



## Indirect Tax Alert

### Indirect Tax Amendment Bills

On 10 December 2020, seven indirect tax amendment bills were tabled before the House of Representatives (*Dewan Rakyat*) of Parliament for the first reading. Since then, all but one of these bills have been passed in the House of Representatives, with the Windfall Profit Levy (Amendment) Bill 2020 being postponed to future parliamentary sittings. Six of the bills which have passed in the House are currently being tabled in the Senate (*Dewan Negara*), and once passed, these bills would be presented to the King (*Agong*) for royal assent before being published as an Act of Parliament in the official gazette. We anticipate that these steps should be completed prior to 31 December 2021.

This alert aims to analyse and provide an understanding of proposed key amendments to indirect taxes, brought about by these bills. We expect that once these Bills have been gazetted into Law, a number of Regulations and Orders will be gazetted that would provide additional details. We will provide our analysis subsequent to the release of these documents.

#### 1. Sales Tax (Amendment) Bill 2020

Current law	Proposed amendment	Deloitte's comments
<p><b><u>Cessation of liability to be registered</u></b></p> <p>Sec. 17(1) of Sales Tax Act 2018</p>	<p>Sec. 17(1) is proposed to be amended to state as follows -</p>	<p>The proposed change relates to the use of the historical method (i.e. 12 months immediately preceding</p>

<p>The registered manufacturer shall cease to be liable to be registered at the end of any month where the Director General (“DG”) is satisfied that the total sale value of all his taxable goods in that month and the eleven months <b><u>immediately succeeding that month</u></b> does not exceed the total sale value of taxable goods determined by the Minister.</p>	<p>The registered manufacturer shall cease to be liable to be registered at the end of any month where the DG is satisfied that the total sale value of all his taxable goods in that month and the eleven months <b><u>immediately preceding</u></b> that month does not exceed the total sale value of taxable goods determined by the Minister.</p>	<p>each month), to determine whether taxpayer has ceased to be liable for registration (i.e. fallen below the applicable registration threshold of RM500,000 of sale value of taxable goods).</p> <p>As taxpayer has a mandatory obligation to notify Customs on cessation of liability to register, the proposed amendment would seem to impose a compliance burden on taxpayer to monitor any applicable registration threshold on monthly basis for revolving past 12 months, and notify Customs in writing if it falls below that threshold.</p> <p>Taxpayer may provide grounds in the notification to Customs for DG to exercise discretion not to deregister despite taxpayer falling below any applicable registration threshold.</p>
<p><b><u>Refund via deduction of sales tax in return</u></b></p> <p>N/A</p>	<p>Introduction of new Sec. 35A of the Sales Tax Act 2018:</p> <p>(1) The DG may direct any registered manufacturer to deduct the amount of refund against the amount of sales tax to be paid from his return under Sec. 26 if the registered manufacturer has been granted refund of sales tax under Sec. 35(3)(c) or has made a deduction under Sec. 23 or Sec. 41A .</p>	<p>The proposed amendment does not appear to address ‘refund’ situations for deductions (from tax payable in current return) that are already authorized under the relevant deduction provisions in the law (as mentioned in the proposed amendment i.e. Sec. 23 – credit note/debit note - and Sec. 41A – ‘contra’ facility). The proposed amendment seems to be effectively applicable for deductions for refunds directed by the Minister of Finance</p>

	<p>(2) Where there is any balance in the amount of refund after the deduction has been made, the balance shall be refunded to the registered manufacturer by the DG.</p> <p>(3) The DG may withhold the whole or part of the amount of refund to be credited to any following or subsequent taxable period.</p>	<p>under Sec. 35(3)(c) of Sales Tax Act 2018.</p> <p>Nevertheless, Customs guidance may be expected to address all the above deductions to be deducted in current return, and any amount of such deduction in excess of tax payable in current return to be either refunded by Customs or directed by Customs to be carried forward for deduction in a future return.</p> <p>See also comments below on proposed amendment to offence of improperly obtaining deduction of sales tax.</p>
<p><b><u>Enforcement powers of Customs etc</u></b></p> <p>Various provisions under Part X and Part XI of the Sales Tax Act 2018</p>	<p>Sec. 69 (seizure of goods etc) is proposed to be amended.</p> <p>The proposed new sections are as below:</p> <ul style="list-style-type: none"> <li>• 69A – Power to Seal</li> <li>• 72B – Additional Power</li> <li>• 74A – Evidence of agent provocateur admissible</li> </ul>	<p>The proposals mainly amend or introduce provisions to enhance Customs enforcement powers in respect of sales tax.</p>
<p><b><u>Offence of improperly obtaining deduction of sales tax</u></b></p> <p>Sec. 88A of Sales Tax Act 2018 makes it an offence to improperly obtain a deduction of sales tax under section 41A (sales tax ‘contra’ facility)</p>	<p>The words “section 41A” under Sec. 88A have been proposed to be replaced with the words “section 23, 35A or 41A”.</p>	<p>Before the proposed amendment, the offence of improperly obtaining deduction (effectively over-deduction) is limited to deduction (in sales tax return) for sales tax on taxable materials acquired via the ‘contra’ facility under Sec. 41A.</p> <p>The proposed amendment extends the offence of over-deduction of sales tax</p>

