

A BILL

*intituled*

An Act to amend the Excise Act 1976.

[ ]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Excise (Amendment) Act 1990. Short title.

2. Section 2 of the Excise Act 1976, which in this Act is referred to as the "principal Act", is amended— Amendment of section 2. Act 176

(a) by inserting, immediately after the word "tobacco" in the definition of "cigarette", the words "either with or without any other added ingredient";

(b) by deleting the definitions of "gallon", "proof gallon" and "proof spirit"; and

(c) by substituting for the definition of "licensed warehouse" the following:

\* "licensed warehouse" means a warehouse or other place licensed under section 25 for the warehousing of dutiable goods, and includes—

(a) customs warehouse under section 65;

(b) any warehouse licensed under sections 65 and 65A; and

(c) any inland clearance depot licensed under section 65B,

Act 235. of the Customs Act 1967, for the warehousing of goods of a similar class to such dutiable goods;

- Amendment of section 4. 3. Section 4 of the principal Act is amended—
- (a) by deleting the words "Deputy Director," in the second line of subsection (1); and
  - (b) by substituting for the full stop at the end of that subsection a comma and inserting immediately thereafter the words "other than those conferred by section 18."
- Amendment of section 14. 4. Section 14 of the principal Act is amended by substituting for the words "by unavoidable accident, lost, damaged or destroyed" in subsection (1) the words "damaged, destroyed or, by unavoidable accident, lost".
- Amendment of section 15. 5. Section 15 of the principal Act is amended by renumbering it as "15. (1)" and inserting immediately thereafter the following new subsections (2), (3), (4) and (5):
- "(2) Where any amount is payable in accordance with subsection (1), the Director General may allow the amount to be paid by instalments in such amounts and on such dates as he may determine.
  - (3) If after a reasonable time has lapsed and the amount due is not paid by such person, after giving not less than thirty days' notice in writing to such person, the Director General may sell any goods detained under subsection (1).
  - (4) The proceeds of sale of any such goods shall be applied to the payment of the amount due, and the surplus, if any, shall be paid to such person.
  - (5) If the sale of such goods is by auction, such auction shall be conducted by or in the presence of a senior officer of excise."
- Amendment of section 16. 6. Section 16 of the principal Act is amended by inserting, immediately after the word "stored", the words "or from any other place under excise control".
- Substitution of section 19. 7. The principal Act is amended by substituting for section 19 the following:
- "Drawback. 19. (1) Where any goods are exported by the manufacturer as part or ingredient of any goods manufactured in the Federation or as the packing,

or part or ingredient of the packing, of such manufactured goods, then if excise duty has been paid on that part or ingredient of such manufactured goods or on the packing or that part or ingredient thereof, the Director General may, on such export, allow to the manufacturer a full drawback of the duty so paid, if—

- (a) the finished goods have been manufactured on premises approved by the Director General;
- (b) such books and account are kept as the Director General may require for the purpose of ascertaining the quantity of the goods used in such manufacture or for or in the packing of such manufactured goods;
- (c) such goods are so exported within twelve months of the date upon which excise duty was paid or such further period as the Director General may approve; and-
- (d) written notice has been given on the export declaration form that a claim for drawback will be made, and such claim is made in the prescribed form and established to the satisfaction of the senior officer of excise within six months of the date such export or such further period as the Director General may approve.

(2) In this section, the expression "manufacturer" includes any person to whom the manufactured goods have been sold or otherwise disposed of."

8. Section 23 of the principal Act is amended—

Amendment  
of section 23.

- (a) by substituting for the comma in paragraph (c) of subsection (1) a semicolon and inserting immediately thereafter the word "or"; and
- (b) by inserting, immediately after paragraph (c) of the said subsection, the following new paragraph (d):
  - "(d) any other place under excise control."

New sections  
23A and 23B.

9. The principal Act is amended by inserting in Part IV, immediately after section 23, the following new sections 23A and 23B:

"Liquidator  
of company  
to give  
notice of  
winding-  
up and set  
aside duty.

23A. (1) Where an effective resolution is passed or an order is made for the winding-up of a company to which a licence under this Act is issued, the liquidator of the company shall give notice thereof to the Director General within fourteen days thereafter, and shall 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 excise duty that is or will thereafter become payable in respect of the company.

