

# **WINDFALL PROFIT LEVY BILL 1998**

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A BILL

*intituled*

An Act to provide for the imposition of a levy on windfall profit derived from the production of goods and for matters connected therewith and incidental thereto.

[ ]

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

**Short title and commencement**

1. (1) This Act may be cited as the Windfall Profit Levy Act 1998.

(2) This Act shall come into operation on 1 January 1999.

**Interpretation**

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

"Department" means the Royal Malaysian Customs and Excise Department;

"Director General" means the Director General of Customs and Excise appointed under subsection 3(1) of the Customs Act 1967 [Act 235];

"Fund" means the Federal Consolidated Fund;

"goods" means all kinds of movable and immovable property;

"levy" means a levy imposed under section 6;

"Minister" means the Minister charged with the responsibility for finance;

"prescribed", unless otherwise stated, means prescribed by regulations made under section 28;

"prescribed goods" means goods prescribed by order made under section 6;

"proper officer of customs" shall have the same meaning as is assigned to that expression in section 2 of the Customs Act 1967.

### **Powers of Director General**

3. Subject to the direction and control of the Minister, the Director General shall have the superintendence of all matters relating to the levy under this Act.

### **Powers of a proper officer of customs**

4. Any proper officer of customs shall, in addition to the duties and powers conferred under the Customs Act 1967, have all the duties and powers to enforce and ensure due compliance with the provisions of this Act.

### **Authority card to be produced**

5. (1) Every proper officer of customs when acting against any person under this Act shall, if not in uniform, on demand declare his office and produce to the person against whom he is acting such document establishing his identity as the Director General may direct to be carried by such officer.

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

### **Imposition of levy**

6. (1) There shall be charged and levied a levy to be known as windfall profit levy on such amount as may be prescribed by the Minister by order published in the *Gazette* which exceeds the amount of such gains as may be prescribed by the Minister in such order and derived from the production of prescribed goods.

### *Windfall Profit Levy*

(2) An order made under subsection (1) may prescribe different amounts and rates for different types of goods.

(3) A levy shall be paid by the producer of the prescribed goods and shall be paid into the Fund.

(4) Any person who fails to pay any levy imposed under this section commits an offence and shall on conviction be liable to a fine not exceeding ten times the amount of levy due or to imprisonment for a term not exceeding three years or to both.

(5) The prosecution of any person under this section shall not relieve such person from liability for the payment of any levy for which he is or may be liable or from liability to make any return which he is required by this Act to make.

### **Order to be tabled**

7. (1) An order determining the amount of levy to be levied under this Act shall, at the next meeting of the Dewan Rakyat, be laid on the table of the Dewan Rakyat.

(2) An order laid on the table of the Dewan Rakyat shall cease to have effect on the expiration of the period of 120 days from the date it is so laid or of such extended period as the Dewan Rakyat may by resolution direct, if it is not confirmed by a resolution passed by the Dewan Rakyat within such period or extended period.

### **Registration**

8. Every person who produces the prescribed goods shall register with the Department.

### **Penalty for late payment**

9. (1) Where any amount of levy remains unpaid after the last day on which it was payable then a penalty equal to ten per cent of such unpaid amount shall thereupon be payable.

(2) If the levy 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 subsection (1) on such unpaid levy shall be

increased by ten per cent 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 of fifty per cent.

### **Levy may be recovered as civil debt**

10. Without prejudice to any other remedy, any levy due and payable and any penalty accruing under this Act may be recovered as a civil debt due to the Government.

### **Submission of return**

11. (1) Every person who produces prescribed goods shall within the prescribed time deliver to the proper officer of customs a return in the prescribed form stating the amount of levy payable, quantity or volume of prescribed goods produced, and such other particulars as the Director General may require.

(2) Every return submitted in accordance with subsection (1) shall be accompanied by payment of the amount due as levy.

### **Assessment of levy**

12. (1) Any return submitted under section 11 may be accepted by the proper officer of customs as sufficient proof of the matters contained therein, and levy may be assessed accordingly.

(2) If the proper officer of customs has reason to believe that the amount of levy shown in a return made by any person under section 11 is less than the amount payable under this Act, he may assess the levy at such greater amount as he deems fit.

### **Refund of levy**

13. The Minister may, if he is satisfied that it would be just and proper to do so as regards a levy paid under this Act, direct the refund of the whole or any part of such levy during such period as he may specify in the direction, and in directing such refund may impose such conditions as he deems fit.

### **Refund of levy overpaid or erroneously paid**

**14.** (1) Subject to subsection (2), if the Director General is satisfied that any money has been overpaid or erroneously paid as a levy under this Act, he may order the refund of the money so overpaid or erroneously paid.

(2) The Director General shall not order such refund unless a claim in respect thereof is made within one year after the overpayment or erroneous payment was made.

