

A BILL

i n t i t u l e d

An Act to amend the Excise Act 1976.

[]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Excise (Amendment) Act 2018.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 2

2. The Excise Act 1976 [*Act 176*], which is referred to as the “principal Act” in this Act, is amended in subsection 2(1) in the definition of “value” by substituting for paragraph (a) the following paragraph:

“(a) in relation to locally manufactured goods, value as determined under paragraph 85(2)(bd);”.

Amendment of section 5B

3. Paragraph 5B(3)(c) of the principal Act is amended by inserting before the words “an appeal” the words “a review or”.

Substitution of section 47

4. The principal Act is amended by substituting for section 47 the following section:

“Review of and appeal against decision of the Director General

47. (1) Subject to subsection (4), any person aggrieved by any decision of the Director General may apply to the Director General to review any of his decision within thirty days from the date the person has been notified of such decision provided that no appeal has been made on the same decision to the Tribunal or High Court.

(2) An application under subsection (1) shall be made in the prescribed form.

(3) Where an application for review has been made under subsection (1), the Director General shall, where practicable within sixty days from the date of the receipt of such application, carry out the review and notify the decision of the review to the person.

(4) No review may be made in any matter relating to compound or subsection 67(3).

(5) Any person aggrieved by any decision of the Director General under subsection (3) or any other provisions of this Act, except any matter relating to compound or subsection 67(3), may appeal to the Tribunal within thirty days from the date of notification in writing of the decision to the aggrieved person.

(6) Any excise duty payable under this Act shall be paid on the due date notwithstanding that any review or appeal has been made under this section.

(7) All provisions relating to the Customs Appeal Tribunal shall be applicable to this Act.”.

Substitution of section 50A

5. The principal Act is amended by substituting for section 50A the following section:

“Power of enforcement, investigation and inspection

50A. For the purposes of this Act, a senior officer of excise 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, investigation and inspection, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.”.

New section 59A

6. The principal Act is amended by inserting after section 59 the following section:

“Court order

59A. (1) Where any person is found guilty of an offence under this Act, the court before which that person is found guilty shall order that person to pay to the Director General the amount of excise duty due and payable or penalty payable under this Act, if any, as certified by the Director General and such excise duty or penalty shall be recoverable in the same manner as provided under section 283 of the Criminal Procedure Code.

(2) For the purpose of subsection (1), the court has civil jurisdiction to the extent of the amount of the excise duty due and payable, and the order is enforceable in all respects as a final judgment of the court in favour of the Director General.

(3) Where any person is found not guilty of an offence under this Act has paid the amount of excise duty due and payable or penalty payable pursuant to section 82A in respect of the offence charged, the court may order the amount so paid to be refunded to such person where no notice of appeal is filed.”.

Amendment of section 71

7. Section 71 of the principal Act is amended—

(a) by substituting for paragraph (c) the following paragraph:

“(c) counterfeits or causes to be counterfeited or falsifies or causes to be falsified any document which is or may be required under this Act or used in the transaction of any business or matter relating to excise, or uses or causes to be used or in any way assists in the use of such counterfeited or falsified document;”;

(b) by substituting for the words “shall, on conviction” the words “shall be guilty of an offence and shall, on conviction”; and

(c) by substituting for the words “five years” the words “seven years”.

Amendment of section 73

8. Subsection 73(1) of the principal Act is amended by substituting for the words “six months or to a fine not exceeding two thousand ringgit or to both such imprisonment and fine” the words “five years or to a fine not exceeding one hundred thousand ringgit or to both”.

Amendment of section 74

9. Subsection 74(1) of the principal Act is amended—

(a) by substituting for subparagraph (i) the following subparagraph:

“(i) in the case of locally manufactured goods other than cigarettes containing tobacco and intoxicating liquor—

(A) for the first offence, to a fine of not less than ten times the amount of the excise duty or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the excise duty or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding five years or to both; and

(B) for a second offence or any subsequent offence, to a fine of not less than twenty times the amount of the excise duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the excise duty or one million ringgit, whichever is the greater amount or to imprisonment for a term not exceeding seven years or to both:

Provided that when no excise duty is involved or the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both;”;

(b) by substituting for subparagraph (ii) the following subparagraph:

“(ii) in the case of imported goods other than cigarettes containing tobacco and intoxicating liquor—

(A) for the first offence, to a fine of not less than ten times the amount of the excise duty or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the excise duty or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding five years or to both; and

(B) for a second offence or any subsequent offence, to a fine of not less than twenty times the amount of the excise duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the excise duty or one million ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding seven years or to both:

Provided that where the amount of the excise duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both;” and

(c) by inserting after the proviso to subparagraph (ii) the following subparagraphs:

“(iii) in the case of locally manufactured cigarettes or intoxicating liquor—

(A) for the first offence, to a fine of not less than ten times the amount of the excise duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of

the excise duty or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both, and shall be punished with whipping of not more than three strokes; and

- (B) for a second offence or any subsequent offence, to a fine of not less than twenty times the amount of the excise duty or two hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the excise duty or one million ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both, and shall be punished with whipping of not more than three strokes; and

(iv) in the case of imported cigarettes or intoxicating liquor—

- (A) for the first offence, to a fine of not less than ten times the amount of the excise duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the excise duty or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both, and shall be punished with whipping of not more than three strokes; and

- (B) for a second offence or any subsequent offence, to a fine of not less than twenty times the amount of the excise duty or two hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the excise

duty or one million ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both, and shall be punished with whipping of not more than three strokes.”.

