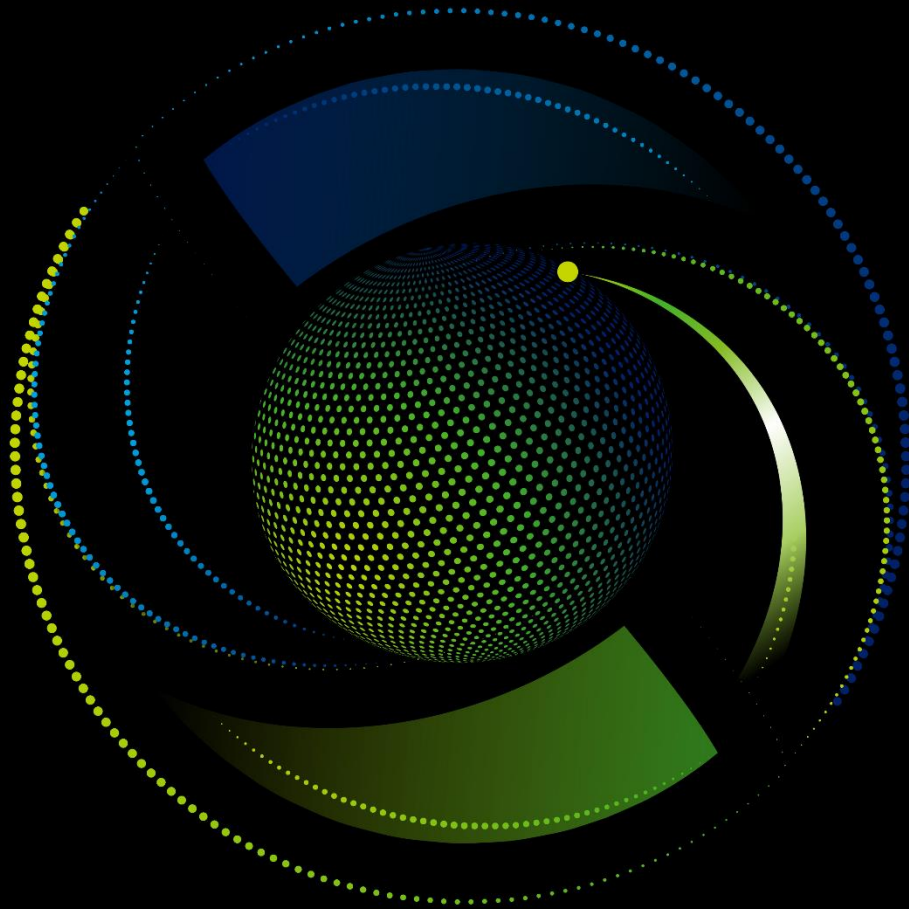


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Indirect Tax Chat

Keeping you updated on the latest news in the Indirect Tax world

October 2023



Issue 10.2023

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Key takeaways:

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Greetings from Deloitte Malaysia's Indirect Tax team

Greetings readers, we are delighted to welcome you to the October 2023 edition of our Indirect Tax Chat.

The Malaysian Budget for 2024 was presented by the Malaysian Finance Minister, YAB Dato' Seri Anwar bin Ibrahim, in Parliament on Friday, 13 October 2023. A summary of the proposed indirect tax changes is included in our Budget alerts, which can be accessed [here](#) and [here](#). A critical update to take note of is the revised e-invoicing timeline. The commencement date for businesses with an annual turnover exceeding RM100 million has been extended from 1 June 2024 to 1 August 2024. However, the timeline for a full mandatory implementation across all taxpayers has been brought forward from 2027 to 1 July 2025.



For the full year of 2023, indirect tax collection by the Royal Malaysian Customs Department (“RMCD”) stood at RM56 billion, which is RM0.7 billion more than its 2022 collection of RM55.3 billion. For more information, please click [here](#).

On a separate note, in a meeting conducted by the RMCD with the e-commerce industry on 17 October 2023, the RMCD informed that the sales tax on Low Value Goods (“LVG”) will commence on 1 January 2024. This tax which is imposed on imported goods with a value of RM500 or less, was first proposed in the 2022 Budget in October 2021. It was subsequently passed into law with an initial effective date of 1 April 2023, this implementation date however was subsequently withdrawn and deferred until further notice. The new effective date provides a very short timeframe for affected sellers to get their business systems and operations ready to comply.