		<p>to the following deductions:</p> <ul style="list-style-type: none"> <li>• due to credit note/debit note adjustments under Sec. 23; and</li> <li>• due to refund of sales tax deducted via return, under the proposed new Sec. 35A (see above comments on the proposed new Sec. 35A).</li> </ul> <p>The criminal penalty (on court conviction) for non-compliance is 2 times the amount in excess of the correct deduction amount, which can be in addition to fine and imprisonment term.</p> <p>Businesses have to monitor compliance with all deductions made in a return, to avoid any risk of the criminal penalty.</p>
<p><u>Liquidator of company to give notice of winding-up, and set aside sales tax</u></p> <p>Sec. 97 of Sales Tax Act 2018</p>	<p>The proposed amendment to Sec. 97 (1) is to replace the words “company which is a registered manufacturer or an importer with “<b>company which is liable for any sales tax due and payable.</b>”</p>	<p>With the proposed amendment, the liquidator is also obliged to give notice and set aside sales tax due and payable for any company which is liable for sales tax, not only registered manufacturer or an importer.</p> <p>Failure to comply is an offence and the liquidator upon conviction would be liable to a fine of <b>no more than RM10,000.</b></p>
<p><u>Appointment of receiver to be notified to Director General</u></p> <p>Sec. 98 of Sales Tax Act 2018</p>	<p>The proposed amendment to Sec. 98(1) is to replace the words “company which is a registered manufacturer or an importer with “<b>company which is liable for any sales tax due and payable.</b>”</p>	<p>With the proposed amendment, the receiver is also obliged to give notice and set aside sales tax due and payable for any company which is liable for sales tax, not only registered</p>

		<p>manufacturer or an importer.</p> <p>Failure to comply is an offence and the receiver upon conviction would be liable to a fine of no more than RM10,000.</p>
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## 2. Service Tax (Amendment) Bill 2020

Current law	Proposed amendment	Deloitte's comments
<p><b><u>Definitions</u></b></p> <p>Sec. 2 of the Service Tax Act 2018 covers definitions.</p>	<p>Insertion of new definitions -</p> <ul style="list-style-type: none"> <li>• “goods” - means “all kinds of movable property”</li> <li>• “conveyance” – “includes any vessel, train, vehicle, aircraft or any other means of transport by which persons or goods can be carried”</li> </ul> <p>Substitution in the definition of “foreign service provider” -</p>	<p>The proposed amendments define some of the terms in the Act and also seek to make the definition of “foreign service provider” in the English text of the Act to be consistent with the National Language text.</p>
<p>“foreign service provider” means any person who is outside Malaysia providing any digital service to a consumer and includes any person who is outside Malaysia operating an online platform for <b><u>buying and selling goods</u></b> or providing services (whether or not such person provides any digital service) and who makes transactions for provision of digital services on behalf of any person.</p>	<p>“foreign service provider” means any person who is outside Malaysia providing any digital service to a consumer and includes any person who is outside Malaysia operating an online platform for <b><u>buying or selling goods</u></b> or providing services (whether or not such person provides any digital service) and who makes transactions for provision of digital services on behalf of any person.</p>	
<p><b><u>Cessation of liability to be registered</u></b></p> <p>Sec. 18 (1) states -</p>	<p>Sec. 18(1) is proposed to be amended to state as follows -</p>	<p>The amendment is similar to an amendment made to the Sales Tax Act 2018 – see above.</p>

<p>Any registered person shall cease to be liable to be registered at the end of any month where the Director General (“DG”) is satisfied that the total value of all his taxable services in that month and the eleven months <b><u>immediately succeeding</u></b> that month does not exceed the total value of taxable services determined by the Minister.</p>	<p>Any registered person shall cease to be liable to be registered at the end of any month where the Director General (“DG”) is satisfied that the total value of all his taxable services in that month and the eleven months <b><u>immediately preceding</u></b> that month does not exceed the total value of taxable services determined by the Minister.</p>	<p>The proposed change is the use of the historical method (i.e. 12 months immediately preceding each month), to determine whether taxpayer has ceased to be liable for registration (i.e. fallen below any applicable registration threshold – <u>generally</u> RM500,000 of value of taxable services).</p> <p>As taxpayer has a mandatory obligation to notify Customs on cessation of liability to register, the proposed amendment would seem to impose a compliance burden on taxpayer to monitor any applicable registration threshold on monthly basis for revolving past 12 months, and notify Customs in writing if it falls below that threshold.</p> <p>Taxpayer may provide grounds in the notification to Customs for DG to exercise his discretion to not deregister the taxpayer despite it falling below any applicable registration threshold.</p>
<p><b><u>Power to vary taxpayer’s registration or particulars of registration</u></b></p> <p>N/A</p>	<p>Introduction of new Sec. 20A -</p> <p>(1) Where a registered person makes a notification of cessation of liability, the DG 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.</p>	<p>The proposed amendment will give the DG the power to vary taxpayer’s registration or particulars of registration and to determine the effective date of such variation, which the DG has to notify in writing to taxpayer.</p>

	<p>(2) Where there is no notification of cessation of liability made and the DG is satisfied that a registered person has ceased to provide any taxable service or has ceased to be liable to be registered, the DG 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.</p> <p>(3) Where the DG is satisfied that on the day on which the person was registered -</p> <p>(a) in the case of a person who was registered by way of application in the prescribed form, the person was not liable to be registered, was not providing any taxable service or has ceased to provide any taxable service; or</p> <p>(b) in case of a person who was registered on a voluntary basis, the person was not providing any taxable service or has ceased to provide any taxable service</p> <p>the DG may vary the registration of such person or the particulars of the registration with effect from the date as determined by the DG in writing.</p>	
<p><b><u>Power to assess tax</u></b></p> <p>Sec. 27(1) states -</p> <p>Where any taxable person -</p>	<p>Sec. 27(1) is proposed to be amended to state as follows -</p> <p>Where any taxable person -</p>	<p>The proposed amendments are merely to renumber the relevant subsections, as a consequence of amendments introduced via the</p>

