

STATE OF SABAH

STATE SALES TAX ENACTMENT 1998

(Sabah No. 12 of 1998)

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LIST OF AMENDMENTS

<i>Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
2/2000	2 (definition of "sale"), 16 (2)	07-09-2000
6/2018	General amendment (substitute the words "proper officer" wherever appearing the words "proper officer of State sales tax", Section 2, New section 10A, Sections 14, 15, 16, 18, 20, 31, 32, 33, 34, 36, 41, New sections 60A, 60B and 60C.	01-01-2019
6/2025	General amendment, 2, 8, 10, 11, New section 12A, 13, 14, New section 14A, 15, New section 15A & 15B, 16, 17, 18, 19, 21, 22, Part VII, 25, 26, [New section 26A, 29A], 30, 31, 32. 33, 34, 37, 38, 41, New Part IXA, 54, New Section 54A, 55, 58, 60B, 61.	01-09-2025 (<i>Except sections 36 and 38</i>)

An Enactment to make provisions for the charging, levying and collecting of State sales tax and all matters incidental thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PART I
PRELIMINARY

Short title and commencement.

1. This Enactment may be cited as the State Sales Tax Enactment 1998 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

[31.03.99 G.N. 241/1999]

Interpretation

2. In this Enactment, unless the context otherwise requires-

“calendar month” means a month reckoned according to the Gregorian calendar;

“computer” has the meaning assigned thereto in section 3 of the Evidence Act 1950 [Act 56.];

“Director” means the Director of State Sales Tax appointed under section 3(1);

“document” has the meaning assigned thereto in section 3 of the Evidence Act 1950 [Act 56.];

“electronic data interchange” means the transfer, from computer to computer, of commercial and administrative transactions using an agreed message standard to structure the data pertaining to a transaction;

“goods” means all kinds of movable property and includes service;

“Minister” means the Minister charged with the responsibility for finance;

“penalty” means any charge due and payable under section 18;

“person” includes an individual, a firm, an association of persons, a company and every other juridical person;

“proper officer of State sales tax” means any officer acting under the authority or direction of the Director;

“records” include –

- (a) books of account or audited accounts;
- (b) vouchers, receipts and such other documents as in the opinion of the Director are necessary to verify the entries in any books of account; and
- (c) any other records as may be specified by the Director;

“sale” includes barter and, in relation to goods, includes –

- (a) the disposal of goods with the right of purchase or on terms providing that the seller retains interest in such goods;
- (b) the internal transfer of goods within the same entity for the purpose of processing the goods into another form of product;
- (c) the delivery of goods under any condition as to future payment;
- (d) the taking out of goods for sale or delivery to any person outside the State except for the personal use of the person taking out or delivering such goods; and
- (e) the distribution, selling or supply of any goods imported or delivered into the State for resale, sale by retail or redistribution,

whether such transaction takes place within or outside the State, and “sell” and “sold” has a corresponding meaning;

“State Sales Tax Officer” means a State Sales Tax Officer appointed under section 3(2);

“taxable goods” means goods sold or provided in respect of which State sales tax is chargeable under section 4;

“taxable period” means, subject to section 14(2), a period of one month ending on the last day of the month;

“taxable person” means any person who is chargeable to State sales tax under this Enactment;

“this Enactment” includes any subsidiary legislation made under this Enactment.

PART II
ADMINISTRATION

Appointment of Director and State Sales Tax Officers.

3. (1) There shall be appointed by the Minister by notification in the *Gazette*, a member of the State Public Service to be the Director of State Sales Tax who shall be responsible generally for the carrying out of the provisions of this Enactment and the superintendance of all matters relating to the State sales tax including collection thereof subject to the direction and control of the Minister.

(2) For the purposes of assisting the Director in the discharge of his powers and duties under this Enactment, there may be appointed by the Minister, by notification in the *Gazette*, from among members of the State Public Service such number of State Sales Tax Officers as may be necessary.

(3) A State Sales Tax Officer shall exercise such powers and perform such duties vested in the Director by this Enactment as may be delegated to him in writing by the Director from time to time.

(4) The Director may also by instrument in writing delegate, subject to such conditions and restrictions as he may think fit to impose, the exercise of such of his powers or the performance of such of his duties vested in him by this Enactment to any person.

PART III
IMPOSITION OF STATE SALES TAX

Charge to tax.

4. Subject to this Enactment, there shall be charged and levied a tax known as State sales tax in respect of any prescribed goods (hereafter in this Enactment referred to as "taxable goods") sold or provided by any person who carries on business in the State, whether for profit or otherwise.

Determination of sale value.

5. For the purposes of this Enactment, the sale value of goods on which State sales tax is payable shall be ascertained as follows:

- (i) except as otherwise provided in regulations made under section 61, the actual price for which the taxable goods are sold; or
- (ii) Where no charge is made for provision of such taxable goods, the charge which would have been made in the ordinary course of business for providing such goods to a person independent of the taxable person.

Rate of tax.

6. (1) The Minister may by order published in the *Gazette* fix the rate of State sales tax to be charged and levied under this Enactment.

(2) The Minister may from time to time by order published in the *Gazette* vary or amend the rate of tax fixed under subsection (1).

(3) Any order made under subsections (1) and (2) shall at the next meeting of the Legislative Assembly be laid on the table of the Legislative Assembly and shall remain in force unless the Legislative Assembly by resolution revokes the same.

(4) Where an order is revoked in whole or in part as provided in subsection (3), then any State sales tax levied in pursuance of such order or, as the case may be, of such part thereof as is revoked shall, subject to the provisions of subsection (5), be repayable to the person by whom such State sales tax was paid.

(5) Except otherwise directed by the Minister, no State sales tax payable under the provisions of subsection (4) shall be repaid, unless the person entitled to such repayment makes a claim thereof to the Director within one year from the date on which the order is revoked in whole or in part as provided by subsection (3); and such claim shall be made in writing and shall contain such particulars as the Director may by order require.

Computation of tax payable.

7. Subject to this Enactment, State sales tax shall be levied on the sale value at the rate in force at the time at which the State sales tax is due.

Powers of Minister to exempt and refund.

