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Indirect Tax Chat

Keeping you up to date on the latest news in the
Indirect Tax world

June 2019

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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings, readers, and welcome to the June 2019 edition of our Indirect Tax Chat.

Following a recent meeting with the Ministry of Finance (MoF) and the Royal Malaysian Customs Department (RMCD), further details have been made available in relation to the implementation of service tax on foreign digital services from 1 January 2020. It was confirmed that the tax would apply to both services provided to Malaysian businesses, as well as consumers. You can read more on this in our Indirect Tax Alert, issued on 20 June 2019 which can be found [here](#).



MoF has also indicated that the commencement date of the Departure Levy has been deferred to a yet to be announced date. It was also indicated that the calculation method for the levy would be revised.

Also this month, the ASEAN - Hong Kong Free Trade Agreement (AHKFTA) entered into force for Hong Kong and five ASEAN member states, namely Lao PDR, Myanmar, Singapore, Thailand and Vietnam. This Free Trade Agreement (FTA) was signed by the ASEAN economic ministers and the Secretary for Commerce and Economic Development of Hong Kong back in November 2017. Once Malaysia implements the AHKFTA requirement, it will eliminate Customs duties on 85% of the products traded with Hong Kong within ten years, and reduce another 10% of tariff lines within 14 years. Hong Kong, in return, will grant immediate tariff-free access to all products originating from Malaysia once the relevant FTA is in effect.

Here is some other recent news that may interest you:

- The RMCD announced new limits when paying for Sales and Service Tax (SST) online. Through the Financial Process Exchange (FPX) in the MySST system, the maximum payment allowable is now RM100 million for corporate account payments and RM100,000 for individual account payments (RM10,000). For more information, click [here](#).
- The RMCD released a new guide on Sales Tax drawback in Bahasa Malaysia. The drawback provision under section 40 of the Sales Tax Act 2018 is to preserve the concept of a single tier tax concept and to return any sales tax paid on taxable goods that have been subsequently exported. This section does not apply to petroleum and petroleum products that are included in chapter 27 of the Customs Duties Order 2017. For more information, click [here](#).
- With the impending sugar excise coming next month, businesses have taken drastic measures to mitigate its effects. F&N Malaysia's CEO, Lim Yew Hoe shared at the company's 2018/2019 first-half financial results briefing that F&N Malaysia will be reformulating about 70% of its products. On the other spectrum, some businesses have brushed aside the minimal impact the sugar tax will have on them. The Malaysian operations of 7-Eleven, Carlsberg, and Nestle have had company officials express confidence that the sugar tax will not have a material impact on them.

We hope you find this month's Indirect Tax Chat informative. Please do not hesitate to contact us if you have any queries, comments or require our assistance on any indirect tax matters.

Best regards,

Tan Eng Yew
Indirect Tax Leader

1. Compliance Audit Framework

The RMCD has recently published the Compliance Audit Framework (the Framework) dated 30 April 2019 on its website. Currently, the Framework is only available in Bahasa Malaysia.

The Framework outlines the provisions of law adopted by the RMCD in conducting audits, stages of audit execution, rights and responsibilities of auditees, as well as the ethics of RMCD officers. It has been issued to ensure that auditees perform their responsibilities with a high degree of compliance.

The Framework is summarised in the table below:

Subject matter	Description
Purpose and importance of the audit	<ul style="list-style-type: none"> • To ensure all duties/taxes/levies accounted and paid by businesses are correct and accurate, in respect of legislations administered by the RMCD. • To ensure that auditees which have been granted exemption comply with the conditions of the exemption. • To promote self-compliance, voluntary compliance and to educate businesses in accounting and making correct payments of duties/taxes/levies. • To ensure government revenue collection is done in an effective, efficient and professional manner.
Provisions of law	The provisions of law administered, enforced and adopted for the audits by RMCD are listed in the Framework.
Audit period covered and completion period	<p>The period covered by an audit is up to six years. However, the time limit does not apply to fraud cases.</p> <p>The completion period of an audit depends on the completeness of records/documents, complexity of the case and the level of cooperation given by the auditees.</p>
Who can be audited	Any person, group of persons, limited liability partnership, company or organisation who is directly or indirectly involved in businesses which are governed under the relevant laws and administered by RMCD.
Implementation of the audit	<p>The audit consists of 4 stages:</p> <ol style="list-style-type: none"> i. Measures taken prior to the audit – determination of audit criteria and approach

