

SALES TAX BILL 2018

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A BILL

i n t i t u l e d

An Act to provide for the charging, levying and collecting of sales 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 Sales Tax Act 2018.

(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) Notwithstanding subsection (2), the Minister may, by notification in the *Gazette*, appoint the effective date for the charging and levying of sales tax under this Act.

Interpretation

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

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

“goods” means all kinds of movable property;

“taxable goods” means goods of a class or kind not exempted from sales tax;

“sales tax” means the tax payable under this Act;

“prescribed” means prescribed by the Minister in the regulations made under this Act;

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

“licensed warehouse” means any warehouse or place licensed under section 65 of the Customs Act 1967 [*Act 235*];

“customs warehouse” has the meaning assigned to it under subsection 2(1) of the Customs Act 1967;

“licensed manufacturing warehouse” means a licensed warehouse in respect of which an additional licence to carry on any manufacturing process has been granted under section 65A of the Customs Act 1967;

“sale” includes barter, disposal of goods with a right of purchase or on terms providing that the seller retains an interest in the goods, and delivery of goods under any conditions as to future payment;

“designated areas” means Labuan, Langkawi and Tioman;

“special areas” means any free zone, licensed warehouse and licensed manufacturing warehouse, and the Joint Development Area;

“Joint Development Area” has the meaning assigned to it under section 2 of the Malaysia-Thailand Joint Authority Act 1990 [*Act 440*];

“customs ruling” means any customs ruling made by the Director General under section 44;

“Director General” means the Director General of Customs and Excise appointed under subsection 3(1) of the Customs Act 1967;

“computer” has the meaning assigned to it under section 3 of the Evidence Act 1950;

“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;

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

“taxable person” means a registered manufacturer or a manufacturer who is liable to be registered under section 12;

“officer of sales tax” means any officer of customs as defined in subsection 2(1) of the Customs Act 1967 and includes any person appointed or employed under subsection 4(3);

“proper officer of sales tax” means any senior officer of sales tax or officer of sales tax acting in the fulfilment of his duties under this Act, whether such duties are assigned to him specially or generally, or expressly or by implication;

“senior officer of sales tax” means any senior officer of customs as defined in subsection 2(1) of the Customs Act 1967;

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

“manufacturer” means a person who engages in the manufacture of goods;

“registered manufacturer” means a manufacturer registered under section 13 or 14;

“regulations” means regulations made under section 106;

“limited liability partnership” has the meaning assigned to it under section 2 of the Limited Liability Partnerships Act 2012 [Act 743];

“business” includes any trade, commerce or manufacture, or any concern in the nature of trade, commerce or manufacture;

“petroleum” has the meaning assigned to it under subsection 2(1) of the Customs Act 1967;

“effective date” means the date appointed under subsection 1(3);

“taxable period” means any period as determined or provided for under section 25;

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

“Customs Appeal Tribunal” means the Customs Appeal Tribunal established under section 141B of the Customs Act 1967;

“surcharge” means the surcharge referred to in subsection 32(3);

“free zone” has the meaning assigned to it under subsection 2(1) of the Free Zones Act 1990 [Act 438].

(2) For the purpose of this Act—

(a) goods shall be deemed to be under customs control whilst the goods are deposited or held in any customs warehouse or licensed warehouse, post office, or in any conveyance, pipeline or place from which the goods may not be removed except with the permission of the proper officer of sales tax; and

(b) goods shall be deemed to be under excise control whilst the goods are deposited or held in any distillery, brewery or other places of manufacture, or in any public excise warehouse, licensed warehouse, post office, or in any conveyance, pipeline or place from which the goods may not be removed except with the permission of the proper officer of sales tax.

Meaning of “manufacture”

3. (1) In this Act, “manufacture” means—

- (a) in relation to goods other than petroleum, the conversion by manual or mechanical means of organic or inorganic materials into a new product by changing the size, shape, composition, nature or quality of such materials and includes the assembly of parts into a piece of machinery or other products, but does not include the installation of machinery or equipment for the purpose of construction; and
- (b) in relation to petroleum, any process of separation, purification, refining, conversion and blending.

(2) If any question arises as to the meaning of “manufacture” under subsection (1), such question shall be decided by the Minister whose decision shall be final.

PART II

ADMINISTRATION

Functions and powers of Director General and other officers

4. (1) The Director General shall have the superintendence of all matters relating to sales 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 sales tax shall have and exercise all powers conferred on the Director General by or under this Act, other than those conferred under sections 7, 41, 42 and 105.

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

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

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

Persons appointed or employed to be public servants

5. Every person appointed or employed under subsection 4(3) for any duty or service relating to sales tax shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

Recognition of office

6. (1) Every officer of sales 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 sales 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 sales 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 sales tax, who unlawfully wears, uses, possesses or displays, otherwise than in the course of a stage play or other theatrical performance—

(a) any uniform prescribed under section 8A of the Customs Act 1967 or any dress having the appearance of, or bearing the distinctive marks of, such uniform; or

(b) any prescribed authority card or badge, or authority card as approved by the Director General, referred to in 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.

Confidentiality of information

7. (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, sale value of the goods of any taxable person or the sale 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 sale value of the goods of any taxable person or the sale 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

Chief Statistician of the Department of Statistics Malaysia 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 SALES TAX

Imposition and scope of sales tax

8. (1) A tax to be known as sales tax shall be charged and levied on all taxable goods—

(a) manufactured in Malaysia by a registered manufacturer and sold, used or disposed of by him; or

(b) imported into Malaysia by any person.

(2) Sales tax on any importation of taxable goods into Malaysia shall be levied and payable as if it were a customs duty or an excise duty and as if the imported taxable goods are dutiable and liable to customs duty or excise duty.

(3) This Act shall be construed as one with the Customs Act 1967 and the Excise Act 1976 [*Act 176*] with regards to the importation or exportation of goods including goods in transit and the movement of goods under customs control or excise control.

(4) Where there is any inconsistency between the provisions of the Customs Act 1967 or the Excise Act 1976 and the provisions of this Act, the provisions of this Act shall prevail.

Determination of sale value of taxable goods

9. (1) In the case of taxable goods—

(a) sold by a taxable person; or

- (b) manufactured by a taxable person and—
 - (i) used by him otherwise than as materials in the manufacture of the taxable goods; or
 - (ii) disposed of by him otherwise than by sale,

the sale value of such taxable goods shall be determined in accordance with the regulations made under this Act.

(2) In the case of taxable goods imported into Malaysia, the sale value of the taxable goods shall be the sum of the following amounts:

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

(3) Where any registered manufacturer receives taxable goods from any person to be manufactured and subsequently return the goods so manufactured to such person, the sale value of the goods so manufactured shall, subject to approval of the Director General, be the amount that the manufacturer charges for work performed by him.

Rate of sales tax

10. (1) Sales tax shall be charged and levied at the rate fixed in accordance with subsection (2) on the taxable goods sold, used or disposed of or imported, by reference to the sale value of the taxable goods as determined under section 9.

- (2) The Minister may, by order published in the *Gazette*—
 - (a) fix the rate of sales tax to be charged and levied under this Act; and

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

(3) Any order made under subsection (2) shall—

(a) be laid before the Dewan Rakyat at the next meeting of the Dewan Rakyat; and

(b) at the expiration of one hundred and twenty days from being laid under paragraph (a) or of such extended period as the Dewan Rakyat may, by resolution, direct, cease to have effect in whole if the order is not confirmed, or in part in so far as the order is not confirmed, by a 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 under subsection (3), any sales tax charged and levied in pursuance of such order or such part of the order as ceases to have effect shall, subject to subsections (5) and (6), be refundable to the person by whom such sales tax was paid.

(5) Unless the Minister otherwise directs, no sales tax refundable under subsection (4) shall be refunded, unless the person by whom the sales 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 sales tax refundable under subsection (4) to the extent that the refund would unjustly enrich the person by whom the sales tax was paid.

Sales tax due

11. (1) The sales tax chargeable under paragraph 8(1)(a) shall be due at the time the taxable goods are sold, disposed of otherwise than by sale, or first used otherwise than as materials in the manufacture of taxable goods, by the taxable person.

(2) Notwithstanding subsection (1)—

- (a) the Minister may determine different time for sales tax to be due in respect of petroleum subject to such conditions as the Minister deems fit; and
- (b) where any sale of taxable goods is made by any person, who is a taxable person under this Act, within the period beginning from 1 June 2018 and ending immediately before the effective date, and the taxable goods are delivered on or after the effective date—
 - (i) the sale of such taxable goods shall be deemed to have been made on the date such taxable goods are delivered notwithstanding any payment, wholly or partly, is received or invoice is issued, for such taxable goods during such period;
 - (ii) any payment received within such period or on or after the effective date, or invoice issued within such period, shall be deemed to have been received or issued on the date such taxable goods are delivered; and
 - (iii) sales tax shall be charged and levied on such taxable goods and shall become due on the date such taxable goods are delivered.

(3) Where the taxable goods referred to in subparagraph (2)(b) are petroleum, the sales tax in respect of such petroleum shall be due at the time as determined under subparagraph (2)(a).

(4) Where any registered manufacturer who ceases to carry on business as a manufacturer is succeeded in such business by another person who—

- (a) purchases from the registered manufacturer any stock of taxable goods which is on hand at the date of cessation; or
- (b) acquires any stock of taxable goods as a trustee, receiver, liquidator, donee, or beneficiary of such registered manufacturer,

no sales tax shall be due on such purchase or acquisition.

PART IV

REGISTRATION

Liability to be registered

12. (1) The Minister may, by order published in the *Gazette*, determine the total sale value of taxable goods for the purpose of registration of any manufacturer under this Part.

(2) Subject to subsection (3), any manufacturer of taxable goods is liable to be registered at the following time, whichever is the earlier:

(a) at the end of any month, where the total sale value of all his taxable goods in that month and the eleven months immediately preceding that month has exceeded the total sale value of taxable goods determined under subsection (1); or

(b) at the end of any month, where there are reasonable grounds for believing that the total sale value of all his taxable goods in that month and the eleven months immediately succeeding that month will exceed the total sale value of taxable goods determined under subsection (1).

(3) The total sale value of all taxable goods of a manufacturer in the month and the eleven months immediately preceding that month referred to in paragraph (2)(a) shall be disregarded if—

(a) the registration of the manufacturer is cancelled, otherwise than under subsection 19(3), during that period; and

(b) the Director General is satisfied that before the manufacturer's registration is cancelled, he has given all information required by the Director General in order to determine whether to cancel the registration or not.

(4) Where any person succeeds any business from a registered manufacturer as specified in subsection 11(4), such person shall be deemed to be a manufacturer who is liable to be registered on the date he succeeded the business.

Application for registration

13. (1) Any manufacturer who is liable to be registered under section 12 shall apply to the Director General for registration as a registered manufacturer in the prescribed form not later than the last day of the month following the month in which he is liable to be registered as referred to in paragraph 12(2)(a) or (b).

(2) Upon receipt of the application under subsection (1), the Director General may approve the registration, subject to such conditions as he deems fit.

(3) The Director General shall register the manufacturer under subsection (1) with effect from the first day of the month following the month in which the application under subsection (1) is made or from such earlier date as may be agreed between the Director General and the manufacturer but such date shall not be earlier than the date he becomes liable to be registered.

(4) Where any manufacturer fails to comply with subsection (1), the Director General shall register the manufacturer on the date as the Director General may determine but not earlier than the date he is liable to be registered under section 12.

(5) Any manufacturer who fails to comply with subsection (1) commits an offence.

Voluntary registration

14. (1) Any manufacturer who is not liable to be registered under section 12 may apply to the Director General for registration as a registered manufacturer.

(2) Upon receipt of the application under subsection (1), the Director General may approve the registration from such date as he may determine subject to such conditions as he deems fit.