This month, we will be discussing the Service Tax changes introduced in Budget 2024 and the latest guide revision issued by the RMCD. We will also provide updates on the Standard Operating Procedures (SOP) for Completely Built-Up Vehicles imported at Licensed Warehouses.

Additionally, here are some recent news that may interest you:

- Tourism-related associations are advocating for an increase in the SST threshold for the hospitality sector from RM500,000 to RM1.5 million in the 2024 Budget. Dr. Sri Ganesh Michiel suggested that this change would strengthen the position of budget hotels against unlicensed competitors. For more information, please click [here](#).
- Datuk Anis Rizana Mohd Zainudin made a historic mark as the RMCD's first female director-general, beginning her tenure on 25 September. For more information, please click [here](#).

We hope that you are keeping safe and well.

Best regards,

Tan Eng Yew

Indirect Tax Leader

1. Service Tax Changes Introduced in the Budget

In Appendix 34 to the Budget Speech, the following changes were outlined:

A. Expansion of Taxable Service Scope

The existing taxable services to be expanded to include **new type of taxable services** as follows:

- i. Group C: **Karaoke centre** services;
- ii. Group I: a) **Delivery** services (except for delivery of food and beverage);
 b) **Brokerage and underwriting** services for **non-financial services** such as brokerage for ship and aircraft space, commodity, and real estate; and
 c) **Logistic** services.

Deloitte's Comments

The expansion of the scope of service tax to include delivery services had been proposed a number of times, but its implementation had been postponed. Similarly, "logistics management" was previously included and subsequently exempted. The challenge for both logistics and delivery services is that such arrangements can include multiple levels of service providers who may provide various aspects of the activity that make up the ultimate delivery or logistic service. As service tax is imposed on each in-scope transaction, it would result in multiple layers of tax which increases the overall cost of providing the service. Although there are business to business exemption provisions, these are limited in scope, and would not apply to delivery or logistics services unless the exemption scope is changed. Ideally, the scope of this exemption should be expanded to include these activities to mitigate the cost impact. From a classification point of view, it will be critical to have a detailed definition of what constitutes "logistics services", "delivery services" and "logistics management," given the difference in treatment and rates between the three. In the absence of such guidance, we anticipate that there is a probable risk of divergent views between taxpayers as well as with the RMCD.

The expansion of brokerage and underwriting services is limited to the additional non-financial services activities identified. Similar to the above, these activities can involve multiple levels of service and there is a risk of multiple levels of tax being imposed. It is critical that the current business to business exemption be broadened to address this. In terms of real estate broking, a clear and adequate distinction would need to be made between the existing estate agent taxable service and the real estate broking service.

B. Changes on the Service Tax Rate

The service tax rate has been increased from 6% to **8%** on all taxable services **except** for the following, which are subject to a service tax rate of 6%:

- i. Group B: Food and beverage;
- ii. Group I: Telecommunication services;
- iii. Group I: Vehicle parking space services; and
- iv. Group I: Logistic services.

Deloitte's comments

The introduction of multiple levels of tax rates into the service tax regime increases the complexity level as classifying the nature of the service becomes even more critical. We anticipate numerous challenges, for example:

- Providers of telecommunication services (6%) also provide services that may be viewed as digital or IT services (both taxed at 8%);
- Logistics services (6%) would need to be distinguished from a delivery service (8%);
- Food and beverage (6%) provided in a hotel can be viewed as an accommodation service (taxed at 8%).

In addition to classification matters, all taxpayers would need to manage the rate change. Currently, there is nothing to address this in the Law and/or in a published guide. We would need to wait until formal guidelines are published on this matter.

In the interim, we would recommend clients to identify impacted scenarios, for example:

1. Services that span 1 March 2024;
2. Services performed prior to 1 March 2024, where payment is received after 1 March 2024;
3. Payment received prior to 1 March 2024, for services that commence on or after 1 March 2024;
4. Part payments received prior to 1 March 2024 and part payments received after 1 March 2024 for services in the period prior, during, or after 1 March 2024;
5. Adjustments, cancellations, and refund scenarios.

