2 of the Customs Act 1967;

“designated area” means Labuan, Langkawi or Tioman;

“Director General” means the Director General of Customs and Excise appointed under section 3 of the Customs Act 1967;

“computer” has the meaning assigned to it in section 2 of the Computer Crimes Act 1997 [*Act 563*];

“Labuan” means the Island of Labuan and its dependent islands, namely, Rusukan Besar, Rusukan Kecil, Keraman, Burong, Papan and Daat;

“Langkawi” means the Island of Langkawi and all adjacent islands lying nearer to the Island of Langkawi than to the mainland;

“Malaysia” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;

“Minister” means the Minister charged with the responsibility for finance;

“electronic notice” means any document transmitted by the registered user by way of electronic service;

“registered person” means a person who is registered under Part IV;

“taxable person” means any person who is or is liable to be registered under this Act;

“officer of goods and services tax” means any officer of customs acting in the fulfilment of his duties under this Act, whether the duties are assigned to him specially or generally, or expressly or by implication;

“senior officer of goods and services tax” means—

- (a) the Director General;
- (b) any Deputy Director General of Customs and Excise appointed under subsection 3(1) of the Customs Act 1967;
- (c) any Assistant Director General, Director, Senior Assistant Director and Assistant Director of Customs and Excise appointed under subsection 3(1) of the Customs Act 1967;

- (d) any Senior Superintendent or Superintendent of Customs and Excise appointed under subsection 3(4) of the Customs Act 1967; or
- (e) any officer of goods and services tax, conferred with the powers of a senior officer of goods and services tax under subsection 5(4);

“officer of customs” has the meaning assigned to it in section 2 of the Customs Act 1967;

“compliance officer” has the meaning assigned to it in section 27 of the Limited Liability Partnership Act 2012 [*Act 743*];

“supply” has the meaning assigned to it in section 4;

“taxable supply” means a supply of goods or services which are standard-rated supply and zero-rated supply and does not include an exempt supply;

“zero-rated supply” means a zero-rated supply under section 17;

“exempt supply” means an exempt supply determined under section 18;

“owner”—

- (a) in respect of goods, includes any person being or holding himself out to be the owner, or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the goods;
- (b) in respect of a conveyance, includes any person acting as an agent of the owner of the conveyance or who receives freight or other charges payable in respect of the conveyance;

“conveyance” includes any vessel, train, vehicle, aircraft or any other means of transport by which persons or goods can be carried;

“services” means anything done or to be done including the granting, assignment or surrender of any right or the making available of any facility or benefit but excludes supply of goods or money;

“imported services” means any services by a supplier who belongs in a country other than Malaysia or who carries on business outside Malaysia, to a recipient who belongs in Malaysia, and the services are consumed in Malaysia;

“electronic service” means the service provided by the Director General to the registered user under section 166;

“arrangement” means any agreement, contract, plan, understanding, scheme, trust, grant, covenant, disposition or transaction and includes all steps by which it is carried into effect;

“Islamic financial arrangement” means a written contract which relates to a supply of financing in accordance with the principles of *Syariah*;

“limited liability partnership” has the meaning assigned to it in section 4 of the Limited Liability Partnership Act 2012;

“business” has the meaning assigned to it in section 3;

“surcharge” in respect of any default in payment of any instalment, means the charge accrued under subsection 51(2);

“flat rate addition” means the prescribed flat rate addition under section 74;

“usual place of residence” means—

- (a) in relation to a body corporate, the place where it is incorporated or otherwise legally constituted;
- (b) in relation to an unincorporated body of persons, the place where the body has its centre of administration;
- (c) in relation to an individual, the place where he usually resides;

“taxable period” means any period as determined or provided for under section 40;

“Tioman” means the Island of Tioman and the islands of Soyak, Rengis, Tumok, Tulai, Chebeh, Labas, Sepoi and Jahat;

“money” includes currencies whether of Malaysia or any other country.

(2) Paragraph 1 of the Third Schedule shall apply in relation to any reference in this Act to “open market value”.

Meaning of “business”

3. (1) In this Act, “business” includes any trade, commerce, profession, vocation or any other similar activity, whether or not it is for a pecuniary profit.

(2) Without prejudice to the generality of any other provision in this Act, the following are deemed to be the carrying on of a business:

(a) the provision by a club, association, society, management corporation, joint management body or organisation (for a subscription or other consideration) of the facilities or benefits available to its members or parcel proprietors, as the case may be; and

(b) the admission, for a consideration, of persons to any premise.

(3) Anything done in connection with the commencement, termination or intended termination of a business is treated as being done in the course or furtherance of that business.

(4) Subject to the Second Schedule, the disposition of any business as a going concern, or of its assets or liabilities (whether or not in connection with its reorganisation or winding-up), is a supply made in the course or furtherance of the business.

(5) Where any person, in carrying on any trade, commerce, profession, vocation or any other similar activity accepts any office, any services supplied by the person as the holder of the office shall be treated as supplied in the course or furtherance of that trade, commerce, profession, vocation or any other similar activity.

Meaning of “supply”

4. (1) Subject to subsections (2) and (3), “supply” means all forms of supply, including supply of imported services, done for a consideration and anything which is not a supply of goods but is done for a consideration is a supply of services.

(2) Matters to be treated as a supply of goods or a supply of services shall be as specified in the First Schedule.

(3) Matters to be treated as neither a supply of goods nor a supply of services shall be as specified in the Second Schedule.

(4) The Minister may, by order published in the *Gazette*, amend the First Schedule and Second Schedule.

(5) Any order made under subsection (4) shall be laid before the Dewan Rakyat.

PART II**ADMINISTRATION****Director General and other officers and their responsibilities**

5. (1) The Director General shall have the superintendence of all matters relating to goods and services tax, subject to the direction and control of the Minister.

(2) Subject to the general direction and supervision of the Director General, a senior officer of goods and services tax shall have and exercise all powers conferred on the Director General under this Act other than those conferred by sections 8, 62, 76, 77, 172 and 173.

(3) Any person other than an officer of customs may be appointed by or employed with the concurrence of the Director General for any duty or service relating to goods and services tax and the person shall be deemed to be an officer of goods and services tax.

(4) The Director General may, by authorization in writing, confer on any officer of goods and services tax not being a senior officer of goods and services tax all or any of the powers of a senior officer of goods and services tax for a period not exceeding ninety days in respect of any one authorization.

(5) Any officer of goods and services tax shall have the duties and powers to enforce and ensure due compliance with the provisions of this Act.

Recognition of office

6. (1) Every officer of goods and services tax when discharging his duties shall, on demand made by any person, declare his office and produce to the person the authority card or badge prescribed under section 8A of the Customs Act 1967 or in the case of any officer of goods and services tax not being an officer of customs, any other authority card as may be approved by the Director General.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any officer of goods and services tax acting or purporting to act under this Act if the officer refuses to declare his office and produce his authority card or badge on demand being made by the person.

(3) Any person, not being an officer of goods and services tax, who unlawfully wears, uses, possesses or displays, otherwise than in the course of a stage play or other theatrical performance, any prescribed uniform, badge or authority card referred to in subsection (1), or any dress having the appearance of or bearing the distinctive marks of such uniform commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Public servants

7. All officers of goods and services tax shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

Confidentiality of information

8. (1) Every person, having any official duty or being appointed or employed under this Act, shall regard and deal with all documents, information, returns or declarations relating to the business, value of the supply of goods or services of any taxable person or value of imported goods as confidential.

(2) Subject to subsection (4), every person having possession or control over any document, information, return or declaration or copies thereof in relation to the business or the value of the supply of goods or services of any taxable person or value of imported goods, who at any time, otherwise than for the purposes of this Act or with the express authority of the Director General—

(a) communicates or attempts to communicate the information or anything contained in the document, return or declaration or copies thereof to any person; or

(b) suffers or permits any person to have access to any information or to anything contained in the document, return or declaration or copies thereof,

commits an offence.

(3) No person having any official duty or being appointed or employed under this Act or who is referred to in subsection (4) shall be required to produce in any matters or proceedings in any court or tribunal any document, information, return or declaration or to divulge or communicate in the matters or proceedings, any matter or thing, coming under his notice in the performance of his duties under this Act, except as may be necessary for the purposes of carrying into effect the provisions of this Act or in order to institute a prosecution or in the course of a prosecution for any offence committed under this Act.

(4) The Director General may, as he deems fit, transmit or communicate any document, information, return or declaration referred to in subsection (1) or anything contained therein, to the Director General of Inland Revenue or the Chief Statistician which may be required in the performance of his official duty.

(5) Notwithstanding subsection (4), the Minister may, as he deems fit, allow the Director General to transmit or communicate any document, information, return or declaration referred to in subsection (1) or anything contained therein to any other person.

PART III

IMPOSITION AND SCOPE OF TAX

Imposition and scope of goods and services tax, etc.

9. (1) A tax to be known as goods and services tax, shall be charged and levied on—

(a) any supply of goods or services made in Malaysia, including anything treated as a supply under this Act; and

(b) any importation of goods into Malaysia.

(2) Except as otherwise provided in subsections 13(3) and 72(5), tax shall be charged on any supply of goods or services made in Malaysia where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(3) Except as otherwise provided in subsections 65(4) and 65(5), tax chargeable on any supply of goods or services is a liability of the person making the supply and subject to Part V, becomes due and payable at the time of supply.

(4) Tax on any importation of goods into Malaysia shall be charged, levied and payable as if it were a customs duty or excise duty and as if the imported goods are dutiable and liable to customs duty or excise duty.

(5) Where any registered person displays, advertises, publishes or quotes in any manner the price of any supply of goods or services he makes or intends to make, such price shall include the tax that is chargeable on the supply unless the Director General approves otherwise under subsection (7).

(6) Any registered person may apply to the Director General in the form and manner as the Director General may determine to be exempted from displaying, advertising, publishing or quoting in any manner the price inclusive of tax which is chargeable on the supply of goods or services he makes or intends to make.

(7) The Director General may approve in writing an application made under subsection (6) and where an approval has been granted, the registered person shall display, advertise, publish or quote the price exclusive of tax with the words “Price payable is exclusive of GST”.

(8) Any registered person who contravenes subsection (5) or (7) commits an offence.

(9) For the purposes of this Act, “supply of goods or services made in Malaysia” shall be treated as goods or services supplied in Malaysia.

Rate of tax

10. (1) Tax shall be charged and levied at the rate fixed under this section on the supply of goods or services or on the importation of goods by reference to the value of the supply or importation as determined under this Act.

(2) The Minister may, by order published in the *Gazette*—

(a) fix the rate of tax to be charged on the supply of goods or services or on the importation of goods; and

(b) vary or amend the rate of tax fixed under paragraph (a).

(3) Any order made under subsection (2) shall, at the next meeting of the Dewan Rakyat, be laid before the Dewan Rakyat and shall, at the expiration of one hundred and twenty days of being so laid or of such extended period as the Dewan Rakyat may by resolution direct, cease to have effect if and insofar as it is not confirmed by resolution passed by the Dewan Rakyat within the said one hundred and twenty days or, if such period has been extended, within such extended period.

(4) Where an order ceases to have effect in whole or in part as provided in subsection (3), any tax charged and levied in pursuance of the order, as the case may be, of such part thereof as ceases to have effect shall, subject to subsections (5) and (6), be refundable to the persons by whom the tax was paid.

(5) Unless the Minister otherwise directs, no tax refundable under subsection (4) shall be refunded, unless the person by whom the tax was paid makes a claim in writing to the Director General within one year from the date on which the order ceases to have effect in whole or in part and the claim shall contain such particulars as the Director General may require.

(6) The Director General may reduce or disallow any tax refundable under subsection (4) to the extent that the refund would unjustly enrich the person by whom the tax was paid.

Time of supply

11. (1) This section shall apply in determining the time of supply of goods or services except as otherwise provided in this Act.

(2) Subject to subsections (4), (5), (6) and (7), the time of supply of goods shall be—

- (a) at the time of removal of the goods if the goods are to be removed;
- (b) at the time when the goods are made available to the person to whom the goods are supplied if the goods are not to be removed;
- (c) where goods, being sent or taken on approval or sale or return or similar terms, are removed before it is known whether a taxable supply will take place, at the time when it becomes certain that the taxable supply has taken place or twelve months after the removal, whichever is the earlier.

(3) Subject to subsections (4), (5), (6) and (8), the time of supply of services shall be at the time when the services are performed.

(4) Where, before the time applicable under subsection (2) or (3), the person making the supply issues a tax invoice in respect of it or where, before the time applicable under paragraph (2)(a) or (b) or subsection (3), he receives a payment in respect of it, the supply shall, to the extent covered by the invoice or payment, be treated as taking place at the time the invoice is issued or the payment is received, as the case may be, or whichever is the earlier.

(5) Where, within twenty-one days after the time applicable under subsection (2) or (3), the person making the supply issues a tax invoice in respect of it, then, the supply shall, to the extent that it is not treated as taking place at the time referred to in subsection (4) be treated as taking place at the time the invoice is issued.

(6) On the request made in writing by a taxable person, the Director General may in writing, as he deems fit, alter the time at which supplies made by the taxable person are to be treated as taking place.

(7) Where there is a supply of goods by virtue only of a transfer or disposal of business assets under subparagraph 5(1) of the First Schedule, the time of supply is at the time when the goods are transferred or disposed of.

(8) Where there is a supply of services by virtue only of subparagraph 5(3) of the First Schedule, the time of the supply is at the time when the goods are appropriated to the use referred to in the subparagraph.

(9) Notwithstanding subsections (1), (2), (3), (4), (5), (6), (7) and (8), where there is—

- (a) a supply of goods or services for a consideration the whole or part of which is determined or payable periodically, or from time to time, or at the end of any period;
- (b) a supply of goods for a consideration the whole or part of which is determined at the time when the goods are appropriated for any purpose;

- (c) a supply of services by virtue of subparagraph 5(3) of the First Schedule over a period of time;
- (d) a supply of goods or services under any prescribed circumstances,

the time at which the supply made in the course or furtherance of any business in Malaysia shall be determined according to the regulations made under this Act.

(10) For any case referred to in subsection (9), the regulations may provide for goods or services to be treated as separately and successively supplied at prescribed times or intervals.

(11) This section shall not apply to subsections 183(2) and 183(4).

Place of supply

12. (1) This section shall apply for determining, for the purposes of the charge to tax, whether goods or services are supplied in Malaysia.

(2) Where the supply of any goods involves their removal from a place in Malaysia to another place in Malaysia, the goods shall be treated as supplied in Malaysia if the goods are in Malaysia and where the supply of goods involves their removal from a place outside Malaysia to another place outside Malaysia, the goods shall be treated as supplied outside Malaysia.

(3) Where the supply of any goods involves their removal from a place in Malaysia to a place outside Malaysia, the goods shall be treated as supplied in Malaysia and where the supply of goods involves their removal from a place outside Malaysia to a place in Malaysia, the goods shall be treated as supplied outside Malaysia.

(4) A supply of services shall be deemed as made—

- (a) in Malaysia, if the supplier belongs in Malaysia; and
- (b) in another country, if the supplier belongs in the other country.

Supply of imported services

13. (1) Where imported services, being a taxable supply if made in Malaysia, is supplied to a person (hereinafter referred to as the “recipient”) for the purposes of any business carried on by him, the supply shall be treated as a supply made by the recipient in the course or furtherance of his business, and the supply is a taxable supply.

(2) Where the recipient is a taxable person, the provisions of this Act shall apply to him with respect to the supply of imported services.

(3) Where the recipient is a person other than a taxable person, tax shall be charged on the supply of such imported services and he shall be liable for any tax due and payable on that supply.

(4) Notwithstanding section 11 and for the purposes of subsection (1), the time of supply of imported services shall, to the extent covered by any payment by the recipient, be treated to have been made when the supplies are paid for.

(5) Notwithstanding subsection (1), when goods are imported into Malaysia under a lease agreement from a person who does not belong in Malaysia, tax shall be charged on the goods.

Place where supplier of services belongs

14. (1) The supplier of services shall be treated as belonging in a country if—

- (a) he has in that country a business establishment or fixed establishment and no such establishment elsewhere;
- (b) he has no business establishment or fixed establishment in any country but his usual place of residence is in that country; or
- (c) he has business establishments or fixed establishments both in that country and elsewhere and his establishment which is most directly concerned with the supply is in that country.

(2) For the purposes of this section, a fixed establishment in any country includes a branch or an agency through which a person carries on a business in that country.

Value of supply of goods or services

15. (1) Subject to the Third Schedule, the value of any supply of goods or services shall be determined in accordance with this section.

(2) Where the supply is for a consideration in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the consideration.

(3) Where the supply is for a consideration not in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that consideration.

(4) Where the supply is for a consideration not wholly in money, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the aggregate of—

(a) to the extent that the supply is for a consideration in money, the amount of the money; and

(b) to the extent that the supply is not for a consideration in money, the open market value of that consideration.

(5) Where the supply is not for a consideration, the value of the supply shall be taken to be an amount, with the addition of the tax chargeable, equal to the open market value of that supply.

(6) Where the supply is not the only matter to which a consideration in money relates, the supply shall be deemed to be for the part of the consideration as is properly attributable to the supply.

(7) For the purposes of this section, the value of the supply shall include excise duty paid or is to be paid where applicable.

(8) The Minister may, by order published in the *Gazette*, amend the Third Schedule and provide for the determination of the value of a supply otherwise than in accordance with this section.

(9) Any order made under subsection (8) shall be laid before the Dewan Rakyat.

Value of goods imported

16. The value of goods imported into Malaysia shall be the sum of the following amounts, namely—

- (a) the value of the goods for the purposes of customs duty determined in accordance with the Customs Act 1967;
- (b) the amount of customs duty, if any, paid or is to be paid on the goods; and
- (c) the amount of excise duty, if any, paid or is to be paid on the goods.

Zero-rated supply

17. (1) A zero-rated supply is—

- (a) any supply of goods or services determined to be a zero-rated supply by the Minister under subsection (4); and
- (b) any supply of goods if the goods are exported.

(2) Where a taxable person supplies goods or services and the supply is zero-rated, whether or not tax would be chargeable on the supply apart from this section, no tax shall be charged on the supply.

(3) The supply referred to in subsection (2) shall, in any other respect, be treated as a taxable supply and the rate at which tax is treated as charged on the supply shall be zero per cent.

(4) The Minister may, by order published in the *Gazette*, determine any supply of goods or services in Malaysia to be a zero-rated supply.

(5) Any order made under subsection (4) shall, at the next meeting of the Dewan Rakyat, be laid before the Dewan Rakyat and shall, at the expiration of one hundred and twenty days of being so laid or of such extended period as the Dewan Rakyat may by resolution direct, cease to have effect if and insofar as it is not confirmed by resolution passed by the Dewan Rakyat within the said one hundred and twenty days or, if such period has been extended, within such extended period.

(6) Where an order ceases to have effect in whole or in part as provided in subsection (5), any tax charged and levied in pursuance of the order or, as the case may be, of such part thereof as ceases to have effect shall, subject to subsections (7) and (8), be refundable to the persons by whom the tax was paid.

(7) Unless the Minister otherwise directs, no tax refundable under subsection (6) shall be refunded, unless the person by whom the tax was paid makes a claim in writing to the Director General within one year from the date on which the order ceases to have effect in whole or in part and the claim shall contain such particulars as the Director General may require.

(8) The Director General may reduce or disallow any tax refundable under subsection (6) to the extent that the refund would unjustly enrich the person by whom the tax was paid.

(9) Where any goods are claimed to have been or were to be exported and the supply of the goods is a zero-rated supply, not being goods zero-rated if supplied for home consumption and—

(a) the goods are found in Malaysia after the date on which they were claimed to have been or were to be exported; and

(b) the presence of the goods in Malaysia after that date has not been approved by the Director General,

the tax that would have been chargeable on the supply but for the zero-rating shall become due and payable forthwith by the supplier or by any person in whose possession the goods are found in Malaysia and the goods may be liable to seizure under this Act.

Exempt supply

18. (1) An exempt supply is a supply of any goods or services which shall not be subject to the imposition of tax under section 9.

(2) The Minister may, by order published in the *Gazette*, determine any supply of goods or services in Malaysia to be an exempt supply.

(3) Any order made under subsection (2) shall, at the next meeting of the Dewan Rakyat, be laid before the Dewan Rakyat and shall, at the expiration of one hundred and twenty days of being so laid or of such extended period as the Dewan Rakyat may by resolution direct, cease to have effect if and insofar as it is not confirmed by resolution passed by the Dewan Rakyat within the said one hundred and twenty days or, if such period has been extended, within such extended period.

(4) Where an order ceases to have effect in whole or in part as provided in subsection (3), any tax charged and levied in pursuance of the order, as the case may be, of such part thereof as ceases to have effect shall, subject to subsections (5) and (6), be refundable to the persons by whom the tax was paid.

(5) Unless the Minister otherwise directs, no tax refundable under subsection (4) shall be refunded, unless the person by whom the tax was paid makes a claim in writing to the Director General within one year from the date on which the order ceases to have effect in whole or in part and the claim shall contain such particulars as the Director General may require.

(6) The Director General may reduce or disallow any tax refundable under subsection (4) to the extent that the refund would unjustly enrich the person by whom the tax was paid.

PART IV

REGISTRATION

Registration of taxable person

19. (1) The registration of taxable persons under this Act shall be in accordance with the provisions of this Part and in the manner as may be prescribed.

(2) In this Part—

- (a) references to supplies are references to supplies made in the course or furtherance of business;
- (b) references to value of a supply of goods or services are references to value determined on the basis that no tax is chargeable on the supply or no flat rate addition is included in the consideration of the supply.

Liability to be registered

20. (1) The Minister may, by order published in the *Gazette*, specify the amount of taxable supply to give effect to the provisions of this section.

(2) Any order made under subsection (1) shall be laid before the Dewan Rakyat.

(3) Subject to subsections (5) and (6), any person who is not registered who makes any taxable supply is liable to be registered—

- (a) at the end of any month, where the total value of all his taxable supplies in that month and the eleven months immediately preceding the month has exceeded the amount of taxable supply specified under subsection (1); or
- (b) at the end of any month, where there are reasonable grounds for believing that the total value of all his taxable supplies in that month and the eleven months immediately succeeding the month will exceed the amount of taxable supply specified under subsection (1).

(4) Subject to subsections (5) and (6), where any business carried on by any taxable person is transferred to another person as a going concern under section 68 and the transferee is not registered at the time of the transfer, the transferee is liable to be registered at that time if—

- (a) the total value of all his taxable supplies in the period of twelve months immediately preceding the time of the transfer has exceeded the amount of taxable supply specified under subsection (1); or
- (b) there are reasonable grounds for believing that the total value of all his taxable supplies in the period of twelve months beginning from the time of the transfer will exceed the amount of taxable supply specified under subsection (1).

(5) In determining the value of any person's supply for the purposes of paragraphs (3)(a) and (4)(a), any supply made at the time when he was previously registered shall be disregarded if—

- (a) his registration was cancelled otherwise than under subsection 26(3); and
- (b) the Director General is satisfied that before his registration was cancelled, he had given all the information required by the Director General in order to determine whether to cancel the registration.

(6) In determining the value of any person's supplies for the purposes of subsections (3) and (4), the following supplies shall be excluded:

- (a) supplies of goods that are capital assets of the business in the course or furtherance of which they are supplied or to be supplied;
- (b) supplies of imported services;
- (c) supplies made in accordance with the Warehousing Scheme under section 70;
- (d) supplies made by a person who belongs in a country other than Malaysia or a recipient, in accordance with the Approved Toll Manufacturer Scheme under section 72; or

- (e) supplies made within or between designated areas under section 155 except where such supply is subject to an order under subsection 160(1).

Notification of liability and registration

21. (1) A person who is liable to be registered under subsection 20(3) shall notify the Director General of the liability by applying to be registered in the prescribed form within twenty-eight days from the end of the month referred to in paragraph 20(3)(a) or (b), as the case may be.

(2) The Director General shall register any person who notifies his liability under subsection (1) with effect from the first day of the following month in which the twenty-eighth day falls or from such earlier date as may be agreed between the Director General and him but such date shall not be earlier than the date he becomes liable to be registered.

(3) A person who is liable to be registered under subsection 20(4) shall notify the Director General of the liability by applying to be registered in the prescribed form within twenty-eight days from the time when the business is transferred.

(4) The Director General shall register any person who notifies his liability under subsection (3) with effect from the date when the business is transferred.

(5) Where a taxable person fails to comply with subsection (1) or (3)—

- (a) the Director General shall register him on the date as the Director General may determine but not earlier than the date his liability to be registered became known or made known to the Director General; and
- (b) the person shall be liable to pay a late registration penalty as imposed by the Director General from the date he should have been registered to the date immediately before the date he is so registered and hereinafter referred to as late registration period.

(6) The late registration penalty and the late registration period referred to in subsection (5) shall be as prescribed and subject to an amount of not less than one thousand and five hundred ringgit for a period within thirty days and not exceeding an amount of twenty thousand ringgit for a period of more than three hundred and sixty days.

(7) References to registration in this Part are references to registration in a register kept with the Director General in the form as he may determine for the purposes of this Act.

Cessation of liability to be registered

22. (1) Subject to subsection (2), any taxable person shall cease to be liable to be registered at the end of any month where the Director General is satisfied that the value of all his taxable supplies in the period of twelve months then beginning, will not exceed the amount of taxable supply specified under subsection 20(1).

(2) A person shall not cease to be liable to be registered by virtue of subsection (1) where the Director General is satisfied that the reason the value of all his taxable supplies will not exceed the amount of taxable supply specified under subsection 20(1) is that in the period in question he will cease making taxable supplies, or will suspend making them for a period of thirty days or more.

(3) In determining the value of any person's supplies for the purposes of subsection (1), the following supplies shall be excluded:

- (a) supplies of goods that are capital assets of the business in the course or furtherance of which they are supplied or to be supplied;
- (b) supplies of imported services;
- (c) supplies made in accordance with the Warehousing Scheme under section 70;
- (d) supplies made by a person who belongs in a country other than Malaysia or a recipient, in accordance with the Approved Toll Manufacturer Scheme under section 72; or

- (e) supplies made within or between designated areas under section 155 except where such supply is subject to an order under subsection 160(1).

Direction to treat persons as a single taxable person

23. (1) Without prejudice to section 20, where the Director General is satisfied that any separation of business activities is artificial resulting in an avoidance of tax, he may make a direction directing that the persons named in the direction be treated as a single taxable person carrying on the activities of the business described in that direction and that single taxable person shall be liable to be registered with effect from the date specified in the direction.

(2) For the purposes of subsection (1), in determining whether any separation of business activities is artificial, regard shall be had to the extent to which the different persons carrying on those business activities are closely bound to one another by financial, economic and organisational links.

(3) The Director General may make a direction naming any person if the Director General is satisfied—

- (a) that the person is making or has made taxable supplies;
- (b) that the activities in the course of which the person makes or has made those taxable supplies form only part of certain activities in the business and that the other activities in that business whether or not they are similar to the activities carried on by that person are being carried on concurrently or previously, or both, by one or more other persons; and
- (c) that if all the taxable supplies made in that business were taken into account, the person carrying on that business would, at the time of the direction, be required to be registered by virtue of section 20.

(4) Any direction made shall be served on each of the persons named in it.

(5) Where, after a direction had been given under this section by specifying a description of the business, it appears to the Director General that any person who has not been named in that direction is making taxable supplies in the course of activities which should be regarded as part of the business activities, the Director General may make and serve on that person a supplementary direction referring to the earlier direction and the description of business specified in it, and adding that person's name to those of the persons named in the earlier direction with effect from—

- (a) the date on which that person began to make the taxable supplies; or
- (b) the date specified in the earlier direction in which the single taxable person referred to is registered under subsection (1),

whichever is the later.

(6) Where, immediately before any direction, including a supplementary direction, is made, any person named in the direction is registered in respect of taxable supplies made by him as specified in subsection (3) or (5), his registration shall be revoked by the Director General with effect from the date the single taxable person is registered under subsection (1) and upon the revocation of his registration, he together with all the persons named in the direction shall be treated as a single taxable person under this section.

(7) In relation to a business specified in a direction, the persons named in the direction together with the person named in the supplementary direction relating to that business being the persons who together are to be treated as a single taxable person are referred to as “the constituent members” in subsections (8) and (9).

(8) Where any direction is made under this section—

- (a) the single taxable person carrying on the business specified in the direction shall be registered in the name to be jointly nominated by the persons named in the direction by notice in writing given to the Director General not later than fourteen days after the date of the direction or, in default of the nomination, in the name as may be specified in the direction;

- (b) any taxable supply made by one of the constituent members in the course of the activities of the single taxable person shall be treated as being a taxable supply made by the single taxable person;
- (c) each of the constituent members shall be jointly and severally liable for any tax due and payable by the single taxable person;
- (d) without prejudice to paragraph (c), any failure by the single taxable person to comply with any requirement imposed by or under this Act shall be treated as a failure by each of the constituent members severally; and
- (e) subject to paragraphs (a) to (d), the constituent members shall be treated as a partnership carrying on the business of the single taxable person and any question as to the scope of the activities of that business at any time shall be determined accordingly.

