

# Trade & Customs e-Alert

19 APRIL 2019

## Key Amendments To Customs Law (Part 1)

On 3.4.2019, the government tabled amendment Bills to the Customs Act 1967 (**CA**), the Excise Act 1976 and the Free Zones Act 1990, respectively.

In a three-part e-Alert series, we will analyse some of the key features of these Bills, starting with the Customs (Amendment) Bill (**Bill**).

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### A. Time Frame to Levy Customs Duties

Clause 11 of the Bill seeks to amend Section 17 of the CA, whereby it is proposed that the Royal Malaysian Customs Department (**Customs**) can demand payment of Customs duties within six years from the date on which such duties become payable instead of the present three-year period.

This is a significant amendment as Customs can now raise bills of demand (i.e. additional duties) for Customs duties for a period of up to six years from the date of importation of goods as compared to the present three-year period.

Customs' scope of investigation and powers is being expanded to include the imposition of additional duties. As such, importers are exposed to a higher demand for duties should Customs demand the payment of additional duties, where common issues include valuation and classification of imported goods.

### B. New Provision on Offsetting Drawback or Refund Against Duties Owed

Clause 68 of the Bill introduces a new Section 99A to the CA, under which Customs may offset any amount of drawback or refund due against any amount a person has failed to pay under the CA, the Sales Tax Act 1972, the Service Tax Act 1975, the Goods and Services Tax 2014, the Sales Tax Act 2018 or the Service Tax Act 2018.

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This new provision allows Customs to legitimately offset any duties owed by a taxpayer against refunds or drawback that he is entitled to. It is notable that this provision does not exclude instances whereby taxpayers are disputing the duties through legal avenues, and thus, grants Customs wide powers to immediately offset such duties. However, our view is that a taxpayer faced with such a scenario could obtain a stay order against the invocation of this provision from our courts with the appropriate legal strategy.

### C. Goods in Transit and Transshipment

Clauses 2 and 22 of the Bill seek to introduce provisions to govern goods in transit and transshipment. Clause 2 defines “transshipment” as:

- (a) the transferring of goods from one vessel or aircraft to another vessel or aircraft; or
- (b) the unloading of goods from a vessel or aircraft and depositing such goods in a customs or licensed warehouse for the purpose of shipment out of Malaysia on that other vessel or aircraft.

Further, “transit” is defined as movement of goods between two or more customs offices in Malaysia or from a customs office in any country to a customs office in Malaysia for the sole purpose of being carried out to another country.

Clause 22 of the Bill introduces clear legal requirements for goods in transit or transshipment, something which was absent in the CA previously. Among others, the key features are:

- In the event that goods under the transit and transshipment procedures are interrupted, the owner of such goods shall be immediately liable to pay the duties leviable.
- Owners of goods are required to take safeguard measures to prevent goods in transit and transshipment from being interfered.
- Customs will clearly prescribe the routes for transits.

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- Goods in transit can only be moved by a licensed carrier unless special approval is granted by Customs.
- Licensed carriers are subjected to conditions affixed by Customs.
- Dutiable goods meant for transshipment must be stored in a customs or licensed warehouse until such goods are exported. Within two hours after the goods are removed from the warehouse for transshipment, the relevant persons must submit a certified statement in respect of such removal to Customs.
- The vessel or aircraft that reports the arrival of transshipment goods must ensure that such goods are loaded and transported out of Malaysia.

Prior to these amendments, goods meant for transshipment were governed by rather loose requirements and therefore subject to abuse. In the past, smugglers of dutiable goods would mask their activities by claiming that such goods were in transit or transshipment. Such goods would then be smuggled and leaked into Malaysia instead of being exported.

The insertions of these specific provisions will enable Customs to regulate transit and transshipment effectively and to prevent abuse, leakages and smuggling. Most notably, Customs will now hold the licensed carrier as well as the warehouse owners accountable for any illegal removal of goods.

