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**Act 807**

**SERVICE TAX ACT 2018**

An Act to provide for the charging, levying and collecting of service tax, and for matters connected therewith.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

Part I

PRELIMINARY

**Short title and commencement**



1. (1) This Act may be cited as the Service Tax 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 parts or different provisions of this Act.

(3) Notwithstanding subsection (2), the Minister may, by notification in the *Gazette*, appoint the effective date for the charging and levying of service tax under this Act.

**Interpretation**



2. (1) In this Act, unless the context otherwise requires—

“this Act” includes any subsidiary legislation made under this Act;

“service tax” means the tax payable under this Act;

“prescribed” means prescribed by the Minister in the regulations made under this Act;

“document” has the meaning assigned to it under section 3 of the Evidence Act 1950 [Act 56];

“licensed warehouse” means any warehouse or place licensed under section 65 of the Customs Act 1967 [Act 235];

“licensed manufacturing warehouse” means a licensed warehouse in respect of which an additional licence to carry on any manufacturing process has been granted under section 65a of the Customs Act 1967;

“designated areas” means Labuan, Langkawi and Tioman;

“special areas” means any free zone, licensed warehouse and licensed manufacturing warehouse, and the Joint Development Area;

“Joint Development Area” has the meaning assigned to it under section 2 of the Malaysia-Thailand Joint Authority Act 1990 [Act 440];

“customs ruling” means any customs ruling made by the Director General under section 43;

“Director General” means the Director General of Customs and Excise appointed under subsection 3(1) of the Customs Act 1967;

“computer” has the meaning assigned to it under section 3 of the Evidence Act 1950;

“Labuan” means the Island of Labuan and its dependent islands, namely, Rusukan Besar, Rusukan Kecil, Keraman, Burong, Papan and Daat;

“Langkawi” means the Island of Langkawi and all adjacent islands lying nearer to Langkawi Island than to the mainland; “Minister” means the Minister charged with the responsibility for finance;



“registered person” means a person registered under section 13 or 14;

“taxable person” means a registered person or a person who is liable to be registered under section 12;

“officer of service tax” means any officer of customs as defined in subsection 2(1) of the Customs Act 1967 and includes any person employed under subsection 3(3);

“proper officer of service tax” means any senior officer of service tax or officer of service tax acting in the fulfilment of his duties under this Act, whether such duties are assigned to him specially or generally, or expressly or by implication;

“senior officer of service tax” means any senior officer of customs as defined in subsection 2(1) of the Customs Act 1967; “regulations” means regulations made under section 91;

“taxable service” means any service which is prescribed to be a taxable service under section 8;

“limited liability partnership” has the meaning assigned to it under section 2 of the Limited Liability Partnership Act 2012 [Act 743];

“business” includes any trade, commerce, profession or vocation, or any concern in the nature of trade, commerce, profession or vocation;

“surcharge” means the surcharge referred to in subsection 32(3);

“effective date” means the date appointed under subsection 1(3);

“taxable period” means any period as determined or provided for under section 25;

“Tioman” means the Island of Tioman and the islands of Soyak, Rengis, Tumok, Tulai, Chebeh, Labas, Sepoi and Jahat; “Customs Appeal Tribunal” means the Customs Appeal Tribunal established under section 141b of the Customs Act 1967;

“free zone” has the meaning assigned to it under subsection 2(1) of the Free Zones Act 1990 [Act 438].

## Part II

### ADMINISTRATION

#### **Functions and powers of Director General and other officers**



**3.** (1) The Director General shall have the superintendence of all matters relating to service tax, subject to the direction and control of the Minister.

(2) Subject to the general direction and supervision of the Director General, a senior officer of service tax shall have and exercise all powers conferred on the Director General by or under this Act, other than those conferred under sections 6, 40, 41 and 90.

(3) Any person, other than an officer of service tax may be appointed by, or employed with the concurrence of, the Director General for any duty or service relating to service tax and such person shall be deemed to be an officer of service tax for that duty or service.

(4) The Director General may, by authorization in writing, confer on any officer of service tax not being a senior officer of service tax all or any of the powers of a senior officer of service tax for a period not exceeding ninety days in respect of any one authorization.

(5) Any officer of service tax shall have the duties and powers to enforce and ensure due compliance with the provisions of this Act.

#### **Persons appointed or employed to be public servants**



**4.** Every person appointed or employed under subsection 3(3) for any duty or service relating to the service tax shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

#### **Recognition of office**



**5.** (1) Every officer of service tax when discharging his duties shall, on demand made by any person, declare his office and produce

to the person the authority card or badge prescribed under section 8a of the Customs Act 1967 or in the case of any officer of service tax not being an officer of customs, any other authority card as may be approved by the Director General.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any officer of service tax acting or purporting to act under this Act if the officer refuses to declare his office and produce his authority card or badge on demand being made by the person.

(3) Any person, not being an officer of service tax, who unlawfully wears, uses, possesses or displays, otherwise than in the course of a stage play or other theatrical performance—

(a) any uniform prescribed under section 8a of the Customs Act 1967 or any dress having the appearance of, or bearing the distinctive marks of, such uniform; or

(b) any prescribed authority card or badge, or authority card as approved by the Director General, referred to in subsection (1),

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

## **Confidentiality of information**



6. (1) Every person, having any official duty or being appointed or employed under this Act, shall regard and deal with all documents, information, returns or declarations relating to the business or value of the provision of services by any taxable person as confidential.

(2) Subject to subsection (4), every person having possession or control over any document, information, return or declaration or copies thereof in relation to the business or the value of the provision of services by any taxable person, who at any time, otherwise than for the purposes of this Act or with the express authority of the Director General—

(a) communicates or attempts to communicate the information

or anything contained in the document, return or declaration or copies thereof to any person; or

(b) suffers or permits any person to have access to any information or to anything contained in the document, return or declaration or copies thereof,

commits an offence.

(3) No person having any official duty or being appointed or employed under this Act or who is referred to in subsection (4) shall be required to produce in any matters or proceedings in any court or tribunal any document, information, return or declaration or to divulge or communicate in the matters or proceedings of any matter or thing, coming under his notice in the performance of his duties under this Act, except as may be necessary for the purposes of carrying into effect the provisions of this Act or in order to institute a prosecution or in the course of a prosecution for any offence committed under this Act.

(4) The Director General may, as he deems fit, transmit or communicate any document, information, return or declaration referred to in subsection (1) or anything contained therein, to the Chief Statistician of the Department of Statistics Malaysia which may be required in the performance of his official duty.

(5) Notwithstanding subsection (4), the Minister may, as he deems fit, allow the Director General to transmit or communicate any document, information, return or declaration referred to in subsection (1) or anything contained therein to any other person.

### Part III

## IMPOSITION AND SCOPE OF SERVICE TAX

### **Imposition and scope of service tax**



7. A tax to be known as service tax shall be charged and levied on any taxable services provided in Malaysia by a registered person in carrying on his business.

**Taxable service**



8. The Minister may prescribe any service to be a taxable service.

**Determination of value of taxable service**



9. (1) For the purposes of this Act, the value of taxable service on which service tax is payable shall be determined as follows:

(a) in the case of taxable service for—

(i) the sale of goods by a taxable person to—

(A) a person not connected with the taxable person, the actual price for which the goods are sold; or

(B) a person connected with the taxable person, the price at which the goods would have been sold in the ordinary course of business to a person not connected with the taxable person; or

(ii) the provision of goods, where the goods are provided for free, the price at which the goods would have been sold in the ordinary course of business to a person not connected with the taxable person;

(b) in the case of taxable service, other than the taxable service specified in paragraph (a)—

(i) provided by a taxable person to a person not connected with the taxable person—

(A) the actual value of the taxable service provided; or

(B) in the case of premium for insurance policy, or takaful contribution for takaful certificate, the actual premium or contribution paid; (ii) provided by a taxable person to a person connected with the taxable person, the value of the taxable service which would have been

provided in the ordinary course of business to a person not connected with the taxable person; or

(iii) where the taxable service are provided for free, the value of taxable service which would have been provided in the ordinary course of business to a person not connected with the taxable person; or

(c) in the case of betting and gaming which are prescribed to be taxable services, the value of such betting and gaming shall be as prescribed.

(2) For the purpose of this section— “goods”

means goods as prescribed;

“person connected with the taxable person” means a person connected with the taxable person as prescribed.

### Rate of service tax



**10.** (1) Service tax shall be charged and levied at the rate fixed in accordance with subsection (2) on the taxable services by reference to the value of the taxable services provided as determined under section 9.

(2) The Minister may, by order published in the *Gazette*—

(a) fix the rate of service tax to be charged and levied under this Act; and

(b) vary or amend the rate of service tax fixed under paragraph (a).

(3) Any order made under subsection (2) shall—

(a) be laid before the Dewan Rakyat at the next meeting of the Dewan Rakyat; and

(b) at the expiration of one hundred and twenty days from being laid under paragraph (a) or of such extended period as the Dewan Rakyat may, by resolution, direct,

cease to have effect in whole if the order is not confirmed, or in part in so far as the order is not confirmed, by a resolution passed by the Dewan Rakyat within the said one hundred and twenty days or, if such period has been extended, within such extended period.

