

Client Alert

June 2018

Anti-Profiteering Laws in Malaysia: Zerorisation of GST Leading to Greater Scrutiny on Pricing

The Ministry of Finance issued a statement ("**MOF Statement**") that the Malaysian Goods and Services Tax ("**GST**") rate will be reduced from 6% to 0%. This means that all standard rated supplies are now at 0% GST.

In tandem with the issuance of the MOF Statement, the Ministry of Finance has emphasised that all businesses must ensure that prices of goods and services are compliant with the provisions under the Price Control and Anti-Profiteering Act 2011 ("**PCAP**") at all times. The Ministry of Domestic Trade, Co-operatives and Consumerism ("**MDTCC**") has also released guidance on anti-profiteering and regulatory matters to some business associations in light of the recent developments.

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Key Implications

In this alert, we have summarised the key implications and immediate action points to be addressed by all businesses:

Remove GST at 6%

- Review all existing pricing lists, price displays and price tags to remove the GST at 6%.

Update Price Displays

- Update all existing pricing lists, price displays and price tags to reflect the reduced pricing without the 6% GST element.

Pass on benefit to consumers

- Illegal for businesses to profiteer and exploit pricing and any benefits from the removal of 6% GST is expected to be passed on to consumers.

Grace Period Granted For Updating Price Displays

Businesses granted grace period up to 30 June 2018 to update price displays

- All businesses will have until 30 June 2018 to update all price displays to remove the 6% GST.



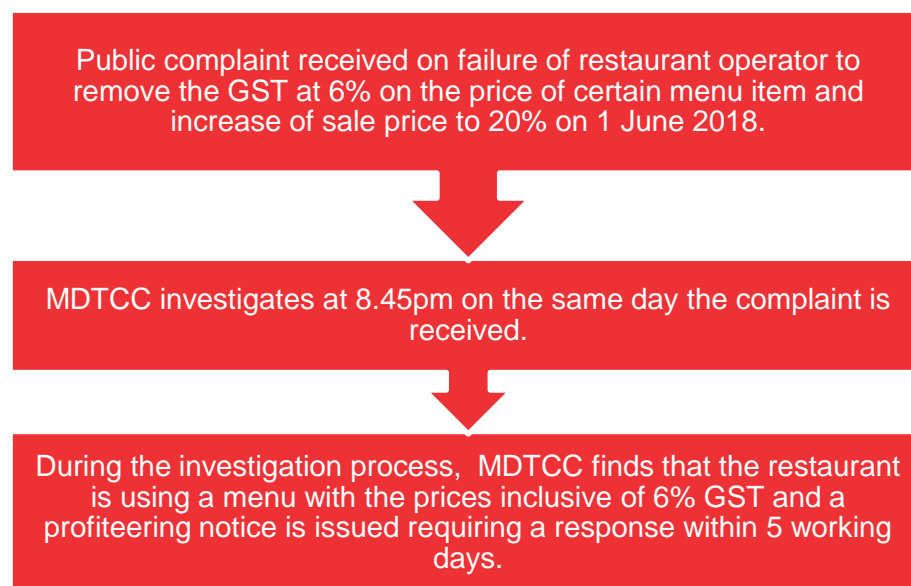
Notwithstanding the grace period given by the MDTCC, businesses should take immediate steps to implement the changes as soon as possible and where advertisements, quotes and price displays are currently published at a price which is inclusive of 6% GST, changes will need to be made to ensure that the prices displayed do not include the 6% GST element.

Compliance with anti-profiteering regulations

The MDTCC has asserted that the objective of the anti-profiteering framework is not to prevent businesses from making any profit. Rather, the objective is to protect consumers by ensuring that businesses do not make unreasonably high profits to the extent that the rights of the consumers are jeopardised.

As of 1 June 2018, the MDTCC has already received several complaints from consumers regarding businesses which have failed to comply with the requirement to remove the 6% GST and reflect a reduction in pricing.

A highlight of the recent enforcement action is reflected below:



Under the PCAP, it is an offence for a person to make an unreasonably high profit from the sale or supply of goods or services in the course of a trade or a business. The PCAP empowers the MDTCC to prescribe the formulation to determine profiteering. Individuals who fail to adhere to the provisions of the PCAP or who are found to be profiteering may face a maximum fine of RM100,000 or imprisonment of up to 3 years or both. Bodies corporate which commit an offence face a maximum fine of RM500,000 for a first time offence or a maximum fine of RM1 million for every second or subsequent offence. The financial penalties will be imposed on a per offence, per product basis.

With greater scrutiny expected, it is essential that businesses be prepared to provide full cooperation and be prepared for price monitoring and audit exercises. All price adjustments after the removal of GST at 6% must be substantiated with justifications.



How We Can Help

Our dedicated team of lawyers and practitioners can help you navigate the complexities of the anti-profiteering regime to stay competitive and compliant.

Our value propositions include:

Analyse the provisions of the PCAP in the context of your business and to identify immediate action items.

Review existing price structure or price lists to ascertain level of audit risks and establish the likelihood of an audit outcome.

Assist with the price monitoring, audit exercises and manage the information disclosure process.

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