8. (1) The Minister may, in any particular case, subject to such conditions as he may deem fit to impose-

- (a) exempt any person or class of persons from the payment of the whole or any part of the State sales tax which otherwise would have been payable by that person or that class of persons;
- (b) exempt any goods or class of goods from the whole or any part of the State sales tax which otherwise would have been payable;
- (c) direct the refund to any person or class of persons of the whole or any part of the State sales tax paid by that person or that class of persons; or
- (d) direct the refund to any person or class of persons of the whole or any part of the penalty paid by that person or that class of persons.

(2) The Minister may vary or revoke any exemption granted under subsection (1).

PART IV
LICENSING OF TAXABLE PERSONS

Person chargeable to tax.

9. Subject to this Enactment, State sales tax shall be charged on and paid by any person (in this Enactment referred to as “taxable person”) who carries on business of selling or providing taxable goods referred to in section 4.

Application for licence, issue, etc.

10. (1) Every person who carries on business of selling or providing taxable goods referred to in section 4 shall apply to the Director in the prescribed form for a licence, and subject to section 11, no person shall carry on such a business unless he is in possession of a licence issued under subsection (2).

(2) Subject to subsection (3), the Director shall issue a licence in the prescribed form.

(3) Before any licence is issued under this section, or where a licence has been issued under this section, the Director may require the person applying for the licence, or the holder of the licence, as the case may be, to give such security for the due compliance by that person with the provisions of this Enactment and generally for the protection of the revenue as the Director thinks fit; and where the Director is at any time dissatisfied with any security given, he may require a new security in lieu thereof, or in addition thereto; and in default of such new security being given the Director may suspend any licence previously issued. During any such suspension the holder of any licence issued shall be deemed to be unlicensed.

(4) Any person licensed under this section shall carry on the business only at the place or premises specified in the licence issued under subsection (2).

(5) Any person who contravenes subsection (1) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding two thousand ringgit for each day during which the offence continues.

Amendment or cancellation of licence

10A. (1) Every person licensed under section 10 shall within thirty days forward to the Director the licence for amendment or cancellation when –

- (a) he ceases business in providing any taxable goods stipulated in the licence or he undertakes the business of selling any taxable goods not stipulated in the licence;
- (b) he goes into partnership or a partner withdraw or a new partner is added to the partnership;
- (c) a company, or any person as defined under section 2 of this Enactment, takes over the business of selling any taxable goods stipulated in the licence;
- (d) there is any change in the principal place of business;
- (e) there is any change in or addition to the description of taxable goods sold; or
- (f) he is called upon to do so by the Director.

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

Surrender and revocation of licences.

11. (1) If any taxable person ceases to carry on business he shall forthwith surrender his licence to the Director within thirty days from the date he ceases to carry on business.

(2) If any taxable person ceases to carry on business as such or dies or being a company is dissolved, the Director shall revoke the licence.

(3) If any taxable person fails to comply with, or is found acting contrary to, the provisions of section 12, 13, 14 or 16 the Director may revoke the licence, after reasonable notice had been given to the taxable person and if that person continues to carry on the business in respect of which the licence was issued, he shall be deemed to carry on the business without a licence under this Enactment.

PART V
INVOICES, RECORDS, RETURNS AND ASSESSMENT

Invoices.

12. Any person who sells or provides any taxable goods shall issue invoice in the National Language or in English to the customer or purchaser in respect of the transaction and shall state thereon the price of the taxable goods sold or provided.

Production of invoices by computer

12A. For the purposes of any provision under this Enactment relating to an invoice, a taxable person shall be treated as having issued an invoice to a customer or purchaser notwithstanding that there is no delivery of any equivalent document in physical form to the customer or purchaser if the invoice is recorded in a computer and –

(a) is transmitted or made available to the customer or purchaser by electronic means;
or

(b) is produced on any material other than paper and is delivered to the customer or purchaser.

Duty to keep records.

13. (1) Every taxable person shall keep complete, true and up-to-date records of all transactions which affect or may affect his liability to State sales tax and shall keep those records in the national language or in English language.

(2) Any record kept under this section and duplicate copies of invoices issued under section 12 shall be preserved for a period of seven years from the latest date to which the records and invoices relate.

(3) Where the records are in electronically readable form, the records shall be kept in such manner as to enable the records to be readily accessible and convertible into writing.

(4) Where the records are originally in a manual form and are subsequently converted into an electronic form, the records shall be retained in their original form prior to the conversion.

(5) A copy of the records shall be admissible as evidence in any proceedings to the same extent as the record itself.

Furnishing of returns and payment of tax.

14. (1) Every taxable person shall, in respect of his taxable period, account for the State sales tax due in a return as may be prescribed and the return shall be furnished to the Director in the prescribed manner within twenty eight days following the end of his taxable period to which the return relates.

(2) Notwithstanding subsection (1), the Director may, vary any taxable period or the date on which any taxable period begins or ends if he considers it necessary in the circumstances of any particular case.

(3) Where a taxable period has been varied under subsection (2) and notwithstanding subsection (1), the return shall be furnished on the date to be determined by the Director.

(3A) The Director may give notice in writing to any taxable person whenever he thinks fit requiring that person to furnish, within a reasonable time to be specified in such notice, complete or further returns in respect of any matter as to which a return is required by or under this Enactment.

(4) Any person who ceases to be licensed under this Enactment shall, not later than thirty days after such cessation, or such later date as the Director may allow, furnish a return containing particulars as the Director may determine in respect of that part of the last taxable period during which the person was licensed.

(5) Any taxable person who is required to furnish a return under this section shall pay to the Director the amount of State sales tax due and payable by him in respect of the taxable period to which the return related not later than the last day on which he is required to furnish the return.

(6) The return referred to in subsections (1), (3), (3A), (4) and (5) shall be furnished whether or not there is State sales tax to be paid.

(7) Any person who fails to furnish the return or fails to pay the amount of State sales tax due as required under subsection (1), (3), (3A), (4), or (5) 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.

Payment by instalments

14A. (1) The Director may allow any State sales tax due and payable, or penalty payable, to be paid by instalments under the circumstances, in such amounts and on such dates as may be determined by the Director.