(2) A liquidator of any such company who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for payment of the excise duty as required by that subsection shall be personally liable for any excise duty that is or becomes payable as aforesaid.

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

Appoint-  
ment of  
receiver  
to be  
notified  
to the  
Director  
General.

23B. (1) Where a receiver is appointed of the property of a company to which a licence under this Act is issued, the receiver shall give notice thereof to the Director General within fourteen days thereafter, and shall before disposing of any of the assets of that company set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any excise duty that is or will thereafter become payable in respect of the dutiable goods that have been sold by the company before the appointment of the receiver.

(2) A person appointed as receiver who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for payment of the excise duty as required by that subsection shall be personally liable for any excise duty that is or becomes payable as aforesaid.

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

**10.** Section 26 of the principal Act is amended by substituting for the words ", or licensed, warehouse" the words "or licensed warehouse, or in any other place under excise control". Amendment of section 26.

**11.** Section 28 of the principal Act is amended— Amendment of section 28.

(a) by inserting, immediately after the words "licensed warehouse" in paragraph (b), the words "or in other place under excise control"; and

(b) by deleting paragraph (c).

**12.** Section 32 of the principal Act is amended— Amendment of section 32.

(a) by substituting for the full stop at the end of paragraph (b) of subsection (1) the word "; or";

(b) by inserting, immediately after paragraph (b) in subsection (1), the following new paragraph (c):

"(c) to the sale by retail of intoxicating liquors in duty free shops licensed under section 65D of the Customs Act 1967."; and

*Act 235.*

(c) by substituting for the words "six gallons" in subsection (2) the words "twenty seven litres".

**13.** Section 33 of the principal Act is amended by substituting for the words "six gallons" in subsection (2) the words "twenty seven litres". Amendment of section 33.

**14.** Section 54 of the principal Act is amended by deleting subsection (5). Amendment of section 54.

Substitution  
of section 55.

**15.** The principal Act is amended by substituting for section 55 the following:

"Return or  
disposal of  
movable  
property.

55. (1) Where any goods have been seized under this Act, a senior officer of excise may, at his discretion—

(a) temporarily return the goods to the owner thereof or to the person from whose possession, custody or control they were seized, or to such person as a senior officer of excise may consider entitled thereto, subject to such terms and conditions as such officer may impose, and subject, in any case, to sufficient security being furnished to the satisfaction of such officer that the goods shall be surrendered to him on demand being made by him and that the said terms and conditions, if any, shall be complied with; or

(b) return the goods to the owner thereof or to the person from whose possession, custody or control they were seized, or to such person as a senior officer of excise may consider entitled thereto, with liberty for the person to whom the goods are so returned to dispose of the same, such return being subject to security being furnished to the satisfaction of such officer in an amount not less than an amount which, in the opinion of such officer, represents—

(i) the open market value of such goods on the date on which they are so returned;

(ii) the excise duty payable in respect thereof; and

(iii) any tax payable in respect thereof under any written law,

for the payment of the amount so secured to the Director General in the event of the court making an order for the forfeiture of such amount under section 66 (3) or 67 (4); or

(c) sell or destroy the goods, as appropriate in the circumstances, where they are a living creature or where, in the opinion of a senior officer of excise, they are of a perishable or dangerous nature or likely to speedily deteriorate in quality or value, and where they are so sold, he shall hold the proceeds of sale to abide the result of any prosecution or claim.

(2) Any person who—

(a) fails to surrender on demand to a senior officer of excise the goods temporarily returned to him under subsection (1) (a);  
or

(b) fails to comply with or contravenes any of the terms or conditions imposed under subsection (1) (a),

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

(3) The criminal liability of any person under subsection (2) shall be in addition to any other liability that the said person or any other person may incur under the terms and conditions relating to the return of the goods under subsection (1) (a).

(4) The provisions of subsection (2) shall not apply to such person, if any, who is the guarantor or surety of the person to whom the goods are returned under subsection (1) (a).

(5) The Minister may, from time to time, either generally or in any particular case or class of cases, give such directions to the Director General as he may deem necessary or expedient with regard to the exercise of the powers conferred on a senior officer of excise under subsection (1).

