

JAWAPAN MINIT
MESYUARAT PANEL PERUNDINGAN KASTAM - SWASTA
1/2007

PERKARA	AGENDA	MUKA SURAT	KEDUDUKAN/TINDAKAN
[Item 3] Re-importation of Rejected Goods Requiring Import License (Usul oleh FMM)	4	18 16(3)	Kedudukan KDRM telah mengemukakan surat cadangan KE.HE.(44) 669/15 KLT.9 (77) bertarikh 15 November 2007 kepada MITI berkenaan perkara ini. KDRM kini sedang menunggu hasil kajian yang telah dipersetujui oleh MITI dan juga keputusan muktamad daripada semua agensi berkaitan termasuk MITI bagi membolehkan KDRM mengambil tindakan-tindakan berikut sekiranya dipersetujui; i. Meminda perundangan Kastam yang berkaitan khususnya Perintah Kastam (Larangan Mengenai Import) 1998 ii. Membuat pindaan kepada Sistem Maklumat Kastam (SMK), jika perlu iii. Mengeluarkan surat pekeliling bagi memaklumkan kepada semua stesen Kastam Tindakan : Bahagian Kastam
[Item 5] Masalah <i>hanging forms</i> dalam SMK (Usul oleh FMFF)	4	19	Kedudukan Pada mesyuarat 'Trade Facilitation Action Council' Bil.3/07 yang telah diadakan di MITI pada 1/11/07 dan pada mesyuarat berasingan pada 15/11/07, pihak MITI bercadang untuk membawa masalah <i>hanging forms</i> kepada Kementerian Kewangan supaya mengadakan satu sistem yang boleh membuat pindaan <i>online</i> untuk mengatasi masalah tersebut. MITI akan menghantar surat kepada Ketua Setiausaha Perbendaharaan dalam masa terdekat. Tindakan : Bahagian Kastam

PERKARA	AGENDA	MUKA SURAT	KEDUDUKAN/TINDAKAN
[Item 7] Meningkatkan syarat pengisian Borang Kastam 1A, iaitu, barangan bernilai RM 10,000 ke RM100,000 (Usul oleh FMFF)	4	19	Kedudukan Cadangan pindaan kepada perkara 11A, Peraturan-Peraturan Kastam 1977 telah dikemukakan kepada Jawatankuasa Pindaan Undang-Undang Jabatan [REDACTED] [REDACTED] untuk dipertimbangkan. Nilai yang dicadangkan ialah RM 20,000 selaras dengan perkembangan ekonomi negara. Tindakan : Bhg. Perkhidmatan Teknik
(Item 7) Service Tax on bad debts (Usul oleh MIA)	5	23	Kedudukan Perkara ini telah dimaklumkan kepada MIA dan keputusannya adalah seperti berikut : Berdasarkan peruntukan Seksyen 14(2) Akta Cukai Perkhidmatan 1975, jika bayaran tidak diterima dari pelanggan, Cukai Perkhidmatan menjadi kena dibayar setelah genap 12 bulan dari tarikh invois dikeluarkan. Samada tindakan hutang lapok telah diambil atau tidak , Seksyen 14 adalah tetap terpakai dan cukai perlu dijelaskan dalam tempoh yang telah ditetapkan. Tuntutan balik hutang lapok boleh dibuat selepas 6 bulan dari tarikh cukai dibayar setelah semua syarat-syarat tuntutan hutang ragu dipenuhi sebagaimana ditetapkan di Seksyen 21B Akta Cukai Perkhidmatan 1975. Untuk makluman
(Item 11) Excise Duty is not refunded for returned damaged goods. (Usul oleh MICCI)	5	26	Kedudukan Satu perbincangan telah diadakan dengan Perbendaharaan (Panel Kajian Cukai Tak Langsung) pada 28.9.2007. Mesyuarat telah memutuskan agar peruntukan dalam ketiga-tiga perundangan (Akta Kastama 1967, Akta Cukai Jualan 1972 dan Akta Eksais 1976) berhubung pulangbalik duti/cukai diselaraskan. Panel Kajian Cukai Tak Langsung akan mengemukakan laporan serta pengesyoran kepada Menteri Kewangan untuk mendapat keputusan dasar. Untuk makluman

PERKARA	AGENDA	MUKA SURAT	KEDUDUKAN/TINDAKAN
(Item 12) Payment of Excise Duties electronically for beer and stout products (Usul oleh MICCI)	5	27	Kedudukan KDRM sedang membangunkan e PayCD untuk tujuan bayaran duti eksais / cukai jualan / cukai perkhidmatan. e PayCD akan dilaksanakan sepenuhnya mulai Ogos 2008. Tindakan : Bhg. Cukai Dalam
(Item 14) Customs Ruling (Usul oleh FMM & AFAM)	5	28	Kedudukan Ketetapan Kastam bukanlah satu keperluan mandatori. Ia adalah satu fasilitasi yang diberi kepada pelanggan untuk mengetahui lebih awal kod tarif atau kaedah penilaian. Ketetapan Kastam dilaksanakan oleh negara-negara maju sebagai satu sistem '<i>trade facilitation</i>'. Bukan semua negara yang memberi perkhidmatan ini secara percuma. Negara-negara seperti India (RM 250.00 dikenakan) dan New Zealand mengenakan bayaran. Pada masa yang sama, satu arahan bertulis berkuatkuasa 17 September 2007 membenarkan Cawangan Teknik Negeri menerima pertanyaan penjenisan tanpa bayaran. KDRM telah memasukkan keputusan Ketetapan Kastam kedalam laman web Jabatan. Untuk makluman
(Item 17) Tambahan Format Lampiran B4 PTK 45 (Permohonan Perlantikan Agen) (Usul oleh FMFF)	5	32	Kedudukan KDRM akan meminda ayat dalam Lampiran B4 PTK 45 seperti berikut : "Syarikat saya telah mengambil segala tindakan perlu untuk memastikan supaya pengimport /syarikat yang kami wakili adalah sebuah pengimport /syarikat yang wujud, beroperasi dan mempunyai pendaftaran yang sah dengan Suruhanjaya Syarikat Malaysia (SSM) /pihak berkuatkuasa /persatuan berkaitan yang bertanggungjawab untuk membuat pendaftaran sedemikian." Untuk makluman

PERKARA	AGENDA	MUKA SURAT	KEDUDUKAN/TINDAKAN
(Item 18) Perjelasan ke atas pelepasan pengimpotan / dagangan melalui syarikat kurier udara (<i>air courier</i>) seperti dalam Butiran 172 Perintah Duti Kastam 1988 (pengecualian) (Usul oleh FMFF)	5	32	Kedudukan Express Handling Unit adalah satu kemudahan khas yang diberikan kepada syarikat yang berdaftar dengan Suruhanjaya Komunikasi dan Multimedia (SKMM). Pengecualian ini adalah dibawah kuasa Menteri Kewangan dibawah Sekyen 14 (1), Akta Kastam 1967 dan dihadkan kepada Lapangan Terbang Antarabangsa Berhad (LTAB) tertentu sahaja untuk memberi sokongan dan pembangunan kepada LTAB. Untuk makluman
(Item 23) Kursus Asas Agen Kastam oleh UUM (Usul oleh FMFF & AFAM)	5	34	Kedudukan Perbincangan KDRM-UUM telah diadakan di Ibu Pejabat KDRM pada 16.8.2007 bersama-sama PUJ, KDRM, UUM, AFAM, FMFF & PPLBS. Pengendalian KAAK oleh pertubuhan/ persatuan masih diteruskan sehingga 31.12.2007. (Surat Ibu Pejabat KE.HE(44)001/01-3/Klt. 15(46) bertarikh 14.9.2007 dan surat AKMAL KE.HI(65)17/769/18/2007/KLT.10/(36) bertarikh 21.9.2007 kepada pihak AFAM, FMFF & PPLBS ada kaitan). AKMAL telah terima cadangan kos yuran pengendalian KAAK daripada Persatuan (yuran pengendalian AFAM-RM 1350; FMFF-RM 1,200; UUM-RM 1,980) dan AKMAL akan mengadakan satu mesyuarat pada 14 Disember 2007 untuk membincangkan perkara ini. Tindakan : AKMAL
(Item 24) 'Freight Forwarder' tidak dikawal oleh KDRM (Usul oleh FOMSA)	5	35	Kedudukan KDRM mencadangkan pindaan ke atas Akta Kastam 1967 untuk melesenkan 'freight forwarder'. Oleh yang demikian, KDRM meminta pandangan pihak industri berkaitan. Tindakan : Bahagian Kastam