Subject matter	Description
	<ul style="list-style-type: none"> ii. Fieldwork – information will be gathered through telephone interviews, discussions at the auditee’s premises or RMCD offices and relevant documentation and records prepared by the auditee iii. Audit reporting – all audit findings will be recorded and documented for evidentiary purposes and for making just and fair decisions iv. Review – to ensure proper audit procedures have been carried out, working papers are well documented, the correct laws have been applied and all audit findings have been reported accordingly
Documents/ records required for the audit	<ul style="list-style-type: none"> • Organisation chart/company profile (if any). • Copy of the company/business registration form/documents. • Summary of the computation of duties/taxes/levies accounted and paid (if any). • Accounting documents/records: <ul style="list-style-type: none"> – Audited financial statement, trial balance, profit and loss, management accounts – Income tax Form B (Sole proprietor), Form C (Company) and Form P (Partnership) – General ledger – Sales and purchase records/documents together with receipts and proof of payments – Bank statement/payment information (telegraphic transfer, letter of credit) • Name, address, telephone number, fax number, email and license number of chartered accountant (if any).
Round Table Discussion (RTD)	<ul style="list-style-type: none"> • One session of a RTD will be held with the auditee to: <ul style="list-style-type: none"> – Provide information and advice to the auditee on the non-compliance areas to be corrected and improved – Inform of audit findings, i.e. detected short payments of duty/tax/levy (if any) – Inform of the offences committed under the relevant provisions (if any) • Where there is any detected short payment of duties/taxes/levies, a Bill of Demand (BOD) will be issued to the auditee. The auditee is required to pay the BOD amount within 14 days from the date the BOD is issued. • RMCD may take further action if the BOD is not settled within the stipulated deadline (such as travel restrictions and court action to name a few).

Subject matter	Description
Rights and responsibilities of auditee	<ul style="list-style-type: none"> • The auditee may contact the Head of Branch/ Compliance Section of the relevant State RMCD to verify audit visits. • The auditee may request for the identification of authority card to verify the authenticity of the RMCD officer’s identity. The authority card contains the name, designation, identification card number and picture of the officer. • The auditee shall give full cooperation to the RMCD officers by: <ul style="list-style-type: none"> – Allowing the officers to access the premise – Providing a copy of the original record/document for review and access to recorded information/computerised data – Providing explanation and information required by the officer – Answering all queries raised by the officer – Keeping the records/documents for 7 years and presenting them to the officer upon request • The auditee shall not: <ul style="list-style-type: none"> – Prevent the officer from performing his duty – Provide false information – Hide facts, documents and information – Avoid answering queries raised by the officer – Provide any form of gift, reward, compensation, wages and promise to do business with the officer • Failure to comply with the above may result in legal action being taken against the auditee.
Ethics of RMCD officers	<ul style="list-style-type: none"> • In performing the audit, the RMCD officers pledge to adhere to the following professional standards: <ul style="list-style-type: none"> – Integrity – Free, fair and just – Professionalism – Confidentiality – Quality assurance • The RMCD officers are prohibited from performing the following: <ul style="list-style-type: none"> – Audit companies where the officer has an interest – Accept bribes, rewards, gratuities or wages to ignore/not perform one’s duties, or to carry out one’s duties – Misuse of the auditee’s/RMCD’s equipment or information for personal benefit/individual interest.
Appeal	<p>The three categories of appeal provided for under the law are:</p> <ul style="list-style-type: none"> • Appeal to the Customs Appeal Tribunal; • Appeal to the Minister; and • Appeal to the Director General of Customs.