(6) No person shall be entitled to maintain any action on account of any act done or any decision taken by or on behalf of the Minister or by or on behalf of a senior officer of excise under this section, and no court shall have any jurisdiction to entertain any such action."

New  
section 55A.

16. The principal Act is amended by inserting, immediately after section 55, the following new section 55A:

"Production of a certificate of an analyst, or a senior officer of excise, or a person authorized by the Minister.

55A. (1) In any proceedings in respect of any offence against this Act or any regulations made thereunder in which the existence, description, classification, composition, quantity, quality or value of, or any other matter in relation to, any goods returned under paragraph (a) or (b) of subsection (1) of section 55 or sold or destroyed under paragraph (c) of the said subsection, is in question, any document produced by the prosecutor purporting to be a certificate in respect of any such matter given and signed by—

- (a) any analyst within the meaning of section 61 (5); or
- (b) a senior officer of excise; or
- (c) any person, regardless whether or not he is a public officer, authorized by or on behalf of the Minister, either generally or in any particular case, for the purposes of this section,

shall be admissible in evidence and its conclusiveness shall not be challenged on the ground that the goods in respect of which the certificate is given has not been produced before the court either in part or in entirety, and it shall be evidence of its contents, including the facts stated therein, without proof of the signature to such certificate.

(2) The provisions of this section shall apply notwithstanding anything contained in any other written law or rule of evidence to the contrary."

**17.** Section 58 of the principal Act is amended by deleting the words "Sessions Court in the States of Malaya or court of the" and the words "in Sabah and Sarawak". Amendment of section 58.

**18.** Section 66 of the principal Act is amended by inserting, after subsection (2), the following new subsection (3): Amendment of section 66.

"(3) The amount secured under paragraph (a) or (b) of subsection (1) of section 55 or the amount realised by sale under paragraph (c) of the said subsection (1) shall be forfeited by the court if it is proved to the satisfaction of the court that an offence against this Act or any regulations made thereunder has been committed and that the goods in respect of which the amount was secured or realised by sale, as the case may be, were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence,".

**19.** The principal Act is amended by substituting for section 67 the following: Substitution of section 67.

"Goods seized in respect of which there is no prosecution, or the proceeds of sale thereof, are forfeited if not claimed within one month.

67. (1) If there be no prosecution with regard to any goods seized under this Act, such goods or the proceeds of sale of such goods which are held pursuant to paragraph (c) of subsection (1) of section 55 shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure of the goods unless, before such expiration—

(a) a claim to such goods or the proceeds of sale of such goods is made under subsection (2);

(b) a written application is made for the return of such goods under paragraph (a) or (b) of subsection (1) of section 55; or

(c) such goods are returned under the said paragraph (a) or (b).

(2) Any person asserting that he is the owner of such goods or the proceeds of sale of such goods, as the case may be, and that they are not

liable to forfeiture may give written notice to a senior officer of excise that he claims the same.

(3) On the expiration of the period mentioned in subsection (1) the senior officer of excise shall, if such goods or the proceeds of sale of such goods are not taken and deemed to be forfeited under that subsection, refer the claim to the Director General who may direct that such goods or the proceeds of sale of such goods or the security furnished under paragraph (a) or (b) of subsection (1) of section 55, as the case may be, be released, or may direct such senior officer of excise, by information in the prescribed form, to refer the matter to a Magistrate of the First Class for his decision.

(4) The Magistrate of the First Class shall issue a summons requiring the person asserting that he is the owner of the goods or the proceeds of sale of such goods, and the person from whom the goods were seized, to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the Magistrate of the First Class shall proceed to the examination of the matter, and upon proof that an offence against this Act or any regulations made thereunder has been committed and that such goods were the subject matter, or were used in the commission, of such offence, shall order such goods or the proceeds of sale of such goods or the amount secured under paragraph (a) or (b) of subsection (1) of section 55, as the case may be, to be forfeited, or in the absence of such proof, may order the release of such goods or the proceeds of sale of such goods or the security furnished under paragraph (a) or (b) Of subsection (1) of section 55, as the case may be.

(5) In any proceedings under subsection (4), section 59 shall apply to the person asserting that he is the owner of the goods and to the person from whom they were seized as if such owner or

person had been the defendant in a prosecution under this Act."