**USUL BARU DAN CADANGAN JAWAPAN
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1.	Customs Compound Customs are imposing stringent regulation on manifest. Most of the errors or non-adherence were committed by the forwarding agents/forwarders. Customs often compound the lines citing the Customs Act 1967 that the lines are responsible. This issue was raised on several occasions and Customs verbally agreed that they will investigate on a case-by-case basis. However, experiences showed that Customs still compound the lines instead. Recommendations The Customs Act 1967 must be amended to meet the needs of the present operating environment. While waiting for the amendment to the Customs Act (Akta Kastam), Customs should issue a circular, with procedures to all its stations to compound only the party that committed the error or non-adherence. Jawapan (Bahagian Pencegahan) <i>Kompaun hanya dikenakan ke atas seseorang yang dibuktikan telah melakukan kesalahan termasuk 'shipping owner'. KDRM tidak boleh membuat satu dasar yang bertentangan dengan undang-undang di mana 'shipping owner' tidak boleh dikompaun. Jika 'shipping owner' yang dikenakan kompaun merasakan mereka tidak bersalah, rayuan atau aduan boleh dikemukakan kepada Ibu Pejabat. Justeru itu, Akta Kastam 1967 tidak akan dipinda kerana perundangan yang ada sekarang sudah mencukupi dan KDRM tidak akan mengeluarkan surat pekeliling mengenai perkara ini.</i>	Persatuan Pemilik-Pemilik Kapal Antarabangsa Malaysia (ISOA)
2.	Long Detention of Containers by Customs Despite having raised this issue at the past several Kastam-Swasta Dialogues, ISOA members still faced the problem of containers being detained by Customs for a long period. Again, the Customs Act 1967 was referred to as a justification for the long detention. Some of the long detained containers are attached for you attention. Recommendations The Customs Act 1967 must be amended to reflect the needs of the current operating environment. While awaiting for the Customs Act 1967 to be amended, ISOA request Kastam Putrajaya to issue an instruction to all its stations that	Persatuan Pemilik-Pemilik Kapal Antarabangsa Malaysia (ISOA)

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	all detained containers are to be released within 2 months from the date of detention. Two months should be sufficient for the investigation Customs Officer to complete his investigation. <u>Jawapan (Bahagian Pencegahan)</u> Penyitaan kontena adalah berlandaskan undang-undang di bawah Seksyen 114 Akta Kastam 1967. KDRM telah mengeluarkan dasar di mana 'public transport' termasuk kontena boleh dilepaskan dengan bon dalam tempoh masa 3 bulan di bawah Seksyen 115(1)(a) Akta Kastam 1967 kecuali bagi kontena-kontena yang dipercayai terlibat secara langsung dalam pelakuan kesalahan (seperti mempunyai 'special compartment' untuk penyembunyian dan lain-lain). Dua surat arahan kepada semua negeri berhubung perkara ini telah dikeluarkan oleh TKPK(Pencegahan) dan Pengarah Bhg.Pencegahan Ibu Pejabat. Walau bagaimanapun, tidak dinafikan bahawa terdapat sebilangan kes tidak dapat disempurnakan dalam tempoh 3 bulan yang ditetapkan kerana : (a) siasatan yang rumit dan tidak dapat dirungkaikan dalam tempoh 3 bulan (b) pihak tuanpunya kontena gagal memberi kerjasama yang sepatutnya semasa siasatan dilakukan. Senarai kontena yang telah lama ditahan telah dihantar oleh Urusetia Panel kepada Bahagian Pencegahan Ibu Pejabat pada 6 November 2007 untuk tindakan selanjutnya. Justeru itu, Akta Kastam 1967 tidak akan dipinda.	
3.	e-Manifest at Penang and Johore Recommendations Now that e-manifest has stabilised in Port Klang, it is time for Customs to consider implementing the same model and specification in Penang and Johore, as standardisation will facilitate the lines and merchants. <u>Jawapan (Bahagian Kastam)</u> KDRM akan melaksanakan pilot projek di Johor dahulu sebelum meluaskan sistem ini ke tempat-tempat lain.	Persatuan Pemilik-Pemilik Kapal Antarabangsa Malaysia (ISOA)
4.	Pre-Clearance for Laden & Empty Containers Recommendations ISOA propose to adopt pre-clearance procedure for laden and empty import containers even before receiving the import manifest from shipping lines. This will facilitate fast clearance at the port.	Persatuan Pemilik-Pemilik Kapal Antarabangsa Malaysia (ISOA)

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	<u>Jawapan (Bahagian Kastam)</u> <i>Pihak industri perlu memberi penjelasan mengenai makna 'pre-clearance' supaya tidak keliru dengan 'pre-release' untuk dikaji bersama.</i>	
5.	Contract/toll manufacturers to continue enjoying the import duty/sales tax exemption facilities As provided in the Sales Tax Act 1972, a licensed manufacturer is eligible to apply for sales tax exemption for goods used in manufacturing. Similarly, a company with Licensed Manufacturing Warehouse ("LMW") status is given the same treatment under the Customs Act 1967. With multi-national companies moving their manufacturing process to Malaysia, it is common for our local manufacturers to assume the roles of a contract/toll manufacturer i.e. the local manufacturers receive materials from their customers and provide manufacturing services. The current provisions in the sales tax and customs legislation have no "restrictions" on the ownership of the goods used in manufacturing i.e. such goods need not be owned by the sales tax licensed manufacturer or the LMW. Recommendations In order to better reflect the non restriction under the current import duty/sales tax exemption framework for sales tax licensed companies and companies with LMW status, the Institute proposes that a guideline be issued to clarify that contract/toll manufacturers will continue to be given import duty/sales tax exemption facilities. <u>Jawapan (Bahagian Kastam, Cukai Dalamn & UPA)</u> <u>Jawapan Bhg. Cukai Dalamn</u> - Mengikut dasar Cukai Jualan, telah ada peruntukan kemudahan pengecualian dibawah kemudahan CJ5 dan CJ5A keatas input bagi mengilang barangan tempatan dan eksport. Satu garipanduan akan dikeluarkan oleh KDRM untuk panduan pengilang/pengimport. <u>Jawapan Bhg. Kastam</u> - Bagi syarikat yang dilesenkan sebagai Gudang Pengilangan Berlesen(GPB) dan menjalankan pengilangan untuk syarikat luar negara, pengecualian cukai adalah berasaskan kepada senarai bahan mentah yang diluluskan oleh Pengarah Kastam Negeri. Sehubungan dengan itu, tiada masalah akan ujud sekiranya bahan mentah yang diimport adalah sama dengan senarai bahan mentah yang telah diluluskan untuk mengilang barang siap seperti diluluskan didalam lesen GPB syarikat berkenaan.	Institut Akauntan Malaysia (MIA)