Subject matter	Description
	The procedures for each type of appeal may differ according with the provisions of the prescribed law.
Complaints	Any complaints may be directed to the State Customs Director where the audit had been conducted in, or channeled to the Director of Compliance Management at RMCD Headquarters via email ccc@customs.gov.my .

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2. Changes to the Customs (Anti-Dumping Duties) Orders

Customs (Anti-Dumping Duties) (Administrative Review) Order 2019

In 2018, the Malaysian Government carried out an administrative review investigation based on a petition which claimed that there was a substantial change in the dumping margin for the imports of certain cold rolled coils of alloy and non-alloy steel originating from certain exporters from China, South Korea and Vietnam.

On 8 May 2019, the Government gazetted the Customs (Anti-Dumping Duties) (Administrative Review) Order 2019 (the New Order) and revoked the Customs (Anti-Dumping Duties) (No. 2) Order 2016 on the same day. The New Order takes effect from 8 May 2019 to 23 May 2021. There is a notable increase in the rates of anti-dumping duties for certain exporters of certain steel products from China. You can refer to the New Order [here](#) for further information or details of the steel that are subject to the revised anti-dumping duties rates.

Deloitte's view

Businesses should be aware that additional duties will increase the cost of the relevant steel imported from the relevant exporters from China.

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3. Amendments to the Customs Act 1967 and Excise Act 1976

Customs Act 1967

The Customs Act 1967 is to be amended by the Customs (Amendment) Bill 2019 (which has been passed by Parliament but yet to be gazetted), effective from a date to be notified in the gazette.

Below is an outline of a few of the notable changes in the Customs (Amendment) Bill 2019:

Section amendment/ addition	Proposed change	Current state	Deloitte's view
Section 10A	Matters where a Customs ruling can be obtained now includes the origin of goods.	Matters where Customs ruling can be obtained does not include origin of goods.	This should allow importers an avenue to address potential disputes on the item's origin, especially in the case of imports where preferential rates or entry restrictions may be affected. Nevertheless, this is an untested case and there may be areas which will warrant further clarity from RMCD.
Section 10F (new section)	Inclusion of a possibility of public ruling being issued by the Director General (DG) of Customs.		Given that the DG may exercise his power to issue public rulings, businesses should be alert of the potentially binding decisions issued by the DG. At this point, it is unclear if

Section amendment/ addition	Proposed change	Current state	Deloitte's view
			the public ruling will be legally binding.
Section 11A (new section)	Customs duties shall not be levied on goods bona fide in transit and in transshipment – unless they are or become uncustomed goods. Uncustomed goods means goods where a breach under the provision of the Customs Act has been committed.		This provides more clarity on the Customs duties treatment on goods in transit or transshipment.
Part IVA (new part)	Introduction of a new Part discussing on matters relating to goods in transit or transshipment which includes: <ul style="list-style-type: none"> • Allowable modes of transit • Suspension of Customs duties for goods in transit • The commencement and completion of transit procedure 		Consistent with the introduction of Section 11A above, this provides more clarity on the procedures in undertaking shipments involving goods in transit or transshipment.
Section 65	i) DG may now allow goods, other than goods liable to customs duty, to be kept in a bonded warehouse.	i) Only goods liable to Customs duty is permitted to be stored in a bonded warehouse. ii) The Customs Act 1967 does not stipulate a time	i) This allows flexibility for non-dutiable goods or locally manufactured goods to be stored in a bonded warehouse.