(2) 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 and payable, be subject to a surcharge equals to ten percent of that balance and the surcharge shall be recoverable as if it were due and payable under this Enactment.

(3) Nothing in subsections (1) and (2) shall prejudice the exercise of the powers under this Enactment to seize or dispose of any goods belonging to the person liable to pay such State sales tax, penalty or surcharge for the recovery of the amount due and payable under subsections (1) and (2) or any outstanding balance of such amount.

Assessment of tax.

15. (1) Where any taxable person –

(a) fails to apply for a licence under section 10;

(b) fails to furnish a return under section 14; or

(c) furnishes a return which appears to the Director to be incomplete or incorrect,

the Director may assess to the best of his judgment the amount of State sales tax due and payable 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 State sales tax under this Enactment which ought not to have been paid to him, the Director may assess the amount of the refund as being State sales 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 State sales tax was due and payable or from the date on which the refund of State sales tax was made, as the case may be, except where in the opinion of the Director any form of fraud, willful default or negligence has been committed by or on behalf of any person in relation to the State sales tax or refund, the Director may, for the purposes of

making good any loss of State sales tax or payment of refund of State sales tax attributable to the fraud, willful default or negligence, make an assessment at any time.

(4) The proper officer of State sales tax may assess the State sales tax payable on any taxable goods.

(5) Where any taxable person has obtained control of any taxable goods, the Director may require him to account for the taxable goods.

(6) Where the taxable person fails to account for the taxable goods under subsection (5) by reason that –

- (a) the taxable goods have been sold by him;
- (b) the taxable goods have been removed by way of sale; or
- (c) the taxable goods have been lost or destroyed,

the Director may assess to the best of his judgement the amount of State sales tax that would have been chargeable in respect of the taxable goods if the goods had been sold by him and shall forthwith notify the taxable person of the assessment in writing.

(7) Where –

- (a) the Director has made an assessment of State sales tax under subsection (1) in respect of paragraph (1)(a) or (b);
- (b) the State sales 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 may, as he deems fit, assess an amount of State sales tax greater than that which he otherwise would have considered to be appropriate.

(8) Where it appears to the Director that the amount which ought to have been assessed in an assessment under subsection (1), (2), (4), (6) or (7) 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.

(9) Where an amount of State sales tax has been assessed and notified to any taxable person under subsection (1), (2), (6) or (8), it shall be deemed to be an amount of State sales tax due and payable by him and may be recovered accordingly and the amount of State sales tax shall be paid by the taxable person, whether or not that taxable person appeals against the assessment, to the Director unless or except to the extent that the assessment has been withdrawn or reduced by the Director.

(10) The Director 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.

Composite assessment

15A. (1) Without prejudice to section 15, where a taxable person –

(a) fails to furnish returns as required under section 14;

(b) makes an incorrect return by omitting any information; or

(c) gives any incorrect information in relation to any matter affecting his own liability to State sales tax or the liability of any other person to State sales tax,

for any year within an assessment period (that year being referred to in this section as the relevant year), the Director and the taxable person may come to an agreement in writing as to the payment of a sum of money (in this section referred to as the total amount) being -

- (i) the amount of State sales tax which has been undercharged or not charged for that relevant year in consequence of such failure in furnishing a return, making an incorrect return or giving any incorrect information; and
- (ii) this amount of any penalty which the taxable person may be required to pay for that relevant year pursuant to subsection 14(7).

(2) Where the Director and a taxable person have come to an agreement pursuant to subsection (1), the Director may make a composite assessment on that taxable person in the total amount.

(3) As soon as may be after a composite assessment has been made, the Director shall cause a notice of composite assessment to be served on the taxable person in respect of whom the composite assessment was made.

(4) A notice served under subsection (3) shall state the following particulars:

- (a) the relevant year;
- (b) the amount of State sales tax undercharged or not charged in the relevant year;
- (c) the amount of any penalty imposed under subsection 14(7) and section 32; and
- (d) the manner of payment of the total amount.

(5) The total amount shall be collected as if it were part of the State sales tax payable by the taxable person in respect of whom the composite assessment has been made but shall not be treated as State sales tax payable for the purposes of the provisions of this Enactment other than sections 14, 15, 17 and 20.

(6) Notwithstanding any other provision of this Enactment –

- (a) a composite assessment made under this section shall be final and conclusive for the purpose of this Enactment; and
- (b) no appeal shall lie against a composite assessment.

(7) For the purposes of this section, “assessment period” means the period for an assessment to be made pursuant to subsection 15(3).

Errors and defects in assessment, notice and other document

15B. (1) No assessment, notice or other document purporting to be made or issued for the purposes of this Enactment shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission therein, if it is in substance and effect in conformity with this Enactment or in accordance with the intent and meaning of this Enactment and –

(a) in the case of an assessment, the person assessed or intended to be assessed or affected thereby is designated; or

(b) in any other case, the person to whom the notice and other document is addressed and any other person referred to therein are so designated,

according to common intent and understanding.

(2) An assessment purporting to be made or issued for the purposes of this Enactment shall not be impeached or affected by reason of a mistake as to –

(a) the name of the taxable person; or

(b) the amount of State sales tax due and payable,

so long as the a notice of assessment is served on the person on whom it was intended to be served and contains in substance and effect the particulars on which the assessment is founded.

PART VI
COLLECTION, RECOVERY, REFUND AND REMISSION

State sales tax due

16. (1) The State sales tax chargeable under this Enactment shall be due at the time the taxable goods are sold or provided to the customer or purchaser, or disposed of otherwise than by sale by the taxable person.

(2) Notwithstanding subsection (1), a sale of taxable goods shall be deemed to have been made -

(a) on the date such taxable goods are delivered notwithstanding any payment, wholly or partly, is received or invoice is issued, for such taxable goods during such period; or

(b) in respect of taxable goods provided in the State to be taken out or delivered out of the State, the sale shall be deemed to have taken place in the State, at the time when -

(i) the contract for the sale of such taxable goods is concluded or signed between the parties irrespective of whether the contract is entered into in the State or not;

(ii) the delivery of the taxable goods or performance of the Contract takes place; or

(iii) such taxable goods are conveyed or shipped out of the State,

whichever is earlier.