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6	Sales of taxable goods by licensed manufacturer to exempt person There is no specific exemption facilities to allow licensed manufacturer under the Sales Tax Act, 1972 to supply goods without sales tax to exempt person where sales are made via trading companies. Recommendations Licensed manufacturer should be allowed to supply goods without sales tax if it can be substantiated by the licensed manufacturer with documentary evidence that the goods are consigned to exempt person and guidelines should be made available setting out the criteria to be met. <u>Jawapan (Bahagian Cukai Dalam)</u> <i>Peruntukan telah ada dibawah Jadual B dan C, Perintah Cukai Jualan (Pengecualian) 1980. Satu garis panduan akan dikeluarkan oleh KDRM.</i>	Institut Akauntan Malaysia (MIA)
7.	Service tax refund The duration taken by the Customs to process applications for service tax refunds is too long, despite the submission of the complete information/documentation. More often than not, the application process drags from 6 months to one year and beyond. From the commercial perspective, the time taken by Customs is not acceptable. Recommendations It is proposed that the duration taken to process the application for refund as per the client's charters be strictly adhered to. Alternatively, taxpayers may be allowed to offset the amount of service tax refund against the future service tax payable without any written approval from the Customs but subject to Customs audit subsequently. <u>Jawapan (Bhg. Cukai Dalam)</u> <i>KDRM mengambil maklum mengenai kelewatan dalam proses permohonan yang dibangkitkan. Kenyataan mengenai kelewatan tidak disertakan dengan fakta tuntutan-tuntutan yang terlibat serta stesen yang berkaitan. Semakan telah dibuat dan didapati sebahagian permohonan 'refund' telah diproses dalam tempoh yang ditetapkan dan terdapat juga permohonan-permohonan yang lewat diproses. Dicaadangkan sekiranya terdapat permohonan yang lewat diproses, pihak persatuan boleh menulis kepada Ibu Pejabat untuk diberi perhatian. Cadangan untuk 'offset' tuntutan dengan cukai yang kena dibayar adalah tidak menepati prosedur kewangan negara dan tidak dapat dilaksanakan</i>	Institut Akauntan Malaysia (MIA) & Institut Akauantan Awam Bertauliah Malaysia (MICPA)

BIL	USUL	PEMBAWA USUL
8.	Lampiran A of CP3 Submission of the service tax return (CP 3) is to be accompanied by the "Lampiran A", setting out the details of the daily collection of the taxable transactions as well as the collection in respect of invoices issued more than 12 months ago. Lampiran A" is meant for Customs to monitor the collection of invoices issued more than 12 months ago but the format of the same will not enable any effective monitoring by Customs. The completion of "Lampiran A" is also cumbersome for the taxable persons. Recommendations It is proposed that the requirement to submit "Lampiran A" to the CP 3 be done away with. Alternatively, we propose that Lampiran A be simplified e.g for the licensee to submit total monthly figures rather than daily. Jawapan (Bhg. Cukai Dalam) <i>Cadangan untuk tidak mengemukakan Lampiran A bersama-sama Borang CP3 tidak dapat diterima kerana pengemukakan Lampiran A adalah selaras dengan kehendak Peraturan 8(3), Peraturan-Peraturan Cukai Perkhidmatan 1975. Format lampiran A yang sedia ada adalah mudah diisi dan bersesuaian.</i>	Institut Akauntan Malaysia (MIA)
9.	Disbursements/out-of-pocket expenses Under the Service Tax Act 1975, Customs allows that service tax is levied on fees only exclusive of disbursements/out-of-pocket expenses. In other words, service tax is not levied on disbursements/out-of-pocket expenses. In relation to the calculation of annual sales turnover under Regulation 3A of the Service Tax Regulations 1975, it has always been the understanding that disbursements/out-of-pocket expenses are not included in the calculation of the annual sales turnover. However, there are cases where disbursements/out-of-pocket expenses and value of materials (e.g. paper, printing ink etc used in the provision of advertising services) are included in the calculation of annual sales turnover by Customs. Recommendations To avoid any confusion, the Institute would like to confirm that disbursements/out-of-pocket expenses be not included in the calculation of the annual sales turnover. Jawapan (Bhg. Cukai Dalam) <i>KDRM telah memutuskan bahawa pengiraan threshold (annual</i>	Institut Akauntan Malaysia (MIA) & Institut Akauantan Awam Bertauliah Malaysia (MICPA)

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	<i>sales turnover</i>) tidak termasuk 'disbursement' atau 'out of pocket expenses'. Pengiraan threshold adalah atas perkhidmatan yang kena dibayar cukai sahaja. 'Disbursement' atau 'out of pocket expenses' yang telah diputuskan tidak diambil kira dalam pengiraan threshold perbelanjaan fotostat, tambang pengangkutan, makanan, penginapan, telefon, faks, pos dan bayaran wajib yang dibayar dibawah peruntukan undang-undang lain yang berkuatkuasa pada masa ini. Amaun 'disbursement' ini hendaklah ditunjukkan secara berasingan dalam invoice yang dikeluarkan kepada pelanggan. 'Disbursement' bukanlah merupakan perolehan jualan atau perkhidmatan kerana ia bukan 'charge' atau 'fee' perkhidmatan. Surat rujukan KE.HF(11) 664/01Klt. 14(43) bertarikh 22 Februari 2003 ada kaitan.	
10	Refund of bad debts Under the Sales Tax Act 1972 and Service Tax Act 1975, refund of sales tax and service tax as a result of bad debts are allowed. However, the requirements imposed by Customs in Regulation 16A of the Service Tax Regulations 1975 as well as the guidelines are extremely onerous and impossible to satisfy Customs to obtain refunds of sales tax and service tax for genuine cases of bad debts. Recommendations It is proposed that the requirements and guidelines in relation to refund of bad debts be reviewed by the Customs with the input from the private sector. In addition, it is also proposed that "offset" be allowed as an alternative choice available to taxpayers besides refund of bad debts. <u>Jawapan (Bhg. Cukai Dalamn)</u> KDRM mengambil maklum mengenai kelewatan dalam proses permohonan yang dibangkitkan. Kenyataan mengenai kelewatan tidak disertakan dengan fakta tuntutan-tuntutan yang terlibat serta stesen yang berkaitan. Semakan telah dibuat dan didapati sebahagian permohonan 'refund' telah diproses dalam tempoh yang ditetapkan dan terdapat juga permohonan-permohonan yang lewat diproses. Dicadangkan sekiranya terdapat permohonan yang lewat diproses, pihak persatuan boleh menulis kepada Ibu Pejabat untuk diberi perhatian. Cadangan untuk 'offset' tuntutan dengan cukai yang kena dibayar adalah tidak menepati prosedur kewangan negara dan tidak dapat dilaksanakan.	Institut Akauntan Malaysia (MIA) & Institut Akauantan Awam Bertauliah Malaysia (MICPA)
11.	Clear definition of taxable services in Second Schedule of the Service Tax Regulations, 1975 Many of the taxable services such as consultancy and	Institut Akauntan Malaysia (MIA)

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	management services in Second Schedule of the Service Tax Regulations, 1975 are not clearly defined leading to different interpretations by different officers. Recommendations To reduce inconsistency, new rulings/decisions which result in changes to the Customs practices should be published and made known to the public on time without disclosing the identity of the taxpayers concern. Similar to the Inland Revenue Board (IRB), it is proposed that a public ruling framework be adopted by the Customs to address its position on indirect tax issues, especially since customs (private) ruling would not be published. <u>Jawapan (Bhg. Cukai Dalamam)</u> <i>KDRM akan 'revise' surat pekeliling dan buku-buku panduan Jabatan yang telah dikeluarkan dan akan memasukkan keputusan-keputusan yang telah dibuat berhubung dengan Cukai Perkhidmatan untuk diedarkan kepada pelesen-pelesen untuk dijadikan rujukan dan panduan. Dengan itu, tafsiran-tafsiran dapat diseragamkan.</i>	
12.	Restriction in the usage of Item No. 58 Customs Duties (Exemption) Order, 1988 (and Item No. 62 Sales Tax (Exemption) Order, 1980). The above allows for import/export exemption of duty/sales tax for goods that are solely for the purpose of propaganda, research or demonstration. The importer/exporter is required to obtain an authorization from the Director General of Customs certifying that the goods are intended for the abovementioned purposes. In issuing the authorization, the Director General of Customs may impose such conditions as deemed necessary. However, in practice the Customs treats this facility as a "temporary import". Such practice defeats the purpose of the legally allowed exemption. Recommendations The Institute is of the view that the above practice should be reviewed and the facility should be allowed since it has been legally provided for. <u>Jawapan (Bhg. Cukai Dalamam dan Kastam)</u> <i>KDRM akan mengkaji perkara ini.</i>	Institut Akauntan Malaysia (MIA)
13.	Refund of duty/tax paid The Customs have refused to process refund	Institut Akauntan Malaysia (MIA)