Direction to treat persons as single taxable person

15. (1) Notwithstanding section 12, where the Director General is satisfied that any separation of business activities is artificial, he may make a direction requiring that—

- (a) the persons named in that direction be treated as a single taxable person carrying on business activities described

in that direction with effect from the date as specified in the direction; and

- (b) the single taxable person referred to in paragraph (a) to be registered with effect from the date as 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 organizational links.

(3) The Director General may make a direction under subsection (1) naming any person if the Director General is satisfied that—

- (a) the person is manufacturing or has manufactured taxable goods;
- (b) the activities in the course of which the person manufactures or has manufactured those taxable goods form only part of certain activities in the business and that the other activities in that business, whether or not that other activities 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) if all taxable goods manufactured in that business were taken into account, the person carrying on that business would, at the time of such direction is made, be required to be registered by virtue of section 12.

(4) Any direction made under subsection (1) shall be served on each of the persons named in it.

(5) Where, after a direction had been made under subsection (1), it appears to the Director General that any person who has not been named in that direction is manufacturing taxable goods 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 adding that person's name to those of the persons named in the direction under subsection (1).

(6) Upon the addition of the person's name in the direction under subsection (5), that person shall be treated as a single taxable person carrying on the business activities described in the direction under subsection (1) with effect from the date as specified in the direction.

(7) Where, immediately before any direction including a supplementary direction is made, any person named in the direction has been registered in respect of taxable goods manufactured 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).

(8) Upon the revocation of registration under subsection (7), the person whose registration has been revoked together with all other persons named in the direction under subsection (1) shall be treated as a single taxable person.

(9) In relation to a business specified in a direction, the persons named in such direction together with any person named in a 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 (10) and (11).

(10) Where any direction is made under subsection (1)—

- (a) the single taxable person carrying on the business specified in the direction shall be registered in such name as the persons named in the direction may jointly nominate by notice in writing given to the Director General not later than fourteen days after the date the direction is served on the last of such persons named in the direction or, in default of such nomination, in such name as may be specified in the direction;
- (b) any taxable goods manufactured by one of the constituent members in the course of the activities of the single taxable person shall be treated as being taxable goods manufactured by the single taxable person;
- (c) each of the constituent members shall be jointly and severally liable for any sales 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 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.

(11) 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 (10)(c) and (d) and the Director General gives notice in writing to that effect, that person—

(a) shall not have any liability by virtue of paragraphs (10)(c) and (d) for anything done after the date specified in that notice; and

(b) on the date as specified in that notice, shall be treated as having ceased to be a member of the partnership referred to in paragraph (10)(e).

Registration of partnership

16. (1) The registration of—

(a) persons carrying on a business in a partnership as a registered manufacturer shall be in the name of the firm; and

(b) the same persons carrying on separate businesses in a partnership as a registered manufacturer shall be in the separate names of the respective firms.

(2) In determining whether taxable goods are manufactured 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 sales tax due and payable on any taxable goods manufactured by the partnership until the date of cessation.

(4) Where any person ceases to be a partner in a partnership under subsection (3) during any taxable period, 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—

(a) as having been properly served on the partnership; and

(b) where subsection (4) applies, as having been properly served on any previous partner.

(6) Subsections (1) and (3) shall not affect the extent to which a partner is liable for sales tax owed by the firm under any other written law.

(7) Where a person is a partner in a firm during part only of a taxable period, his liability for sales tax on the sale of taxable goods 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 of the partners, it shall be regarded as sufficient compliance with the requirement.

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

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

Cessation of liability to be registered

17. (1) Subject to subsection (2), any registered manufacturer shall cease to be liable to be registered at the end of any month where the Director General is satisfied that the total sale value of all his taxable goods in that month and the eleven months immediately succeeding that month (“hereinafter referred to as “the period of twelve months”) does not exceed the total sale value of taxable goods determined under subsection 12(1).

(2) A registered manufacturer shall not cease to be liable to be registered by virtue of subsection (1) where the Director General is satisfied that the reason the total sale value of all his taxable goods does not exceed the total sale value of taxable goods determined under subsection 12(1) is that in the period of twelve months referred to in subsection (1) he temporarily ceases manufacturing such taxable goods, or suspends manufacturing such taxable goods for a period of thirty days or more.

Notification of cessation of liability

18. (1) A manufacturer registered under section 13 or 14—

(a) who ceases to manufacture taxable goods; or

(b) who ceases to be liable to be registered under section 17,

as the case may be, shall notify the Director General in writing of that fact and the date of cessation within thirty days from the date of cessation.

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

Cancellation of registration

19. (1) Where a registered manufacturer makes a notification under section 18, the Director General may cancel the manufacturer's registration from the date the registered manufacturer ceased to manufacture taxable goods or ceased to be liable to be registered under section 17, as the case may be, or from such later date as the Director General may determine if he is satisfied that the registered manufacturer can be deregistered.

(2) Where there is no notification made under section 18 and the Director General is satisfied that a registered manufacturer has ceased to manufacture taxable goods or has ceased to be liable to be registered under section 17, the Director General may cancel his registration from the date the registered manufacturer ceased to manufacture taxable goods or ceased to be liable to be registered under section 17, as the case may be, 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 manufacturer was registered—

- (a) in the case of a manufacturer who was registered under section 13, the manufacturer was not liable to be registered under section 12 or has ceased to manufacture taxable goods; or
- (b) in the case of a manufacturer who was registered under section 14, the manufacturer was not manufacturing taxable goods or has ceased to manufacture taxable goods,

the Director General may cancel the registration of the manufacturer with effect from the date as determined by the Director General in the notification in writing to such manufacturer.

(4) The Director General may cancel the registration of a registered manufacturer under subsection 14(2) if the registered manufacturer is in breach of any conditions imposed in relation to such registration with effect from the date of the breach or from such later date as the Director General may determine.

Exemptions from registration

20. (1) The Minister may, by order published in the *Gazette*, exempt any class of persons from registration under section 13 subject to such conditions as he deems fit.

(2) Notwithstanding that any person is exempted by virtue of subsection (1), such person may apply to be registered as a registered manufacturer and the provisions of this Act shall apply to such person.

PART V**ACCOUNTING, ASSESSMENT, RECOVERY, ETC.****Invoices**

21. (1) Every registered manufacturer who sells any taxable goods shall issue an invoice containing prescribed particulars in the national language or English language to the purchaser in respect of the transaction.

(2) No invoice showing an amount which purports to be sales tax shall be issued on the sale of any goods—

(a) which are not taxable goods; or

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

(3) The amount of sales tax payable shall be collected by the registered manufacturer from the purchaser in addition to the price and any other amount due and payable by the purchaser in respect of the taxable goods.

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

Production of invoices by computer

22. For the purposes of any provision under this Act relating to an invoice, a registered manufacturer shall be treated as having issued an invoice to a purchaser notwithstanding that there is

no delivery of any equivalent document in paper form to the purchaser if the prescribed particulars referred to in subsection 21(1) are recorded in a computer and—

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

Credit notes and debit notes

23. Where any taxable goods is sold by any registered manufacturer which involves the issuance and receipt of credit notes or debit notes under the prescribed circumstances and conditions, the registered manufacturer shall make deduction or addition of sales tax in his returns accordingly, and the credit notes and debit notes shall contain the prescribed particulars.

Duty to keep records

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

- (a) all records of sales of taxable goods by or to that taxable person including invoices, receipts, debit notes and credit notes;
 - (b) all records of importation and exportation of taxable 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 language or English language; and

(c) kept in Malaysia, except as otherwise approved by the Director General and subject to such 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) Any person who contravenes subsection (1), (2), (3) or (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.

Taxable period

25. (1) The first taxable period of every taxable person shall begin from the date he should have been registered under section 13 and end on the last day of the following month and the subsequent taxable period shall be a period of two months ending on the last day of any month of any calendar year.

(2) Notwithstanding subsection (1), the Director General may determine a different taxable period in respect of petroleum subject to such conditions as the Director General deems fit.

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

(4) The Director General may, upon receiving any application under subsection (3)—

(a) allow the application and the taxable period shall be the period as applied for;

- (b) refuse the application and the taxable period shall remain as determined under subsection (1); or
- (c) vary the length of the taxable period or the date on which the taxable period begins or ends.

(5) 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), (2) or (4).

Furnishing of returns and payment of sales tax due and payable

26. (1) Every taxable person shall, in respect of his taxable period, account for the sales tax due 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 the end of his taxable period to which the return relates.

(2) Where a taxable period has been varied under paragraph 25(4)(c) and notwithstanding subsection (1), the return shall be furnished within thirty days from the end of the varied taxable period.

(3) Any registered manufacturer who ceases to be liable to be registered under section 17 or ceases to manufacture taxable goods under section 18 shall, not later than thirty days after such cessation, 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) Where any registered manufacturer who ceases to carry on business as a manufacturer has in stock any taxable goods on which sales tax due and payable has not been paid and where subsection 11(4) does not apply, such registered manufacturer shall include particulars of those goods in the return to be furnished by him for his last taxable period as if such goods had been sold by him during such taxable period, and he shall pay the sales tax accordingly.

(5) Any taxable person who is required to furnish a return under this section shall pay to the Director General the amount of sales 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.

(6) The return referred to in subsections (1), (2), (3) and (4) shall be furnished whether or not there is sales tax to be paid.

(7) Any taxable person who—

(a) contravenes subsection (1), (2), (3) or (4); or

(b) furnishes an incorrect return,

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.

(8) Any taxable person who fails to pay to the Director General the amount of sales tax due and payable under subsection (5) 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.

(9) Where any sales tax due and payable is not paid wholly or partly by any taxable person after the last day on which it is due and payable under subsection (5) and no prosecution is instituted, the taxable person shall pay—

(a) for the first thirty-day period that the sales tax is not paid wholly or partly after the expiry of the period specified under subsection (5), a penalty of ten per cent of the amount of sales tax which remains unpaid;

(b) for the second thirty-day period that the sales tax is not paid wholly or partly after the expiry of the period specified under subsection (5), an additional penalty of fifteen per cent of the amount of sales tax which remains unpaid; and

(c) for the third thirty-day period that the sales tax is not paid wholly or partly after the expiry of the period specified under subsection (5), an additional penalty of fifteen per cent of the amount of sales tax which remains unpaid.

(10) Subject to subsection (12), prosecution for the offence under subsection (8) may be instituted after the expiry of the period specified in paragraph (9)(c).

(11) The court may order that any taxable person who is convicted for the offence under subsection (8) to pay the penalty as specified in subsection (9).

(12) No prosecution for the offence under subsection (8) shall be instituted against any taxable person who has paid the amount of sales tax due and payable, and the penalty specified under subsection (9) within the period specified in subsection (9).

Power to assess

27. (1) Where any taxable person—

(a) fails to apply for registration under section 13;

(b) fails to furnish a return under section 26; or

(c) furnishes a return which appears to the Director General to be incomplete or incorrect,

the Director General may assess to the best of his judgment the amount of sales tax due and payable, and the penalty payable under subsection 26(9), if any, by 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 a refund of sales tax under this Act which ought not to have been paid to him, the Director General may assess the amount of the refund as being sales tax due and payable by 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 sales tax was due and payable or from the date on which the refund of sales tax 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 relation to the

sales tax or refund, the Director General may, for the purposes of making good any loss of sales tax or payment of refund of sales tax attributable to the fraud or wilful default, make an assessment at any time.

(4) The proper officer of sales tax may assess the sales tax payable on any taxable goods imported by any person.

(5) Where any taxable person has obtained control of any taxable goods or has imported any taxable goods, the Director General may require him to account for the taxable goods.