(3) For the purpose of paragraph (2)(a), any payment received or invoice issued shall be deemed to have been received or issued on the date such taxable goods are delivered and State sales tax shall become due on the date such taxable goods are delivered.

Recovery of tax.

17. (1) Without prejudice to any other remedy, any State sales tax due and payable and any penalty and surcharge payable under this Enactment may be recovered as a civil debt due to the State Government.

(2) In any suit to recover the State sales tax, penalty and surcharge, if any, under subsection (1), the production of a certificate signed by the Director giving the name and address of the taxable person and the amount of the State sales tax, penalty and surcharge, if any, due by him shall be sufficient evidence of the amount so due by him and sufficient authority for the court to give judgment for the said amount.

(3) In any proceedings under this section, the court shall not entertain any plea that the amount of State sales tax, penalty and surcharge sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under sections 14, 14A, paragraph 18(a) or 18(b).

Penalty for late payment of State sales tax

18. Where any State sales tax due and payable is not paid by any taxable person after the last day on which it is due and payable under section 16 –

(a) a penalty equal to ten percent of such unpaid amount shall be paid by the taxable person; and

(a) if the State sales tax due and payable remains unpaid for more than thirty days after the last day on which it was so payable, the rate of penalty under paragraph (a) on such unpaid State sales tax shall be increased by ten percent for the second period of thirty days after such last day and for every succeeding period of thirty days or part thereof during which such amount remains unpaid to a maximum penalty of fifty percent.

Joint and several liability of directors, etc.

19. Where State sales tax or penalty is due and payable by –

- (a) a company;
- (b) a firm; or
- (c) an association of persons,

then notwithstanding anything to the contrary in this Enactment or in any other written law, the directors of such company, including any person who was a director of such company, or the partners of such firm, including any person who was a partner of such firm or the members of such association of persons, including any person who was a member of such association, during the period which such liability arises, as the case may be, shall, together with the person, company, firm or association of persons liable to pay the State sales tax or penalty, be jointly and severally liable for the State sales tax or penalty.

Recovery of State sales tax, etc., from persons about to leave Malaysia without paying State sales tax, etc.

20. (1) Where the Director has reason to believe that any person is about or is likely to leave Malaysia without paying –

- (a) any State sales tax due and payable by him under this Enactment;
- (b) any penalty payable by him under this Enactment;
- (c) any surcharge accrued by him under this Enactment;
- (d) any fee payable by him under this Enactment; or
- (e) any other money recoverable from him under this Enactment,

the Director 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 State sales tax, surcharge, penalty, fee or other money, or other money, or furnishes security to the satisfaction of the Director 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 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 that 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 stating that all the State sales 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.

Power to collect tax from person owing money to taxable person.

21. (1) Where any sum by way of State sales tax or penalty is due and payable by a taxable person, the Director may, by notice in writing (a copy of which shall be forwarded to the taxable person at his last known address) require-

- (a) any person by whom any money is due or accruing or may become due to the taxable person;

- (b) a person who holds or may subsequently hold money for or on account of the taxable person;
- (c) any person having authority from some other person to pay money to the taxable person; or
- (d) any person who holds or may subsequently hold money for or on account of any other person for payment to the taxable person,

to pay to him forthwith, or within such period as the Director may allow, such money (not being salary or wages due to the taxable person) or so much thereof as is sufficient to pay the sum due and payable by the taxable person as aforesaid.

(2) All payments made pursuant to a notice under this section shall be deemed to have been made on behalf of the taxable person and with his authority and the authority of all other persons concerned.

Payment of State sales tax or other moneys erroneously refunded.

22. Where the whole or any part of any State sales tax due and payable or other moneys payable, after having been paid, has been erroneously refunded to a person, the Director shall demand from the person to repay the refund erroneously paid to him, provided that such demand is made within six years from the date on which the refund was made.

Refund.

23. Where the Director is satisfied that any State sales tax has or other moneys have been paid by reason of error, whether of fact or of law, he may refund the same on application made at any time within one year after the payment thereof and such refund shall be made in accordance with the Treasury Instructions issued under the Financial Procedure Act 1957 [Act 61].

Remission.

24. The Minister may, if he thinks it just and equitable to do so, and subject to such conditions as he may deem fit to impose, remit the whole or any part of any State sales tax or other moneys due and payable under this Enactment, or the whole or any part of any penalty payable under the provisions of section 18.

PART VII
ENFORCEMENT

Persons bound to give information.

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

(2) Every person required by the proper officer of State sales tax to produce a document, record or other thing which is within the power of such person to produce, and which is a document, record or thing required under this Enactment or a document, record or thing used in any transaction relating to State sales tax or a document, record or thing into which it is the duty of the proper officer of State sales tax to inquire under this Enactment, shall produce such document, record or thing.

Access to building, place, etc.

26. (1) For the purposes of this Enactment, the Director or any proper officer of State sales tax shall at all times have full and free access to any building or place where the taxable person carries on his business and to any book, document, record or thing and may search such building or place and may inspect, copy or make extracts from any such book, document, record or thing without making any payment by way of fee or reward.

(2) Where the Director or any proper officer of State sales tax exercises his powers under subsection (1), the person who carries on his business or any other person present at the building or place shall provide to the Director or the proper officer of State sales tax all reasonable facilities and assistance for the exercise of his powers under this section.

(3) The Director or any proper officer of State sales tax may take possession of any book, document, record or thing to which he has access under subsection (1) where in his opinion -

- (a) the inspection of them, copying of them or the making of extracts from them cannot reasonably be undertaken without taking possession of them;
- (b) they may be interfered with or destroyed unless he takes possession of them; or

- (c) they may be needed as evidence in any legal proceedings instituted under or in connection with this Enactment.

(4) Where in the opinion of the Director or any proper officer of State sales tax it is necessary for the purposes of this Enactment, to examine any book, document or record made or kept in a language other than the national language, he may by notice in writing require the person who has the possession, custody or control of such book, document or record to furnish a translation in the national language or the English language within such period as he may specify.