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	duty/taxes/penalties in cases where remission of duties/taxes/penalty have been approved by Minister of Finance but there is no specific mention of refund to be given. Recommendations It is proposed that a refund of duties/taxes/penalties where approval for remission has been granted by the Minister of Finance be expedited in light of the fact that with the remission, the company, in effect, is not required to pay the duty/taxes/penalties involved. <u>Jawapan</u> (Bhg. Cukai Dalaman, Kastam, Perkhidmatan Teknik) <i>KDRM akan mengeluarkan surat arahan kepada semua negeri untuk memproses pulangbalik cukai/duti/penalti yang telah dibayar jika remisi telah diluluskan oleh Menteri Kewangan.</i>	
14.	Importer and exporter of record The term importer/exporter of record has created some uncertainty amongst the Customs officers and companies which undertake cross borders business arrangements which involve amongst others consignment sales. The relevant definitions as per the legislation are provided as below: "importer" includes and applies to any owner or other person for the time being possessed of or beneficially interested in any goods at and from the time of importation thereof until such goods are duly removed from customs control. "exporter" includes any person by whom any goods (including goods transferred from an importing aircraft or ship) are exported from Malaysia or supplied for use as aircraft's or ship's stores, and also the owner, or any person acting on his behalf, and any person who for customs purposes signs any document relating to goods exported or intended for exportation or supplied or intended for supply as aircraft's or ship's stores as aforesaid. As the concept of importer/exporter of record is not clearly spelt out, the clearance of goods from customs control could be an issue to the importers where: - • the importers are not the owner of the goods • the owners are overseas entities/individuals who do not have physical presence in Malaysia. Recommendations With the increase in cross border transactions, it is common for inventories to be brought into and subsequently exported	Institut Akauntan Malaysia (MIA)

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	from Malaysia on a consignment basis. The current definition of importer and exporter under the Customs Act 1967 does not pose any restrictions on who may be importer of record and exporter of record. In order to better reflect the non restriction under the current importer and exporter framework, it is proposed that the Customs issue an interpretation statement whereby Customs officers may be guided on how to react to different business arrangements to enable facilitation of trade. <u>Jawapan (Bahagian Kastam)</u> <i>Definasi 'importer' tidak sesuai dipinda kerana sudah menyeluruh. Jika dipinda mengikut cadangan kemungkinan menimbulkan isu 'liability'. Diakui terdapatnya urusan secara 'consignment' ini di mana pengimport bukannya 'owner' barang yang import dan hanya mengetahui harga 'retail' barang itu, tetapi kebiasaannya akan terdapat 'Invoice for customs purpose' di mana harga yang diikrar berdasarkan inois itu. Terpulanglah kepada Kastam untuk menerima atau menggunakan kaedah lain dalam penilaian. KDRM memerlukan penjelasan yang lebih terperinci daripada MIA sebelum kajian mengenai garispanduan dibuat.</i>	
15.	Time frame for approval of Sales Tax exemption The approval for sales tax exemptions such as CJ5, CJ5A, CJ5B and CJ Pentd. No.2 is very discretionary and takes up to two weeks which is of grave concern. Recommendations The Institute is of the opinion that this facility is important to manufacturers and approvals should be given within two working days without any queries by Customs. Frequent audits can be conducted to ensure compliance if necessary. <u>Jawapan (Bhg. Cukai Dalamn)</u> <i>Mengikut piagam pelanggan, masa yang diperuntukan ialah 7 hari bagi permohonan pertama dan 2 hari bagi pembaharuan. Bagaimanapun, terdapat negeri-negeri yang telah mengambil inisiatif setelah mengambilkira beban tugas dinegeri masing-masing menetapkan piagam pelanggannya mengikut kesesuaian masing-masing dengan menetapkan masa yang lebih singkat daripada piagam yang ditetapkan. Mohon MIA menyatakan secara khusus mengenai soalan kes yang timbul dan negeri/stesen mana yang terlibat supaya kajian dan pemantauan dapat dibuat.</i>	Institut Akauntan Malaysia (MIA)

BIL	USUL	PEMBAWA USUL
16.	Sales Tax officers are unfamiliar with procedures Some sales tax officers are not well-versed with sales tax procedures often resulting in different officers giving differing opinions. Recommendations To facilitate compliance and to promote consistency for all Customs practices/procedures, help desk which should be manned by well-trained and knowledgeable officers should be set up in each Customs station to handle public enquiries. <u>Jawapan</u> (Bahagian Cukai Dalam) <i>Memang terdapat masalah seperti yang dibangkitkan tetapi ianya tidaklah menyeluruh. KDRM akan mengambil langkah menyediakan "helpdesk" dengan meletakkan pegawai-pegawai yang berpengalaman. Buku-buku panduan juga akan disediakan. Mohon MIA menyatakan secara khusus dimana kes ini berlaku supaya kajian dan pemantauan dapat dibuat.</i>	Institut Akauntan Malaysia (MIA)
17.	Option of security for the duty/tax payable/General Bond Currently, businesses are not given an option to provide to the Customs authority a security in the form of a general bond to cover the duty/tax payable. In addition, different practices are being followed at different stations. Recommendations In order to facilitate the business community, it is proposed that option be given to them to provide a security in the form of bank guarantee OR general bond to cover the duty/tax payable. <u>Jawapan</u> (Bahagian Kastam) <i>Bon Am tidak boleh digunakan sebagai jaminan untuk pembayaran cukai/duti. Sebagai tambahan, semua Bahagian di Ibu Pejabat perlu mengeluarkan surat yang menyenaraikan aktiviti-aktiviti yang memerlukan penggunaan Bon Am dan Jaminan Bank kepada semua negeri.</i>	Institut Akauntan Malaysia (MIA) & Institut Akauantan Awam Bertauliah Malaysia (MICPA)
18.	Private Bonded Warehouse a) Recently companies which have been approved with "private bonded warehouse" status have been required by the Customs authority to sign an "undertaking letter" to	Institut Akauntan Malaysia (MIA), Dewan Perniagaan dan Perindustrian

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	observe compliance with the customs requirements. b) Many companies in Malaysia applied to Customs to set up their own private bonded warehouse but most applications have been rejected by Customs. c) According to the Royal Malaysian Customs, imported goods that are kept in Private Bonded Warehouses for more than 2 years have to settle all relevant duties and taxes on them. Recommendations (a) The Institute is of the view that the undertaking letter is redundant as the customs legislation has sufficient provisions to cater for non compliance. In this regard, it is proposed that the requirement for any company operating such warehouse to sign such undertaking letter be withdrawn. (b) We would like to seek clarifications from Customs as to why the applications were rejected. Private Bonded Warehouse should be allowed to encourage more FDIs in to Malaysia (c) No time limit on how long the goods can be kept in Private Bonded Warehouses. As long as the goods are not removed or used, duties and taxes should not be imposed. Most Private Bonded Warehouses are strictly supervised and checked by Customs, hence likelihood of goods being released out without Customs' knowledge is low. To allow for more flexibility in terms of the amount and kinds of inventory kept by manufacturers. <u>Jawapan (Bahagian Kastam)</u> (a) <i>Surat Bahagian Kastam Ibu Pejabat KE.HE(-)669/01-2(17) bertarikh 4 Oktober 2007 telah dikeluarkan dan diedarkan kepada beberapa persatuan dan semua Pengarah Kastam Negeri memaklumkan bahawa semua lesen gudang berlesen persendirian hendaklah diluluskan serta merta, iaitu, dalam tempoh satu hari dari tarikh penerimaan permohonan. Pemohon tidak lagi perlu kemukakan akujanji tidak pernah melanggar peruntukan dibawah Akta Kastam 1967 dan Akta Eksais 1976 serta peraturan-peraturan yang dikuatkuasakan oleh Jabatan</i> (b) <i>Daripada semakan yang telah dibuat, semua permohonan GBP yang dikemukakan oleh syarikat kepada Pusat Perlesenan Bersetempat negeri akan diterima dan disemak. Jika permohonan lengkap ianya akan diproses dan</i>	Antarabangsa Malaysia (MICCI) & Institut Akauantan Awam Bertauliah Malaysia (MICPA)