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

(a) the taxable goods have been sold by him;

(b) the taxable goods have been exported or removed by way of sale; or

(c) the taxable goods have been lost or destroyed,

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

(7) Where—

(a) the Director General has made an assessment of sales tax under subsection (1) in respect of paragraph (1)(a) or (b);

(b) the sales tax assessed under paragraph (a) has been paid but no return has been furnished for the taxable period to which the assessment relates; and

(c) the taxable person fails to furnish a return for any subsequent taxable period,

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

(8) Where it appears to the Director General that the amount which ought to have been assessed in an assessment under subsection (1), (2), (4), (6) or (7) exceeds the amount which was so assessed, he may—

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

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

(9) Where an amount of sales tax and penalty, if any, has been assessed and notified to any taxable person under subsection (1), (2), (6) or (8), it shall be deemed to be an amount of sales tax due and payable, and penalty payable, by him and may be recovered accordingly and the amount of sales tax and penalty, if any, shall be paid by the taxable person, whether or not that taxable person appeals against the assessment, to the Director General unless or except to the extent that the assessment has been withdrawn or reduced by the Director General.

(10) 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 of the assessment and shall forthwith notify the person in writing.

Recovery of sales tax, etc., as civil debt

28. (1) Without prejudice to any other remedy and notwithstanding any review or appeal against any decision of the Director General under section 96, any sales tax due and payable, any surcharge accruing, or any penalty, fee or other money payable, under this Act, may be recovered as a civil debt due to the Government.

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

- (a) that which is shown in the invoice as sales tax; or

- (b) so much of the total amount shown as payable as is to be taken as representing sales tax, if the sales tax is not separately shown in the invoice,

for the sale of such taxable goods.

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

- (a) the invoice is an invoice issued under section 21 or 22;
- (b) the sale of the taxable goods shown on the invoice actually takes or has taken place or the amount shown as sales tax or any amount of sales tax is or was chargeable on the sale of the taxable goods; or
- (c) the person issuing the invoice is a registered manufacturer,

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 sales tax, surcharge, penalty, fee or other money under subsection (1), the production of a certificate signed by the Director General—

- (a) stating that any sales tax, surcharge, penalty, fee or other money and the amount shown in the certificate as due and payable, accruing or payable, in any return, assessment or notice made under this Act from a person named in the certificate; and
- (b) 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 sales tax, surcharge, penalty, fee or other money and the amount as due and payable, accruing or payable, in any return, assessment or notice and shall be sufficient authority for the court to give judgement for that amount.

(5) Any penalty 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*] or the Limitation Ordinance of Sarawak [*Sarawak Cap. 49*], as the case may be, be recoverable

as if the penalty were sales 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 or section 3 of the Limitation Ordinance of Sarawak, as the case may be, shall not apply to that penalty.

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

29. (1) Where any sum by way of sales tax is due and payable, surcharge is accrued, or penalty, fee or other money is payable, by a taxable person, the Director General may, by notice in writing, 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 any 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 such time as the Director General allows, such money, not being salary or wages due or accruing to the taxable person, or so much of such money as is sufficient to pay the sum due and payable, accruing or payable, by the taxable person as aforesaid.

(2) A copy of the notice under subsection (1) shall be forwarded to the taxable person at his last known address.

(3) All payments made pursuant to a notice under subsection (1) shall be deemed to be made on behalf of the taxable person and with the authority of the taxable person and of all other persons concerned.

(4) For the purposes of this section, the Director General may require any person to give him information—

- (a) as to any money, fund or asset which may be held by the person for any other person; or
- (b) of any money due and payable by him to any other person.

Recovery of sales tax before payable from persons about to leave Malaysia

30. If the Director General has reason to believe that any person is about or is likely to leave Malaysia before any sales tax due by him becomes payable in accordance with the provisions of this Act, the sales tax shall, if the Director General deems fit, be payable on such earlier date as the Director General determines and the person shall be notified accordingly.

Recovery of sales tax, etc., from persons about to leave Malaysia without paying sales tax, etc.

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

- (a) any sales tax due and payable by him under subsection 26(5);
- (b) any penalty payable by him under subsection 26(9);
- (c) any surcharge accrued by him under subsection 32(3);
- (d) any fee payable by him under this Act; or
- (e) any other money recoverable from him under this Act,

the Director General may issue to the Director General 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 he pays the sales tax, surcharge, penalty, fee or other money, or furnishes security to the satisfaction of the Director General for its payment.

(2) Subject to any order issued or made under any written law for the time being in force relating to immigration, the Director General of Immigration who receives a request 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 documents in relation to that person as may be necessary to give effect to the request.

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

(4) The non-receipt of the notice under subsection (1) by that person referred to in subsection (3) shall not invalidate anything done under this section.

(5) 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 all the sales tax, surcharge, penalty, fee or other money specified in the notice have been paid, or that security has been furnished for its payment, that statement shall be sufficient authority for allowing that person to leave Malaysia.

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

Payment by instalments

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

(2) Where the sales tax is allowed to be paid by instalments, the penalty under subsection 26(9) shall cease to be calculated from the date the Director General allows the payment by instalments.

(3) Where there is a default in payment of any instalment under subsection (1) on its due date for payment of the balance of the amount due and payable, the whole outstanding balance shall become due and 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 equals to ten per cent of that balance and the surcharge shall be recoverable as if it were due and payable under this Act.

(4) Nothing in subsections (1) and (3) shall prejudice the exercise of the rights and powers under this section by the Director General to seize or sell any goods belonging to the person liable to pay such sales tax, penalty or surcharge for recovery of the amount payable under subsections (1) and (3) or any outstanding balance of the sales tax, penalty or surcharge.

Goods subject to customs or excise control not to be delivered until sales tax paid as demanded

33. (1) In the case of imported taxable goods, no person shall be entitled to obtain delivery of such goods from the customs control or excise control until the amount of the sales tax assessed by the proper officer of sales tax on those goods has been paid in full.

(2) Notwithstanding subsection (1), any person may obtain delivery of imported taxable petroleum from the customs control or excise control whether or not any part of or all of the sales tax due and payable on such taxable petroleum have been paid.

Liability of directors, etc.

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

- (c) the partners of the firm;
- (d) the office-bearers of the society; or
- (e) the persons responsible for the management of the 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 sales tax, surcharge, penalty, fee or 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 sum having priority under the Companies Act 2016 [Act 777] in relation to the application of the assets of the company in the winding-up over the sales tax, surcharge, penalty, fee or other money.

PART VI

EXEMPTION, REFUND, DRAWBACK AND REMISSION

Power of Minister to exempt and refund

35. (1) The Minister may, by order published in the *Gazette* and subject to such conditions as he deems fit, exempt—

- (a) any goods or class of goods from the whole or any part of the sales tax; or
- (b) any person or class of persons from payment of the whole or any part of the sales tax which may be charged and levied on any taxable goods manufactured or imported.

(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—

- (a) exempt any person or class of persons from payment of the whole or any part of the sales tax which may be

charged and levied on any taxable goods manufactured or imported;

- (b) exempt any registered manufacturer or class of registered manufacturers from charging and collecting sales tax on taxable goods; or
- (c) direct the Director General to make a refund to any person or class of persons of the whole or any part of the sales tax or penalty paid by such persons or class of persons.

(4) Where a registered manufacturer sold any taxable goods to a person or class of persons exempted under paragraph (1)(b) or (3)(a), the registered manufacturer shall be exempted from charging and collecting sales tax due and payable on such taxable goods.

(5) Where any person who is exempted under paragraph (1)(b) or (3)(a) fails to comply with any conditions to which the exemption relates, any sales tax that has been the subject of the exemption shall become due and payable by the person on the date on which any of the conditions failed to be complied with.

(6) Where a person who has been granted exemption under paragraph (1)(b) or (3)(a) has paid any of the sales tax to which the exemption relates and has been granted approval by the Minister for a refund of the amount of the sales tax which has been paid, the person shall be entitled to such refund.

Claim for refund of sales tax in relation to bad debt

36. (1) Any person who is, or has ceased to be, a registered manufacturer may make a claim to the Director General for a refund of the whole or any part of any sales tax paid by him in respect of taxable goods if—

- (a) the whole or any part of the sales tax payable to such person has been written off in his accounts as bad debts; and
- (b) the Director General is satisfied that all reasonable efforts have been made by such person to recover the sales tax.

(2) Where the person who makes a claim for a refund under subsection (1) in relation to bad debt—

- (a) has not received any payment in respect of the sale of taxable goods, such person may make a claim for a refund of the whole of the sales tax paid; or
- (b) has received any payment in respect of the taxable goods, such person may make a claim for the difference between the sales tax paid and the amount calculated in accordance with the following formula:

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

- where
- A is the payment received in respect of the sale of such taxable goods;
 - B is the sale value of such taxable goods plus sales tax payable on such taxable goods; and
 - C is the sales tax payable on such taxable goods.

(3) The person referred to in subsection (1) may make a claim for a refund of the whole or any part of any sales tax in relation to the bad debt within six years from the date the sales tax is paid by him and the Director General may refund the whole or any part of the sales tax after being satisfied that the person has properly established the claim.

(4) For the purposes of this section, “bad debt” means an outstanding amount of the payment in respect of the sale of taxable goods including the sales tax which is due to a person who is, or has ceased to be, a registered manufacturer but has not been paid to, and is irrecoverable by, the person.

Repayment of sales tax in relation to bad debt

37. Where a refund of sales tax has been made under section 36 by the Director General to the person referred to in subsection 36(1)

and any payment in respect of the sale of taxable goods for which the sales tax is payable is subsequently received by the person, the person shall repay to the Director General an amount calculated in accordance with the following formula:

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

- where
- A is the payment received in respect of the sale of such taxable goods;
 - B is the sale value of such taxable goods plus sales tax payable on such taxable goods; and
 - C is the sales tax payable on such taxable goods.

Payment of sales tax, etc., short paid or erroneously refunded

38. (1) Where—

- (a) the whole or any part of any sales tax due and payable, surcharge accrued, or penalty, fee or other money payable, under this Act has not been paid by a person; or
- (b) the whole or any part of any sales tax due and payable, surcharge accrued, or penalty, fee or other money payable, after having been paid, has been erroneously refunded to a person,

the Director General shall demand from the person to pay the sales tax, surcharge, penalty, fee or other money, or the deficient sales tax, surcharge, penalty, fee or other money, or to repay the refund erroneously paid to him.

(2) The demand under subsection (1) shall be made within six years from the date on which—

- (a) the sales tax, surcharge, penalty, fee or other money was payable, or the deficient sales tax, surcharge, penalty, fee or other money was paid; or
- (b) the refund was made.

(3) Upon receipt of the demand under subsection (1), the person shall—

(a) pay the sales tax, surcharge, penalty, fee or other money, or the deficient sales tax, surcharge, penalty, fee or other money; or

(b) repay the refund erroneously paid to him.

(4) Without prejudice to subsection (1), any goods belonging to the person referred to in subsection (1), which may be in customs control or excise control or at a place specified in the registration under section 13, may be seized until the sales tax, surcharge, penalty, fee or other money, or the deficient sales tax, surcharge, penalty, fee or other money, are paid, or the refund erroneously paid to him is repaid.

(5) If the sales tax, surcharge, penalty, fee or other money or the deficient sales tax, surcharge, penalty, fee or other money, or the refund to be repaid remains unpaid, as the case maybe, the Director General may sell such goods seized under subsection (4)—

(a) after giving not less than thirty days' notice in writing to the person or his agent if the name and address of such person or agent is known to the Director General; or

(b) after giving due notice in the *Gazette* if the name and address of such person or his agent is not known to the Director General.

(6) The proceeds of the sale of any goods seized under subsection (4) shall be applied to the payment of—

(a) the sales tax, surcharge, penalty, fee or other money;

(b) the deficient sales tax, surcharge, penalty, fee or other money;

(c) the refund erroneously paid; or

- (d) the recovery of the amount due or other charges which may be due in respect of selling off such goods,

and the surplus, if any, shall be paid to the person, and if the person cannot be found within one month of the sale, such surplus shall be paid into the Consolidated Fund.