(9) Where it appears to the Director General that any person who is one of the constituent members should no longer be regarded as such for the purposes of paragraphs (8)(c) and (d) and the Director General gives notice in writing to that effect, that person shall not have any liability by virtue of those paragraphs for anything done after the date specified in that notice and accordingly on that date he shall be treated as having ceased to be a member of the partnership referred to in paragraph (8)(e).

Voluntary registration

24. (1) Where any person who is not liable to be registered satisfies the Director General that he is carrying on a business and he—

- (a) makes a taxable supply including a taxable supply which is disregarded under this Act; or
- (b) intends to make a taxable supply,

in the course or furtherance of that business, the Director General may, if the person applies in the prescribed form and subject to such conditions as the Director General deems fit to impose, register the person from such date as the Director General may determine and the person shall remain registered for a period of not less than two years or such other shorter period.

(2) Where any person who is not liable to be registered satisfies the Director General that he is carrying on a business and he—

- (a) makes a supply outside Malaysia which would be a taxable supply if made in Malaysia; or
- (b) intends to make a supply outside Malaysia which would be a taxable supply if made in Malaysia,

in the course or furtherance of that business, and in either case he—

- (A) has a business establishment in Malaysia or his usual place of residence is in Malaysia; and
- (B) does not make and does not intend to make a taxable supply in Malaysia,

the Director General may, if the person applies in a prescribed form and subject to such conditions as the Director General deems fit to impose, register the person from such date as the Director General may determine.

(3) The Director General may cancel the registration of a person under paragraph (1)(b) or (2)(b) if he does not begin to make a supply by the intended date in his application or if he is in breach of any condition imposed under subsection (1) or (2).

(4) The Director General may refuse any application for registration made under subsection (1) or (2) as he deems fit.

Notification of cessation of liability or voluntary registration

25. (1) A person registered under section 21 or subsection 24(1) who ceases to make or ceases to have the intention of making a taxable supply shall notify the Director General in writing of that fact and the date thereof within thirty days from the date of cessation or intention to cease.

- (2) A person registered under subsection 24(2) who—
- (a) ceases to make or ceases to have the intention of making a supply outside Malaysia which would be a taxable supply if made in Malaysia; or
 - (b) makes or intends to make a taxable supply in Malaysia,

shall notify the Director General in writing of that fact and the date thereof within thirty days from the date of the occurrence.

(3) Any person who contravenes subsection (1) or (2) commits an offence.

Cancellation of registration

26. (1) Where a registered person makes a request in writing to cancel his registration or makes a notification under section 25, the Director General may cancel the person's registration from such date as the Director General may determine if he is satisfied that the person can be deregistered.

(2) Where the Director General is satisfied that a registered person has ceased to be registrable, the Director General may cancel his registration with effect from the day on which he ceased to be registrable or from such later date as the Director General may determine.

(3) Where the Director General is satisfied that on the day on which a registered person was registered he was not registrable, the Director General may cancel his registration with effect from the date of notification in writing by the Director General.

(4) For the purposes of this section, "registrable" means liable to be registered under section 20 or eligible to be registered under section 24.

Group registration

27. (1) Two or more companies are eligible to be treated as members of a group if they satisfy the conditions as may be prescribed.

(2) Members of a group may apply in the prescribed form to the Director General to be treated as a group and every member shall, in that application, nominate a member to be their representative member.

(3) The Director General may, as he deems fit, approve or refuse any application made under subsection (2) and upon approval, impose conditions.

(4) The Director General may, as he deems fit, refuse to register the member nominated by the members of the group as the representative member.

(5) The registration of a group shall be in the name of the representative member.

(6) Where companies have been treated as a group—

(a) any taxable supply of goods or services by a member of the group to another member of the group shall be disregarded;

(b) any taxable supply of goods or services by or to a member of the group shall be treated as a supply by or to the representative member;

(c) any business carried on by a member of the group shall be treated as carried on by the representative member; and

(d) any importation of goods or supply of imported services by any member shall be treated as being imported by the representative member and any tax paid or due and payable by a member of the group on the importation of goods or supply of imported services shall be treated as paid or due and payable by the representative member.

(7) All members of the group shall be liable jointly and severally for any tax due and payable by the representative member.

(8) The Director General may cancel the registration of a group or terminate the treatment of a company as a member of a group as he deems fit.

Registration of partnership

28. (1) The registration—

- (a) of persons carrying on a business in a partnership shall be in the name of the firm; and
- (b) of the same persons carrying on separate businesses in a partnership may be in the separate names of the respective firms.

(2) In determining whether goods or services are supplied to or by the persons referred to in subsection (1), no account shall be taken of any change in the partnership.

(3) Any person who ceases to be a partner in a partnership shall—

- (a) notify the Director General in writing of the date of cessation within thirty days from the date of cessation; and
- (b) pay for the proportion of the partnership's liability on any tax due and payable on any supply of goods or services by the partnership until the date of cessation.

(4) Where any person ceases to be a partner in a partnership during any taxable period or is treated as so doing by virtue of subsection (3), any notice, whether of assessment or otherwise, which is served on the partnership and relates to the taxable period or to any other taxable period during the whole or part of which he was a partner in the partnership, shall be deemed as to have been served also on him.

(5) Notwithstanding any written law to the contrary, any notice, whether of assessment or otherwise, which is addressed to a partnership by the name in which it is registered under this Act, and is served in accordance with this Act shall be deemed as having been properly served on the partnership and accordingly, where subsection (4) applies, as having been properly served on any previous partner.

(6) Subsections (1) and (4) shall not affect the extent to which, under any other written law, a partner is liable for tax owed by the firm.

(7) Where a person is a partner in a firm during part only of a taxable period, his liability for tax on any supply of goods or services by the firm during the taxable period shall be the proportion of the firm's liability as may be just.

(8) Where any notice is required to be given by a partnership under this Act, it shall be the joint and several liability of all partners to give the notice, except that if a notice is given by any one partner, it shall be regarded as sufficient compliance with the requirement.

(9) Any person who contravenes paragraph 3(a) or 3(b) commits an offence.

(10) For the purposes of this section, a partnership excludes a limited liability partnership.

Registration of societies or similar organisation

29. (1) The registration of any society or similar organisation may be in the name of the society or similar organisation and in determining whether goods or services are supplied to or by the society or similar organisation, no account shall be taken of any change in its members.

(2) Where anything is required to be done under this Act by or on behalf of the society or similar organisation, the affairs of which are managed by a committee, or committee of its members, it shall be the joint and several responsibility of—

(a) every member holding office as president, chairman, treasurer, secretary or any similar office; or

(b) in default of any such member, every member holding office as a member of a committee,

except that if it is to be done or done strictly by any official or committee member, it shall be regarded as sufficient compliance with the requirement.

Registration of branches or divisions

30. (1) Where any business of a taxable person is carried on by one or more branches or divisions, that taxable person may apply for registration in the prescribed form to the Director General for any of the branches or divisions to be registered in the name of the branch or division.

(2) The Director General may approve an application made under subsection (1) subject to such conditions as he deems fit to impose if he is satisfied that the taxable person has fulfilled the following requirements:

- (a) the taxable person and all of the branches or divisions make wholly taxable supplies;
- (b) the taxable person is not a member of a group under section 27;
- (c) it is likely to cause real difficulty for the taxable person to submit a single return in respect of all the branches or divisions but for the separate registration;
- (d) each branch or division maintains a separate account in respect of its activities;
- (e) each branch or division is separately identifiable by reference to the nature of the activities carried on by or the location of the branch or division; and
- (f) each branch or division has the same taxable period.

(3) The Director General may, at any time by notice in writing to the registered person, cancel the registration approved under subsection (2) in respect of any or all of the branches or divisions if he is satisfied that—

- (a) the registered person has failed to comply with any condition imposed by the Director General under subsection (2);
- (b) any of the requirements referred to in subsection (2) has ceased to apply;
- (c) the registered person has provided any false, misleading or inaccurate declaration or information in his application under subsection (1); or
- (d) it is necessary for the protection of the revenue.

(4) Where the Director General cancels the registration in accordance with subsection (3), it shall have effect from the date of the cancellation as the Director General may determine.

(5) Subject to subsection (6), the taxable person may apply in writing to the Director General for any branch or division separately registered under subsection (2) to cease to be so registered, and the Director General may cancel the separate registration with effect from the date of application or from such later date as the Director General may determine.

(6) A taxable person registered under subsection (2) shall remain registered for a period of not less than two years or such other shorter period as the Director General may determine.

Personal representatives deemed to be taxable persons

31. (1) Where a taxable person—

- (a) dies;
- (b) goes into liquidation or receivership;
- (c) becomes bankrupt; or
- (d) becomes incapacitated,

the Director General may deem any personal representative carrying on the business in the interim to be a taxable person from the date the personal representative takes over until the time when a person is registered in respect of the business or in the case of incapacity, until the time as the incapacity ceases.

(2) Any requirement to pay tax on the personal representative carrying on the business referred to in subsection (1) shall apply to him to the extent of the assets over which he has control.

(3) The personal representative carrying on the business referred to in subsection (1) shall, within twenty-one days commencing to do so, notify in writing to the Director General of that fact and of the date of the death, liquidation, receivership, bankruptcy or the nature of the incapacity and the date on which it began.

(4) Notwithstanding any written law to the contrary, the personal representative carrying on the business referred to in subsection (1) shall, before disposing any of the assets of that taxable person, set aside a sum out of the assets as appears to the Director General to be sufficient to pay for any tax and penalty, if any, that is or will thereafter become due and payable or payable, as the case may be, in respect of any taxable supply of goods or services that have been supplied by that taxable person before the personal representative is deemed to be a taxable person carrying on the business in the interim and the personal representative shall pay for the tax and penalty.

(5) The personal representative carrying on the business referred to in subsection (1) who fails to comply with subsection (4) shall be personally liable to pay for the tax or penalty, that is or will thereafter become due and payable or payable, as the case may be.

(6) Where two or more personal representatives carry on the business referred to in subsection (1), the obligations and liabilities of the personal representatives shall be attached to all of them jointly and severally, subject to a right of contribution between themselves as in cases of contract.

(7) Any person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Exemption from registration for persons making or intending to make zero-rated supply

32. (1) Notwithstanding any provision of this Act, where any person who makes or intends to make a taxable supply satisfies the Director General that the supply is a zero-rated supply, the Director General may, if he deems fit and on that person's request, exempt the person from registration until the exemption is withdrawn.

(2) Where there is a change in the nature of the supply made by the person exempted from registration under subsection (1), he shall notify in writing to the Director General of the change within thirty days from the date on which it occurred.

PART V

ACCOUNTING, ASSESSMENT, RECOVERY, ETC.

Issuance of tax invoice

33. (1) Except as otherwise provided in this section, every registered person who makes any taxable supply of goods or services in the course or furtherance of any business in Malaysia shall issue a tax invoice containing the prescribed particulars in respect of the supply.

(2) Any registered person who—

(a) fails to issue a tax invoice; or

(b) issues a tax invoice which does not contain any of the prescribed particulars,

commits an offence.

(3) Notwithstanding subsection (1), the Director General may, upon request in writing and subject to conditions as he deems fit to impose, approve—

(a) any one or more of the prescribed particulars not to be contained on a tax invoice; or

(b) a tax invoice not to be issued if he is satisfied that it will not be appropriate for the registered person to issue a tax invoice:

Provided that in the case of paragraph (a), the registered person shall include the recipient's name and address in the tax invoice upon request by the recipient.

(4) Any registered person under subsection (3) who issues a tax invoice which does not contain any of the prescribed particulars as approved by the Director General under paragraph 3(a) or refuses to issue a tax invoice containing recipient's name and address upon request by the recipient commits an offence.

(5) Where a recipient who is a registered person provides a document to himself namely a self-billed invoice in respect of a supply of goods or services to him by another registered person, the recipient may apply in writing to the Director General for such self-billed invoice to be treated as a tax invoice if—

- (a) the value is not known by the supplier at the time of making the supply;
- (b) the supplier and the recipient are both registered persons;
- (c) the recipient and the supplier agree in writing to a self-billed invoice; and
- (d) the supplier and the recipient agree that the supplier shall not issue a tax invoice in respect of any supply to which this section applies,

and upon approval, the self-billed invoice shall contain prescribed particulars and the Director General may impose any of the prescribed conditions.

(6) Any recipient referred to in subsection (5) who—

- (a) issues a self-billed invoice without the approval of the Director General;
- (b) issues a self-billed invoice which does not contain any of the prescribed particulars; or
- (c) fails to comply with any prescribed condition imposed on him,

commits an offence.

(7) In the case where the self-billed invoice is issued before the time applicable under paragraph 11(2)(a) or 11(2)(b) or subsection 11(3), the self-billed invoice shall be issued with payment and failing which, the recipient commits an offence.

(8) Where goods described in subsection 65(4) or subparagraph 5(7) of the First Schedule are sold by auction or otherwise than by auction, the auctioneer or the person selling the goods shall issue a document containing the prescribed particulars of the tax chargeable and the document issued to the buyer shall be treated as a tax invoice provided by the taxable person by whom the goods are deemed to be supplied in accordance with subsection 65(4) or subparagraph 5(7) of the First Schedule.

(9) Any auctioneer or person selling the goods referred to in subsection (8) who fails to issue a document or issues a document without the prescribed particulars of the tax chargeable to the buyer commits an offence.

(10) No invoice showing an amount which purports to be a tax shall be issued—

(a) by any person—

(i) on any supply of goods or services which is not a taxable supply;

(ii) on any zero-rated supply; or

(b) by any person who is not a registered person.

(11) Any person who contravenes subsection (10) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both and a penalty of two times the amount of tax.

(12) A tax invoice under subsection (1) is not required to be issued where a registered person makes the following supply:

(a) a zero-rated supply; or

(b) a supply made without consideration on which tax is charged.

(13) Notwithstanding subsection (1), no tax invoice shall be issued for—

(a) any supply of second-hand goods under section 59;

(b) any supply of imported services; or

- (c) any supply of treated or processed goods which is deemed to have been supplied by the recipient under section 72.

(14) Any person who issues a tax invoice in contravention of subsection (13) commits an offence.

Production of tax invoices by computer

34. For the purposes of any provision under this Act in relation to a tax invoice, a registered person shall be treated as having issued a tax invoice to another person notwithstanding that there is no delivery of any equivalent document in paper form to the person if the requisite particulars are recorded in a computer and are—

- (a) transmitted or made available to the person by electronic means; or
- (b) produced on any material other than paper and is delivered to the person.

Credit note and debit note

35. Where any taxable supply is made by or to any registered person which involves the issuance and receipt of credit note or debit note under the prescribed circumstances and conditions, the registered person, whether he is the supplier or recipient of the taxable supply, shall make adjustments in his returns accordingly and the credit note and debit note shall contain the prescribed particulars.

Duty to keep records

36. (1) Every taxable person shall keep full and true records written up to date of all transactions which affect or may affect his liability to tax, including the following records:

- (a) all records of goods and services supplied by or to that taxable person including tax invoices, invoices, receipts, debit note, credit note and export declaration forms;
- (b) all records of importations of goods; and
- (c) all other records as the Director General may determine.

(2) Any record kept under this section shall be—

- (a) preserved for a period of seven years from the latest date to which the record relates;
- (b) in the national or English language; and
- (c) kept in Malaysia, except as otherwise approved by the Director General and subject to the conditions as he deems fit.

(3) Where the record is in an electronically readable form, the record shall be kept in such manner as to enable the record to be readily accessible and convertible into writing.

(4) Where the record is originally in a manual form and is subsequently converted into an electronic form, the record shall be retained in its original form prior to the conversion.

(5) A copy of the record shall be admissible in evidence in any proceedings to the same extent as the record itself.

(6) This section shall apply to any person, other than a taxable person, under subsection 13(3), section 58, paragraph 65(4)(b), and subsections 65(5) and 72(5).

(7) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Accounting basis

37. (1) For the purposes of section 41, every taxable person shall account for tax on an invoice basis in accordance with the time of supply under sections 11, 13, 70, 72 and 73.

(2) Notwithstanding subsection (1), the Director General may, upon application in writing by any registered person and subject to the prescribed conditions, approve the registered person to account for the tax on a payment basis in accordance with the prescribed manner.

(3) Where the registered person has been approved to account for the tax on a payment basis under subsection (2) and elects not to proceed with the payment basis, he may apply in writing to the Director General to account for the tax in accordance with subsection (1).

(4) The Director General may refuse to approve the application made under subsection (2) or (3) as he deems fit.

(5) The Director General may, by notice in writing, revoke the approval under subsection (2) under the prescribed circumstances.

(6) Where there is a change in the basis of accounting, the registered person shall make adjustment of the tax in the prescribed manner.

Credit for input tax against output tax

38. (1) Any taxable person is entitled to credit for so much of his input tax as is allowable under section 39 to be deducted from any output tax that is due from him.

(2) For the purposes of any tax on a taxable supply of goods or services to a taxable person, any flat rate addition included in the consideration of any supply acquired by a registered person from the approved person under section 74 shall be treated as a tax on the supply.

(3) Subject to subsections (4) and (5), where—

(a) no output tax is due at the end of any taxable period; or

(b) the amount of the credit entitled by virtue of subsection (1) to the taxable person exceeds the output tax,

the amount of the credit or the amount of credit that exceeds the output tax, as the case may be, shall be refunded to the taxable person by the Director General.

(4) The whole or any part of any input tax due as credit to any taxable person in any taxable period may be held over to be credited to any following or subsequent taxable period, either on the taxable person's own application in writing or on any direction given by the Director General.

(5) Where at the end of any taxable period any amount is due under subsection (3), the Director General may withhold payment of the amount if—

- (a) the taxable person fails to furnish the return under section 41 or to provide any information as required by the Director General; or
- (b) the Director General has reasonable grounds to believe that the amount should not be the amount due to the person.

(6) No deduction shall be made under subsection (1) nor shall any refund be made under subsection (3), except on a claim made in the prescribed manner and within the prescribed time.

(7) Where any taxable person has made no taxable supply during a taxable period or any previous taxable period, any refund to be made under subsection (3) shall be made subject to the conditions imposed by the Director General as he deems fit.

(8) Subject to subsections (5) and (7), any refund to be made by the Director General under subsection (3) shall be made within the prescribed time.

(9) Except as the Director General may otherwise allow, where—

- (a) a taxable person fails to pay his supplier the consideration or any part thereof for the supply of any goods or services made by his supplier to him at the end of the period of six months following the date of supply; and
- (b) the taxable person has credited under subsection (1) or been refunded under subsection (3) the input tax to which the consideration or the part thereof which he failed to pay relates,

the taxable person shall account of an amount equal to the input tax which shall be deemed as his output tax.

(10) The taxable person shall account the amount deemed as output tax under subsection (9) in the taxable period after the period of six months has elapsed and in accordance with the method which he was required to use when he first credited the input tax and he shall repay the amount to the Director General at the same time as any tax in respect of the taxable period would be due and payable by him.

(11) Where a taxable person—

(a) has complied with subsection (10); and

(b) pays his supplier the consideration or any part thereof for the supply of goods or services referred to in paragraph (9)(a),

the taxable person shall be entitled to treat an amount equal to the input tax relating to the payment referred to in paragraph (b) as if it were an input tax for the taxable period during which the payment was made.

(12) The whole or any part of tax charged on any supply of goods or services or importation of goods, as may be prescribed, shall be excluded from any credit under this section.

Amount of input tax allowable

39. (1) The amount of input tax for which any taxable person is entitled to credit in any taxable period shall be so much of the input tax for the period that is allowable and reasonable to be attributable, as may be prescribed, to the following supplies made or to be made by the taxable person in the course or furtherance of any business in Malaysia:

(a) any taxable supply, including a taxable supply which is disregarded under this Act;

(b) any supply made outside Malaysia which would be a taxable supply if made in Malaysia; or

(c) any other supply as may be prescribed.

(2) Input tax attributable to any exempt supply shall be treated as input tax attributable to a taxable supply—

- (a) where the value of all exempt supplies would be less than the prescribed amount and less than the prescribed proportion of the total value of all supplies; or
- (b) in other prescribed circumstances.

Taxable period

40. (1) For the purposes of determining a taxable period for a taxable person—

- (a) in the case where the total value of all his taxable supplies in the period of twelve months is five million ringgit or more, the first taxable period shall begin from the date he should have been registered under section 21 and end on the last day of the month he should have been registered and the subsequent taxable period shall be a period of one month ending on the last day of any month of any calendar year; or
- (b) in the case where the total value of all his taxable supplies in the period of twelve months is less than five million ringgit, the first taxable period shall begin from the date he should have been registered under section 21 and end on the last day of the two months period following the month in which he should have been registered and the subsequent taxable period shall be a period of three months ending on the last day of any month of any calendar year.

(2) A taxable person may apply in writing to the Director General for a taxable period other than the period as determined under subsection (1).

(3) The Director General may, upon receiving any application under subsection (2), allow or refuse the application and where the Director General—

- (a) allows the application, the taxable period shall be the period as applied for; or
- (b) refuses the application, the taxable period shall remain as determined under subsection (1) or any period as the Director General deems fit to direct.

(4) The Director General may, as he deems fit, reassign the taxable person to any taxable period other than the period to which he has been previously determined under subsection (1) or assigned under subsection (3) or (5).

(5) Notwithstanding subsection (1), the Director General may, upon an application in writing, vary the length of any taxable period or the date on which any taxable period begins or ends if he considers it necessary in the circumstances of any particular case.

Furnishing of returns and payment of tax

41. (1) Every taxable person shall, in respect of his taxable period, account for the tax in a return as may be prescribed and the return shall be furnished to the Director General in the prescribed manner not later than the last day of the month following after the end of his taxable period to which the return relates.

(2) Where a taxable period has been varied under subsection 40(5) and notwithstanding subsection (1), the return shall be furnished not later than the last day of the thirty days from the end of the varied taxable period.

(3) Any person who—

(a) ceases to be liable to be registered under section 20; or

(b) ceases to be registered under section 24,

shall, not later than thirty days after so ceasing or such later date as the Director General may allow, furnish a return containing particulars as the Director General may determine in respect of that part of the last taxable period during which the person was registered.

(4) Any taxable person who is required to furnish a return under this section shall pay to the Director General the amount of tax due and payable by him in respect of the taxable period to which the return relates not later than the last day on which he is required to furnish the return.

(5) The return referred to in subsections (1), (2) and (3) shall be furnished whether or not there is tax to be paid.

(6) Any person who fails to furnish the return as required under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(7) Any person who fails to pay to the Director General the amount of tax due and payable under subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Furnishing of declarations and payment of tax by person other than a taxable person

42. (1) Where any person other than a taxable person is liable for tax under subsection 13(3), section 58, paragraph 65(4)(b), subsections 65(5) and 72(5), the person shall—

- (a) account for the tax in a declaration as may be prescribed and the declaration shall be furnished to the Director General; and
- (b) pay to the Director General the amount of tax due and payable by him,

not later than the last day of the subsequent month from the month in which the supply is made or treated as taken place or payment is received under those provisions.

(2) Any person who contravenes subsection (1) in respect of paragraph (a) commits an offence.

(3) Any person who contravenes subsection (1) in respect of paragraph (b) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Power to assess

43. (1) Where any taxable person—

- (a) fails to apply for registration under section 21;
- (b) fails to furnish a return under section 41; or
- (c) furnishes a return which to the Director General appears incomplete or incorrect,

the Director General may assess to the best of his judgement the amount of tax due and payable from the taxable person and shall forthwith notify him of the assessment in writing.

(2) Where an amount has been paid to any person as being refund of tax under subsection 38(3) and Part VII which ought not to have been paid to him, the Director General may assess the amount as being tax due and payable from him and shall forthwith notify him of the assessment in writing.

(3) The assessment under subsections (1) and (2) shall not be made more than six years from the date on which the tax was due and payable or from the date on which the refund was made, as the case may be, except where in the opinion of the Director General any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to tax, the Director General may, for the purposes of making good any loss of tax or payment of refunds of tax attributable to the fraud or wilful default, make an assessment at any time.

(4) Where any taxable person has been supplied with or has obtained control of any goods or has imported any goods in the course or furtherance of a business, the Director General may require him to account for the goods.

(5) Where the taxable person fails to account for the goods under subsection (4) by reason that:

- (a) the goods have been supplied by him;
- (b) the goods are available to be supplied by him;
- (c) the goods have been exported or removed by way of supply; or
- (d) the goods have been lost or destroyed,

the Director General may assess to the best of his judgement the amount of tax that would have been chargeable in respect of the supply of the goods if they had been supplied by him and shall forthwith notify the taxable person of the assessment in writing.

(6) Where—

- (a) the Director General has made an assessment under subsection (1) in respect of paragraph (1)(a) or (b);
- (b) the tax assessed has been paid but no return has been furnished for the period to which the assessment relates; and
- (c) the person fails to furnish a return for any subsequent taxable period,

the Director General may, as he deems fit, assess an amount of tax greater than that which he otherwise would have considered to be appropriate.

(7) Where it appears to the Director General that the amount which ought to have been assessed in an assessment under this section exceeds the amount which was so assessed, he may—

- (a) under the same provision as that assessment was made; and
- (b) within the period during which that assessment could have been made,

make a supplementary assessment of the amount of the excess and shall forthwith notify the person in writing accordingly.

(8) Where an amount has been assessed and notified to any person under subsection (1), (2), (5) or (7), it shall be deemed to be an amount of tax due and payable from him and may be recovered accordingly and the amount of tax shall be paid by the person, whether or not that person appeals against the assessment, to the Director General unless or except to the extent that the assessment has been withdrawn or reduced.

(9) The Director General may make any alteration in or addition to the assessment made under this section as he deems fit to ensure the correctness thereof and shall forthwith notify the person in writing.

Director General may disregard or vary certain arrangements

44. (1) Where the Director General is satisfied that the purpose or effect of any arrangement is directly or indirectly to—

- (a) alter the incidence or postpone the time due of any tax which is due and payable by or which would otherwise have been due and payable by any person;
- (b) relieve any person from any liability to pay tax or to furnish a return;
- (c) reduce or avoid any liability imposed or which would otherwise have been imposed on any person by this Act;
- (d) obtain any credit or refund of input tax or any increase thereof for any person which would not otherwise have been obtained; or
- (e) hinder or prevent the operation of this Act in any respect,

the Director General may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the arrangement and make such adjustments as he deems fit to counteract any tax advantage obtained or obtainable by that person from or under the arrangement.

(2) For the purposes of this section the Director General may deem—

- (a) any person other than a taxable person who is a party to or has participated in any arrangement, to be a taxable person;
- (b) any supply of goods or services, whether or not a taxable supply, that is affected by or is part of any arrangement, made to and made by any taxable person or a person deemed to be a taxable person under paragraph (a), to be a taxable supply;

- (c) any supply of goods or services that, but for any arrangement affected by this section, would have been the taxable period in which the supply was made, to take place in any taxable period;
- (d) any supply of goods or services, that is affected by or is part of any arrangement, to have been made, or consideration for the supply to be given, at open market value.

(3) This section shall not apply to any arrangement carried out for *bona fide* commercial reasons and had not as one of its main purposes the obtaining of any tax advantage.

(4) For the purposes of this section, “tax advantage” includes—

- (a) any avoidance or reduction in the liability of any person to pay tax;
- (b) any increase in the entitlement of a person to a credit or refund of input tax;
- (c) any reduction in the total consideration payable by any person in respect of any supply of goods or services; or
- (d) any postponement of the time when tax is due and payable.

Offsetting unpaid tax against refund

45. Notwithstanding any provision of this Act, where any person has failed to pay, in whole or in part—

- (a) any amount of tax due and payable, any surcharge accruing, or any penalty, fee or other money payable under this Act;
- (b) any amount of sales tax due and payable, any surcharge accruing, or any penalty or other money payable under the Sales Tax Act 1972 [*Act 64*];

- (c) any amount of service tax due and payable, any surcharge accruing, or any penalty or other money payable under the Service Tax Act 1975 [Act 151]; or
- (d) any amount of customs duty or excise duty,

the Director General may offset, against the unpaid amount referred to in paragraphs (a), (b), (c) or (d), any amount or any part of any amount refundable other than the special refund under section 190 to that person and the Director General shall treat the amount offset as payment or part payment received from that person.

Recovery of tax, etc., as a civil debt

46. (1) Without prejudice to any other remedy and notwithstanding any appeal against any decision of the Director General under section 126, any tax due and payable, any penalty payable, any surcharge accruing, any fee or any other money payable under this Act may be recovered by the Minister as a civil debt due to the Government.

(2) Where an invoice shows a supply of goods or services as having taken place with tax chargeable on the supply, there shall be recoverable from the person who issued the invoice an amount equal to—

- (a) that which is shown on the invoice as tax; or
- (b) if the tax is not separately shown, so much of the total amount shown as payable as is to be taken as representing tax,

on the supply.

(3) Subsection (2) shall apply whether or not—

- (a) the invoice is a tax invoice issued under section 33;
- (b) the supply shown on the invoice actually takes or has taken place or the amount shown as tax or any amount of tax is or was chargeable on the supply; or
- (c) the person issuing the invoice is a taxable person,

and any amount recoverable from the person under subsection (2) shall be recoverable as such and shall otherwise be recoverable as a civil debt due to the Government.

(4) In any proceedings to recover the tax, penalty, surcharge, fee or other money under subsection (1), the production of a certificate signed by the Director General that any tax, penalty, surcharge, fee or other money and the amount shown thereof as due in any return, assessment or notice made under this Act from a person named therein and giving the address of the person and purporting to be a copy of or an extract from any notice of assessment shall be conclusive evidence of the making of the assessment and shall be sufficient authority for the court to give judgement for that amount.

