

Trade & Customs e-Alert

20 JUNE 2019

Key Amendments To Customs Law (Part 3)

In this third and final part of our e-Alert series on the amendments to Customs law, we focus on the key features of the Free Zones (Amendment) Bill 2019. This Bill amends the Free Zones Act 1990 (**FZA**). [[Part 1](#) of the series was published in April and [Part 2](#), last month.]

A. Definition Of Pangkor

Clause 2 introduces the definition of and adds Pangkor to the list of duty-free zones, which currently consist of Labuan, Langkawi and Tioman.

Following the examples of Tioman and Langkawi Islands, it is hoped that the addition of Pangkor as a duty-free island will accelerate economic activity on the island. However, there is concern that the duty-free status may turn into an opportunity for the smuggling of dutiable products and thus, the relevant authorities should strengthen their monitoring activities.

B. Goods Deemed To Be Exported From Or Imported Into Malaysia

Clause 3 amends Section 7 of the FZA to provide that customs duty shall be payable where:

- (a) goods are taken from the principal Customs area into a free zone, which would be seen as a form of deemed exportation; and
- (b) goods are taken from a free zone into the principal Customs area, which would be seen as a form of deemed importation.

This proposed amendment is significant as it empowers Customs to collect customs duties imposed on goods which are deemed to be exported from or imported into Malaysia. The advantage of this measure is that the goods sold in the free zones will retain the competitiveness in their pricing and further bolster the economic development of duty-free zones.

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C. Declaration To Give Full And True Account

Clause 4 inserts a new Section 8A to the FZA, which requires any person who makes a declaration to give a full and true account relating to:

- The number and description of the packages
- The description of the goods
- The weight, measure or quantity of the goods
- The value of all of the goods
- The country of origin of the goods

This detailed provision lists the information required for a declaration to be made and, as such, the person making the declaration should be aware of the legal obligation to provide accurate information. It is likely that the information given under this provision will be used as the initial records to monitor for unaccounted goods pursuant to Clause 4 of the Bill.

D. Goods Unaccounted For

Clause 4 introduces Section 8B, where if it is found that the quantity of any goods which ought to be kept in any shop or warehouse, or other building, place or premises in a free zone is short or unaccounted for, the owner of the goods or operator of such shop shall be deemed to have illegally removed those goods from the free zone into the principal customs area, until the contrary is proved.

Under this provision, Customs is granted power to demand settlement of the taxes, duties or payment imposed on the goods which were deemed illegally removed from the free zone within six years from when they became due.

Section 8B(3) further reserves the right of Customs to make a demand on unpaid taxes, duties or payment even after the six-year period. Effectively, Section 8B will impose a more onerous obligation on the owner of the goods or operator of the shop to keep track of the goods kept in the shop or warehouse. This will add on to the operational risk of the shop owners in the free zones. If this Bill is passed, the burden of proof will shift to the goods' owner to rebut this statutory presumption underlining Section 8B.

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E. Provision On Penalty

A key amendment is Clause 5, which seeks to levy higher fines for an offender under Section 9 of the FZA, as illustrated in the following table:

Minimum		Maximum
10 times the value of goods or RM50,000, whichever is greater	First offence	<ul style="list-style-type: none"> 20 times the value of goods, or RM500,000, whichever is greater; Imprisonment for a term not exceeding five years; or Both of the above
20 times the value of goods or RM100,000, whichever is greater	Second or subsequent offence	<ul style="list-style-type: none"> 40 times the value of goods or RM1 million, whichever is greater; Imprisonment for a term not exceeding seven years, or Both of the above

Compared with the current minimum monetary threshold of RM5,000 for the first offence and RM10,000 for the second or subsequent offence stated in Section 9, this amendment clearly aims for a more deterrent penalty to prevent the misuse and manipulation of the facilities and Customs procedures in the free zones.

F. Record Of Activity

The new Section 10A of the FZA will impose an obligation on every person carrying out any activity in a free zone to keep, for seven years, all records relating to the activity of importation, exportation of manufacturing of goods in the free zone.

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More importantly, any person who contravenes this section will be liable to a fine not exceeding RM50,000 or imprisonment not exceeding three years, or both.

This provision is similar to Section 82A of the Income Tax Act 1967, where taxpayers are required to keep and retain in safe custody sufficient documents for a period of seven years. However, Section 10A will sanction those who fail to comply with this provision, further emphasising the importance of record-keeping and documentation of the activities carried out in the free zones.

G. Annual Reports And Accounts

In relation to annual reports, Clause 9 makes its mandatory for Customs to present the annual report on the free zone to the Minister of Finance, who may specify the form of the reports and information required.

Currently, the annual reports will only be presented upon the direction by the Minister. If this Bill is passed, Customs will have a legal obligation to submit to the Minister the annual report without the need for a Ministerial direction.

H. Access To Shop Or Warehouse, Or Other Building, Place Or Premises

Clause 12 introduces a new Section 20A to the FZA, which empowers any senior Customs officer to have full and free access to any shop or warehouse, or other building, place or premises in the free zone where any person carries on his activity. The Customs officer may, among others, examine or seize and detain any goods or documents, require any person to answer questions relating to the goods or documents, take samples of the goods and make copies or extracts of any documents.

This is a significant change to the FZA as it seeks to enhance the powers of senior Customs officers when carrying out their duties. Every person carrying out an activity in the free zones should be aware of the limit to these powers in order to prevent the abuse of power by Customs officers.

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I. Recovery Of Duty Or Tax As A Civil Debt

Clause 17 inserts a new Section 41A to the FZA governing the recovery of any tax, duty or payment payable under the FZA by way of civil debt through a certificate signed by the Director General of Customs. The certificate will, among others, state the tax, duty or payment, give the address of the person and purport to be a copy of or an extract from any notice of assessment. According to the proposed Section 41A(2), such a certificate shall be conclusive evidence and sufficient authority for the court to give judgment for that amount.

This is an important amendment to the FZA as it seeks to elevate the status of a notice of assessment to warrant a court judgment in favour of Customs. Given such consequences of unpaid taxes or duties, a person who operates trading activities in the free zones should always ensure compliance with the relevant law.

Conclusion

It can be summed up that the Free Zones (Amendment) Bill 2019 provides Customs wider power in exercising their duties in free zones. Additionally, the Bill also transfers some of the operational risks to the owner of goods or the operator of shops by imposing heftier fines for non-compliance.

In light of the extensive amendments to the Customs Act 1967, the Excise Act 1976 and the FZA, Customs is likely to change some of its existing administrative and operational practices, although to what extent is as yet undetermined.

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

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