

# GST and anti-profiteering – tackling the pricing issue

Uncertainty is like a necessary evil. It's something that accompanies you when you attempt new things and prime yourself for bigger things. For businesses, operating in an environment of uncertainty is almost a given in our current economic landscape.

Pricing is a complex juggling act between competing interests from the 3Cs – company, customers and competitors. The government is adding a fourth C to the pricing mix – “compliance” – with the implementation of the Goods and Services Tax (GST Act) and the Price Control and Anti-Profiteering Act 2011 (the Act) come April 1, 2015.

Much has been reported on the level of uncertainty and ambiguity surrounding the implementation of the GST. Businesses are having reservations about the cost of compliance and the effect of GST on their liquidity. They are attempting to widen their margins as a contingency against uncertainty. But how sustainable is this, bearing in mind that there may only be a temporary surge in business in the months leading up to the implementation date?

To help businesses cope with the sensitive issue of price changes at the onset of GST implementation, the government has gazetted amendments to the Act on July 24. The amendments seek to penalise businesses that make “unreasonably high profits” arising from the implementation of the tax.

Among the recent amendments to the Act are key changes affecting businesses:

1. It shall be illegal to include any credit for input tax that a business is entitled to claim under the GST Act 2014 and any refund of sales tax under the GST Act 2014 as “part of the price of the goods or charge for services”; and
2. The Minister for Domestic Trade, Cooperatives and Consumerism will determine the mechanism to assess if profits are unreasonably high as well as determine a period during which there shall be no increase in the net profit margin of any goods and services.

Businesses that breach the law may be liable for a fine not exceeding RM500,000 for the first offence and RM1 million for each subsequent offence.

## How will the amendments work?

There is scant news apart from the announcement of a price guide indicating the expected range of price increases to be released three months before the implementation of the tax. Detailed information is due to be released “soon”. So what does this mean for businesses?

Based on a strict interpretation of the law, businesses must claim all input tax credits they are entitled to. The problem is that many businesses make pricing decisions based on projected or estimated standard costs and the actual costs that are incurred during a period may only be reflected in future price revisions. The law appears to require absolute exclusion of every ringgit of input tax credit from pricing decisions, which may not be possible. What may be practical is a range of profit parameters that can be quantitatively measured but, where necessary, modified by qualitative considerations? In this regard, the government should provide for flexibility in the profit measurement and consider the net margin of a group of products, for example, the profit of biscuits rather than a particular brand of biscuits. A qualitative consideration could be the fact that the demand for a particular biscuit is less elastic and enables the business to make premium profits.

The government in coming up with the mechanism to determine “unreasonably high profits” should come out positively to assure the business community that so long as their businesses can demonstrate that the post-April 1, 2015, prices have been reviewed and efforts have been made to exclude the input tax and the sales tax refund from the cost of doing business, they will not be penalised for any additional profits arising from one year to another.

## How to protect your business

At the minimum, businesses should consider the following:

- Maintain documentation of the due process of stripping out the legacy sales tax and service tax from its costs;
- Estimate the impact of non-recoverable input tax; and
- Link this process to pricing decisions affecting post-April 1, 2015 prices.



MY  
Say

BY WAN HENG CHOON

This should be done at a product and entity level and where the net profits post-April 1, 2015, increase beyond the price guide to be issued. The Act also refers to a period over which net margins will be monitored.

Clarification on the time horizon, and the monitoring and enforcement regimes needs to be socialised at the earliest opportunity for the benefit of all stakeholders. Experience in other countries suggest that a two-year period should be adequate for businesses and consumers to adjust their price level changes arising from the implementation of the tax.

Another simple measure would be to allow businesses, if they so choose, to display two prices, one before and one after the implementation of the tax for a two-month period leading up to the implementation date. This will allow consumers to compare the effect of the tax as well as to facilitate the changeover of price labelling as at March 31, 2015, for goods.

## Need for business-friendly regulations

The GST Act proposes that a business will be entitled to a special refund for sales tax for stock in trade on April 1, 2015. The tedious claims process (need for an audit, clawback rules, record keeping and discretionary period of up to two years for the refund) potentially makes the prospect of a claim uneconomical and/or impractical. The architects of the law need to provide greater clarity if the claim is mandatory, and allow for mitigating reasons not to make a claim in making pricing decisions.

The potential for profiteering upon implementation of the tax cannot be taken lightly. The government needs the cooperation of the business community to minimise the pressure on prices. The policies on prices and anti-profiteering need to be made public quickly, with greater clarity and designed to simplify the transition process. Consultation with the business community and more importantly, being receptive to their concerns, would facilitate acceptance and transition to GST.

The business community must also respond to the challenge and start the process of looking at and documenting their pricing decisions after April 1, 2015, and work out optimal strategies to demonstrate efforts made to maintain margins. Failure to recognise the importance of looking at how post-April 1, 2015, prices are determined will cause businesses to deal with sustainability issues, be labelled as profiteers and suffer financial loss if the hefty penalties for profiteering are imposed.

At the end of the day, all regulation policies should be formulated on sound and practical economic principles and consultations. The government's proposal to issue a “Shopper's Guide” in January 2015 on the likely price changes post-GST is a positive first step to address these uncertainties.

Transparency to both the business community and consumers is key to the success of these initiatives.

Senior executive director Wan Heng Choon leads PwC Taxation Services Malaysia's GST Solutions team