Section amendment/ addition	Proposed change	Current state	Deloitte's view
	<p>ii) Goods deposited in a licensed warehouse shall be cleared within 2 years from the date of deposit or a longer period, as approved by the DG of Customs.</p>	<p>limit as to how long goods can be stored in a licensed warehouse.</p>	<p>ii) Businesses utilising the licensed warehouse to store goods may need to re-evaluate their inventory turnover in the warehouse, given the time limit for goods stored. Otherwise, an approval is required to store goods for longer periods.</p>
<p>Section 65A</p>	<p>The DG of Customs now grants a licence for a company to act as a licensed manufacturing warehouse (LMW) and such licence shall be deemed to include a licence for warehousing goods as provided under Section 65.</p>	<p>For a person to act as a LMW, a licence is obtained under Section 65 whereas an additional licence is obtained under Section 65A.</p>	<p>It would appear that as opposed to Customs' previous practice of issuing two licences to LMW licensees (one under Section 65, whereas another under Section 65A), one licence will be issued instead.</p>
<p>Section 65AA (new section)</p>	<p>Customs duties on waste arising in the course of manufacturing by a LMW may be remitted by the DG of Customs. If remitted, the DG shall direct the</p>		<p>Though this is consistent with the current practice of LMW licensees in complying with LMW conditions, LMW licensees should ensure that the movement of its waste are tracked</p>

Section amendment/ addition	Proposed change	Current state	Deloitte's view
	<p>destruction of such waste.</p> <p>Where Customs duties are not remitted, the DG shall require Customs duty to be paid on such waste as if it had been imported in that form.</p>		<p>and supported with relevant certificates of disposal.</p> <p>Further clarity by Customs is required on the basis of valuation for the affected waste.</p>
Section 65AB (new section)	<p>If there is a deficiency in the amount of dutiable goods ought to be found in the LMW, such goods shall be deemed illegally removed unless there is proof to the contrary and Customs duty shall then be payable on the goods.</p> <p>Where the DG is satisfied that the deficiency is caused by unavoidable leakage, breakage or other accident, the Customs duty leviable may be remitted.</p>		<p>This emphasises the need for a LMW licensee to ensure that all movement of its goods are properly tracked and accounted for.</p> <p>This should nevertheless be consistent with the current practice of LMW licensees in complying with the LMW conditions.</p>
Section 65F (new section)	The DG of RMCD is empowered to allow the storage of dutiable goods in a warehouse or any		This may facilitate the introduction of customised duty exemption facilities

Section amendment/ addition	Proposed change	Current state	Deloitte's view
	other place (not being a customs warehouse/licensed warehouse) subject to conditions the DG may impose.		<p>similar to licensed warehouses.</p> <p>Businesses may seek guidance from RMCD on the potential benefits or facilities which can be granted for their operations.</p>
Part VIIIA (new part)	<p>Introduction of a new Part discussing on matters relating to the establishment of a petroleum supply base (PSB) which includes:</p> <ul style="list-style-type: none"> • Application requirements to operate as a PSB • Movement of goods in relation to the PSB • Treatments in relation to unaccountable stock loss in the PSB 		<p>This appears to be a new facility (similar to those granted to licensed warehouses) which is granted for businesses in the petroleum sector.</p> <p>Businesses under this sector may consider exploring the viability of applying for this facility and how they can benefit from the Customs duties exemption, which a PSB may bring.</p>
Section 87A	Provisional declaration can be made for imports and exports subject to Customs' approval and conditions imposed.	Provisional declaration is only allowable for exports.	This should provide businesses with more flexibility, especially when dealing with importation of goods.
Section 88A	The DG may grant a deferral to pay duty and determine the		This appears to be a new flexibility that