(7) If at the sale of any goods seized under subsection (4) no sufficient bid is forthcoming to defray the sales tax, surcharge, penalty, fee or other money payable or the deficient sales tax, surcharge, penalty, 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.

(8) Every auction sales of any goods seized under subsection (4) shall be conducted by or in the presence of a senior officer of sales tax.

Refund of sales tax, etc., overpaid or erroneously paid

39. (1) Any person who—

(a) has overpaid or erroneously paid any sales tax, surcharge, penalty, fee or other money; or

(b) is entitled to the refund under subsection 35(6) or 41(3),

may make a claim for refund in the prescribed form.

(2) A claim for refund under subsection (1) shall be made to the Director General within one year from the time—

(a) such overpayment or erroneous payment occurred; or

(b) such entitlement of the refund under subsection 35(6) or 41(3) occurred.

(3) The Director General may make such refund in respect of the claim under subsection (1) after being satisfied that the person has properly established the claim.

(4) The Director General may reduce or disallow any refund due in respect of the claim under subsection (1) to the extent that the refund would unjustly enrich the person referred to in subsection (1).

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

Drawback

40. (1) The Director General may allow drawback of the full amount of sales tax paid by a person in respect of taxable goods which are subsequently exported by the person from Malaysia subject to the regulations made under this Act.

(2) This section shall not apply to petroleum.

Remission of sales tax, etc.

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

(2) The Director General may remit the whole or any part of the surcharge accrued, or penalty, fee or other money payable, under this Act where he deems fit.

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

PART VII

RULING

Public ruling

42. (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 business activities.

(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 under subsection (1) applies to any person in relation to a business activity 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 business activities in accordance with the ruling.

Customs ruling

43. (1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a customs ruling in respect of any one or more of the following matters:

- (a) the classification of taxable goods;
- (b) the determination of a taxable person;
- (c) the principles to be adopted for the purposes of determination of sale value of taxable goods; or
- (d) any other matters as determined by the Director General.

(2) An application for a customs ruling under subsection (1) may be made—

- (a) in respect of imported goods—
 - (i) at any time before the goods, that are the subject matter of the application, are to be imported or intended to be imported into Malaysia; or
 - (ii) at any later time, if permitted by the Director General; or
- (b) in respect of manufactured goods—
 - (i) at any time before the goods, that are the subject matter of the application, are to be manufactured; or

- (ii) at any later time, if permitted by the Director General.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made relating to the application for the customs ruling shall be forfeited by the Director General.

Making of customs ruling

44. (1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in the application made under section 43 and such customs ruling shall bind the applicant.

(2) Any customs ruling made under subsection (1) may be subject to such conditions as the Director General deems fit.

(3) The Director General may decline to make a customs ruling if, in his opinion—

- (a) the information given by the applicant is insufficient to do so;
- (b) the application is for a hypothetical situation; or
- (c) any pending appeal under section 96 involves the subject matter referred to in the application.

Amendment, modification or revocation of customs ruling

45. (1) A customs ruling may be amended, modified or revoked by the Director General if—

- (a) the customs ruling contains an error which needs to be corrected;
- (b) the customs ruling was based on an error of fact or law;
- (c) there is a change in law relating to sales tax; or
- (d) there is a change in the material fact or circumstances on which the customs ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give notice in writing to the applicant referred to in section 43 of the amendment, modification or revocation and, subject to subsection (3), such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2), where a customs ruling has the effect of causing or increasing any sales tax liability in respect of any taxable goods, and—

- (a) the taxable goods are imported within three months of the date the notice of the amendment, modification or revocation is given pursuant to a binding contract entered into before that date;
- (b) the taxable goods have left the place of manufacture or warehouse in the country from which the goods are being exported for direct shipment to Malaysia on the date the notice of the amendment, modification or revocation of the customs ruling is given; or
- (c) the taxable goods are imported on or before the date the notice of the amendment, modification or revocation is given but have not been released for home consumption,

the customs ruling which was made prior to the amendment, modification or revocation under this section shall be applied to such taxable goods.

(4) Notwithstanding subsection (2) and subject to section 39, if the amendment, modification or revocation of a customs ruling has the effect of decreasing any sales tax liability in respect of any taxable goods, any higher sales tax that has been paid shall be treated as if the higher sales tax has been paid in error.

Director General to declare customs rulings to be null, etc.

46. The Director General shall, by a notice, declare a customs ruling made under section 44 to be null, void and of no effect if the ruling has been obtained by the applicant referred to in section 43 by way of fraud, misrepresentation or falsification of facts.

Different customs rulings on same subject matter

47. Where an applicant referred to in section 43 receives two or more different customs rulings on the same subject matter, such rulings shall be treated as being null and void, and such applicant shall immediately notify the Director General who shall, within thirty days from the date of notification, make a new customs ruling.

PART VIII

SPECIAL PROVISIONS RELATING TO DESIGNATED AREAS

Interpretation

48. In this Part, “Malaysia” excludes the designated areas and the special areas.

Application

49. For the purposes of this Part, this Act shall not apply to any taxable goods manufactured in the designated areas other than petroleum.

Sales tax relating to taxable goods imported into or transported to or from designated areas

50. Notwithstanding anything to the contrary contained in this Act—

- (a) no sales tax shall be levied and payable on any taxable goods—
 - (i) imported into the designated areas or transported to the designated areas from Malaysia;
 - (ii) transported between the designated areas; or
 - (iii) transported from the designated areas to the special areas,

other than any taxable goods which the Minister may from time to time declare by order published in the *Gazette*;

- (b) sales tax shall be levied and payable on all taxable goods transported to Malaysia from the designated areas as if such transportation to Malaysia were importation into Malaysia; and
- (c) the sale value of taxable goods liable to sales tax in accordance with paragraph (b) shall be determined in accordance with subsection 9(2).

Transportation of taxable goods from or to designated areas to or from Malaysia

51. (1) Where taxable goods are transported—

- (a) from the designated areas to Malaysia; or
- (b) from Malaysia to the designated areas,

the provisions of this Act shall, with such modifications and adaptations as may be necessary, apply as if such goods were imported into, or exported from, Malaysia from or to a place outside Malaysia.

(2) Without prejudice to the generality of subsection (1), Part X shall apply to—

- (a) taxable goods transported to or from the designated areas from or to Malaysia; and
- (b) persons, and vehicles, vessels and aircrafts, transporting such goods.

Declaration of taxable goods transported from designated areas to Malaysia

52. The person in charge of any vehicle, vessel or aircraft on which taxable goods are transported from the designated areas to Malaysia shall make a declaration substantially in the form as prescribed under the Customs Act 1967 giving particulars of the taxable goods transported in such vehicle, vessel or aircraft.

Collection of sales tax in designated areas

53. In making regulations under section 106, the Minister may provide—

- (a) for the collection in the designated areas of sales tax payable in respect of taxable goods transported or about to be transported from or to the designated areas to or from Malaysia;
- (b) for the limitation or restriction of vehicles, vessels and aircrafts which may be used to transport taxable goods; and
- (c) for the licensing or control of persons, or vehicles, vessels or aircrafts, transporting taxable goods.

Application of section 40 to taxable goods transported to designated areas

54. Section 40 shall apply to taxable goods, other than any goods declared by the Minister under paragraph 50(a) to be taxable on importation into the designated areas, transported from Malaysia to the designated areas as if such goods had been exported or re-exported, as the case may be.

PART IX

SPECIAL PROVISIONS RELATING TO SPECIAL AREAS

Interpretation

55. In this Part, “Malaysia” excludes the special areas and the designated areas.

Application

56. For the purposes of this Part, this Act shall not apply to any taxable goods manufactured in the special areas.

Sales tax relating to taxable goods imported into or transported to or from special areas

57. Notwithstanding anything to the contrary contained in this Act—

(a) no sales tax shall be levied and payable on any taxable goods—

(i) imported into the special areas or transported to the special areas from Malaysia;

(ii) transported between the special areas; or

(iii) transported from the special areas to the designated areas,

other than any taxable goods which the Minister may from time to time declare by order published in the *Gazette*;

(b) sales tax shall be levied and payable on all taxable goods transported to Malaysia from the special areas as if such transportation to Malaysia were importation into Malaysia; and

(c) the sale value of taxable goods liable to sales tax in accordance with paragraph (b) shall be determined in accordance with subsection 9(2).

Transportation of taxable goods from or to special areas to or from Malaysia

58. (1) Where taxable goods are transported—

(a) from the special areas to Malaysia; or

(b) from Malaysia to the special areas,

the provisions of this Act shall, with such modifications and adaptations as may be necessary, apply as if such goods were imported into, or exported from, Malaysia from or to a place outside Malaysia.

(2) Without prejudice to the generality of subsection (1), Part X shall apply to—

- (a) taxable goods transported to or from the special areas from or to Malaysia; and
- (b) persons, and vehicles, vessels and aircrafts, transporting such goods.

Declaration of taxable goods transported from special areas to Malaysia

59. The person in charge of any vehicle, vessel or aircraft on which taxable goods are transported from the special areas to Malaysia shall make a declaration substantially in the form as prescribed under the Customs Act 1967 giving particulars of the taxable goods transported in such vehicle, vessel or aircraft.

Collection of sales tax in special areas

60. In making regulations under section 106, the Minister may provide—

- (a) for the collection in the special areas of sales tax payable in respect of taxable goods transported or about to be transported from or to the special areas to or from Malaysia;
- (b) for the limitation or restriction of vehicles, vessels or aircrafts which may be used to transport taxable goods; and
- (c) for the licensing or control of persons, or vehicles, vessels or aircrafts, transporting taxable goods.

Application of section 40 to taxable goods transported to special areas

61. Section 40 shall apply to taxable goods, other than any goods declared by the Minister under paragraph 57(a) to be taxable on importation into the special areas, transported from Malaysia to the special areas as if such goods had been exported or re-exported, as the case may be.

PART X

ENFORCEMENT

Persons bound to give information

62. (1) Every person having information about any matter into which it is the duty of the proper officer of sales tax to inquire shall, upon being required by the officer to do so, give such information.

(2) Every person required by the proper officer of sales tax to produce any goods, documents, articles or things which are within the power of such person to produce, and which are—

- (a) goods, documents, articles or things used in any transaction or other matter relating to sales tax; or
- (b) goods, documents, articles or things into which it is the duty of the proper officer of sales tax to inquire under this Act,

shall produce the goods, documents, articles or things.

(3) Where any information, goods, documents, articles or things are not in the national language or English language, any proper officer of sales 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 of the information, goods, documents, articles or things in the national language or English language as the proper officer of sales tax may determine.

(4) Any person—

- (a) who contravenes subsection (1) or (2); or
- (b) who fails to produce a translation as required under subsection (3),

commits an offence.

Power to take samples

63. (1) Any senior officer of sales tax may at any time, if his duties so require, take samples of any goods—

- (a) to ascertain whether the samples are goods of a description liable to sales tax;
- (b) to ascertain the sales tax payable on such goods; or
- (c) for such other purposes as he may deem necessary,

and such samples may be disposed of in such manner as he may direct.

(2) No payment shall be made for any sample taken under subsection (1), but the proper officer of sales tax shall give a receipt for such sample.

Access to places or premises

64. (1) For the purposes of this Act, any senior officer of sales tax shall at all times have access to any place or premises where a manufacturer or importer carries on his business.

(2) Where any senior officer of sales 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 the officer all reasonable facilities and assistance for the exercise of his duties under this section.