20. The principal Act is amended by substituting for section 68 the following: Substitution  
of section 68.

"Goods or amount forfeited may be delivered or refunded to the owner or other person.

68. The Minister may, upon application made to him in writing through the Director General, order—

(a) any goods seized under this Act; or

(b) any amount secured under paragraph (a) or (b) of subsection (1) of section 55 or the amount realized by sale under paragraph (c) of the said subsection (1),

whether forfeited or taken or deemed to be forfeited, pursuant to section 66, 67 or 69 to be delivered, or refunded, as the case may be, to the owner or other person entitled thereto upon such terms and conditions as he may deem fit:

Provided that any such application shall be made before the expiration of one calendar month from the date on which such goods or the amount are forfeited or are taken and deemed to be forfeited, as the case may be."

21. Section 69 of the principal Act is amended by substituting for the word "two" in subsection (1) the word "five". Amendment  
of section 69.

22. Section 75 of the principal Act is amended— Amendment  
of section 75.

(a) by substituting for the words "eighteen months" the words "three years";

(b) by substituting for the word "one" the word "two"; and

(c) by substituting for the word "five" the word "ten".

23. Section 79 of the principal Act is amended by substituting for the word "four" the word "five". Amendment  
of section 79.

## EXPLANATORY STATEMENT

This Bill seeks to amend the Excise Act 1976 (hereinafter referred to as "the Act").

2. *Clause 2* seeks to amend section 2 of the Act to redefine "cigarette" to extend the scope of the existing definition to include any other ingredients mixed with tobacco in the manufacture of cigarettes, and to delete certain definitions from the Act.

3. *Clause 3* seeks to delete the words "Deputy Director" from section 4 (1) of the Act due to abolition of the post, and to provide that only the Director General personally shall decide on disputes arising on classification of goods.

4. *Clause 4* seeks to amend section 14 (1) of the Act to provide for the circumstances whereby remission of excise duty in cases where goods are lost, may be allowed only where such loss is on account of unavoidable accident.

5. *Clause 5* seeks to amend section 15 of the Act to strengthen the provisions regarding the recovery of excise duty and other moneys and also to empower the Director General to allow money due to be paid by a person liable, to be paid by instalments in such amounts and on such dates as he may determine.

6. *Clauses 6, 8, 10 and 11* are inter-related. They seek to provide further facilities to store dutiable goods.

7. *Clause 7* seeks to introduce a new section 19 to include packing materials used for or in the packing of manufactured goods in the existing provisions of section 19 in respect of drawback claims on goods exported.

8. *Clause 9* seeks to introduce a new section 23A to require a liquidator to give notice of a company under winding-up and to set aside such sum out of the asset of the company to provide for any excise duty that is payable or will become payable after the winding-up. A new section 23e is also created imposing similar obligations on a receiver.

9. *Clause 12* seeks to amend section 32 of the Act to exempt duty free shops from licensing to sell intoxicating liquor by retail.

10. *Clause 15* seeks to introduce a new section 55 to improve the administration by providing the methods to dispose of seized goods.

11. *Clause 16* seeks to create a new section 55A to allow the admissibility of documents as conclusive evidence in any criminal proceedings if such documents are signed by an analyst under section

61 (5), a senior officer of excise or a person so authorized by the Minister.

12. *Clause 17* seeks to amend section 58 of the Act. This amendment is consequential to the amendment of the Subordinate Courts Act 1948 where the jurisdiction of a Magistrate is enhanced to preside over all cases within the Act.

13. *Clause 18* seeks to amend section 66 of the Act to introduce a new subsection (3) to make it mandatory for the court to order a forfeiture of the amount secured or the proceeds of sale derived from action taken under section 55 of the Act.

14. *Clause 19* seeks to amend section 67 of the Act to enable the forfeiture of any goods seized, the amount secured for the release of the goods seized or the amount realized by its sale.

15. *Clause 20* seeks to amend section 68 of the Act to provide power to the Minister to order goods or amount forfeited to be delivered or refunded to the person entitled.

16. *Clause 21* seeks to increase the compound fee to five thousand ringgit so as to act as a deterrent.

17. *Clauses 22 and 23* seek to increase the penalty for offences committed under the Act.

18. The other amendments are minor and consequential.

*FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure. [PN. (U<sup>2</sup>) 1510.]