<p>(a) fails to apply for registration under Sec. 13</p> <p>(b) fails to furnish a return under Sec. 26; or</p> <p>(c) furnishes a return which appears to the DG to be incomplete or incorrect;</p> <p>the DG may assess to the best of his judgment the amount of service tax due and payable, and the penalty payable under subsection <b><u>26(8)</u></b>, <b><u>26A(4)</u></b> if any, by the taxable person and shall forthwith notify him of the assessment in writing.</p>	<p>(a) fails to apply for registration under Sec. 13</p> <p>(b) fails to furnish a return under Sec. 26; or</p> <p>(c) furnishes a return which appears to the DG to be incomplete or incorrect;</p> <p>the DG may assess to the best of his judgment the amount of service tax due and payable, and the penalty payable under subsection <b><u>26(7)</u></b>, <b><u>26A(3)</u></b> if any, by the taxable person and shall forthwith notify him of the assessment in writing.</p>	<p>Service Tax (Amendment) Act 2019.</p>
<p><b><u>Recovery of service tax from persons about to leave Malaysia</u></b></p> <p>Sec. 31 (1)(b) states -</p> <p>Where the DG has reasons to believe that any person is about or is likely to leave Malaysia without paying -</p> <p>any penalty payable by him under subsection <b><u>26(8)</u></b>, <b><u>26A(4)</u></b></p>	<p>Sec. 31(1) is proposed to be amended to state as follows -</p> <p>Where the DG has reasons to believe that any person is about or is likely to leave Malaysia without paying -</p> <p>any penalty payable by him under subsection <b><u>26(7)</u></b>, <b><u>26A(3)</u></b></p>	<p>The proposed amendments are merely to renumber the relevant subsections, as a consequence of amendments introduced via the Service Tax (Amendment) Act 2019.</p>
<p><b><u>Payment by instalments</u></b></p> <p>Sec. 32 (2) states -</p> <p>Where the service tax is allowed to be paid by instalments, the penalty under subsection <b><u>26(8)</u></b> or <b><u>26A(4)</u></b> shall cease to be calculated from the date the DG allows the payment by instalments.</p>	<p>Sec. 32(2) is proposed to be amended to state as follows -</p> <p>Where the service tax is allowed to be paid by instalments, the penalty under subsection <b><u>26(7)</u></b> or <b><u>26A(3)</u></b> shall cease to be calculated from the date the DG allows the payment by instalments.</p>	<p>The proposed amendments are merely to renumber the relevant subsections, as a consequence of amendments introduced via the Service Tax (Amendment) Act 2019.</p>
<p><b><u>Refund via deduction of service tax in return</u></b></p> <p>N/A</p>	<p>Introduction of new Sec. 34A:</p>	<p>The proposed amendment is similar to a proposed amendment to</p>



	<p>(4) The DG may direct any registered person to deduct the amount of refund against the amount of service tax to be paid from his return under Sec. 26 if the registered person has been granted refund of service tax under Sec. 34(3)(b) or has made a deduction under Sec. 23 or Sec. 39.</p> <p>(5) Where there is any balance in the amount of refund after the deduction has been made, the balance shall be refunded to the registered person by the DG.</p> <p>(6) The DG may withhold the whole or part of the amount of refund to be credited to any following or subsequent taxable period.</p>	<p>introduce a new section 35A into the Sales Tax Act 2018 – see above.</p> <p>The proposed amendment does not appear to address ‘refund’ situations for deductions (from tax payable in current return) that are already authorized under the relevant deduction provisions in the law (as mentioned in the proposed amendment i.e. Sec 23 – credit note/debit note - and Sec 39 – deduction for termination of taxable service etc). The proposed amendment seems to be effectively applicable for deductions for refunds directed by the Minister of Finance under Sec. 34(3)(b) of the Service Tax Act 2018.</p> <p>Nevertheless, Customs guidance may be expected to address all the above deductions to be deducted in current return, and any amount of such deduction in excess of tax payable in current return to be either refunded by Customs or directed by Customs to be carried forward for deduction in a future return.</p> <p>See also below proposed new offence for improperly obtaining deduction of service tax.</p>
<p><b><u>Remission of service tax</u></b></p> <p>Sec. 40 states -</p> <p>The Minister may remit the whole or part of the service tax due, surcharge accrued or</p>	<p>Deletion of subsection 40(4)</p>	<p>Under the proposed amendment, foreign registered person would be able to apply for remission of service tax, surcharge accrued or penalty, fee or other money payable.</p>

<p>penalty, fee or other money payable where he deems fit.</p> <p>Subsection 40(4) states that the above does not apply to a foreign registered person</p>		
<p><b><u>Digital services - powers of enforcement etc</u></b></p> <p>Sec. 56A in Part IX</p>	<p>Deletion of Sec. 56A in Part IX and inserted as a new Sec. 63B in part X</p>	<p>The proposed amendment merely rearranges an existing provision of the Act (section 56A), as a new Sec. 63B.</p>
<p><b><u>Digital services - when is tax due</u></b></p> <p>Sec. 56A (4) in Part IX A states that -</p> <p>Service tax charged on the digital service provided to the consumer shall be due at the time when the payment for the digital service is received by the foreign registered person.</p>	<p>Introduction of new Sec. 56A (4A) -</p> <p>The DG 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 invoice is issued.</p>	<p>The proposed amendment seeks to codify the current administrative concession of Customs that a foreign registered person is allowed to account for service tax on digital services, on invoice basis, upon approval from DG.</p>
<p><b><u>Digital services - credit notes and debit notes</u></b></p> <p>N/A</p>	<p>Introduction of new Sec. 56G A -</p> <p>Where any digital service is provided by any foreign registered person which involves the issuance and receipt of credit 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.</p>	<p>The proposed amendment seeks to codify the current Customs practice (in a Customs Guide) that a foreign registered person is allowed to issue credit and/or debit notes.</p> <p>However, the Customs Guide is not clear whether any adjustment (deduction/addition) would have to be made in the service tax return arising from the credit note/debit note. The proposed amendment makes it clear that an adjustment has to be made in the return.</p> <p>Amendments are expected to be made to</p>