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

- (a) require the manufacturer or importer, as the case may be, to produce any goods, documents, articles or things, which such manufacturer or importer is required to keep under the provisions of this Act, or which relates to any taxable goods;
- (b) examine any goods, documents, articles or things and take copies of any documents;

- (c) seize and detain any goods, documents, articles or things which, in his opinion, may afford evidence of the commission of any offence under this Act;
- (d) require any manufacturer or importer, or any person employed by such manufacturer or importer, to answer questions relating to any goods, documents, articles or things, or any entry in any document, or any taxable goods;
- (e) require any container, envelope, or other receptacle, in such place or premises to be opened;
- (f) at the risk and expense of the manufacturer or importer, open and examine any package, or any goods or materials, in such place or premises; or
- (g) take samples of any goods in accordance with section 63.

(4) Where the senior officer of sales tax acting under this section is unable to obtain access to any place or premises where a manufacturer or importer carries on his business, or to any receptacle contained in the place or premises, he may, at any time, enter such place or premises, and open such receptacle in such manner, if necessary by force, as he may think necessary.

(5) Where, on the entry upon any place or premises under the provisions of this section, any taxable goods are found in relation to which any offence under the provisions of this Act has been committed, such taxable goods shall be liable to forfeiture.

(6) Any person who contravenes subsection (2) commits an offence.

Access to recorded information or computerized data

65. (1) Any senior officer of sales tax exercising his powers under sections 64, 66, 67 and 68 shall be given access to any recorded information or computerized data, whether stored in a computer or otherwise.

(2) In addition, a senior officer of sales tax exercising his powers under sections 64, 66, 67 and 68—

(a) may inspect the operation of any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been used in connection with the information or data; and

(b) may require—

(i) the person by whom or on whose behalf the senior officer of sales tax has reasonable cause to suspect the computer is or has been so used in connection with the information or data; or

(ii) the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material in connection with the information or data,

to provide the officer with such reasonable assistance as he may require for the purposes of this section.

(3) For the purposes of subsection (1), “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information or computerized data.

Magistrate may issue search warrant

66. (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, documents, articles or things which may afford evidence of the commission of an offence under this Act, the Magistrate may issue a warrant authorizing any senior officer of sales 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, documents, articles or things; and

(b) to arrest any person being in the place, premises or conveyance in whose possession the goods, documents, articles or things are found or who may reasonably be suspected as having concealed or deposited such goods, documents, articles or things.

(2) The senior officer of sales 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.

Search may be made without warrant

67. Whenever it appears to the senior officer of sales tax that there is reasonable cause to believe that in any place, premises or conveyance there are concealed or deposited any goods, documents, articles or things 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, documents, articles or things are likely to be removed, he may exercise in, upon and in respect of the place, premises or conveyance, all the powers under section 66 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

68. (1) The proper officer of sales 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 in the conveyance.

(2) If required so to do by the proper officer of sales tax, the person in control or in charge of the conveyance—

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

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

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

69. (1) Any proper officer of sales tax may seize in any place either on land or in the territorial waters any of the following:

- (a) all goods, documents, articles or things in respect of which the proper officer of sales tax has reasonable cause to suspect that there has been committed any offence under this Act, any violation of any of the provisions of this Act, or any breach of any conditions subject to which a registration has been approved under sections 13 and 14;
- (b) any receptacle, package or conveyance in which the goods, documents, articles or things may have been found or which have been used in connection with the offence, violation or breach referred to in paragraph (a); and
- (c) any other goods, documents, articles or things which may reasonably be believed to have a bearing on the offence, violation or breach referred to in paragraph (a).

- (2) For the purpose of paragraph (1)(b)—
- (a) if the conveyance is a vessel, the vessel shall not exceed two hundred tonnes net of its registered tonnage; or
 - (b) if the conveyance is an aircraft, the aircraft is other than an aircraft engaged in international carriage.
- (3) Whenever any goods, documents, articles, things, receptacles, packages or conveyances are seized under this Act, the proper officer of sales tax shall forthwith give notice in writing of the seizure and the grounds thereof to the owner of the goods, documents, articles, things, receptacles, packages or conveyances, if known, either by delivering the notice to him personally or by post at his place of abode.
- (4) The provision of this section relating to the seizure of—
- (a) any goods, documents, articles or things shall apply to all contents of any receptacles, packages or conveyances in which the goods, documents, articles or things are found, and to any article used to conceal the goods, documents, articles or things; 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 conveyance is drawn.

Proportional examination or testing of goods seized

70. (1) When any goods suspected of being taxable goods or otherwise liable to seizure 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 such 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.

Return or disposal of goods, etc.

71. (1) For the purpose of investigation, where any goods have been seized under this Part, a senior officer of sales tax may, at his discretion—

- (a) temporarily return the goods to the owner thereof or to the person from whose possession, custody or control the goods were seized, or to any person as the senior officer of sales tax may consider entitled to the goods, subject to such terms and conditions as the senior officer of sales tax may impose and to sufficient security being furnished to the satisfaction of the senior officer of sales tax that the goods shall be surrendered to the senior officer of sales tax on demand being made by the senior officer of sales tax and that the said terms and conditions, if any, shall be complied with;
- (b) return the goods to the owner thereof or to the person from whose possession, custody or control the goods were seized, or to such person as the senior officer of sales tax may consider entitled to such goods, with liberty for the person to whom the goods are so returned to dispose of the same; or
- (c) sell or destroy the goods, as appropriate in the circumstances, where the goods are living creatures or where, in the opinion of the senior officer of sales tax, the goods are of a perishable or dangerous nature or likely to speedily deteriorate in quality or value, and where the goods are sold, the senior officer of sales tax shall hold the proceeds of sale to abide the result of any prosecution or claim.

(2) The return of goods under paragraph (1)(b) shall be subject to security being furnished to the satisfaction of the senior officer

of sales tax in an amount not less than an amount which, in the opinion of the senior officer of sales tax, represents—

- (a) the sale value of the goods, on the date on which the goods are so returned; and
- (b) the sales tax due and payable in respect of the goods, if any,

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 81.

(3) Whenever any goods are returned or disposed of under subsection (1), a document purporting to be a certificate in accordance with subsection 74(2) shall be issued by the senior officer of sales tax.

(4) Any person who—

- (a) fails to surrender on demand to a senior officer of sales tax the 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.

(5) The criminal liability of any person under subsection (4) 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 goods under paragraph (1)(a).

(6) The provisions of subsection (4) shall not apply to a person who is the guarantor or surety of the person to whom the goods are returned under paragraph (1)(a).

(7) 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 sales tax under subsection (1).

Power of arrest

72. (1) Any proper officer of sales 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, documents, articles or things liable to seizure under this Act; or
- (c) any person whom he may reasonably suspect to have committed an offence under this Act.

(2) The proper officer of sales tax may search or cause to be searched any person arrested under subsection (1) provided that—

- (a) any person who requests that his person be searched in the presence of a senior officer of sales tax shall not be searched except in the presence of and under the supervision of such senior officer of sales tax, but such person may be detained until the arrival of such senior officer of sales tax, or taken to any office or police station where such senior officer of sales tax may be found;
- (b) the goods and baggage of the person who requests to be present when the goods and baggage are searched and so presents himself within a reasonable time shall not be searched except in his presence; or
- (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.

(3) Any proper officer of sales 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.

(4) If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after 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 such offence.

(5) Any proper officer of sales tax may cause to be taken photographs, finger and 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.

(6) Every person so arrested may be released from custody—

- (a) on his depositing such reasonable sum of money as the proper officer of sales tax may require;
- (b) on his executing a bond, with such surety or sureties, as the proper officer of sales tax may require; or
- (c) on his depositing such reasonable sum of money as the proper officer of sales tax may require and his executing a bond, with such surety or sureties, as the proper officer of sales tax may require.

(7) Any person who has been released from custody under subsection (6) may be arrested without warrant by any proper officer of sales tax—

- (a) if such officer has reasonable grounds for believing that any conditions subject to which such 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 such person that such person is likely to breach any conditions subject to which such person was released and that the surety wishes to be relieved of his obligation as surety.

PART XI

TRIALS AND PROCEEDINGS

Jurisdiction to try offences

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

Evidence by certificate, etc.

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

- (a) a manufacturer was or was not, on any date, registered under this Act;
- (b) any return has not been furnished or had not been furnished on any date;
- (c) any sales tax shown as due and payable in any return or assessment has not been paid;
- (d) any penalty and the amount of the penalty shown as due from a person named in the certificate; or
- (e) any public ruling made under section 42 or customs ruling made under section 43,

shall be *prima facie* evidence of the facts stated in the certificate 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 goods returned, sold or destroyed under section 71 is in question, any document produced by the Public Prosecutor purporting to be a certificate in respect of any of the matter given and signed by—

- (a) an analyst within the meaning of subsection 75(4);

- (b) a senior officer of sales 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 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 in the certificate, without proof of the signature to the certificate.

Production of certificate of analysis

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

(2) Where the Public Prosecutor intends to give in evidence any certificate of analysis, he shall deliver a copy of the certificate to the accused not less than ten clear days before the commencement of the trial.

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

(4) In this section, “analyst” means—

- (a) a registered chemist under the Chemists Act 1975 [Act 158] or a person authorized under section 23A of such Act, or his employee working under his supervision;
- (b) a registered pharmacist under the Registration of Pharmacists Act 1951 [Act 371] or his employee working under his supervision;

(c) a registered engineer under the Registration of Engineers Act 1967 [Act 138]; or

(d) a registered geologist under the Geologists Act 2008 [Act 689].

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

(6) The Minister may appoint any qualified person or class of qualified persons, by notification in the *Gazette*, to be an analyst for the purpose of this section.

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

76. Where in any prosecution under this Act it is relevant to ascertain particulars as to the registration or licensing of any 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 of the conveyance shall be *prima facie* evidence as to all particulars concerning the registration or licensing contained in the certificate, and the burden of proving the incorrectness of any particulars stated in such certificate shall be on the person denying the same.

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

77. 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 of such merits.

Obligation of secrecy

78. (1) Except as provided under section 79, the name, identification card number, passport number and address of an informer, or any other information which can lead to the 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 sales 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 proper officer of sales tax.

(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

79. (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 an informer, or state any matter which might lead to the discovery of the informer.

(2) If any documents which are produced in evidence or liable to inspection in any civil or criminal proceedings 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 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 fully be 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.

Goods liable to seizure liable to forfeiture

80. (1) All goods liable to seizure under the provisions of this Act shall be liable to forfeiture.

(2) For the purposes of this section and of sections 71, 81, 82, 83 and 85, the word “goods” shall be deemed to include receptacles and conveyances.

(3) All goods forfeited shall be delivered to a proper officer of sales tax and shall be disposed of in accordance with the directions of the Director General.

Court to order disposal of goods seized

81. (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 to the forfeiture 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—

(a) an offence under this Act has been committed; and

(b) 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 any offence under this Act.

(2) The amount secured under paragraph 71(1)(a) or subsection 71(2) or the amount realized by sale under paragraph 71(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 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.

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

82. (1) If there is 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 71(1)(c) shall be taken

and deemed to be forfeited at the expiration of thirty days from the date of the notice of the seizure of the goods is given under subsection 69(3) 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 71(1)(a) or (b); or
- (c) the goods are returned under paragraph 71(1)(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 the goods or the proceeds of sale of the goods are not liable to forfeiture may, personally or by his agent authorized in writing, give written notice to any senior officer of sales tax that he claims the same.

(3) If there is a claim or a written application made within the period of thirty days referred to in subsection (1) and there is no prosecution with regard to the goods, the senior officer of sales tax shall, on the expiration of the period of thirty days, refer the claim or the application to the Director General.

(4) Upon reference by the senior officer of sales tax under subsection (3), the Director General may direct such senior officer of sales tax—

- (a) to release such goods or the proceeds of sale of such goods or the security furnished under paragraph 71(1)(a) or subsection 71(2); or
- (b) by information in the prescribed form, to refer the matter to a Sessions Court Judge for a decision.

