



德勤马来西亚中国服务部刊物

针对所有企业的新反暴利条例

背景

马来西亚国内贸易、合作与消费部（MDTCC）公布了新的“2018 新价格管制与反暴利（确定商品的非合理高利润机制）条例”，此条例自**2018年6月6日**起生效。此新条例将取代自2017年1月1日起实施的“旧”条例。

普遍适用于所有商品和服务

新条例在实质上与旧条例相似，但新条例适用于**所有**商品和服务。这意味着此次新条例的覆盖范围将涵盖所有提供任何商品或服务的企业。

（相反的，旧条例仅适用于下列类别的商品：

- 食物与饮料；和
- 非耐用性家居用品及个人护理用品，不包括化妆品。）

新条例上更为通用的适用范围是可以理解的，因为从2018年6月1日起，广泛适用于商品和服务的消费税（GST）税率由6%下调为0%，针对这一变动，新条例紧随其后的进行了颁布。

新反暴利条例尚未有截止日期。而新条例是否在2018年9月1日起实施适用范围较窄的销售和服务税（SST）后依然有效，则仍需观察。

显著的反暴利原则

旧条例的原则已被带入了新条例中，对于不熟悉这些原则的企业，我们在下面列出了一些新条例原则中简短、突出的特点：

1. 新条例广泛实施以公式为基础的机制，以厘定不合理的高利润，例如：如果在特定财务年度或日历年中任何一天，已销售或意图销售的商品或服务，其涨价率（% mark-up）或利润率（% margin）超过在此特定财年或日历年中确定“基线”的第一天时的涨价率或利润率，则会被厘定为不合理的高利润。
2. 计算公式是基于此特定财年或日历年前三年的涨价率或利润率，来广泛计算当年财年或日历年“基线”第一日的涨价率和利润率。我们把前三个财年或日历年设为 X1, X2, X3（相邻最近的一年为 X1），那么基础原则就是当前财年或日历年“基线”第一天的涨价率或利润率是根据，第一年的涨价率或利润率 X1 加上较高的差异（通常称为公差）：X1-X2 或 X2-X3。此基础原则也会针对某些特殊情况而有所例外。
3. 在新条例的计划中，“商品或服务”是指“同一类”或“相同描述”的商品或服务（这两个术语均在新条例中被定义）。
4. 新条例允许在上述通用规则 - “如果在特定财务年度或日历年中的其涨价率或利润率超过在这个财年或日历年中确定“基线”的第一天时的涨价率或利润率”中存在例外情况，这是考虑到在此特定财年或日历年中，生产制造或服务供应的成本有显著下降。
5. 新条例也在很大程度上反映了旧条例中有关以低于正常售价出售/提供商品/服务的因素，即“促销低价”、“入门价格”等，而在以公式厘定不合理的高利润时，这些因素造成的“低价”不会被纳入考虑范围内。

不合规的刑事违法行为

如不符合新条规中公式要求，理论上等同于“不合理的高利润”。按照现行的 2011 年价格管制和反暴利法案的规定，这将构成一项违法行为，法院判决的处罚如下：

- 公司实体 - 第一次犯罪罚款不超过 50 万令吉，第二次及其后犯罪不超过 100 万令吉。
- 对于上述以外的人士 - 如第一次触犯该等罪行，最高可被罚款不超过 10 万令吉及/或最高 3 年监禁，或第二次及其后触犯该等罪行，最高可被罚款不超过 25 万令吉及/或最高 5 年监禁。

企业应该怎么做？

从执行“旧条例”的经验来看，企业可能面临与遵守“新条例”规定的公式有关的实际问题。这些问题将需要根据“新条例”的公式来分析定价和成本，并在必要时寻求 MDTCC 的指导，以便在实践中具有执行上的灵活性。在寻求 MDTCC 指导的过程中，为减轻在新条例下以公式为基础的严苛性，可能需要做出基于公平、合理、原则基础的争论。

尽管新条例是从 2018 年 6 月 6 日起生效，但 MDTCC 自 2018 年 6 月 1 日起（当消费税率从 6% 下调为 0%）已经开始采取行动，一些企业已经收到 MDTCC 的执法通知。在“新条例”颁布之前，MDTCC 可能以目前职权范围内的其他法规（例如商品描述条例）为基础来采取行动。但是，随着新条例的生效，企业必须及时注意它带来的影响，并采取积极行动，面对任何 MDTCC 基于新条例的查询/执行行动。

联系我们

如果您对新的反暴利条例有任何问题，请随时与我们联系。



Deloitte Malaysia Chinese Services Group Publication

New Anti-Profiteering Regulations for ALL Businesses

Background

The Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) has gazetted the new Price Control and Anti-profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2018 (New Regulations), effective **6 June 2018**. The New Regulations, replace the 'Old' Regulations that were in force since 1 January 2017.