- (4) Where an order ceases to have effect in whole or in part as provided under subsection (3), any service tax charged and levied in pursuance of the order or such part of the order as ceases to have effect shall, subject to subsections (5) and (6), be refundable to the persons by whom such service tax was paid.
- (5) Unless the Minister otherwise directs, no service tax refundable under subsection (4) shall be refunded, unless the person by whom the service tax was paid makes a claim in writing to the Director General within one year from the date on which the order ceases to have effect in whole or in part, and the claim shall contain such particulars as the Director General may require.
- (6) The Director General may reduce or disallow any service tax refundable under subsection (4) to the extent that the refund would unjustly enrich the person by whom the service tax was paid.

## **Service tax due**



- 11.** (1) The service tax chargeable under section 7 shall be due at the time when payment is received for the taxable service provided to the customer by the registered person.
- (2) Where the whole or any part of the payment for any taxable service provided by the registered person is not received from the customer within a period of twelve months from the date of the invoice for the taxable service provided, service tax shall be due on the day following that period of twelve months.
- (3) Notwithstanding subsection (1)—

- (a) the service tax required to be accounted in any return made under subsection 26(3) shall be due on the day the return is required to be furnished to the Director General;
  - (b) the service tax in respect of betting and gaming which are prescribed to be taxable services shall be due at the time as prescribed;
  - (c) where an arrangement or agreement for the provision of any taxable service is made by any person, who is a taxable person under this Act, within the period beginning from 1 June 2018 and ending immediately before the effective date, and the taxable service is provided or performed on or after the effective date—
    - (i) the arrangement or agreement for the provision of such taxable service shall be deemed to have been made on the date such taxable service is provided or performed notwithstanding any payment, wholly or partly, is received or invoice is issued, for such taxable service during such period;
    - (ii) any payment received within such period or on or after the effective date, or invoice issued within such period, shall be deemed to have been received or issued on the date such taxable service is provided or performed; and
    - (iii) service tax shall be charged and levied on such taxable service and shall become due on the date such taxable service is provided or performed.
- (4) Where the taxable service referred to in paragraph (3)(c) are betting and gaming, the service tax in respect of such betting and gaming shall be due at the time as prescribed under paragraph (3)(b).

#### Part IV

#### REGISTRATION



**Liability to be registered**

**12.** (1) The Minister may prescribe—

- (a) any person who provides any taxable service; and
- (b) the total value of taxable services of the person referred to in paragraph (a), for the purpose of registration of the person under this Part.

(2) Any person who provides any taxable service is liable to be registered at the following time, whichever is the earlier:

- (a) at the end of any month, where the total value of all his taxable services in that month and the eleven months immediately preceding that month has exceeded the total value of taxable service prescribed under subsection (1); or
- (b) at the end of any month, where there are reasonable grounds for believing that the total value of all his taxable services in that month and the eleven months immediately succeeding that month will exceed the total value of taxable services prescribed under subsection (1).

(3) Notwithstanding subsection (2), the Minister may prescribe that any person who provides taxable services shall be liable to be registered on the date of the commencement of the business.

(4) The total value of all taxable services of a person providing taxable services in the month and the eleven months immediately preceding that month referred to in paragraph (2)(a) shall be disregarded if—

- (a) the registration of the person providing the taxable services is cancelled, otherwise than under subsection 20(3), during that period; and
- (b) the Director General is satisfied that before the person's registration is cancelled, he has given all information required by the Director General in order to determine whether to cancel the registration or not.

**Application for registration**

**13.** (1) Any person who is liable to be registered under section 12 shall apply to the Director General for registration as a registered person in the prescribed form not later than the last day of the month following the month in which he is liable to be registered as referred to in paragraph 12(2)(a) or (b) or subsection 12(3).

(2) Upon receipt of the application under subsection (1), the Director General may approve the registration, subject to such conditions as he deems fit.

(3) The Director General shall register the person under subsection (1) with effect from the first day of the month following the month in which the application under subsection (1) is made or from such earlier date as may be agreed between the Director General and the person but such date shall not be earlier than the date the person becomes liable to be registered.

(4) Where any person fails to comply with subsection (1), the Director General shall register that person on the date as the Director General may determine but not earlier than the date he is liable to be registered under section 12.

(5) Any person who fails to comply with subsection (1) commits an offence.

**Voluntary registration**

**14.** (1) Any person who is not liable to be registered under section 12 may apply to the Director General for registration as a registered person.

(2) Upon receipt of the application under subsection (1), the Director General may approve the registration from such date as he may determine subject to such conditions as he deems fit.

**Direction to treat persons as single taxable person**

**15.** (1) Notwithstanding section 12, where the Director General is satisfied that any separation of business activities is artificial, he may make a direction requiring that—

- (a) the persons named in that direction be treated as a single taxable person carrying on the business activities described in that direction with effect from the date as specified in the direction; and
  - (b) the single taxable person referred to in paragraph (a) to be registered with effect from the date as specified in the direction.
- (2) For the purposes of subsection (1), in determining whether any separation of business activities is artificial, regard shall be had to the extent to which the different persons carrying on those business activities are closely bound to one another by financial, economic and organizational links.
- (3) The Director General may make a direction under subsection (1) naming any person if the Director General is satisfied that—
  - (a) the person is providing or has provided any taxable service;
  - (b) the activities in the course of which the person provides or has provided those taxable service form only part of certain activities in the business and that the other activities in that business, whether or not that other activities are similar to the activities carried on by that person, are being carried on concurrently or previously, or both, by one or more other persons; and
  - (c) if all the taxable services provided in that business were taken into account, the person carrying on that business would, at the time of such direction is made, be required to be registered by virtue of section 12.
- (4) Any direction made under subsection (1) shall be served on each of the persons named in it.
- (5) Where, after a direction had been made under subsection (1), it appears to the Director General that any person who has not been named in that direction is providing any taxable services in the course of activities which should be regarded as part of the business activities, the Director General may make and serve on that person a supplementary direction adding that

- person's name to those of the persons named in the direction under subsection (1).
- (6) Upon the addition of the person's name in the direction under subsection (5), that person shall be treated as a single taxable person carrying on the business activities described in the direction under subsection (1) with effect from the date as specified in the direction.
- (7) Where, immediately before any direction including a supplementary direction is made, any person named in the direction has been registered in respect of the taxable service provided by him as specified in subsection (3) or (5), his registration shall be revoked by the Director General with effect from the date the single taxable person is registered under subsection (1).
- (8) Upon the revocation of registration under subsection (7), the person whose registration has been revoked together with all other persons named in the direction under subsection (1) shall be treated as a single taxable person.
- (9) In relation to a business specified in a direction, the persons named in such direction together with any person named in a supplementary direction relating to that business, being the persons who together are to be treated as a single taxable person, are referred to as "the constituent members" in subsections (10) and (11).
- (10) Where any direction is made under subsection (1)—
- (a) the single taxable person carrying on the business specified in the direction shall be registered in such name as the persons named in the direction may jointly nominate by notice in writing given to the Director General not later than fourteen days after the date the direction is served on the last of such persons named in the direction or, in default of such nomination, in such name as may be specified in the direction;
  - (b) any taxable service provided by one of the constituent members in the course of the activities of the single

taxable person shall be treated as being taxable service provided by the single taxable person;

- (c) each of the constituent members shall be jointly and severally liable for any service tax due and payable by the single taxable person;
- (d) without prejudice to paragraph (c), any failure by the single taxable person to comply with any requirement imposed under this Act shall be treated as a failure by each of the constituent members severally; and
- (e) subject to paragraphs (a) to (d), the constituent members shall be treated as a partnership carrying on the business of the single taxable person and any question as to the scope of the activities of that business at any time shall be determined accordingly.

(11) Where it appears to the Director General that any person who is one of the constituent members should no longer be regarded as such for the purposes of paragraphs (10)(c) and (d) and the Director General gives notice in writing to that effect, that person—

- (a) shall not have any liability by virtue of paragraphs (10)(c) and (d) for anything done after the date specified in that notice; and
- (b) on the date as specified in the notice, shall be treated as having ceased to be a member of the partnership referred to in paragraph (10)(e).

## Registration of partnership



16. (1) The registration of—

- (a) persons carrying on a business in a partnership as a registered person shall be in the name of the firm; and
- (b) the same persons carrying on separate businesses in a partnership as a registered person shall be in the separate names of the respective firms.

(2) In determining whether taxable services are provided to or by the persons referred to in subsection (1), no account shall be taken of any change in the partnership.

(3) Any person who ceases to be a partner in a partnership shall—

(a) notify the Director General in writing of the date of cessation within thirty days from the date of cessation; and

(b) pay for the proportion of the partnership's liability on any service tax due and payable on any taxable services provided by the partnership until the date of cessation.

(4) Where any person ceases to be a partner in a partnership under subsection (3) during any taxable period, any notice, whether of assessment or otherwise, which is served on the partnership and relates to the taxable period or to any other taxable period during the whole or part of which he was a partner in the partnership, shall be deemed as to have been served also on him.

(5) Notwithstanding any written law to the contrary, any notice, whether of assessment or otherwise, which is addressed to a partnership by the name in which it is registered under this Act, and is served in accordance with this Act shall be deemed— (a) as having been properly served on the partnership; and

(b) where subsection (4) applies, as having been properly served on any previous partner.

(6) Subsections (1) and (3) shall not affect the extent to which a partner is liable for service tax owed by the firm under any other written law.

(7) Where a person is a partner in a firm during part only of a taxable period, his liability for service tax on any taxable service provided by the firm during the taxable period shall be the proportion of the firm's liability as may be just.