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	dikemukakan ke Ibu Pejabat untuk kelulusan. Walau bagaimanapun sekiranya permohonan tidak lengkap, pemohon tersebut akan di KIV sehingga pemohon/syarikat mengemukakan dokumen-dokumen tambahan yang diperlukan bagi melengkapkan permohonannya. <u>Statistik Permohonan GBP yang ditolak.</u> <table><tr><td>Tahun</td><td>2005</td><td>2006</td><td>2007</td></tr><tr><td></td><td>1/6</td><td>1/4</td><td>5/25</td></tr></table> Sebab-sebab ditolak:- 1. Tidak menyimpan barang sendiri. 2. Premis yang dicadangkan tidak sesuai. 3. Tidak mematuhi syarat yang ditetapkan (Perintah Tetap Kastam bil.53) (c) Tiada tempoh masa untuk menyimpan barangan didalam Gudang Berlesen Persendirian (GBP).	Tahun	2005	2006	2007		1/6	1/4	5/25	
Tahun	2005	2006	2007							
	1/6	1/4	5/25							
19.	Time frame taken for the refund of drawback Taxpayers are required to submit the original documents as supporting document for the refund of drawback. Despite the fact of full submission of the original documents, it still takes very long time in the confirmation and verification process before the drawback could be refunded to taxpayers. Recommendations To expedite the processing of the refund, it is proposed that the verification process be carried out by Customs on a sampling basis. <u>Jawapan (Bahagian Kastam)</u> Masa yang diambil untuk memproses permohonan dan membayar pulangbalik adalah 21 hari daripada tarikh penerimaan permohonan dengan dokumen yang lengkap. Cawangan Industri, Bahagian Kastam Ibu Pejabat sedang menjalankan kajian terperinci bagi mempercepatkan proses pembayaran disamping menjaga kepentingan dan keselamatan hasil Negara.	Institut Akauntan Malaysia (MIA)								
20.	“Statement of value” in lieu of invoices for consignment goods. Currently, the Customs request for invoices for the consignment goods in determining the value of customs duty to be imposed on the consignment goods. In practice, the importers would not be able to produce invoices for consignment goods imported as there is no transaction when the goods are being imported into Malaysia.	Institut Akauntan Malaysia (MIA) & Institut Akauantan Awam Bertauliah Malaysia (MICPA)								

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	Recommendations In view that the valuation of consignment goods for customs duty is normally based on the computed or deductive method, it is proposed that the Customs allow for a "statement of value" in lieu of invoices. This "statement of value" should be formalised and standardised in all stations. <u>Jawapan (Bahagian Perkhidmatan Teknik)</u> <i>Goods imported on consignment refer to goods dispatched to the country of importation not as a result of a sale, but with the intention that they would be sold for the account of the supplier, at the best price obtainable. At the time of importation no sale has taken place, and the goods remain the property of the foreign supplier until, after importation. Hence there is no transaction value for these goods at the time of importation, valuation of consignment goods for customs duty is normally based on other methods of valuation. So, it is proposed that the customs not to allow for a "statement of value" in lieu of invoices.</i>	
21.	Sales Tax – Tax Credit (CJ5A) Many small and medium-sized manufacturers in Malaysia purchase their raw materials, components and packing materials from wholesalers who have already paid sales tax when they purchased these goods. These wholesalers are reluctant to apply for CJ5A or endorse their sales invoice for their customers to enjoy the credit system. As such many manufacturers are paying sales tax twice. Recommendations We suggest that the Customs allow these manufacturers to deduct the sales tax paid automatically as long as the inputs are subject to sales tax. We would also like to seek confirmation from the Customs on the reasonable grounds for credit or exemption given to the manufacturers <u>Jawapan (Bahagian Cukai Dalamn)</u> <i>Kemudahan yang sedia ada mencukupi dan mudah. Sekiranya pihak pemborong/trader tidak setuju menggunakan sistem vendor, pengilang berlesen khususnya industri kecil sederhana ('small manufacturing industries'-SMI) boleh memilih menggunakan kemudahan sistem kredit (CJ10) dibawah Seksyen 31(A) Akta Cukai Jualan 1972 dimana pelesen boleh kontra elemen cukai yang telah dibayar dalam penyata CJ3 menggunakan formula dibawah Peraturan 19(a) Peraturan-Peraturan Cukai Jualan 1972.</i>	Institut Akauantan Awam Bertauliah Malaysia (MICPA)

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22.	Sales Tax CJ5 Presently a Sales Tax licensed manufacturer is required to apply for CJ5 on a yearly basis or on the expiry of the amount approved. This application is to be submitted to Customs one day before the due date and is required to submit together stock records with the following information ie opening stock, purchases, stock in hand and projected purchases. As the date to make application is one month prior to expiry, manufacturers will have to make estimates and at time of future audits by Customs are unable to tire with actual numbers. Furthermore, manufacturers have to collect a lot of information at every renewal. Recommendations A one-time approval be granted to CJ5 at time of issuance of Sales Tax license as the manufacturer is required to submit the list of raw materials on license application. The manufacturer should only be required to submit the stock records within 3 months from end of their accounting period. Customs use this information tracking and audit purposes. This would reduce time and cost of manufacturers. <u>Jawapan (Bahagian Cukai Dalam)</u> <i>Kemudahan CJ5 yang diberi kepada pengilang lesen Cukai Jualan bertujuan untuk mengelak pembayaran cukai dua kali. Pengilang boleh dan wajar membuat permohonan pengecualian input mengikut perancangan pengilangannya. Mohon pihak MICCI memberi penjelasan mengenai negeri/stesen mana yang mengamalkan peraturan seperti yang dinyatakan supaya kajian dan pemantauan dapat dibuat.</i>	Dewan Perniagaan dan Perindustrian Antarabangsa Malaysia (MICCI)
23.	Definition of the word "Use" for Goods Taxable Section 6 of the Sales Tax Act, 1972 provides that sales tax shall be charged and levied on all taxable goods : (a) manufactured in Malaysia, or acquired under the provision of section 9, by a taxable person and sold, used or disposed of by him, otherwise than by sale or disposal to a licensed manufacturer authorized by the Director General to acquire such goods without payment of tax;... The words "...used or disposed of by him, otherwise than by sale..." have resulted in erroneous interpretations by the Customs. For example, in a case where "sales of taxable goods" manufactured by a company are delivered to company outlets (licensed for service tax) for sale, such delivery to one's own outlets is deemed by Customs as "used" in the context of Section 6(a). Therefore, the company was required to charge	Institut Akauantan Awam Bertauliah Malaysia (MICPA)

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	sales tax to its outlets when making the delivery. Recommendations We propose that the word “used” in section 6(a) of the Sales Tax Act, 1972 be discussed and explained clearly in the Customs guidelines and made known to tax payers. The “delivery” in the example above is not a sale! <u>Jawapan</u> (Bahagian Cukai Dalaman) <i>Mengikut konsep Cukai Jualan, semua barang bercukai jualan yang dikilang dan dilepaskan/guna tempatan mestilah dibayar cukai selaras dengan Seksyen 6, Akta Cukai Jualan 1972 kecuali di eksport. Tafsiran “used” dalam akta adalah kemas dan teratur.</i>	
24.	Service Tax Intra Group The service tax intra group “exemption” has the following criteria: • Where a company holds between 20% to 50% of the issued share capital of another Company, the first mentioned company would need to demonstrate that it has exercisable power to appoint or remove all or majority of directors in the board of directors in the second mentioned company in order to be eligible for service tax intra group “exemption”. The appointment of company directors is generally based on voting by shareholders during an AGM. Thus, when the shareholdings in the second mentioned company, by the first mentioned company are less than 50%, the first mentioned company will be required to provide “evidence” to conclusively show that it has exercisable power to remove all or majority of directors in the board of directors of the second mentioned company. • In addition, shares held through nominees are not considered as shares held for the purpose of determining the eligibility for service tax intra group “exemption”. • Where the selected taxable services are rendered by the taxable persons to another person outside the group of companies, the same taxable services provided to any company outside or within the group of companies shall be taxable. We are of the view that the above requirements are too rigid and many companies have not been able to enjoy the “exemption” and this had led to increase cost of doing business in Malaysia. Recommendations	Institut Akauantan Awam Bertauliah Malaysia (MICPA)