(5) Any person who knowingly furnish a translation under subsection (4) which is not accurate, faithful and true, or knowingly make a translation under that subsection which is not accurate, faithful and true commits an offence.

Power of investigation.

26A. (1) The Director or any proper officer of State sales tax shall have the power to investigate the commission of any offence under this Enactment.

(2) The Director or any proper officer of State sales tax may, in relation to an investigation in respect of any offence committed under this Enactment, exercise all or any of the powers in relation to police investigation in any seizable offence, except the power to arrest without warrant, given under the Criminal Procedure Code [Act 593].

Magistrate may issue search warrant.

27. (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 dwelling house, shop or other building or place or on board any vessel or aircraft, there are concealed or deposited any taxable goods, books, documents, records or things which may afford evidence of an offence against this Enactment, the Magistrate may issue a warrant authorizing any proper officer of State sales tax named therein, at any time and with or without assistance to enter the dwelling house, shop or other building, place, vessel or aircraft and there to search for and seize the taxable goods, books, documents, records or things.

- (2) The officer authorized in accordance with subsection (1) may if it is necessary so to do-
- (a) break open any outer or inner door of the dwelling house, shop or other building, place or vessel or aircraft and enter every part thereof, if necessary, forcibly;
 - (b) remove by force any obstruction to such entry, search or seizure as he is empowered to effect;
 - (c) detain every person found in the dwelling house, shop or other building, place, vessel or aircraft until the search has been completed.

When search may be made without warrant.

28. Whenever it appears to the Director that there is reasonable cause to believe that in any dwelling house, shop or other building, or place, or on board any vessel or aircraft, there are concealed or deposited any taxable goods, books, documents, records or things which may afford evidence of an offence against this Enactment, and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the taxable goods, books, documents, records or things are likely to be removed, he may exercise in, upon and in respect of the dwelling house, shop or other building, place, vessel or aircraft all the powers mentioned in section 27 in the same manner as if he were empowered so to do by a warrant issued under that section.

Seizure of taxable goods, books, documents, records, etc.

29. All taxable goods, books, documents, records or things in respect of which the Director or the proper officer of State sales tax has reasonable cause to suspect that there has been committed any offence against this Enactment or a breach of any condition subject to which any licence has been issued under this Enactment and any taxable goods, books, documents, records or things which may reasonably be believed to have a bearing on the case, may be seized by that officer.

Access to recorded information or computerized data.

29A. (1) Any proper officer of State sales tax conducting a search under this Enactment shall be given access to any recorded information or computerized data, whether stored in a computer or otherwise.

(2) In exercising his powers, the proper officer of State sales tax -

(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 proper officer of State sales 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 him with such reasonable assistance as he may require for the purposes 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.

Power of arrest.

30. (1) Any proper officer of State sales 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 Enactment;

- (b) any person whom he may reasonably suspect to have in his possession any taxable goods, books, documents, records or things liable to seizure under this Enactment; or
- (c) any person whom he may reasonably suspect to have committed an offence under this Enactment.

(1A) The proper officer of State sales 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 police officer shall not be searched except in the presence of and under the supervision of such police officer, but such person may be detained until the arrival of such police officer, or taken to any office or police station where such police officer 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.

(2) Every person arrested under this section shall without unnecessary delay be taken to a police station to be dealt with under the provisions of the Criminal Procedure Code [F.M.S. Cap. 6].

(3) If any person liable to arrest under this Enactment 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 the offence.

PART VIII
OFFENCES

Failure to comply with notice, etc.

31. Without prejudice to any other liability incurred under this Enactment, any person who-
- (a) fails or refuses to comply with the requirements of section 9, 10, 10A, 12, 13, 14, 16 or 21;
 - (b) carries on business at any place or premises not specified in the licence issued under section 10;
 - (c) fails or refuses to produce any taxable goods, book, document, record or thing for the examination or retention by the proper officer of State sales tax in accordance with the requirements of this Enactment;
 - (ca) fails or refuses to give access to any recorded information or computerized data, whether stored in a computer or otherwise, in accordance with the requirements of section 29A;
 - (d) fails or refuses to give correct information or refuses to give any information which he is required to give relating to State sales tax;
 - (e) pays a lesser amount of State sales tax than is required by this Enactment;
 - (ea) impersonates a Director, State Sales Tax Officer or a proper officer of State sales tax;
 - (f) in any way obstructs any proper officer of State sales tax in the discharge of his functions under this Enactment; or
 - (g) contrary to section 12 issues an invoice showing the price of the taxable goods sold or provided which is false or incorrect,

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.

Penalty for incorrect return.

32. (1) Any person who makes an incorrect return under this Enactment by omitting therefrom any information or gives any incorrect information in relation to any matter affecting his own liability to State sales tax or the liability of any other person or a firm or an association of persons 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.

(2) If no prosecution under subsection (1) has been instituted in relation to the incorrect return or incorrect information, the Director may require that person to pay a penalty equal to the amount of State sales tax which has been undercharged in consequence of the incorrect return or information or which would have been undercharged if the return or information had been accepted as correct, and if that person pays that penalty, he shall not be liable to be charged on the same facts with an offence under subsection (1).

Penalty for charging or collecting tax by non-taxable person.

33. (1) No person shall charge or collect from any person any sum of money for the purpose of paying State sales tax levied under this Enactment in respect of any goods sold or provided by him or on his behalf.

(2) Any person who contravenes the provisions of this section 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.

(3) If no prosecution under subsection (2) has been instituted, the Director may require that person to pay a penalty equal to the amount of State sales tax which was collected by that person.

Evasion of State sales tax.

34. (1) Any person who, with intent to evade or to assist any other person to evade State sales tax-

- (a) omits from a return any information in relation to any matter affecting the amount of State sales tax chargeable by him or other person;
- (b) makes any 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 Enactment;
- (d) prepares or maintains, or authorises the preparation or maintenance of, any false invoices or other false records, or falsifies or authorises the falsification of any invoices or records; or
- (e) makes, uses or authorises the use of any fraud, artifice or contrivance,

commits an offence.

