

A BILL

i n t i t u l e d

An Act to amend the Service Tax Act 2018.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Service Tax (Amendment) Act 2020.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Service Tax Act 2018 [*Act 807*], which is referred to as the “principal Act” in this Act, is amended in subsection 2(1)—

(a) by inserting after the definition of “this Act” the following definition:

‘ “goods” means all kinds of movable property;’;

- (b) in the English language text, in the definition of “foreign service provider”, by substituting for the words “for buying and selling” the words “for buying or selling”; and
- (c) by inserting after the definition of “foreign service provider” the following definition:

‘ “conveyance” includes any vessel, train, vehicle, aircraft or any other means of transport by which persons or goods can be carried; ’.

Amendment of section 18

3. Subsection 18(1) of the principal Act is amended by substituting for the words “immediately succeeding” the words “immediately preceding”.

Amendment of section 19

4. Paragraph 19(1)(a) of the principal Act is amended by substituting for the words “taxable services” the words “any taxable service”.

New section 20A

5. The principal Act is amended by inserting after section 20 the following section:

“Variation of registration

20A. (1) Where a registered person makes a notification under section 19, the Director General may vary the person’s registration or the particulars of the person’s registration from the date the registered person ceased to carry on business of providing any taxable service.

(2) Where there is no notification made under section 19 and the Director General is satisfied that a registered person has ceased to provide any taxable service or has ceased to be

liable to be registered under section 18, the Director General may vary the person's registration or the particulars of the person's registration from the date the registered person ceased to provide any taxable service.

(3) Where the Director General is satisfied that on the day on which the person was registered—

(a) in the case of a person who was registered under section 13, the person was not liable to be registered under section 12, was not providing any taxable service or has ceased to provide any taxable service; or

(b) in the case of a person who was registered under section 14, the person was not providing taxable service or has ceased to provide any taxable service,

the Director General may vary the registration of such person or the particulars of registration of such person with effect from the date as determined by the Director General in the notification in writing to such person.”.

Amendment of section 27

6. Subsection 27(1) of the principal Act is amended by substituting for the words “26(8), 26A(4)” the words “26(7), 26A(3)”.

Amendment of section 31

7. Paragraph 31(1)(b) of the principal Act is amended by substituting for the words “26(8) or 26A(4)” the words “26(7) or 26A(3)”.

Amendment of section 32

8. Subsection 32(2) of the principal Act is amended by substituting for the words “26(8) or 26A(4)” the words “26(7) or 26A(3)”.

New section 34A

9. The principal Act is amended by inserting after section 34 the following section:

“Refund by deduction of service tax

34A. (1) The Director General may direct any registered person to deduct the amount of refund against the amount of service tax to be paid from his return in section 26 if the registered person has been granted refund of service tax under paragraph 34(3)(b) or has made a deduction under section 23 or 39.

(2) Where after the deduction has been made under subsection (1), there is any balance in the amount of refund, the balance shall be refunded to the registered person by the Director General.

(3) Notwithstanding subsection (2), the Director General may withhold the whole or any part of any amount refundable under subsection (2) to be credited to any following or subsequent taxable period and the Director General shall treat the amount credited as payment or part payment received from the registered person.”.

Amendment of section 40

10. Section 40 of the principal Act is amended by deleting subsection (4).

Deletion of section 56A in Part IX

11. The principal Act is amended by deleting section 56A in Part IX.

Amendment of section 56A in Part IXA

12. Section 56A in Part IXA of the principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) The Director General may, upon application in writing by any foreign registered person and subject to such conditions as he deems fit, approve service tax on any digital service provided by the foreign registered person to be due at the time the invoice is issued.”.

New section 56GA

13. The principal Act is amended by inserting after section 56G the following section:

“Credit notes and debit notes

56GA. Where any digital service is provided by any foreign registered person which involves the issuance and receipt of credit notes or debit notes under the prescribed circumstances and conditions, such foreign registered person shall make deduction or addition of service tax in his returns accordingly, and the credit notes and debit notes shall contain the prescribed particulars.”.

Amendment of section 56H

14. Section 56H of the principal Act is amended—

(a) by inserting after subsection (4) the following subsection:

“(4A) A foreign registered person who ceases to be liable to be registered under section 56D shall furnish a return not later than thirty days or such later date containing particulars as the Director General may determine in respect of that part of the last taxable period during which the foreign registered person was registered.”;

(b) in subsection (6), by substituting for the words “subsections (4) and (5)” the words “subsections (4), (4A) and (5)”; and

(c) in paragraph (7)(a), by substituting for the words “subsection (4) or (5)” the words “subsection (4), (4A) or (5)”.