		the Service Tax (Digital Services) Regulations 2020, to prescribe further details on the adjustment to be made in the return and other related compliance matters.
<p><b><u>Digital services - taxable period and accounting for service tax</u></b></p> <p>NA</p> <p>Sec. 56H (6) -</p> <p>The return referred to in subsections <b><u>(4) and (5)</u></b> shall be furnished whether or not there is service tax to be paid.</p> <p>Sec. 56H (7) (a) -</p> <p>Any registered person who contravenes subsection <b><u>(4) or (5)</u></b></p>	<p>Introduction of new Sec. 56H (4A)</p> <p>A foreign registered person who ceases to be liable to be registered shall furnish a return not later than thirty days or such later date containing particulars as the DG may determine in respect of that part of the last taxable period during which the foreign registered person was registered.</p> <p>The return referred to in subsections <b><u>(4), (4A) and (5)</u></b> shall be furnished whether or not there is service tax to be paid.</p> <p>Any registered person who contravenes subsection <b><u>(4), (4A) or (5)</u></b></p>	<p>With the proposed amendment, a foreign registered person will be required to file their last return for the last taxable period before deregistration. Even where there are no taxes to be paid, the company must file a “Nil” return.</p> <p>Foreign registered persons should adhere to compliance matters including filing of returns, until a confirmation from Customs is obtained on the deregistration for service tax.</p>
<p><b><u>Enforcement powers of Customs etc</u></b></p> <p>Various provisions in Part X and XI of the Service Tax Act 2018.</p>	<p>Sec. 62(1) and Sec. 62(3) are proposed to be amended.</p> <p>Introduction of new sections below:</p> <p>62A – Power to Seal 63A – Additional Powers</p>	<p>The proposals mainly amend or introduce provisions to enhance Customs enforcement powers in respect of service tax.</p> <p>The proposed amendments are largely similar to proposed amendments</p>

	63B – Powers of Enforcement, Inspection and Investigation 65A - Evidence of agent provocateur admissible	to the Sales Tax Act 2018 – see above.
<p><b><u>Offence of improperly obtaining deduction of service tax</u></b></p> <p>N/A</p>	<p>Introduction of new Sec. 73A -</p> <p>Any person who causes or attempts to cause the deduction of service tax (under sections 23, 34A or 39), 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 -</p> <p>(a) to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or to both; and</p> <p>(b) to a penalty of two times the amount deducted in excess of the amount properly so deductible</p>	<p>The proposed amendment introduces an offence of improperly obtaining deduction (effectively over-deduction) of service tax in a service tax return, similar to sales tax (see above.)</p> <p>The criminal penalty (on court conviction) is 2 times the amount in excess of the correct deduction amount, which can be in addition to fine and imprisonment term.</p> <p>The deductions of service tax are due to the following:</p> <ul style="list-style-type: none"> <li>• credit note/debit note adjustments under Sec. 23;</li> <li>• deductions for termination of taxable service etc under Sec.39; and</li> <li>• refund of service tax deducted via return, under the proposed new Sec. 34A (see above comments on the proposed new Sec. 34A).</li> </ul> <p>Businesses have to monitor compliance with all deductions made in a return, to avoid any risk of the criminal penalty.</p>
<p><b><u>Liquidator of company to give notice of winding up and set aside service tax</u></b></p> <p>Sec. 82(1)</p>	<p>The proposed amendment to Sec. 82 (1) is to replace the words “a registered person” with “any person who is liable for any service tax <b>due and payable.</b>”</p>	<p>With the proposed amendment, the liquidator of a company is also obliged to give notice and set aside any service tax due and payable by any person who is liable for service tax, not only the registered person. This</p>

		<p>could cover persons (not registered) who are liable to account for service tax on imported taxable service.</p> <p>Failure to comply is an offence and the liquidator upon conviction would be liable to a fine of no more than RM10,000.</p> <p>The proposed amendment is similar to a proposed amendment to the Sales Tax Act 2018 – see above.</p>
<p><b><u>Appointment of receiver to be notified to DG</u></b></p> <p>Sec. 83 (1)</p>	<p>The proposed amendment to Sec. 83 (1) is to replace the words:</p> <p>a) “a registered person” with <b>“any person who is liable for any service tax due and payable”</b></p> <p>b) “disposing of any of the assets of the registered person” with <b>“disposing of any assets of the person”</b></p> <p>c) “provided by the registered person” with <b>“provided or imported taxable services acquired by the person”</b></p>	<p>With the proposed amendment, the receiver is obliged to give notice and set aside any service tax due and payable by any person who is liable for service tax, not only registered person. This could cover persons (not registered) who are liable to account for service tax on imported taxable service.</p> <p>Failure to comply is an offence and the receiver upon conviction would be liable to a fine of no more than RM10,000.</p> <p>The proposed amendment is similar to a proposed amendment to the Sales Tax Act 2018 – see above.</p>

### 3. Customs (Amendment) Bill 2020

Current law	Proposed amendment	Deloitte’s comments
<p><b>‘Trading’ drawback</b></p> <p>Sec. 93(1) of the Customs Act 1967 states inter alia:</p>	<p>Sec. 93(1) is proposed to be amended to state, as follows –</p> <p>“When any goods, other than goods affected by section 96,</p>	<p>The amendment merely provides clarity that it is the Director General of Customs who has the discretionary power to approve any drawback</p>

<p>“When any goods, other than goods affected by section 96, upon which customs duty has been paid are re-exported, nine-tenths of the duties calculated in accordance with subsection (2) may be repaid as drawback...”</p>	<p>upon which customs duty has been paid are re-exported, the Director General may allow nine-tenths of the duties calculated in accordance with subsection (2) be repaid as drawback...”</p>	<p>claim in accordance with Sec. 93 of the Act. This is consistent with the current practice adopted by Customs.</p>
<p><b><u>‘Manufacturing’ drawback</u></b></p> <p>Sec. 99(1) of the Act allows a manufacturer to claim a full drawback of the customs duty paid on imported goods used in the manufacture of goods or the packing of such manufactured goods, subject to the conditions as prescribed in the Act.</p>	<p>An additional condition is to be included in Sec. 99(1) for drawback claim –</p> <p>“(f) the drawback claimed in respect of any one consignment of re-exported goods is not less than two hundred ringgit.”</p>	<p>Moving forward, businesses will need to be mindful that the minimum amount for a drawback claim is RM200 for any one consignment of exported goods.</p>
<p><b>Enforcement powers of Customs etc.</b></p> <p>N/A</p>	<p>Introduction of new sections 106C, 114(3A), 114(3B) and 116E.</p>	<p>The proposed amendments mainly introduce provisions to enhance Customs enforcement powers under the Act.</p>