(5) 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—

- (a) shall order the goods or the proceeds of sale of the goods or the amount secured under paragraph 71(1)(a) or subsection 71(2) to be forfeited; or
- (b) 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 71(1)(a) or subsection 71(2).

(6) In any proceedings under subsection (6), section 83 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 the goods were seized as if the owner or person had been the accused in a prosecution under this Act.

Burden of proof

83. Where any dispute arises in any prosecution as to whether—

- (a) any sales tax has been paid;
- (b) any goods seized have been lawfully imported or exported;
- (c) any goods are not taxable goods; or
- (d) the accused is entitled to an exemption from sales tax,

the burden of proof of such dispute shall lie on the accused in the prosecution.

Court order

84. (1) Where any person is found guilty of an offence under this Act, the court before which that person is found guilty shall order the person to pay to the Director General the amount of sales tax due and payable, or penalty payable, under this Act, if any, as certified by the Director General and such sales tax

or penalty shall be recoverable in the same manner as a fine as provided under section 283 of the Criminal Procedure Code [Act 593].

(2) In addition to subsection (1), the court has civil jurisdiction to the extent of the amount of sales tax due and payable, or penalty payable 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 sales tax due and payable, or penalty payable, under this Act pursuant to section 100 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.

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

85. No person shall, in any proceedings before any court in respect of the seizure of any goods, documents, articles or things 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 such goods, documents, articles or things or the payment of the value of such goods, documents, articles or things, unless such seizure was made without reasonable or probable cause.

PART XII

GENERAL

Evasion of sales tax

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

- (a) omits from a return any information in relation to any matter affecting the amount of sales tax chargeable by him or other person;

- (b) makes any false statement or entry in any return, claim or application;
- (c) gives any false answer, whether in writing or otherwise, to any question asked or request for information made under this Act;
- (d) prepares or maintains, or authorizes the preparation or maintenance of, any false book of accounts, false invoices or other false records, or falsifies or authorizes the falsification of any book of accounts, invoices or records; or
- (e) makes, uses or authorizes the use of any fraud, artifice or contrivance,

commits an offence.

(2) Any person who commits an offence under subsection (1) 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 sales 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 sales tax or to imprisonment for a term not exceeding seven years or to both.

(3) For the purposes of subsection (2), where the amount of sales 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.

(4) 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 sales tax of another person, 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.

(5) Any reference under paragraph (1)(e) 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 sales tax—

- (a) destroys, damages, erases, alters or manipulates the data stored in, or used in connection with, a computer;
- (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 other data stored in that computer; or
 - (ii) interfering with, interrupting or obstructing the lawful use of that computer, or the data stored in that computer; or
- (c) otherwise uses a computer,

the purpose or effect of which is to evade sales tax.

(6) For the purposes of subsection (5), “data” includes any computer programme or part of a computer programme.

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

Giving incorrect information relating to liability to sales tax

87. Without prejudice to any other liability incurred under this Act, any person who gives any incorrect information in relation to any matter affecting his own liability to sales tax or the liability of any other person to sales tax commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding fifty thousand ringgit or to both.

Improperly obtaining refund

88. Any person who causes or attempts to cause the refund by the Director General under section 10, 36 or 39 to himself or to any other person of any amount in excess of the amount properly so refundable to him or to that 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 of two times the amount refunded in excess of the amount properly so refundable.

Employee may transact business

89. (1) An employee of any person may transact business generally with any proper officer of sales tax on behalf of such person.

(2) A proper officer of sales tax may refuse to transact business with such employee unless the person referred to under subsection (1) identifies such employee to such proper officer of sales tax as empowered to transact.

Transaction of business on behalf of taxable person

90. (1) Subject to section 89, no person shall transact any business in relation to this Act on behalf of any taxable person, except on matters with regard to any refund, remission, exemption, or any other matters as approved by the Director General, under this Act.

(2) The person who transacts business on any of the matters stated in subsection (1) on behalf of a taxable person shall—

- (a) produce a letter of authorization from the taxable person whom he represents; and
- (b) where any prescribed form is required to be submitted for the purposes of the matters being transacted, submit

the form that has been signed by the taxable person, except where otherwise allowed by a senior officer of sales tax.

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

Offences by authorized and unauthorized persons

91. Any person—

(a) being an employee of a taxable person or a person authorized under section 90 who—

(i) withholds for his own use or otherwise any portion of the amount of sales tax or penalties collected under this Act;

(ii) otherwise than in good faith, demands from any person an amount in excess of any assessment of sales tax due and payable, or penalties payable, under this Act;

(iii) submits any false return, statement or report, whether in writing or otherwise, of the amount of sales tax or penalty collected or received by him under this Act; 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 who collects or attempts to collect any sales tax or penalty 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.

Obstruction

92. Any person who in any way obstructs, assaults or hinders any proper officer of sales tax in the discharge of his functions under this Act commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

Offences by company, etc.

93. (1) Where any company, limited liability partnership, firm, society or other body of persons commits an offence under this Act, a 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 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 or other body of persons or was assisting in its management—

- (a) may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or the body of persons; and
- (b) if the company, limited liability partnership, firm, society or the body of persons is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge; or
 - (ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and 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 the

person's employee or agent, or of the employee of the person's agent, if the act, omission, neglect or default was committed—

- (a) by that person's employee in the course of his employment;
- (b) by that person's agent when acting on behalf of that person; or
- (c) by the employee of that person's agent when acting in the course of his employment by the person's agent or otherwise on behalf of the person's agent acting on behalf of that person.

General penalty

94. 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.

Compounding of offences

95. (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

- (a) any offence under this Act or any regulations made under this Act as an offence which may be compounded;
- (b) the criteria for compounding such offence; and
- (c) the method and procedure for compounding such offence.

(2) Any senior officer of sales tax may, with the consent in writing of the Public Prosecutor, at any time before a charge is being instituted, compound any offence prescribed as an offence which may be compounded by making a written offer to the person reasonably suspected of having committed the offence to compound the offence upon payment to the Director General of a sum of money not exceeding fifty per centum of the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence, within such time as may be specified in the written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time 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.

(4) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any document or thing seized in connection with the offence may be released by the Director General, subject to such terms as the Director General thinks fit.

(5) All sums of moneys received by the Director General under this section shall be paid into and form part of the Consolidated Fund.

Review and appeal

96. (1) Any person aggrieved by any decision of the Director General may apply to the Director General for review of any of his decision within thirty days from the date the person has been notified of such decision provided that no appeal has been made on the same decision to the Customs Appeal Tribunal or court.

(2) An application for review under subsection (1) shall be made in the prescribed form.

(3) Where an application for review has been made under subsection (1), the Director General shall make the review and notify the decision of the review to the person, where practicable, within sixty days from the date of the receipt of such application.

(4) No review may be made in any matter relating to compound.

(5) Any person aggrieved by any decision of the Director General under subsection (3) or any other provision of this Act, except any matter relating to compound, may appeal to the Customs Appeal Tribunal in writing within thirty days from the date of notification of the decision to the aggrieved person.

(6) Any sales tax due and payable under this Act shall be paid notwithstanding any review or appeal has been made under this section.

Liquidator of company to give notice of winding-up, and set aside sales tax

97. (1) Where a resolution is passed and becomes effective, or an order is made, for the winding-up of a company which is a registered manufacturer or an importer, the liquidator of the company shall—

- (a) give notice of the winding up of the company to the Director General within fourteen days after the resolution is effective or order is made;
- (b) before disposing of any of the assets of the company, set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any sales tax that is or will thereafter become due and payable in respect of the company; and
- (c) pay the sales tax referred to in paragraph (b).

(2) A liquidator of any company referred to in subsection (1) who fails to give notice to the Director General within the time specified in paragraph (1)(a) or fails to provide for payment of the sales tax as required under paragraph (1)(c) shall be personally liable for any sales tax that is or will become due and payable as aforesaid.

(3) Any liquidator who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(4) Where two or more persons are appointed as liquidators or are required by law to carry out the winding-up of the company referred to in subsection (1), the obligations and liabilities attaching to a liquidator under this section shall attach to all such persons jointly and severally, subject to a right of contribution between themselves as in cases of contract.

Appointment of receiver to be notified to Director General

98. (1) Where a receiver of the property of a registered manufacturer or an importer is appointed, the receiver shall give notice of such appointment to the Director General within fourteen days thereafter, and shall before disposing of any of the assets of the registered manufacturer or importer set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any sales tax that is or will thereafter become due and payable in respect of the taxable goods that have been sold or manufactured by the registered manufacturer or importer before the appointment of the receiver, and shall pay such sales tax.

(2) Any receiver appointed under subsection (1) who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for the payment of the sales tax as required under that subsection shall be personally liable for any sales tax that is or will become due and payable as aforesaid.

(3) Any receiver who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(4) Where two or more persons are appointed as receivers, the obligations and liabilities attaching to a receiver under this section shall attach to all such persons jointly and severally, subject to a right of contribution between themselves as in cases of contract.

Registered manufacturer to submit audit certificate

99. The Director General may require a registered manufacturer to submit annually an audit certificate, signed by a public accountant not in the employment of the registered manufacturer, in relation to the records required to be kept by the registered manufacturer under section 24 in respect of the registered manufacturer's production and sale of taxable goods manufactured by him.

Sales tax, etc., to be payable notwithstanding any proceedings, etc.

100. 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 95 shall not relieve any person from the liability to pay for sales tax, surcharge, penalty, fees or other money under this Act.

Service of notices, etc.

101. (1) Every notice, direction or other document required by this Act to be served on any person may be served—

- (a) personally on that person;
- (b) by sending it to that person by registered post; or
- (c) by the electronic service under section 102.

(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 such notice, direction or other document was addressed—

- (a) in the case of a company, limited liability partnership, firm, society 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.

Use of electronic service

102. (1) Notwithstanding any other provision of this Act and subject to the regulations made under this Act, the Director General may provide an electronic service to any registered user for—

- (a) the filing or furnishing 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 howsoever 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 electronic service or in the equipment used for the provision of the electronic service.

(3) Any electronic notice made and transmitted by the registered user shall be deemed to have been filed, furnished 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.

Protection of officer of sales tax from liability

103. No officer of sales 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 causes while the goods are in the customs control or excise control or in the lawful custody or control of the officer of sales tax or other 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.

Rewards

104. The Director General may order such rewards as he may deem fit to be paid to any officer of sales tax or other person for services rendered in connection with the detection of any offences against this Act.

Power of Director General to charge fees

105. The Director General may charge such fee as he may consider reasonable in respect of any services rendered by him or any officer of sales tax—

- (a) which is not required to be rendered under this Act; and
- (b) for which no fee is prescribed by any written law.

Power to make regulations

106. (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), the Minister may prescribe—

- (a) all matters relating to registration of manufacturers;
- (b) all matters relating to taxable period;
- (c) all matters relating to determination of sale value of taxable goods;
- (d) all matters relating to furnishing of returns and payment of sales tax;
- (e) all matters relating to refund, drawback and remission of sales tax;
- (f) all matters relating to public ruling and customs ruling;
- (g) all matters relating to electronic service;
- (h) all matters relating to invoices, credit notes and debit notes;

- (i) all matters relating to the offices for the administration of sales tax;
- (j) all fees required by this Act to be prescribed;
- (k) all forms to be prescribed for the purposes of this Act;
- (l) all matters relating to petroleum; or
- (m) any other matters required by this Act to be prescribed.

(3) Any regulations made under subsection (1) may prescribe an act or omission 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 to both for such offence.

PART XIII

SAVINGS AND TRANSITIONAL

Registration on commencement date

107. (1) Notwithstanding section 13, any person who manufactures goods before the effective date which goods are taxable goods on the effective date shall, within thirty days from the date of the coming into operation of this Act, apply to the Director General to be registered as a registered manufacturer if there are reasonable grounds for believing that the total sale value of all his taxable goods in the month of effective date and eleven months immediately succeeding that month will exceed the total sale value of taxable goods determined under subsection 12(1).