Amendment of section 62

15. Section 62 of the principal Act is amended—

- (a) in subsection (1), by inserting after the word “place” the words “or premises”; and
- (b) in subsection (3), by substituting for the words “or packages” the words “, packages or conveyance”.

New section 62A

16. The principal Act is amended by inserting after section 62 the following section:

“Power to seal

62A. (1) Where by reason of its nature, size or amount it is not practicable to remove any goods, documents, articles or things seized under this Act, a proper officer of service tax may, by any means, seal the goods, documents, articles or things, or the places, premises, receptacles, packages or conveyances in which the goods, documents, articles or things are found.

(2) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (1) or removes the goods, documents, articles, things, receptacles, packages or conveyances under seal, or attempts to do so, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.”.

New sections 63A and 63B

17. The principal Act is amended by inserting after section 63 the following sections:

“Additional powers

63A. (1) In addition to and without affecting the existing powers conferred under this Act, when escorting and guarding any person in custody, a proper officer of service tax shall

have all the powers of a police officer of the rank of Corporal and below and the powers of a prison officer of the rank of Sergeant and below under the Prison Act 1995 [Act 537].

(2) For the purposes of this Act—

(a) where an order, a certificate or any other act is required to be given, issued or done by an officer in charge of a Police District under any written law, such order, certificate or act may be given, issued or done by a senior officer of service tax, and for such purpose, the place where the order, certificate or act was given, issued or done shall be deemed to be a Police District under his charge; and

(b) a proper officer of service tax shall have all the powers conferred on an officer in charge of a police station under any written law, and for such purpose the office of such officer shall be deemed to be a police station.

Powers of enforcement, inspection and investigation

63B. For the purposes of this Act, a senior officer of service tax shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593] in relation to enforcement, inspection and investigation, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.”.

New section 65A

18. The principal Act is amended by inserting after section 65 the following section:

“Evidence of agent provocateur admissible

65A. (1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, and that the agent provocateur is a police officer of whatever rank or an officer of service tax, any statement, whether oral or in writing made to an agent provocateur by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.”.

New section 73A

19. The principal Act is amended by inserting after section 73 the following section:

“Improperly obtaining deduction of service tax

73A. Any person who causes or attempts to cause the deduction of service tax under subsection 23(1), 34A(1) or 39(2) for himself or for any other person of any amount in excess of the amount properly so deductible for him or for that other person commits an offence and shall, on conviction, be liable—

- (a) to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both; and
- (b) to a penalty of two times the amount deducted in excess of the amount properly so deductible.”.

Amendment of section 82

20. Subsection 82(1) of the principal Act is amended by substituting for the words “which is a registered person” the words “which is liable for any service tax due and payable”.

Amendment of section 83

21. Subsection 83(1) of the principal Act is amended—

- (a) by substituting for the words “a registered person” the words “any person who is liable for any service tax due and payable”;

- (b) by substituting for the words “disposing of any of the assets of the registered person” the words “disposing of any of the assets of the person”; and
- (c) by substituting for the words “provided by the registered person” the words “provided or imported taxable services acquired by the person”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Service Tax Act 2018 (“Act 807”).

- 2. *Clause 1* contains the short title of the proposed Act and the provision on the commencement of the proposed Act.
- 3. *Clause 2* seeks to amend subsection 2(1) of Act 807.

Subclauses 2(a) and (c) seek to provide for new definitions of “goods” and “conveyance”.

Subclause 2(b) seeks to amend the definition of “foreign service provider” in the English language text to make it consistent with the national language text.

- 4. *Clause 3* seeks to amend section 18 of Act 807 to provide for the historical method in calculating the total value of all of a registered person’s taxable services who ceases to liable to be registered in a period of twelve months. Currently, section 18 of Act 807 provides for the future method in calculating the total value of all his taxable services in a period of twelve months.

- 5. *Clause 4* seeks to amend paragraph 19(1)(a) of Act 807 to clarify that any registered person under section 13 or 14 of Act 807 who ceases to carry on business of providing any taxable service to notify the Director General in writing within thirty days from the date of cessation.

- 6. *Clause 5* seeks to introduce a new section 20A into Act 807 to provide for the variation of registration and particulars of registration of a registered person and the effective date of such variation.