(5) Any penalty, surcharge, fee or other money imposed under this Act shall, for the purposes of this Act and the Limitation Act 1953 [*Act 254*], the Limitation Ordinance of Sabah [*Sabah Cap. 72*] and the Limitation Ordinance of Sarawak [*Sarawak Cap. 49*], as the case may be, be recoverable as if it were tax due and payable under this Act and accordingly subsection 6(4) of the Limitation Act 1953, section 3 of the Limitation Ordinance of Sabah and section 3 of the Limitation Ordinance of Sarawak, as the case may be, shall not apply to the penalty, surcharge, fee or other money.

Seizure of goods for the recovery of tax, etc.

47. (1) Without prejudice to section 43, any goods belonging to the person referred to in section 43 which may be in excise control or customs control or at his place of business may be seized until the tax, penalty, surcharge, fee or other money, or the deficient tax, penalty, surcharge, fee or other money, are paid, or the refund erroneously paid to him is repaid.

(2) Notwithstanding section 51, the Director General may seize or sell any goods belonging to the person liable to pay the tax, penalty, surcharge, fee or other money for recovery of the amount due and payable under section 43 and accrued under section 51 or any outstanding balance thereof.

(3) Where the tax, penalty, surcharge, fee or other money or deficiency, or the refund to be repaid remain unpaid, as the case may be, the Director General may—

- (a) after giving not less than thirty days' notice in writing to the owner or his agent if the name and address of the owner or agent is known to him; or
- (b) after due notice in the *Gazette* if the name and address of the owner or agent is not known to him,

sell the goods.

(4) The proceeds of the sale of any such goods shall be applied to the payment of the tax, penalty, surcharge, fee and other money or deficient tax, penalty, surcharge, fee or other money payable or the refund erroneously paid or other charges which may be due in respect of selling off such goods and the surplus, if any, shall be paid to the owner of such goods and if the owner cannot be found within one month of the sale, such surplus shall be paid into the Federal Consolidated Fund.

(5) Where at the sale of any such goods no sufficient bid is forthcoming to defray the tax, penalty, surcharge, fee or other money payable or deficient tax, penalty, surcharge, fee or other money payable or the refund erroneously paid, as the case may be, the goods shall be forfeited to the Government and shall be disposed of in such manner as the Director General may direct.

(6) Every auction sale under this section—

- (a) shall be conducted by or in the presence of a senior officer of goods and services tax; and
- (b) may be conducted electronically in the manner as the Director General may determine.

Power to collect tax, etc., from person owing money to taxable person

48. (1) Where any tax is due and payable, surcharge is accrued, or penalty, fee or other money is payable by any taxable person, the Director General may, by notice in writing a copy of which shall be forwarded to the taxable person at his last-known place of address, require—

- (a) any person by whom any money is due or accruing or may become due and payable to the taxable person;

- (b) any person who holds or may subsequently hold money for or on account of the taxable person;
- (c) any person who holds or may subsequently hold money for or on account of some other person for payment to the taxable person; or
- (d) any person having authority from any other person to pay money to the taxable person,

to pay to the Director General forthwith, or within the time as the Director General allows, the money not being salary or wages due or accruing due to the taxable person or so much thereof as is sufficient to pay the tax due and payable, surcharge accrued, or penalty, fee or other money payable, if any, by the taxable person as aforesaid.

(2) All payments made pursuant to any notice under this section shall be deemed to be made on behalf of the taxable person and with the authority of the taxable person and all other persons concerned.

(3) For the purposes of this section, the Director General may require any person to give him information as to any money, fund or asset which may be held by the person for or of any money due and payable by him to any other person.

Recovery of tax from persons leaving Malaysia

49. (1) Where the Director General has reason to believe that any person is about or is likely to leave Malaysia without paying—

- (a) any tax due and payable by him;
- (b) any penalty payable under section 21;
- (c) any surcharge which has accrued under section 51;
- (d) any fee payable under sections 77, 170 and 173; or
- (e) any other money recoverable from him under this Act,

the Director General may issue to any Director of Immigration a notice containing particulars of the person and the offence committed with a request that the person be prevented from leaving Malaysia unless and until he pays the tax, penalty, surcharge, fee or any other money, or furnishes security to the satisfaction of the Director General for their payment.

(2) Subject to any order issued or made under any written law for the time being in force relating to immigration, any Director of Immigration who receives a notice under subsection (1) in respect of a person shall exercise all measures which may include the removal and retention of any certificate of identity, passport, exit permit or other travel document in relation to that person as may be necessary to give effect to the notice.

(3) The Director General shall cause the notice issued under subsection (1) to be served personally or by registered post on the person to whom the notice relates:

Provided that the non-receipt of the notice by that person shall not invalidate anything done under this section.

(4) Where the person in respect of whom a notice has been issued under subsection (1) produces on or after the date of the notice a written statement signed by the Director General stating that any tax, penalty, surcharge, fee or any other money specified in the notice have been paid or that security has been furnished for its payment, the statement shall be sufficient authority for allowing that person to leave Malaysia.

(5) No legal proceedings shall be instituted or maintained against the Federal Government, a State Government or any public officer in respect of anything lawfully done under this section.

(6) For the purposes of this section, “Director of Immigration” means the Director of Immigration appointed under subsection 3(1A) of the Immigration Act 1959/1963 [*Act 155*].

Power to require security

50. Where it appears to the Director General requisite to do so for the due compliance with the provisions of this Act and generally for the protection of the revenue, the Director General may require any person to give security or further security of such amount in such manner as the Director General may determine for the payment of any tax which is or may become due and payable from him.

Payment by instalments

51. (1) The Director General may allow any tax or penalty to be paid by instalments, under the prescribed circumstances in such amounts and on such dates as the Director General may determine.

(2) Where there is a default in the payment of any one instalment on its due date for the payment of the balance of the amount due and payable or payable, the whole outstanding balance shall become due and payable or payable on that date and shall, without any further notice being served on the person liable to pay the amount due, be subject to a surcharge equal to ten per cent of that balance and the surcharge shall be recoverable as if it were due and payable or payable under this Act.

Imported goods not to be released until tax paid

52. Any imported goods shall not be released from the customs control until the tax on those goods has been paid in full except as otherwise allowed by the Director General.

Liability of directors, etc.

53. (1) Notwithstanding any written law to the contrary, but subject to subsection (2) in relation to a company that is being wound up, where tax is due and payable, surcharge is accrued, or penalty, fee or any other money is payable, under this Act by a company, limited liability partnership, a firm, a society or other body of persons—

- (a) the directors of the company;
- (b) the compliance officer who is appointed amongst the partners of the limited liability partnership or if no compliance officer is appointed as such, any one or all of the partners thereof;
- (c) the partners of the firm; or
- (d) officials or committee members of the society or other body of persons,

as the case may be, shall together with the company, limited liability partnership, firm, society or other body of persons be jointly and severally liable for the tax, surcharge, penalty, fee or any other money.

(2) In relation to a company that is being wound up, the directors of the company shall only be liable where the assets of the company are insufficient to meet the amount due, after paying any sums having priority under the Companies Act 1965 [Act 125] in relation to the application of the assets of the company in the winding-up over the tax, surcharge, penalty, fee or any other money.

PART VI

FUND FOR GOODS AND SERVICES TAX REFUND

Establishment of Fund for Goods and Services Tax Refund

54. (1) A fund to be known as the Fund for Goods and Services Tax Refund (in this section referred to as “the Fund”) is established which shall be specified in and incorporated into the Second Schedule to the Financial Procedure Act 1957 [Act 61].

(2) There shall be paid into the Fund the amount of tax collected under this Act as may be authorized by the Minister.

(3) The moneys of the Fund shall be applied for the making of any refund under section 38 and Part VII.

(4) The Fund shall be administered by the Accountant General of Malaysia.

(5) Notwithstanding subsection (2) and the provisions of the Financial Procedure Act 1957, the Minister may authorize the payment into the Consolidated Revenue Account in the Federal Consolidated Fund of all or part of the moneys of the Fund.

Non-applicability of section 14A of the Financial Procedure Act 1957

55. Section 14A of the Financial Procedure Act 1957 shall not apply to any refund under section 38 and Part VII.

PART VII

RELIEF, REFUND AND REMISSION

Power of Minister to grant relief

56. (1) The Minister may, by order in the *Gazette* and subject to such conditions as he deems fit to impose, relieve any person or class of persons from the payment of the whole or any part of the tax which may be charged and levied on any taxable supply of goods or services or any importation of goods or class of goods.

(2) Any order made under subsection (1) shall be laid before the Dewan Rakyat.

(3) The Minister may, in any particular case and subject to such conditions as he deems fit to impose—

(a) relieve any person or class of persons from the payment of the whole or any part of the tax which may be charged and levied on any taxable supply of goods or services or any importation of goods or class of goods; or

(b) relieve any taxable person or class of taxable persons from charging and collecting tax on any taxable supply of goods or services.

(4) Where a taxable person supplies goods or services to a person or a class of persons referred to in subsection (1) or paragraph (3)(a), the taxable person shall be relieved from charging and collecting tax due and payable on the supply.

(5) Where any person who is granted relief under subsection (1) or paragraph (3)(a) fails to comply with the condition subject to which the relief was granted, any tax that has been the subject of the relief shall become due and payable by the person at the time when the condition ceased to be fulfilled.

(6) Where a recipient is a taxable person who has not paid tax on his acquisition or importation by virtue of—

(a) relief from payment of tax under subsection (1) or paragraph 3(a); or

- (b) another taxable person making a taxable supply to him is relieved from charging tax under paragraph 3(b),

such recipient shall be deemed to have incurred and claimed input tax on the supply.

Refund of tax, etc., overpaid or erroneously paid

57. (1) Any person who has overpaid or erroneously paid any tax, surcharge, penalty, fee or any other money may make a claim thereof in the prescribed form to the Director General within six years from the time the overpayment or erroneous payment occurred and the Director General may refund the tax, surcharge, penalty, fee or any other money, as the case may be, after being satisfied that the person has properly established the claim.

(2) The Director General may reduce or disallow any refund due under this section to the extent that the refund would unjustly enrich the person referred to in subsection (1).

(3) A claim under this section shall be supported by such evidence as required by the Director General.

(4) Except as provided by this section, the Director General shall not be liable to refund an amount paid to the person referred to in subsection (1) by way of tax by virtue of the fact that it was not tax due and payable to him.

(5) This section shall not apply to a claim for refund under sections 10, 17 and 18.

Bad debt relief

58. (1) Subject to regulations made under this Act, any person who is or has ceased to be a taxable person may make a claim to the Director General for a relief for bad debt on the whole or any part of the tax paid by him in respect of the taxable supply if—

- (a) the person has not received any payment or part of the payment in respect of the taxable supply from the debtor six months from the date of supply or the debtor has become insolvent before the period of six months has elapsed; and

(b) sufficient efforts have been made by him to recover the debt.

(2) Where the person referred to in subsection (1)—

(a) has not received any payment in respect of the taxable supply, the person may make a claim for the whole of the tax paid; or

(b) has received part of the payment in respect of the taxable supply, the person may make a claim for an amount calculated in accordance with the following formula:

$$\frac{A1}{B} \times C$$

where A1 is the payment not received in respect of the taxable supply;

B is the consideration for the taxable supply; and

C is the tax due and payable on the taxable supply.

(3) Where a relief for bad debt has been made by the Director General to a person and any payment in respect of the taxable supply for which the tax is due and payable is subsequently received by the person, the person shall repay to the Director General an amount calculated in accordance with the following formula:

$$\frac{A2}{B} \times C$$

where A2 is the payment received in respect of the taxable supply;

B is the consideration for the taxable supply; and

C is the tax due and payable on the taxable supply.

Relief for secondhand goods

59. (1) Any taxable person may secure a reduction of any tax chargeable on any supply of prescribed goods in cases where on the previous supply of such goods—

(a) no tax was chargeable; or

(b) tax was chargeable in accordance with this section.

(2) The tax chargeable on the supply of goods referred to in subsection (1) shall be reduced to the tax charged as if the supply of prescribed goods was for a consideration equal to the excess of X - Y,

where X is the consideration for which the goods are supplied; and

Y is the consideration for which the goods were acquired,

and where there is no excess, tax shall not be charged.

(3) This section shall extend to cases where the previous importation or sale of prescribed goods was taxable under the Sales Tax Act 1972.

(4) For the purposes of this section, references to a supply of prescribed goods where no tax was chargeable include references to the matters under paragraph 4 of the Second Schedule.

Recovery of tax, etc., erroneously refunded

60. Where any tax, surcharge, penalty, fee or any other money after having been paid has been erroneously refunded to any person, the person shall pay the refund erroneously paid to him upon a demand made by the Director General within six years from the date on which the refund was made.

Tourist Refund Scheme

61. (1) There shall be a scheme to be known as “Tourist Refund Scheme” which allows any tourist who qualifies to claim a refund on tax paid on certain goods purchased in Malaysia from an approved outlet.

(2) The Minister may appoint any person to be an approved refund agent subject to the prescribed conditions as he deems fit to impose.

(3) The operation of the Tourist Refund Scheme shall be as prescribed by the Minister.

Remission of tax, etc.

62. (1) The Minister may remit the whole or any part of the tax due and payable under this Act where he deems fit.

(2) The Director General may remit the whole or any part of the penalty payable or surcharge accrued under this Act where it is just and equitable to do so.

(3) Where a person who has been granted remission under subsections (1) and (2) has paid any of the tax, surcharge or penalty to which the remission relates, he shall be entitled to a refund of the amount of tax, penalty or surcharge which had been remitted.

Remission of tax on goods lost, etc., under customs control

63. (1) Where any imported goods are—

- (a) by an unavoidable accident, lost, damaged or destroyed; or
- (b) lost through theft or evaporation,

at any time after the arrival of the imported goods in Malaysia but before removal from customs control, the Director General may remit the whole or any part of any tax due and payable on the imported goods.

(2) After removal of any goods from customs control, no abatement of any tax charged on the importation of the goods shall be allowed—

- (a) on account of loss or damage; or
- (b) on account of any claim that the weight, measure, volume or value as determined by the Director General for the purposes of ascertaining the tax on the goods, or any other factor affecting the goods, is incorrect,

unless notice in writing of the claim has been given to the Director General by any claimant at or before the time of the removal.

PART VIII

SPECIAL CASES

Non-application to Government

64. (1) This Act shall not apply in relation to any supply of goods or services made by—

- (a) the Federal Government and State Governments, unless the Minister otherwise directs in an order in the *Gazette*; or
- (b) any local authority and statutory body in respect of its regulatory and enforcement functions.

(2) For the purposes of subsection (1), the local authority or statutory body is taken to perform its regulatory and enforcement functions where—

- (a) the local authority or statutory body is given powers by any written law expedient for or in connection with the performance of its regulatory and enforcement functions; and
- (b) the supply made by the local authority or statutory body is not of the same kind or similar to a taxable supply made by any other person in the course or furtherance of a business.

Agents

65. (1) Where goods or services are supplied by an agent acting on behalf of a principal, the supply shall be deemed to be made by the principal and not by the agent.

(2) Where goods or services are supplied to an agent acting on behalf of a principal, the supply shall be deemed to be made to the principal and not to the agent.

(3) Where goods or services are supplied through an agent acting in his own name, the supply shall be treated as a supply to the agent and as a supply by the agent.

(4) Notwithstanding subsection (3), where an agent is acting in his own name as an auctioneer and the goods are not the goods described under subparagraph 5(7) of the First Schedule—

- (a) a supply by a principal who is a taxable person to the auctioneer shall be disregarded; and
- (b) the supply made by the auctioneer shall be treated as a supply made by the principal and the auctioneer whether or not he is a taxable person shall be liable for any tax due and payable on the supply.

(5) Where goods are deemed to be supplied by a taxable person pursuant to subparagraph 5(7) of the First Schedule, any person, whether or not he is a taxable person, who sells the goods in satisfaction of any debt owed by that taxable person, shall be liable for any tax due and payable on the supply.

(6) Where a person who does not belong in Malaysia makes a taxable supply in Malaysia and is liable to be registered under section 20 or intends to be registered under section 24, he shall appoint an agent to act on his behalf and such agent, whether or not he is a taxable person, shall be liable for the tax and comply with any other requirements imposed under this Act as if the agent is a person who does not belong in Malaysia.

(7) Where an agent has been appointed under subsection (6), the Director General may, with reasonable cause, direct the person who does not belong in Malaysia, by giving a notice in writing to appoint another agent to act on his behalf.

(8) For the purposes of subsection (6), a person shall be treated as not belonging in Malaysia if—

- (a) he has no business establishment or other fixed establishment in Malaysia;
- (b) he has no business establishment or other fixed establishment in any country and his usual place of residence is not in Malaysia; or
- (c) he has a business establishment or other fixed establishment both in Malaysia and elsewhere and his establishment which is most directly concerned with the supply is not in Malaysia,

and for the purposes of paragraphs (a), (b) and (c), a fixed establishment in Malaysia or in any other country includes a branch or an agency through which a person carries on a business in Malaysia or in that other country, as the case may be.

(9) Where goods are imported and supplied by an agent who is a taxable person acting on behalf of a principal who is a person other than a taxable person, the goods shall be deemed to be imported and supplied by the agent.

Supplies spanning change in rate or description

66. (1) Notwithstanding section 11, this section shall apply where there is a change in the—

- (a) rate of tax fixed under section 10;
- (b) description of the supply of goods or services determined as zero-rated supply under section 17; or
- (c) description of the supply of goods or services determined as exempt supply under section 18.

(2) Where there is a change in the rate of tax fixed under section 10, the rate at which the tax is chargeable on any supply spanning the change in the rate of tax shall be as follows:

- (a) tax shall be charged at the old tax rate on the higher of the following amounts:
 - (i) full payment or part payment received before the date of change in the rate of tax; or
 - (ii) value of the supply of goods where the goods are wholly or partly removed or made available or the services are wholly or partly performed before the date of change in the rate of tax; and
- (b) tax shall be charged at the new tax rate on the difference, if any, between the amount of the whole supply and the amount referred to in paragraph (a).

(3) Where there is a change in the description of the supply of goods or services determined as zero-rated supply under section 17, the rate at which tax is chargeable on the supply spanning the change in the description shall be as follows:

(a) in the case of a zero-rated supply being changed to a standard-rated supply and spans the change—

(i) no tax shall be charged on the higher of the following amounts:

(aa) full payment or part payment received before the date of change in the description; or

(bb) value of the zero-rated supply of goods where the goods are wholly or partly removed or made available or the services are wholly or partly performed before the date of change in the description; and

(ii) tax shall be charged on the difference, if any, between the amount of the whole supply and the amount referred to in subparagraph (a)(i);

(b) in the case of a standard-rated supply being changed to a zero-rated supply and spans the change—

(i) tax shall be charged on the higher of the following amounts:

(aa) full payment or part payment received before the date of change in the description; or

(bb) value of the standard-rated supply of the goods where the goods are wholly or partly removed or made available or the services are wholly or partly performed before the date of change in the description; and

(ii) no tax shall be charged on the difference, if any, between the amount of the whole supply and the amount referred to in subparagraph (b)(i).

(4) Where there is a change in the description of the supply of goods or services determined as an exempt supply under section 18, the rate at which tax is chargeable on the supply spanning the change in the description shall be as follows:

(a) in the case of an exempt supply being changed to a taxable supply and spans the change—

(i) no tax shall be charged on the higher of the following amounts:

(aa) full payment or part payment received before the date of change in the description; or

(bb) value of the exempt supply of goods where the goods are wholly or partly removed or made available or the services are wholly or partly performed before the date of change in the description; and

(ii) tax shall be charged on the difference, if any, between the amount of the whole supply and the amount referred to in subparagraph (a)(i);

(b) in the case of a taxable supply being changed to an exempt supply and spans the change—

(i) tax shall be charged at the old tax rate on the higher of the following amounts:

(aa) full payment or part payment received before the date of change in the description; or

(bb) value of the taxable supply of the goods where the goods are wholly or partly removed or made available or the services are wholly or partly performed before the date of change in the description; and

(ii) no tax shall be charged on the difference, if any, between the amount of the whole supply and the amount referred to in subparagraph (b)(i).

(5) For the purposes of this section—

- (a) any supply spanning the change in the rate of tax or description refers to any supply where—
- (i) full payment is received before the date of change in the rate of tax or description and the goods are wholly removed or made available or the services are wholly performed after the date;
 - (ii) full payment is received after the date of change in the rate of tax or description and the goods are wholly removed or made available or the services are wholly performed before the date;
 - (iii) full payment is received before the date of change in the rate of tax or description and the goods are partly removed or made available or the services are partly performed before and after the date;
 - (iv) full payment is received after the date of change in the rate of tax or description and the goods are partly removed or made available or the services are partly performed before and after the date;
 - (v) the goods are wholly removed or made available or the services are wholly performed before the date of change in the rate of tax or description and part payment is received before and after the date;
 - (vi) the goods are wholly removed or made available or the services are wholly performed after the date of change in the rate of tax or description and part payment is received before and after the date;
 - (vii) part payment is received before the date of change in the rate of tax or description and part payment is received after the date;
 - (viii) part payment is received before the date of change in the rate of tax or description and the goods are partly removed or made available or the services are partly performed after the date;

(ix) the goods are partly removed or made available or the services are partly performed before the date of change in the rate of tax or description and part payment is received after the date; or

(x) the goods are partly removed or made available or the services are partly performed before the date of change in the rate of tax or description and the goods are partly removed or made available or services are partly performed after the date;

(b) “new tax rate” means the rate of tax applicable on the date the change in the rate of tax comes into operation;

(c) “old tax rate” means the rate of tax applicable immediately before the date the change in the rate of tax comes into operation;

(d) “standard-rated supply” means any supply which is chargeable to a rate of tax fixed under section 10.

(6) Any person who contravenes this section commits an offence.

Adjustment of contracts on changes in rate of tax

67. Where after the entering into any contract for any taxable supply of goods or services and before the goods are supplied or services are performed, there is a change in the rate of tax charged on the supply, unless an express provision for the exclusion of any such change in the tax charged is contained in the contract or where the change in the rate of tax has been taken into account, the contract shall be deemed to be adjusted as follows:

(a) where the change in the rate of tax renders the supply liable to be charged with tax or increases the amount of any tax charged or chargeable in relation to the supply, the supplier may add to the agreed price in the contract the amount of the tax or the increase in the tax;

(b) where the change in the rate of tax renders the supply exempt from tax or reduces the amount of any tax charged or chargeable in relation to the supply, the supplier may deduct from the agreed price in the contract the amount of the tax or the reduction of the tax.

Transfer of going concern

68. (1) Where any taxable person (hereinafter referred to as the “transferor”) transfers his business to another person (hereinafter referred to as the “transferee”) as a going concern—

- (a) for the purposes of determining whether the transferee is liable to be registered under this Act, the transferee shall be treated as having carried on the business before as well as after the transfer and any supply by the transferor shall be treated as supplied by the transferee; and
- (b) the transferor shall transfer to the transferee, unless otherwise permitted in writing by the officer of goods and services tax upon the request of the transferor, all records relating to the business as required under section 36 and the transferee shall keep the records in accordance with section 36.

(2) Where a business or part thereof carried on by a taxable person is transferred as a going concern to a transferee, who is or is to be a taxable person by virtue of the transfer together with the assets of the business—

- (a) any right of the transferor to a credit for input tax or a refund of tax shall become the right of the transferee whether or not existing at the date of the transfer and when the transferor has made a claim for credit for input tax or refund of tax before the date of transfer, it shall be treated as having been made by the transferee; and
- (b) any liability of the transferor existing at the date of the transfer to furnish a return or to account for or pay tax under section 41 shall become the liability of the transferee and any return furnished or tax accounted for or paid by the transferor shall be treated as having been made by the transferee.

(3) Where a business carried on by a transferor, who has been approved to account for the tax on a payment basis, is transferred in circumstances where subsection 20(4) applies, the transferee shall continue to account for and pay the tax on the supplies made and received by him on or after the date of transfer as if he were the transferor who was given the approval to account for the tax on a payment basis.

(4) The transferor and transferee may claim any input tax incurred which is incidental to the transfer of going concern.

Joint venture

69. (1) Where two or more registered persons participate in a petroleum-related activity under a venture, evidenced contractually in writing, for the purposes of making taxable supply (hereinafter referred to as “venturers”), the venturers may apply to the Director General to be deemed as a joint venture.

(2) The venturers shall, in the application under subsection (1), nominate one of the venturers to be the venture operator or to appoint a joint operating company to be the venture operator.

(3) A joint operating company appointed under subsection (2) shall be deemed to be a taxable person for the purposes of the joint venture.

(4) Where a joint venture under subsection (1) has been approved, the joint venture shall be registered as a registered person and the registration shall be in the name of the venture operator.

(5) Where a joint venture has been registered under subsection (4)—

(a) the venture operator shall maintain a separate account for the joint venture;

(b) any taxable supply of goods or services for the purposes of carrying on a business of the joint venture between a venturer and the venture operator shall be disregarded;

(c) where—

(i) each venturer acquires any taxable supply of goods or services for the joint venture, the venturer shall claim the deduction of input tax on acquisitions made by him in respect of the joint venture;

(ii) the venture operator acquires any taxable supply of goods or services for the joint venture, the venturer shall claim the deduction of input tax on acquisitions made by him in respect of the joint venture;

(d) each venturer shall account and pay for tax on the supplies made by him in respect of the joint venture.

(6) The Director General may cancel the registration of a joint venture under subsection (4) if he deems fit for the protection of the revenue.

(7) All venturers of the joint venture shall be liable jointly and severally for any tax due from venture operator.

(8) Where the Minister prescribes any other activity to be deemed as a joint venture under section 177, this section shall apply *mutatis mutandis* to the prescribed activity.

(9) For the purposes of this section—

(a) “venture” means a contractual arrangement whereby two or more parties undertake an economic activity that is subject to joint control but does not include jointly controlled entities;

(b) “petroleum-related activity” means an upstream activity which begins with exploration including seismic and drilling activities and ends when the product (crude oil, natural gas or condensate) is allocated to the venturers;

(c) any petroleum-related activity which is outsourced to a third party shall be taken as an activity undertaken and managed by the third party and not an activity undertaken and managed by the joint venture;

(d) “venturer” means a party to a joint venture and has joint control over that joint venture;

(e) “venture operator” means the person who operates or manages the joint venture.

(10) Any person who contravenes subsection (5) in respect of paragraph (d) commits an offence.

Warehousing Scheme

70. (1) In relation to goods that have been imported and deposited in the warehouse and for which tax would be chargeable on the imported goods, there shall be a scheme to be known as the “Warehousing Scheme” which allows supplies of goods made within the warehouse to be disregarded except for the last of such supplies of goods which are removed before the duty point.

(2) The last supply referred to in subsection (1) shall be treated as taking place at the duty point and the value of the supply shall be treated as including the duty, if any.

(3) The tax on the last supply referred to in subsection (1) shall be due and payable at the duty point, together with the duty, if any, by the person who is required to pay the duty or, if no duty is due and payable, by the person by whom the goods are removed, except as may be otherwise provided by regulations made under this Act.

(4) No person shall remove from a Warehousing Scheme any goods subject to tax and duty except—

- (a) after payment of the tax together with the duty, if any;
- (b) if the goods are in customs warehouse or licensed warehouse, under such conditions as the Director General deems fit to impose, for deposit in another customs warehouse or licensed warehouse; or
- (c) in accordance with such conditions as the Director General deems fit to impose, for a re-export from Malaysia,

and in no case shall any goods be removed from a warehouse.

(5) Any goods which are not subject to any duty shall be construed as being under customs control if they are subject to a Warehousing Scheme and shall be construed as being removed from customs control if they are removed from a Warehousing Scheme.

(6) A reference in this section to goods being subject to a Warehousing Scheme shall be a reference to goods being kept in a warehouse or being transported between warehouses without the payment of any tax or duty and a reference to the removal of goods from a warehouse shall be construed accordingly.

(7) For the purposes of this section—

- (a) “customs warehouse” has the meaning assigned to it in section 2 of the Customs Act 1967;
- (b) “duty” means customs duty or excise duty or to both;

- (c) “duty free shop” has the meaning assigned to it in section 2 of the Customs Act 1967;
- (d) “duty point” in relation to any supply of goods, means the time when the goods are removed from the Warehousing Scheme;
- (e) “inland clearance depot” has the meaning assigned to it in section 2 of the Customs Act 1967;
- (f) “licensed warehouse” has the meaning assigned to it in section 2 of the Customs Act 1967; and
- (g) “warehouse” means—
 - (i) any customs warehouse;
 - (ii) any licensed warehouse;
 - (iii) any duty free shop;
 - (iv) any inland clearance depot.

(8) Any person who contravenes subsection (4) commits an offence.

Approved Trader Scheme

71. (1) Subject to the prescribed conditions, there shall be a scheme to be known as “Approved Trader Scheme” which allows the Director General to suspend the payment of tax chargeable on the goods imported by any taxable person who qualifies at the time of importation provided that the goods are imported in the course or furtherance of his business.

(2) Any taxable person granted an approval under the Approved Trader Scheme shall account the suspended payment of tax in the return for the taxable period to which the suspension relates.