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

- (a) for the first offence, to a fine of not less than ten times and not more than twenty times the amount of State sales tax or to imprisonment for a term not exceeding five years or to both; and
- (b) for a second or subsequent offence, to a fine of not less than twenty times and not more than forty times the amount of State sales 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 State sales 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 State sales 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 under paragraph (1)(e) in relation to a person who makes, uses or authorises the use of any fraud, artifice or contrivance includes a reference to a person who, without the authority of the proper officer of State sales tax –

(a) destroys, damages, erases, alters or manipulates the 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 State sales 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 State sales tax shall be deemed to be with the knowledge of the accused unless the contrary be proved by the accused.

Attempts and abetments.

35. Whoever attempts to commit an offence against this Enactment, or abets the commission of such offence, shall be punished with the punishment provided for such offence.

General penalty.

36. Any omission or neglect to comply with and any act done or attempted to be done contrary to the provisions of this Enactment, and in respect of which no penalty is expressly provided 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.

Offences by company, etc.

37. (1) Where any company, firm, society or other body of persons commits an offence under this Enactment, 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, firm, society or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, 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, firm, society or the body of persons; and
- (b) if the company, 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 would be liable under this Enactment to any punishment, penalty or forfeiture for any act, omission, neglect or default, he shall be liable to the same punishment, penalty or forfeiture 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 with that person's agent or otherwise on behalf of that person's agent acting on behalf of that person.

PART IX
PROVISIONS AS TO TRIALS AND PROCEEDINGS

Prosecution.

38. No prosecution for an offence under this enactment shall be instituted except by or with the consent in writing of the Public Prosecutor.

First Class Magistrate's Court to have jurisdiction.

39. Notwithstanding the provisions of any written law to the contrary, a First Class Magistrate's Court shall have jurisdiction to try any offence under this Enactment for any such offence.

Protection of informers from discovery.

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

(2) Subject to subsection (3), if any books, documents or papers which are produced in evidence or liable to inspection in any civil or criminal proceeding under this Enactment, contain any entry in which any informer is named or described or which might lead to his

discovery, the court shall cause all such passages to be concealed from view or to be obliterated, but only to the extent necessary to protect the informer from discovery.

(3) If on trial for any offence under this Enactment, 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.

Compounding of offences.

41. (1) The Director may compound any offence under this Enactment, by making a written offer to the person suspected of committing the offence to compound the offence amount of money not exceeding fifty per centum of the amount of the maximum fine for that offence within the time specified in the offer.

(2) Any money paid to the Director shall be paid into and form part of the State Consolidated Fund.

(3) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within any extended period as the Director 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 (1), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

Proportional examination or testing of goods seized to be accepted by courts.

42. When any goods suspected of being taxable goods or otherwise liable to seizure have been seized, it shall be sufficient to open, examine, and if necessary test the contents of ten per centum only of each description of package or receptacle in which such goods are

contained, and the court shall presume, until the contrary is proved, that the goods contained in the unopened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened.

Evidence of analysis may be given in writing.

43. (1) In any prosecution under this Enactment, a certificate of analysis under the hand of an analyst shall, on production thereof by the prosecutor, be sufficient evidence of the facts stated therein unless the defendant requires that the analyst be called as a witness, in which case he shall give notice thereof to the prosecutor not less than ten days before the day on which the summons is returnable; and in like manner a certificate of analysis under the hand of an analyst shall, on production thereof by the defendant, be sufficient evidence of the facts stated therein, unless the prosecutor requires that the analyst be called as a witness.

(2) A copy of the certificate referred to in subsection (1) shall be sent to the defendant or the prosecutor, as the case may be, at least ten days before the day fixed for the hearing of the summons, and if it is not so sent the court may adjourn the hearing on such terms as it may think proper.

(3) In this section "analyst" means-

- (a) a person employed as a Chemist in the Department of Chemistry;
- (b) a person employed as a Chemist in the State or Federal Department of Agriculture;
- (c) a person employed as a Chemist, or a Geologist in the Geological Survey Department; and
- (d) any other person or class of persons who is or are declared by the Minister, by notification in the *Gazette*, to be an analyst or analysts for the purposes of this section.

(4) If an analyst is called by the defendant as provided by subsection (1) of this section, he shall be called at the expense of the defendant unless the court otherwise directs.

Manner of seizure not to be enquired into on trial before court or on appeal to High Court.

44. On any trial before any court and in any proceedings on appeal in the High Court, relating to the seizure of goods subject to forfeiture under this Enactment, the court shall proceed to such trial or hear such appeal on the merits of the case only, without enquiring into the manner or form of making any seizure, except insofar as the manner and form of seizure may be evidence of such merits.

Goods liable to seizure liable to forfeiture.

45. (1) All goods liable to seizure under the provisions of this Enactment shall be liable to forfeiture.

(2) For the purpose of this section and of sections 46, 47, 48 and 49 the word “goods” shall be deemed to include receptacles, conveyances, vessels and aircraft.

(3) All goods forfeited shall be delivered to the Director and shall be disposed of in accordance with his directions.

Court to order disposal of goods seized.

46. (1) An order for the forfeiture or for the release of anything liable to forfeiture under the provisions of this Enactment shall be made by the court before which a prosecution with regard thereto has been held.

(2) An order for the forfeiture of goods shall be made if it is proved to the satisfaction of the court that an offence against this Enactment has been committed and that the goods 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.

Goods seized in respect of which there is no prosecution deemed to be forfeited if not claimed within one month.

47. (1) Where no prosecution is initiated with regard to any goods seized under this Enactment, such goods shall be deemed to be forfeited at the expiration of one calendar month from the date of seizure unless claim thereto is made before that date in the manner hereinafter set forth.

(2) Any person asserting that he is the owner of such goods and that they are not liable to forfeiture may personally, or by his agent authorized in writing in that behalf, give written notice to the Director that he claims the same.

(3) On receipt of such notice the Director may direct that such goods be released or may refer the matter to the First Class Magistrate for his decision.

(4) The First Class Magistrate shall issue a summon requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the First Class Magistrate shall proceed to the examination of the matter and on proof that an offence against this Enactment has been committed and that such goods were the subject matter, or were used in the commission, of such offence shall order the same to be forfeited, or may in the absence of such proof order their release.