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	We propose that the criteria for intra group service tax exemption shall be as follows: • The above mentioned requirements should be reviewed to encourage the provision of services within groups of companies; • If the first mentioned company can exercise significant influence over the financial, business and operating policies of the second mentioned company instead of the evidence to demonstrate exercisable powers to remove all or majority of the board of directors of the second company; • Shares holds through nominees, trustees or beneficial owner are to be considered as shares held for the purpose of determining the eligibility for service tax intra group "exemption". • Only the portion of services provided to companies outside the group shall be taxable when the company provides services to intra group and also to companies outside the group. We also propose that the above intra group service tax exemption be extended to partnership and companies held by common shareholders who can demonstrate influence over the financial, business and operating policies of those companies. <u>Jawapan (Bahagian Cukai Dalaman)</u> <i>Pelaksanaan pengecualian Cukai Perkhidmatan syarikat dalam kumpulan yang sama adalah berasaskan dasar yang telah ditetapkan melalui 'preamble' Jadual Kedua Peraturan-Peraturan Cukai Perkhidmatan 1975. Di antara kriteria/syarat utama pengecualian yang ditetapkan adalah seperti berikut;</i> <i>Memiliki saham melebihi 50%</i> <i>Memilik saham 20%-50% dengan syarikat mempunyai kuasa melantik atau memecat ahli lembaga pengarah</i> <i>Saham tidak dipegang melalui nominee.</i> <i>Sekiranya perkhidmatan yang sama diberikan kepada syarikat di luar kumpulan, perkhidmatan tersebut adalah kena cukai perkhidmatan termasuk perkhidmatan di dalam syarikat. Sebarang cadangan pindaan disyorkan dikemukakan kepada pihak Perbendaharaan.</i>	
25.	Withdrawal of requirement to submit photographs of directors It is the practice of Customs to request for the submission of the photographs of the applicants/directors of the company	Institut Akauantan Awam Bertauliah Malaysia

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	in relation to the submission of applications by the company on customs related matters. The photograph is not relevant to the application as the approvals are issued to legal entities. Furthermore individuals on the board of such entities are not permanent fixtures. Recommendations It is proposed that the requirement to submit photographs be done away with as the approvals are issued to legal entities. <u>Jawapan (Bahagian Kastam & Cukai Dalam)</u> <i>Jawapan Bahagian Kastam - Tiada halangan keatas usul menarik balik keperluan gambar pengarah syarikat semasa mengemukakan apa-apa permohonan lesen kastam.</i> <i>Jawapan Bahagian Cukai Dalam – KDRM bersetuju dengan cadangan ini dan hanya kad pengenalan photosat diperlukan.</i>	(MICPA) & Institut Akauntan Malaysia (MIA)
26.	Licensed Manufacturing Warehouse Currently, Licensed Manufacturing Warehouses (LMW) who want to engage in value added activities such as trading, research & development, marketing distribution etc. need to apply to Customs to obtain permission for such activities. Most of the time, Customs was reluctant to grant permission. The Customs was inflexible in granting facilities to these LMW. This defeats the purpose of setting up LMWs. In addition, different states have different practices relating to this matter. Recommendations We suggest that more flexibility is exercised in granting the above mentioned facilities to the LMW and also the standardisation of the rules and regulations in granting such facilities in all states. <u>Jawapan (Bahagian Kastam)</u> <i>Kemudahan GPB adalah untuk pengilangan yang berorientasikan eksport 80% keatas. Ianya melibatkan pengecualian cukai/duti keatas bahan mentah, komponen dan peralatan yang digunakan didalam pengilangan. Merujuk kepada 'value-added activities', aktiviti berkenaan mesti diluluskan oleh Bahagian Kastam, Ibu Pejabat berpandukan kepada Surat Pekeliling Bahagian Kastam Bil. 6/2004. Kelulusan adalah berasaskan kepada ulasan dan sokongan stesen yang mengawal serta hubungkait aktiviti yang berkenaan dengan aktiviti pengilangan yang diluluskan didalam lesen GPB.</i>	Institut Akauantan Awam Bertauliah Malaysia (MICPA)

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27.	Customs rulings (a) Meaning of "each particular goods/services" An application form is required to be completed when applying for a ruling. According to: - note 10 of the form, the fee for each application is RM200 in relation to "each particular goods or services". - the "Brief Guide to Customs Ruling", published by Customs, "each application is limited to one product, activity, service". (b) Whether the practice of obtaining non-binding "opinion" or "confirmation" from Customs will still be allowed? Recommendations (a) The Institute would like to seek clarification from the Customs of the meaning of "each particular goods/services" and "one application for one product, activity, service". The Institute would like to highlight that each description of goods may have different models/variants e.g. television and milk powder; and a contract may have various services. In this regard, the Institute would appreciate it if the Customs could reconsider the fee of RM200 for each application as it would be a burden to taxpayers e.g. if one application is required for one model and there are many models involved, or, one contract involves various services and one application is required for each service. It is proposed that the Customs to discuss this issue with the private sector in greater detail. (b) The Institute would like to seek clarification whether the Customs will continue to issue non-binding "opinion" or "confirmation" on matters including classification, and arrangements with the ruling framework. The Institute would like to highlight that it may not be practical and efficient for all decisions to be made under the ruling framework as some may turn out to be simple matters. Taxpayers should not be denied the right to write in for non-binding opinions, especially if the cost would be prohibitive (i.e. RM200 for one product, activity, service). <u>Jawapan (Bahagian Perkhidmatan Teknik)</u> <i>Permohonan untuk mendapatkan Ketetapan Kastam dibuat dibawah Seksyen 10A (1) Akta Kastam 1967. Dibawah Jadual A</i>	Institut Akauntan Malaysia (MIA)

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	<i>(Nota 10) – Peraturan-Peraturan Kastam (Ketetapan Kastam) 2007, fi bagi setiap permohonan Ketetapan Kastam ialah RM200.00 yang berhubungan dengan setiap barang atau perkhidmatan tertentu. Berdasarkan kepada keperluan undang-undang, Buku Panduan Ringkas mengenai Ketetapan Kastam telah diedarkan yang menyatakan setiap permohonan hanya dihadkan kepada satu produk, aktiviti atau perkhidmatan sahaja.</i> <i>Namun demikian jika terdapat borang di mana model yang berbeza tetapi mempunyai ciri dan fungsi yang sama, Urusetia Ketetapan Kastam menerima satu permohonan bagi beberapa barangan atau produk. Tetapi jika produk barangan berbeza misalnya televisyen dan tepung susu, permohonan hendaklah dibuat secara berasingan.</i> <i>Amalan untuk mendapatkan 'Pertanyaan Penjenisan' masih dibenarkan dan Bahagian Perkhidmatan Teknik Negeri telah diarahkan untuk menerima pertanyaan penjenisan mulai 17 September 2007. Ketetapan Kastam merupakan satu fasilitasi yang diberi kepada perdagangan bagi barangan yang masih belum diimport atau perkhidmatan yang masih belum dimulakan.</i>	
28.	Preparing Amendment in HS2007 Recommendations A grace period should be stated and allowed for before the implementation of HS 2007. The Royal Malaysian Customs Department to consider the following: • publish the "Correlation Table – HS 2007" in their website to create greater public awareness; • establish a "hotline" for a specific period of time in order to handle queries from the public re HS 2007; • publish an article to highlight the significant changes arising from the implementation of HS 2007 and how it would affect the trade of goods. <u>Jawapan (Bahagian Perkhidmatan Teknik)</u> (a) "Correlation Table" - HS 2007 telah pun siap dan akan dimasukkan ke dalam laman web Jabatan setelah deraf Perintah Duti Kastam dan AHTN 2007 diluluskan oleh Peguam Negara. (b) Akan mewujudkan 'hotline' setelah deraf Perintah Duti Kastam 2007 diluluskan oleh Peguam Negara. (c) Buku Panduan mengenai HS 2007 telah pun dicetak dan akan diedarkan kepada orang awam kelak.	Dewan Perniagaan dan Perindustrian Antarabangsa Malaysia (MICCI)