Universal application to ALL goods and services

The New Regulations are in substance similar to the Old Regulations, except the New Regulations are expressed to apply universally to **ALL** goods and services. This means the scope of coverage includes all businesses making any supply of goods or services.

(In contrast, the Old Regulations had applied to the following classes of goods only:

- Food and beverages; and
- Non-durable household goods and personal care products, excluding cosmetic products.)

The universal scope of the New Regulations is understandable, given that they follow close on the heels of the reduction of the widely applicable Goods and Services Tax (GST), from 6% to 0%, effective 1 June 2018.

There is no expiry date to the New Regulations and it remains to be seen whether the New Regulations would still be in place, when the expectedly narrower Sales and Services Tax (SST), takes effect from 1 September 2018.

Salient anti-profiteering principles

For businesses unfamiliar with the Old Regulations' principles, which have been replicated into the New Regulations, we set out below some brief, salient features of the New Regulations:

1. The New Regulations broadly implement a formula-based mechanism to determine unreasonably high profit, i.e., profit is determined as unreasonably high if the % mark-up (%MU) or % margin (%MG) for goods/services sold/supplied or offered for sale/supply on any date in a particular financial year (FY) or calendar year (CY) exceeds the %MU or %MG in respect of those goods/services, as at the 'baseline' first day of that particular FY or CY.
2. The formulas broadly compute the %MU and %MG of the goods/services for the baseline first day of the particular FY or CY by reference to the %MU or %MG of the goods/services for up to 3 FYs or CYs preceding the particular FY or CY. The preceding 3 FYs or CYs are termed as X1, X2 and X3, respectively, which represent the 1st, 2nd and 3rd year preceding, respectively. The basic principle is that the baseline %MU or %MG on the first day of the particular FY/CY would be based on the preceding 1st year's %MU or %MG (X1) plus the higher of the following variances (in practice known as 'tolerance'): X1-X2 or X2-X3. There are exceptions to this basic principle for certain scenarios.
3. For the purpose of the New Regulations, "goods or services" mean goods or services of the "same class" or "same description" (both of these terms are defined in the New Regulations).
4. The New Regulations allow for an exception to the above general rule, whereby the %MU or %MG on a date in a particular FY/CY may exceed the %MU or %MG on the baseline first day of that FY/CY. This is due to reduction in costs in that particular FY/CY.
5. The New Regulations broadly also reflect the factors in the Old Regulations as to goods sold (or services supplied) at prices below their normal selling price, i.e., "cheap sale price", "introductory selling price", etc., which are essentially not considered in the formulas to determine unreasonably high profit.

Criminal offences for non-compliance

Non-compliance with the formulas under the New Regulations would technically tantamount to "unreasonably high profit". This in turn would technically constitute an offence under the current provisions of the Price Control and Anti-Profiteering Act

2011, for which the penalties on court conviction, are as follows:

- For corporate entity – a fine not exceeding MYR500,000 for first offence and not exceeding MYR1 million for second and subsequent offence.
- For any person other than the above – a fine not exceeding MYR100,000 and/or imprisonment for up to 3 years or both for first offence and not exceeding MYR250,000 and/or imprisonment for up to 5 years for second and subsequent offence.

What should businesses do?

From experience with the implementation of the Old Regulations, businesses could likely face practical issues associated with compliance with the formulas under the New Regulations. These issues would require analyses of pricing and costs in the context of the formulas under the New Regulations and, if necessary, seeking guidance from MDTCC for administrative flexibility in practice. Such an approach to MDTCC could involve arguments based on a fair and reasonable, principle-based approach, to mitigate the rigours of the strict, formula-based approach under the New Regulations.

Even though the New Regulations are only effective from 6 June 2018, MDTCC had commenced enforcement action since 1 June 2018 when the GST rate change from 6% to 0% took effect. Some businesses have already received MDTCC notices of enforcement action. There are other laws within the purview of MDTCC (e.g. trade descriptions legislation) that may potentially be the basis for such enforcement action, before the enactment of the New Regulations. But with the New Regulations in effect, businesses would have to be mindful of its impact and take proactive action to face any MDTCC query/enforcement action based on the New Regulations.

Contact us

If you have any enquiries on the New Regulations, please reach out to any of the contacts below.