Customs will also be able to effectively monitor the licensed carriers and/or warehouse owners as they would now be required to submit stock movements and certificates. Additionally, should any goods be interrupted during the transit or transshipment process, the owner of such goods shall immediately be liable to pay the duties leviable.

### D. Amendments to Provisions on Declaration of Goods

Modifications to Section 78 of the CA and a new Section 78A have been proposed through Clauses 53 and 54 of the Bill. They relate to the time when an importer needs to file an import declaration and the time when customs duties on imported goods have to be paid as follows:

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Item	Time When Declaration Is Due	Time When Payment Is Due
Goods deposited in the customs or licensed warehouse	Within a period of one month from the date of the arrival or landing of such goods before the removal of such goods or any part of the goods from customs control	Within 14 days from the date of declaration being approved by the proper officer of customs except for goods in transit
Goods not deposited in the customs or licensed warehouse	Upon arrival or landing of such goods at a place of import	Forthwith upon the arrival of such goods
Goods entering the principal customs area from a free zone	Upon arrival of such goods at the principal customs area	Forthwith upon the arrival of such goods

Further, the insertion of Section 78C to the CA will enable Customs to deem goods that have not been declared as abandoned goods, following which these can then be destroyed.

Prior to these amendments, there was a lack of clarity as to when duties are payable upon arrival in Malaysia. With the insertion of Section 78A to the CA, it is now clear that for goods stored in warehouses, duties must be paid within 14 days after Customs has approved the declaration form. As for goods that are imported directly without being stored, duties must be paid immediately upon arrival.

As for Section 78C, this provision enables Customs to immediately destroy goods that are not declared. Prior to this, there have been instances where smuggled goods were not declared but Customs could not destroy them immediately.

### E. Provisions on Enforcement Powers for Customs Officers

Under the proposed new Section 111B of the CA, the Public Prosecutor is empowered to authorise any Customs officer to intercept any postal article transmitted by post or any messages online. Further, Section 112 of the CA is amended to allow Customs to use any tracing and tracking device, non-intrusive instrument, or any other form of aids in the performance of their duty under the CA.

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This provision effectively legalises Customs' usage of tracking devices to potentially trace syndicates that are involved in smuggling. The effectiveness of such tracking devices to effectively deal with smuggling remains to be seen.

## F. Provisions on Offences

Clause 107 of the Bill amends Sections 135(1)(iv)(bb) and (v)(bb) of the CA in respect of smuggling of tobacco and intoxicating liquor, whereby it increases the maximum jail term for a second offender from five years to seven years.

Further, Clause 108 of the Bill introduces the following new offences:

- Alternation, manipulation or interference with computer data (Section 135A);
- Unlawfully claiming for drawback (Section 135B); and
- Unlawfully claiming for refunds (Section 135C).

Customs has identified the smuggling of tobacco and liquor as hotbed issues, hence the increase of the maximum jail sentence punishable under Section 135 of the CA. This is, in fact, a sequel to the introduction in January 2019 of more severe punishment for the smuggling of tobacco and intoxicating liquor.

Section 135A broadly address the manipulation of data stored in a computer to evade liability to customs duty. Under the proposed section, the net is cast so wide that the use of a computer to evade liability of customs duty is said to constitute an offence.

## G. Special Provisions Dealing with Pangkor

Clause 123 of the Bill aims to exclude Pangkor from the definition of "principal customs area", thus effectively making it a duty-free island. However, declaring Pangkor as a duty-free island could turn out to be a double-edged sword.

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On the one hand, it could bolster economic development for the island, but on the other hand, it could be turned into another avenue for smuggling activities to be conducted. Its effect remains to be seen and will definitely be closely monitored by Customs.

If you have any queries on these proposed amendments, please contact our Tax, SST & Customs partners, **Datuk D P Naban** or **S Saravana Kumar** at [tax@lh-ag.com](mailto:tax@lh-ag.com)

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