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29.	Security Mark System vs Tax Stamps for Domestic Manufactured Cigarettes Beyond August 2009 <u>Security Mark System</u> In 2003, the Government had mandated that all cigarettes that are manufactured and sold in the domestic market be printed with a "Security Mark". This "Security Mark" has overt (visible) and covert (invisible) features, and this will allow Government enforcement officers to differentiate between genuine excise paid cigarettes and illegal non-duty paid cigarettes. It is hoped that with the security marks, illicit trade can be curbed and Government can recover an estimated RM1 billion in lost tobacco tax revenues. All the domestic cigarette manufacturers were very supportive of the Government's intent to curb illicit trade and therefore complied with the Government's directive to print security marks on its product. From August 2004 onwards, all cigarette packs sold in the domestic market are now printed with security marks. To print security marks, all the domestic cigarette manufacturers collectively invested about RM 50 million in Security Marks printing equipment. In addition, manufacturers spent an additional RM 40 to 50 million annually on security ink, which is used to print the security marks. <u>Tax Stamps</u> In July 2006, the Royal Malaysian Customs announced that with effect from 1 August 2006, all cigarettes manufactured and sold locally must be applied with tax stamps. However, Customs also gave an extension of up to 3 years (until 1 August 2009), to domestic manufacturers to continue using security marks before they have to switch to tax stamps. If domestic manufacturers are to switch to tax stamps in 2009, manufacturers would have to write-off more than RM50 million worth of printing equipment, after only using them for 5 years. In addition, manufacturers will have to invest another RM20-30 million on tax stamps applicators. Recommendations Studies by the Confederation of Malaysian Tobacco Manufacturers (CMTM) had shown that the compliance rate and effectiveness of security marks is high, when compared to tax stamps. Therefore, the industry hopes that the Government can continue allowing the domestic cigarette manufacturers to continue using security marks, so that the Industry does not have to write-off expensive equipment and to purchase new ones. In addition, the manufacturers also hope that the Government can consider reducing the re-current cost of security ink, which is on the very high side.	Dewan Perniagaan dan Perindustrian Antarabangsa Malaysia (MICCI) & Persekutuan Pekilang- Pekilang Malaysia (FMM)

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	Currently, the 3 biggest cigarette manufacturers in Malaysia are multi-national companies, and they are British American Tobacco Malaysia Berhad (BATM), JT International Berhad (JTI) and Philip Morris International (PMI). These 3 companies had invested over RM1 billion in Foreign Direct Investment (FDI) over the past 10 years in Malaysia. For Malaysia to continue to be competitive and business friendly, the Government's policies and regulations have to be consistent, and the Government has also to be mindful of reducing the cost of doing business. The continued usage of security marks beyond 2009 is the right step in this direction. <u>Jawapan</u> (Bahagian Cukai Dalamam) KDRM telah menerima arahan dari pihak Perbendaharaan melalui surat bil: SK.KEW/PK/KP/9999/221000/57/194 Jld. 10(12) bertarikh 11 Mei 2006 bahawa kaedah setem cukai (banderol) digunapakai ke atas rokok yang diimport dan rokok keluaran tempatan. Bagi rokok keluaran tempatan, arahan tersebut bermula 1 Ogos 2006 tetapi pengilang pengilang rokok tempatan diberi tempoh peralihan sehingga tiga (3) tahun mulai tarikh tersebut untuk bertukar daripada penggunaan sistem dakwat keselamatan kepada label cukai. Harga untuk tanda dakwat keselamatan bagi rokok keluaran tempatan telah ditetapkan pada harga 4.5 sen bagi satu cetakan bagi tempoh 1.8.2006 hingga 31.7.2009 (3 tahun) melalui surat Perbendaharaan bil: 0.3865/42(SJ.23)VOL.2 (23) bth 27 Februari 2007. Cadangan sebaliknya perlu dikemukakan kepada Menteri Kewangan untuk pertimbangan dan keputusan.	
30.	Forms CJ5, CJ5A, CJ5B Recommendations Upgrade the forms to computer readable forms <u>Jawapan</u> (Bahagian Cukai Dalamam & CTM) Cadangan ini telah diambilkira dalam Projek Portal Kastam yang akan dilaksanakan apabila kelulusan diperolehi daripada pihak Perbendaharaan.	Dewan Perniagaan dan Perindustrian Antarabangsa Malaysia (MICCI)
31.	Pengendalian Kursus Asas Ajen Kastam Cadangan Di peringkat sijil, KAAK dikendalikan oleh Persatuan-persatuan termasuk Persatuan Pengusaha Logistik Bumiputera (PPLBS). Di peringkat diploma pula, KAAK dikendalikan oleh Universiti Utara Malaysia (UUM).	Persatuan Pengusaha Logistik Bumiputera Selangor (PPLBS)

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	Recommendations In the interest of equity and justice, we recommend that the Customs should not restrict the right of the taxpayers / companies as to who can represent them at the Customs Appeal Tribunal. We are of the view that the taxpayers / companies should be allowed to get assistance from a suitable person, be it a legal counsel or otherwise. <u>Jawapan</u> (a) <i>There is no expressed provision in the law for the representation by Tax Practitioner and there is also no expressed prohibition as in the case of advocate and solicitor.</i> (b) <i>The main objective of setting up the Tribunal, besides providing impartially of treatment on appeals, is also to assist the appellant in getting fast decisions and reducing any financial burden. The proceedings before The Tribunal shall be conducted in atmosphere of less formality and technicality .Even though section 141Q does not allow advocate and solicitor , the same section do allow for the appellant to be represented. Section 141 C provides that members of the Tribunal shall be appointed by the Minister. To ensure its equity and justice, the Chairman and Deputy Chairman will be from the Judicial and Legal Service while the other members will be persons having customs and taxation experience.</i>	
33.	Acknowledge Receipt Recommendations Customs should acknowledge receipt of any application made and the officer responsible is to be indicated in the acknowledgement. <u>Jawapan (Unit Perhubungan Awam)</u> <i>Dalam Minit Mesyuarat Panel Perundingan Kastam-Swasta Bil 1/2005, KDRM ada menyatakan bahawa satu surat edaran bertarikh 17 Januari 2005 telah dikeluarkan kepada semua Pengarah Ibu Pejabat dan Pengarah Kastam Negeri untuk mengambil tindakan seperti yang dicadangkan oleh MIT, iaitu, menjawab pertanyaan/permohonan orang awam dalam masa satu (1) minggu dari tarikh surat diterima dengan menyatakan nama pegawai serta nombor telefon untuk dirujuk bagi tujuan susulan.</i> <i>Sebagai langkah penambahbaikan, Unit ini mencadangkan satu</i>	Dewan Perniagaan dan Perindustrian Antarabangsa Malaysia (MICCI)

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	<i>format standard yang mudah dikeluarkan bagi menjawab pertanyaan/permohonan dengan merujuk contoh LHDN/MIDA sebagai 'benchmarking'.</i>	
34.	Export Services <u>Scenario</u> A company in a free zone (FZ) provides Information and Communication Technology (ICT) equipment and services including ICT-related consultancy and management services to customers in the principal customs area (PCA). The FZ company is not required to license for service tax purposes as FZ is outside Malaysia for service tax purposes and hence the FZ company will not charge service tax on the consultancy and management services provided to customers in the PCA. The FZ company subcontracts the provision of the consultancy and management services to a subcontractor in the PCA who is licensed for service tax. The PCA subcontractor would carry out the consultancy and management services in the FZ company's customers' premises in the PCA. The PCA subcontractor's contract is with the FZ company and invoice is issued by the PCA subcontractor to the FZ company for the consultancy and management services. <u>Issue</u> Whether the PCA subcontractor's consultancy and management services provided under contract with the FZ company and invoiced to the FZ company would be considered 'export services' and hence not subject to service tax. The above scenario clearly shows that service tax is not chargeable by the FZ company on the services provided to PCA customers. Therefore, service tax should not be chargeable when the FZ company subcontracts the services to the PCA subcontractor. Service tax is based on contractual transactions evidenced by invoices issued to customers. As far as the PCA subcontractor is concerned, the customer (consumer) of its services is the FZ company under the subcontract. <i>Conflicting views of Customs</i> Customs officers have recently expressed views that consultancy and management services provided to FZ would not be taxable <u>only</u> if the following criteria, enacted with effect from 1 January 2003, under the Second Schedule to the Service Tax Regulations 1975, are fulfilled i.e. that such services are provided in connection with: • goods or land outside Malaysia; or	Dewan Perniagaan dan Perindustrian Antarabangsa Malaysia (MICCI)