Approved Toll Manufacturer Scheme

72. (1) There shall be a scheme to be known as “Approved Toll Manufacturer Scheme” which allows any taxable person who qualifies to disregard the supply of services which comprises the treatment or processing of goods for and to a person who belongs in a country other than Malaysia subject to the prescribed conditions (hereinafter referred to as the “toll manufacturer”).

(2) Any person who belongs in Malaysia and receives the treated or processed goods from the toll manufacturer (hereinafter referred to as the “recipient”) shall account and pay for tax as if the recipient had himself supplied and acquired the goods in Malaysia in the course or furtherance of his business and as if the supply were a taxable supply.

(3) Notwithstanding section 11, the supply of the treated or processed goods shall be regarded as taking place at the earlier of the following time:

(a) whenever a payment in respect of the supply is made;
or

(b) whenever the recipient receives an invoice relating to the supply.

(4) Where the recipient is a taxable person, he shall include the tax due and payable in his return.

(5) Where the recipient is a person other than a taxable person, tax shall be charged on the supply made by him and he shall be liable for any tax due and payable on the supply.

(6) This section shall not apply to a person who does not belong in Malaysia and who has appointed an agent to act on his behalf under subsection 65(6).

(7) For the purposes of this section, a person shall be treated as belonging in a country if—

(a) he has his usual place of residence in that country where the supply is made to him as an individual and received by him otherwise than for the purpose of any business carried out by him; and

(b) in the case where paragraph (a) does not apply—

- (i) he has in that country a business establishment or fixed establishment and no such establishment elsewhere;
- (ii) he has no business establishment or fixed establishment in any country but his usual place of residence is in that country; or
- (iii) he has business establishments or fixed establishments both in that country and elsewhere and his establishment which is most directly concerned with the supply is in that country.

(8) For the purposes of subsection (7), a fixed establishment in any country includes a branch or an agency through which a person carries on a business in that country.

Approved Jeweller Scheme

73. (1) There shall be a scheme to be known as “Approved Jeweller Scheme” which allows any taxable person (hereinafter referred to as the “approved jeweller”) who qualifies to account the tax on the prescribed supply of goods received by him in the course or furtherance of his business from another taxable person subject to the prescribed conditions (hereinafter referred to as the “supplier”).

(2) Notwithstanding section 9, where the supplier makes any prescribed supply of goods to the approved jeweller and the prescribed supply of goods is a taxable supply,—

- (a) the supplier shall charge tax and is not liable to account for the tax in respect of that supply; and
- (b) the approved jeweller is not required to pay the tax charged in paragraph (a) to the supplier but shall account the tax in his return.

(3) Notwithstanding section 11, the prescribed supply of goods shall be treated as taking place at the earlier of the following time:

- (a) whenever a payment in respect of the prescribed supply of goods is made; or
- (b) when the approved jeweller receives a tax invoice relating to the supply.

Flat Rate Scheme

74. (1) There shall be a scheme to be known as “Flat Rate Scheme” which allows any person who is a qualified person and is carrying on a business involving the prescribed activities (hereinafter referred to as the “approved person”) to include a prescribed flat rate addition in the consideration for any taxable supply of goods made by him from the prescribed activities to any registered person in the course or furtherance of his business.

(2) An approved person shall not—

- (a) account for the prescribed flat rate addition; and
- (b) be entitled to credit for input tax against output tax under section 38.

(3) An approved person shall issue an invoice on the taxable supply of goods made by him from the prescribed activities to the registered person in the course or furtherance of his business.

(4) A registered person shall be entitled to a credit for input tax against output tax under section 38 on any taxable supply of goods acquired from the approved person from the prescribed activities under the Flat Rate Scheme equal to the prescribed flat rate addition on the supply.

(5) An approved person shall not include the prescribed flat rate addition in the consideration for any supply of goods made by him—

- (a) from any activity other than the prescribed activities; or
- (b) to any person other than the registered person.

(6) An approved person who contravenes subsection (3) or (5) commits an offence and shall, on conviction, be liable—

- (a) to a fine not exceeding fifteen thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (b) to a penalty of the amount of prescribed flat rate addition so shown.

(7) Any person other than an approved person who issues an invoice or a receipt showing an amount as being the prescribed flat rate addition or as being attributable to the prescribed flat rate addition commits an offence and shall, on conviction, be liable—

- (a) to a fine not exceeding fifteen thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (b) to a penalty of the amount of prescribed flat rate addition so shown.

Capital markets

75. (1) A holder of a Capital Markets Services Licence and holders of a Capital Markets Services Representative's Licence shall be treated as a single entity for the purposes of registration under this Act:

Provided that the holder of a Capital Markets Services Licence is a taxable person.

(2) The registration of the single entity shall be in the name of the holder of the Capital Markets Services Licence and the holder of the Capital Markets Services Licence shall be the lead member of the single entity.

(3) Where the holder of a Capital Markets Services Licence and holder of a Capital Markets Services Representative's Licence have been registered as a single entity—

- (a) the holders of the Capital Markets Services Representative's Licence shall be members of the single entity;
- (b) any taxable supply of goods or services in carrying on a business of dealing in securities or dealing in derivatives between members and lead member of the single entity shall be disregarded;

- (c) any business of dealing in securities or dealing in derivatives transacted by a member of the single entity shall be treated as a supply made by the lead member;
 - (d) any supply of goods and services in carrying on a business of dealing in securities or dealing in derivatives made to a member of the single entity shall be treated as a supply made to the lead member;
 - (e) the lead member of the single entity shall maintain separate account for each member of his single entity;
 - (f) the lead member of the single entity shall be liable on any taxable supply made by the single entity in carrying on a business of dealing in securities or dealing in derivatives;
 - (g) any input tax allowable to any member of the single entity in carrying on a business of dealing in securities or dealing in derivatives shall be claimed by the lead member on behalf of the members of the single entity.
- (4) For the purposes of this section—
- (a) “Capital Markets Services Licence” has the meaning assigned to it in of the Capital Markets and Services Act 2007 [*Act 671*];
 - (b) “Capital Markets Services Representative’s Licence” has the meaning assigned to it in of the Capital Markets and Services Act 2007.

PART IX

GOODS AND SERVICES TAX RULING

Public ruling

76. (1) The Director General may, at any time, make a public ruling on the application of any provision of this Act in relation to any person or class of persons, or any type of arrangement.

(2) The Director General may withdraw, either wholly or partly, any public ruling made under this section.

(3) Notwithstanding any provision of this Act, where a public ruling in subsection (1) applies to any person in relation to an arrangement and the person applies the provision in the manner stated in the ruling, the Director General shall apply the provision in relation to the person and the arrangement in accordance with the ruling.

Advance ruling

77. (1) Subject to this section and any regulations made under this Act, on the application made by any person, the Director General shall make an advance ruling on the application of any provision of this Act to the person and to the arrangement for which the ruling is sought and the ruling shall take effect from the date as specified in the ruling.

(2) An application under subsection (1) shall be made in such manner and form as the Director General may determine and subject to the prescribed fees.

(3) Notwithstanding any provision of this Act, where an advance ruling applies to any person in relation to an arrangement and the person applies the provision in the manner stated in the ruling, the Director General shall apply the provision in relation to the person and the arrangement in accordance with the ruling.

(4) An advance ruling made under subsection (1) does not apply to a person in relation to an arrangement if—

- (a) the arrangement is materially different from the arrangement stated in the ruling;
- (b) there was a material omission or misrepresentation in, or in connection with the application of the ruling;
- (c) the Director General makes an assumption about a future event or another matter that is material to the ruling, and that assumption subsequently proves to be incorrect; or
- (d) the person fails to satisfy any of the conditions stipulated by the Director General.

(5) The Director General may, at any time, withdraw any advance ruling made under subsection (1) by giving a notice in writing of such withdrawal to the person to whom the ruling applies.

(6) Where the Director General withdraws an advance ruling, such advance ruling shall not apply to any arrangement entered into or effected on or after the date of withdrawal but the advance ruling shall continue to apply in relation to any arrangement subsisting for the remainder of the period specified in the advance ruling to which the advance ruling applies which has been entered into or effected before the date specified in the notice of withdrawal.

Finality of an advance ruling

78. (1) An advance ruling issued to any person for the purposes of any arrangement shall be final.

(2) No appeal shall be lodged by any person against any advance ruling.

Ruling not applicable when provision of the Act is amended or repealed

79. A ruling shall not apply from the date a provision of this Act is amended or repealed to the extent that the amendment or repeal changes the way the provision applies in the ruling.

PART X

ENFORCEMENT

Powers of enforcement, inspection and investigation

80. For the purposes of this Act, a senior officer of goods and services tax shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593] in relation to enforcement, inspection and investigation, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

Access to place or premises

81. (1) Any senior officer of goods and services tax shall for the purposes of this Act at all times have full and free access to any place or premise where any person carries on his business.

(2) Where any senior officer of goods and services tax exercises his powers under subsection (1), the person who carries on his business or any other person present at the place or premises at that time of entry shall provide to him all reasonable facilities and assistance for the exercise of his duties under this section.

(3) Where any senior officer of goods and services tax enters upon any place or premises in accordance with this section, he may—

- (a) require the taxable person or any other person to produce any goods, document or thing which relates to the person's business and, if he is a taxable person, any record which is required to be kept under section 36;
- (b) examine any goods, document or thing;
- (c) seize and detain any goods, document or thing if in his opinion it may afford evidence of the commission of any offence under this Act;
- (d) require the person to answer any question relating to any goods, document or thing;
- (e) require any container, envelope or other receptacle in the place or premises to be opened;
- (f) at the risk and expense of the owner of the business, open and examine any package, or any goods or material in the place or premises; or
- (g) take samples of any goods or material and make copies or extracts of any document, if he deems necessary.

(4) Where any senior officer of goods and services tax is unable to obtain full and free access to the place or premises under subsection (1) or to any receptacle contained therein, he may, at any time, enter the place or premises and open the receptacle by force if necessary.

(5) Any person who refuses to permit any senior officer of goods and services tax to enter upon any place or premises in accordance with this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding one hundred thousand ringgit or to both.

Magistrate may issue search warrant—

82. (1) Whenever it appears to any Magistrate, upon written information upon oath and after any inquiry which he may think necessary, that there is reasonable cause to believe that in any place, premises or conveyance, there are concealed or deposited any goods, document or thing which may afford evidence of the commission of an offence under this Act, the Magistrate may issue a warrant authorizing any officer of goods and services tax named therein, at any time and with or without assistance—

- (a) to enter the place, premises or conveyance and to search for and seize the goods, document or thing;
- (b) to arrest any person being in the place, premises or conveyance in whose possession the goods, document or thing are found or who may reasonably be suspected as having concealed or deposited such goods, document or thing.

(2) The officer of goods and services tax authorized under subsection (1) may, if it is necessary so to do—

- (a) break open any outer or inner door of the place, premises or conveyance and enter every part thereof, if necessary forcibly;
- (b) remove by force any obstruction to the entry to search or to seize as he is empowered to effect; and
- (c) detain every person found in the place, premises or conveyance until the search has been completed.

When search may be made without warrant

83. Whenever it appears to the senior officer of goods and services tax that there is reasonable cause to believe that in any place, premises or conveyance there are concealed or deposited any goods, document or thing which may afford evidence of the

commission of any offence under this Act and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the goods, document or thing are likely to be removed, he may exercise in, upon and in respect of the place, premises or conveyance, all the powers under section 81 in the same manner as if he was empowered so to do by a warrant issued under that section.

Power to stop and search conveyance

84. (1) The officer of goods and services tax may stop and examine any conveyance for the purposes of ascertaining whether any goods in respect of which he has reason to believe that an offence under this Act has been committed are contained therein and the person in control or in charge of the conveyance shall, if required so to do by the officer of goods and services tax—

- (a) stop the conveyance and allow the officer of goods and services tax to examine it;
- (b) move the conveyance to another place for examination; and
- (c) not proceed until permission to do so has been given by the officer of goods and services tax.

(2) The person in control or in charge of the conveyance examined under this section shall, on the request of the officer of goods and services tax, open all parts of the conveyance for examination by the officer of goods and services tax and take all measures necessary to enable the examination as the officer of goods and services tax considers necessary to be made.

Seizure of goods, etc., the subject of an offence

85. (1) All goods, document or thing in respect of which the officer of goods and services tax has reasonable cause to suspect that there has been committed any offence under this Act or any violation of any of the provisions of this Act and any receptacle, package or conveyance (if the conveyance is a vessel, the vessel is not exceeding two hundred tonnes net registered tonnage or if the conveyance is an aircraft, the aircraft is other than an aircraft

engaged in international carriage) in which the goods, document or thing may have been found or which has been used in connection with the offence or violation, and any other goods, document or thing which may reasonably be believed to have a bearing on the case, may be seized by the officer of goods and services tax in any place either on land or in the territorial waters.

(2) Whenever any goods, document, thing, receptacle, package or conveyance are seized under this Act, the officer of goods and services tax shall forthwith give notice in writing of the seizure and the grounds thereof to the owner of the goods, document, receptacle, package or conveyance, if known, either by delivering the notice to him personally or by post at his place of abode, if known.

(3) This section is relating to the seizure of—

- (a) any goods, document or thing shall apply to all the contents of any receptacle, package or conveyance in which the same are found and to any article used to conceal the same; and
- (b) any conveyance shall apply to the tackle, equipment and furnishings of the conveyance and if the conveyance is an animal vehicle, to any animal by which the same is drawn.

(4) Any goods of a perishable nature or any animals seized under this section may forthwith be sold and the proceeds of the sale held to abide the result of any prosecution or claim.

Return or disposal of movable goods

86. (1) For the purpose of investigation, where any movable goods has been seized under this Part a senior officer of goods and services tax may, at his discretion—

- (a) temporarily return the movable goods to the owner thereof or to the person from whose possession, custody or control it was seized, or to any person as the senior officer of goods and services tax may consider entitled thereto, subject to such terms and conditions as the senior officer of goods and services tax may impose, and, subject in any case, to sufficient security being furnished to the

satisfaction of the senior officer of goods and services tax that the movable goods shall be surrendered to the senior officer of goods and services tax on demand being made by the senior officer of goods and services tax and that the said terms and conditions, if any, shall be complied with;

(b) return the movable goods to the owner thereof or to the person from whose possession, custody or control it was seized, or to such person as the senior officer of goods and services tax may consider entitled thereto, with liberty for the person to whom the movable goods is so returned to dispose of the same, the return being subject to security being furnished to the satisfaction of the senior officer of goods and services tax in an amount not less than an amount which, in the opinion of the senior officer of goods and services tax, represents—

(i) the value of the movable goods, on the date on which the goods are so returned; and

(ii) the tax due and payable in respect thereof,

for the payment of the amount secured to the Director General in the event of the court making an order for the forfeiture under section 117; or

(c) sell or destroy the movable goods, as appropriate in the circumstances, where it is a living creature or where, in the opinion of the senior officer of goods and services tax, it is of a perishable or dangerous nature or likely to speedily deteriorate in quality or value, and where it is sold, he shall hold the proceeds of sale to abide the result of any prosecution or claim.

(2) Whenever any movable goods are returned or disposed under subsection (1), a document purporting to be a certificate in accordance with subsection 112(1) shall be issued by the senior officer of goods and services tax.

(3) Any person who—

(a) fails to surrender on demand to a senior officer of goods and services tax the movable goods temporarily returned to him under paragraph (1)(a); or

(b) fails to comply with or contravenes any of the terms or conditions imposed under paragraph (1)(a),

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(4) The criminal liability of any person under subsection (3) shall be in addition to any other liability that the said person or any other person may incur under the terms and conditions relating to the return of the movable goods under paragraph (1)(a).

(5) The provisions of subsection (3) shall not apply to the person, if any, who is the guarantor or surety of the person to whom the goods is returned under paragraph (1)(a).

(6) The Minister may, either generally or in any particular case or class of cases, give such directions to the Director General as he may deem necessary or expedient with regard to the exercise of the powers conferred on the senior officer of goods and services tax under subsection (1).

(7) No person shall be entitled to maintain any action on account of any act done or any decision taken by or on behalf of the Minister or by or on behalf of a senior officer of goods and services tax under this section, and no court shall have any jurisdiction to entertain any such action.

(8) For the purposes of this section, “movable goods” includes any description of movable goods whatsoever seized under this Act.

Power of arrest

87. (1) Any officer of goods and services tax may arrest without warrant—

(a) any person found committing or attempting to commit, or employing or aiding any person to commit or abetting the commission of, an offence under this Act;

(b) any person whom he may reasonably suspect to have in his possession any goods, document or thing liable to seizure under this Part;

- (c) any person whom he may reasonably suspect to have committed an offence under this Act,

and the officer of goods and services tax may search or cause to be searched any person so arrested:

Provided that—

- (A) any person so arrested who requests that his person be searched in the presence of a senior officer of goods and services tax shall not be searched except in the presence of and under the supervision of the officer, but the person may be detained until the arrival of the officer, or taken to any office or police station where the officer may be found;
- (B) the goods and baggage of any person who requests to be present when they are searched and so presents himself within a reasonable time shall not be searched except in his presence;
- (C) no person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(2) Any officer of goods and services tax making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force.

(3) If any person liable to arrest under this Act is not arrested at the time of committing the offence for which he is so liable, or after the arrest makes his escape, he may at any time thereafter be arrested and dealt with as if he had been arrested at the time of committing the offence.

(4) A senior officer of goods and services tax may cause to be taken photographs, finger, thumb impressions and any other form of identification that may be required under any other written law of any person charged with an offence against this Act.

- (5) Every person so arrested may be released from custody—
- (a) on his depositing such reasonable sum of money as the senior officer of goods and services tax may require;
 - (b) on his executing a bond, with such surety or sureties, as the senior officer of goods and services tax may require;
or
 - (c) on his depositing such reasonable sum of money as the senior officer of goods and services tax may require and his executing a bond, with such surety or sureties, as the senior officer of goods and services tax may require.

(6) Any person who has been released from custody under subsection (5) may be arrested without warrant by any officer of goods and services tax—

- (a) if the officer has reasonable grounds for believing that any condition on or subject to which the person was released or otherwise admitted to bail has been or is likely to be breached; or
- (b) on being notified in writing by the surety of the person that the person is likely to breach any condition on or subject to which the person was released and that the surety wishes to be relieved of his obligation as surety.

PART XI

OFFENCES AND PENALTIES

Penalty for incorrect return

88. Any person who—

- (a) makes an incorrect return by omitting from the return any information;
- (b) understates any output tax or overstates any input tax in a return; or

- (c) gives any incorrect information in relation to any matter affecting his own liability to tax or the liability to tax of any other person,

commits an offence and shall, on conviction, be liable—

- (A) to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both; and
- (B) to a penalty equal to the amount of tax which has been undercharged or would have been so undercharged if the return or information had been accepted as correct.

Penalty for evasion of tax, fraud

89. (1) Any person who with intent to evade or to assist any other person to evade tax—

- (a) omits from a return any information in relation to any matter affecting the amount of his or the other person's chargeability to tax;
- (b) makes any false statement or entry in any return;
- (c) gives any false answer whether in writing or otherwise to any question asked or request for information made in accordance with the provisions of this Act;
- (d) prepares or maintains or authorizes the preparation or maintenance of any false books of account, false invoices or other false records, or falsifies or authorizes the falsification of any books of accounts, invoices or records; or
- (e) makes, uses or authorizes the use of any fraud, artifice or contrivance,

commits an offence and shall, on conviction, be liable—

- (A) for the first offence, to a fine of not less than ten times and not more than twenty times the amount of tax or to imprisonment for a term not exceeding five years or to both; and

- (B) for a second or subsequent offence, to a fine of not less than twenty times and not more than forty times the amount of tax or to imprisonment for a term not exceeding seven years or to both:

Provided that where the amount of tax cannot be ascertained, the person shall be liable to a fine of not less than fifty thousand ringgit and not more than five hundred thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

(2) Any person who assists in, or advises with respect to, the preparation of any return where the return results in an understatement of the liability for tax of another person shall, unless he satisfies the court that the assistance or advice was given with reasonable care, commits an offence and shall, on conviction, be liable to a fine of not less than two thousand ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) Any reference in this section in relation to a person who makes, uses or authorizes the use of any fraud, artifice or contrivance includes a reference to a person who, without the authority of the officer of goods and services tax—

- (a) destroys, damages, erases, alters or manipulates data stored in, or used in connection with, a computer; or
- (b) introduces into, or records or stores in, a computer by any means data for the purpose of—
 - (i) destroying, damaging, erasing, altering or manipulating data stored in, or used in connection with, a computer; or
 - (ii) interfering with, interrupting or obstructing the lawful use of the computer, or the data stored in, or used in connection with, a computer; or

(c) otherwise uses a computer,

the purpose or effect of which is to evade tax.

(4) For the purposes of subsection (3), “data” includes any computer programme or part of a computer programme.

(5) Any reference in this section relating to evading tax includes a reference to obtaining any of the following:

- (a) credit for input tax against output tax under section 38;
- (b) relief for bad debt under section 58; and
- (c) claim under the Tourist Refund Scheme under section 61,

where the person concerned is not entitled to the credit, relief or claim.

(6) In any prosecution under this section or section 95, any evasion of tax shall be deemed to be with the knowledge of the accused unless the contrary be proved by the accused.

Penalty for improperly obtaining refund, etc.

90. Any person who causes or attempts to cause the refund under subsection 10(4), 17(6), 18(4), 38(3), 57(1), 61(1), 190(1) or 190(2) or entitlement to relief under subsection 58(1) to any person by the Director General of any amount in excess of the amount properly so refundable or relieved to him commits an offence and shall, on conviction, be liable—

- (a) to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both; and
- (b) to a penalty of two times the amount refunded or entitled as a relief in excess of the amount properly so refundable or so entitled as a relief.

Penalty for offences in relation to goods, invoices and receipts

91. (1) Any person who acquires possession of or deals with any goods, or accepts the supply of any services, having reasonable cause to believe that tax on the supply of goods or services or on the importation of the goods has been or will be evaded, commits an offence and shall, on conviction, be liable—

- (a) to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (b) to a penalty of two times the amount of the tax.

(2) In any prosecution under subsection (1), any evasion of tax shall be deemed to be with the knowledge of the accused unless the contrary be proved by the accused.

(3) Any person other than a registered person who issues an invoice or a receipt showing an amount as being tax or as being attributable to tax commits an offence and shall, on conviction, be liable—

(a) to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding three years or to both; and

(b) to a penalty of two times the amount of tax so shown.

Penalty for obstructing, etc., officer of goods and services tax

92. Any person who—

(a) in any way assaults, hinders or obstructs the officer of goods and services tax in the performance of his duties under this Act; or

(b) fails to give reasonable facilities or assistance to any officer of goods and services tax in the performance of his duties under this Act,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding one hundred thousand ringgit or to both.

Penalty for refusing to answer question or giving false information

93. (1) Any person who, being required under this Act to give any information which may reasonably be required by the officer of goods and services tax which it is in his power to give, refuses to give the information or furnishes as true information which he knows or has reason to believe to be false commits an offence.

(2) When any of the information is proved to be untrue or incorrect in whole or in part it shall be no defence to allege that the information or any part of the information was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the informant.

Penalty for offences by authorized and unauthorized persons

94. Any person who—

- (a) being a person appointed for the due administration of this Act or any assistant employed in connection with the assessment and collection of tax—
 - (i) withholds for his own use or otherwise any portion of the amount of tax or penalties collected;
 - (ii) otherwise than in good faith, demands from any person an amount in excess of the authorized assessment or tax or penalties;
 - (iii) submits any false return, statement or report, whether in writing or otherwise, of the amount of tax collected or received by him; or
 - (iv) defrauds any person, embezzles any money or otherwise uses his position so as to deal wrongfully either with the Director General or any other individual; or
- (b) not being authorized under this Act to do so collects or attempts to collect any tax under this Act,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Attempts and abetments

95. Any person who attempts to commit any offence punishable under this Act, or abets the commission of the offence, shall be punishable with the punishment provided for the offence.

General penalty

96. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Offences by bodies of persons, etc.

97. (1) Where a company, a limited liability partnership, a firm, a society, an association or other body of persons commits an offence under this Act, any person who at the time of the commission of the offence was a director, compliance officer, partner, manager, secretary or other similar officer of the company, limited liability partnership, firm, society, association or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, limited liability partnership, firm, society, association or other body of persons or was assisting in the management, shall be deemed to be guilty of the offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

- (a) that the offence was committed without his knowledge, consent or connivance; and
- (b) that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

(2) Where any person would be liable under this Act to any punishment, penalty or forfeiture for any act, omission, neglect or default, he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any employee or agent, or of the employee of the agent, provided that the act, omission, neglect or default was committed by—

- (a) the employee in the course of his employment;
- (b) the agent when acting on behalf of the person; or
- (c) the employee of the agent when acting in the course of his employment in such circumstances that had the act, omission, neglect or default been committed by the agent, his principal would have been liable under this section.

Tax, etc., to be payable notwithstanding any proceedings, etc.

98. The institution of proceedings or the imposition of a penalty, fine or term of imprisonment under this Act or the compounding of an offence under section 121 shall not relieve any person from the liability to pay for tax, penalty or surcharge under this Act.

PART XII

TRIALS AND PROCEEDINGS

Prosecution

99. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Jurisdiction to try offences

100. Notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try any offence under this Act and to impose the full punishment for the offence.

Conviction under any other law

101. Nothing in this Act shall prevent the prosecution, conviction and punishment of any person according to the provisions of any other written law for the time being in force.

Burden of proof

102. If in any prosecution in respect of any goods seized for non-payment of tax or for any cause of forfeiture or for the recovery of any penalty under this Act, any dispute arises whether tax has been paid in respect of the goods, or whether the supply of goods or services or importation of goods is exempt from or not liable to any tax chargeable under this Act or is subject to tax at the rate of zero per cent or any value upon which tax is chargeable under this Act, or any amount of tax chargeable under this Act is subject to any deduction or offset or any amount should be deducted as input tax, or whether the goods or services had

been lawfully supplied or the goods had been lawfully imported, or concerning the place from where those goods were brought, the burden of proof of every such case shall lie on the accused in the prosecution or the person making the claims.

Evidential provisions

103. (1) In any proceedings under this Act any statement purporting to be signed by the Director General or an officer authorized by him which forms part of or is annexed to the information, complaint or statement of claim, shall be *prima facie* evidence of the facts stated therein.

(2) A transcript of any particulars contained in a return or other document relating to tax, if it is certified under the hand of the Director General or an officer authorized by him to be a true copy of the particulars, shall be *prima facie* evidence of the facts stated therein.

(3) No statement made or document produced by or on behalf of any person shall be inadmissible in evidence against the person in any proceedings against him to which this section applies, by reason only of the fact that he was or may have been induced to make the statement or produce the document by any inducement, promise or threat made by any person having any official duty under, or being appointed for the due administration of, this Act.

(4) Nothing in this Act shall affect the operation of Chapter IX of Part III of the Evidence Act 1950.

(5) For the purposes of section 83, where in any proceedings it is proved that any false statement or entry has been made in any return rendered under this Act by or on behalf of any person or in any books of account or records of any person—

- (a) the person shall be presumed, until the contrary is proved, to have made the false statement or entry or to have caused the false statement or entry to be made or to have allowed it to be made with intent to evade the payment of tax or to obtain a refund of tax to which the person is not entitled, as the case may be; and

(b) any other person who made any false statement or entry shall be presumed, until the contrary is proved, to have made the false statement or entry with intent to assist the first-mentioned person to evade the payment of tax or to obtain a refund of tax to which he is not entitled.

(6) Where any officer of goods and services tax has obtained any document or other evidence in exercise of his powers under this Act, the document or copy of the document or other evidence, as the case may be, shall be *prima facie* evidence of the facts stated therein, notwithstanding anything to the contrary in any written law.

(7) Where any document which is to be used in any proceedings against any person for an offence under this Act is in a language other than the national language or English language, a translation of the document into the national language or English language shall be admissible in evidence where the translation is accompanied by a certificate of the person who translated the document setting out that it is an accurate, faithful and true translation and the translation had been done by the person at the instance of any officer of goods and services tax.

(8) Subsection (7) shall apply to a document which is translated, regardless of whether the document was made in or outside Malaysia, or whether the translation was done in or outside Malaysia, or whether possession of the document was obtained by any officer of goods and services tax in or outside Malaysia.

Evidentiary value of copies of electronic notice

104. (1) For the avoidance of doubt, any electronic notice or any electronic record of an electronic notice or any copy or print out thereof shall not be inadmissible in evidence merely on the basis that it was filed, lodged or transmitted through the electronic service, without the delivery of any equivalent document or counterpart in paper form.

(2) Notwithstanding any other written law, in any proceedings under this Act, any electronic notice or any electronic record of an electronic notice or any copy or print out thereof which is—

(a) certified by the Director General to contain all or any information filed, lodged or transmitted through the electronic service in accordance with this Part; and

- (b) duly authenticated in the manner specified in section 168 or is otherwise authenticated in the manner provided in the Evidence Act 1950 for the authentication of document produced by computer,

shall be *prima facie* evidence of the facts stated therein.

Evidence by certificate, etc.