#### 4. Excise (Amendment) Bill 2020

Current law	Proposed amendment	Deloitte’s comments
<p><b><u>‘Manufacturing’ drawback</u></b></p> <p>Sec. 19(1) of the Excise Act 1976 allows a manufacturer to claim a full drawback of the excise duty paid on goods used in the manufacture of goods or the packing of such manufactured goods, subject to the conditions as prescribed in the Act.</p>	<p>An additional condition is to be included in Sec. 19(1) for drawback claim -</p> <p>“(e) the drawback claimed in respect of any one consignment of exported goods is not less than two hundred ringgit.”.</p>	<p>Moving forward, businesses will need to be mindful that the minimum amount for a drawback claim is RM200 for any one consignment of exported goods.</p> <p>The proposed amendment is similar to an amendment made to the Customs Act 1967 – see above.</p>
<p><b><u>‘Trading’ drawback</u></b></p> <p>Sec. 19A(1) of the Excise Act 1976 states inter alia:</p>	<p>Sec. 19A(1) is proposed to be amended to state, as follows-</p> <p>“When any imported goods, other goods</p>	<p>The amendment merely provides clarity that it is the Director General of Customs who has the discretionary power to approve any drawback</p>

“When any imported goods, other goods affected under section 19E upon which excise duty has been paid, are re-exported, nine-tenths of the duties calculated in accordance with subsection (2) may be repaid as drawback ...”	affected under section 19E upon which excise duty has been paid, are re-exported, the Director General may allow nine-tenths of the duties calculated in accordance with subsection (2) be repaid as drawback ...”	claim in accordance with Sec. 19A(1) of the Act.  The proposed amendment is similar to an amendment made to the Customs Act 1967 – see above.
<b>Enforcement powers of Customs etc.</b>  N/A	Introduction of new sections 50B, 54(3A), 54(3B) and 56E.	The proposed amendments mainly introduce provisions to enhance Customs enforcement powers under the Act.

## 5. Free Zones (Amendment) Bill 2020

Current law	Proposed amendment	Deloitte’s comments
N/A	The proposed amendments mainly introduce provisions to enhance Customs enforcement powers in respect of free zones.	Businesses operating in the free zones should comply and cooperate with Customs officials to ensure smooth business operations.

## 6. Tourism Tax (Amendment) Bill 2020

Current law	Proposed amendment	Deloitte’s comments
<b>Territorial and extra-territorial application</b>  Insertion of new sec. 1A	<b>1A.</b> (1) This Act and its subsidiary legislation shall apply both within and outside Malaysia.  (2) Notwithstanding subsection (1), this Act and its subsidiary legislation shall apply to any person of whatever nationality or citizenship, beyond the geographical limits of Malaysia and the territorial waters of Malaysia, if the person is a digital platform service provider registered under section 20D.	This amendment expands the scope of the tax to both within Malaysia and outside of Malaysia, to enable the inclusion of digital platforms operating outside Malaysia.
<b>Interpretations</b>  Amendment of sec. 2 – Addition of new definitions	“Digital platform service provider” means any person who provides service relating to online booking accommodation premises to a tourist whether such person is in Malaysia or outside Malaysia.	The definition of digital platform service provider is broad and appears to include any platform, website or similar that is operating that

	<p>“Service relating to online booking accommodation premises” means any online service relating to the booking of accommodation premises that is delivered automatically over the internet or any other electronic network.</p>	<p>would provide a facility for the booking of accommodation premises in Malaysia. The definition covers scenarios where the service provider is within or outside of Malaysia, and where the person booking the room is in Malaysia or outside of Malaysia.</p>
<p><b>Power of Minister to exempt</b></p> <p>Subsection 9(1)(b) and 9(1)(c)</p> <p>(b) exempt any operator or class of operator from collecting the whole or any part of the tourism tax.</p> <p>(c) exempt any operator or class of operator from the requirement to register under Part IV.</p>	<p>(b) exempt any operator, class of operator, <u>digital platform service provider or class of digital platform service provider</u> from collecting the whole or any part of the tourism tax.</p> <p>(c) exempt any operator, class of operator, <u>digital platform service provider or class of digital platform service provider</u> from the requirement to register under Part IV or Part VA.</p>	<p>This amendment would allow the Minister of Finance to also provide exemptions to digital platform service providers from collecting tourism tax like it currently does for other providers.</p>
<p><b>Cancellation of registration</b></p> <p>Insertion of new subsection 13(3)</p>	<p>(3) Where there is no notification made under subsection (1) and the Director General is satisfied that the operator has ceased to operate an accommodation premises or is exempted under section 9, the Director General may cancel the operator’s registration from the date the operator ceased to operate the accommodation premises or from the date the operator is exempted or from such later date as the Director General may determine, as the case may be.</p>	<p>This amendment would empower the Director General to cancel the registration of an operator if the Director General is satisfied that the operator has ceased to operate an accommodation premises or is exempted under sec. 9.</p>
<p><b>Invoice, receipt, or other document</b></p> <p>Amendment of subsection 14(1)</p>	<p>14. (1) Every operator shall <u>within thirty days from the date the accommodation is provided or such extended period as may be approved by the Director</u></p>	<p>This amendment imposes a time requirement of thirty days from the date of the</p>