(8) Where any notice is required to be given by a partnership under this Act, it shall be the joint and several liabilities of all partners to give the notice, except that if a notice is given by any of the

partners, it shall be regarded as sufficient compliance with the requirement.

(9) Any person who contravenes paragraph (3)(a) or (b) commits an offence.

(10) For the purposes of this section, a partnership excludes a limited liability partnership.

## Registration of branches or divisions



**17.** (1) Where any business of a registered person is carried on by one or more branches or divisions, the registered person may apply to the Director General, in the prescribed form, for any of the branches or divisions to be registered in the name of the branch or division.

(2) The Director General may approve an application made under subsection (1) subject to such conditions as he deems fit if he is satisfied that the registered person has fulfilled the following requirements:

- (a) it is likely to cause real difficulty for the registered person to submit a single return in respect of all the branches or divisions but for the separate registration;
- (b) each branch or division maintains a separate account in respect of its activities;
- (c) each branch or division is separately identifiable by reference to the nature of the activities carried on by or the location of the branch or division; and
- (d) each branch or division has the same taxable period.

(3) The Director General may, at any time, by notice in writing to the registered person, cancel the registration approved under subsection (2) in respect of any or all of the branches or divisions if he is satisfied that—

- (a) the registered person has failed to comply with any condition imposed by the Director General under subsection (2);

- (b) any of the requirements referred to in subsection (2) has ceased to apply;
  - (c) the registered person has provided any false, misleading or inaccurate declaration or information in his application under subsection (1); or
  - (d) it is necessary for the protection of the revenue.
- (4) Where the Director General cancels the registration in accordance with subsection (3), the cancellation shall have effect from the date as the Director General may determine.
- (5) Subject to subsection (6), the registered person may apply in writing to the Director General for any branch or division separately registered under subsection (2) to cease to be so registered, and the Director General may cancel the separate registration with effect from the date of application or from such later date as the Director General may determine.
- (6) A registered person registered under subsection (2) shall remain registered for a period of not less than two years or such other shorter period as the Director General may determine.

### **Cessation of liability to be registered**



**18.** (1) Subject to subsection (2), any registered person shall cease to be liable to be registered at the end of any month where the Director General is satisfied that the total value of all his taxable services in that month and the eleven months immediately succeeding that month (hereinafter referred to as "the period of twelve months") does not exceed the total value of taxable services prescribed under paragraph 12(1)(b).

(2) A registered person shall not cease to be liable to be registered by virtue of subsection (1) where the Director General is satisfied that the reason the total value of all his taxable services does not exceed the total value of taxable services prescribed under paragraph 12(1)(b) is that in the period of twelve months referred to in subsection (1) he temporarily ceases providing such taxable



services, or suspends providing such taxable services, for a period of thirty days or more.

### **Notification of cessation of liability**



**19.** (1) A person registered under section 13 or 14—

(a) who ceases to carry on business of providing taxable services; or

(b) who ceases to be liable to be registered under section 18,

as the case may be, shall notify the Director General in writing of that fact and the date of cessation within thirty days from the date of cessation.

(2) Any person who contravenes subsection (1) commits an offence.

### **Cancellation of registration**



**20.** (1) Where a registered person makes a notification under section 19, the Director General may cancel the person's registration from the date the registered person ceased to provide taxable services or ceased to be liable to be registered under section 18, as the case may be, or from such later date as the Director General may determine if he is satisfied that the registered person can be deregistered.

(2) Where there is no notification made under section 19 and the Director General is satisfied that a registered person has ceased to provide taxable services or has ceased to be liable to be registered under section 18, the Director General may cancel his registration from the date the registered person ceased to provide taxable services or ceased to be liable to be registered under section 18, as the case may be, or from such later date as the Director General may determine.

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

- (a) in the case of a person who was registered under section 13, the person was not liable to be registered under section 12 or has ceased to provide taxable services; or
- (b) in the case of a person who was registered under section 14, the person was not providing taxable services or has ceased to provide taxable services,

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

(4) The Director General may cancel the registration of a registered person under subsection 14(2) if the registered person is in breach of any conditions imposed in relation to such registration with effect from the date of the breach or from such later date as determined by the Director General.

## Part V

### ACCOUNTING, ASSESSMENT, RECOVERY, ETC.

#### **Invoices**



**21.** (1) Every registered person who provides any taxable service shall issue an invoice containing prescribed particulars in the national language or English language to the customer in respect of the transaction.

(2) No invoice showing an amount which purports to be service tax shall be issued on the provision of services—

- (a) which are not taxable services; or
- (b) by a person who is not a registered person.

(3) The amount of service tax payable shall be collected by the registered person from the customer in addition to the value and any other amount due and payable by the customer in respect of the taxable services.

- (4) Any person who contravenes subsection (1), (2) or (3) commits an offence.

### **Production of invoices by computer**



**22.** For the purposes of any provision under this Act relating to an invoice, a registered person shall be treated as having issued an invoice to a customer notwithstanding that there is no delivery of any equivalent document in paper form to the customer if the prescribed particulars referred to in subsection 21(1) are recorded in a computer and—

- (a) are transmitted or made available to the customer by electronic means; or
- (b) are produced on any material other than paper and are delivered to the customer.

### **Credit notes and debit notes**



**23.** Where any taxable service is provided by any registered person which involves the issuance and receipt of credit notes or debit notes under the prescribed circumstances and conditions, such 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.

### **Duty to keep records**



**24.** (1) Every taxable person shall keep complete and true records written up to date of all transactions which affect or may affect his liability to service tax, including the following records:

- (a) all records of provision of taxable services by or to that taxable person including invoices, receipts, debit notes and credit notes; and
  - (b) all other records as the Director General may determine.
- (2) Any record kept under this section shall be—

- (a) preserved for a period of seven years from the latest date to which the record relates;
  - (b) in the national language or English language; and
  - (c) kept in Malaysia, except as otherwise approved by the Director General and subject to such conditions as he deems fit.
- (3) Where the record is in an electronically readable form, the record shall be kept in such manner as to enable the record to be readily accessible and convertible into writing.
- (4) Where the record is originally in a manual form and is subsequently converted into an electronic form, the record shall be retained in its original form prior to the conversion.
- (5) A copy of the record shall be admissible in evidence in any proceedings to the same extent as the record itself.
- (6) Any person who contravenes subsection (1), (2), (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

## Taxable period



**25.** (1) The first taxable period of every taxable person shall begin from the date he should have been registered under section 13 and end on the last day of the following month and the subsequent taxable period shall be a period of two months ending on the last day of any month of any calendar year.

(2) A taxable person may apply in writing to the Director General for a taxable period other than the period as determined under subsection (1).

(3) The Director General may, upon receiving any application under subsection (2)—

- (a) allow the application and the taxable period shall be the period as applied for;

- (b) refuse the application and the taxable period shall remain as determined under subsection (1); or
  - (c) vary the length of the taxable period or the date on which the taxable period begins or ends.
- (4) The Director General may, as he deems fit, reassign the taxable person to any taxable period other than the period to which he has been previously determined under subsection (1) or (3).



### **Furnishing of returns and payment of service tax due and payable**

- 26.** (1) Every taxable person shall, in respect of his taxable period, account for the service tax due 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 the end of his taxable period to which the return relates.
- (2) Where a taxable period has been varied under paragraph 25(3)(c) and notwithstanding subsection (1), the return shall be furnished within thirty days from the end of the varied taxable period.
  - (3) A registered person who ceases to be liable to be registered under section 18 or ceases to carry on business of providing taxable services under section 19 shall, not later than thirty days after such cessation, or such later date as the Director General may allow, furnish a return containing particulars as the Director General may determine in respect of that part of the last taxable period during which the person was registered.
  - (4) Any taxable person who is required to furnish a return under this section shall pay to the Director General the amount of service tax due and payable by him in respect of the taxable period to which the return relates not later than the last day on which he is required to furnish the return.
  - (5) The return referred to in subsections (1), (2) and (3) shall be furnished whether or not there is service tax to be paid.
  - (6) Any taxable person who—

- (a) contravenes subsection (1), (2) or (3); or
- (b) furnishes an incorrect return,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

- (7) Any taxable person who fails to pay to the Director General the amount of service tax due and payable under subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.
- (8) Where any service tax due and payable is not paid wholly or partly by any taxable person after the last day on which it is due and payable under subsection (4) and no prosecution is instituted, the taxable person shall pay—
  - (a) for the first thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (4), a penalty of ten per cent of the amount of service tax which remains unpaid;
  - (b) for the second thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (4), an additional penalty of fifteen per cent of the amount of service tax which remains unpaid; and
  - (c) for the third thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (4), an additional penalty of fifteen per cent of the amount of service tax which remains unpaid.
- (9) Subject to subsection (11), prosecution for the offence under subsection (7) may be instituted after the expiry of the period specified in paragraph (8)(c).
- (10) The court may order that any taxable person who is convicted for the offence under subsection (7) to pay the penalty as specified in subsection (8).

- (11) No prosecution for the offence under subsection (7) shall be instituted against any taxable person who has paid the amount of service tax due and payable, and the penalty specified under subsection (8) within the period specified in subsection (8).

## Power to assess



### 27. (1) Where any taxable person—

- (a) fails to apply for registration under section 13;
- (b) fails to furnish a return under section 26; or
- (c) furnishes a return which appears to the Director General to be incomplete or incorrect;

the Director General may assess to the best of his judgment the amount of service tax due and payable, and the penalty payable under subsection 26(8), if any, by the taxable person and shall forthwith notify him of the assessment in writing.