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	any other matter outside Malaysia. It should be noted that, the criterion of “any other matter outside Malaysia” was not in the definition of “exported taxable service”, which was in force before 1 January 2003. Further, the above views of Customs officers are contrary to what has been agreed by Customs in past minutes of Customs-Private Sector Consultative Panel Meeting, in relation to the implication of the abolition of “exported taxable service”, effective from 1 January 2003 (see below extract from the relevant Minutes of the Customs-Private Sector Consultative Panel Meeting 1/2003 held on 4 June 2003 (“the 2003 Meeting”)). <table><tr><th>Item</th><th>Outcome</th></tr><tr><td>Exported taxable services The MIT requested an explanation as to whether consultancy services rendered to persons outside Malaysia in relation to land, goods and other articles in Malaysia are subject to service tax as there has been some confusion after the abolishment of the term "exported taxable services".</td><td>Services related to consultancy services rendered directly to persons outside Malaysia in relation to land, goods and other articles in Malaysia is not subject to service tax when the invoice is issued directly to the recipient of the service outside the country.</td></tr></table> Recommendations The recent views of Customs officers could result in back taxes and penalties being imposed on businesses which had placed reliance on the minutes of the 2003 Meeting. For certainty to businesses, Customs should be consistent with what has been agreed in the past. To avoid conflicting views by Customs due to the lack of clarity in the law, Customs should recommend to the Minister of Finance for amendment to be made to the criteria in the Second Schedule to the Service Tax Regulations 1975 to reflect what has been agreed by Customs in the 2003 Meeting. <u>Jawapan (Bahagian Cukai Dalaman)</u> <i>Setelah menyemak minit Mesyuarat Penal Perunding Kastam-Swasta Bil.1/2003 didapati minit yang dicatat adalah bertentangan dengan perundangan yang berkuatkuasa mulai 1.1.03. Takrif 'export services' telah dibatalkan mulai 1.1.2003.</i> <i>Semua 'exclusion' (perkhidmatan tidak kena cukai) telah</i>	Item	Outcome	Exported taxable services The MIT requested an explanation as to whether consultancy services rendered to persons outside Malaysia in relation to land, goods and other articles in Malaysia are subject to service tax as there has been some confusion after the abolishment of the term "exported taxable services".	Services related to consultancy services rendered directly to persons outside Malaysia in relation to land, goods and other articles in Malaysia is not subject to service tax when the invoice is issued directly to the recipient of the service outside the country.	
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	dinyatakan secara spesifik di dalam Jadual Kedua Peraturan-peraturan Cukai Perkhidmatan 1975 mengikut jenis perkhidmatan. Bagi perkhidmatan perundingan dinyatakan seperti berikut; Penyediaan semua jenis perkhidmatan perundingan yang tidak disebut secara khusus dalam Peraturan-peraturan ini TIDAK TERMASUK; i. Perkhidmatan perundingan yang berhubungan dengan rawatan perubatan dan pembedahan yang disediakan oleh klinik persendirian atau klinik pakar; atau' ii. Penyediaan perkhidmatan perundingan yang dibekalkan berkaitan dengan; (A) Barang atau tanah yang terletak di luar Malaysia; (B) Selain daripada perkara-perkara yang berhubung dengan (A) terletak di luar Malaysia. Isu invois kepada siapa bukan merupakan kriteria menentukan samada sesuatu perkhidmatan itu bercukai atau tidak. Sekiranya perundingan tersebut adalah berkaitan barang, tanah atau perkara yang melibatkan Malaysia, perkhidmatan tersebut adalah kena cukai perkhidmatan. Dicaadangkan pihak industri terlibat berbincang secara langsung dengan Bahagian Cukai Dalamam untuk penjelasan lebih terperinci.	
35.	Exempt domestic manufactured products meant for export markets from security ink markings Currently, all domestic manufactured cigarettes and beer which are to be sold in the domestic market have to be printed with security marks. It is hoped that with the security marks, illicit trade can be curbed and Government can recover lost tobacco tax revenues. As domestic manufacturers were very supportive of the Government's intent to curb illicit trade, they complied with the Government's directive to print security marks on domestic manufactured products bound for the domestic market. However, the Government had also directed that security marks be printed on domestic manufactured products that are bound for export markets. The consequences are the following: ▪ The security mark is a Malaysian Government mark. If it appears on a products that are meant to be sold overseas, the overseas customers will reject the product and foreign governments are also likely to reject the product.	Persekutuan Pekilang- Pekilang Malaysia (FMM)

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	▪ Malaysian manufacturers export business will face serious problems given that overseas customers will reject the Malaysian manufactured products. The consequence is loss in profits and loss of confidence in the business environment and possible dissipation of Foreign Direct Investment (FDI). ▪ The security mark also infringes the intellectual property rights of the packs which are sold overseas. ▪ If the Government wishes to increase enforcement on exported products in the domestic market, this can be done without the product having the Malaysian security ink mark. This is because enforcement agencies can easily identify these products by their foreign health warnings or foreign labels. Recommendations Government to remove or exempt the requirement that security marks be printed on locally manufactured beer and cigarettes that are bound for overseas markets (Exports). <u>Jawapan</u> (Bahagian Cukai Dalam) <i>Perkara ini telah dibincang dan dibawa ke Perbendaharaan untuk pertimbangan.</i>	
36.	Excise Duties (Exemption) Order, 1977 Excise Duties (Exemption) Order, 1977 have not incorporate imported goods subject to excise duty. As such, there are instances where imported goods are exempted from payment of Import duty and Sales Tax but not the excise duty (e.g. Item 58 of Custom Duties Exemption Order and Item 62 of Sales Tax Exemption Order – that exempt both import duty and sales tax for goods that are imported or purchased from licensed manufacturer for the purpose of propaganda, research or demonstration). No similar item is available in the Excise Duties Exemption Order. Recommendations It is proposed that the exemption order for excise duty purposes be updated accordingly to take into consideration items that are currently granted with exemption under both Customs Duty and Sales Tax. <u>Jawapan</u> (Bahagian Cukai Dalam) <i>Deraf pindaan Perintah Duti Eksais (Pengecualian) 1977 sedang disediakan untuk dimajukan ke Perbendaharaan.</i>	Persekutuan Pekilang- Pekilang Malaysia (FMM)

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37.	Submission of Inward Manifest 24 hours before vessel arrival Section 52 of the Customs Act 1967 indicate that shipping lines are required to submit the shipping inward manifest within 24 hours after vessel arrival and before any cargo is unshipped. Although Customs still accepts shipping manifest from shipping lines before the vessel arrival, section 52 gives shipping lines the flexibility to submit the shipping manifest after the vessel has arrived in local ports. Recommendations Terminal operators in Port Klang has recently proposed to reduce the free storage period at ports from the current 5 days to 3 days. FMM has objected to the move to reduce the free storage period as many parties in the supply chain including Customs are not able provide faster clearance time due to restrictions in existing policies and procedures. In this regard, it is proposed that Customs to revise the Customs Act to accept shipping manifest 24 hours before vessel arrival for expedient customs clearance. <u>Jawapan (Bahagian Kastam)</u> <i>Perkara ini telah dimasukkan ke dalam cadangan pindaan Akta Kastam 1967.</i>	Persekutuan Pekilang- Pekilang Malaysia (FMM)

Nota : Usul-usul yang telah dihantar oleh Persatuan/Pertubuhan kepada pihak Urusetia dan tidak dibincangkan di dalam Mesyuarat Panel Perundingan Kastam-Swasta Bil.2/2007 akan dijawab secara terus kepada Persatuan/Pertubuhan berkenaan oleh Urusetia.

Disediakan oleh;

*Urusetia
Mesyuarat Panel Perundingan Kastam-Swasta 2/2007
b.p Unit Perhubungan Awam
Kastam Diraja Malaysia*