105. (1) Any certificate signed by the Director General stating that—

- (a) a person was or was not, at any date, registered under this Act;
- (b) any return has not been furnished or had not been furnished at any date;
- (c) any tax shown as due in any return or assessment has not been paid;
- (d) any penalty and the amount thereof shown as due from a person named therein; or
- (e) any public ruling made under section 76 or advance ruling made under section 77,

shall be *prima facie* evidence of the facts stated therein without proof of the signature to the certificate.

(2) In any proceedings in respect of any offence under this Act in which the existence, description, classification, composition, quantity, quality or value of, or any other matter in relation to, any movable goods returned, sold or destroyed under section 86 is in question, any document produced by the prosecution purporting to be a certificate in respect of any of the matter given and signed by—

- (a) an “analyst” within the meaning of subsection 107(3);
- (b) a senior officer of goods and services tax; or

- (c) any person, regardless whether or not he is a public officer, authorized by or on behalf of the Minister either generally or in any particular case, for the purposes of this section,

shall be admissible in evidence and its conclusiveness shall not be challenged on the ground that the movable goods in respect of which the certificate is given has not been produced before the court either in part or in entirety, and it shall be evidence of its contents, including the facts stated therein, without proof of the signature to the certificate.

Proportional examination or testing of goods seized to be accepted by courts

106. (1) When any goods liable to seizure under the provisions of this Act have been seized, it shall be sufficient to open and examine five per centum only of each description of the package or receptacle in which the goods are contained.

(2) If it is necessary to test any goods seized under this Act, it shall be sufficient to test only a sample not exceeding five per centum in volume or weight of the goods examined under subsection (1).

(3) The court shall presume that the goods contained in the unopened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened.

Production of a certificate of analysis

107. (1) In any prosecution under this Act, a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the prosecutor, be sufficient evidence of the facts stated therein unless the accused requires that the analyst be called as a witness, in which case he shall give notice thereof to the prosecutor not less than three clear days before the commencement of the trial:

Provided always that in any case in which the Public Prosecutor intends to give in evidence any certificate of analysis he shall deliver a copy thereof to the accused not less than ten clear days before the commencement of the trial.

(2) Analysts are bound to state the truth in the certificates of analysis under their hands.

(3) For the purposes of this section, “analyst” means—

- (a) a person employed as a Chemist in the Department of Chemistry, or as a Chemist or Assistant Chemist at the Institute for Medical Research;
- (b) a Senior Chemist in the Department of Agriculture;
- (c) a person employed as a Chemist or Geologist in the Department of Minerals and Geoscience;
- (d) any chemist in the employment of the Government of Malaysia or Singapore;
- (e) any other person or class of persons who is or are declared by the Minister charged with responsibility for the Department of Chemistry, by notification in the *Gazette*, to be an analyst or analysts;
- (f) any police officer or officer of customs who is declared by the Minister by notification in the *Gazette* to be an analyst;
- (g) any person appointed by the Minister under section 399 of the Criminal Procedure Code to be a Document Examiner;
- (h) any Inspector of Weights and Measures appointed under any written law relating to weights and measures; and
- (i) any person or class of persons who is or are declared by the Minister, by notification in the *Gazette*, to whom the provisions of this section shall apply.

(4) If an analyst is called by the accused under subsection (1), he shall be called at the expense of the accused unless the court otherwise directs.

(5) For the purposes of subsection (3), “Minister” means the Minister responsible for the matter in connection with which the reference is made.

Proof as to registration or licensing of vessel and conveyances in Malaysia or Singapore

108. Where in any prosecution under this Act, it is relevant to ascertain particulars as to the registration or licensing of any vessel or conveyance registered or licensed in any port or place in Malaysia or Singapore, a certificate purporting to be signed by the officer responsible under any written law in Malaysia or in Singapore for the registration or licensing shall be *prima facie* evidence as to all particulars concerning the registration or licensing contained therein, and the burden of proving the incorrectness of any particulars stated in the certificate shall be on the person denying the same.

Proof as to tonnage or build of a craft

109. (1) Where in any prosecution under this Act, it is relevant to ascertain the tonnage or build or any other particulars descriptive of the identity of a craft, and if any of these particulars relating to the identity of the craft is in question, then any document produced by the prosecution purporting to be a certificate in respect of any such matter given and signed by any officer responsible for such certificate under any written law shall be *prima facie* evidence of the facts stated therein without proof of the signature to the certificate.

(2) This section shall apply notwithstanding anything contained in any other written law or rule of evidence to the contrary.

Proof as to accuracy of a metre or other device for measuring petroleum

110. Where in any proceedings under this Act, it is necessary to prove the accuracy of a metre or any other device for measuring petroleum, a certificate purporting to be signed by any officer responsible under any written law for the measurement shall be *prima facie* evidence of the facts stated therein.

Imprisonment for non-payment of fine

111. Notwithstanding the provisions of the Criminal Procedure Code, the period of imprisonment imposed by any court in respect of the non-payment of any fine under this Act, or in respect of the

default of a sufficient distress to satisfy any such fine, shall be such period of such description, as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale:

Where the fine	The maximum period
does not exceed five thousand ringgit	two months
exceeds five thousand ringgit but does not exceed ten thousand ringgit	four months
exceeds ten thousand ringgit but does not exceed twenty thousand ringgit	six months

with two additional months for every ten thousand ringgit after the first twenty thousand ringgit of the fine until a maximum period of six years is reached.

Manner of seizure not to be enquired into on trial before court or on appeal

112. In any trial before any court or in any proceedings on appeal, relating to the seizure of goods subject to forfeiture under this Act, the court shall proceed to the trial or hear the appeal on the merits of the case only, without enquiring into the manner or form of making any seizure, except in so far as the manner and form of seizure may be evidence on the merits.

Obligation of secrecy

113. (1) Except as provided under section 114, the name, identification card number, passport number, address of an informer or any other information which can lead to identity of the informer and the substance of the information received from an informer shall be kept secret and shall not be disclosed by any officer of goods and services tax or any person who in the ordinary course of his duties comes into possession of or has control of or access to the information to any person except the designated officer of goods and services tax authorized by the Director General.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding one hundred thousand ringgit or to both.

Protection of informers from discovery

114. (1) Except as hereinafter provided, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name, address or any information of an informer or the substance of the information received from him or to state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceedings whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all the passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If in the trial for any offence under this Act the court after full enquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry, and require full disclosure, concerning the informer.

Forfeiture and release of goods liable to seizure

115. (1) All goods liable to seizure under this Act shall be liable to forfeiture and all forfeited goods shall be disposed of in accordance with the direction of the Director General and any revenue collected is to be paid into the Federal Consolidated Fund.

(2) Notwithstanding subsection (1), the Director General or any senior officer of goods and services tax may, where he deems fit, at any time direct any goods liable to seizure under this Act to be released to the person from whose possession, custody or control the goods was seized.

No costs or damages arising from seizure to be recoverable unless seizure without reasonable or probable cause

116. No person shall in any proceedings before any court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the goods or the payment of the value unless the seizure was made without reasonable or probable cause.

Court to order disposal of goods seized

117. (1) An order for the forfeiture or for the release of anything liable to forfeiture under this Act shall be made by the court before which the prosecution with regard thereto has been held, and an order for the forfeiture of goods shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed, and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of the offence.

(2) The amount secured under paragraph 86(1)(a) or (b) or the amount realized by sale under paragraph 86(1)(c) shall be forfeited by the court if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the movable goods in respect of which the amount was secured or realized by sale, as the case may be, was the subject matter of or was used in the commission of the offence notwithstanding that no person may have been convicted of the offence.

(3) All goods forfeited shall be delivered to an officer of goods and services tax and shall be disposed of in accordance with the directions of the Director General and any revenue collected to be paid into the Federal Consolidated Fund.

Goods seized in respect of which there is no prosecution, or the proceeds of sale thereof, are forfeited if not claimed within one month

118. (1) If there be no prosecution with regard to any goods seized under this Act, the goods or the proceeds of sale of the goods which are held pursuant to paragraph 86(1)(c) shall be

taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure of the goods unless, before the expiration—

- (a) a claim to the goods or the proceeds of sale of the goods is made under subsection (2);
- (b) a written application is made for the return of the goods under paragraph 86(1)(a) or (b); or
- (c) the goods are returned under paragraph (a) or (b).

(2) Any person asserting that he is the owner of the goods or the proceeds of sale of the goods, as the case may be, and that they are not liable to forfeiture may, personally or by his agent authorized in writing, give written notice to any senior officer of goods and services tax that he claims the same.

(3) On the expiration of the period mentioned in subsection (1), or, if a decision is made earlier that there be no prosecution with regard to the goods, on the making of the decision the senior officer of goods and services tax shall, if the goods or the proceeds of sale of the goods are not taken and deemed to be forfeited under the subsection, refer the claim to the Director General who may direct that the goods or the proceeds of sale of the goods or the security furnished under paragraph 86(1)(a) or (b), as the case may be, be released or may direct the senior officer, in the form and manner as the Director General may determine to refer the matter to a Sessions Court.

(4) The Sessions Court shall issue a summons requiring the person asserting that he is the owner of the goods or the proceeds of sale of the goods, and the person from whom the goods were seized, to appear before him, and upon their appearance or default to appear, due service of the summons being proved, the Sessions Court shall proceed to the examination of the matter, and upon proof that an offence against this Act has been committed and that the goods were the subject matter, or were used in the commission of the offence, shall order the goods or the proceeds of sale of the goods or the amount secured under paragraph 86(1)(a) or (b), as the case may be, to be forfeited, or in the absence of such proof, may order the release of the goods or the proceeds of sale of the goods or the security furnished under paragraph 86(1)(a) or (b), as the case may be.

(5) In any proceedings under subsection (4), section 102 shall apply to the person asserting that he is the owner of the goods or the proceeds of sale of the goods and to the person from whom they were seized as if the owner or person had been the accused in a prosecution under this Act.

Vesting of forfeited goods in the Federal Government

119. (1) Where any goods is forfeited under this Act, the goods shall vest in the Federal Government free from any right, interest or encumbrance of any person except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration and which is not otherwise null and void under any written law.

(2) Where any person who holds any encumbrance to which the goods is subject claims that he holds the encumbrance as a purchaser in good faith for valuable consideration and that the encumbrance is not otherwise null and void under any written law, and the Federal Government disputes such claim, the Public Prosecutor may apply to the Sessions Court to determine the question and the court shall determine the question after giving an opportunity to be heard to the person holding the encumbrance and hearing the reply of the Public Prosecutor to any representations which may be made before that court by the person holding the encumbrance.

(3) Where any goods is vested in the Federal Government under subsection (1), the vesting shall take effect without any transfer, conveyance, deed or other instrument and where any registration or such vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer, authority, person or body as the Public Prosecutor may specify.

(4) Where the goods vested in the Federal Government under subsection (1) is an immovable goods, the vesting shall, upon production to the Registrar of Titles or the Land Administrator, in Peninsular Malaysia, or to the Registrar of Titles or the Collector of Land Revenue, in Sabah or the Registrar of Titles or the Director of Lands and Surveys, as the case may be, in Sarawak, of the order of the court forfeiting the immovable property, or in the case of property forfeited under section 117, a certificate of the Public Prosecutor certifying that the goods has been forfeited, be registered in the name of the Federal Lands Commissioner.

Service of summons

120. (1) Every summons issued by a court against any person in connection with any civil or criminal proceedings under this Act may be served on the person named therein—

- (a) by delivering the summons to the person or any adult member of his family or any of his servants residing with him at his usual or last-known place of residence;
- (b) by leaving the summons at his usual or last-known place of residence or business in an envelope addressed to the person;
- (c) by sending the summons by registered post addressed to the person at his usual or last-known place of residence or business; or
- (d) where the person is a company, a limited liability partnership, a firm, a society, an association or other body of persons—
 - (i) by delivering the summons to the secretary or other like officer of the company, limited liability partnership, firm, society, association or other body of persons at its registered office or principal place of business; or
 - (ii) by sending the summons by registered post addressed to the company, limited liability partnership, firm, society, association or other body of persons at its registered office or principal place of business.

(2) Any summons sent by registered post to any person in accordance with subsection (1) or by delivering the summons to the person or to any adult member of his family or any of his servant residing with him shall be deemed to be duly served on the person.

(3) When a summons issued by a court is served, an affidavit of the service purporting to be made before an officer duly authorized to administer an oath shall be admissible in evidence.

Compounding of offences

121. (1) The officer of goods and services tax may, with the written consent of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed to be a compoundable offence by making a written offer to the person suspected of committing the offence to compound the offence on payment to the Director General of an amount of money not exceeding fifty per centum of the amount of the maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within any extended period as the Director General may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

Court order

122. (1) Where any person is found guilty of an offence under this Act, the court before which the person is found guilty shall order the person to pay to the Director General the amount of tax due and payable under this Act, if any, as certified by the Director General and the tax shall be recoverable in the same manner as a fine as provided under section 283 of the Criminal Procedure Code.

(2) In addition to subsection (1), the court has civil jurisdiction to the extent of the amount and the order is enforceable in all respects as a final judgement of the court in favour of the Director General.

(3) Where any person is found not guilty of an offence under this Act, and if he has paid the amount of tax due and payable under this Act pursuant to section 98, in respect of the offence charged, the court may order the amount paid to be refunded to such person where no notice of appeal is filed.

PART XIII

REVIEW AND APPEAL

Interpretation

123. In this Part, unless the context otherwise requires—

“Chairman” means the Chairman of the Tribunal appointed under paragraph 128(1)(a);

“Deputy Chairman” means any Deputy Chairman of the Tribunal appointed under paragraph 128(1)(a);

“Secretary” means the Secretary of the Tribunal appointed under subsection 133(1);

“Tribunal” means the Goods and Services Tax Appeal Tribunal established under section 125.

Application for review

124. (1) Any person may apply to the Director General within thirty days from the date the person has been notified of any decision made by an officer of goods and services tax for the review of the decision and provided no appeal has been made on the same matter to the Tribunal or court.

(2) Where an application has been made under subsection (1), the Director General shall make a decision and notify the person within sixty days from the date the application is received or within the time practicable.

(3) An application under subsection (1) shall be made in the prescribed manner and prescribed form.

Establishment of Tribunal

125. A tribunal to be known as the “Goods and Services Tax Appeal Tribunal” is established.

Right of appeal

126. (1) Subject to section 127, any person aggrieved by the decision of the Director General may appeal against the decision.

(2) The appeal shall be made to the Tribunal within thirty days from the date the disputed decision was made known to the aggrieved person or within any such extension of time that may be granted by the Tribunal in the prescribed manner together with the prescribed fee.

Jurisdiction of Tribunal

127. (1) The Tribunal shall have jurisdiction to determine appeals relating to goods and services tax except on matters specified in the Fourth Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Fourth Schedule.

(3) Any order made under subsection (2) shall be laid before the Dewan Rakyat.

Membership of Tribunal

128. (1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman of the Tribunal and such number of Deputy Chairmen from amongst members of the Judicial and Legal Service; and
- (b) not less than five other members as the Minister deems fit, from among persons who, in the opinion of the Minister have wide knowledge or extensive experience in any field of activities relating to goods and services tax, customs or taxation.

(2) The Chairman, Deputy Chairmen and other members of the Tribunal shall hold office for a term not exceeding three years, after which they shall be eligible to be reappointed upon the expiry of their term of office but shall not be appointed for more than three consecutive terms.

(3) The Minister shall determine the remuneration and other terms and conditions of the appointment of the Chairman, Deputy Chairmen and other members of the Tribunal.

Temporary exercise of functions of Chairman

129. Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, a Deputy Chairman shall perform the functions of the Chairman.

Revocation of appointment

130. The Minister may revoke the appointment of a member of the Tribunal appointed under paragraph 128(1)(b) if—

- (a) his conduct, whether in connection with his duties as a member of the Tribunal or otherwise, has been such as to bring discredit to the Tribunal;
- (b) he has become incapable of properly carrying out his duties as a member of the Tribunal;
- (c) there has been proved against him, or he has been convicted on, a charge or charges in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption;
 - (iii) an offence under this Act, the Customs Act 1967 or the Excise Act 1976; or
 - (iv) any other offence punishable with imprisonment for more than two years;
- (d) he is adjudicated a bankrupt;
- (e) he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs;
or
- (f) he absents himself from three consecutive sittings of the Tribunal without leave of the Chairman.

Resignation

131. A member of the Tribunal appointed under paragraph 128(1)(b) may at any time resign his office by giving three months' notice in writing to the Minister.

Vacation of office and acting appointments

132. (1) The office of any member of the Tribunal shall be vacated upon—

- (a) his death;
- (b) his resignation from office by giving notice in writing;
- (c) expiry of his term of appointment.

(2) The Minister shall appoint any person in accordance with section 128 to replace the Chairman, any Deputy Chairman or any other member during the vacancy in the office of the Chairman, the Deputy Chairman or other member.

(3) The exercise of the powers or the performance of the functions of the Tribunal is not affected only because of there being a vacancy in the membership of the Tribunal.

Secretary to the Tribunal and other officers

133. (1) There shall be appointed a Secretary and an Assistant Secretary to the Tribunal and such number of officers as may be necessary for carrying out the functions of the Tribunal.

(2) The Chairman shall have general control of the Secretary, Assistant Secretary and officers of the Tribunal.

(3) For the purposes of this Act, the Secretary and Assistant Secretary to the Tribunal shall be deemed to be officers of the Tribunal.

Public servants

134. All members, officers, Secretary and Assistant Secretary of the Tribunal while discharging their duties shall be deemed to be public servants within the meaning of the Penal Code.

Hearing of appeals

135. (1) The sitting of every appeal shall consist of a panel of three members.

(2) In every appeal the Tribunal shall be presided by the Chairman or the Deputy Chairman.

(3) The decision of the panel shall be decided in accordance with the opinion of the majority of the members composing the panel.

(4) Where a member of the panel other than the Chairman or the Deputy Chairman under subsection (1) dies or becomes incapable of exercising his functions as a member, the proceedings shall continue before, and decision shall be given by, the remaining members of the panel, not being less than two, and the panel shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the death or incapability of the member as aforesaid.

(5) In the case under subsection (4), the decision shall be determined in accordance with the opinion of the majority of the remaining members of the panel, and if there is no majority, the Chairman or the Deputy Chairman presiding the proceedings shall have a second or casting vote.

(6) If the Chairman or the Deputy Chairman presiding over any proceedings in respect of an appeal dies or become incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the appeal shall be heard afresh, unless the parties agree that the appeal be continued by another Deputy Chairman.

(7) Where the term of appointment of any member of the panel expires during the pendency of any proceedings in respect of an appeal, the term of his appointment shall be deemed to be extended until the final disposal of the appeal.

(8) The Tribunal may sit in one or more sittings on such day and at such time and place as the Chairman may determine.

Hearing by a single member

136. Notwithstanding section 135, if the Chairman deems it fit in the interest of achieving the expeditious and efficient conduct of the appeal, the proceedings of the appeal shall be presided over by any of the following persons sitting alone—

- (a) the Chairman;
- (b) any of the Deputy Chairmen; or
- (c) any other member of the Tribunal as the Chairman may determine.

Disclosure of interest

137. (1) A member of the Tribunal having, directly or indirectly, by himself or his family member, any interest in an appeal brought before him as a member, the member shall immediately disclose the fact and the nature of his interest to the Chairman.

(2) Upon receipt of the disclosure of interest under subsection (1), the Chairman shall appoint another member to hear and dispose of the appeal.

Exclusion of jurisdiction of court

138. (1) Where an appeal is lodged with the Tribunal and the appeal is within the jurisdiction of the Tribunal, the issues in dispute in that appeal, whether as shown in the initial appeal or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless—

- (a) the proceedings before the court were commenced before the appeal was lodged with the Tribunal; or
- (b) the appeal before the Tribunal is withdrawn, abandoned or struck out.

(2) Where paragraph (1)(a) applies, the issues in dispute in the appeal to which those proceedings relate, whether as shown in the initial appeal or emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the proceedings before the court is withdrawn, abandoned or struck out.

Notice of appeal and hearing

139. Upon an appeal being lodged under section 126, the Secretary shall give notice of the details of the day, time and place of hearing in the prescribed form to the Director General and the appellant.

Negotiation for settlement

140. (1) The Tribunal shall, with regard to every appeal within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to the proceedings to negotiate an agreed settlement in relation to the appeal.

(2) Without limiting the generality of subsection (1), in making an assessment the Tribunal shall have regard to any factor that in the opinion of the Tribunal, is likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall take effect as if it were a decision of the Tribunal.

(4) Where—

(a) it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the appeal; or

(b) the parties are unable to reach an agreed settlement in relation to the appeal,

the Tribunal shall proceed to determine the appeal.

Representation at hearing

141. Subject to section 170, for the purposes of an appeal—

- (a) any party to the appeal may conduct his case himself or may be represented by any person whom he may appoint for that purpose; and
- (b) the Director General may be represented at any hearing by an authorized officer appointed by him.

Evidence

142. (1) Any proceedings before the Tribunal shall be conducted without regard to formality and technicality and the Tribunal may—

- (a) procure and receive evidence on oath or affirmation, whether written or oral, and examine any person as a witness, as the Tribunal thinks necessary to procure, receive or examine;
- (b) require the production before it of books, papers, documents, records and things;
- (c) administer the oath, affirmation or statutory declaration, as the case may require;
- (d) seek and receive such other evidence and make such other inquiries as it thinks fit;
- (e) summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any document, record or other thing in his possession or otherwise to assist the Tribunal in its deliberations;
- (f) receive expert evidence; and
- (g) generally direct and do all such things as may be necessary or expedient for the expeditious determination of the claims.

(2) A summons issued under this section shall be served and enforced as if it were a summons issued by a Sessions Court.

Tribunal may request for information

143. (1) The Tribunal may request for any information as it may deem necessary for the purposes of exercising any of its powers and functions under this Act.

(2) Any person who refuses to comply with the request by the Tribunal commits an offence.

Decision

144. (1) The Tribunal shall make its decision without delay and where practicable, within sixty days from the first day the hearing before the Tribunal commences.

(2) The Tribunal shall have the power—

(a) to affirm the decision of the Director General;

(b) to vary the decision of the Director General; or

(c) to set aside the decision of the Director General and substitute for it a new decision.

(3) The Tribunal shall give its reason for its decision in any appeal heard before it.

Decision and settlement to be recorded in writing

145. The Tribunal shall make or cause to be made a written record of the terms of—

(a) every agreed settlement reached by the parties under section 140; and

(b) every decision made by it under section 144.

Decision of the Tribunal to be binding

146. (1) A decision of the Tribunal shall be—

- (a) binding on all parties to the proceedings; and
- (b) deemed to be an order of a Sessions Court and be enforced accordingly by the parties to the proceedings.

(2) For the purposes of paragraph (1)(b), the Secretary shall send a copy of the decision made by the Tribunal to the Sessions Court having jurisdiction in the place to which the decision relates or in the place where the decision was made and the Court shall cause the copy to be recorded.

Disposal of appeal

147. The Tribunal shall dispose an appeal by way of—

- (a) agreed settlement reached by the parties and the settlement shall be recorded as if it has been pronounced by the Tribunal;
- (b) withdrawal by the appellant; or
- (c) orders by the Tribunal,

in the prescribed form.

Appeal to the High Court

148. Any party aggrieved by the decision of the Tribunal shall have right of appeal from the decision of Tribunal to the High Court on a question of law or of mixed fact and law.

Tribunal to adopt procedure

149. The Tribunal shall adopt such procedures as it thinks fit and proper.

Want of form

150. No proceedings, award or other document of the Tribunal shall be set aside or quashed for want of form.

Provisions relating to costs and expenses

151. The Tribunal shall only make an award as to costs and expenses and shall have full power to determine by whom and to what extent the costs and expenses are to be paid—

- (a) against the appellant, if it is satisfied that he had conducted his case in a frivolous or vexatious manner; and
- (b) against any party to the appeal, if it is satisfied that in all circumstances of the case it would be unjust and inequitable not to do so.

Disposal of documents, etc.

152. (1) The Tribunal may, at the conclusion of the proceedings before it, order that any goods, document, record, material, thing or other property produced during the proceedings be delivered to the rightful owner or be disposed of in the manner as it thinks fit.

(2) Where no person has taken delivery of the goods, document, record, material, thing or other property referred to in subsection (1) after a period of six months, the ownership in the goods, document, record, material, thing or other property shall be deemed to have passed to and become vested in the Government.

Act or omission done in good faith

153. No action or suit shall be instituted or maintained in any court against—

- (a) a member of the Tribunal; or
- (b) any person authorized to act for or on behalf of the Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Act.

PART XIV

DESIGNATED AREAS

Interpretation

154. For the purposes of this Part, “Malaysia” excludes the designated areas.

Supply of goods or services made within or between designated areas

155. Notwithstanding section 9, no tax shall be charged on any taxable supply of goods or services made within or between the designated areas unless the Minister otherwise directs in an order under section 160.

Goods or services imported into or supplied to or from designated area

156. Notwithstanding any provision of this Act—

- (a) tax shall be due and payable upon all goods including any goods under any lease agreement supplied from a designated area to Malaysia to all intents as if the supply were importation into Malaysia;
- (b) tax shall be charged on taxable supply of services made by any taxable person from a designated area to Malaysia or from Malaysia to a designated area but excluding a supply of services which comprises the use of goods under any lease agreement from a designated area to Malaysia;
- (c) no tax shall be charged upon any importation of goods or supply of imported services into a designated area unless the Minister otherwise directs in an order under section 160.

Supply of goods or services within Malaysia

157. Notwithstanding any provision of this Act, tax shall be charged on all goods or services supplied within Malaysia by a taxable person whose principal place of business is located in a designated area.

Declaration of goods supplied from designated area to Malaysia

158. The person in charge of any vessel or aircraft on which goods are supplied from the designated area to Malaysia shall make a declaration substantially in the form as prescribed under the Customs Act 1967 and any other applicable written law for the time being in force.

Collection of tax in designated area

159. Notwithstanding any provision of this Act, the collection of tax due and payable shall be made in a designated area in respect of goods supplied or to be supplied from the designated area to Malaysia.

Power of Minister to impose tax

160. (1) The Minister may, by order published in the *Gazette*, prescribe any supply within or between the designated areas and any goods or services supplied to, imported into or exported from the designated area to be chargeable to tax.

(2) Any order made under subsection (1) shall be laid before the Dewan Rakyat.

PART XV

FREE COMMERCIAL ZONE

Interpretation

161. In this Part, unless the context otherwise requires—

“commercial activity” has the meaning assigned to it in section 2 of the Free Zones Act 1990 [Act 438];

“Malaysia” excludes free commercial zone;

“free commercial zone” has the meaning assigned to it under subsection 3(1) of the Free Zones Act 1990.

Goods imported into or supplied from free commercial zone

162. Notwithstanding any provision of this Act—

- (a) no tax shall be due and payable upon any importation of goods into a free commercial zone except for goods used in the free commercial zone, other than goods for the purpose of commercial or retail trade activities approved under the Free Zones Act 1990;
- (b) tax shall be due and payable upon all goods supplied or removed from a free commercial zone to Malaysia to all intents as if the supply or removal were importation into Malaysia;
- (c) the payment of tax on any goods supplied or removed from a free commercial zone to a warehouse under section 70 or from a warehouse to a free commercial zone shall be suspended.

Supply of goods made within free commercial zones

163. (1) Notwithstanding section 9, no tax shall be charged on any supply of goods in relation to retail trade activities approved under the Free Zones Act 1990 made within the free commercial zones unless the Minister may, by order published in the *Gazette*, prescribe any supply of goods within the free commercial zones to be chargeable to tax.

(2) Any order made under subsection (1) shall be laid before the Dewan Rakyat.

PART XVI

MISCELLANEOUS

Power to take samples

164. (1) The Director General or any officer of goods and services tax may, if his duties so require, take samples of any goods to ascertain whether they are goods of a description liable to tax or to ascertain the tax due and payable on the goods, or for other purposes as he may deem necessary, and the samples may be disposed of and accounted for in such manner as the Director General may direct.

(2) No payment shall be made for any samples taken under subsection (1), but the officer of goods and services tax shall give a receipt for the samples.

Persons bound to produce goods or give information, etc.

165. (1) Every person having information about any matter into which it is the duty of an officer of goods and services tax to inquire shall, upon being required by him to do so, give the information.

(2) Every person required by an officer of goods and services tax to produce any goods, document, article or thing which is within the power of the person to produce, and which are goods, document, article or thing required under this Act or goods, document, article or thing used in any transaction or other matter relating to tax or goods, document, article or thing into which it is the duty of the officer of goods and services tax to enquire under this Act, shall produce the goods, document, article or thing.

(3) Where any information, goods, document, article or thing are not in the national language or English language, the Director General or any officer of goods and services tax may by notice in writing require the supplier or, on the supplier's default, any other person, to produce, within a reasonable period, a translation thereof in the national language or English language as the Director General or officer may determine.

(4) Any person who contravenes this section commits an offence.

Use of electronic service

166. (1) Notwithstanding any other provision of this Act and subject to regulations made under this Act, the Director General may provide an electronic service to any registered user for—

- (a) the filing or submission of any application, return, declaration or any other document; and
- (b) the service of any notice, direction, order, permit, receipt or any other document.