- (2) Where an amount has been paid to any person as being a refund of service tax under this Act which ought not to have been paid to him, the Director General may assess the amount of the refund as being service tax due and payable by him and shall forthwith notify him of the assessment in writing.
- (3) The assessment under subsections (1) and (2) shall not be made more than six years from the date on which the service tax was due and payable or from the date on which the refund of service tax was made, as the case may be, except where in the opinion of the Director General any form of fraud or willful default has been committed by or on behalf of any person in relation to the service tax or refund, the Director General may, for the purposes of making good any loss of service tax or payment of refund of service tax attributable to the fraud or willful default, make an assessment at any time.
- (4) Where—
  - (a) the Director General has made an assessment of service tax under subsection (1) in respect of paragraph (1)(a) or (b);

- (b) the service tax assessed under paragraph (a) has been paid but no return has been furnished for the taxable period to which the assessment relates; and
- (c) the taxable person fails to furnish a return for any subsequent taxable period,

the Director General may, as he deems fit, assess an amount of service tax greater than that which he otherwise would have considered to be appropriate.

- (5) Where it appears to the Director General that the amount which ought to have been assessed in an assessment under subsection (1), (2) or (4) exceeds the amount which was so assessed, he may—
  - (a) under the same provision as that assessment was made; and
  - (b) within the taxable period during which that assessment could have been made,

make a supplementary assessment of the amount of the excess and shall forthwith notify the taxable person in writing accordingly.

- (6) Where an amount of service tax and penalty, if any, has been assessed and notified to any taxable person under subsection (1), (2) or (5), it shall be deemed to be an amount of service tax due and payable, and penalty payable, by him and may be recovered accordingly and the amount of service tax and penalty, if any, shall be paid by the taxable person, whether or not that taxable person appeals against the assessment, to the Director General unless or except to the extent that the assessment has been withdrawn or reduced by the Director General.
- (7) The Director General may make any alteration in or addition to the assessment made under this section as he deems fit to ensure the correctness of the assessment and shall forthwith notify the person in writing.



**Recovery of service tax, etc., as civil debt**

**28.** (1) Without prejudice to any other remedy and notwithstanding any review or appeal against any decision of the Director General under section 81, any service tax due and payable, any surcharge accruing, or any penalty, fee or other money payable, under this Act may be recovered as a civil debt due to the Government.

(2) Where an invoice shows a provision of taxable service as having taken place with service tax chargeable on the service, there shall be recoverable from the person who issued the invoice an amount equals to—

- (a) that which is shown in the invoice as service tax; or
- (b) so much of the total amount shown as payable as is to be taken as representing service tax, if service tax is not separately shown in the invoice, for the provision of such taxable service.

(3) Subsection (2) shall apply whether or not—

- (a) the invoice is an invoice issued under section 21 or 22;
- (b) the provision of taxable service shown on the invoice actually takes or has taken place or the amount shown as service tax or any amount of service tax is or was chargeable on the provision of the taxable service; or (c) the person issuing the invoice is a registered person,

and any amount recoverable from the person under subsection (2) shall be recoverable as such and shall otherwise be recoverable as a civil debt due to the Government.

(4) In any proceedings to recover the service tax, surcharge, penalty, fee or other money under subsection (1), the production of a certificate signed by the Director General—

- (a) stating that any service tax, surcharge, penalty, fee or other money and the amount shown in the certificate as due and payable, accruing or payable, in any return, assessment or notice made under this Act from a person named in the certificate; and

- (b) giving the address of the person and purporting to be a copy of or an extract from any notice of assessment,

shall be conclusive evidence of the service tax, surcharge, penalty or other money and the amount as due and payable, accruing or payable, in any return, assessment or notice and shall be sufficient authority for the court to give judgement for that amount.

- (5) Any penalty imposed under this Act shall, for the purposes of this Act and the Limitation Act 1953 [Act 254], the Limitation Ordinance of Sabah [Sabah Cap. 72] or the Limitation Ordinance of Sarawak [Sarawak Cap. 49], as the case may be, be recoverable as if the penalty were service tax due and payable under this Act and accordingly subsection 6(4) of the Limitation Act 1953, section 3 of the Limitation Ordinance of Sabah or section 3 of the Limitation Ordinance of Sarawak, as the case may be, shall not apply to that penalty.

### **Power to collect service tax, etc., from person owing money to taxable person**

**29.** (1) Where any sum by way of service tax is due and payable, surcharge is accrued, or penalty, fee or other money is payable, by a taxable person, the Director General may, by notice in writing, require—

- (a) any person by whom any money is due or accruing or may become due and payable to the taxable person;
- (b) any person who holds or may subsequently hold money for or on account of the taxable person;
- (c) any person who holds or may subsequently hold money for or on account of any person for payment to the taxable person; or
- (d) any person having authority from any other person to pay money to the taxable person,

to pay to the Director General forthwith, or within such time as the Director General allows, such money, not being salary or wages due or accruing to the taxable person, or so much of such money

as is sufficient to pay the sum due and payable, accruing or payable by the taxable person as aforesaid.

(2) A copy of the notice under subsection (1) shall be forwarded to the taxable person at his last known address.

(3) All payments made pursuant to a notice under this subsection (1) shall be deemed to be made on behalf of the taxable person and with the authority of the taxable person and all other persons concerned.

(4) For the purposes of this section, the Director General may require any person to give him information—

- (a) as to any money, fund or asset which may be held by the person for any other person; or
- (b) of any money due and payable by him to any other person.

### **Recovery of service tax before payable from persons about to leave Malaysia**



**30.** If the Director General has reason to believe that any person is about or is likely to leave Malaysia before any service tax due by him becomes payable in accordance with the provisions of this Act, the service tax shall, if the Director General deems fit, be payable on such earlier date as the Director General determines and the person shall be notified accordingly.

### **Recovery of service tax, etc., from persons about to leave Malaysia without paying service tax, etc.**



**31.** (1) Where the Director General has reason to believe that any person is about or is likely to leave Malaysia without paying—

- (a) any service tax due and payable by him under subsection 26(4);
- (b) any penalty payable by him under subsection 26(8);
- (c) any surcharge accrued by him under subsection 32(3);

(d) any fee payable by him under this Act; or

(e) any other money recoverable from him under this Act,

the Director General may issue to the Director General of Immigration a notice containing particulars of the person and the offence committed with a request that the person be prevented from leaving Malaysia unless he pays the service tax, surcharge, penalty, fee or other money, or furnishes security to the satisfaction of the Director General for its payment.

(2) Subject to any order issued or made under any written law for the time being in force relating to immigration, the Director General of Immigration who receives a request under subsection (1) in respect of a person shall exercise all measures which may include the removal and retention of any certificate of identity, passport, exit permit or other travel documents in relation to that person as may be necessary to give effect to the request.

(3) The Director General shall cause the notice under subsection (1) to be served personally or by registered post on the person to whom the notice relates.

(4) The non-receipt of the notice under subsection (1) by the person referred to in subsection (3) shall not invalidate anything done under this section.

(5) Where the person in respect of whom a notice has been issued under subsection (1) produces, on or after the date of the notice, a written statement signed by the Director General stating that all the service tax, surcharge, penalty, fee or other money specified in the notice have been paid, or that security has been furnished for its payment, that statement shall be sufficient authority for allowing that person to leave Malaysia.

(6) No legal proceedings shall be instituted or maintained against the Federal Government, a State Government or any other public officer in respect of anything lawfully done under this section.

## Payment by instalments



**32.** (1) The Director General may allow any service tax due and payable, or penalty payable, to be paid by instalments under the prescribed circumstances in such amounts and on such dates as the Director General may determine.

(2) Where the service tax is allowed to be paid by instalments, the penalty under subsection 26(8) shall cease to be calculated from the date the Director General allows the payment by instalments.

(3) Where there is a default in payment of any instalment under subsection (1) on its due date for payment of the balance of the amount due and payable, the whole outstanding balance shall become due and payable on that date and shall, without any further notice being served on the person liable to pay the amount due, be subject to a surcharge equals to ten per cent of that balance and the surcharge shall be recoverable as if it were due and payable under this Act.

## Liability of directors, etc.



**33.** (1) Notwithstanding any written law to the contrary, but subject to subsection (2) in relation to a company that is being wound up, where service tax is due and payable, surcharge is accrued, or penalty, fee or other money is payable, under this Act by any company, limited liability partnership, firm, society or other body of persons— (a) the directors of the company;

(b) the compliance officer who is appointed amongst the partners of the limited liability partnership or if no compliance officer is appointed as such, any one or all of the partners of the limited liability partnership;

(c) the partners of the firm;

(d) the office-bearers of the society; or

(e) the persons responsible for the management of the body of persons,

as the case may be, shall together with the company, limited liability partnership, firm, society or other body of persons be jointly and severally liable for the service tax, surcharge, penalty, fee or other money.

(2) In relation to a company that is being wound up, the directors of the company shall only be liable where the assets of the company are insufficient to meet the amount due, after paying any sum having priority under the Companies Act 2016 [Act 777] in relation to the application of the assets of the company in the winding-up over the service tax, surcharge, penalty, fee or other money.

## Part VI

### EXEMPTION, REFUND AND REMISSION

#### Power of Minister to exempt and refund



**34.** (1) The Minister may, by order published in the *Gazette* and subject to such conditions as he deems fit, exempt any person or class of persons from payment of the whole or any part of the service tax which may be charged and levied on any taxable service provided.