Brought to you by:



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2. Revised Guides on Import Duty and Sales Tax Matter

(i) Guides On Import Duty Exemption for Machinery and Equipment under Items 112 and 113 of the Customs Duties (Exemption) Order 2017

Under item 112 of the Customs Duties (Exemption) Order 2017 (“Item 112”), any manufacturer in principal customs area endorsed by the Malaysian Investment Development Authority (“MIDA”) may apply for import duty exemption for the importation/purchase of machinery and equipment (excluding spare parts and consumables), subject to conditions.

Under item 113 of the Customs Duties (Exemption) Order 2017 (“Item 113”), any company engaged in a hotel business endorsed by MIDA may apply for import duty exemption for the importation/purchase of machinery and equipment as approved by the Secretary General of the Treasury, subject to conditions.

Given the above, the RMCD has issued two (2) guides with respect to applying for each exemption certificate under Item 112 (available [here](#)) and Item 113 (available [here](#)) to provide updates on the following:

- Conditions in utilising Item 112 and Item 113
- Procedure in applying for Item 112 and Item 113
- Procedure in claiming the Item 112 and Item 113
- Responsibilities of the applicant
- Template of the application forms (SPM1/2022 for Item 112 and SPM2/2022 for Item 113)
- List of qualifying machinery and equipment as well as Personal Protective Equipment for Item 112 (Lampiran A)
- List of qualifying machinery and equipment for Item 113 (Lampiran B)

The salient updates are as follows:

- The guides list out the type of machinery and equipment that are eligible for Item 112 and Item 113. For Item 112 specifically, there is a prescribed list of tariff codes under the Customs Duties Order 2022 for the qualifying machinery and equipment
- The application forms (SPM1/2022 and SPM2/2022) are uploaded in the RMCD website
- One of the conditions for Item 112 is that the machinery and equipment are to be used directly in the manufacturing of finished goods in the approved premise. This guide further clarifies that the manufacturing process also includes the following permissible activities:
 - Research and development (R&D);
 - Testing and quality control;
 - Pollution and environment control;
 - Safety purposes for chemical plants; and
 - Cleanroom environments.

The above guides at the time of writing were only available in Bahasa Malaysia.

Deloitte's comments

The RMCD has provided further clarity on the utilisation of Item 112 and Item 113. A noticeable addition is the list of machinery and equipment eligible for Item 112 and Item 113.

As more clarity on the conditions and relevant processes has been provided, it is important for companies to be aware of these guides and ensure that the conditions stated under Item 112 and Item 113 are complied with. This is especially important to avoid exemption applications from being stalled or compliance to be disputed by the RMCD at a later stage.

(ii) **Guide on Import Duty and Sales Tax Exemption Granted by MIDA for Raw Materials, Components, and Accessories**

Generally, the approval letter issued by MIDA via the InvestMalaysia system on import duty and sales tax exemption for raw materials, components, and accessories do not specify the controlling RMCD import station. The RMCD has issued a guide to explain the procedures to be taken after an approval letter is issued through the InvestMalaysia system.

The guideline is available via the RMCD's website [here](#).

We have summarised the procedures above as follows:

1. Once the approval letter is obtained, the company would need to allocate the quantity of items to be imported via each RMCD import station in a prescribed for obtainable through [here](#).
2. The completed form above is to be submitted to the Industrial Section, Customs Division of State Customs that is nearest to the company's premises (known as the controlling RMCD station) to be validated.
3. For any changes in the RMCD import station or quantity of goods, the company must obtain a written approval from the RMCD officer at the original controlling RMCD station.

The guide above at the time of this article's writing is only available in Bahasa Malaysia.

Deloitte's comments

It is critical for companies to stay updated with the procedures that are required to be followed when applying for import duty and sales tax exemptions to ensure a smooth application and approval process. There is an increasing trend of RMCD audits on the importation of goods against the approved quantity in the sales tax and import duty exemption approval letters.

Maintaining accurate information in the approved listing is also crucial to ensure a smooth clearance process at the RMCD import stations.

(iii) **Guide on Import Duty Refund for Importers Entitled to Preferential Tariff Rates under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”)**

The Customs Duties (Goods Under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Order 2022 (“CPTPP Order”) came into operation on 29 November 2022. However, the CPTPP Order was only gazetted on 30 December 2022. As a result, there were imports made into Malaysia where import duty was paid between 29 November 2022 to 30 December 2022 on goods originating from CPTPP members.