联系我们

分支机构/名字	职务	邮箱	电话
吉隆坡 Kuala Lumpur			
余永平 Yee Wing Peng	主管合伙人	wpjee@deloitte.com	(603) 7610 8800
谭丽君 Tham Lih Jiun	执行董事	ljtham@deloitte.com	(603) 7610 8875
卓鸿培 Toh Hong Peir	执行董事	hthoh@deloitte.com	(603) 7610 8808
徐莹晋 Chee Ying Cheng	总监	yichee@deloitte.com	(603) 7610 8827
郭川永 Kok Soon Weng	总监	kekok@deloitte.com	(603) 7610 8157
黄珮琪 Wong Pui Kay	总监	pwong@deloitte.com	(603) 7610 8529
颜杏蕊 Gan Sin Reei	副总监	sregan@deloitte.com	(603) 7610 8166
郑顺民 Tey Soon Meng	经理	sotey@deloitte.com	(603) 7610 8197
郭明以 Kuo Min Yee	副经理	nkuo@deloitte.com	(603) 7610 7818
戴蔚 Vivian Dai	副经理	vdai@deloitte.com	(603) 7610 8646
黄尹羚 Ooi Ying Ling	高级助理	aooi@deloitte.com	(603) 7610 8241
张艾嘉 Zhang Aijia	高级助理	aijizhang@deloitte.com	(603) 7610 7872
马冰青 Ma Bing Qing	高级助理	stelma@deloitte.com	(603) 7610 7787
陈宇骄 Chen Yu Jiao	助理	yujchen@deloitte.com	(603) 7610 8271
胡程 Hu Cheng	助理	chhu@deloitte.com	(603) 7610 7614
王娟 Wang Juan	助理	juanwang@deloitte.com	(603) 7610 8772
初俊啸 Chu Jun Xiao	助理	junxchu@deloitte.com	(603) 7610 8732
潘万 Amanda Pan Wan	助理	wapan@deloitte.com	(603) 7610 8723
古晋 Kuching			
蔡淑萍 Chai Suk Phin	副总监	spchai@deloitte.com	(608) 246 3311
蒋贞洁 Janice Chiang	副经理	jjchiang@deloitte.com	(608) 246 3311
新山 Johor Bahru			
吴玉凤 Caslin Ng	副总监	caslinng@deloitte.com	(607) 222 5988
陈莱玲 Susie Tan	高级经理	susietan@deloitte.com	(607) 222 5988
王萌 Emma Wang	助理	mengwang@deloitte.com	(607) 268 0881
怡保 Ipoh			
梅皓然 Terrence Mooi	高级经理	tmooi@deloitte.com	(605) 254 0288
刘慧婷 Loh Wai Teng	高级经理	wloh@deloitte.com	(605) 254 0288
槟城 Penang			
黄兰卿 Ng Lan Kheng	执行董事	lkng@deloitte.com	(604) 218 9888
刘美玲 Liew Monica	总监	monicaliew@deloitte.com	(604) 218 9888
赵晨 Zhao Chen	助理	chezhao@deloitte.com	(604) 218 9888
亚庇 Kota Kinabalu			
张济妃 Cheong Yit Hui	经理	yicheong@deloitte.com	(608) 823 9601

吉隆坡 Kuala Lumpur



余永平



谭丽君



卓鸿培



徐莹晋



郭川永



黄珮琪



颜杏蕊



郑顺民



郭明以



戴蔚



张艾嘉



黄尹矜



马冰青



陈宇骄



胡程



王娟



初俊啸



潘万

古晋 **Kuching**



蔡淑萍



蒋贞洁

新山 **Johor Bahru**



吴玉凤



陈莱玲



王萌

怡保 **Ipoh**



梅皓然



刘慧婷

檳城 Penang



黄兰卿



刘美玲



赵晨

亞庇 Kota Kinabalu



张济妃



Deloitte

Level 16, Menara LGB
1, Jalan Wan Kadir
Taman Tun Dr. Ismail
60000 Kuala Lumpur, Malaysia

英文版本与中文版本倘出现任何歧义，概以英文版本为准。上述仅供阅读参考。

If there is any inconsistency or conflict between the Chinese and English versions, the English version shall prevail for all purposes.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/my/about to learn more about our global network of member firms.

Deloitte provides audit & assurance, consulting, financial advisory, risk advisory, tax & legal and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 264,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

About Deloitte Southeast Asia

Deloitte Southeast Asia Ltd – a member firm of Deloitte Touche Tohmatsu Limited comprising Deloitte practices operating in Brunei, Cambodia, Guam, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam – was established to deliver measurable value to the particular demands of increasingly intra-regional and fast growing companies and enterprises.

Comprising approximately 330 and 8,000 professionals in 25 office locations, the subsidiaries and affiliates of Deloitte Southeast Asia Ltd combine their technical expertise and deep industry knowledge to deliver consistent high quality services to companies in the region.

All services are provided through the individual country practices, their subsidiaries and affiliates which are separate and independent legal entities.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2018 Deloitte Tax Services Sdn Bhd

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.