### **Payment of levy or penalty shortpaid or erroneously refunded**

**15.** Where the whole or any part of any levy or penalty under section 9 has not been paid, or after having been paid has been erroneously refunded, then, provided a demand is made within three years from the date on which such levy or penalty were paid, or the refund was made, as the case may be, the person liable to pay such levy or penalty, or the person to whom such refund has erroneously been made, as the case may be, shall pay the deficiency or repay the amount paid to him in excess.

### **Duty to keep records**

**16.** (1) Every producer of prescribed goods shall keep such books of accounts or other records as the Director General may direct showing full and true records written up to date of all transactions which affect or may affect his liability to levy under this Act and shall keep those books of accounts or other records in the national language or English language.

(2) The books of accounts and other records which are required to be kept in accordance with this section shall be preserved for a period of six years from the latest date in respect of the production of prescribed goods to which such documents relate.

### **Persons bound to give information**

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

(2) Every person required by the proper officer of customs to produce a document or other thing which is within the power of such person to produce and which is a document or thing required under this Act or a document or thing used in any transaction or other matter relating to levy or a document or thing into which it is the duty of the proper officer of customs to enquire under this Act shall produce such document or thing.

### **Access to place or premises**

**18.** (1) For the purposes of this Act, any senior officer of customs shall at all times have access to any place or premises where a producer of prescribed goods carries on his business.

(2) Where any senior officer of customs enters upon any place or premises in accordance with this section, he may do all or any of the following:

- (a) require the producer to produce any book, document, or thing, which such producer is required to keep under the provisions of this Act, or which relate to any prescribed goods;
- (b) examine any book, document or thing and take copies of any book or document;
- (c) seize and detain any book, document or thing, if in his opinion it may afford evidence of the commission of any offence under this Act;
- (d) require any producer or any person employed by the producer to answer question relating to any book, document or thing or to any entry in any book or document;
- (e) take and retain without payment such samples of any goods or materials as he may think necessary for the performance of his duties.

(3) Where the senior officer of customs acting under this section is unable to obtain free access to any premises where a producer carries on his business, he may at any time enter such premises in such manner, if necessary by force, as he may think necessary.



(4) Where—

- (a) any prescribed goods are found on any premise entered under this section;
- (b) such prescribed goods are produced by a producer who is liable to pay the levy; and
- (c) such levy has not been paid,

such goods may be seized and shall be liable to forfeiture.

**Penalty on making incorrect return and on falsifying documents**

**19.** (1) Any person who—

- (a) makes, orally or in writing, or signs any return, or other document required by this Act which is untrue or incorrect in any material particular;
- (b) makes, orally or in writing, or signs any return or document made for the consideration of any proper officer of customs on any application presented to him which is untrue or incorrect in any material particular;
- (c) counterfeits or falsifies, or uses, when counterfeited or falsified, any document which is or may be required under this Act or any document used in the conduct of any business or matter relating to the levy;
- (d) fraudulently alters any document, or counterfeits the seal, signature, or initials or other mark of, or used by, any proper officer of customs for the verification of any such document or for the security of any goods or any other purpose in the conduct of any business or matter relating to the levy;
- (e) being so required by this Act to make a return, fails to make such return as so required; or
- (f) fails or refuses to produce to a proper officer of customs any document required to be produced under this Act,

commits an offence.

(2) Any person who is convicted of an offence under subsection (1) shall be liable to a fine of not less than ten times the amount of the levy payable and of not more than twenty times the amount of the levy payable.

(3) When any such return, whether oral or written, or any such document as is referred to in paragraphs (1)(a), (b) and (c) has been proved to be untrue or incorrect or counterfeited or falsified in whole or in part, it shall be no defence to allege that such return or document was made or used inadvertently or without criminal or fraudulent intent, or that the person signing the return or document was not aware of or did not understand the contents of such document, or where any return was made or recorded in the national language or in the English language by interpretation from any other language, that such return was misinterpreted or not fully interpreted by an interpreter provided by the person making the return or document.

(4) For the purposes of this section, "falsified" in relation to a document shall be deemed to include a document which is untrue or incorrect in any material particular, and "falsifies" shall be construed accordingly.

### **Penalty on refusing to answer questions or on giving false information**

20. (1) Any person who, being required by this Act to give any information which may reasonably be required by a proper officer of customs and which it is in his power to give, refuses to give such information or furnishes as true information which he knows or has reason to believe to be false, commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) When any such information is proved to be untrue or incorrect in whole or in part it shall be no defence to allege that such information or any part thereof was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the informant.

### **Failure to comply with requirement of this Act**

**21.** Without prejudice to any other liability incurred under this Act, any person who—

- (a) fails or refuses to comply with the requirements of section 8, 11, 12, 15 or 16;
- (b) fails or refuses to produce any book or document for the examination or retention by the proper officer of customs in accordance with the requirements of this Act;
- (c) fails or refuses to give correct information or refuses to give any information which he is required to give relating to the levy; or
- (d) pays a lesser amount of levy than is required by this Act,

commits an offence, and shall be liable on conviction to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### **General offence and penalty**

22. (1) Any person who omits or neglects to comply with, or does or attempts to do any act contrary to, the provisions of this Act commits an offence.