(2) Where an electronic notice is made and transmitted to the Director General, the Director General shall not be liable for any loss or damage suffered by the registered user by reason of any error or omission of whatever nature or however arising appearing in any electronic notice obtained by the registered user under the electronic service if the error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Director General or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.

(3) Any electronic notice made and transmitted by the registered user shall be deemed to have been filed, submitted or served at the time the electronic notice is received by the Director General.

(4) For the purposes of this section, “registered user” means any person who is authorized in writing by the Director General to gain access to and use the electronic service.

Service of notices

167. (1) Every notice, direction or any other document required by this Act to be served on any person may be served—

- (a) personally upon the person;
- (b) by sending it to the person by registered post; or
- (c) by electronic service.

(2) The notice, direction or other document sent by registered post to a person shall be deemed to have been served on that person at the time at which it would have been delivered to that person in the ordinary course of the post if the notice, direction or other document was addressed—

- (a) in the case of a company, limited liability partnership, firm, society, an association or other body of persons—
 - (i) to its registered office;
 - (ii) to its last-known address; or
 - (iii) to any person authorized by it to accept service of process; and
- (b) in the case of an individual, to his last-known address.

(3) Where a person has given his consent for a notice to be served on him through the electronic service, the notice shall be deemed to have been served at the time when the electronic notice is transmitted to his account through the electronic service.

Authentication of notices, etc.

168. (1) Subject to subsection (2), every notice or any other document served for the purposes of this Act by the Director General or an officer authorized by him shall be sufficiently authenticated if the name and office of the Director General is printed, stamped or otherwise written thereon.

(2) Where this Act provides for a notice or any other document to be under the hand of any officer of goods and services tax, the notice or the other document shall be signed in manuscript by the officer of goods and services tax.

(3) A notice or any other document served for the purposes of this Act and purporting to be signed in manuscript by the Director General or an officer authorized by him shall be presumed, until the contrary is proved, to have been so signed.

Free postage

169. All returns and remittances of tax and any correspondence resulting from or connected with any return or remittance may, if posted in Malaysia, be sent free of postage to the Director General in an envelope marked "Goods and Services Tax".

Tax agent

170. (1) No person shall be permitted to act in Malaysia on behalf of any person for any matter under this Act unless he is a tax agent provided that this subsection shall not prevent any other person to represent any party to an appeal under section 141.

(2) An individual who has his usual place of residence in Malaysia may apply to the Minister for approval to be a tax agent in accordance with the prescribed conditions.

(3) The Minister may approve an application under subsection (2), and if it is approved, the approval shall, unless sooner revoked, be valid for—

- (a) a minimum period of twenty-four months; or
- (b) any other period less than twenty-four months as the Minister may determine,

beginning from the date of the approval.

(4) A tax agent may apply for a renewal of an approval to the Minister before the expiry of approval period specified under subsection (3) and if the application for renewal is approved, the renewal shall, unless sooner revoked, be valid for the period as the Minister may determine.

(5) A fee as may be prescribed by the Minister by an order published in the *Gazette* shall be paid on the application for an approval under subsection (2) or renewal of an approval under subsection (4).

(6) A tax agent who transacts business on behalf of any person for any matter under this Act shall—

- (a) produce a letter of authorization from the person whom he represents; and
- (b) where any prescribed form is required to be submitted for the purposes of the matter being transacted, submit the form that has been signed by the person whom he represents, except where otherwise allowed by the Director General.

(7) Notwithstanding subsection (1), any person who is given permission to act as an agent under section 90 of the Customs Act 1967 shall be permitted to act in Malaysia on behalf of any person for any matter under this Act in relation to importation or exportation of goods, including transshipment.

(8) For the purposes of this section, “tax agent” means any professional accountant or any other person permitted by the Minister to act in Malaysia on behalf of any person for any matter under this Act.

(9) Any person who contravenes subsection (1) or (6) commits an offence.

Rewards

171. The Director General may order any reward as he deems fit to be paid to any person for services rendered in connection with the detection of any offences against this Act or any recovery of tax under this Act.

Forms to be used

172. (1) Where any form has been prescribed under this Act, no person shall, for the purposes of this Act, use any form which is not printed or issued by the authority of the Director General:

Provided that the Director General may, at his discretion and subject to such conditions as he deems fit to impose, permit any person to use forms which are not printed or issued as aforesaid or the use of any form submitted through electronic service.

(2) Any person who contravenes subsection (1) commits an offence.

Power of Director General to charge fees

173. The Director General may charge such fees as may be prescribed in respect of any act or service done or rendered by him or any officer and which is not required to be done or rendered under this Act and for which no fee is prescribed by any written law.

Application of customs legislation

174. (1) Subject to subsection (2), this Act shall be construed as one with the Customs Act 1967 or Excise Act 1976 with regards to the exportation or importation of goods including in transit and the movement of goods under customs control.

(2) Where there is any inconsistency between the provisions of the Customs Act 1967 or Excise Act 1976 and the provisions of this Act, the provisions of this Act shall prevail.

Protection of Government from liability

175. The Government shall not be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while the goods are in any customs warehouse or in the lawful custody or control of any officer of goods and services tax unless the loss is caused by the wilful neglect or default of an officer of goods and services tax or of a person employed by the Government in the course of carrying out his duties under this Act.

Protection of officer of goods and services tax from liability

176. No officer of goods and services tax or other person employed by the Government in the course of carrying out his duties under this Act shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while the goods are in any customs warehouse or in the lawful custody or control of the officer or any other officer of goods and services tax or person employed by the Government in the course of carrying out his duties under this Act unless the loss is caused by his wilful neglect or default.

Power to make regulations

177. (1) The Minister may make regulations as may be necessary or expedient for the purposes of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for the following purposes:

- (a) to prescribe anything required by this Act to be prescribed;
- (b) to vary the rules for determining where a supply of services is made for the purposes of place of supply under section 12;
- (c) to prescribe the offices for the administration of the goods and services tax and for the days and times during which the offices may be opened for business;

- (d) to determine the time of supply in cases where subsections 11(9) and 11(10) apply;
- (e) to prescribe matters relating to registration or registered persons;
- (f) to prescribe matters relating to accounting basis under section 37;
- (g) to prescribe the following matters in relation to the credit of input tax against output tax under section 38:
 - (i) the manner and circumstances where—
 - (aa) a taxable person may treat the tax on the supply of goods or services to him, or the tax paid or to be paid by him on the importation of goods as his input tax;
 - (bb) a person may treat the tax on the supply of goods to him, or the tax paid or to be paid by him on the importation of goods as his input tax in the case where the person was not a taxable person at the time when the supply or importation was made; and
 - (cc) any person who has been but is no longer a taxable person, may be paid by the Director General any amount of any tax on the supply of services made to him when he was a taxable person;
 - (ii) the time limit for a taxable person to claim the whole or any part of any input tax as allowable input tax;
- (h) to prescribe matters in relation to the allowable amount of input tax and to provide for securing a reasonable attribution of input tax to supply under section 39 including—
 - (i) determining a proportion by reference to which input tax for any taxable period is to be provisionally attributed to the supply;

- (ii) adjusting, in accordance with a proportion determined in like manner for a period comprising two or more taxable periods or part thereof, the provisional attribution for any of those periods;
 - (iii) the making of adjustment where the estimate on the basis of which an attribution was made is inaccurate;
- (i) to prescribe matters relating to the relief for bad debt under section 58;
- (j) to prescribe for different provisions for the charging and accounting for tax for joint venture and for any other activity to be deemed as a joint venture under section 69;
- (k) to prescribe the operation of the Approved Trader Scheme under section 71;
- (l) to prescribe the operation of the Approved Toll Manufacturer Scheme under section 72;
- (m) to prescribe the operation of the Approved Jeweller Scheme under section 73;
- (n) to prescribe the operation of the Flat Rate Scheme under section 74;
- (o) to prescribe matters relating to capital markets under section 75;
- (p) to prescribe the following matters in relation to any ruling made under section 76 or 77—
 - (i) the scope and procedure that is to be applied relating to any ruling; and
 - (ii) the scale of costs and fees payable in respect of an advance ruling application;
- (q) to prescribe the manner of furnishing returns and declarations and other matters relating to returns and declarations;

- (r) to prescribe the manner of payment of tax;
- (s) to prescribe the following matters in relation to the Goods and Services Tax Appeal Tribunal under Part XIII:
 - (i) manner in which any matter may be referred to the Tribunal;
 - (ii) the manner in which the Tribunal shall be convened and the place where the Tribunal shall hold its sittings;
 - (iii) the scale of costs and fees payable in respect of any inquiry or proceedings before the Tribunal;
 - (iv) the responsibilities of the members of the Tribunal;
 - (v) the forms to be used in the proceedings;
 - (vi) fees and the manner for collecting and disbursing the fees;
 - (vii) costs and expenses relating to any matter before the Tribunal;
 - (viii) generally the better carrying out of the functions assigned to the Tribunal by this Act;
- (t) to prescribe matters relating to the approval of a tax agent under section 170;
- (u) to prescribe the offences which may be compounded;
- (v) to prescribe matters relating to electronic service.

(3) The regulations made under subsection (2) may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or both.

PART XVII

REPEAL AND SAVINGS OF SALES TAX ACT 1972

Repeal and savings of Sales Tax Act 1972

178. (1) The Sales Tax Act 1972 is repealed.

(2) Notwithstanding the repeal of the Sales Tax Act 1972, any liability incurred, sales tax due, overpaid or erroneously paid under that Act may be collected, refunded, remitted or enforced as if that Act had not been repealed.

Furnishing of return for the last taxable period

179. (1) Notwithstanding subsection 178(1), any person who is licensed under the Sales Tax Act 1972 shall furnish to the Director General a return as required under the Sales Tax Act 1972 for the last taxable period not later than twenty-eight days or such longer period as the Director General may determine from the effective date.

(2) The person referred to in subsection (1) shall state and pay the amount of sales tax chargeable under paragraph 6(a) of the Sales Tax Act 1972 which falls due during the last taxable period.

(3) For the purposes of this section, “last taxable period” means the period of two calendar months or part of it ending on the effective date.

Payment of sales tax when person not registered

180. (1) Notwithstanding subsection 178(1), any person who is licensed under the Sales Tax Act 1972 and is not registered under this Act shall be required to account and pay for sales tax on the goods held on hand on the effective date—

(a) which are acquired free from sales tax under section 9 of the Sales Tax Act 1972;

(b) which are exempted from sales tax under section 10 of the Sales Tax Act 1972; or

(c) where a deduction of sales tax has been made for goods purchased under section 31A of the Sales Tax Act 1972.

(2) The person referred to in subsection (1) shall be required to account and pay for sales tax on the finished and semi-finished goods held on the effective date.

(3) Where a person is required to account for sales tax referred to in subsections (1) and (2), he shall state the amount of sales tax required to be paid in the return under subsection 179(1).

PART XVIII

REPEAL AND SAVINGS OF SERVICE TAX ACT 1975

Repeal and savings of Service Tax Act 1975

181. (1) The Service Tax Act 1975 is repealed.

(2) Notwithstanding the repeal of the Service Tax Act 1975, any liability incurred, service tax due, overpaid or erroneously paid under that Act may be collected, refunded, remitted or enforced as if that Act had not been repealed.

Furnishing of return for the last taxable period

182. (1) Notwithstanding subsection 181(1), any person who is licensed under the Service Tax Act 1975 shall furnish to the Director General a return as required under the Service Tax Act 1975 for the last taxable period not later than twenty-eight days or such longer period as the Director General may determine from the effective date.

(2) The person referred to in subsection (1) shall—

(a) state—

- (i) the amount of service tax, for the whole or any part of the payment for any taxable service provided, not received within a period of twelve calendar months preceding the last taxable period; and
- (ii) the amount of service tax on all taxable service provided in the last taxable period; and

- (b) pay tax in accordance with section 14 of the Service Tax Act 1975.

(3) For the purposes of this section, “last taxable period” means the period of two calendar months or part of it ending on the effective date.

PART XIX

TRANSITIONAL PROVISIONS

Payments, invoices and importation before effective date

183. (1) Tax shall not be charged and levied on any supply of goods or services or importation of goods made before the effective date.

(2) Where, before the effective date—

- (a) any payment is received in connection with a supply of goods or services that will be made on or after the effective date; or
- (b) an invoice is issued relating to a supply of goods or services that will be made on or after the effective date,

for the purposes of determining the taxable period to which output tax or input tax is attributable, the payment is taken to have been received or the invoice is taken to have been issued on the effective date.

(3) For the purposes of determining the value of the supply under subsection (2), the payment received or any amount stated in the invoice issued shall be deemed to be inclusive of tax.

(4) Notwithstanding subsection (2), where any person who is licensed under the Sales Tax Act 1972 or the Service Tax Act 1975 is a taxable person under this Act and before the effective date—

- (a) has issued an invoice on which sales tax is charged on the sale of any taxable goods or service tax is charged on the provision of taxable service; or

(b) has received payment of sales tax or service tax,

no tax shall be charged on the supply of such goods or services made on or after the effective date to the extent covered by the invoice.

(5) Where any goods which on the effective date have not been released from customs control, it shall be treated for the purposes of this section to be imported at the time when the goods are released by the officer of customs.

(6) Any person who contravenes subsection (1) commits an offence.

Registration before effective date

184. (1) For the purposes of this section, any person who would be making a taxable supply is liable to be registered under this section if there are reasonable grounds for believing that the total value of his taxable supplies in the month of the effective date and eleven months immediately succeeding the month will exceed the amount of taxable supplies as specified in the order under subsection 20(1).

(2) Any person who is liable to be registered under subsection (1) shall apply to the Director General to be registered and the application shall be made three months before the effective date.

(3) The Director General may register the person under subsection (1) on or from the effective date.

(4) Any person who contravenes subsection (2) commits an offence.

Effect on sales tax and service tax

185. With effect from the effective date—

(a) sales tax shall not be chargeable on any sale, use, disposal or importation of taxable goods under the Sales Tax Act 1972; and

(b) service tax shall not be chargeable on any taxable service under the Service Tax Act 1975.

Value of supply of goods and services

186. Where a supply of goods or services is treated as having taken place on or after the effective date, the value of the supply shall be the amount determined under section 15, as is, in the opinion of the Director General, not reasonably attributable to any part of the goods supplied or services performed before the effective date.

Contract with no opportunity to review

187. (1) This section shall apply where—

- (a) a written contract specifically identifies a supply and the consideration for the supply; and
- (b) any supply is made pursuant to any contract with no opportunity to review entered into not less than two years before the effective date.

(2) Where a supply is made before the earlier of the following, that is—

- (a) five years after the effective date; or
- (b) when a review opportunity arises,

the supply made pursuant to a contract with no opportunity to review shall be treated as a zero-rated supply:

Provided that—

- (A) the supplier and recipient of the supply are registered persons;
- (B) the supply is a taxable supply; and
- (C) the recipient is making wholly taxable supply.

(3) For the purposes of this section—

- (a) “contract with no opportunity to review” means any written contract or agreement which has no provision for a general review of the consideration for the supply for such a period until a review opportunity arises;

- (b) “review opportunity” means an opportunity that arises for the supplier under the contract, acting either alone or with the agreement of one or more of the other parties to the contract, to—
- (i) change the consideration directly or indirectly because of the imposition of the tax;
 - (ii) conduct, on or after the effective date, a general review, renegotiation or alteration of the consideration; or
 - (iii) conduct, before the effective date, a general review, renegotiation or alteration of the consideration that takes account of the imposition of the tax.

Progressive or periodic supply

188. (1) Where any supply is made under an agreement for a period or progressively over a period whether or not at regular intervals and that period begins before the effective date and ends on or after the effective date, the proportion of the supply which is attributed to the part of the period on or after the effective date shall be chargeable to tax.

(2) Where the supply under subsection (1) is a supply of services, the supply shall be taken to be made continuously and uniformly throughout the period of that agreement.

(3) Notwithstanding subsection (1), where the supply is made under a warranty that relates to goods or services whether expressed, implied or required by law and the value of the warranty is included in the price of the goods or services, no tax shall be charged on such supply.

(4) Subsections (1) and (2) shall not apply to—

- (a) a sale of goods where sales tax has been paid on the sale of the goods to the extent covered by the invoice;
- (b) a provision of services where service tax has been paid on the services to the extent covered by the payment or invoice; or
- (c) any contract with no opportunity to review under section 187.

Rights granted for life

189. (1) This section shall apply where—

- (a) a taxable person, who is a club or other similar body, makes a supply of services under an agreement;
- (b) the agreement provides whether expressly or implicitly that a right is to be granted or exercisable for the rest of the person's life or for a period of not less than thirty years; and
- (c) the rights is granted or first exercisable before the effective date.

(2) Where any payment for rights granted or exercisable for the rest of the person's life or for a period of not less than thirty years is paid by existing or new members of a club or other similar body for any rights to use facilities of the club or other similar body, the supply of services on which any payment is made—

- (a) before the effective date, shall not be chargeable to tax; and
- (b) on or after the effective date, shall be chargeable to tax.

Special refund of sales tax for goods held on hand

190. (1) A person is entitled to a special refund equal to the amount of sales tax in respect of the goods held on hand subject to the following conditions:

- (a) the claimant is a registered person under section 20 as at the effective date;
- (b) the claimant on the effective date holds goods for the purposes of making a taxable supply;
- (c) the goods are taxable under the Sales Tax Act 1972 and the sales tax has been charged to and paid by the claimant; and

(d) the claimant must hold the relevant supplier's invoice proving that the claimant is the recipient for which sales tax has been charged or import documents proving that the claimant is the importer, consignee or owner for which sales tax has been paid.

(2) In the case where—

(a) the goods are purchased from suppliers other than a licensed manufacturer;

(b) the goods are taxable under the Sales Tax Act 1972; and

(c) the invoice held by the person for the goods purchased does not show that the sales tax has been charged,

he is entitled to a special refund equal to twenty per cent of the value of the goods he holds on the effective date as ascertained from the invoice multiplied by the applicable sales tax rate subject to the following conditions:

(A) the claimant is a registered person under section 20 as at the effective date;

(B) the claimant on the effective date holds goods for the purposes of making a taxable supply; and

(C) the claimant has paid the amount as shown on the invoice.

(3) Where a claim for special refund has been made under subsection (1) or (2) and subsequently the claimant returns the goods to the supplier, the claimant shall account the amount of special refund as his output tax in the return for the taxable period in which the goods are returned.

(4) The special refund shall not apply to—

(a) goods which have been capitalised under accepted accounting principles;

(b) goods which have been used partially or incorporated into some other goods;

- (c) goods held for hire, goods held for other than business use and goods not for sale or exchange;
- (d) goods on which sales tax has been paid under the Sales Tax Act 1972 before the effective date and subsequently to be exported on or after the effective date where a claim for drawback on the sales tax paid is to be made under section 29 of the same Act; or
- (e) goods on which the claimant is allowed to claim for a deduction of sales tax under section 31A of the Sales Tax Act 1972.

Claim for special refund

191. (1) Any person who is entitled to a special refund under section 190 shall be eligible to claim once and such claim shall be made to the officer of goods and services tax in a form as the Director General may determine not later than six months from the effective date.

(2) Where the amount of special refund under subsection (1) is—

- (a) less than ten thousand ringgit, the claimant shall furnish to the officer of goods and services tax an audit certificate signed by a chartered accountant certifying the amount of special refund; or
- (b) ten thousand ringgit or more, the claimant shall furnish to the officer of goods and services tax an audit certificate signed by an approved company auditor under section 8 of the Companies Act 1965 certifying the amount of special refund.

(3) Where any information on the claim provided by the claimant is found to be false, inaccurate, misleading or misrepresented—

- (a) he shall not be entitled to a special refund and the officer of goods and services tax may refuse such claim; or

(b) he shall be taken not to have been entitled to a special refund and it shall be lawful for the Director General to recover any refund which has been paid to the claimant.

(4) Subject to subsection (3), the special refund shall be refunded quarterly in equal instalments over a period of two years or any shorter period as the Director General may determine.

(5) Where a claim has been made under subsection (1), the goods shall be deemed to have been given credit for input tax and all provisions of this Act shall apply accordingly.

Offsetting unpaid tax, etc., against special refund

192. Notwithstanding any provision of this Act or any other written law, where any person has failed to pay, in whole or in part—

- (a) any amount of tax due and payable, any surcharge accruing, or any penalty, fee or any other money payable under this Act;
- (b) any amount of sales tax due and payable, any surcharge accruing, or any penalty or any other money payable under the Sales Tax Act 1972;
- (c) any amount of service tax due and payable, any surcharge accruing, or any penalty or any other money payable under the Service Tax Act 1975; or
- (d) any amount of customs duty or excise duty,

the Director General may offset, against that unpaid amount referred to in paragraph (a), (b), (c) or (d), any amount or any part of any special refund that is entitled to that person under this Act and the amount that is offset shall be treated as payment or part payment received from that person.

Construction agreements made before the effective date

193. (1) This section shall apply to the extent that a supply of goods or construction services which relates to the construction, major reconstruction, manufacture or extension of a building or

of a civil engineering work by the supplier, and the goods or construction services are—

- (a) supplied in accordance with a written agreement made before the effective date; and
- (b) made available to the recipient on or after the effective date.

(2) The value of all work and materials permanently incorporated in or affixed on the site of the building or civil engineering work in accordance with the agreement shall be determined as at the beginning of the effective date.

(3) Tax shall be due and payable on the supply to the extent that the value of the supply exceeds the value determined under subsection (2).

(4) For the purposes of determining the value under subsection (2), a taxable person shall furnish to the officer of goods and services tax a certificate signed by any authorized person as provided under any written law, certifying the value of all work and materials permanently incorporated in or affixed on the site of the building or civil engineering work.

(5) This section shall only apply to the extent that the value referred to in subsection (2) is determined—

- (a) in a manner specified by the Director General; and
- (b) on or before the end of the supplier's first taxable period after the effective date or a later date allowed by the Director General.

Retention payments

194. Where any contract for the supply of goods or services before the effective date provides for the retention of any part of the consideration by a person pending full and satisfactory performance of the contract, or any part of it, by the supplier, the retention payment in respect of any supply made on or after the effective date shall be chargeable to tax.

Unredeemed vouchers

195. Subject to section 183, goods or services supplied on or after the effective date in the redemption of vouchers that is issued before the effective date shall be chargeable to tax.

Supplies from machine operated by coins, token, etc.

196. A supply of goods or services from any machine or device operated by coins, tokens and the like is treated as follows:

- (a) the first removal of the collection within one week beginning on the effective date shall not be subject to tax and any subsequent removal within one week beginning on the effective date shall be deemed to be tax inclusive; and
- (b) any removal of the collection after one week beginning on the effective date shall be deemed to be tax inclusive.

Things done in anticipation of the enactment of this Act

197. (1) All acts and things done by or on behalf of the Director General in preparation for or in anticipation of the enactment of this Act and any expenditure incurred in relation thereto shall be deemed to have been authorized under this Act, provided that the acts and things done are consistent with the general intention and purposes of this Act, and all rights and obligations acquired or incurred as a result of the doing of those acts or things including any expenditure incurred in relation thereto shall upon the coming into operation of this Act be deemed to be the rights and obligations of the Director General.

(2) Where any approval in respect of registration under Part IV is given and where any appointment in respect of an approved refund agent under section 61 or an agent under section 65 or a tax agent under section 170 is granted before the effective date, such registration or appointment shall be deemed to be made under this Act.

(3) Such approval given or appointment granted under subsection (2) shall only have effect from the effective date.

FIRST SCHEDULE

[Section 4]

MATTERS TO BE TREATED AS A SUPPLY OF GOODS OR A SUPPLY OF SERVICES

Transfer

1. (1) Any transfer of the whole property in movable goods is a supply of goods but subject to subparagraph (2) the transfer—

- (a) of any undivided share of the property in movable goods; or
- (b) of the possession of the movable goods,

is a supply of services.

(2) If the possession of movable goods is transferred—

- (a) under an agreement for the sale of the movable goods; or
- (b) under an agreement which expressly stipulates that the property in movable goods will pass at some time in the future,

it is a supply of goods.

Land

2. (1) In the case of land, any transfer of—

- (a) the whole right of ownership in land;
- (b) land under an agreement for the sale of such land;
- (c) land under an agreement which expressly stipulates that the ownership of such land will pass at some time in the future;
- (d) any interest under Deed of Assignment; or
- (e) any strata title,

is a supply of goods.

(2) Any lease, tenancy, easement, licence to occupy land or transfer of undivided share in land is a supply of services.

(3) Where there is a default in payment under a security relating to land, the transfer of such land shall be treated as a supply of goods.

Treatment or process

3. Any treatment or process which is being applied to another person's goods is a supply of services.

Utilities, etc.

4. The supply of any form of power including electricity and the supply of gas, water, refrigeration, air-conditioning or ventilation is a supply of goods.

Transfer, etc., of business assets

5. (1) Subject to subparagraph (2), where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, the transfer or disposal is a supply of goods by the person.

(2) Subparagraph (1) does not apply where the transfer or disposal is—

- (a) a gift of goods made in the course or furtherance of the business made to the same person in the same year where the total cost to the donor is not more than five hundred ringgit; or
- (b) a gift, to an actual or potential customer of the business, of an industrial or commercial sample in a form not ordinarily available for sale to the public.

(3) Whereby or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of goods is a supply of services.

(4) Subparagraphs (1) and (3) shall not deem anything done not for a consideration as a supply except where the person who is carrying on a business is entitled to credit under section 38 on the supply or importation of the goods.

(5) The supply of goods in subparagraph (1) or the supply of services in subparagraph (3) is to be treated as made in the course or furtherance of the business, and in the case of a business carried on by an individual—

- (a) subparagraph (1) shall apply to any transfer or disposal of goods in favour of himself personally; and
- (b) subparagraph (3) shall apply to goods used or made available for use by himself personally.

(6) Notwithstanding paragraph (1), where a taxable person who is in the business of making a taxable supply of goods has claimed input tax under section 38 and there is a change of use of such goods and the goods are excluded from any credit under subsection 38(12), the use of such goods by him, whether for a consideration or not, shall be treated as a supply of goods.

(7) Where any goods, forming part of the business assets of a taxable person, are sold by any other person who has the power to do so to recover any debt owed by the taxable person, the goods shall be deemed to be supplied by the taxable person in the course or furtherance of his business.

(8) Subject to subparagraph (9), where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

- (a) the business is transferred as a going concern to another person under section 68; or
- (b) the business is carried on by a personal representative who is deemed to be a taxable person under section 31.

(9) Subparagraph (8) does not apply to any goods where the person who ceases to be a taxable person can show to the satisfaction of the Director General—

- (a) that no credit for input tax in respect of the supply or importation of the goods has been allowed to him and the goods were not acquired by him as part of the assets of a business which was transferred to him as a going concern by another taxable person; or
- (b) that the goods were acquired by him from a person other than a taxable person.

Supply of services to connected persons

6. Subject to subparagraph 5(3), where a supply of services is made not for a consideration by a taxable person to a connected person as referred to in the Third Schedule, the supply to the connected person is a supply of services.

SECOND SCHEDULE

[Section 4]

MATTERS TO BE TREATED AS NEITHER A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

Transfer of going concern

1. The supply of business assets to a person under section 68 is treated as neither a supply of goods nor a supply of services if the assets are to be used by transferee in carrying on the same kind of business, whether or not as part

of any existing business, as that carried on by the transferor or where the supply to whom he transfers relates to part of his business only as a going concern, that part of business shall be capable of separate operation and the transferee is already, or immediately becomes as a result of the transfer, a taxable person.

Pension, provident or social security fund

2. Any contribution made to the pension, provident or social security fund under any written law shall be treated as neither a supply of goods nor a supply of services.

Supply by any society or similar organization

3. The supply of any goods or services by any society or similar organization registered under any written law shall be treated as neither a supply of goods nor a supply of services where—

- (a) the supply to its members relates to its aims and objectives and available without payment other than a membership subscription and the value of the supply is nominal; or
- (b) the supply to a donor or sponsor has no commercial value.

Supplies excluded from any credit

4. Where the whole or any part of tax charged on any supply or importation of goods is excluded from any credit under subsection 38(12), the subsequent supply of the same goods shall be treated as neither a supply of goods nor a supply of services.

Supply of goods or services under Islamic financial arrangement

5. Where any person makes a supply of goods or services under an Islamic financial arrangement, any supply made in such arrangement other than the provision of financing shall be treated as neither a supply of goods nor a supply of services.

Insurance indemnity settlement

6. Any supply of goods between an insurer or takaful operator and an insured in the course of settling a claim under the insurance policy or takaful contract shall be treated as neither a supply of goods nor a supply of services.

Diplomatic and consular services

7. Any supply of diplomatic or consular services by a foreign mission shall be treated as neither a supply of goods nor a supply of services.

THIRD SCHEDULE

[Section 15]

VALUE OF SUPPLY OF GOODS OR SERVICES

Open market value

1. (1) The open market value of any supply of goods or services being a supply freely offered and made between persons who are not connected persons shall be in the following order:

- (a) the open market value of any supply of goods or services shall be equal to the consideration in money which the supply of those goods or services would generally fetch if it were to be a supply freely offered and made between persons who are not connected persons and supplied substantially under the same circumstances at or about the same time in Malaysia;
- (b) where the open market value of any supply of goods or services cannot be determined under subparagraph (a), the open market value shall be the value of a similar supply in Malaysia, being a supply freely offered and made between persons who are not connected persons;
- (c) where the open market value of any supply of goods or services cannot be determined under subparagraph (a) or (b), the open market value shall be determined based on the information and data available in Malaysia which provides a sufficiently objective approximation of the consideration in money which could be obtained for the supply of those goods or services;

(2) Where a taxable person making the supply is connected with the person to whom the supply is made, and—

- (a) the value of a supply made by a taxable person for a consideration in money or for a consideration not wholly consisting of money is less than its open market value; and
- (b) the supply is a taxable supply and the person to whom the supply is made is not entitled to credit under section 38 for the whole or any part of the tax on the supply,

the value of the taxable supply of goods and services shall be taken to be its open market value.

