

Client Alert

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Anti Profiteering Malaysia - Proposal to introduce new anti profiteering mechanism

Proposal to Introduce New Anti Profiteering Mechanism

In early June 2016, the Ministry of Domestic Trade, Co-operatives and Consumerism ("MDTCC") conducted an engagement with the consumer goods industry, chambers of commerce, trade and retail associations, transporters and restaurant operators to propose the introduction of a new anti-profiteering mechanism intended to take effect on 1 July 2016.

The new mechanism will replace the existing mechanism which involves the examination of the net profit margin of businesses in Malaysia from 2 January 2015 up to 30 June 2016. Under the existing mechanism, in applying a prescribed formula, the net profit margin of a business of current period must not exceed the base period which is taken to be 1 January 2015.

Following feedback received from the industry on the existing mechanism, the MDTCC in its administration of anti-profiteering laws has decided not to continue with the existing mechanism because of certain weaknesses which include the inconsistency with economic free market principles and because the existing mechanism does not reflect common business practice where profit margins are determined in percentage terms rather than absolute amounts.

Under the proposed new mechanism, the MDTCC seeks to introduce a formula which examines the mark up on goods and services taking into account the sale price less the cost price, divided by the cost price using a percentage basis. The percentage mark up of a particular good or service must not be higher than its determination on the first day of the financial year or calendar year and revisions are only allowed subject to certain conditions and with the approval from the Price Controller with reasonable justifications. At present, the proposal is still in draft form.

However, once final, the new mechanism is expected to be effective from 1 July 2016 and will be in force continuously, in contrast to the existing mechanism which had a specified timeframe and expiry.

Price Control and Anti Profiteering Laws in Malaysia

The Price Control Anti-Profiteering Act 2011 ("PCAP") was passed to protect consumers in Malaysia against unreasonable increase in prices of goods and services following the implementation of Goods and Services Tax ("GST") in Malaysia. Under the PCAP, profiteering is an offence. The PCAP is administered by the MDTCC.

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The Price Control and Anti Profiteering (Mechanism To Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014 ("Regulations 2014") provides a prescribed formula for the determination of unreasonably high profits within a prescribed timeframe which comes to an end on 30 June 2016.

In spite of the timeline of 30 June 2016 fast approaching, the MDTCC continues to be aggressive in the enforcement of the PCAP and Regulations 2014.

Anti Profiteering Compliance

Since the introduction of the PCAP and the Regulations 2014, the MDTCC has been vigilant in the enforcement of anti profiteering in Malaysia especially given the increased consumer awareness on pricing of goods and services post-GST implementation.

Although at this juncture, the new mechanism is merely a proposal and it is expected that there may be refinements to the formula, once finalised, it is anticipated that the new mechanism will be implemented almost immediately so as to take effect on 1 July 2016. The MDTCC clearly expects that all businesses have adequate justifications to substantiate planned price increases.

Taking into account, the broad powers of investigation and enforcement accorded to the MDTCC under the PCAP, the MDTCC's aggressive price monitoring exercises as well as the substantial financial penalties for breach of the PCAP, it would be prudent for all businesses to review pricing policies. Any intended price increase must be balanced against the implications of being in breach of the anti profiteering laws in Malaysia.

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