<p>14. (1) Every operator shall issue an invoice, receipt or other document in the national language or in the English language to a tourist in respect of the accommodation provided and shall state the rate and amount of tourism tax payable separately from the charges for the accommodation provided by the operator.</p>	<p><u>General</u>, issue an invoice, receipt or other document in the national language or in the English language to a tourist in respect of the accommodation provided and shall state the rate and amount of tourism tax payable separately from the charges for the accommodation provided by the operator.</p>	<p>stay for issuance of a compliant invoice to the customer.</p>
<p><b>Taxable period</b></p> <p>Insertion of new subsections 18(3), 18(4) and 18(5)</p>	<p>(3) Notwithstanding subsection (1), an operator may apply in writing to the Director General for another taxable period.</p> <p>(4) The Director General may, upon receiving any application under subsection (3)—</p> <p>(a) allow the application and the taxable period shall be the period as applied for;</p> <p>(b) refuse the application and the taxable period shall remain as determined under subsection (1); or</p> <p>(c) vary the length of the taxable period or the date on which the taxable period begins or ends.</p> <p>(5) Notwithstanding subsection (1) or (4), the Director General may, as he deems fit, reassign any other taxable period for the operator.</p>	<p>This amendment empowers the Director General to change the taxable period as requested by an operator. This clause also empowers the Director General to determine any other taxable period for the operator.</p>
<p><b>Imposition of tourism tax</b></p> <p>Insertion of new sec. 20A</p>	<p><b>20A.</b> (1) Notwithstanding section 6, tourism tax shall be charged and levied on a tourist staying at any accommodation premises made available through service relating to online booking accommodation premises provided by a digital platform service provider at the rate fixed in accordance with section 8.</p> <p>(2) It shall be the duty of the tourist to pay the tourism tax to</p>	<p>The proposed new sec. 20A shifts the obligation from collecting tourism tax from the hotel operator to the platform provider in the circumstances where the platform is being “paid by the</p>

	<p>the digital platform service provider.</p> <p>(3) Where tourism tax for an accommodation premises made available through service relating to online booking accommodation premises has been paid by the tourist to the digital platform service provider, the operator shall not collect the tourism tax from the tourist, provided that the tourist shall submit proof of such payment.</p>	<p>tourist". There appears to be no distinction made if the platform is acting in a principal or reseller capacity.</p> <p>It is critical to note that where there is no evidence provided that the platform has collected the tax, the local accommodation provider can still be held liable for collecting the tax.</p>
<p><b>Duty of digital platform service provider to collect tourism tax and pay tourism tax collected to Director General</b></p> <p>Insertion of new sec. 20B</p>	<p><b>20B.</b> (1) Every digital platform service provider who made available an accommodation premises through service relating to online booking accommodation premises shall collect the tourism tax from the tourist.</p> <p>(2) Every digital platform service provider shall pay the tourism tax collected or liable to be collected under this Act to the Director General.</p>	<p>The proposed sec. 20B is linked with subsection 20A(1) and then makes the platform liable to collect, report and pay the tax to the authorities.</p>
<p><b>Liability of digital platform service provider to be registered</b></p> <p>Insertion of new sec. 20C</p>	<p><b>20C.</b> (1) Every digital platform service provider shall be liable to be registered under this Part and for such purpose shall apply to the Director General to be registered, in the manner as may be prescribed.</p> <p>(2) The application for registration referred to in subsection (1) shall be made within thirty days from the date the digital platform service provider provides the service relating to online booking accommodation premises in which the accommodation premises is in Malaysia.</p> <p>(3) Every digital platform service provider who provides service relating to online booking accommodation premises in which the accommodation premises is in Malaysia before</p>	<p>The proposed sec. 20C seeks to require that every digital platform service provider who provides the service relating to online booking accommodation premises in which the accommodation premises is in Malaysia has to apply for registration to the Director General in the prescribed form.</p> <p>The proposed sec. also seeks to require such digital platform</p>

	<p>the coming into operation of this Part, shall not later than three months before the date of the coming into operation of this Part, apply to the Director General to be registered in the manner as may be prescribed.</p> <p>(4) Every digital platform service provider who contravenes subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>	<p>service provider to apply to Director General to be registered within 30 days from the date the digital platform service provider provides such service. The proposed sec. further seeks to require a digital platform service provider who provides the service relating to online booking accommodation premises in which the accommodation premises is in Malaysia before the coming into operation of a new Part VA to apply to Director General to be registered not later than three months before the date of the coming into operation of the Part VA.</p>
<p><b>Registration of digital platform service provider</b></p> <p>Insertion of new sec. 20D</p>	<p><b>20D.</b> (1) The Director General shall register any digital platform service provider who makes an application for registration under subsection 20C(1) or (3) with effect from the first day of the following month after the application is submitted to the Director General.</p> <p>(2) Notwithstanding subsection (1), the Director General shall have the power to register any digital platform service provider who is not registered under subsection (1) with effect from the first day of the following month after the information relating to the operation of the digital platform service provider became known or is made known to the Director General.</p>	<p>The proposed sec. 20D seeks to provide that the Director General shall register any digital platform service provider who makes an application to be registered under subsection 20C(1) or (3). The proposed sec. also empowers the Director General to register any digital platform service provider who is not registered under subsection (1) after the information</p>

		relating to the operation of the digital platform service provider became known or is made known to the Director General.
<p><b>Cancellation of registration</b></p> <p>Insertion of new sec. 20E</p>	<p><b>20E.</b> (1) Any digital platform service provider who ceases to provide service relating to online booking accommodation premises in Malaysia or is exempted under section 9 from the requirement to register under Part VA shall notify the Director General in writing of the fact and the date thereof within thirty days from the date of cessation.</p> <p>(2) Upon receipt of the notification under subsection (1), the Director General may cancel the digital platform service provider's registration from such date as the Director General may determine.</p> <p>(3) Where there is no notification made under subsection (1) and the Director General is satisfied that a digital platform service provider has ceased to provide service relating to online booking accommodation premises in Malaysia or is exempted under section 9 from the requirement to register under Part VA, the Director General may cancel his registration from the date the digital platform service provider ceased to provide service relating to online booking accommodation premises in Malaysia or from the date the digital platform service provider is exempted from the requirement to register or from such later date as the Director General may determine, as the case may be.</p>	The proposed sec. 20E deals with cancellation of registration of a digital platform provider and the effective date of such cancellation as determined by the Director General.
<p><b>Invoice, receipt or other document</b></p> <p>Insertion of new sec. 20F</p>	<p><b>20F.</b> (1) Every digital platform service provider shall, within thirty days from the date the accommodation premises is made available or such extended period as may be approved by</p>	The proposed sec. 20F seeks to require any digital platform service provider who provides