(5) In any proceedings under subsection (4) of this section, the provisions of section 49 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 Enactment.

Minister may order return of goods seized.

48. (1) The owner or any person having a beneficial interest in any goods seized may, before the expiration of one calendar month from the date of the forfeiture of such goods, or from the date on which such goods shall be deemed to be forfeited, as the case may be, make application to the Minister for the return of such goods.

(2) Subsequent to any application made in accordance with subsection (1), the Minister may order any goods seized under this Enactment, whether forfeited or not, to be delivered to the owner or other person entitled thereto, upon such terms and conditions as he may deem fit.

Burden of proof.

49. If in any prosecution in respect of any goods seized for non-payment of State sales tax or for any cause of forfeiture or for the recovery of any penalty of penalties under this

Enactment, any dispute arises whether State sales tax has been paid in respect of such goods or whether anything is exempt from State sales tax, then and in every such case the burden of proof thereof shall lie on the defendant in such prosecution.

Conviction under other law.

50. Nothing contained in this Enactment shall prevent the prosecution, conviction and punishment of any person according to the provisions of any other written law for the time being in force in Malaysia or in any part thereof:

Provided that no person shall be punished more than once for the same offence.

PART IXA
POWER TO PROTECT THE REVENUE IN
CERTAIN TRANSACTION

Interpretation.

50A. In this Part, unless the context otherwise requires, “transaction” means any agreement, arrangement, contract, plan, understanding, scheme, trust, grant, covenant, disposition or transaction made and includes a transaction made by two or more persons with another person or persons.

Power to disregard certain transactions.

50B. (1) Where the Director is satisfied that the purpose or effect of any transaction is directly or indirectly to –

- (a) alter the incidence or postpone the due date of any State sales tax which is due and payable by or which would otherwise have been due and payable by any person;

- (b) relieve any person from any liability which has arisen or which would otherwise have arisen to pay State sales tax or to furnish a return; or
- (c) reduce or avoid any liability imposed or which would otherwise have been imposed on any person in this Enactment,

the Director may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction and make such adjustments as he thinks fit to counteract any tax advantage obtained or obtainable by that person from or under that transaction.

(2) Without prejudice to the generality of subsection (1), the Director may, for the purposes of this section, deem -

- (a) any person other than a taxable person who is a party to or has participated in any way in any transaction, to be a taxable person;
- (b) any sale of goods, whether or not taxable goods, that is affected by or is part of any transaction, made to or made by any taxable person or a person deemed to be a taxable person under paragraph (a), to be taxable goods;
- (c) any sale of taxable goods that, but for any transaction affected by this section, would have been within the taxable period when the sale was made, to take place in any taxable period;
- (d) any sale of taxable goods, that is affected by or is part of any transaction, to have been made, or consideration for the sale is to be given, at open market value.

(3) In this section, "tax advantage" includes –

- (a) any avoidance or reduction in the liability of any person to pay State sales tax;
- (b) any increase in the entitlement of a person to a refund of State sales tax;
- (c) any reduction in the total consideration payable by any person in respect of any sale of taxable goods; or
- (d) any postponement of the time when State sales tax is due and payable.

(4) This section shall not apply to any arrangement carried out for *bona fide* commercial reasons and does not have as one of its main purposes the avoidance or reduction of State sales tax or the obtaining of any tax advantage.

Power to substitute price, disregard structure and impose surcharge.

50C. (1) Notwithstanding section 50B, this section shall apply subject to any regulations prescribed under this enactment.

(2) Subject to subsection (3), where a person enters into a transaction with an associated person for selling or providing taxable goods, then, for all purposes of this Enactment, that person shall determine and apply the arm's length price for the selling or providing of such taxable goods.

(3) Where the Director has reason to believe that any taxable goods referred to under subsection (2) is sold or provided at a price which is less than or greater than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length, the Director may in the determination of the State sales tax of the person, substitute the price in respect of the transaction to reflect an arm's length price for the transaction.

(4) The Director may disregard any structure adopted by a person in entering into a transaction if -

(a) the economic substance of that transaction differs from its form; or

(b) the form and substance of that transaction are the same but the arrangement made in relation to the transaction, viewed in totality, differs from those which would have been adopted by independent persons behaving in a commercially rational manner and the actual structure impedes the director from determining an appropriate transfer price.

(5) Where the Director disregards any structure adopted by a person entering into a transaction under subsection (4), the Director shall make adjustments to the structure of that transaction as he thinks fit to reflect the structure that would have been adopted by an independent person dealing at arm's length having regard to the economic and commercial reality.

(6) The Director may, by notice in writing, impose a surcharge to be paid of not more than five percent of the amount of increase of any State sales tax generally or any reduction, deduction or loss, as the case may be, in exercising his powers to substitute the price in respect of a transaction entered into by a person to reflect an arm's length price for that transaction or to disregard any structure adopted by a person entering into a transaction.

(7) Any surcharge required to be paid by a person under subsection (6) shall be collected by the Director as if it were State sales tax payable by that person, but shall not be treated as State sales tax so payable for the purposes of any provision of this enactment other than section 14, 17 and 20.

(8) The transactions under subsections (2) and (4) shall be construed as a transaction between-

- (a) persons one of whom has control over the other;
- (b) individuals who are relatives of each other; or
- (c) person both of whom are controlled by some other person, in this section referred to as "third person".

(9) For the purpose of subsection (8), "control" refers to persons one of whom owns shares of the other person, or a third person who owns shares of both persons, where the percentage of the share capital held in either situation is twenty per cent or more and -

- (a) the business operations of that person depends on the proprietary rights, such as patents, non-patented technological know-how, trademarks or copyrights, provided by the other person or a third person;
- (b) the business activities, such as purchases, sales, receipt of services, provision of services, of that person are specified by the other person, and the prices and other conditions relating to the supply are influenced by such other person or a third person; or
- (c) where one or more of the directors or members of the board of directors of a person are appointed by the other person or a third person.

(10) In this section, "relative" means any person connected by blood or marriage or legal adoption, or a legal guardian.

