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# Malaysia News:

## Update on Malaysia Anti-Profiteering Regulations 2018

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# Update on Malaysia Anti-Profiteering Regulations 2018

## Background

On 6 June 2018, the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) Regulations 2018 (“**Regulation**”) came into effect. It applies universally to:

- i. any goods sold or offered for sale; and
- ii. any services supplied or offered for supply.

It revokes the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016 which had a more limited application governing only non-durable household goods and food and beverages.

## Aim

Following the abolition of the Malaysian Goods and Services Tax (“**GST**”) effective 1 June 2018, the Ministry of Finance and the Ministry of Domestic Trade, Co-operatives and Consumerism (“**MDTCC**”) both seek to ensure businesses remain compliant with anti-profiteering laws. In short, businesses must not abuse the abolition of GST and increase their prices unreasonably. Any benefit from the abolition of GST ought to be passed on to consumers.

Under the current Price Control and Anti-Profiteering Act 2011, it is an offence to make an unreasonably high profit from the sale or supply of goods or services. The Regulation employs a formula based mechanism for assessing whether profit is unreasonably high.

## Determining unreasonably high profit

Section 3 of the Regulation states that profit is unreasonably high if the mark up percentage (“**MU%**”) or margin percentage (“**MG%**”) of goods or services sold or supplied on any day in a particular financial year (“**FY**”) or calendar year (“**CY**”) exceeds the MU% or MG% of goods or services sold or supplied on the first day of that particular FY or CY.

The MU% is calculated by subtracting the cost price from the sale price and dividing this amount by the cost price, using a percentage basis. The MG% is calculated by subtracting the cost price from the sale price and dividing this amount by the sale price, using a percentage basis.

Section 4 details the formula to be used when calculating unreasonably high profit based on the MU%. Section 5 should be referred to when basing the calculation on the MG%.

The MU% or MG% on the first day of a particular FY or CY is based on the immediately preceding year’s MU% or MG% plus the larger of the following:

- i.  $X1 - X2$ ; or
- ii.  $X2 - X3$ ,

where X1, X2, X3 represent the MU% or MG% of the first, second and third year preceding, respectively.

## Next steps

It is widely anticipated that there will be greater scrutiny on pricing and that the Regulation will be enforced strictly.

Businesses should take care when setting new prices to ensure compliance with the Regulation. Failure to do so may result in MDTCC issuing a Notice 21 to initiate investigations on anti-profiteering compliance. Any price increase must be justified and well-documented so as to ease co-operation and information disclosure in the event of an investigation.

Businesses found to be illegally profiteering face a fine not exceeding RM500,000 for the first offence and a fine not exceeding RM1 million for each subsequent offence.

## Your Contact



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