(2) Any order made under subsection (1) shall be laid before the Dewan Rakyat.

(3) The Minister may, in any particular case and subject to such conditions as he deems fit—

(a) exempt any person or class of persons from payment of the whole or any part of the service tax which may be charged and levied on any taxable service provided; or

(b) direct the Director General to make a refund to any person or class of persons of the whole or any part of the service tax or penalty paid by such persons or class of persons.

(4) Where a registered person provides any taxable service to a person or class of persons exempted under subsection (1) or paragraph (3)(a), the registered person shall be exempted from

charging and collecting service tax due and payable on such taxable service.

(5) Where any person who is exempted under subsection (1) or paragraph (3)(a) fails to comply with any conditions to which the exemption relates, any service tax that has been the subject of the exemption shall become due and payable by the person on the date on which any of the conditions failed to be complied with.

(6) Where a person who has been granted exemption under subsection (1) or paragraph (3)(a) has paid any of the service tax to which the exemption relates and has been granted approval by the Minister for a refund of the amount of service tax which has been paid, the person shall be entitled to such refund.

### **Claim for refund of service tax in relation to bad debt**



**35.** (1) Any person who is, or has ceased to be, a registered person may make a claim to the Director General for a refund of the whole or any part of any service tax paid by him in respect of taxable services if—

- (a) the whole or any part of the service tax payable to such person has been written off in his accounts as bad debts; and
- (b) the Director General is satisfied that all reasonable efforts have been made by such person to recover the service tax.

(2) Where the person who makes a claim for a refund under subsection (1) in relation to a bad debt—

- (a) has not received any payment in respect of the provision of taxable services, such person may make a claim for a refund of the whole of the service tax paid; or
- (b) has received any payment in respect of the provision of taxable services, such person may make a claim for the difference between the service tax paid and amount calculated in accordance with the following formula:

$$\frac{A}{\text{---}} \times C B$$

- where
- A is the payment received in respect of the provision of such taxable services;
  - B is the value of such taxable services plus service tax payable on such taxable services; and
  - C is the service tax payable on such taxable services.

(3) The person referred to in subsection (1) may make a claim for a refund of the whole or any part of any service tax in relation to the bad debt within six years from the date the service tax is paid by him and the Director General may refund the whole or any part of the service tax after being satisfied that the person has properly established the claim.

(4) For the purposes of this section, "bad debt" means the outstanding amount of the payment in respect of the provision of taxable services including the service tax which is due to a person who is, or has ceased to be, a registered person but has not been paid to, and is irrecoverable by, the person.

### Repayment of service tax in relation to bad debt



**36.** Where a refund of service tax has been made under section 35 by the Director General to the person referred to in subsection 35(1) and any payment in respect of the provision of taxable services for which the service tax is payable is subsequently received by the person, the person shall repay to the Director General an amount calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

- where
- A is the payment received in respect of the provision of such taxable services;



- B is the value of such taxable services plus service tax payable on such taxable services; and
- C is the service tax payable on such taxable services.

### **Payment of service tax, etc., short paid or erroneously refunded**

#### **37. (1) Where—**



- (a) the whole or any part of any service tax due and payable, surcharge accrued, or penalty, fee or other money payable, under this Act has not been paid by a person; or
- (b) the whole or any part of any service tax due and payable, surcharge accrued, or penalty, fee or other money payable, after having been paid, has been erroneously refunded to a person,

the Director General shall demand from the person to pay the service tax, surcharge, penalty, fee or other money, or the deficient service tax, surcharge, penalty, fee or other money, or to repay the refund erroneously paid to him.

#### **(2) The demand under subsection (1) shall be made within six years from the date on which—**

- (a) the service tax, surcharge, penalty, fee or other money was payable, or the deficient service tax, surcharge, penalty, fee or other money was paid; or
- (b) the refund was made.

#### **(3) Upon receipt of the demand under subsection (1), the person shall—**

- (a) pay the service tax, surcharge, penalty, fee or other money, or the deficient service tax, surcharge, penalty, fee or other money; or
- (b) repay the refund erroneously paid to him.

**Refund of service tax, etc., overpaid or erroneously paid**

**38.** (1) Any person who—

- (a) has overpaid or erroneously paid any service tax, surcharge, penalty, fee or other money; or
- (b) is entitled to the refund under subsection 34(6) or 40(3),  
may make a claim for refund in the prescribed form.

(2) A claim for refund under subsection (1) shall be made to the Director General within one year from the time— (a) such overpayment or erroneous payment occurred; or (b) such entitlement of the refund under subsection 34(6) or 40(3) occurred.

(3) The Director General may make such refund in respect of the claim under subsection (1) after being satisfied that the person has properly established the claim.

(4) The Director General may reduce or disallow any refund due in respect of the claim under subsection (1) to the extent that the refund would unjustly enrich the person referred to in subsection (1).

(5) A claim for refund under this section shall be supported by such evidence as required by the Director General.

**Deduction from return of refunded service tax**

**39.** (1) The Director General may approve, subject to such conditions as he deems fit, an application by any registered person to deduct from time to time from his return referred to in section 26 the amount of service tax paid but subsequently refunded to his customer by reason of— (a) cancellation of taxable service;

(b) termination of taxable service; or

(c) such other reasons as may be approved by the Director General.

(2) The registered person shall make the deduction referred to in subsection (1) within one year after the payment was made, or such extended period as may be approved by the Director General.

**Remission of service tax, etc.**



**40.** (1) The Minister may remit the whole or any part of the service tax due and payable under this Act where he deems fit.

(2) The Director General may remit the whole or any part of the surcharge accrued, or penalty, fee or other money payable, under this Act where he deems fit.

(3) Where a person who has been granted remission under subsection (1) or (2) has paid any of the service tax, surcharge, penalty, fee or other money to which the remission relates, he shall be entitled to a refund of the amount of service tax, surcharge, penalty, fee or other money which had been remitted.

Part VII

RULING

**Public ruling**



**41.** (1) The Director General may, at any time, make a public ruling on the application of any provision of this Act in relation to any person or class of persons, or any type of business activities.

(2) The Director General may withdraw, either wholly or partly, any public ruling made under this section.

(3) Notwithstanding any provision of this Act, where a public ruling under subsection (1) applies to any person in relation to a business activity and the person applies the provision in the manner stated in the ruling, the Director General shall apply the provision in relation to the person and the business activities in accordance with the ruling.



## Customs ruling

**42.** (1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a customs ruling in respect of any one or more of the following matters:

- (a) the determination of a taxable service;
- (b) the determination of a taxable person;
- (c) the principles to be adopted for the purposes of determination of value of taxable service;
- (d) any other matters as determined by the Director General.

(2) An application for a customs ruling under subsection (1) may be made—

- (a) at any time before any service is provided; or
- (b) at any later time, if permitted by the Director General.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made relating to the application for the customs ruling shall be forfeited by the Director General.

## Making of customs ruling



**43.** (1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in the application made under section 42 and such customs ruling shall bind the applicant.

(2) Any customs ruling made under subsection (1) may be subject to such conditions as the Director General deems fit.

(3) The Director General may decline to make a customs ruling if, in his opinion—

- (a) the information given by the applicant is insufficient to do so;

- (b) the application is for a hypothetical situation; or
- (c) any pending appeal under section 81 involves the subject matter referred to in the application.

### **Amendment, modification or revocation of customs ruling**



**44.** (1) A customs ruling may be amended, modified or revoked by the Director General if—

- (a) the customs ruling contains an error which needs to be corrected;
- (b) the customs ruling was based on an error of fact or law;
- (c) there is a change in law relating to service tax; or
- (d) there is a change in the material fact or circumstances on which the customs ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give a notice in writing to the applicant referred to in section 42 of the amendment, modification or revocation and, such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2) and subject to section 38, if the amendment, modification or revocation of a customs ruling has the effect of decreasing any service tax liability in respect of any taxable services, any higher service tax that has been paid shall be treated as if the higher service tax has been paid in error.

### **Director General to declare customs ruling to be null, etc.**



**45.** The Director General shall, by a notice, declare a customs ruling made under section 43 to be null, void and of no effect if the ruling has been obtained by the applicant referred to in section 42 by way of fraud, misrepresentation or falsification of facts.

**Different customs rulings on same subject matter**

**46.** Where an applicant referred to in section 42 receives two or more different customs rulings on the same subject matter, such rulings shall be treated as being null and void, and such applicant shall immediately notify the Director General who shall, within thirty days from the date of notification, make a new customs ruling.

## Part VIII

## SPECIAL PROVISIONS RELATING TO DESIGNATED AREAS

**Interpretation**

**47.** In this Part, “Malaysia” excludes the designated areas and special areas.

**Taxable service provided within or between designated areas, etc.**

**48.** Notwithstanding section 7, no service tax shall be charged and levied on any taxable service provided within or between designated areas or between designated areas and special areas unless the Minister otherwise prescribes by order under section 51.

**Taxable service provided by person whose principal place of business located in designated areas**

**49.** Service tax shall be charged by any person whose principal place of business is located in a designated area on any taxable service provided by him within Malaysia.

**Taxable service provided to designated areas by registered person whose principal place of business located in Malaysia**

**50.** Service tax shall be charged by any registered person whose principal place of business is located in Malaysia who provides any taxable service to a designated area.

**Power of Minister to impose service tax**



**51.** The Minister may, by order published in the *Gazette*, prescribe any service provided within or between designated areas or between designated areas and special areas to be chargeable to service tax.