	<p>the Director General, issue an invoice, a receipt or other document in the national language or in the English language to a tourist in respect of the accommodation premises made available through service relating to online booking accommodation premises and shall state the amount of tourism tax payable separately from any other charges imposed on the tourist.</p> <p>(2) The invoice, receipt or other document referred to in subsection (1) may be issued electronically or in physical form.</p> <p>(3) Any digital platform service provider who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.</p>	<p>service relating to online booking accommodation premises to issue an invoice, a receipt or other document to a tourist in respect of the transaction.</p>
<p><b>Credit note and debit note</b></p> <p>Insertion of new sec. 20G</p>	<p><b>20G.</b> Where a digital platform service provider issues a credit note or debit note containing the prescribed particulars under the prescribed circumstances and conditions, the digital platform service provider shall make adjustment in his returns accordingly.</p>	<p>The proposed sec. 20G seeks to provide that where a digital platform service provider issue a credit note or debit note, the digital platform service provider shall make adjustment in his return accordingly.</p>
<p><b>Taxable period</b></p> <p>Insertion of new sec. 20H</p>	<p><b>20H.</b> (1) The taxable period for a digital platform service provider shall be a period of three months ending on the last day of any month of any calendar year.</p> <p>(2) The digital platform service provider may apply in writing to the Director General for a taxable period other than a period as determined under subsection (1).</p> <p>(3) The Director General may, upon receiving any application under subsection (2)—</p>	<p>The proposed sec. 20H seeks to provide for a taxable period for a digital platform service provider and the power of the Director General to vary the taxable period.</p>

	<p>(a) allow the application and the taxable period shall be the period as applied for;</p> <p>(b) refuse the application and the taxable period shall remain as determined under subsection (1); or</p> <p>(c) vary the length of the taxable period or the date on which the taxable period begins or ends.</p> <p>(4) The Director General may, as he deems fit, reassign the digital platform service provider to any taxable period other than the period to which has been previously determined under subsection (1) or (3).</p>	
<p><b>Furnishing of returns and payment of tourism tax</b></p> <p>Insertion of new sec. 20I</p>	<p><b>20I.</b> (1) Every digital platform service provider shall, in respect of his taxable period, account for the tourism tax received in a return as may be prescribed and the return shall be furnished to the Director General in the prescribed manner not later than the last day of the month following after the end of the digital platform service provider's taxable period to which the return relates.</p> <p>(2) Every digital platform service provider who is required to furnish a return under this section shall pay to the Director General the amount of tourism tax due and payable by the digital platform service provider in respect of the taxable period to which the return relates not later than the last day on which the digital platform service provider is required to furnish the return.</p> <p>(3) Any digital platform service provider who ceases to be registered under section 20d shall, not later than thirty days after so ceasing or such later date as the Director General may allow, furnish a return containing particulars as the</p>	<p>The proposed sec. 20I seeks to require the digital platform service provider to account for tourism tax received in a return as may be prescribed. The proposed sec. also requires the digital platform service provider to pay to the Director General the amount of tourism tax due and payable in respect of the taxable period to which a return relates.</p>

Director General may determine in respect of that part of the last taxable period during which the digital platform service provider was registered.

(4) The return referred to in subsection (1) shall be furnished whether or not there is tourism tax to be paid.

(5) Any digital platform service provider who fails to furnish the return as required under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(6) Any digital platform service provider who fails to pay to the Director General the amount of tourism tax due and payable under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(7) Where any tourism tax due and payable is not paid wholly or partly by any digital platform service provider after the last day on which it is due and payable under subsection (2) and no prosecution is instituted, the digital platform service provider shall pay—

(a) for the first thirty-day period that the tourism tax is not paid wholly or partly after the expiry of the period specified under subsection (2), a penalty of ten percent of the amount of tourism tax remain unpaid;

(b) for the second thirty-day period that the tourism tax is not paid wholly or partly after the expiry of the period specified under subsection (2), an additional penalty of ten percent of the amount

	<p>of tourism tax remain unpaid; and</p> <p>(c) for the third thirty-day period that the tourism tax is not paid wholly or partly after the expiry of the period specified in subsection (2), an additional penalty of ten per cent of the amount of tourism tax remain unpaid.</p> <p>(8) Subject to subsection (10), prosecution for an offence under subsection (6) may be instituted after the expiry of the period specified in paragraph (7)(c).</p> <p>(9) The court may order a digital platform service provider who is convicted for an offence under subsection (6) to pay the penalty as specified in subsection (7).</p> <p>(10) No prosecution for an offence under subsection (6) shall be instituted against the digital platform service provider who has paid the amount of tourism tax due and payable and the penalty specified in subsection (7) within the period specified in subsection (7).</p>	
<p><b>Duty to keep record</b></p> <p>Insertion of new sec. 20J</p>	<p><b>20J.</b> (1) Every digital platform service provider shall keep full, true and up-to-date records of all transaction which affect or may affect his liability to collect tourism tax in such books of account or other records as the Director General may direct.</p> <p>(2) Any record kept under this section shall be preserved for a period of seven years from the latest date to which the records relates and shall be made available for inspection by any senior officer of customs.</p> <p>(3) Where the record is in an electronically readable form, the records shall be kept in such manner as to enable the records to be readily accessible and convertible into writing.</p>	<p>The proposed sec. 20J seeks to impose a duty on a digital platform service provider to keep full, true and up-to date records of all transactions which affect or may affect his liability to collect tourism tax.</p>