In response to this, the RMCD had issued a guideline detailing the requirements and steps to be taken to allow affected companies to claim an import duty refund for such goods.

The guideline is available on the RMCD’s website [here](#).

Broadly, the guideline details the following:

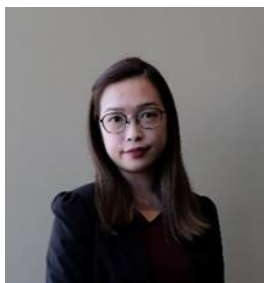
- Procedures in applying for an import duty refund in respect of the above
- The refund application must be made within 1 year from the date of importation of the goods into Malaysia
- Responsibilities of the applicant
- Templates of the relevant forms to be submitted when applying for the refund above:
 - JKDM Form 2 (Appendix A);
 - Statement of import duty and sales tax refund claims (Appendix B);
 - Checklist of supporting documents (Appendix C).

The above guide at the time of writing was only available in Bahasa Malaysia.

Deloitte’s comments

It is crucial for businesses to be familiar with the circumstances and documentation requirements to make the refund applications. The deadline for making the refund application is drawing near (with the latest deadline being 29 December 2023 for the goods imported on 30 December 2022). Since approval for the refund lies with the RMCD, failure to comply with the documentation requirements may result in a prolonged process of obtaining the refund and even a potential rejection.

Brought to you by:



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3. Updates on Standard Operating Procedures (SOP) for Vehicles (Completely Built-Up) Imported at Licensed Warehouse Updates

The RMCD released an updated Standard Operating Procedures (“SOP”) for Customs Control on Vehicles (Completely Built-Up) Imported at Licensed Warehouse (“LW”) under Section 65 of the Customs Act 1965 which comes into effect from 24 August 2023 (“Customs SOP 2023”).

This SOP supersedes the previous SOPs, ‘Customs Control Over Vehicles (Completely Built-Up) Imported in Licensed Warehouse under Section 65 of the Customs Act 1967’ dated 22 August 2022 (“Customs SOP 2022”) and ‘Customs Control SOP Implementation Guide on Vehicles (Completely Built-Up) Imported in Licensed Warehouse Under Section 65 of the Customs Act 1967’ dated 23 August 2022.

The salient updates in the new SOP are highlighted in the table below, in comparison to the previous SOP dated 22 August 2022 as mentioned above:

A) Addition to the scope of the SOP

Previous - Customs SOP 2022	Updated - Customs SOP 2023
2.1.3 Movement of vehicles out of LW for the purpose of: i. Exhibition; ii. Maintenance; iii. Test drive; and iv. Due to the disaster	2.1.3 Movement of vehicles out of LW for the purpose of: i Exhibition; ii. Maintenance; iii. Filming/Advertising; iv. Test drive; and v. Due to the disaster

B) Terminology

Item/Category	Customs SOP 2022	Customs SOP 2023
i. Addition of Appendix J1		3.3 Appendix J1 – Vehicle movement notification form for maintenance purposes
ii. Difference in definition of ‘Exhibitions’	3.6 Exhibitions – Vehicles are taken temporarily for the purpose of exhibition in the vehicle showroom or exhibition places approved by the exhibition organisers.	3.6 Exhibitions – Vehicles are taken out for exhibition purposes at exhibition venues approved by the exhibition organisers. For example, shopping centres and expo sites. Exhibitions in any LW are not allowed.
iii. Addition of definition of ‘Filming/Advertising’		3.8 Filming/Advertising – Vehicles are taken out for promotional and commercial filming purposes.

C) Responsibility of LW licensee

Item/Category	Customs SOP 2022	Customs SOP 2023
i. Addition of responsibilities		<p>4.2.2 Ensure vehicle safety and to be fully responsible for any damage, accident or loss during the vehicle transfer process.</p> <p>4.2.3 Ensure that duties/taxes imposed on the vehicle are cleared according to the regulations and the time set.</p>

D) Updates on Implementation

(i) Item 5.2: The guarantee requirements for the transfer/movement out/in of vehicles from/to LW