(3) For the purposes of subparagraph (1)(b), “similar supply” means any other supply of goods or services that closely represents the supply being valued in respect of materials, components, parts and characteristics and are functionally and commercially interchangeable with the supply being valued having regard to the quality and reputation of the other supply and the supply being valued.

(4) For the purposes of this Act, “open market value” shall be taken to be an amount, with the addition of the tax chargeable.

Connected persons

2. (1) Persons shall be deemed to be connected if—
- (a) they are officers or directors of one another's business;
 - (b) they are legally recognized partners in business;
 - (c) any one person directly or indirectly owns, controls, or holds five per cent or more of the outstanding voting stock or shares of both of them;
 - (d) one of them directly or indirectly controls the other;
 - (e) both of them are directly or indirectly controlled by a third person;
 - (f) together they directly or indirectly control a third person; or
 - (g) they are members of the same family.
- (2) Persons shall be deemed to be members of the same family if—
- (a) they are connected by blood relationship within the fourth degree of relationship;
 - (b) they are married to one another or if one is married to a person who is connected within the fourth degree of relationship to the other; or
 - (c) one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.
- (3) A trustee in a settlement is connected with—
- (a) any individual who in relation to the settlement is a settlor;
 - (b) any person who is connected with such an individual; and
 - (c) a body corporate which is connected with that settlement.

Token, stamp (other than postage stamp) or voucher

3. Where a right to receive goods or services for a monetary value stated on any token, stamp (other than postage stamp) or voucher is granted for a consideration, the consideration shall be disregarded except to the extent, if any, it exceeds the monetary value.

Business assets

4. Where there is a supply of goods by virtue of—

(a) subparagraph 5(1) of the First Schedule, not for a consideration; or

(b) subparagraph 5(8) of the First Schedule,

the value of the supply shall be the open market value.

Foreign exchange

5. Where any sum relevant for determining value is expressed in a currency other than ringgit, it is to be converted into ringgit at the selling rate of exchange prevailing in Malaysia at the time when the supply takes place or in the case of the importation of goods, at the rate of exchange determined by the Director General at the time applicable for the calculation of customs duty or excise duty and valuation.

Value of supply based on retail price under certain circumstances

6. (1) Where—

(a) the whole or part of a business carried on by a taxable person consists in supplying to a number of persons goods to be sold, whether by them or others, by retail; and

(b) those persons are not taxable persons,

the Director General may by notice in writing to the taxable person direct that the value of any such supply by him after the giving of the notice or after such later date as may be specified in the notice shall be taken to be its open market value on a sale by retail.

(2) A notice under subparagraph (1) may be varied, withdrawn or cancelled by the Director General by a further notice given in writing.

Value of supply of goods from a person licensed under section 65A of the Customs Act 1967 or operating in a free industrial zone under paragraph 10(1)(b) of the Free Zones Act 1990

7. Where a taxable supply of goods is made by a person licensed under section 65A of the Customs Act 1967 or a person operating in a free industrial zone under paragraph 10(1)(b) of the Free Zones Act 1990 to any person who is not licensed under section 65A of the Customs Act 1967 or to any person not operating in a free industrial zone under paragraph 10(1)(b) of the Free Zones Act 1990, the value of the goods shall be the value as determined under section 16.

Value of betting and gaming supplies

8. (1) Where a taxable supply of services is made by a person licensed under any written law involving bettings, sweepstakes, lotteries, gaming machines or games of chance, the value of supply shall be determined in accordance with the following formula:

$$\frac{100}{100 + C} \times (A - B)$$

- where A is the total amount received for the supply less any tax or duty under any other written law except excise duty;
- B is the amount of money, if any, payable to any person participating successfully in the bettings, sweepstakes, lotteries, gaming machines or games of chance; and
- C is the rate of tax fixed under section 10.

(2) Where the value of supply determined under paragraph (1) is negative, such value shall be treated as nil.

FOURTH SCHEDULE

[Section 127]

NON-APPEALABLE MATTERS

The Goods and Services Tax Appeal Tribunal shall not have jurisdiction to hear appeals against—

- (a) any matter which is inherent of a statutory restriction under this Act;
- (b) any direction to treat persons as a single taxable person under section 23;
- (c) any refusal of voluntary registration under section 24;
- (d) any refusal of group registration under section 27;
- (e) any matter relating to reassignment of the taxable period under subsection 40(4);
- (f) offsetting tax against refund under section 45;
- (g) any seizure and selling of any goods for recovery of any amount under section 47(2);

- (h) any refusal of payment by instalment under section 51;
- (i) any decision to reduce or disallow any refund under subsection 57(2);
- (j) any refusal to refund an amount paid by any person under subsection 57(5);
- (k) any refusal to remit any penalty or surcharge under subsection 62(2);
- (l) any refusal to approve any application for any scheme under Part VIII;
- (m) any advance ruling made under section 77;
- (n) the exercising of powers under Part X;
- (o) the compounding of offences under section 121;
- (p) any matter relating to approval of reward by the Director General under section 171; and
- (q) any matter relating to special refund under sections 190, 191 and 192.

EXPLANATORY STATEMENT

The Goods and Services Tax Bill 2014 (“the proposed Act”) seeks to provide for the imposition and collection of goods and services tax (GST) and for matters connected therewith. The GST is a broad-based consumption tax based on a value-added concept. The GST will replace the sales tax and the service tax currently imposed and collected under the Sales Tax Act 1972 and the Service Tax Act 1975. Unlike the present sales tax which is a single stage tax, the GST is a multi-stage tax. Payment of tax is made in stages by the intermediaries in the production and distribution process. The tax itself is not a cost to the intermediaries and does not appear as an expense item in their financial statements.

GST covers all sectors of the industry and is a tax on final consumption of goods and services. It is collected through a credit system where GST incurred on inputs is offset against GST charged on outputs.

2. Part I of the proposed Act deals with preliminary matters.

Clause 1 provides for the short title and the power of the Minister to appoint the date of commencement of the proposed Act.

Clause 2 contains the definitions of the words and expressions used in the proposed Act.

Clause 3 seeks to provide for the general meaning of business in the proposed Act which includes the activities of clubs and similar organizations, and paid admission into premises. This *clause* also seeks to extend the meaning of business to include the commencement, termination or intended termination of business and disposal of assets or transfer of business as a going concern to be a supply made in the course or furtherance of business.

Clause 4 seeks to provide for the meaning of supply and the supply of goods or the supply of services, as well as matters that are to be treated as a supply of goods or a supply of services as listed in the First Schedule and matters that are to be treated as neither a supply of goods nor a supply of services as listed in the Second Schedule. This *clause* also gives power to the Minister to amend the First and Second Schedules.

3. Part II sets out the administration of the GST.

Clause 5 seeks to provide that the Director General has superintendence over all matters relating to GST. A senior officer of goods and services tax shall have and exercise all the powers of the Director General other than the powers conferred under sections 8, 62, 76, 77, 172 and 173.

Clause 6 seeks to require officers of goods and services tax to identify themselves when performing their duties and any person may refuse an order made by the officers if they do not identify themselves. This *clause* also provides that unlawfully wearing, using, possessing or displaying an authority card or badge of an officer of goods and services tax is an offence.

Clause 7 seeks to provide that all officers of goods and services tax shall be deemed to be public servants.

Clause 8 deals with the confidentiality of all documents handled by officers of goods and services tax or any other government officers having official duties. It shall be an offence for any person who misuses any information or documents other than for the purposes of carrying on his duties. This *clause* allows the officer of goods and services tax not to divulge any information or document to any person except in the course of carrying out his duties as an officer of goods and services tax or in the case of prosecution of an offence in court. The Director General may share information with the Director General of Inland Revenue and the Chief Statistician in the performance of his official government duties. This *clause* also empowers the Minister to disclose any information or document to any person he deems fit.

4. Part III contains provisions relating to the imposition and scope of tax.

Clause 9 seeks to provide for the chargeability of tax on any taxable supply made in Malaysia by a taxable person in the course or furtherance of business and includes goods and services supplied locally as well as imported except in the case of imported services or any local recipient under Approved Toll Manufacturer Scheme where a non-taxable person is allowed to charge tax. This *clause* places the liability of tax on the person who makes the supply except in the case of an auctioneer or a person who sells goods belonging to a taxable person in satisfaction of a debt to be liable to account for tax

even though they are not making the supply. It further provides for GST to be charged and payable on all importation of goods into Malaysia as if it were customs duty or excise duty. Any registered person must display price of the goods or services inclusive of tax. If he requires to display the price exclusive of tax, he is required to apply to the Director General for approval. It also provides for contravention of this *clause* to be an offence.

Clause 10 seeks to provide for the tax to be charged on the value of the supply or importation based on the rate of tax as determined by the Minister. This *clause* provides for the procedure in fixing the tax rate and a refund of tax may be made under specified conditions.

Clause 11 seeks to provide for the time of supply rules and determines the general time of supply rules for goods and services. It also determines the time of supply to be triggered when a tax invoice is issued or payment is received whichever is the earlier. The time of supply is the date the invoice is issued if the invoice is issued within 21 days after the supply is made. This *clause* allows the Director General to determine the time of supply under special circumstances such as when goods are transferred or disposed of and privately used, one-off use or as and when it is used. This *clause* also provides for exceptions to the general rule on the time of supply under certain circumstances and the application of those sections for supply made separately and successively as prescribed under the regulations to be made under the proposed Act.

Clause 12 seeks to provide for the place of supply rules for the purposes of chargeability of tax and determine the place of supply for goods. The place of supply is in Malaysia if the supply is made from a place in Malaysia to another place in Malaysia or if the goods are removed from a place in Malaysia to a place outside Malaysia. The place of supply is treated to be outside Malaysia if the goods are brought in from a place outside Malaysia. This *clause* also determines the place of supply for services. If the supplier belongs in Malaysia then the place of supply is in Malaysia.

Clause 13 sets out the treatment of imported services as a supply made by the recipient and the chargeability of and liability to pay tax on imported services by a taxable person and any person other than a taxable person. It also provides for the time of supply to be the time when payment is made by the recipient and the non-applicability of the section to any supply of goods under any lease agreement, from a person who does not belong in Malaysia.

Clause 14 seeks to determine the country where the supplier or recipient of services belong based on his business or fixed establishment or his usual place of residence in that country. This *clause* also seeks to provide for any business establishment to be regarded as belonging in Malaysia if the business establishment has a branch or agency in Malaysia.

Clause 15 seeks to provide the rules in determining the value of supply except as provided for in the Third Schedule that is the value of supply to be the consideration in money excluding tax. It also provides for the value of supply (which includes excise duty) to be determined by using the open market value less tax chargeable under certain circumstances where there

is no consideration or the consideration is not wholly in money. Where the consideration covers more than one supply, the *clause* seeks to require apportioning the consideration received that is attributable to the supply. This *clause* seeks to empower the Minister to amend the Third Schedule and to determine the value of supply under special circumstances.

Clause 16 seeks to provide for the computation of value of goods imported for the purposes of charging GST.

Clause 17 seeks to empower the Minister to treat any supply of goods or services as a zero-rated supply by way of an order published in the *Gazette*. The supply of goods if the goods are exported is also treated as a zero-rated supply. The supply of goods or services which are zero-rated shall be treated as a taxable supply and shall be charged at zero per cent. This *clause* provides for the liability to pay tax and the seizure of goods that are claimed to have been exported but found in Malaysia.

Clause 18 seeks to empower the Minister to determine any supply of goods or services to be an exempt supply by way of an order published in the *Gazette* whereby no tax is to be charged on the exempt supply.

5. Part IV sets out the provisions for the registration of taxable persons.

Clause 19 seeks to provide for the general provisions for the registration of taxable persons. It also provides for any reference to a supply to be confined to a supply made for business purposes and that the value of the supply would be taken as tax exclusive.

Clause 20 seeks to empower the Minister to determine the threshold level for mandatory registration by way of an order published in the *Gazette*. This *clause* provides for the computation of annual turnover for the purposes of determining the liability to be registered. The value of supplies made during the period in which the taxable person was previously registered, the value of sale of capital assets, imported services, supplies made within or between designated areas and supplies made by a toll manufacturer for a foreign principal are excluded. Supplies made within or between designated areas will not include supplies that the Minister prescribes as taxable in the designated areas. This *clause* also provides for the use of a prescribed form in making an application to be registered.

Clause 21 seeks to require a person to notify his liability to register within 28 days from the end of his liability to register and the registration date to start on the first day after the month in which he makes the notification to register or an earlier date as may be agreed. This *clause* also requires a person to notify his liability to the Director General within 28 days from the date when the business is transferred and Director General shall register him accordingly. The Director General may predetermine a registration date if the person fails to notify his liability to register. Any reference to registration of persons shall refer to registration in a register kept by the Director General. If a person fails to register within the stipulated period he shall be liable to pay late registration penalty based on the period he is late for registration.

Clause 22 deals with the cessation of a person's liability to be registered. This *clause* further provides that the liability to register does not cease if the person's annual turnover has not exceeded the threshold due to expected cessation of making taxable supplies or suspension of making taxable supplies for 30 days or more. It excludes the value of sale of capital assets, imported services, supplies made within or between designated areas and supplies made by a toll manufacturer for a foreign principal for the purposes of determining the end of liability to be registered. Supplies made within or between designated areas will not include the supplies that the Minister has prescribed as taxable in the designated areas.

Clause 23 seeks to empower the Director General to direct two or more taxable persons to be registered as a single taxable person. It explains the determination of artificial separation of business to take into consideration the extent of financial, economic and organizational links. The Director General shall make the direction subject to certain conditions specified. Each direction is to be served on every person named. This *clause* also gives power to the Director General to direct another person other than those persons named in the earlier direction. Upon the revocation of a registered person (to end his liability) if he is named as one of the persons in the direction, he together with all other persons shall be registered as a single taxable person. The persons named in the direction are to be known as constituent members after they are registered. It stipulates the responsibilities of the single taxable person and the treatment of constituent members as a partnership. The Director General may disregard a person to be a constituent member and that person shall cease to have any liability after he has ceased to be a member of the partnership.

Clause 24 seeks to allow for voluntary registration of any person who is not liable to be registered, subject to certain conditions. Upon registration, the person shall remain to be registered for a period of not less than two years. This *clause* also allows for voluntary registration of a person who makes or intends to make a taxable supply outside Malaysia. This *clause* provides for the use of a prescribed form in making the application to be registered and enables the Director General to cancel the registration of a person if he does not make a taxable supply by the stipulated date or he has breached any conditions imposed.

Clause 25 seeks to require a person to notify the Director General within a stipulated period if he ceases to make a taxable supply or intends to cease making a taxable supply.

Clause 26 seeks to allow the Director General to cancel a person's registration upon request or notification if he is satisfied that such person can be deregistered. This *clause* also allows the Director General to cancel the person's registration if he is satisfied that the person has ceased to be registrable effective from the date he so ceases or such later date or if he is neither liable nor eligible to be registered.

Clause 27 seeks to allow two or more companies to apply for group registration if certain conditions are satisfied. The registration of the group shall be in the name of the representative member. This *clause* further provides for the treatment of supplies between members of a group and the joint liability of every member of a group.

Clause 28 seeks to provide for the registration of partnership in the name of the firm and that any changes in the partnership shall not affect the registration and accounting for tax. A partner is liable to notify in writing to the Director General that he has ceased to be a partner and he is also liable to pay any tax due until the date of cessation as a partner. This *clause* also seeks to provide that any service of notice to the firm during the taxable period in which the partner is liable shall be treated as having been served on him although he has ceased to be a partner. Further, the serving of notice to the firm shall be deemed to have been served on a partnership. Any notice given by any partner shall be deemed as a notice given by all partners of the firm. It shall be an offence if a person does not notify in writing to the Director General of his date of cessation as a partner in the partnership or fails to pay his proportion of tax due and payable. This *clause* further seeks to exclude limited liability partnership.

Clause 29 seeks to provide for the registration of societies and similar organizations. Any change in the members shall not affect the registration and accounting for tax. It also provides for the joint and several responsibility of the principal office bearers and any member of a committee.

Clause 30 deals with the registration of businesses carried on in branches or divisions and the conditions and requirements for the registration of business carried on by branches or divisions. The Director General shall terminate the registration if they breach certain conditions and also determine the date of termination of registration. This *clause* provides for a taxable person to apply for the termination of registration effective from the date of application or a later date as determined by Director General and the taxable person shall remain registered for a period of not less than two years unless the Director General otherwise allows.

Clause 31 seeks to allow the Director General to deem a personal representative carrying on business on behalf of a taxable person as a taxable person himself and limits the tax liability of the personal representative to the extent of control of the business assets. This *clause* requires the personal representative to notify the Director General, within 21 days from the date the personal representative takes over, the fact of the death, liquidation, receivership, bankruptcy or incapacity. It also requires the personal representative to set aside an amount sufficient to pay tax or penalty. The personal representative shall be personally liable in the event he fails to notify or pay the tax or penalty and, in case of two or more personal representatives, they shall be jointly and severally liable.

Clause 32 seeks to exempt a taxable person from registration if he makes wholly a zero-rated supply and requires any person who is exempted from registration to notify the Director General within 30 days from the date of any change in the nature of his supply.

6. Part V contains provisions on accounting, assessment and recovery of tax.

Clause 33 seeks to require a registered person to issue a tax invoice with prescribed particulars and allows omission of any prescribed particulars under certain conditions. However, a tax invoice is not required to be issued for a zero-rated supply or a supply with no consideration. It also prohibits the issuance of a tax invoice for second-hand goods, supply of imported services and deemed supply made by a recipient under an Approved Toll Manufacturer Scheme. It also provides the issuance of a self-billed invoice subject to the approval of the Director General. This *clause* further provides for contravention of this *clause* to be an offence.

Clause 34 seeks to allow tax invoices to be transmitted or made available by electronic means.

Clause 35 seeks to require both the supplier and recipient to make adjustments if the supplier issues a credit note or debit note.

Clause 36 seeks to require both taxable person and certain non-taxable person to keep records in relation to his tax liability in Malaysia either in the national language or the English language for 7 years. This *clause* also seeks to allow for the preservation of records or information in the manner approved by the Director General. Such records shall be admissible as evidence in any proceedings.

Clause 37 seeks to require a taxable person to account for tax at the time of supply and subject to the Director General's approval, allow a registered person to account for tax on payment basis. It also empowers the Minister to make regulations for tax adjustments in respect of the change of accounting basis.

Clause 38 seeks to allow a taxable person to deduct his input tax from the output tax in the return. This *clause* seeks to treat flat rate addition as input tax and also limit the proportion of tax which is attributable to business to be counted as input tax. It also allows the Director General to refund any credit or credit that exceeds the output tax and allows any credit due to be carried forward to the next taxable period either by application or as directed by the Director General. The Director General shall withhold the refund if a taxable person fails to comply with any obligation under the proposed Act or request made by the Director General. This *clause* also provides the time frame for the Director General to make a refund and requires a taxable person to account any input tax that has been credited or refunded as his output tax if he fails to pay the consideration to the supplier. It allows a taxable person to claim back his input tax if he has subsequently paid the consideration to the supplier. This *clause* further excludes certain supply of goods or services from any input tax credit.

Clause 39 seeks to restrict the amount of input tax as credit for the purposes of making certain supplies only and provides certain exempt supply to be treated as taxable supply subject to the prescribed conditions.

Clause 40 seeks to assign the taxable period of a taxable person to be one month or three months depending on his annual total value of taxable supplies. This *clause* further sets out when the taxable person's first and subsequent taxable period begins and ends unless otherwise determined by the Director

General. It allows a taxable person to apply in writing to the Director General to vary his taxable period or the length of any of his taxable period. It further provides power to the Director General to reassign his taxable period.

Clause 41 seeks to require a taxable person to account for tax in a return and furnish it within the stipulated time. A person who has been approved a varied taxable period has to submit a return within 30 days from the end of each varied taxable period. A taxable person shall submit a final return within the stipulated period in the event of deregistration and pay any tax due. This *clause* also requires a taxable person to pay for the tax and to furnish a return whether or not there is tax to be paid. It also provides for contravention of this *clause* to be an offence.

Clause 42 seeks to require a person other than a taxable person to account for tax in a declaration and furnish it within the stipulated time. This *clause* requires a person other than a taxable person to pay for the tax. It also provides for the contravention of this *clause* to be an offence.

Clause 43 seeks to allow the Director General to assess the amount of tax payable if a taxable person fails to apply for registration, fails to furnish a return or furnishes an incomplete or incorrect return. This *clause* limits the time frame of not more than 6 years after the end of a taxable period for the Director General to make an assessment except in cases of fraud. It also allows the Director General to make an assessment where goods are not supplied or exported unless the taxable person can prove that the goods are lost or destroyed. The Director General shall increase the amount of tax assessed in the case where a taxable person pays tax according to the assessed amounts but continually fails to submit returns. This *clause* further deems the assessed amount to be the correct tax that is due from the taxable person, whether or not that person appeals against the assessment, unless the assessment is subsequently withdrawn or reduced and the taxable person must pay the tax regardless of whether he makes an appeal against the assessment. This *clause* also allows the Director General to make a supplementary assessment in excess of an earlier assessment and amend the assessment to ensure the correctness of his assessment.

Clause 44 seeks to allow the Director General to disregard any transaction in relation to tax avoidance and deem any person as a taxable person, any supply as a taxable supply, to place a supply in a specific taxable period and to fix the value of any supply at open market value. This *clause* seeks to exclude any genuine commercial transactions with no intention of obtaining tax advantage.

Clause 45 seeks to allow the Director General to offset any refund other than special refund against any unpaid tax including penalty, surcharge, fee, other money payable, customs duty, excise duty, sales tax or service tax and the amount offset is regarded as if payment or part payment has been made.

Clause 46 empowers the Minister to recover any tax due and payable or any penalty, surcharge, fee or other money payable as a civil debt. It also provides for the recovery of tax from a taxable person when tax is charged and which shall be based on the amount shown as tax in the invoice and if

not shown, it shall be regarded as tax inclusive. This *clause* provides for the recovery of tax even though the invoice is not a tax invoice, the supply did not take place or the person issuing the invoice is not a taxable person as long as the supply is a taxable supply. The issuance of a certificate signed by the Director General shall be taken as sufficient evidence for court proceedings. The *clause* treats penalty, surcharge, fee or other money payable as tax and sets aside the time limit imposed on the collection of penalties under the Limitation Act 1953, the Limitation Ordinance of Sabah and the Limitation Ordinance of Sarawak.

Clause 47 contains provisions for the seizure of goods belonging to a person at his place of business until the tax, penalty, surcharge, fee or other money have been paid. This *clause* provides for the seizure of goods, for the selling of seized goods after due notice has been given to the owner or his agent and the proceeds of sale to be applied for the payment of tax, penalty, surcharge, fee or other money and any surplus to be given to the owner and if the owner cannot be traced, the balance to be credited into the Federal Consolidated Fund. The Director General shall dispose the seized goods if there are no bidders for the sale of the goods. This *clause* requires a senior officer of goods and services tax to witness the sale of the seized goods by auction and it allows the sale of seized goods by auction to be conducted through electronic means.

Clause 48 seeks to require a person holding or owing money due to a taxable person to pay to the Director General if the taxable person owes tax, penalty, surcharge, fee or other money and a written request has been made to the person holding or owing money. It deems the payment made by the person holding or owing money to the taxable person to be the payment made by the taxable person. This *clause* also provides for any person to give information regarding any money due to the taxable person if the Director General requires such information.

Clause 49 seeks to allow the Director General to request the police or the immigration to prevent any person from leaving the country if the person owes tax, penalty, surcharge, fee or other money. The police or immigration may retain travel documents if a request has been made by the Director General. This *clause* requires the Director General to give a notice to the person informing him that he is prevented from leaving the country and any non-receipt of the notice does not prevent the police or immigration from performing his duties. A person is allowed to leave the country if he is able to show proof that the tax, penalty, surcharge, fee or other money owed have been paid or he has furnished a security sufficient to pay the tax, penalty, surcharge, fee or other money owed.

Clause 50 seeks to require a person to give security for the payment of tax if the Director General thinks it is necessary for the due compliance of the law.

Clause 51 empowers the Director General to allow any unpaid tax or penalty to be paid in instalments. A surcharge of ten per cent shall be imposed on the outstanding amount if there is a default in the payment of any instalment and the outstanding amount together with the surcharge shall become due and payable on the date the default occurs.

Clause 52 disallows any imported goods to be released from customs control until tax has been fully paid except as otherwise allowed by the Director General.

Clause 53 seeks to provide for the liability of directors of companies, limited liability partnership, partners of firms or committee members of societies to pay any unpaid tax, penalty, surcharge, fee or other money.

7. Part VI sets out the establishment of the Fund for Goods and Services Tax Refund.

Clause 54 seeks to provide the establishment of the Fund for Goods and Services Tax Refund and empowers the Minister to pay into the Fund such amount of tax collected under the proposed Act. The moneys of the Fund shall be used for the purposes of refund under *clause 38* and Part VII. This *clause* empowers the Accountant General to administer the Fund and authorizes the payment of all or part of the moneys of this Fund into the Consolidated Revenue Account of the Federal Consolidated Fund.

Clause 55 seeks to set aside the provision of section 14A of the Financial Procedure Act 1957 in relation to refunds under *clause 38* and Part VII.

8. Part VII contains provisions relating to relief, exemption, refund and remission.

Clause 56 seeks to empower the Minister to relieve any person or class of persons from the payment of the whole or part of the tax charged and levied. Consequently, the taxable person is relieved from charging and collecting tax.

Clause 57 seeks to allow a person who has overpaid any tax, penalty, surcharge, fee or other money to claim for a refund within six years from the date the tax has been overpaid and after the claim has been made, the Director General may refund such tax, penalty, surcharge, fee or other money if he is satisfied that such overpayment has occurred. This *clause* further empowers the Director General to reduce or disallow any refund if the refund may unjustly enrich the claimant. Overpayment claim shall be supported by evidence if required by the Director General. The Director General is not liable to make any refund if it is found that tax is not due to the claimant.

Clause 58 seeks to provide for a person to be entitled for bad debt relief if he has not received payment within a stipulated time in relation to the taxable supply made by him and he has also made sufficient effort to recover the debt. A person who is entitled to a bad debt relief shall make a deduction or claim for the whole amount of tax if he has not received any payment for the supply and a certain portion of the tax paid if he has received part payment for the supply. This *clause* further requires the person who has been granted relief from bad debt and subsequently receives payment for the supply that has been granted relief to repay an amount determined by a formula to the Director General.

Clause 59 seeks to allow any taxable person to reduce the tax chargeable on certain supplies such as secondhand goods and impose certain conditions on such supplies. Tax shall be chargeable on the positive price margin between goods supplied and goods acquired and tax will not be chargeable if there is a negative margin. This *clause* applies to where the previous supply of goods and previous importation of goods took place before the effective date and was chargeable to sales tax, a supply with no tax chargeable shall include a supply under paragraph 4 of the Second Schedule or the previous supply was from a taxable person also granted relief the sale of secondhand goods.

Clause 60 seeks to allow the Director General to recover tax, penalty and surcharge, fee or any other money which was wrongly refunded within 6 years from the date on which the refund was made.

Clause 61 seeks to provide for a Tourist Refund Scheme to enable tourists to claim refund on goods purchased from an approved outlet in Malaysia and subsequently taken out of Malaysia. This *clause* empowers the Minister to appoint any person to be a tourist refund agent.

Clause 62 seeks to allow the Minister to remit the whole or any part of tax due and payable on a case-by-case basis. This *clause* further allows the Director General to remit the whole or any part of the penalty payable or the surcharge accrued under the proposed Act on the grounds of justification and equity. It provides for the refund of tax if a person has been granted a tax remission and has paid the tax.

Clause 63 seeks to empower the Director General to remit the whole or any part of tax if the goods under customs control are lost, damaged or destroyed. Tax shall be chargeable on the goods that have been removed from customs control even though the goods have been claimed to have been lost, damaged or short in weight, measure, volume or value unless a written notice is given to the Director General before the goods are removed from customs control.

9. Part VIII deals with special cases under the proposed Act.

Clause 64 seeks to provide the non-applicability of the proposed Act to the Federal and State Governments and to local authorities and statutory bodies in respect of their regulatory and enforcement functions.