Part IX

SPECIAL PROVISIONS RELATING TO SPECIAL AREAS

**Interpretation**



**52.** In this Part, "Malaysia" excludes the special areas and designated areas.

**Taxable service provided within or between special areas, etc.**



**53.** Notwithstanding section 7, no service tax shall be charged and levied on any taxable service provided within or between special areas or between special areas and designated areas unless the Minister otherwise prescribes by order under section 56.

**Taxable service provided by person whose principal place of business located in special areas**



**54.** Service tax shall be charged by any person whose principal place of business is located in a special area on any taxable service provided by him within Malaysia.

**Taxable service provided to special areas by registered person whose principal place of business located in Malaysia**



**55.** Service tax shall be charged by any registered person whose principal place of business is located in Malaysia who provides any taxable service to a special area.

**Power of Minister to impose service tax**

**56.** The Minister may, by order published in the *Gazette*, prescribe any service provided within or between special areas or between special areas and designated areas to be chargeable to service tax.

## Part X

## ENFORCEMENT

**Persons bound to give information**

**57.** (1) Every person having information about any matter into which it is the duty of the proper officer of service tax to inquire shall, upon being required by the officer to do so, give such information.

(2) Every person required by the proper officer of service tax to produce any goods, documents, articles or things which are within the power of such person to produce, and which are—

(a) goods, documents, articles or things used in any transaction or other matter relating to service tax; or

(b) goods, documents, articles or things into which it is the duty of the proper officer of service tax to inquire under this Act, shall produce such goods, documents, articles or things.

(3) Where any information, goods, documents, articles or things are not in the national language or English language, any proper officer of service tax may by notice in writing require the person or any other person to produce within a reasonable period a translation of the information, goods, documents, articles or things in the national language or English language as the proper officer of service tax may determine.

(4) Any person—

(a) who contravenes subsection (1) or (2); or



- (b) who fails to produce a translation as required under subsection (3), commits an offence.

### Access to places or premises



**58.** (1) For the purposes of this Act, any senior officer of service tax shall at all times have access to any place or premises where a person providing services carries on his business.

(2) Where any senior officer of service tax exercises his powers under subsection (1), the person who carries on his business or any other person present at the place or premises at that time of entry shall provide to the officer all reasonable facilities and assistance for the exercise of his duties under this section.

(3) Where any senior officer of service tax enters upon any place or premises in accordance with this section, he may—

- (a) require the person providing services who carries on his business at such place or premises or any other person present at such place or premises, as the case may be, to produce any goods, documents, articles or things, which such person is required to keep under the provisions of this Act, or which relates to any taxable service;
- (b) examine any goods, documents, articles or things and take copies of any documents;
- (c) seize and detain any goods, documents, articles or things which, in his opinion, may afford evidence of the commission of any offence under this Act;
- (d) require the person providing services who carries on his business at such place or premises or any other person present at such place or premises, or any person employed by such person to answer questions relating to any goods, documents, articles or things, or any entry in any documents, or any taxable service;
- (e) require any container, envelope or other receptacle in such place or premises to be opened; or

- (f) at the risk and expense of the person providing services who carries on his business at such place or premises or any other person present at such place or premises, open and examine any package, or any goods or materials, in such place or premises.

(4) Where the senior officer of service tax acting under this section is unable to obtain access to any place or premises where a person providing services carries on his business, or to any receptacle contained in the place or premises, he may, at any time, enter such place or premises, and open such receptacle in such manner, if necessary by force, as he may think necessary.

(5) Any person who contravenes subsection (2) commits an offence.

### **Access to recorded information or computerized data**



**59.** (1) Any senior officer of service tax exercising his powers under sections 58, 60 and 61 shall be given access to any recorded information or computerized data, whether stored in a computer or otherwise.

(2) In addition, a senior officer of service tax exercising his powers under sections 58, 60 and 61—

(a) may inspect the operation of any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been used in connection with the information or data; and

(b) may require—

(i) the person by whom or on whose behalf the senior officer of service tax has reasonable cause to suspect the computer is or has been so used in connection with the information or data; or

(ii) the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material in connection with the information or data,

to provide the officer with such reasonable assistance as he may require for the purpose of this section.

(3) For the purposes of subsection (1), “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information or computerized data.

### **Magistrate may issue search warrant**



**60.** (1) Whenever it appears to any Magistrate, upon written information upon oath and after any inquiry which he may think necessary, that there is reasonable cause to believe that in any place, premises or conveyance, there are concealed or deposited any goods, documents, articles or things which may afford evidence of the commission of an offence under this Act, the Magistrate may issue a warrant authorizing any senior officer of service tax named therein, at any time and with or without assistance—

- (a) to enter the place, premises or conveyance and to search for and seize the goods, documents, articles or things; and
- (b) to arrest any person being in the place, premises or conveyance in whose possession the goods, documents, articles or things are found or who may reasonably be suspected as having concealed or deposited such goods, documents, articles or things.

(2) The senior officer of service tax authorized under subsection (1) may, if it is necessary so to do—

- (a) break open any outer or inner door of the place, premises or conveyance and enter every part thereof, if necessary forcibly;
- (b) remove by force any obstruction to the entry to search or to seize as he is empowered to effect; and
- (c) detain every person found in the place, premises or conveyance until the search has been completed.

**Search may be made without warrant**

**61.** Whenever it appears to the senior officer of service tax that there is reasonable cause to believe that in any place, premises or conveyance there are concealed or deposited any goods, documents, articles or things which may afford evidence of the commission of any offence under this Act and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the goods, documents, articles or things are likely to be removed, he may exercise in, upon and in respect of the place, premises or conveyance, all the powers under section 60 in the same manner as if he was empowered so to do by a warrant issued under that section.

**Seizure of goods, etc.**

**62.** (1) Any proper officer of service tax may seize in any place any of the following:

- (a) all goods, documents, articles or things in respect of which the proper officer of service tax has reasonable cause to suspect that there has been committed any offence under this Act, any violation of any of the provisions of this Act, or any breach of any condition subject to which a registration has been approved under sections 13 and 14; and
- (b) any other goods, documents, articles or things which may reasonably be believed to have a bearing on the offence, violation or breach referred to in paragraph (a).

(2) Whenever any goods, documents, articles or things are seized under this Act, the proper officer of service tax shall forthwith give notice in writing of such seizure and the grounds of the seizure to the owner of the goods, documents, articles or things, if known, either by delivering such notice to him personally or by post at his place of abode.

(3) The provisions of this section relating to the seizure of any goods, documents, articles or things shall apply to all contents of any receptacles or packages in which the goods, documents, articles or things are found, and to any

articles used to conceal the goods, documents, articles or things.

(4) Where a senior officer of service tax is satisfied that the goods, documents, articles or things seized are not required for the purposes of investigation, prosecution or any proceedings under this Act, he may release the goods, documents, articles or things to—

- (a) the owner of the goods, documents, articles or things; or
- (b) the person from whose possession, custody or control, the goods, documents, articles or things were seized.

### Power of arrest



**63.** (1) Any proper officer of service tax may arrest without warrant—

- (a) any person found committing or attempting to commit, or employing or aiding any person to commit, or abetting the commission of, an offence under this Act;
- (b) any person whom he may reasonably suspect to have in his possession any goods, documents, articles or things liable to seizure under this Act; or
- (c) any person whom he may reasonably suspect to have committed an offence under this Act.

(2) The proper officer of service tax may search or cause to be searched any person arrested under subsection (1) provided that—

- (a) any person who requests that his person be searched in the presence of a senior officer of service tax shall not be searched except in the presence of and under the supervision of such senior officer of service tax, but such person may be detained until the arrival of such senior officer of service tax, or taken to any office or police station where such senior officer of service tax may be found;

- (b) the goods and baggage of the person who requests to be present when the goods and baggage are searched and so presents himself within a reasonable time shall not be searched except in his presence; and
    - (c) no person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.
- (3) Any proper officer of service tax making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force.
- (4) If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time thereafter be arrested and dealt with as if he had been arrested at the time of committing such offence.
- (5) Any proper officer of service tax may cause to be taken photographs, finger and thumb impressions and any other form of identification that may be required under any other written law of any person charged with an offence against this Act.
- (6) Every person so arrested may be released from custody—
  - (a) on his depositing such reasonable sum of money as the proper officer of service tax may require;
  - (b) on his executing a bond, with such surety or sureties, as the proper officer of service tax may require; or
  - (c) on his depositing such reasonable sum of money as the proper officer may require and his executing a bond, with such surety or sureties, as the proper officer of service tax may require.
- (7) Any person who has been released from custody under subsection (6) may be arrested without warrant by any proper officer of service tax—

- (a) if such officer has reasonable grounds for believing that any conditions subject to which such person was released or otherwise admitted to bail has been or is likely to be breached; or
- (b) on being notified in writing by the surety of such person that such person is likely to breach any conditions subject to which such person was released and that the surety wishes to be relieved of his obligation as surety.

## Part XI

## TRIALS AND PROCEEDINGS

**Jurisdiction to try offences**

64. Notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try any offence under this Act and to impose punishment under this Act for any such offence.

**Evidence by certificate, etc.**

65. Any certificate signed by the Director General stating that—
- (a) a person was or was not, on any date, registered under this Act;
  - (b) any return has not been furnished or had not been furnished on any date;
  - (c) any service tax shown as due and payable in any return or assessment has not been paid;
  - (d) any penalty and the amount of the penalty shown as due from a person named in the certificate; or
  - (e) any public ruling is made under section 41 or customs ruling is made under section 43,

shall be *prima facie* evidence of the facts stated in the certificate without proof of the signature to the certificate.

