GST TO SST | THE EDGE ctim

Taxing matters

BY SEAH SIEW YUN
– CTIM PRESIDENT

The newly elected government pledged in its election manifesto to abolish the Goods and Services Tax (GST) and its first step was to zero-rate the tax effective June 1.

The tax industry, however, is anxiously monitoring developments as the election manifesto promised to abolish the tax, not merely zero-rate it. However, more is in store, including the reintroduction of the Sales and Services Tax (SST).

While many might think the abolition of GST is a world-first, the Canadians did it in 1993. The Liberty Party of Canada promised to abolish the highly unpopular GST and went on to win the election. The government took chunks of the GST provisions and repackaged them into the Harmonised Sales Tax (HST). However, the province of British Columbia held a referendum in 2010 and reverted to the GST with a regional provincial sales tax (PST). This switching back and forth was costly for the government as well as businesses.

In Malaysia, we hope to see a swift transition, with a set of new laws that will ultimately benefit all parties. It will not be easy as we are talking about delving into two sets of rules — from 6% GST to 0%, and from 0% GST to SST — all within a short period of time.

The standard rate of GST has been changed from 6% to 0%. This is only a temporary measure as it is the swiftest way to meet the rakyat's demand to see a reduction in the cost of living.

The SST is targeted to be introduced in September, Prime Minister Tun Dr Mahathir Mohamad announced on May 30. So the rakyat is enjoying a tax holiday until then.

Some retailers had even reduced their prices immediately after the announcement of the zero-rating. Nonetheless, we are cautious as the reduction in prices is likely to be temporary until SST is reintroduced and the ringgit is strengthened.

Looking at its previous incarnations, the SST is not known to be efficient. It has limited scope and cascades itself as cost to business. These problems are being reviewed and there are hints that a hybrid model may be introduced, allowing businesses to submit selected claims to prevent cascading costs. Whether it is GST or SST, the rakyat's expectations are paramount and should be managed. We hope the new SST model will be made known soon as very little is known presently and the situation is uneasy, mired in uncertainty. It takes time to iron out any issues and the longer we wait, the less time we have to do it.

Against this background, the Chartered Tax Institute of Malaysia (CTIM) has initiated a think tank for GST-SST transformation to fill the gap between the government and businesses on various technical and practical aspects that may arise.

We have the best GST-SST tax practitioners in our fold, known as the CTIM GST-SST Transformations Working Group (TWG) to present to you issues that confront us today. The TWG will provide a series of technical write-ups in collaboration with *The Edge* and hold educational roadshows in the coming months with the respective industries. These will be on a no-charge basis as a pledge of support by CTIM to the nation.

Many in industry have touched base with CTIM to hold the half-day educational sessions on "6% GST to 0%" and "0% GST to SST" on their premises. Businesses are welcome to contact us at secretariat@ctim.org.my if they wish to do the same.

CTIM is Malaysia's premier tax body that provides effective institutional support to members and promotes convergence of interests with government, using taxation as a tool for the nation's economic advancement.

CTIM is ready to contribute the best brains in town to devise an acceptable solution for all. E

CTIM GST-SST Transformations Working Group line-up

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In the limelight again — the anti-profiteering law

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In 2014, with the advent of the Goods and Services Tax (GST), parliament had aimed to tackle profiteering by enacting the Price Control and Anti-Profiteering (Amendment) Act 2014 (Amendment Act). A notable provision was the introduction of Section 10A, which prohibits the inclusion of the following as part of the prices of goods or charges for services:

- Any credit for input tax against output tax under the GST Act 2014; and
- Any special refund of sales tax under the GST Act 2014.

In a nutshell, the purpose of the Price Control and Anti-Profiteering Act 2011 (PCAP Act), read with the Amendment Act, is to prevent profiteering by traders.

This is evident in the speech by the then minister when tabling the amendment bill in parliament on June 17, 2014.