- 7. *Clauses 6, 7 and 8* seek to amend subsection 27(1), paragraph 31(1)(b) and subsection 32(2) of Act 807 respectively as consequential amendments arising from the renumbering of—

- (a) subsection 26(7) as subsection 26(8) and subsection 26(8) as subsection 26(7); and
- (b) subsection 26A(4) as subsection 26A(3) and subsection 26A(3) as subsection 26A(4).

The renumbering was done vide the Service Tax (Amendment) Act 2019 [Act A1597].

8. *Clause 9* seeks to introduce a new section 34A into Act 807.

The proposed subsection 34A(1) seeks to empower the Director General to direct any registered person to deduct the amount of refund from the amount of service tax to be paid from his return under section 26.

The proposed subsection 34A(2) seeks to provide that where after a registered person has made a deduction under the proposed subsection 34A(1), there is any balance in the amount of the refund, the balance shall be refunded to the registered person by Director General.

The proposed subsection 34A(3) seeks to empower the Director General to withhold the whole or any part of any amount of refund to be credited to any following or subsequent taxable period.

9. *Clause 10* seeks to amend section 40 of Act 807 to extend the application of this section to a foreign registered person relating to the remission of service tax, surcharge accrued, or penalty, fee or other money payable, under Act 807.

10. *Clause 11* seeks to delete section 56A in Part IX of Act 807 and inserted it as a new section 63B in Part X by clause 17 of this Bill.

11. *Clause 12* seeks to introduce a new subsection (4A) into section 56A in Part IXA of Act 807. The proposed subsection (4A) seeks to empower the Director General, upon application, to approve service tax in respect of digital service provided by a foreign registered person to be due at the time the invoice is issued.

12. *Clause 13* seeks to introduce a new section 56GA into Act 807 to allow a foreign registered person to make deduction or addition of service tax in his return if credit notes or debit notes is issued under prescribed circumstances and conditions.

13. *Clause 14* seeks to introduce a new subsection (4A) into section 56H of Act 807. The proposed subsection (4A) seeks to require a foreign registered person who ceases to be liable to be registered under section 56D to furnish a return to the Director General.

14. *Clause 15* seeks to amend section 62 of Act 807.

Subclause 15(a) seeks to empower a proper officer of service tax to make any seizure in any premises.

Subclause 15(b) seeks to extend the application of section 62 relating to the seizure of any goods, documents, articles or things to all contents of any conveyance in which the goods, documents, articles or things are found.

15. *Clause 16* seeks to introduce new section 62A into Act 807.

The proposed subsection 62A(1) seeks to empower the proper officer of service tax to seal any goods, documents, articles or things, or the places, premises, receptacles, packages or conveyances in which the goods, documents, articles or things are found where by reason of their nature, size or amount it is not practicable to remove the goods, documents, articles or things seized.

The proposed subsection 62A(2) seeks to make it an offence for any person who without lawful authority, breaks, tampers with or damages the seal referred to in subsection (1) or removes the goods, documents, articles, things, receptacles, packages or conveyances under seal, or attempts to do so and to provide punishments for such offence.

16. *Clause 17* seeks to introduce new sections 63A and 63B into Act 807.

The proposed section 63A seeks to provide that a proper officer of service tax shall have all the powers of a police officer of the rank of Corporal and below and the powers of a prison officer of the rank of Sergeant and below under the Prison Act 1995 when escorting and guarding any person in custody. This proposed section also seeks to confer powers of an officer in charge of a police station on a proper officer of service tax, and for such purpose the office of the proper officer of service tax shall be deemed to be a police station.

This *clause* also seeks to insert the deleted section 56A in Part IX of Act 807 as a new section 63B of Act 807.

17. *Clause 18* seeks to introduce a new section 65A into Act 807 to provide for the credibility of an agent provocateur's evidence and the admissibility as evidence of any statement given to an agent provocateur, by a person who is subsequently charged with an offence under Act 807.

18. *Clause 19* seeks to introduce a new section 73A into Act 807 to make it an offence on any person who improperly obtains a deduction of service tax under Act 807.

19. *Clause 20* seeks to amend section 82 of Act 807 to require a liquidator of a company which is liable for any service tax due and payable to give notice of winding up of the company to the Director General. Currently, the obligation is imposed on a liquidator of a company which is a registered person.

20. *Clause 21* seeks to amend section 83 of Act 807 to require a receiver of the property of any person who is liable for any service tax due and payable to give notice of his appointment to the Director General and to set aside such sum out of the assets to provide for any service tax that is or will thereafter become due and payable in respect of the taxable services provided or imported taxable services acquired. Currently, the obligation is imposed on a receiver of a registered person.

21. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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