**Obligation of secrecy**

**66.** (1) Except as provided under section 67, the name, identification card number, passport number and address of an informer, or any other information which can lead to the identity of the informer, and the substance of the information received from an informer shall be kept secret and shall not be disclosed by any officer of service tax or any person who in the ordinary course of his duties comes into possession of, or has control of or access to, the information to any person except the proper officer of service tax.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding one hundred thousand ringgit or to both.

**Protection of informers from discovery**

**67.** (1) Except as hereinafter provided, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name, address or any information of an informer, or the substance of the information received from an informer, or state any matter which might lead to the discovery of the informer.

(2) If any documents which are produced in evidence or liable to inspection in any civil or criminal proceedings contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all the passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If in the trial for any offence under this Act, the court, after full enquiry into the case, believes that the informer wilfully made in his complaint a material statement which he knew to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot fully be done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry and require full disclosure concerning the informer.



**Burden of proof**

**68.** Where any dispute arises in any prosecution as to whether— (a)

any service tax has been paid;

(b) any provision of service is not liable to service tax chargeable under this Act;

(c) any value upon which service tax is chargeable under this Act;  
or

(d) any amount of service tax chargeable under this Act is subject to any deduction,

the burden of proof of such dispute shall lie on the accused in the prosecution.

**Court order**

**69.** (1) Where any person is found guilty of an offence under this Act, the court before which that person is found guilty shall order the person to pay to the Director General the amount of service tax due and payable or penalty payable, under this Act, if any, as certified by the Director General and such service tax or penalty shall be recoverable in the same manner as a fine as provided under section 283 of the Criminal Procedure Code [Act 593].

(2) In addition to subsection (1), the court has civil jurisdiction to the extent of the amount of service tax due and payable or penalty payable and the order is enforceable in all respects as a final judgement of the court in favour of the Director General.

(3) Where any person is found not guilty of an offence under this Act, and if he has paid the amount of service tax due and payable or penalty payable under this Act pursuant to section 85 in respect of the offence charged, the court may order the amount paid to be refunded to such person where no notice of appeal is filed.

**No costs or damages arising from seizure to be recoverable unless seizure without reasonable or probable cause**

**70.** No person shall, in any proceedings before any court in respect of the seizure of any goods, documents, articles or things in exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of the proceedings or to any damages or other relief, other than an order for the return of such goods, documents, articles or things or the payment of the value of such goods, documents, articles or things, unless such seizure was made without reasonable or probable cause.

## Part XII

## GENERAL

**Evasion of service tax**

**71. (1)** Any person who, with the intent to evade or assist any other person to evade service tax—

- (a) omits from a return any information in relation to any matter affecting the amount of service tax chargeable by him or other person;
- (b) makes a false statement or entry in any return, claim or application;
- (c) gives any false answer, whether in writing or otherwise, to any question asked or request for information made under this Act;
- (d) prepares or maintains, or authorizes the preparation or maintenance of, any false book of accounts, false invoices or other false records, or falsifies or authorizes the falsification of any book of accounts, invoices or records; or
- (e) makes, uses or authorizes the use of any fraud, artifice or contrivance, commits an offence.

(2) Any person who commits an offence under subsection (1) shall, on conviction—

- (a) for the first offence, be liable to a fine of not less than ten times and not more than twenty times the amount of service tax or to imprisonment for a term not exceeding five years or to both; and
  - (b) for a second or subsequent offence, be liable to a fine of not less than twenty times and not more than forty times the amount of service tax or to imprisonment for a term not exceeding seven years or to both.
- (3) For the purposes of subsection (2), where the amount of service tax cannot be ascertained, the person shall be liable to a fine of not less than fifty thousand ringgit and not more than five hundred thousand ringgit or to imprisonment for a term not exceeding seven years or to both.
- (4) Any person who assists in, or advises with respect to, the preparation of any return where the return results in an understatement of the liability for service tax of another person, unless he satisfies the court that the assistance or advice was given with reasonable care, commits an offence and shall, on conviction, be liable to a fine of not less than two thousand ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.
- (5) Any reference in paragraph (1)(e) in relation to a person who makes, uses or authorizes the use of any fraud, artifice or contrivance includes a reference to a person who, without the authority of the officer of service tax—
- (a) destroys, damages, erases, alters or manipulates data stored in, or used in connection with, a computer;
  - (b) introduces into, or records or stores in, a computer by any means data for the purpose of—
    - (i) destroying, damaging, erasing, altering or manipulating other data stored in that computer; or
    - (ii) interfering with, interrupting or obstructing the

lawful use of that computer, or the data stored in that computer; or (c) otherwise uses a computer, the purpose or effect of which is to evade service tax.

(6) For the purposes of subsection (5), "data" includes any computer programme or part of a computer programme.

(7) In any prosecution under this section, any evasion of service tax shall be deemed to be with the knowledge of the accused unless the contrary be proved by the accused.

### **Giving incorrect information relating to liability to service tax**



**72.** Without prejudice to any other liability incurred under this Act, any person who gives any incorrect information in relation to any matter affecting his own liability to service tax or the liability of any other person to service tax commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding fifty thousand ringgit or to both.

### **Improperly obtaining refund**



**73.** Any person who causes or attempts to cause the refund by the Director General under subsection 10(4), 35(1) or 38(1) to himself or to any other person of any amount in excess of the amount properly so refundable to him or to that other person commits an offence and shall, on conviction, be liable—

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

### **Employee may transact business**



**74.** (1) An employee of any person may transact business generally with any proper officer of service tax on behalf of such person.

(2) A proper officer of service tax may refuse to transact business with such employee unless the person referred to under subsection (1) identifies such employee to such proper officer of service tax as empowered to transact.

### **Transaction of business on behalf of taxable person**



**75.** (1) Subject to section 74, no person shall transact any business in relation to this Act on behalf of any taxable person, except on matters with regard to any refund, remission, exemption, or any other matters as approved by the Director General, under this Act.

(2) The person who transacts business on any of the matters stated in subsection (1) on behalf of a taxable person shall—

(a) produce a letter of authorization from the taxable person whom he represents; and

(b) where any prescribed form is required to be submitted for the purposes of the matters being transacted, submit the form that has been signed by the taxable person, except where otherwise allowed by a senior officer of service tax.

(3) Any person who contravenes subsection (1) commits an offence.

### **Offences by authorized and unauthorized persons**



**76.** Any person—

(a) being an employee of a taxable person or a person authorized under section 75 who—

(i) withholds for his own use or otherwise any portion of the amount of service tax or penalties collected under this Act;

(ii) otherwise than in good faith, demands from any person an amount in excess of any assessment of service tax due and payable, or penalties payable, under this Act;

- (iii) submits any false return, statement or report, whether in writing or otherwise, of the amount of service tax or penalty collected or received by him under this Act; or
- (iv) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the Director General or any other individual; or

(b) not being authorized under this Act who collects or attempts to collect any service tax or penalty under this Act,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Obstruction**



**77.** Any person who in any way obstructs, assaults or hinders any proper officer of service tax in the discharge of his functions under this Act commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

### **Offences by company, etc.**



**78.** (1) Where any company, limited liability partnership, firm, society or other body of persons commits an offence under this Act, a person who at the time of the commission of the offence was a director, compliance officer, partner, manager, secretary or other similar officer of the company, limited liability partnership, firm, society or other body of persons or was purporting to act in such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, limited liability partnership, firm, society or other body of persons or was assisting in its management—

- (a) may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or other body of persons; and
- (b) if the company, limited liability partnership, firm, society or the body of persons is found guilty of the offence, shall be

deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

- (i) that the offence was committed without his knowledge; or
- (ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) Where any person is liable under this Act to any punishment or penalty for any act, omission, neglect or default, such person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of the person's employee or agent, or of the employee of the person's agent, if the act, omission, neglect or default was committed—

- (a) by that person's employee in the course of his employment;
- (b) by that person's agent when acting on behalf of that person; or
- (c) by the employee of that person's agent when acting in the course of his employment by the person's agent or otherwise on behalf of the person's agent acting on behalf of that person.

### **General penalty**



**79.** Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Compounding of offences**

**80.** (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

- (a) any offence under this Act or any regulations made under this Act as an offence which may be compounded;
- (b) the criteria for compounding such offence; and
- (c) the method and procedure for compounding such offence.

(2) Any senior officer of service tax may, with the consent in writing of the Public Prosecutor, at any time before a charge is being instituted, compound any offence prescribed as an offence which may be compounded by making a written offer to the person reasonably suspected of having committed the offence to compound the offence upon payment to the Director General of a sum of money not exceeding fifty per centum of the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence, within such time as may be specified in the written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Director General may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any document or thing seized in connection with the offence may be released by the Director General, subject to such terms as the Director General thinks fit.

(5) All sums of moneys received by the Director General under this section shall be paid into and form part of the Consolidated Fund.



## Review and appeal



- 81.** (1) Any person aggrieved by any decision of the Director General may apply to the Director General for review of 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 Customs Appeal Tribunal or court.
- (2) An application for review 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 make the review and notify the decision of the review to the person, where practicable, within sixty days from the date of the receipt of such application.
- (4) No review may be made in any matter relating to compound.
- (5) Any person aggrieved by any decision of the Director General under subsection (3) or any other provision of this Act, except any matter relating to compound, may appeal to the Customs Appeal Tribunal in writing within thirty days from the date of notification of the decision to the aggrieved person.
- (6) Any service tax due and payable under this Act shall be paid notwithstanding any review or appeal has been made under this section.