(2) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### **Power to compound**

23. (1) A proper officer of customs may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act or its subsidiary legislation and prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the proper officer of customs of an amount of money not exceeding fifty per cent of the amount of maximum fine for that offence within the time specified in the offer.

(2) 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 period specified in the offer or within such extended period as the proper officer of customs may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) If an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer was made and any thing seized in connection with the offence may be released or forfeited by the proper officer of customs, subject to such terms and conditions as he thinks fit.

(4) All sums of money received by the proper officer of customs under this section shall be paid into and form part of the Fund.

### **Offences by body corporate**

24. (1) If a body corporate commits an offence under this Act or its subsidiary legislation, a person who at the time of the commission of the offence was a director, chief executive officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) if the body corporate 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 that—
  - (i) the offence was committed without his knowledge, consent or connivance; and
  - (ii) he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

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

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

### **Institution of prosecution**

25. No prosecution for or in relation to any offence under this Act shall be instituted without the written consent of the Public Prosecutor.

### **Abetting an offence**

26. Where any person wilfully makes on behalf of another person, or aids, abets, assists, incites or induces any other person to make an incorrect return, account or statement resulting in a short payment of the levy by the person liable for the payment of the levy such first-mentioned person commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### **Power of Minister to apply Customs Act 1967**

27. (1) The Minister may prescribe any provision in the Customs Act 1967 to be a provision which shall apply for the purpose of carrying out the provisions of this Act.

(2) In prescribing the provisions of the Customs Act 1967 under subsection (1), the Minister may make such modifications as are necessary and expedient for the purpose of ensuring the proper and efficient implementation of this Act.

**Regulations**

28. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), such regulations may provide for—

- (a) the procedures for the payment and collection of levy;
- (b) the form required for the collection of levy; and
- (c) the place and time relating to collection of levy.

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**EXPLANATORY STATEMENT**

This Bill seeks to make provisions for the imposition of a levy on windfall profit derived from the production of goods.

2. *Clause 1* contains the short title and commencement date of the proposed Act.

3. *Clause 2* contains the definitions of several expressions used in this Bill.

4. Under *clause 3* the Director General will have the superintendence of all matters relating to levy subject to the direction and control of the Minister.

5. *Clause 4* seeks to provide for the duties and powers of a proper officer of customs under the proposed Act.

6. *Clause 5* seeks to require a proper officer of customs who is not in uniform to declare his office and produce identification document when demanded by any person against whom he is acting.

7. *Clause 6* seeks to provide for a levy to be charged on windfall profit derived from the production of prescribed goods and to empower the Minister to prescribe the amount and rates of levy.

8. *Clause 7* seeks to require that the order which imposes the levy to be tabled before the Dewan Rakyat.

9. *Clause 8* seeks to impose the duty on producers of prescribed goods to register with the Royal Customs and Excise Department.

10. *Clause 9* seeks to provide for a penalty for any late payment in respect of any levy remaining unpaid after the last day for its payment.
11. *Clause 10* seeks to provide that any levy due and any penalty accruing may be recovered as a civil debt.
12. *Clause 11* seeks to impose a duty on producers of prescribed goods to submit returns to the proper officer of customs.
13. *Clause 12* contains provisions relating to assessment of levy.
14. *Clause 13* seeks to empower the Minister to refund any levy paid under the proposed Act.
15. *Clause 14* seeks to empower the Director General to order the refund of any money overpaid or erroneously paid as a levy under the proposed Act.
16. *Clause 15* seeks to provide for the payment of any levy or penalty short paid or erroneously refunded.
17. *Clause 16* seeks to impose a duty on the producers of prescribed goods to keep and preserve books of accounts or other records for a period of six years.
18. *Clause 17* seeks to impose duty on person having any information or document required by a proper officer of customs to provide such information or document.
19. *Clause 18* seeks to allow a senior officer of customs to have access to any place or premises for purpose of determining whether a levy is payable under the proposed Act.
20. *Clause 19* seeks to make the making of incorrect returns and falsifying of documents offences under the proposed Act.
21. *Clause 20* seeks to make it an offence for any person to refuse to give information.
22. *Clause 21* contains provisions relating to any failure to comply with the requirements of the proposed Act.
23. *Clause 22* seeks to provide for general offences and penalties.
24. *Clause 23* seeks to provide for the compounding of offences under the proposed Act.
25. *Clause 24* deals with offences committed by bodies corporate.
26. *Clause 25* deals with the institution of prosecution for offences under the proposed Act.

## *Bill*

27. *Clause 26* deals with the abetment of offences under the proposed Act.
28. *Clause 27* seeks to empower the Minister to prescribe any provision of the Customs Act 1967 to be provisions which shall apply for the purpose of the proposed Act.
29. *Clause 28* deals with the power of the Minister to make regulations for the purpose of giving effect to the provisions of the proposed Act.

## *FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure.  
[PN(U<sup>2</sup>)2110]