(2) The Director General shall register the person referred to in subsection (1) with effect from the first day of the month following the month in which the application is made, and the person shall charge sales tax on the taxable goods sold, used or disposed of by him with effect from such day.

(3) Any person who manufactures goods before the effective date which goods are taxable goods on the effective date and has made an application before the effective date to the

Director General to be registered as a registered manufacturer under this Act—

- (a) shall be deemed to have been registered in accordance with section 13 on the effective date if there are reasonable grounds for believing that the total sale value of all his taxable goods in the month of the effective date and eleven months immediately succeeding that month will exceed the total sale value of taxable goods determined under subsection 12(1); and
- (b) shall charge sales tax on the taxable goods sold, used or disposed of by the person with effect from the effective date.

(4) A manufacturer who is registered under the Goods and Services Tax Act 2014 [Act 762] before the effective date and manufactures taxable goods on the effective date—

- (a) shall be deemed to have been registered in accordance with section 13 on the effective date if there are reasonable grounds for believing that the total sale value of all his taxable goods in the month of the effective date and eleven months immediately succeeding that month will exceed the total sale value of taxable goods determined under subsection 12(1); and
- (b) shall charge sales tax on the taxable goods sold, used or disposed of by the manufacturer with effect from the effective date.

Progressive or periodic agreement

108. (1) Where any sale of taxable goods is made under an agreement for a period or progressively over a period whether or not at regular intervals and that period begins before 1 June 2018 and ends after the effective date, the proportion of the sale which is attributed to the part of the period after the effective date shall be chargeable to sales tax.

(2) Where the sale referred to in subsection (1) is made under a warranty whether expressed, implied or required by law and the value of the warranty is included in the price of the goods,

no sales tax shall be charged on the replacement of the goods under such warranty.

(3) Subsection (1) shall not apply to a sale of goods where goods and services tax under the Goods and Services Tax Act 2014 has been paid on the sale of the goods to the extent covered by the invoice.

Things done in anticipation of the enactment of this Act

109. 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.

EXPLANATORY STATEMENT

The proposed Sales Tax Bill 2018 (“the proposed Act”) seeks to provide for the charging, levying and collecting of sales tax, and for matters connected therewith. The proposed Act and the proposed Service Tax Bill 2018 provide for the implementation of a new tax system, namely sales tax and service tax, which will replace the goods and services tax imposed under the Goods and Services Tax Act 2014 [Act 762].

PART I

1. Part I deals with preliminary matters.
2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act. *Clause 1* also empowers the Minister to appoint the effective date for the charging and levying of sales tax under the proposed Act.
3. *Clause 2* contains the definitions of certain words and expressions used in the proposed Act.

4. *Clause 3* seeks to provide for the meaning of “manufacture” for the purposes of the proposed Act. *Clause 3* also empowers the Minister to decide on any question that arises with regards to the meaning of “manufacture”.

PART II

5. Part II deals with the administration on matters relating to sales tax.

6. *Clause 4* seeks to provide that the Director General has superintendence over all matters relating to sales tax subject to the direction and control of the Minister and that the Director General is empowered to confer on any officer of sales tax other than senior officer of sales tax all or any powers of a senior officer of sales tax. *Clause 4* also seeks to provide for the powers of the officers of sales tax in enforcing and ensuring due compliance of the proposed Act.

7. *Clause 5* seeks to provide that persons appointed or employed for any duty or service relating to sales tax shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

8. *Clause 6* seeks to require officers of sales tax to identify themselves and produce their authority card or badge when discharging their duties and failure to do so entitles any person to refuse to comply with any request, demand or order made by such officers. *Clause 6* also seeks to provide that any person who unlawfully wears, uses, possesses or displays any prescribed uniform, authority card or badge, etc., of an officer of sales tax as specified under *subclause 6(3)* commits an offence.

9. *Clause 7* seeks to provide that any person who has an official duty, or is employed or appointed under the proposed Act, is obligated to have regard and deal with any information, documents, returns or declarations relating to the business, sale value of the goods of any taxable person or the sale value of imported goods as confidential. *Clause 7* also seeks to provide that such information, documents, returns or declarations can only be divulged by such person for the purposes of carrying into effect the provisions of the proposed Act or prosecution of an offence.

PART III

10. Part III deals with the provisions relating to the imposition and scope of sales tax.

11. *Clause 8* seeks to provide that sales tax shall be charged and levied on any taxable goods manufactured in Malaysia and sold, used or disposed of by a registered manufacturer, or taxable goods imported into Malaysia by any person. *Clause 8* also seeks to provide that where there is inconsistency between the provisions of the Customs Act 1967 [*Act 235*] or the Excise Act 1967 [*Act 176*] and the provisions of the proposed Act, the provisions of the proposed Act will prevail.

12. *Clause 9* seeks to provide for the manner to determine the sale value of taxable goods. In relation to taxable goods sold or manufactured by taxable person, the sale value of such goods shall be determined in accordance with the regulations made under the proposed Act. Where the taxable goods is imported, the sale value of the goods shall be the sum of the value of such goods for the purpose of customs duty, the amount of customs duty and the amount of excise duty, if any, paid or to be paid on such goods.

13. *Clause 10* seeks to provide that the rate of sales tax to be charged shall be based on the sale value of the taxable goods as determined by the Minister by order published in the *Gazette*, and the Minister is empowered to vary or amend the said rate.

14. *Clause 11* seeks to provide the time when sales tax shall become due in respect of taxable goods.

PART IV

15. Part IV deals with provisions relating to registration as a registered manufacturer under the proposed Act.

16. *Clause 12* seeks to empower the Minister to determine the total sale value of taxable goods for the purpose of registration of any manufacturer under Part IV of the proposed Act. This *clause* also seeks to provide for the time when the manufacturer of taxable goods is liable to be registered.

17. *Clause 13* seeks to require a manufacturer who is liable to be registered under *clause 12* to apply for registration as a registered manufacturer to the Director General in the prescribed form. This *clause* makes it an offence for a manufacturer who fails to comply with this *clause*.

18. *Clause 14* seeks to allow any manufacturer who is not liable to be registered under *clause 12* to apply to the Director General for registration as a registered manufacturer.

19. *Clause 15* seeks to empower the Director General to make direction requiring the persons named in the direction to be treated as a single taxable person if the Director General is satisfied that any separation of business activities is artificial.

20. *Clause 16* seeks to provide for the registration of persons carrying on a business in a partnership as a registered manufacturer and their liability in relation to sales tax.

21. *Clause 17* deals with the cessation of liability to be registered under the proposed Act.

22. *Clause 18* seeks to require any registered manufacturer under *clause 13* or *14* to notify the Director General in writing within thirty days from the date of cessation if he ceases to manufacture taxable goods or ceases to be liable to be registered under *clause 17*. This *clause* makes it an offence for failure to comply with the requirement.

23. *Clause 19* deals with the cancellation of registration of a registered manufacturer and the effective date of such cancellation.

24. *Clause 20* seeks to empower the Minister to exempt any class of persons from any registration under *clause 13*. However, this *clause* also provides that any person who is exempted by virtue of *subclause 20(1)* may apply to be registered and the provisions of the proposed Act shall apply to such person.

PART V

25. Part V deals with accounting, assessment, recovery, etc., relating to sales tax.

26. *Clause 21* seeks to require a registered manufacturer who sells any taxable goods to issue an invoice containing prescribed particulars in the national language or English language to the purchaser in respect of the transaction.

27. *Clause 22* deals with the production of invoices by computer.

28. *Clause 23* seeks to require a registered manufacturer to make deduction or addition of sales tax in his returns if credit notes or debit notes are issued under prescribed circumstances and conditions.

29. *Clause 24* seeks to impose a duty on a taxable person to keep complete and true records of all transactions in relation to his sales tax liability.

30. *Clause 25* seeks to provide for a taxable period of a taxable person and the power of the Director General to vary and reassign the taxable period.

31. *Clause 26* seeks to require a taxable person to account for sales tax in a return in respect of his taxable period and to furnish the return to the Director General. The taxable person shall pay the Director General the amount of sales tax due and payable by him in respect of the taxable period to which the return relates.

32. *Clause 27* seeks to empower the Director General to assess the amount of sales tax due and payable, and the penalty payable under *subclause 26(9)*, by a taxable person if the taxable person fails to apply for registration under *clause 13*, fails to furnish a return under *clause 26*, or furnishes an incomplete or incorrect return.

33. *Clause 28* seeks to provide for the recovery of any sales tax due and payable, any surcharge accruing, or any penalty, fee or other money payable, under the proposed Act as a civil debt due to the Government.

34. *Clause 29* seeks to empower the Director General to collect sales tax, surcharge, penalty, fee or other money from any person holding money for or owing money due to a taxable person.

35. *Clause 30* seeks to provide for the recovery of sales tax due by a person who is about or is likely to leave Malaysia before the sales tax becomes payable.

36. *Clause 31* seeks to provide for measures to prevent a person from leaving Malaysia if the Director General has reason to believe that such person is about or is likely to leave Malaysia without paying any sales tax due and payable, any surcharge accrued, or any penalty or fee payable, by him, or any other money recoverable from him.

37. *Clause 32* seeks to empower the Director General to allow any sales tax due and payable, or penalty payable, to be paid by instalments. In the case of default in payment of such instalments, a surcharge of ten per cent will be imposed on the outstanding balance. *Clause 32* also empowers the Director General to seize or sell any goods belonging to the person liable to pay such sales tax, penalty or surcharge for recovery of the amount payable by him or any outstanding balance.

38. *Clause 33* seeks to prohibit a person from obtaining delivery of imported taxable goods, other than imported taxable petroleum, from customs control or excise control until the amount of the sales tax assessed by the proper officer of sales tax has been fully paid.

39. *Clause 34* seeks to deal with the liability of directors of companies, compliance officers of limited liability partnerships, partners of firms, office-bearers of societies, or persons responsible for the management of bodies of person for any sales tax due and payable, any surcharge accrued, or any penalty, fee or other money payable, by the companies, limited liability partnerships, firms, societies or bodies of person.

PART VI

40. Part VI deals with provisions relating to exemption, refund, drawback and remission of sales tax.

41. *Clause 35* seeks to empower the Minister to exempt, by an order published in the *Gazette*, any goods or class of goods from sales tax, or any person or class of persons from payment of sales tax, and such order shall be laid before the Dewan Rakyat. This *clause* also seeks to empower the Minister, in any particular case, to exempt any person or class of persons from payment of sales tax, to exempt any registered manufacturer or class of registered manufacturers from charging and collecting sales tax, or to direct the Director General to make a refund to any person or class of persons of the sales tax or penalty paid by such persons or class of persons.

42. *Clause 36* seeks to allow any person who is, or has ceased to be, a registered manufacturer to claim for a refund of any sales tax paid by him in respect of the taxable goods which has been written off in his account as bad debts.

43. *Clause 37* seeks to require a person who has been refunded with sales tax in relation to bad debt under *clause 36* to repay the sales tax to the Director General in accordance with the specified formula when the payment in respect of the sales of taxable goods for which the sales tax is payable is subsequently received by the person.

44. *Clause 38* seeks to empower the Director General to demand from a person to pay sales tax due and payable, surcharge accrued or, penalty, fee or other money payable, or the deficient sales tax, surcharge, or penalty, fee or other money, under the proposed Act, or to repay the refund erroneously paid to the person within six years from the date sales tax, surcharge, penalty, fee or other money was paid or the refund was made, as the case may be. The Director General is also empowered to seize any goods belonging to the person and sell such goods for the purpose of the recovery of the sales tax, surcharge, penalty, fee or other money or the refund erroneously paid.

