Complying with the Anti-Profiteering Act

Protecting consumers from traders who seek to profit excessively from GST

BY ESTHER LEE

The government's commitment to protect consumers from unscrupulous traders during the implementation of the Goods and Services Tax (GST) is expressed in the form of the Price Control and Anti-Profiteering Act (Amendment) 2014.

The Act gives the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) power to take action against businesses deemed to have made excessive profits from the implementation of GST, via an 18-month monitoring mechanism that began on Jan 1.

This should provide consumers some comfort, but the same cannot be said about businesses that find it difficult to comply with the Act. Tax consultants say the Act is right and good as it will serve as a price control mechanism during the introduction of the new tax while assuring consumers that prices will remain reasonable.

"The Anti-Profiteering Act is a good move. It is transparent and people will know how excessive profits are measured. Therefore, it should be able to stabilise prices for a reasonable time. If there wasn't such an Act, we could potentially end up with soaring inflation rates, like the countries that did not have proper legislation to monitor profiteering practices at the time of GST implementation," says PricewaterhouseCoopers Taxation Services Sdn Bhd executive director Raja Kumaran.

The law essentially forbids any increment in the net profit margin of goods and services between Jan 1 this year and June 30, 2016. Businesses found to have higher net profit margins during this period could be investigated.

The Royal Malaysian Customs Department's director of GST Datuk Subromaniam Tholasy says the department will work closely with the MDTCC to crack down on unscrupulous traders.

Unfortunately for traders, the law does not take into account practical aspects such as a sudden shift in demand and supply, which usually affects profit margin. Nevertheless, tax consultants say there is room for businesses to justify an increase in margins, for instance, if they have a valid reason for increasing prices, which can raise net profit margins.

"Say your net margin moves significantly. If there is an underlying reason for it to move, say, from significant operating efficiencies, they can still justify the increase in net profit margin. That does not mean businesses have profiteered because they are able to justify [the increase] in other ways," says PwC senior consultant Tim Simpson.

"Essentially, what the Anti-Profiteering legislation is designed to do is make it an offence for businesses not to pass on savings from GST and the transition from the current sales and service tax systems," he adds. Thus, businesses need to keep records of anything that could help them justify an increase in margins.

The main grouse businesses have is the requirement for product information to be kept at the stock keeping units (SKU) level in order to prove that they are not profiteering.

> **Large retail outlets, such as Giant or Tesco, carry thousands of items ... the main grouse such businesses have is the requirement for product information to be kept at the stock keeping units level in order to prove that they are not profiteering**

"The key challenges we hear regarding the Anti-Profiteering Act is that businesses have to look at things at the SKU level. But currently, a lot of businesses do not maintain records that take operating cost right down to the SKU level," says Simpson.

"Businesses often ask us: 'How do I come up with a methodology to bring that operating cost down to SKU level? Will I be penalised for the choice of method that I use?' So, these are the worries that we are hearing now, especially from those that have thousands of SKU."

EY Malaysia tax partner and indirect tax leader Bernard Yap says challenges can come from having to deal with the compliance requirements of GST as well as those of the Anti-Profiteering Act concurrently.

"If you are one of the large retail outlets, such as Giant or Tesco, you have thousands of items in your supermarket. How are you going to do a margin calculation for all your items by April 1? Here we are trying to get ready for GST, but the law also wants us to do this [ensure that excessive profits are not made in the pricing of goods]," he says.

PwC's Raja says the Act will be even more difficult for the services sector to comply with because these services, which are also subject to GST, are different from one to another.

"The formula in the Act [for calculating excessive profit] is skewed towards tangible goods. The focus of the Price Control and Anti-Profiteering Act is very much towards basic necessities," says Yap.

"The ultimate intention of the government is to ensure that consumers don't suffer because of GST. So, if the MDTCC gets it right for this group, such as food and transport, then Malaysians will be happy. We can't fault the ministry for not focusing on services as the focus is on controlling the prices of basic necessities."

Nevertheless, this has left the services sector in limbo, says Yap, as it does not have much guidance on how to comply with the Act.

Businesses aside, consumers may have a reason to cheer come April 1. According to Subromaniam, a simulation conducted by the Customs Department shows that more than 500 categories of items will see a reduction in prices due to the implementation of GST.

"Consumers are worried that everything will go up 6%. Let me assure you this is not the case. You will be pleasantly surprised," he says.

"For the first time in Malaysian history, we have the Price Control and Anti-Profiteering Act. You will see the benefits ... where the net profit margins will be capped," he adds. E

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