

Trade & Customs e-Alert

23 MAY 2019

Key Amendments To Customs Law (Part 2)

In this second of our three-part e-Alert series on the recent amendments to Customs law, we analyse the proposed changes to the Excise (Amendment) Bill 2019, which was tabled in Parliament on 8.4.2019. [[“Key Amendments To Customs Law \(Part 1\)”](#) was published last month.]

Excise (Amendment) Bill 2019

A. Provisions On Payment Of Duty

Clause 12 of the Excise (Amendment) Bill 2019 (**Excise Bill**) seeks to amend Section 15 of the Excise Act 1976 (**EA**), whereby the Royal Malaysian Customs Department (**Customs**) may demand payment of excise duties or money payable where refund has been erroneously made within six years from the date on which such duties become payable or refund was made instead of the present three-year period. Further, Customs may make a demand at any time after the six-year period in the case of fraud or default.

The proposed amendments also seek to impose a surcharge equal to 10% on the outstanding balance payable should there be a default in the payment of any instalment for the amount payable.

This is a significant amendment as Customs will be empowered to impose bills of demand (i.e. additional duties) for excise duties retrospectively for a period of up to six years from the date of importation or manufacture of goods. It also widens Customs' scope of investigation and powers to impose additional duties by a wide margin. As such, should the Excise Bill be passed, taxpayers will be exposed to significantly higher demand for duties should there be any disputes raised by Customs.

B. Recovering Duties Owed As Civil Debt Due

Clause 14 of the Excise Bill seeks to introduce a new Section 15B into the EA to allow any excise duty, surcharge, penalty, fee or other money payable under the EA to be recovered as a civil

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debt due to the government. The production of a certificate signed by Customs stating the amount payable, address of the person liable to pay and a copy or extract of any notice of assessment is conclusive evidence, and shall be sufficient authority for the court to give judgment for the amount payable. Further, the judgment for any penalty imposed under the EA will not be time barred under the Limitation Act 1953, the Limitation Ordinance of Sabah or the Limitation Ordinance of Sarawak.

This amendment gives Customs wide powers to recover any amount due from any person liable to pay excise duties as Customs is able to seek and enforce judgment for penalty imposed under the EA without the defence of limitation.

C. Offsetting Drawback Or Refund Against Duties Owed

Clause 19 of the Excise Bill aims to introduce a new Section 19G into the EA whereby it is proposed that Customs may offset any amount of drawback or refund of excise duties due to the person against any amount the person has failed to pay under the EA, the Customs Act 1967, 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.

This new provision effectively allows Customs to legitimately offset any duties owed by a taxpayer against refunds or drawback that are entitled to him. There may be risks of double payment in the event where the amount due to taxpayers has been erroneously offset against other duties fully paid by the taxpayers but deemed to be unpaid by Customs.

D. Requirement To Keep Records Of Imported Goods

Clause 35 of the Bill seeks to amend Section 41B of the EA whereby a person is to keep full and true records of all transactions which may affect obligation on any matters under the EA for a period of seven years instead of the current six. Any breach of this requirement is an offence under the EA.

Taxpayers should be aware of this amended time period and adhere accordingly as any person who contravenes the requirement is liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding five years, or both.

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E. Protection For Officers

Clause 41 of the Excise Bill introduces Section 44B into the EA whereby any officer of excise, any police officer having the powers of a senior officer of excise or officer of excise or any proper officer is protected against any action, suit, prosecution or other proceeding in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith in the execution of his duty under the EA.

This provision will make it difficult for taxpayers to bring any legal action against any officer for any act or omission done in good faith in executing his or her duty. Thus, it is unlikely that any officer will be personally liable for any potential loss and damage caused by his or her act or omission unless the person bringing the legal action is able to prove bad faith.

F. Cost Of Holding Seized Items

Clause 59 of the Excise Bill aims to institute a new Section 69A into the EA, where the cost of holding any goods, document or thing seized in custody shall be a debt due to the government by such person and shall be recoverable accordingly in the event that person is found guilty of an offence.

Should this amendment be approved, the person found guilty of any offence under the EA shall also be liable to pay the holding cost of any goods held in custody pending completion of any proceedings of the said offence. Customs will also be able to obtain judgment for the debt due and enforce it against the person liable through civil proceedings.

G. Offences and Penalties

Clause 60 of the Excise Bill amends Section 74(1)(iii)(B) and (1)(iv)(B) of the EA where the maximum term of imprisonment imposed for a second offender of evading excise duty and illegal manufacture of dutiable goods in the case of cigarettes or intoxicating liquor has been increased from five years to seven years. Further, clause 61 of the Excise Bill introduces the following new offences:

- Alternation, manipulation or interference with computer data (Section 74A);

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- Unlawfully claiming for drawback (Section 74B); and
- Unlawfully claiming for refunds (Section 74C).

It is notable that Customs has identified the smuggling of cigarettes and liquor as pressing concerns and increased the maximum jail sentence punishable under Section 74 of the EA. Further, Section 74A broadly addresses the manipulation of data stored in a computer to evade liability to excise duty. Under the proposed section, the mere use of a computer to evade liability of excise duty is said to constitute an offence.

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H. Special Provisions Dealing With Pangkor

Clause 79 of the Excise Bill introduces a new Part XVD into the EA, whereby Pangkor is to be excluded from the definition of “principal customs area”. Pangkor shall be regarded as a duty-free island similar to Labuan, Langkawi and Tioman. While declaring Pangkor as a duty-free island could boost economic development, there is also a risk that it could be turned into another channel for illegal smuggling activities to be conducted.

Conclusion

It is clear that the Excise Bill aims to improve the existing practices of Customs by strengthening the EA in respect of payment and collection of excise duties. The Bill also imposes a stricter obligation to keep records and increases the penalties for certain offences under the EA. The enforcement powers of Customs are also widened.

Hence, it is vital that businesses that have excise duty obligation review their existing business practices and tax risk management policy so as to ensure that their internal practices and policies are in accordance with the proposed amendments.

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

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