Customs SOP 2022		Customs SOP 2023	
Details	Type of Guarantee	Details	Type of Guarantee
4.PEKEMA LW to Public LW	Bank Guarantee (vehicle owner)	4.PEKEMA LW to Public LW	General Bond
6.Public LW to PEKEMA LW	Bank Guarantee (vehicle owner)	6.Public LW to PEKEMA LW	General Bond
9.Out of LW for maintenance purposes	None	9.Out of LW for maintenance purposes	Bank Guarantee (LW other than PEKEMA LW)
10.Out of LW for test drive purposes	None	10.Out of LW for filming/advertising purposes	General Bond (PEKEMA LW)
11.LW to Duty Free Island	Bank Guarantee	11.Out of LW for test drive purposes	*Can use existing guarantee (need to ensure the guarantee value is sufficient)
12.LW for export purposes overseas	Bank Guarantee (LW other than PEKEMA LW) General Bond (PEKEMA LW)	12.LW to Duty Free Island	
		13.LW for export purposes overseas	

(ii) Item 5.3: Addition of procedure for transfer of vehicle from country entry point to LW

Customs SOP 2022	Customs SOP 2023
	5.3.8 Additional information such as variant, original registration date, engine power (CC), AP number, colour, and other relevant information can be checked and verified by the responsible Customs officer through supporting documents submitted by license holders.

(iii) Item 5.4: Removal of portion to the procedure for transfer of vehicle from one LW to another LW

Customs SOP 2022	Customs SOP 2023
5.4.4. Transfers from Private LW/PEKEMA LW to Public LW or vice versa are subject to the following conditions	5.4.4. Transfers from Private LW/PEKEMA LW to Public LW are subject to the following conditions

(iv) Item 5.5: Addition/Removal of portion to the procedure for outbound transfer of vehicles from LW to Duty Free Island for sale purposes

Customs SOP 2022	Customs SOP 2023
5.5 Outbound transfer of vehicles from LW to the Duty Free Island for sales purposes .	5.5 Outbound transfer of vehicles from LW to the Duty Free Island.
5.5.2 The licensee must submit an application letter together with the supporting documents as follows: <ul style="list-style-type: none"> i. Copy of the buyer's Identification Card; ii. Residential utility bills (in the buyer's name) if the buyer is an individual; iii. If the buyer is the owner or shareholder of a company that has a business premise in the Duty Free Island, the Company Registration Certificate, Form 49 (Malaysian Company Commission), and the company's utility bills must be submitted; iv. A copy of the Hire Purchase Agreement of the vehicle involved; and v. Other documents that satisfy the responsible Customs officer. 	5.5.2 The licensee must submit an application letter together with the supporting documents as follows: <ul style="list-style-type: none"> i. Sales documents (purchase order/invoice); and ii. Other documents that satisfy the responsible Customs officer.
	5.5.10 If the sale is cancelled before the vehicle is transferred to the Duty Free Island, the licensee must inform the responsible Customs officer at the Customs station controlling the LW. 5.5.11 In the event that the sale is cancelled but the vehicle has arrived at the Duty Free Island, the vehicle must be returned to the original LW premise within fourteen (14) days from the date of receipt at the Duty Free Island or any extended period approved by the responsible Customs officer at the Customs station controlling LW.

(v) Item 5.7: Addition of portion to the procedure for movement of vehicles for exhibition purposes

Customs SOP 2022	Customs SOP 2023
5.7.1 The licensee must submit an application using the form as in Appendix J - Vehicle Movement Application within fourteen (14) days before the date of the exhibition.	5.7.1 The licensee must submit an application using the form as in Appendix J - Vehicle Movement Application for Exhibition Purposes within fourteen (14) days before the date of the exhibition.
	5.7.4 Ensure that the premises for exhibition purposes are non-LW.
5.7.6 The maximum approval period that can be considered is fourteen (14) days.	5.7.6 The maximum approval period that can be considered is thirty (30) days. This facility is not applicable for vehicles with a storage period of thirty (30) days and below.
5.7.6 The licensee must submit an application for extension of the exhibition period seven (7) days before the original approval period expires.	5.7.7 For the movement of vehicles out for exhibition purposes at the Duty Free Island, the following additional conditions must be complied with: <ul style="list-style-type: none"> i. Ensure that the transfer to the Duty Free Island is pledged by using Form K8 and accompanied by a guarantee covering the value of the duty/tax of the vehicle involved. ii. The vehicle transfer process must comply with the Policy Order: Management of the Transfer of Duty and Taxable Goods Using Customs Form No.8 (K8) which is currently in force. iii. The vehicle must be returned to the original LW after the end of the exhibition period. The process of bringing the vehicle to the original LW must be completed within fourteen (14) days. iv. If the vehicle is sold at the Duty Free Island, the license holder must submit a copy of the Road Transport Department's Vehicle Ownership Certificate to the dispatch station within fourteen (14) days from the vehicle's date of sale.
5.7.7 The maximum extension period allowed is fourteen (14) days only.	<i>Removed</i>