The then government had hoped that no trader would take advantage of the introduction of GST by unreasonably increasing the prices of their goods and services. If this were to happen, the GST would be seen as burdening the rakyat.

But, history tells us that the PCAP Act has not been effective in achieving this. The prices of goods and services continued to rise and this was compounded by the withdrawal of various government subsidies, especially the petrol subsidy.

Without a doubt, the escalating cost of living made many a working-class Malaysian decide to vote for change on May 9.

Be that as it may, the PCAP Act is a social legislation aimed at tackling unreasonable price increases by unscrupulous businesses. It is far from perfect, but given the unexpected and sudden implementation of zero-rating of GST for all supplies from June 1, the Act plays a key role in curbing profiteering. This is the law that the nation has to bring to book businesses that refuse to reduce the prices of their goods and services that were previously standard-rated.

The Act consists of eight parts and one schedule, namely:

Part I — Preliminary (ss 1-3) specifies the short title and commencement of the Act, the interpretation section and the appointment of the price controller, deputy price controller, assistant price controller and so on.

Part II — Determination of Prices and Charges (ss 4-10A) stipulates the power of the controller to determine the prices of goods (s 4), charges for services (s 5), prices or charges according to area (s 6) and amount of deposit (s 7), and where the prices determined include tax (s 8), the seller is to display the price list (s 9), price marking orders (s 10) and prices or charges imposed are not to include certain items as specified in section 10A.

Part III — Offences (ss 11-14) stipulates certain offences to sell and purchase goods as per ss 11 and 12 as well as the offence to profiteer in s 14. Section 13 specifies the illegal conditions.

Part IV — Anti-profiteering (ss 15-17) stipulates the mechanism to determine unreasonably high profits (s 15) as well as the offer to sell (s 16) and offer to supply (s 17).

Part V specifies the penalty for committing an offence under Part III or IV in section 18.

Part VI — Investigation and Enforcement comprises three chapters. Chapter 1 is on investigations and complaints (ss 19--20), chapter 2 on information gathering powers (ss 21-27) and chapter 3 on search and seizure powers (ss 28-40).

Part VII (ss 41-53) lists provisions on the Price Advisory Council.

Part VIII (ss 53A-63) involves general provisions, including the duty to keep records (s 53A), the jurisdiction to try offences (s 54) and rewards for information (s 55).

Some of the provisions on anti-profiteering are discussed here along with recommendations for immediate intervention by the government to give the PCAP Act added legal strength to make it current and effective.

Prices or charges imposed not to include certain items

As explained earlier, Section 10A of the PCAP Act stipulates that a person supplying any goods or services shall not include any credit for input tax against output tax and any special refund of sales tax in his pricing mechanism. Failure to comply with this requirement is an offence, whereby a body corporate is subject to a fine not exceeding RM500,000 for the first offence and a fine of not exceeding RM1 million for the second and subsequent offences. A body corporate is a legal entity by which it can sue and be sued in its own name.

If the offender is an individual, he may be subject to a fine of up to RM100,000 or imprisonment not exceeding three years, or both. For the second and subsequent offences, it is a fine not exceeding RM250,000 or imprisonment up to five years, or both.

Profiteering is an offence

Section 14(1) of the PCAP Act makes it an offence for any person who, in the course of trade or business, makes unreasonably high profits in selling or offering to sell or supplying or offering to supply any goods or services. On conviction, a body corporate is liable to a fine not exceeding RM500,000 and a fine of not exceeding RM1 million for the second or subsequent offences.

For individuals, it is a fine not exceeding RM100,000 or imprisonment up to three years, or both. If he commits a second or subsequent offence, he is liable to a fine not exceeding RM250,000 or imprisonment up to five years, or both.