Section amendment/ addition	Proposed change	Current state	Deloitte's view
	date to pay the duty applicable.		may be allowed on a case by case basis.
Section 93	<p>Minimum value for drawback claims to be increased to RM200.</p> <p>The period where goods are required to be re-exported in order to qualify for duty drawback has been decreased to 3 months.</p>	<p>Minimum value for drawback claims is RM50.</p> <p>The period where goods are required to be re-exported in order to qualify for duty drawback is 12 months.</p>	<p>This has, without a doubt, narrowed the scope for businesses to claim import duty drawbacks.</p> <p>For businesses relying on drawbacks, there may be a need to revisit and reassess current business models and consider applying other available Customs duty exemption facilities.</p>
Section 99A (new section)	DG is empowered to offset Customs duty drawback or refunds against amounts owing under the Customs Act 1967, Excise Act 1976, Sales Tax Act 1972, Service Tax Act 1975, Goods and Services Tax Act 2014, Sales Tax Act 2018 and Service Tax Act 2018.		Businesses that wish to claim their drawbacks and refunds in full should ensure that there are no outstanding payments in respect of complying with SST 1.0, GST, SST 2.0 or current Customs related matters.
Part XA (new part)	Introduction of a new Part discussing on matters relating to the origin of goods, preferential and non-preferential tariff		It would appear that the authorities are placing more importance on the compliance of rules pertaining to the

Section amendment/ addition	Proposed change	Current state	Deloitte's view
	<p>treatments which includes:</p> <ul style="list-style-type: none"> • Procedures of applying for a preferential or non-preferential certificate of origin • The importer, producer or exporter having the responsibility to ensure that the origin of goods are correctly declared – otherwise, penalties may be imposed • Procedures to be undertaken in respect of the declaration of goods when the authenticity of the information regarding the goods' origin is in doubt and subject to further verification 		<p>origin of goods especially with the increased complexity of global trade and origin-based incentives or restrictions.</p> <p>Businesses will need to ensure that proper controls are in place and supporting documents to substantiate the origin of their products, especially when utilising certificates of origin.</p>
Section 100A	<p>Every person is required to keep records for transactions, which affect or may affect his obligations on any matters under the Customs Act 1967. The amendment also provides more clarity on the type of</p>	<p>Every person who has possession of documents and records pertaining to valuation of goods imported is required to maintain all records relating to the purchase of, importation of, cost of, value of, payment for</p>	<p>The obligation to maintain records especially those in relation to Customs declaration will now be expanded to a wider scope of persons.</p> <p>The authorities appear to be imposing stricter</p>

Section amendment/ addition	Proposed change	Current state	Deloitte's view
	records to be maintained above.	and disposal of the goods.	<p>documentation requirements in order to facilitate the compliance of other aspects of the Customs law.</p> <p>Businesses engaging in cross border trade or enjoying Customs duties exemptions should ensure that sufficient documents are maintained in accordance to the proposed amendments and to substantiate the transactions undertaken by them.</p>
Section 131	The value of compound for compoundable offences to be increased to 50% of the maximum fine for that particular offence.	Compound of not more than RM5,000 for compoundable offences.	The increase of the compound amount increases the importance of ensuring compliance of the Customs Act 1967 – especially for exemption facilities or Customs declarations.
Section 135A (new section)	Introduction of penalties in relation to tampering or manipulating data stored in a computer which affects a person's liability to Customs duties.		This adds severity on the punishment the authorities seek to impose on businesses that wilfully attempt to avoid paying Customs duties.

Section amendment/ addition	Proposed change	Current state	Deloitte's view
	Offenders, upon conviction, may be imposed with a fine not exceeding RM100,000 or a jail term of not more than 5 years or both.		This places more importance on information retention and security.
Section 135B (new section)	Introduction of penalties in relation to wrongful claims of duty drawbacks where the offender, upon conviction, may be liable to a fine not exceeding 3 times of such duty or RM500,000 (whichever is greater), or a jail term not exceeding 7 years or both.		Businesses will need to practice extra caution when making claims for drawbacks and to ensure that such claims are substantiated with supporting documents.
Section 135c (new section)	Introduction of penalties in relation to wrongful claims of refunds where the offender, upon conviction, may be liable to a fine not exceeding 3 times the amount refunded in excess of the supposed amount or RM500,000 (whichever is greater), or a jail term not exceeding 7 years or both.		Businesses will need to practice extra caution when making claims for refunds and to ensure that such claims are substantiated with supporting documents.
Part XIXD (new part)	Introduction of special provisions		Given Pangkor's new status,

Section amendment/ addition	Proposed change	Current state	Deloitte's view
	dealing with Pangkor, which include: <ul style="list-style-type: none"> • The non-application or application of Customs duties for the movement of goods to and from Pangkor • Declaration for the movement of goods in relation to Pangkor 		businesses should revisit how this will impact their shipment of goods involving this area.

