

TECHNICAL

Indirect Taxation

ANTI-MONEY LAUNDERING AND ANTI-TERRORISM FINANCING (AMENDMENT OF SECOND SCHEDULE) ORDER 2014 [P.U. (A) 143/2014]

The Order, gazetted on 27 May 2014, provides for amendments to the Second Schedule of the [Anti-Money Laundering and Anti-Terrorism Financing Act 2001 \(Act 613\)](#) ("AMLATFA"). The Second Schedule contains the list of offences which come within the meaning of "serious offence" as defined in Section 3(1) of AMLATFA.

Among the amendments are the following:

- The following heading and items to be inserted after the heading "Exchange Control Act 1953 [Act 17]" and the items relating to it:

Offences	Description*
<u>Excise Act 1976 [Act 176]</u>	
Section 71	Making incorrect statement and falsifying documents
Section 73	Refusing to answer questions or giving false information
Section 74	Evasion of excise duty and illegal manufacture of dutiable goods

- The following heading and items to be inserted after the heading "Penal Code [Act 574]" and the items relating to it:

Offences	Description*
<u>Sales Tax Act 1972 [Act 64]</u>	
Section 43	Failure to comply with notice, etc.
Section 43A	Evasion of sales tax

- The following heading and items to be inserted after the heading "Securities Industry Act 1983 [Act 280]" and the items relating to it:

Offences	Description*
<u>Service Tax Act 1975 [Act 151]</u>	
Section 29	Failure to comply with notice, etc.
Section 32	Evasion of service tax

Other amendments include the insertion of items which constitute offences as specified in the following legislation:

- Malaysian Palm Oil Board Act 1998 [Act 582]
- Malaysian Palm Oil Board (Licensing) Regulations 2005
- Money Services Business Act 2011 [Act 731]

Implications:

1. Section 2(1) of [AMLATFA](#) provides that the Act “shall apply to any serious offence, foreign serious offence or unlawful activity whether committed before or after the commencement date” of the Act.

Subsection (3) further provides that “nothing in this Act shall impose any duty or confer any power on any court in or in connection with any proceedings under this Act against a person for a serious offence in respect of which he has been convicted by a court before the commencement date.”

Section 3 defines “serious offence” as

- (a) any of the offences specified in the Second Schedule;
- (b) an attempt to commit any of those offences; or
- (c) the abetment of any of those offences

2. Section 4(2) stipulates that a person may be convicted of a money laundering offence “irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that a prosecution has been initiated for the commission of a serious offence or foreign serious offence” and “shall be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or both.”
3. Any person who commits an offence under the AMLA or the regulations shall on conviction, if no penalty is expressly provided for the offence under the AMLA or the regulations, be liable to a fine not exceeding two hundred and fifty thousand ringgit pursuant to Section 86 of the AMLA.
4. Under Section 38 of the [AMLATFA](#), “an investigating officer may seize, take possession of and retain for such duration as he deems necessary, any property, record, report or document produced before him in the course of an examination under paragraph 32(2)(a) or (b), or search of the person under subsection 33(1), for ascertaining whether anything relevant to the investigation is concealed, or is otherwise, upon such person.”
5. Section 44 (1) of the [AMLATFA](#) further stipulates that “where an enforcement agency, having the power to enforce the law under which a serious offence is committed, has reasonable grounds to suspect that an offence under subsection 4(1) or a terrorism financing offence has been, is being or is about to be committed by any person, it may issue an order freezing any property of that person or any terrorist property, as the case may be, wherever the property may be, or in his possession, under his control or due from any source to him.”

Members may view the Order at the website of [e-Federal Gazette portal](#).

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