45. *Clause 39* seeks to allow a person who has overpaid or erroneously paid any sales tax, surcharge, penalty, fee or other money, or is entitled to the refund under *subclause 35(6)* or *41(3)* to make a claim in respect of the overpayment or erroneous payment or refund to the Director General within one year from the time the overpayment or erroneous payment occurred, or the entitlement of the refund under *subclause 35(6)* or *41(3)* occurred.

46. *Clause 40* seeks to empower the Director General to allow drawback of full amount of sales tax paid by a person in respect of taxable goods, excluding petroleum, which are subsequently exported by the person from Malaysia.

47. *Clause 41* seeks to empower the Minister to remit sales tax due and payable under the proposed Act and to empower the Director General to remit surcharge accrued, or penalty, fee or other money payable, under the proposed Act.

PART VII

48. Part VII deals with public ruling and customs ruling.

49. *Clause 42* seeks to empower 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 type of business activities.

50. *Clause 43* seeks to allow any person to apply to the Director General for a customs ruling in respect of the classification of taxable goods, the determination of a taxable person, the principles to be adopted for the purposes of determination of sale value of taxable goods or any other matters to be determined by the Director General.

51. *Clause 44* seeks to require the Director General to make customs ruling in respect of any matter specified in the application made under *clause 43* and such customs ruling shall be binding on the applicant.

52. *Clause 45* seeks to empower the Director General to amend, modify or revoke any customs ruling made under *clause 44* under certain circumstances.

53. *Clause 46* seeks to empower the Director General to declare a customs ruling made under *clause 44* to be null, void and of no effect if the ruling has been obtained by the applicant by way of fraud, misrepresentation or falsification of facts.

54. *Clause 47* seeks to provide that where an applicant receives two or more different customs rulings on the same subject matter, the applicant shall notify the Director General immediately and the Director General shall make a new customs ruling within thirty days from such notification.

PART VIII

55. Part VIII deals with special provisions relating to designated areas (Labuan, Langkawi and Tioman).

56. *Clause 48* provides for the definition of “Malaysia” which excludes the designated areas and the special areas.

57. *Clause 49* seeks to provide for the non-application of the proposed Act to any taxable goods manufactured in the designated areas other than petroleum.

58. *Clause 50* deals with sales tax relating to taxable goods imported into the designated areas or transported to the designated areas from Malaysia, transported between the designated areas, or transported from the designated areas to the special areas.

59. *Clause 51* seeks to provide for the application of the provisions of the proposed Act to taxable goods which are transported from the designated areas to Malaysia or from Malaysia to the designated areas as if such goods were imported into, or exported from, Malaysia from or to a place outside Malaysia.

60. *Clause 52* seeks to require a person in charge of any vehicle, vessel or aircraft on which taxable goods are transported from the designated areas to Malaysia to make a declaration of the taxable goods transported in such vehicle, vessel or aircraft.

61. *Clause 53* seeks to empower the Minister to make regulations under *clause 106* relating to the designated areas.

62. *Clause 54* seeks to provide for the application of *clause 40* (relating to drawback) to taxable goods transported from Malaysia to the designated areas as if such goods had been exported or re-exported.

PART IX

63. Part IX deals with special provisions dealing with the special areas (any free zone, licensed warehouse and licensed manufacturing warehouse, and the Joint Development Area).

64. *Clause 55* provides for the definition of “Malaysia” which excludes the special areas and the designated areas.

65. *Clause 56* seeks to provide for the non-application of the proposed Act to any taxable goods manufactured in the special areas.

66. *Clause 57* deals with sales tax relating to taxable goods imported into the special areas or transported to the special areas from Malaysia, transported between the special areas, or transported from the special areas to the designated areas.

67. *Clause 58* seeks to provide for the application of the provisions of the proposed Act to taxable goods which are transported from the special areas to Malaysia or from Malaysia to the special areas as if such goods were imported into, or exported from, Malaysia from or to a place outside Malaysia.

68. *Clause 59* seeks to require a person in charge of any vehicle, vessel or aircraft on which taxable goods are transported from the special areas to Malaysia to make a declaration of the taxable goods transported in such vehicle, vessel or aircraft.

69. *Clause 60* seeks to empower the Minister to make regulations under *clause 106* relating to the special areas.

70. *Clause 61* seeks to provide for the application of *clause 40* (relating to drawback) to taxable goods transported from Malaysia to the special areas as if such goods had been exported or re-exported.

PART X

71. Part X deals with provisions relating to enforcement.

72. *Clause 62* deals with the duty of a person to give information or to produce goods, documents, articles or things as required by a proper officer of sales tax.

73. *Clause 63* seeks to empower any senior officer of sales tax to take samples of any goods to ascertain whether the goods of a description liable to sales tax or to ascertain the sales tax payable on such goods or for such other purposes as he deems necessary.

74. *Clause 64* seeks to empower any senior officer of sales tax to have access to any place or premises where a manufacturer or importer carries on his business. This *clause* also provides certain enforcement powers to be exercised by the senior officer of sales tax upon entering the place or premises.

75. *Clause 65* seeks to enable a senior officer of sales tax exercising his powers under *clauses 64, 66, 67* and *68* to gain access to any recorded information or computerized data.

76. *Clause 66* seeks to empower the Magistrate to issue a search warrant authorizing any senior officer of sales tax to enter any place, premises or conveyance and seize any goods, documents, articles or things which may afford evidence of the commission of any offence under the proposed Act. The warrant issued may also authorize the senior officer of sales tax to arrest any person being in the places, premises or conveyance.

77. *Clause 67* seeks to empower the senior officer of sales tax to search without warrant any place, premises or conveyance if there is reasonable cause to believe that by reason of any delay in obtaining the search warrant under *clause 66* such goods, documents, articles or things which may afford evidence of the commission of an offence are likely to be removed. For the purposes of this *clause*, the senior officer of sales tax may exercise all the powers under *clause 66*.

78. *Clause 68* deals with the power of any proper officer of sales tax to stop and examine any conveyance.

79. *Clause 69* seeks to empower the proper officer of sales tax to seize goods, documents, articles, things, receptacles, packages or conveyances in respect of which there has been committed any offence under the proposed Act, violation of any provision of the proposed Act or any breach of any conditions subject to which a registration has been approved.

80. *Clause 70* deals with proportional examination or testing of the goods seized.

81. *Clause 71* deals with the return or disposal of goods seized under Part X of the proposed Act.

82. *Clause 72* seeks to empower any proper officer of sales tax to arrest without warrant.

PART XI

83. Part XI deals with provisions relating to trials and proceedings.

84. *Clause 73* seeks to provide for the jurisdiction of a Sessions Court to try any offence under the proposed Act.

85. *Clause 74* seeks to provide that any certificate signed by the Director General relating to the matters specified under this *clause* to be *prima facie* evidence of the facts stated in the certificate.

86. *Clause 75* seeks to provide that the certificate of analysis produced by the Public Prosecutor in any prosecution under the proposed Act shall be sufficient evidence of the facts stated in the certificate.

87. *Clause 76* seeks to provide that a certificate purporting to be signed by the officer responsible under any written law in Malaysia or in Singapore for the registration or licensing of any conveyance shall be *prima facie* evidence as to all particulars concerning the registration or licensing contained in the certificate.

88. *Clause 77* seeks to require the court to 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 of such merits.

89. *Clause 78* deals with the obligation of secrecy.

90. *Clause 79* deals with the protection of informers from discovery.

91. *Clause 80* seeks to provide that all goods liable to be seized under the proposed Act shall also be liable to be forfeited.

92. *Clause 81* seeks to provide that an order for the forfeiture or for the release of anything liable to forfeiture under the proposed Act shall be made by the same court before which the prosecution with regard to the forfeiture had been held.

93. *Clause 82* seeks to provide that any goods seized or the proceeds of sale of the goods seized under the proposed Act shall be deemed to be forfeited at the expiration of thirty days from the date of the notice of the seizure of the goods unless before the expiration, a claim to the goods or the proceeds of sale of the goods is made, or a written application for the return of the goods is made, or the goods are returned.

94. *Clause 83* deals with the burden of proof for certain disputes arising in any prosecution.

95. *Clause 84* seeks to require the court before which a person is found guilty to order the person to pay to the Director General the amount of sales tax due and payable, or penalty payable, under the proposed Act.

96. *Clause 85* seeks to disallow any cost of proceedings or damages to be awarded in respect of any goods, documents, articles or things seized unless the seizure was made without reasonable cause.

PART XII

97. Part XII deals with general provisions.

98. *Clause 86* seeks to provide for offences relating to evasion of sales tax.

99. *Clause 87* seeks to provide for the offence of giving incorrect information relating to the liability to sales tax.

100. *Clause 88* seeks to provide for the offence of improperly obtaining refund under the proposed Act.

101. *Clause 89* seeks to allow an employee of any person to transact business on behalf of the person.

102. *Clause 90* seeks to prohibit a person to transact any business on behalf of any taxable person except on matters with regard to any refund, remission, exemption, or any other matters as approved by the Director General, under the proposed Act.

103. *Clause 91* deals with offences committed by an employee of a taxable person, by a person authorized to transact business on behalf of the taxable person under *clause 90* or by an unauthorized person.

104. *Clause 92* seeks to provide for the offence of obstructing, etc. any proper officer of sales tax in the discharge of his functions under the proposed Act.

105. *Clause 93* deals with offences committed by a company, etc.

106. *Clause 94* seeks to provide for general penalty.

107. *Clause 95* seeks to provide for compounding of offences.

108. *Clause 96* seeks to allow any aggrieved person to apply to the Director General for review of his decision. This *clause* also allows any aggrieved person to make an appeal to the Customs Appeal Tribunal relating to the decision of the review or decision under any other provision of the proposed Act.

109. *Clause 97* seeks to require the liquidator of a company to give notice of the winding-up of the company to the Director General and to set aside such sum out of the assets as appears to be sufficient to provide for any sales tax that is or will thereafter become due and payable in respect of the company. The liquidator is also required to pay such sales tax.

110. *Clause 98* seeks to require the receiver of the property of a registered manufacturer or an importer to give notice of his appointment to the Director General and to set aside such sum out of the assets as appears to be sufficient to provide for any sales tax that is or will thereafter become due and payable in respect of the goods. The receiver is also required to pay such sales tax.

111. *Clause 99* seeks to empower the Director General to require a registered manufacturer to submit annually an audit certificate.

112. *Clause 100* seeks to provide that the institution of proceedings or the imposition of a penalty, fine or term of imprisonment under the proposed Act or the compounding of an offence under *clause 95* shall not relieve any person from the liability to pay for sales tax, surcharge, penalty, fees or other money under the proposed Act.

113. *Clause 101* deals with the service of notices, directions or other documents required under the proposed Act.

114. *Clause 102* seeks to allow the Director General to provide an electronic service to any registered user for the filing or furnishing of any application, return, declaration or any other document, and the service of any notice, direction, order, permit, receipt or any other document.

115. *Clause 103* seeks to provide for the protection of officer of sales tax from liability in the course of carrying out his duties under the proposed Act.

116. *Clause 104* seeks to allow the Director General to order such rewards to be paid to any officer of sales tax or other person for services rendered in connection with the detection of any offences against the proposed Act.

117. *Clause 105* seeks to empower the Director General to charge fees in respect of any services rendered by him or by any officer of sales tax which is not required to be rendered under the proposed Act and for which no fee is prescribed under any written law.

118. *Clause 106* seeks to empower the Minister to make regulations for the purposes of the proposed Act.

PART XIII

119. Part XIII deals with savings and transitional provisions.

120. *Clauses 107, 108 and 109* deal with savings and transitional provisions for the implementation of the new tax system, namely the sales tax, under the proposed Act which will replace the goods and services tax under the Goods and Services Tax Act 2014.

FINANCIAL IMPLICATION

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

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