Excise Act 1967

The Excise Act 1976 is to be amended by the proposed Excise (Amendment) Act 2019 (which has been passed by Parliament, but yet to be gazetted), effective from a date to be notified in the gazette.

One of the key proposed changes is to exclude Pangkor from the principal customs area (PCA). With this amendment, Pangkor will be regarded as a 'duty free island' similar to Labuan, Langkawi and Tioman. There are proposed new special provisions dealing with Pangkor and the treatment of excise duty in Pangkor relating to the importation and transportation of goods.

Further, extensive changes have been proposed to the definitions of terms, excise procedures, enforcement and control and penalties for non-compliance, amongst which are the following, in brief:

Definitions of terms

1. Definitions on words from the Customs Act 1967 and the proposed changes to that Act (vide the Customs (Amendment) Act 2019, which has also been passed by Parliament, but yet to be gazetted), have been included in the Excise Act 1976. These words include "road", "customs control", "duty free shop", "sea", "transit", "transshipment" and "conveyance".

Excise procedures

1. New procedures are introduced for goods in transit, including goods for transshipment. The new procedures are mainly in line with similar changes to the Customs Act 1967 under the Customs (Amendment) Act 2019.

2. For drawback procedure, the period for goods to be re-exported for the purposes of a drawback claim is reduced from 12 months to 3 months from the date the excise duty was paid.
3. Offsetting procedure is introduced for refunds, whereby any outstanding amount of excise duty, customs duty, sales tax, service tax etc., due to RMCD by a person may be offset by the DG of Customs, against any refund or drawback of excise duties owed by RMCD to that person. The power to offset is based on the DG's discretion.

Enforcement and control

1. The time-bar for demands to be made by RMCD for shortpaid excise duties etc, is increased to 6 years past (currently, the time bar is 3 years past).
2. The record-keeping obligation is enhanced: (a) to be applicable to every person (to the extent the records affect such person's obligations under the Excise Act 1976), (b) to include a more comprehensive list of records to be kept, including accounting, management and financial records, (c) to increase the record retention period to 7 years (currently, 6 years).

Penalties for non-compliance

1. Penalties for various excise offences have been increased.
2. New provisions introduced to provide for offences relating to data stored in computers, claim for drawback and claim for refund.
3. Enhanced compound for offences, whereby a senior officer of excise is empowered to compound up to 50% of the maximum fine for any compoundable offence, with the written consent of the Public Prosecutor.

Deloitte's view

The proposed changes to exclude Pangkor from the PCA is in line with the proposed changes made to the Customs Act 1967 and the Sales Tax Act 2018. The changes would affect the excise duty treatment of goods manufactured in Pangkor and the movement of goods inbound and outbound into/from Pangkor, based on the list of goods to be excluded from excise duty-free status (which are expected to be made known via a Ministerial gazette order).

For refund or drawback that is due to any claimant taxpayer, the claimant may only be given the balance if Customs decides to offset any excise duties/customs duties/other indirect taxes owed to Customs against the refund/drawback amount owed to taxpayer.

Licensed manufacturers, importers and other persons dealing with dutiable goods under the Excise Act are required to update themselves on the extensive changes proposed to strengthen enforcement and increase punishment for non-compliance. It is timely for businesses affected by excise duties, including the newly enacted excise duties on sugar-sweetened beverages (SSB), to review the level of compliance and changes required to their systems/procedures, to enhance compliance for excise legislation purposes.

For further details of the proposed changes as highlighted above, you can refer to the respective Bills in the Parliament's portal [here](#).

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