## Liquidator of company to give notice of winding-up, and set aside service tax



- 82.** (1) Where a resolution is passed and becomes effective, or an order is made, for the winding-up of a company which is a registered person, the liquidator of the company shall—
- (a) give notice of the winding up of the company to the Director General within fourteen days after the resolution is effective or order is made;
- (b) before disposing of any of the assets of the company, set aside such sum out of the assets as appears to the

Director General to be sufficient to provide for any service tax that is or will thereafter become due and payable in respect of the company; and

(c) pay the service tax referred to in paragraph (b).

(2) A liquidator of any company referred to in subsection (1) who fails to give notice to the Director General within the time specified in paragraph (1)(a) or fails to provide for payment of the service tax as required under paragraph (1)(c) shall be personally liable for any service tax that is or will become due and payable as aforesaid.

(3) Any liquidator who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(4) Where two or more persons are appointed as liquidators or are required by law to carry out the winding-up of the company referred to in subsection (1), the obligations and liabilities attaching to a liquidator under this section shall attach to all such persons jointly and severally, subject to a right of contribution between themselves as in cases of contract.

### **Appointment of receiver to be notified to Director General**



**83.** (1) Where a receiver of the property of a registered person is appointed, the receiver shall give notice of such appointment to the Director General within fourteen days thereafter, and shall before disposing of any of the assets of the registered person set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any service tax that is or will thereafter become due and payable in respect of the taxable services provided by the registered person before the appointment of the receiver, and shall pay such service tax.

(2) Any receiver appointed under subsection (1) who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for the payment of the taxable service tax as required under that subsection shall be personally liable for any service tax that is or will become due and payable as aforesaid.

(3) Any receiver who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(4) Where two or more persons are appointed receivers, the obligations and liabilities attaching to a receiver under this section shall attach to all such persons jointly and severally, subject to a right of contribution between themselves as in cases of contract.

### **Registered person to submit audit certificate**



**84.** The Director General may require a registered person to submit annually an audit certificate, signed by a public accountant not in the employment of the registered person, in relation to the records required to be kept by the registered person under section 24 in respect of the taxable services provided by the registered person.

### **Service tax, etc., to be payable notwithstanding any proceedings, etc.**



**85.** 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 80 shall not relieve any person from the liability to pay for any service tax, surcharge, penalty, fees or other money under this Act.

### **Service of notices, etc.**



**86.** (1) Every notice, direction or other document required by this Act to be served on any person may be served—

- (a) personally on that person;
- (b) by sending it to that person by registered post; or
- (c) by the electronic service under section 87.

(2) The notice, direction or other document sent by registered post to a person shall be deemed to have been served on that person at the time at which it would have been delivered to that person in the ordinary course of the

post if such notice, direction or other document was addressed—

(a) in the case of a company, limited liability partnership, firm, society or other body of persons—

(i) to its registered office;

(ii) to its last known address; or

(iii) to any person authorized by it to accept service of process; and

(b) in the case of an individual, to his last known address.

(3) Where a person has given his consent for a notice to be served on him through the electronic service, the notice shall be deemed to have been served at the time when the electronic notice is transmitted to his account through the electronic service.

### **Use of electronic service**



**87.** (1) Notwithstanding any other provision of this Act and subject to the regulations made under this Act, the Director General may provide an electronic service to any registered user for—

(a) the filing or furnishing of any application, return, declaration or any other document; and

(b) the service of any notice, direction, order, permit, receipt or any other document.

(2) Where an electronic notice is made and transmitted to the Director General, the Director General shall not be liable for any loss or damage suffered by the registered user by reason of any error or omission of whatever nature or however arising appearing in any electronic notice obtained by the registered user under the electronic service if the error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Director General or occurred or arose as a result of any defect or breakdown in the electronic service or in the equipment used for the provision of the electronic service.

(3) Any electronic notice made and transmitted by the registered user shall be deemed to have been filed, furnished or served at the time the electronic notice is received by the Director General.

(4) For the purposes of this section, "registered user" means any person who is authorized in writing by the Director General to gain access to and use the electronic service.

### **Protection of officer of service tax from liability**



**88.** No officer of service tax or other person employed by the Government in the course of carrying out his duties under this Act shall be liable to make good any loss sustained in respect of any goods, documents, articles or things by fire, theft, damage or other causes while the goods, documents, articles or things in the lawful custody or control of the officer or other person employed by the Government in the course of carrying out his duties under this Act unless the loss is caused by his wilful neglect or default.

### **Rewards**



**89.** The Director General may order such rewards as he may deem fit to be paid to any officer of service tax or other person for services rendered in connection with the detection of any offences against this Act.

### **Power of Director General to charge fees**



**90.** The Director General may charge such fee as he may consider reasonable in respect of any service rendered by him or any officer of service tax—

(a) which is not required to be rendered under this Act; and (b) for which no fee is prescribed by any written law.

**Power to make regulations**

**91.** (1) The Minister may make regulations as may be necessary or expedient for the purposes of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), Minister may prescribe—

- (a) all matters relating to registration of registered person;
- (b) all matters relating to taxable period;
- (c) all matters relating to determination of value of taxable service;
- (d) all matters relating to furnishing returns and payment of service tax;
- (e) all matters relating to refund and remission of service tax;
- (f) all matters relating to public ruling and customs ruling;      (g) all matters relating to electronic service;
- (h) all matters relating to invoices, credit notes and debit notes;
- (i) all matters relating to the offices for the administration of service tax;
- (j) all fees required by this Act to be prescribed;
- (k) all forms to be prescribed for the purposes of this Act; or
- (l) any other matters required by this Act to be prescribed.

(2) Any regulations made under this section may prescribe an act or omission in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or both for such offence.

## SAVINGS AND TRANSITIONAL

**Registration on the commencement date**

**92.** (1) Notwithstanding section 13, any person who provides services before the effective date which services are taxable services on the effective date shall, within thirty days from the date of the coming into operation of this Act, apply to the Director General to be registered as a registered person if there are reasonable grounds for believing that the total value of his taxable services provided in the month of effective date and eleven months immediately succeeding that month will exceed the total value of taxable services as prescribed in subsection 12(1).

(2) The Director General shall register the person referred to in subsection (1) with effect from the first day of the month following the month in which the application is made and the person shall charge the service tax on the taxable service provided by the person with effect from such day.

(3) Any person who provides services before the effective date which services are taxable services on the effective date and has made an application before the effective date to the Director General to be registered as a registered person under this Act—

(a) shall be deemed to have been registered in accordance with section 13 on the effective date, if there are reasonable grounds for believing that the total value of his taxable services provided in the month of the effective date and eleven months immediately succeeding that month will exceed the amount of total value of taxable services as prescribed in subsection 12(1); and

(b) shall charge the service tax on the taxable services provided by the person with effect from the effective date.

(4) Any person who is registered under the Goods and Services Tax Act 2014 [Act 762] before the effective date and provides taxable services on the effective date—

(a) shall be deemed to have been registered in accordance with section 13 on the effective date, if there are

reasonable grounds for believing that the total value of his taxable services provided in the month of the effective date and eleven months immediately succeeding that month will exceed the amount of total value of taxable services as prescribed in subsection 12(1); and

- (b) shall charge the service tax on the taxable services provided by the person with effect from the effective date.

### **Progressive or periodic agreement**



**93.** (1) Where any taxable service is provided under an agreement for a period or progressively over a period whether or not at regular intervals and that period begins before 1 June 2018 and ends after the effective date, the proportion of the service which is attributed to the part of the period after the effective date shall be chargeable to service tax.

(2) The services provided under subsection (1) shall be taken to be made continuously and uniformly throughout the period of that agreement.

(3) Where the services referred to in subsection (1) is provided under a warranty whether expressed, implied or required by law and the value of the warranty is included in the value of the services provided, no service tax shall be charged on the services provided under such warranty.

(4) Subsections (1) and (2) shall not apply to a provision of services where goods and services tax under the Goods and Services Tax Act 2014 has been paid on the services to the extent covered by the invoice.

### **Rights granted for life**



**94.** (1) This section shall apply where—

- (a) a registered person, who is a club or other similar body, provides taxable services under an agreement;



- (b) the agreement provides whether expressly or implicitly that a right is to be granted or exercisable for the rest of the person's life or for a period of not less than thirty years; and
- (c) the rights is granted or first exercisable before the effective date.

(2) Where any payment for rights granted or exercisable for the rest of the person's life or for a period of not less than thirty years is paid by existing or new members of a club or other similar body for any rights to use facilities of the club or other similar body, the provision of services on which any payment is made—

- (a) before the effective date, shall not be chargeable to service tax; and
- (b) on or after the effective date, shall be chargeable to service tax.

### **Things done in anticipation of the enactment of this Act**



**95.** All acts and things done by or on behalf of the Director General in preparation for or in anticipation of the enactment of this Act and any expenditure incurred in relation thereto shall be deemed to have been authorized under this Act, provided that the acts and things done are consistent with the general intention and purposes of this Act, and all rights and obligations acquired or incurred as a result of the doing of those acts or things including any expenditure incurred in relation thereto shall upon the coming into operation of this Act be deemed to be the rights and obligations of the Director General.