(vi) Item 5.8: Addition/Removal of portion to the procedure for movement of the vehicle for maintenance purposes

Customs SOP 2022	Customs SOP 2023
5.8.1. The license holder must submit an application using the form as in Appendix J - Vehicle Movement Application.	5.8.1 The licensee must maintain appropriate records for maintenance purposes that covers the following information: i. Vehicle lot no.; ii. Vehicle type and model; iii. Chassis no.; iv. Engine no.; v. Expiry date of storage; vi. Date of departure from LW; vii. The name and address of the place of maintenance; and viii. Return date to LW.
5.8.4 The license holder must submit the confirmation form of the maintenance centre involved as per Appendix J – Vehicle Movement Application.	5.8.4 The licensee must notify the responsible Customs officer via the department's official email no later than 24 hours before the vehicle is taken out of LW by using Appendix J1 - Vehicle Movement Notification Form for Maintenance Purposes.
5.8.5 Applications will be considered within seven (7) working days from the date the complete application is received.	5.8.5 The maximum period allowed is thirty (30) days from the date the vehicle leaves LW. This facility is not applicable for vehicles with a storage period of thirty (30) days and below.
5.8.6 The approval period that can be considered is for a maximum period of fourteen (14) days.	<i>Removed</i>
5.8.7 The licensee must submit an application for an extension of the maintenance period of seven (7) days before the original approval period expires.	<i>Removed</i>
5.8.8. The maximum extension period allowed is fourteen (14) days only.	<i>Removed</i>

(vii) Item 5.9: Addition of movement of the vehicle for filming/advertising purposes

Customs SOP 2022	Customs SOP 2023
	<p>5.9.1 The licensee must maintain appropriate records for the purpose of filming/advertising that covers the following information:</p> <ul style="list-style-type: none"> i. Vehicle lot no.; ii. Vehicle type and model; iii. Vehicle chassis no.; iv. Engine no.; v. Date and time of departure from LW; vi. Name and address of filming/advertisement location; and vii. Date and time of return to LW. <p>5.9.2 The place of filming/advertising must be in the same state where the LW in question is located.</p> <p>5.9.3 The Klang Valley shall be considered as one and the same state for filming/advertising purposes.</p> <p>5.9.4 The license holder must inform the responsible Customs officer via the department's official email no later than 24 hours before the vehicle is taken out of LW.</p> <p>5.9.5 The maximum period allowed for filming/advertising purposes is not more than 24 hours.</p> <p>5.9.6 The licensee is fully responsible for any damage, accident or loss during transfer or filming/advertising.</p>

(viii) Item 5.11: Addition of portion to the procedure for transfer due to natural disaster

Customs SOP 2022	Customs SOP 2023
<p>5.11.2 The licensee must inform the controlling Customs station regarding the vehicle information and the location of the vehicle after the transfer has taken place.</p>	<p>5.11.2 The licensee must inform the controlling Customs station (together with proof of natural disaster) regarding the vehicle information and the location of the vehicle after the transfer has taken place.</p>

(ix) Item 5.14: Addition of actions on any violation of legal provisions/regulations/licensing conditions

Customs SOP 2022	Customs SOP 2023
	5.14 Actions on any violation of legal provisions/regulations/licensing conditions as follows: 5.14.1 A claim bill will be issued (if necessary). 5.14.2 A compound offer will be issued for the offense of violating the provisions of Section 65(2) of the Customs Act 1967 read together with Section 138 of the same Act.

Deloitte's comments

With the release of the updated Customs SOP 2023, it is crucial for affected businesses to reassess and be familiar with the new and removed procedures as well as conditions on the importation of vehicles (completely built-up) in a Licensed Warehouse to ensure compliance with effect from 24 August 2023.

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