

# Tax e-Alert

13 JULY 2018

## Key Features Of The Price Control And Anti-Profiteering Regulations 2018

On 5.6.18, the Price Control and Anti-Profiteering Regulations 2018 [*PU(A) 130/2018*] (**2018 Regulations**) were gazetted and came into operation on 6.6.2018. The 2018 Regulations revoked the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016 (**2016 Regulations**).

The key difference between the 2018 Regulations and 2016 Regulations lies in their scope. In line with the reduction of the goods and services tax (**GST**) rate from 6% to 0% (effective 1.6.2018) and the upcoming implementation of the sales and services tax (**SST**), the 2018 Regulations now accord for wider regulation of “**any goods** sold or offered for sale or **any services** supplied or offered for supply”, rather than just goods comprising food and beverages and household goods in the revoked 2016 Regulations.

Under Section 14 of the Price Control and Anti-Profiteering Act 2011 (**the Act**), any person who, in the course of trade or business, profiteers, i.e. makes an unreasonably high profit, in selling or offering to sell or supplying or offering to supply any goods or services, commits an offence. Like the 2016 Regulations, the 2018 Regulations provides for two main mechanisms to determine “unreasonably high profits”, either based on the mark-up percentage of the goods sold or offered for sale or services supplied or offered for supply, or based on the margin percentage of the same.

### Observations

Under the Act, where a body corporate commits an offence to profiteer, it shall be liable to a fine not exceeding RM500,000 and, for a second or subsequent offence, to a fine not exceeding RM1 million. Where such person is not a body corporate, he/she shall be liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding three years or to both and, for a second or subsequent offence, to a fine not exceeding

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RM250,000 or to imprisonment for a term not exceeding five years or to both. Additionally, the Act provides for a whole gamut of offences and further confers wide powers on the Price Controller to, *inter alia*, request for any return, document or information containing the prices of any goods or charges for any services, to determine prices of goods and charges of services as well as impose requirements for goods or services to be marked with or accompanied by information, including that of the form and manner in which the information is to be given.

It is noted, though, that the present laws do not provide for remedies such as restitution, composite and best judgment determination by the Minister or enforceable undertaking and compounding of offence(s) in lieu of prosecution, which, if introduced, could bolster enforcement. It is also observed that the Royal Malaysian Customs Department is not empowered to enforce the anti-profiteering laws as this is within the purview of the Ministry of Domestic Trade, Co-operatives and Consumerism (**MDTCC**).

Consequent to the 2018 Regulations:

- The scope of the Regulations has now been widened to include any goods sold or offered for sale or any services supplied or offered for supplied. This is especially crucial since following the recent zero rating of GST (which was widely blamed for rising prices) and upcoming re-introduction of the SST, suppliers of goods and services are expected to review and revise prices to reflect the 0% GST to ensure compliance with the Act and the 2018 Regulations.
- By virtue of the widened scope of the Regulations, all parties in the supply chain — from producers and supplies to wholesalers and retailers — would, by extension, also be caught within the ambit of the Act and more comprehensive and thorough business transactions records would need to be retained. While this would inevitably lead to higher compliance costs, such measures are necessary to avoid potential fines or penalties for breaches and offences.

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- With growing consumer education, the public is increasingly sophisticated and now armed with access to a wider range of platforms to raise their concerns and complaints, be it online complaint systems, like the eAduan Consumer Complaint System and the Claims Filing System, or even mobile applications, to monitor fluctuations in the prices of goods and report any suspected breaches to the MDTCC. Further, with the efforts by the MDTCC to strengthen enforcement, businesses must be vigilant and equip themselves with the necessary know-how to handle price fluctuations and comply with the 2018 Regulations and Act.

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In light of the growing consumer awareness and tightening enforcement, it is prudent for businesses to conduct a comprehensive review of their pricing policies and documentation and ensure that compliance with the legislation is in place. Since the introduction of this anti-profiteering law, we have, among others, advised a leading multinational corporation in explaining the commercial and practical reasons for its pricing policy to the MDTCC. We have also successfully represented a taxpayer in the mitigation of an alleged anti-profiteering offence before the Sessions Court, which was achieved without any further action against their key management personnel.

Please contact our tax partners, Datuk D P Naban or Mr S Saravana Kumar at [tax@lh-ag.com](mailto:tax@lh-ag.com) if you have any queries on price control and anti-profiteering matters.

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