	(4) Any digital platform service provider who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.	
<b>Service of notices, etc</b>  Insertion of new sec. 20K	<b>20K.</b> Every notice, direction or any other document required by this Act to be served on a digital platform service provider may be served by electronic service under section 62.	The proposed sec. 20K seeks to provide for the electronic service of notices, directions or other documents required under the Tourism Tax Act 2017 to a digital platform service provider.
<b>Deduction from return of refunded tourism tax</b>  Amendment of sec. 24  <b>24.</b> (1) The Director General may approve, subject to such conditions as he deems fit to impose, an application by any operator to deduct from time to time from the operator's return referred to in subsection 19(1) the amount of tourism tax paid but subsequently refunded to the tourist by reason of— <ul style="list-style-type: none"> <li>(a) cancellation of accommodation; or</li> <li>(b) such other reason as may be approved by the Director General.</li> </ul> (2) The operator shall make the deduction referred to in subsection (1) within one year after the refund of the tourism tax was	<b>24.</b> (1) The Director General may approve, subject to such conditions as he deems fit to impose, an application by any operator <u>or digital platform service provider</u> to deduct from time to time from the operator's return <u>or digital platform service provider's return</u> referred to in subsection 19(1) <u>or subsection 20I(1)</u> the amount of tourism tax paid but subsequently refunded to the tourist by reason of— <ul style="list-style-type: none"> <li>(a) cancellation of accommodation; or</li> <li>(b) such other reason as may be approved by the Director General.</li> </ul> (2) The operator <u>or digital platform service provider</u> shall make the deduction referred to in subsection (1) within one year after the refund of the tourism tax was made, or such extended period as may be approved by the Director General.	This amendment provides that the Director General may approve an application made by a digital platform service provider to deduct from time to time from his return the amount of tourism tax paid but subsequently refunded to the tourist.

made, or such extended period as may be approved by the Director General.		
Amendment of secs 15, 20, 24, 25, 29, 30(2), 33, 41, 65, 69(1), 70(2)	The amendments to these sections are to add certain wordings to operationalise those sections to be relevant to digital platform service providers as well as service relating to online booking accommodation premises. Some of these amendments also make reference to the relevant new sections as introduced under Part VA of this bill.	These amendments are necessary in order for foreign accommodation booking platforms to be governed by the Tourism Tax Act 2017.
<b>Free postage</b>  Deletion of sec. 64	Sec. 64 of the Act regarding “Free Postage” is proposed to be deleted.	The removal of sec. 64 would mean all returns and remittances of tourism tax and any correspondence resulting from or connected with any return or remittance may no longer be sent to the Director General, for free of postage.
<b>Online booking of accommodation premises before effective date</b>  Clause 21	<b>21.</b> Where any booking of accommodation premises is made by a tourist with a digital platform service provider through the service relating to online booking accommodation premises before the effective date mentioned in subsection 1(3) and the tourist stays at such accommodation premises on or after the effective date, no tourism tax shall be charged on the tourist.	This clause contains the transitional provision and provides that where a booking is made via a platform prior to the effective date, no tourism tax would be charged.

## 7. Windfall Profit Levy (Amendment) Bill 2020

Current law	Proposed amendment	Deloitte’s comments
<b>Power of remission</b>  Under Sec. 13 of the Windfall Profit Levy Act, the Minister (of Finance) has the power to direct a	Sec. 13 is proposed to be substituted with a provision that addresses the following:  (1) The Minister (of Finance) may, if he deems fit, remit the	The proposed amendments are in line with the sales tax and service tax laws, which have a more comprehensive scheme for remission and

<p>refund of the levy paid under the Act.</p>	<p>whole or any part of the levy due and payable under this Act.</p> <p>(2) The Director General may, if he deems fit, remit the whole or any part of the penalty under section 9.</p> <p>(3) Where a person who has been granted remission under subsection (1) or (2) has paid any levy or penalty to which the remission relates, subject to subsection 14(3), he shall be entitled to a refund of the amount of the levy or penalty paid which had been remitted.</p>	<p>refund of tax and penalty.</p> <p>The proposed amendments would allow the Minister of Finance to remit any levy payable, and the Director General of Customs to remit any penalty payable, under the Act. (No such power of remission of levy and penalty under the current law.)</p> <p>But, if taxpayer has paid the levy or penalty before being granted a remission of: (a) the levy by the Minister of Finance, or (b) the penalty by the Director General of Customs, taxpayer would have an automatic entitlement to a refund, for which taxpayer would have to apply to the Director General of Customs for such refund (see comment below on the amendment to the refund provision in section 14 of the Act).</p>
<p><b>Refund provision</b></p> <p>Under Sec. 14 of the Act:</p> <p>(1) Subject to subsection (2), if the Director General is satisfied that any money has been overpaid or erroneously paid as a levy under this Act, he may order the refund of the money so overpaid or erroneously paid.</p> <p>(2) The Director General shall not order such</p>	<p>Sec. 14 is proposed to be substituted with a provision that addresses the following:</p> <p>(1) Any person who has overpaid or erroneously paid any levy or penalty, or is entitled to a refund of the levy or penalty under Sec. 13 may make a claim for refund in the prescribed form.</p> <p>(2) A claim for refund under subsection (1) shall be made to the Director General within one year from the date such overpayment or erroneous payment occurred or such</p>	<p>The proposed amendments are in line with the sales tax and service tax laws' refund provisions.</p> <p>The key differences with the current law are that (a) the proposed amendment would allow the Director General to reduce or disallow a claim of refund of levy or penalty if the refund would unjustly enrich the person, and (b) allows for claim for refund to be made to the Director General of Customs, consequential to remission of tax or penalty under the</p>

refund unless a claim in respect thereof is made within one year after the overpayment or erroneous payment was made.	entitlement of the refund occurred.  (3) The Director General may reduce or disallow any refund in respect of the claim under subsection (1) to the extent that the refund would unjustly enrich the person referred to in subsection (1).	proposed amendment to section 13 of the Act (see above).
<b>Ancillary provision on refund</b>  N/A	A new Sec. 14A is proposed to deal with the following ancillary matters on refund:  (1) A claim for refund of levy or penalty under subsection 14(1) shall be supported by such evidence as required by the Director General.  (2) The Director General may make such refund in respect of the claim made by any person under subsection 14(1) after being satisfied that the person has properly established the claim.	The proposed new Sec 14A is unique in that such ancillary matters on refund are usually incorporated into the refund provision itself i.e. the proposed amendment to section 14 (see above), as was done in sales tax and service tax provisions on refund.  However, the ancillary matters do not seem to state anything out of the ordinary.

If you would like to have further discussions on any of the above, please reach out to your usual Deloitte indirect tax contact or to any of the team below.

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