Amendment of section 76

10. Section 76 of the principal Act is amended by substituting for the word “five” the word “fifty”.

Amendment of section 77

11. Section 77 of the principal Act is amended—

- (a) in paragraph (a), by substituting for the words “assaults or obstructs” the words “assaults, obstructs, hinders, threatens or molests”;
- (b) in paragraph (b), by inserting after the words “anything which has been duly seized” the words “or any person who has been detained”;
- (c) in subparagraph (i), by substituting for the words “a term not exceeding three years or to a fine not exceeding ten thousand ringgit or to both such imprisonment and fine” the words “a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both”; and
- (d) in subparagraph (ii), by substituting for the words “a term not exceeding five years or to a fine not exceeding twenty thousand ringgit” the words “a term not exceeding seven years or to a fine not exceeding one million ringgit”.

Amendment of section 78

12. Subsection 78(1) of the principal Act is amended by substituting for the words “a fine not exceeding ten thousand ringgit” the words “a fine not exceeding five hundred thousand ringgit”.

Amendment of section 79

13. Section 79 of the principal Act is amended by substituting for the words “twenty thousand” the words “fifty thousand”.

New section 82A

14. The principal Act is amended by inserting after section 82 the following section:

“Excise duty, etc., to be payable notwithstanding any proceedings, etc.

82A. The institution of proceedings or the imposition of a penalty, fine or term of imprisonment under this Act, or the compounding of an offence under section 69, shall not relieve any person from the liability to pay for excise duty, penalty or surcharge under this Act.”.

Amendment of section 85

15. Subsection 85(2) of the principal Act is amended by inserting after paragraph (bc) the following paragraph:

“(bd) determine the value for the purpose of collection of excise duties;”.

EXPLANATORY STATEMENT

The Excise (Amendment) Bill 2018 seeks to amend the Excise Act 1976 (“Act 176”). The main purpose of the amendment is to strengthen the enforcement powers of the officers of excise and to increase the amount of penalty for offences under Act 176.

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to amend subsection 2(1) of Act 176 by substituting for the definition of “value” a new definition.

4. *Clause 3* seeks to amend paragraph 5B(3)(c) of Act 176 to provide that the Director General may decline to make a customs ruling if in his opinion a review under Act 176 is pending involving the subject matter referred to in the application made under section 5A of Act 176.

5. *Clause 4* seeks to amend section 47 of Act 176 to allow any person aggrieved by any decision of the Director General to apply to the Director General to review any of his decision within thirty days from the date the person has been notified of such decision provided that no appeal has been made on the same decision to the Tribunal or High Court. The proposed section 47 disallows review to be made in any matter relating to compound or subsection 67(3) of Act 176. This provision also allows any person aggrieved by any decision of the Director General on the review or under any other provisions of Act 176, except any matter relating to compound or subsection 67(3) of Act 176, to appeal to the Tribunal within thirty days from the date of notification in writing of the decision to the aggrieved person. This provision also clarifies that any excise duty payable under Act 176 shall be paid on the due date notwithstanding that any review or appeal has been made under the proposed section.

6. *Clause 5* seeks to amend section 50A of Act 176 to specify that for the purposes of Act 176, a senior officer of excise 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, investigation and inspection, and such powers shall be in addition to the powers provided for under Act 176 and not in derogation thereof.

7. *Clause 6* seeks to introduce a new section 59A into Act 176 to require the court before which a person is found guilty of an offence under Act 176 to order that person to pay to the Director General the amount of excise duty due and payable or penalty payable under Act 176 and such excise duty or penalty shall be recoverable in the same manner as provided under section 283 of the Criminal Procedure Code. For the purposes of the proposed new section 59A, the court has civil jurisdiction to the extent of the amount of the excise duty due and payable and the order is enforceable in all respects as a final judgment of the court in favour of the Director General. When any person has been found not guilty of an offence under Act 176 and he has paid the excise duty due and payable or penalty payable pursuant to the proposed section 82A, the court may order the amount paid to be refunded where no notice of appeal is filed.

8. *Clause 7* seeks to amend section 71 of Act 176.

Subclause 7(a) seeks to amend paragraph 71(c) of Act 176 to make it an offence for any person to cause any document which is or may be required under Act 176 or used in the transaction of any business or matter relating to excise to be counterfeited or falsified or to cause to be used or to assist in the use of counterfeited or falsified document.