Clause 65 seeks to deem any supply made by an agent on behalf of a principal to be a supply made by the principal and any supply to an agent on behalf of a principal to be a supply made to the principal. It further treats any supply through an agent who acts in his own name as a supply made to the agent and a supply made by the agent whereas a supply through an auctioneer who acts in his own name on behalf of a taxable person is treated as a supply by a taxable person and the auctioneer is required to account for tax in a tax return if the auctioneer is a taxable person and to account for tax in the prescribed form if he is a non-taxable person and any supply by the taxable person to the auctioneer shall be disregarded. If a person is selling goods belonging to a taxable person to recover debts, he is liable to account

for tax irrespective of whether he is a taxable person or not. This *clause* also seeks to require a principal who does not belong in Malaysia but would be a taxable person if he belongs in Malaysia to appoint an agent whether or not the agent is a taxable person, to account for tax on his behalf. However, the Director General can direct the principal who does not belong in Malaysia to appoint another agent to act on his behalf. Any goods imported by an agent who is a taxable person and acting in his own name for a person other than a taxable person is treated to be imported by the agent and subsequently if he supplies the goods, he is treated as making the supply. This *clause* provides for the scope where a person is treated as not belonging in Malaysia.

Clause 66 seeks to provide for the application of this *clause* when there is a change in the rate of tax or any change in the description of zero-rated supply or exempt supply. The old tax rate shall be charged on the higher of any payment received or the value of the supply made before the change in the rate of tax and the charging of the new tax rate on the balance. This *clause* also deals with the charging of the old tax rate and the new tax rate in cases where there is a change of status from taxable supply to exempt supply and standard-rated supply to zero-rated supply and *vice versa*.

Clause 67 sets out the flexibility of the supplier to charge additional tax or reduce tax if there is a change in the rate of tax after making a contract for a taxable supply of goods or services. A change in the rate of tax shall include a change of status of an exempt supply or zero-rated supply.

Clause 68 seeks to treat the supply made by a transferor to be the supply made by a transferee and requires a transferor to transfer his tax records to the transferee if his business is transferred as a going concern. The transferee is deemed to have claimed his input tax or refund if the transferor has claimed for input tax or refund. Similarly, if it is the liability of the transferor to furnish a tax return, account and pay tax, it shall also be the liability of the transferee to do so. Where the transferor is approved to account tax on payment basis, the transferee is required to continue using the payment basis on the business transferred to him. The transferor and transferee shall be entitled to claim any input tax which is incidental to the transfer of a going concern.

Clause 69 seeks to provide for two or more venturers in a petroleum-related activity under a venture agreement to be treated as a joint venture for tax purposes. The venturers shall nominate one venturer to be the venture operator or appoint a joint operating company to be the venture operator. The registration of the joint venture shall be in the name of the venture operator and a joint operating company shall be a taxable person for the purposes of the joint venture. The Director General may cancel the registration of a joint venture on the grounds of protection of tax revenue. It also provides that all venturers shall be jointly and severally liable for any tax due from the venture operator.

Clause 70 seeks to provide for the treatment of tax on imported goods which are subject to a Warehousing Scheme, the value of the goods to be inclusive of customs duty or excise duty and any tax payable on the goods to be payable at duty point and where no duty is payable, the tax shall be payable when the goods are removed from the warehouse. Goods shall not

be removed from the warehouse unless customs duty, excise duty and tax have been paid or in accordance with conditions as imposed by the Director General.

Clause 71 deals with the Approved Trader Scheme and seeks to allow the suspension of tax on imported goods under the Scheme and to be accounted in the taxable period in which the importation takes place.

Clause 72 deals with the Approved Toll Manufacturer Scheme in which the supply of services from a toll manufacturer to his overseas principal is disregarded. The principal's local customer who receives goods from the toll manufacturer shall account and pay for tax on the supply (if the supply is a taxable supply) as if he had acquired and supplied the goods himself. If the recipient of the goods is a taxable person he must account the tax due in his return. However, if he is not a taxable person, he is liable for any tax due on the supply.

Clause 73 deals with the Approved Jeweller Scheme in which the tax charged on the prescribed supply of goods by any taxable person to an approved jeweller shall not be accounted by him. The approved jeweller shall account for the tax charged by the supplier in his return. This *clause* shifts the liability to account for tax from the supplier to the approved jeweller.

Clause 74 provides for the Flat Rate Scheme where an approved person may deem the flat rate addition imposed on a prescribed activity to a registered person as tax and seeks to prohibit charging such tax to other than the supply and person aforementioned. This *clause* further requires the approved person to issue an invoice on the supply of goods made by him. It also provides for the contravention of this *clause* to be an offence.

Clause 75 seeks to treat stock brokers and remisiers as a single entity for the purposes of registration to alleviate the problem of compliance faced by remisiers as the majority of them are below threshold and their turnover is uncertain. The registration of the single taxable person shall be in the name of the stock broker. This *clause* provides for the tax treatment of supplies made, the obligation of lead members and the claim of input tax. The stock broker shall be liable for the tax due and payable by the single entity.

10. Part IX deals with the GST rulings.

Clause 76 empowers the Director General to make a public ruling on the application of any provision of the proposed Act to any person or class of persons or to any arrangement and withdraw any public ruling made. This *clause* provides for the application of a public ruling to a person and the arrangement in certain circumstances.

Clause 77 empowers the Director General to make an advance ruling on application by any person and the advance ruling takes effect starting on the date of the ruling. The advance ruling shall be made in a specific manner and form as determined by the Director General. The advance ruling shall be applied to a particular type of arrangement and does not apply to any other type of arrangement by the same person. This *clause* further provides that a

person may request for a ruling from the Director General on the application of any provision of the proposed Act to a particular type of arrangement subject to certain qualifications and the ruling issued under this *clause* is binding on the person and the Director General. The Director General is also empowered to withdraw any advance ruling issued but the withdrawal will not affect that ruling and it still applies until expiration of such ruling.

Clause 78 provides for the finality of an advance ruling issued to any person and no appeals shall be made thereafter.

Clause 79 sets out the non-application of an advance ruling from the date the provision of the proposed Act is amended or repealed if such provision of the proposed Act is contained in the advance ruling.

11. Part X contains provisions relating to enforcement.

Clause 80 seeks to provide powers conferred on the senior officer of GST by this Act in relation to enforcement, inspection and investigation, the Criminal Procedure Code [Act 593] shall apply to the senior officer of GST as it applies to a police officer.

Clause 81 seeks to provide the senior officer of goods and services tax with access to any place or premises. This clause requires the person carrying on the business and any other person present at the place or premises to assist the senior officer of goods and services tax in carrying out his duties.

Clause 82 seeks to allow the Magistrate to issue a search warrant if there is reasonable cause to believe that an offence has been committed.

Clause 83 seeks to provide for search made without warrant where there are reasonable grounds to believe that any goods or documents which may afford evidence may be removed by reason of delay in obtaining a search warrant.

Clause 84 deals with the power to stop and search conveyances. The officer of goods and services tax may stop and examine any conveyance if he has reason to believe that an offence may be committed and request the person in charge of the conveyance to open and allow for examination.

Clause 85 seeks to provide for the seizure of goods or documents in relation to an offence. The officer of goods and services tax is required to give notice in writing of any seizure to the owner of the goods or documents. This *clause* also specifies that a seizure shall be applicable to anything contained inside the receptacle, package or conveyance in which the goods or document are found and any perishable goods seized may be sold.

Clause 86 seeks to provide for the return or disposal of movable goods under investigation subject to certain terms and conditions. A certificate shall be issued when the movable goods are returned or disposed of. This *clause* also empowers the Minister to give specific directions to the Director General on the exercise of powers involving the return or disposal of movable goods.

Clause 87 seeks to provide for powers of arrest. Certain provisions of the Criminal Procedure Code are applicable in cases of any person being searched by any officer of goods and services tax. An arrested person shall be taken to a police station or detained in the custody of the officer of goods and services tax and to be photographed or finger printed. This *clause* also sets out that a person shall be arrested at any time if he is liable to be arrested and is not arrested at the time of committing the offence or he has escaped after an arrest has been made. However, an arrested person may be released if he has deposited a reasonable sum of money or bond to ensure his release. A person who is released on bail shall be rearrested if there are reasonable grounds to believe that he will jump bail or the surety wishes to be relieved from his obligation.

12. Part XI deals with various offences and penalties for non-compliance of the proposed Act.

Clause 88 seeks to provide for the offence of making an incorrect return.

Clause 89 seeks to provide for the offence of evading tax. This *clause* further provides for the scope of tax evasion to include obtaining credit for input tax credit, relief for bad debt or claim in the Tourist Refund Scheme where the person is not entitled to such credit, relief or claim. In any prosecution involving tax evasion, attempt to commit offence punishable under this Act or abetment, any evasion shall be deemed to be done with the knowledge of the accused unless the contrary is proven.

Clause 90 seeks to provide for the offence of improperly obtaining a refund which also includes special refund.

Clause 91 seeks to provide for offences in relation to goods, invoices and receipts.

Clause 92 seeks to provide for the offence of obstructing an officer of goods and services tax.

Clause 93 seeks to provide for the offence of refusing to answer questions or giving false information.

Clause 94 seeks to provide for offences by authorized and unauthorized persons.

Clause 95 seeks to provide for offences of attempts and abetments.

Clause 96 seeks to provide for general penalty.

Clause 97 deals with offences by bodies of persons. A director, compliance officer, manager, secretary or partner commits an offence unless he takes all reasonable precautions to prevent the commission of the offence.

Clause 98 seeks to provide for the liability of a person to pay tax, penalty or surcharge for which he is liable even though legal proceedings have been instituted against him.

13. Part XII deals with provisions relating to trials and proceedings.

Clause 99 provides that no prosecution for any offence under the proposed Act may be instituted except by or with the written consent of the Public Prosecutor.

Clause 100 seeks to provide that a Sessions Court has the jurisdiction to try an offence under the proposed Act and to award punishment for the offence.

Clause 101 seeks to provide that the proposed Act does not prevent prosecution, conviction and punishment of a person under any other written law.

Clause 102 deals with the burden of proof.

Clause 103 deals with evidential provisions. This *clause* provides, among others, that—

- (a) any statement purporting to be signed by the Director General or any authorized officer and its annexure shall be *prima facie* evidence of the facts stated therein;
- (b) any transcript of any particulars in a return or other document relating to tax shall be *prima facie* evidence of the facts stated therein if it is certified by the Director General or authorized officer;
- (c) no statement or document shall be inadmissible as evidence against a person in proceedings on the ground that the statement was made under inducement, promise or threat;
- (d) a person is presumed to make a false statement or entry, evade tax or improperly obtain a refund if it is proven that a false statement or entry has been made in a return or on behalf of any person unless the contrary is proven.

Clause 104 deals with the evidentiary value of electronic notice. An electronic notice is admissible as evidence of facts stated in the notice if the electronic notice is certified by the Director General to contain all information transmitted through electronic service and is duly authenticated as specified in the proposed Act or the Evidence Act 1950.

Clause 105 seeks to provide that a certificate signed by the Director General on the status of registration of a person, submission of return, payment of tax or the making of public or advance ruling to be *prima facie* evidence of the facts stated therein and provides for the admissibility of a document produced by the prosecution in any proceedings as evidence if a certificate stating the facts in question is signed by an analyst, senior officer of goods and services tax or any person who is authorized to act on behalf of a Minister.

Clause 106 seeks to require five per cent of each description of package or receptacle containing seized goods to be opened and examined, requires a maximum of five per cent of the seized goods by volume or weight to be tested and presumes that goods contained in unopened packages or receptacles are similar as those goods found in the packages or receptacles which have been opened.

Clause 107 seeks to provide that a certificate of analysis signed by an analyst to be sufficient evidence of the facts stated in the certificate unless the accused requires the analyst be called as witness. A copy of the certificate must be delivered to the accused not less than ten days before the commencement of the trial.

Clause 108 seeks to provide for that a certificate signed by an officer responsible for the registration or licensing of vessels or conveyance in Malaysia or Singapore to be *prima facie* evidence if it is relevant to ascertain such facts in proceedings under the proposed Act.

Clause 109 seeks to provide for a document which purports to be a certificate signed by an officer responsible to ascertain the tonnage or build of a craft to be *prima facie* evidence of the facts stated therein if it is relevant to ascertain such facts in proceedings under the proposed Act.

Clause 110 seeks to provide for a certificate signed by an officer responsible for the accuracy of a metre or device measuring petroleum to be *prima facie* evidence of the facts stated therein if it is necessary to prove such facts in proceedings under the proposed Act.

Clause 111 seeks to provide for the period of imprisonment to be imposed by any court in respect of non-payment of fines.

Clause 112 seeks to provide for a trial in a court or an appeal to proceed without enquiring into the manner and form of making the seizure of the goods except where the manner and form of seizure is adduced as evidence.

Clause 113 deals with the obligation of secrecy in relation to the identity of informers.

Clause 114 seeks to require a witness not to disclose information relating to an informer which may lead to the discovery of the informer. It also provides for a passage in a book, document or paper to be concealed or obliterated to protect the informer from discovery during inspection of the books, documents or papers in proceedings and allows the court to require the production of the original complaint or full disclosure of the informer if the court finds that the informer has made a false material statement after full enquiry into the case.

Clause 115 stipulates that all seized goods may be forfeited or released and any revenue collected to be paid into the Federal Consolidated Fund.

Clause 116 seeks to disallow any cost or damage to be awarded in respect of any seized goods unless the seizure is made without reasonable cause.

Clause 117 deals with the power of the court to order the disposal of goods seized. This *clause* mandates the court to forfeit the amount realized by the disposal or sale of movable goods if an offence has been committed and provides for the goods forfeited to be given to the officer of goods and services tax and disposed of as directed by the Director General. Any revenue collected to be paid into the Federal Consolidated Fund.

Clause 118 deals with the forfeiture of goods seized in respect of which there is no prosecution and the proceeds of the sale of the goods.

Clause 119 empowers the court to return any forfeited goods or refund the proceeds to the owner of the goods upon application by the Public Prosecutor.

Clause 120 deals with the manner of service of summons.

Clause 121 deals with the compounding of offences.

Clause 122 seeks to provide for the court to order a person to pay to the Director General the amount of tax if he is guilty of an offence and the tax is recoverable in the same manner as a fine as provided under section 283 of the Criminal Procedure Code. The provision also empowers the court to order a refund of tax to any person who has paid the amount of tax in respect of the offence charged and is later found not guilty.

14. Part XIII deals with review and appeal matters.

Clause 123 contains the definitions of the words and expressions used in Part XIII of the proposed Act.

Clause 124 seeks to allow the Director General to review a decision made and make a final decision within a stipulated time.

Clause 125 seeks to provide for the establishment of the Goods and Services Tax Appeal Tribunal (“the Tribunal”).

Clause 126 seeks to allow any aggrieved person to appeal against the decision of the Director General to the Tribunal within a stipulated time or an extension of such time by the Tribunal together with a prescribed fee.

Clause 127 seeks to provide for the jurisdiction of the Tribunal to determine appeals, excluding matters specified in the Fourth Schedule.

Clause 128 empowers the Minister to appoint a Chairman, such number of Deputy Chairmen and other members of the Tribunal and determine the remuneration, terms and the conditions of the appointment of the Tribunal members. It also provides for the tenure of appointment of the Tribunal members.

Clause 129 seeks to empower a Deputy Chairman to perform the functions of a Chairman when the Chairman is unable to perform his duties.

Clause 130 seeks to empower the Minister to revoke the appointment of a member of the Tribunal for any specified reasons.

Clause 131 seeks to provide that a person appointed as a member of the Tribunal who wishes to resign must make a notification in writing to the Minister.

Clause 132 deals with the vacation of office members of the Tribunal. It also empowers the Minister to replace any member of the Tribunal in the event of vacancy.

Clause 133 seeks to provide for the appointment of a Secretary, Assistant Secretary and officers to carry out the functions of the Tribunal and states that the Chairman has general control of the Secretary, Assistant Secretary and officers of the Tribunal.

Clause 134 seeks to deem members, officers, the Secretary and Assistant Secretary of the Tribunal to be public servants.

Clause 135 deals with the hearing of appeals. The minimum number of members for each panel is three. This *clause* also provides for the manner in which decisions are to be made by the panel. It also allows proceedings to be continued by the remaining members of the panel in the event of the death or incapability of a member other than the Chairman or the Deputy Chairman. This *clause* further provides that the proceedings of an appeal shall be heard afresh in the event that the presiding person of an appeal is unable to complete the proceedings.

Clause 136 seeks to empower the Chairman to instruct an appeal to be heard by only one member of the Tribunal.

Clause 137 requires a member of the Tribunal to disclose his interest either directly or indirectly in the appeal brought before him and to disqualify himself in taking part in the proceedings. This *clause* empowers the Chairman to appoint another member to hear or dispose of the appeal if he is satisfied that a member has an interest in respect of the proceedings.

Clause 138 seeks to provide for an appeal not to be heard in any court where an appeal has been lodged with the Tribunal which is within the Tribunal's jurisdiction unless proceedings have commenced in a court before the appeal was lodged with the Tribunal or the Tribunal has withdrawn, abandoned or struck out the proceedings.

Clause 139 seeks to require the Secretary to give notice of the day, time and place of a hearing.

Clause 140 seeks to provide for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the appeal. It states that the Tribunal shall have regard to any factor that is likely to impair the ability of either or both of the parties to negotiate an agreed settlement in making an assessment. The Tribunal shall approve and record the settlement agreed by both parties as if the decision had been made by the Tribunal. The Tribunal is empowered to continue the proceedings if both parties are unable to reach an agreed settlement.

Clause 141 seeks to allow a party to the appeal to conduct his case himself or appoint another person as his representative who may include solicitor, tax agent, *etc.*, and the Director General to be represented by an authorized officer.

Clause 142 seeks to provide for the Tribunal to seek, get and receive evidence in any way as the Tribunal thinks fit to assist it in its deliberations during hearing of an appeal. This *clause* further provides that any summons issued by the Tribunal is to be served and enforced as if the summons were issued by a Sessions Court.

Clause 143 seeks to allow the Tribunal to request for information in exercising its powers and functions under the proposed Act.

Clause 144 seeks to provide for the Tribunal to make its decision within a stipulated time. It empowers the Tribunal to review and revise decisions made by the Director General or to make a new decision and also requires the Tribunal to give reasons for its decision.

Clause 145 seeks to provide for the Tribunal's decision and settlement to be recorded in writing.

Clause 146 seeks to provide that the Tribunal's decision is binding. A decision by the Tribunal is deemed to be an order by the Sessions Court.

Clause 147 deals with the manner of disposal of appeals.

Clause 148 seeks to provide for an appeal to the High Court on a question of law or of mixed law and fact.

Clause 149 seeks to provide that the Tribunal shall adopt any necessary procedure in hearing an appeal.

Clause 150 seeks to provide that no proceedings shall be set aside due to want of form.

Clause 151 empowers the Tribunal to make a decision as to who should pay for the costs and to what extent costs are to be paid.

Clause 152 seeks to provide that the Tribunal may order for the disposal of documents produced during the proceedings.

Clause 153 specifies that no action can be taken against the Tribunal for anything done in the performance of its functions under the proposed Act.

15. Part XIV contains special provisions on designated areas.

Clause 154 defines the meaning of Malaysia to exclude the designated areas for the purposes of Part XIV of the proposed Act.

Clause 155 seeks to provide no tax to be charged on supplies made within and between designated areas unless the Minister otherwise directs.

Clause 156 seeks to provide for different tax treatment on goods and services imported into and exported from designated areas or goods and services supplied to or from designated areas from or to Malaysia.

Clause 157 seeks to provide for tax treatment on goods and services supplied within Malaysia by a taxable person whose principal place of business is located in a designated area.

Clause 158 seeks to require a person in charge of a vessel or an aircraft to declare goods supplied from a designated area to Malaysia.

Clause 159 seeks to enable the collection of tax to be made in designated areas in respect of goods supplied or to be supplied from the designated areas to Malaysia.

Clause 160 seeks to empower the Minister to make an order to prescribe certain supplies as taxable in designated areas and in respect of certain goods or services when supplied or imported into or exported from designated areas.

16. Part XV contains special provisions on free commercial zone.

Clause 161 defines the meaning of commercial activity, Malaysia and free commercial zone.

Clause 162 seeks to provide different tax treatment on importation of goods into free commercial zones for the purposes of commercial or retail trade activities.

Clause 163 seeks to provide no tax to be charged on supplies made within free commercial zone unless the Minister otherwise directs.

17. Part XVI deals with miscellaneous provisions.

Clause 164 seeks to empower the Director General or any officer of goods and services tax to take samples to ascertain the taxability of goods and the samples may be disposed of in such manner as the Director General may direct.

Clause 165 requires a person to give information, produce goods or documents or provide translations as required by an officer of goods and services tax.

Clause 166 seeks to enable the Director General to provide electronic service for certain transactions and absolves him of any liability for any loss suffered by a user of electronic service.

Clause 167 seeks to provide for the means and manner pertaining to service of notices by the Director General and deems a notice to be served if the notice had been addressed to certain persons at specified addresses.

Clause 168 deals with the authentication of notices.

Clause 169 seeks to provide for free postage for all returns and related documents sent to the Director General.

Clause 170 deals with tax agents. Only a tax agent may act on behalf of any person on matters relating to tax under the proposed Act. A person can apply to be a tax agent if he is an individual having his usual place of residence in Malaysia. However, this *clause* shall not prevent any other person to represent any party to an appeal under *clause 135*. This *clause* seeks to empower the Minister to approve an application to be a tax agent and the validity period of that applicant as a tax agent.

Clause 171 seeks to enable the Director General to give rewards for services rendered which leads to the detection of offences under the proposed Act.

Clause 172 seeks to require prescribed forms to be used unless permission is granted by the Director General to use forms other than the prescribed forms.

Clause 173 seeks to enable the Director General to charge fees for services rendered which are not required to be rendered under the proposed Act and for which no fee is prescribed under any written law.

Clause 174 seeks to provide for the application of the Customs Act 1967 or the Excise Act 1976 with regards to the importation or exportation of goods. The proposed Act shall apply if there are differences between the provisions of the proposed Act and those in the Customs Act 1967 or Excise Act 1976.

Clause 175 seeks to protect the Government from any liability in respect of goods lost by fire or theft or damaged or other cause while the goods are in the lawful custody of an officer of goods and services tax unless the loss is caused by the wilful neglect of the officer of goods and services tax.

Clause 176 seeks to protect officers of goods and services tax from any liability in respect of goods lost by fire or theft or damaged or other cause while the goods are in the lawful custody of the officers of goods and services tax in the course of carrying out their duties under the proposed Act unless the loss is caused by their wilful neglect or default.

Clause 177 seeks to empower the Minister to make regulations.

18. Part XVII deals with the repeal and savings of the Sales Tax Act 1972.

Clause 178 seeks to provide for the repeal of the Sales Tax Act 1972 and the saving of certain provisions of the Sales Tax Act 1972 to enable the levying, payment, assessment, refund, remission or recovery of sales tax which has become payable.

Clause 179 seeks to require a person who is licensed under the Sales Tax Act 1972 to furnish a final return not later than twenty-eight days from the effective date and state and pay the amount of sales tax chargeable in the final return. This *clause* also defines the meaning of last taxable period.

Clause 180 seeks to require a person who is licensed under the Sales Tax Act 1972 and not a registered person to account and pay for sales tax on the goods he holds on hand on the date of implementation of GST comprising raw materials and components acquired free from sales tax under section 9 or exempted under section 10 of the Sales Tax Act 1972, and on finished and semi-finished goods when he ceases to be a sales tax licensee. He must account and pay for the sales tax in his last sales tax return.

19. Part XVIII deals with the repeal and savings of the Service Tax Act 1975.

Clause 181 seeks to provide for the repeal of the Service Tax Act 1975 and the saving of certain provisions of the Service Tax Act 1975 to enable the levying, payment, assessment, refund, remission or recovery of service tax which has become payable.

Clause 182 seeks to require a person who is licensed under the Service Tax Act 1975 to furnish a final return not later than twenty-eight days from the effective date and state the full amount of service tax chargeable including the amount of service tax not stated in preceding taxable periods in the final return. The payment of service tax is to be in accordance with section 14 of the Service Tax Act 1975. This *clause* also defines the meaning of last taxable period.

20. Part XIX deals with transitional provisions.

Clause 183 seeks to provide for tax not to be charged and levied on any supply of goods or services before the effective date. Where before the effective date any payment is received in connection with a supply of goods or services that will be made on or after the effective date or an invoice was issued relating to a supply of goods or services that will be made on or after the effective date, for the purposes of determining the taxable period to which output tax or input tax is attributable, the payment is taken to have been received or the invoice is taken to have been issued, during the first taxable period after the effective date. Any payment received or amount stated in an invoice issued before the effective date is taken to be tax inclusive for a supply that will be made on or after the effective date. Where sales tax or service tax has been paid or an invoice is issued on which sales tax or service tax has been charged, tax will not be charged on such supply made on or after the effective date to the extent covered by the invoice. In the case of goods which are not released from the customs control, the time of importation is taken to be the time when the goods are released by the officer of customs.

Clause 184 seeks to provide for the liability of a person to be registered if there is a reason to believe that the total value of his taxable supply in the month of the effective date and the next eleven months will exceed the prescribed threshold. This *clause* also requires the person to apply to the Director General to be registered and the application to be made three months before the effective date.

Clause 185 seeks to provide that sales tax and services tax shall not be charged with effect from the effective date.

Clause 186 seeks to determine that the value of supply of goods and services which are treated as having taken place after the effective date shall be in line with the requirement in *clause 15*.

Clause 187 seeks to provide for the treatment of any supply which is made pursuant to any contract with no opportunity to review entered into not less than two years before the effective date. A supply shall be treated as a zero-rated supply if the supplier is a registered person, the supply is a taxable supply, the supply must be made before a review opportunity arises or within 5 years after the effective date and the recipient is registered person and making wholly taxable supplies. This *clause* also defines “contract with no opportunity to review” and “review opportunity”.

Clause 188 seeks to provide for the chargeability of tax on a progressive or periodic supply which is made under an agreement made over a period that begins before the effective date and ends on or after the effective date. Only the portion of supply which is attributed to the part of the period on or after the effective date shall be chargeable to tax. In the case of the supply of services, it should be taken to be made continuously and uniformly throughout the period of that agreement. This *clause* also specifies the non-applicability of the tax treatment to certain types of warranties and agreements referred to in *clause 187*.

Clause 189 deals with the chargeability of tax on the payment for rights granted or exercisable for the rest of a person’s life or for a period of not less than thirty years. The right in question relates to the agreement entered into by a taxable person who makes supply of services. If the payment for the right is made before the effective date, it is not chargeable to tax.

Clause 190 seeks to provide for the entitlement for a special refund which is equal to the amount of sales tax in respect of the goods held on hand if the claimant holds the relevant supplier’s invoice proving that he is the recipient for which the sales tax has been paid before the effective date or the import document proving that he is the importer, consignee or owner for which the sales tax also has been paid before the effective date. For a claimant not holding such an invoice the special refund to which he is entitled is based on twenty per cent of the purchase value shown on the invoice multiplied by the sales tax rate and the claimant has paid the amount as shown on the invoice before the effective date. The *clause* further requires the person to repay the sales tax amount as his output tax if he has claimed for the special refund on goods which were subsequently returned to the supplier. The *clause* also stipulates the category of goods which are not entitled for a special refund claim.

Clause 191 requires the claimant of a special refund to make only one application to the Director General not later than six months from the effective date and requires the claimant to certify the amount of special refund by the relevant person. The *clause* also provides that a claimant shall not be entitled to a special refund if found to be improperly obtaining the special refund and where the claim has been refunded, the Director General is given the power to recover such refund.

Clause 192 seeks to give power to the Director General to offset the unpaid sales tax or penalty against the special refund.

Clause 193 seeks to deal with the supply of goods or construction services which are supplied to the recipient on or after the effective date, in accordance with the agreement made before the effective date. This *clause* explains that the value of all work and materials shall be determined as at the start of the

effective date and must be certified by an authorized person. The value is also determined in the manner as specified by the Director General on or before the end of the supplier's first taxable period after the effective date.

Clause 194 seeks to provide for tax to be charged on retention payment in respect of supplies made on or after the effective date, even though the contract was entered into before the effective date.

Clause 195 seeks to provide for tax to be charged for voucher redemption on or after the effective date, even though the voucher was issued before the effective date. This *clause* also seeks to clarify that no tax shall be charged on the supply if sales tax or service tax has been charged and paid before the effective date.

Clause 196 seeks to provide for treatment of supply of goods or services from any machine or device operated by coins, token and the like. The tax is not charged only for the first removal within the first week beginning on the effective date and any subsequent removal within one week beginning on the effective date shall be tax inclusive. Any removal of collection after one week beginning on the effective date shall be tax inclusive.

Clause 197 seeks to enable for acts and things done by or on behalf of the Director General in preparation for or in anticipation of the enactment of this Act and any expenditure incurred in relation thereto shall be deemed to have been authorized under this Act, provided that the acts and things done are consistent with the general intention and purposes of this Act, and all rights and obligations acquired or incurred as a result of the doing of those acts or things including any expenditure incurred in relation thereto shall upon the coming into operation of this Act be deemed to be the rights and obligations of the Director General. This *clause* also deems any approval in respect of registration or any appointment granted before the effective date shall be deemed to be made under this Act. However, such approval given or appointment granted shall only have effect from the effective date.

The First Schedule sets out the matters to be treated as a supply of goods or a supply of services.

The Second Schedule contains matters to be treated as neither a supply of goods nor a supply of services.

The Third Schedule deals with the value of supply of goods or services.

The Fourth Schedule seeks to provide for non-appealable matters.

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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