PART X
MISCELLANEOUS MATTERS

Officers to be public servants.

51. Every person employed on any duty or service relating to the State sales tax shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

Authority cards to be produced.

52. (1) Every officer when acting against any person under this Enactment, shall, if not in uniform, on demand declare his office and produce to the person against whom he is acting such authority card as he is required to carry in the performance of his duties under this Enactment.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any officer acting or purporting to act under this Enactment, if such officer is not in uniform and refuses to declare his office and produce his authority card on demand being made by such person.

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

53. No person shall in proceedings before any court in respect of the seizure of any thing seized the exercise or the purported exercise of any power conferred under this Enactment, be entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the thing or the payment of its value unless the seizure was made without reasonable or probable cause.

Service of notices.

54. (1) Every notice or other document required to be served on any person under this Enactment may be served –

- (a) personally upon the person;
- (b) by sending it to the person by ordinary service; or
- (c) by electronic service.

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

(a) in the case of a company, partnership or other body of persons having a registered office in Malaysia –

- (i) to its registered office;
- (ii) to its last known address; or
- (iii) to any person authorized by it to accept service of process;

(b) in the case of a company, partnership or other body of persons not having a registered office in Malaysia –

- (i) to any of its registered office (wherever that office may be situated);
- (ii) to its principal place of business or other activity of the company, partnership or body (wherever that place may be situated); or
- (iii) to any person authorized (by or under the law of any place where the company, partnership or body is incorporated, registered or established) to accept service of process; and

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

(3) Where a person to whom there has been addressed a registered letter containing a notice or document under this Enactment -

- (a) is informed that there is a registered letter awaiting him at a post office but refuses or neglects to take delivery of the letter; or
- (b) refuses to accept delivery of that registered letter when tendered,

the notice shall be deemed to have been served upon him on the date on which he was informed that the letter was awaiting him or on which the letter was tendered to him, as the case may be.

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

Substituted service

54A. (1) Where the Director is satisfied that the person on whom the notice or document is to be served cannot, by the exercise of due diligence, be found and service cannot be effected as set out under section 54, the service may be effected by publishing an advertisement in one or more newspapers as the Director thinks fit.

(2) The notice or document shall be deemed to have been served on the person to whom it is addressed on the next working day after the date of publication of the advertisement.

Clerks and employees may transact business.

55. The clerks or employees of any person or firm may transact business generally with any proper officer of State sales tax on behalf of the person or firm:

Provided that an officer may refuse to transact business with the clerk or employee unless the person or a member of the firm identifies such clerk or employee to the officer as empowered to transact.

Rewards.

56. The Director with the approval of the Minister may order such rewards as he may deem fit to be paid to any officer or other person for services rendered in connection with the detection of any offences against this Enactment.

Forms to be used.

57. Where any form has been prescribed under section 61 no person shall, for the purpose of this Enactment, use any form which is not printed or issued by authority of the Director:

Provided that the Director may, at his discretion and subject to such conditions as he may deem fit to impose, permit any person to use forms which are not so printed or issued as aforesaid, or permit the use of any form submitted through an electronic data interchange.

Disputes and appeal.

58. (1) Where any person disputes the decision of a proper officer of State sales tax acting in the course of duty under this Enactment he may appeal therefrom to the Director whose decision on such dispute shall, subject to subsection (2), be final.

(2) Any person aggrieved by a decision of the Director may, within thirty days of being notified of the decision, appeal to the Minister whose decision thereon shall be final and not be subject to review in any court.

Liquidator of company to give notice of winding up, and set aside tax.

59. (1) Where after the passing of this Enactment an effective resolution is passed or an order is made for the winding up of a company to which a licence under section 10 is issued the liquidator of the company shall give notice thereof to the Director within fourteen days after the passing of the resolution or the making of the order, and shall before disposing of any other assets of the company set aside such sum out of the assets of the company as appears to the Director to be sufficient to provide for any State sales tax that there 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 within the time specified in subsection (1) or fails to provide for payment of the State sales tax as required by that subsection shall be personally liable for any State sales tax 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 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 the Director.

60. (1) Where a receiver is appointed of the property of a person to whom a licence under section 10 is issued the receiver shall give notice thereof to the Director within fourteen days after the appointment being made, and shall before disposing of any of the assets of that person set aside such sum out of the assets as appears to the Director to be sufficient to provide for any State sales tax that there is or will thereafter become payable in respect of taxable goods that have been sold or provided by that person before the appointment of the receiver.

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

(3) 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.

State sales tax, etc., to be payable notwithstanding any proceedings, etc.

60A. The institution of proceedings or the imposition of a penalty, fine or term of imprisonment under this Enactment or the compounding of an offence under section 41 shall not relieve any person from the liability to pay for State sales tax, surcharge, penalty, fees or other money under this Enactment.

Use of electronic service

60B. (1) Notwithstanding any other provision of this Enactment, the Director 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, the Director 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 howsoever arising appearing in any electronic notice obtained by the registered 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 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.

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

Protection of proper officer of State sales tax from liability, etc.

60C. No proper officer of State sales tax or other person employed by the Government in the course of carrying out his duties under this Enactment shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other causes while the goods are in the control or excise control or in the lawful custody or control of the proper officer of State sales tax or other person employed by the Government in the course of carrying out his duties under this Enactment unless the loss is caused by his wilful neglect or default.

Power to make regulations.

61. The Minister may make regulations to prescribe and regulate-

- (a) the procedure for application and issue of licences to taxable persons;
- (b) the determination of sale value and fixing of the price of taxable goods;
- (c) the manner of assessment of State sales tax;
- (d) the form and contents of invoices required to be issued by any taxable person;
- (e) the manner and mode of keeping such records required to be kept by any taxable person;
- (f) the manner of generating, producing and storing documents required under this Enactment by means of computers and transmitting thereof by means of electronic data interchange;
- (g) the place at which the State sales tax is to be paid and collected;
- (h) the forms to be used under and for the purposes connected with this Enactment;
- (i) anything required or permitted in this Enactment to be prescribed or regulated;
- (j) generally to give effect to the provisions of this Enactment.