Subclause 7(c) seeks to amend section 71 of Act 176 to increase the imprisonment term for the offences specified under paragraphs 71(a) to (f) of Act 176 from five years to seven years.

9. *Clause 8* seeks to amend subsection 73(1) of Act 176 to increase the penalty for the offence of refusing to give information or furnishing false information from imprisonment for a term not exceeding six months or a fine not exceeding two thousand ringgit or both to imprisonment for a term not exceeding five years or a fine not exceeding one hundred thousand ringgit or both.

10. *Clause 9* seeks to amend section 74 of Act 176.

Subclause 9(a) seeks to amend subparagraph 74(1)(i) of Act 176 to increase the penalty for the offence under subsection 74(1) of Act 176 relating to locally manufactured goods other than cigarettes containing tobacco and intoxicating liquor. For the first offence the penalty is increased to a fine of not less than ten times the amount of the excise duty or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the excise duty or five hundred thousand ringgit, whichever is the greater amount, or imprisonment for a term not exceeding five years or both. For the second or any subsequent offence, the penalty is increased to a fine of not less than twenty times the amount of the excise duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the excise duty or one million ringgit, whichever is the greater amount, or imprisonment for a term not exceeding seven years or both.

Subclause 9(b) seeks to amend subparagraph 74(1)(ii) of Act 176 to increase the penalty for the offences under subsection 74(1) of Act 176 relating to imported goods other than cigarettes containing tobacco and intoxicating liquor. For the first offence the penalty is increased to a fine of not less than ten times the amount of the excise duty or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the excise duty or five hundred thousand ringgit, whichever is the greater amount, or imprisonment for a term not exceeding five years or both. For the second or any subsequent offence, the penalty is increased to a fine of not less than twenty times the amount of the excise duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the excise duty or one million ringgit, whichever is the greater amount, or imprisonment for a term not exceeding seven years or both.

Subclause 9(c) seeks to introduce new subparagraphs 74(1)(iii) and (iv) into Act 176. The proposed subparagraphs 74(1)(iii) seeks to provide specific penalty for the offence under subsection 74(1) of Act 176 relating to locally manufactured cigarettes containing tobacco or intoxicating liquor. The proposed subparagraph 74(1)(iv) seeks to provide specific penalty for the offence under subsection 74(1) of Act 176 relating to imported cigarettes containing tobacco or intoxicating liquor. These amendments are made to deter the smuggling of cigarettes containing tobacco or intoxicating liquor which is currently increasing, and to prevent the loss of revenue to the Government.

11. *Clause 10* seeks to amend section 76 of Act 176 to increase the penalty for the offence under section 76 of Act 176 from a fine not exceeding five thousand ringgit to a fine not exceeding fifty thousand ringgit.

12. *Clause 11* seeks to amend section 77 of Act 176.

Subclause 11(a) seeks to amend paragraph 77(a) of Act 176 to provide that every person who hinders, threatens or molests any officer of excise or other public servant or any person acting in his aid or assistance or duly employed for the prevention of offences under Act 176, commits an offence.

Subclause 11(b) seeks to amend paragraph 77(b) of Act 176 to provide that every person who rescues or endeavours to rescue, or causes to be rescued any person who has been detained commits an offence.

Subclauses 11(c) and (d) seeks to amend subparagraphs 77(i) and (ii) of Act 176 to increase the penalty for the offences under paragraph 77(a), (b) or (c) of Act 176. For the first conviction, the penalty is increased from imprisonment for a term not exceeding three years or a fine not exceeding ten thousand ringgit or both to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both. For the second or subsequent conviction, the penalty is increased from imprisonment for a term not exceeding five years or a fine not exceeding twenty thousand ringgit or both to imprisonment for term not exceeding seven years or a fine not exceeding one million ringgit or both.

13. *Clause 12* seeks to amend subsection 78(1) of Act 176 to increase the fine for the offences under subsection 78(1) of Act 176 from a fine not exceeding ten thousand ringgit to a fine not exceeding five hundred thousand ringgit.

14. *Clause 13* seeks to amend section 79 of Act 176 to increase the general penalty in respect of which no penalty is expressly provided from a fine not exceeding twenty thousand ringgit to a fine not exceeding fifty thousand ringgit for the offences against Act 176.

15. *Clause 14* seeks to introduce new section 82A into Act 176 to provide that excise duty, penalty or surcharge under Act 176 remains payable by the person liable to pay such excise duty, penalty or surcharge notwithstanding the proceedings have been instituted or penalty, fine or term of imprisonment has been imposed against that person under Act 176.

16. *Clause 15* seeks to introduce a new paragraph 85(2)(bd) into Act 176 to empower the Minister to regulate the determination of the value for the purpose of the collection of excise duty.

17. 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.