Mechanism to determine unreasonably high profit

Section 15(1) of the PCAP Act states that the minister shall prescribe the mechanism to determine that profit is unreasonably high and different types of mechanism may be prescribed to cater for different conditions and circumstances as the minister deems fit. This includes the minister's power to determine a certain period during which there shall be no increase in the net profit margin of any goods or services. In formulating this mechanism, the law stipulates that the minister may take into consideration the following:

(a) any tax imposition;

(b) the supplier's cost;
(c) any cost incurred in the course or furtherance of business;
(d) supply and demand conditions;
(e) the conditions and circumstances of geographical or product market; and
(f) any other relevant matters in relation to the prices of goods or charges for services.

The mechanism to determine that a profit is not unreasonably high from Jan 2, 2015, to March 31, 2015, and from April 1, 2015, to June 30, 2016, is that there shall be no increment in the net profit margin of any goods or services pursuant to the determinations stipulated in the Price Control and Anti-Profiteering (Mechanism to determine unreasonably high profit) (Net profit margin) Regulations 2014. These regulations specify the various formulas to assist with the determination and were in effect until Dec 31, 2016.

They were replaced by the 2016 Regulations on Jan 1 last year. Unlike the 2014 Regulations, they only apply to food, beverages and household goods. The 2016 Regulations were repealed recently and replaced with the 2018 Regulations on June 6.

Present issues

First, the new mechanism to determine unreasonably high profits under the 2018 Regulations is effective from June 6. They cover all forms of supplies. While this is a step in the right direction, the question arises as to what happens to the supplies made between June 1 and 5.

For instance, a mechanic providing his services during this period would not be subjected to this new mechanism. Given that the zero-rating of GST covers all aspects of supplies, including services beginning June 1, it begs the question as to how the minister will apply the 2018 Regulations in determining unreasonably high profits between June 1 and 5.

An immediate solution to this would be for the minister to make the 2018 Regulations effective from June 1 to ensure that it covers all supplies effective from that date.

Second, the Customs Department is not empowered to enforce the anti-profiteering law as this is within the purview of the Ministry of Domestic Trade, Co-operatives and Consumerism. Since the present government is committed to ensuring that the zero rating and indirect tax holiday period benefits Malaysians from all walks of life, perhaps, the minister should immediately authorise Customs officers to enforce the anti-profiteering law alongside his officers to ensure there are more enforcement officers on the ground. With more enforcement officers, it is hoped that more businesses will be made aware of the immediate need to reduce their prices and be discouraged from profiteering.

Third, the present law lacks three remedies, which if included, would ensure more effective enforcement of the law for the benefit of consumers. These remedies are:

- **Restitution:** If a company commits profiteering and wrongfully makes a profit of RM5 million, the maximum fine under Section 18 is only RM1 million. What happens to the remaining RM4 million profit, which was made wrongfully by exploiting consumers?
  The present law does not provide for restitution and, therefore, the RM4 million remains with the company. In Australia, the law empowers the minister to obtain restitution from the price exploiters on the monies wrongly gained and refund them to the consumers if the latter can be identified. Where the consumers cannot be identified, the wrongdoer is required to divest overcharged amounts through discounts or the free supply of products and, in some cases, through donations to charities.
- **Apology, enforceable undertaking and compounding:** A guilty company that wishes to rectify its wrongful act of profiteering voluntarily or at the early stage of investigation could be given the following options with the minister's approval:
  (a) tender a public apology to consumers;
  (b) undertake a court enforceable undertaking to reduce its prices; and
  (c) have the offence compounded in lieu of prosecution.
  Items (a) and (b) are applied in Australia.
- **Composite determination and best judgement determination:** In the case where the minister has identified the act of profiteering but is unable to accurately determine the amount of unreasonably high profit made by the wrongdoer, he must be empowered to raise a composite determination in cases where the wrongdoer cooperates or raise a best judgement determination if the wrongdoer refuses to cooperate.

Conclusion

The PCAP Act was introduced with the noble aim of protecting consumers from unscrupulous businesspeople who may want to commit profiteering with the introduction of GST then, and now, with the zero rating. Arming the Act with the recommendations proposed above, the authorities should be able to immediately address some of the legal concerns arising.