

## **ANTI-PROFITEERING MEASURES IN THE DRAFT MODEL GST LAW**

**(Nov 2016)**

The Goods and Services Tax Law (GST) proposed to be introduced in India, drawing powers from the 101<sup>st</sup> Constitutional Amendment Act brings in an unprecedented but much needed provision regarding anti-profiteering measures in the wake of paradigm shift in indirect tax structure of India.

Anti-profiteering measures mean steps or actions taken against a person who seeks or extracts exorbitant profits from a certain opportunity, here implementation of a new indirect tax regime. Incorporated in the latest model law for GST, it is a preventive step to counter initial inflation which is highly anticipated as an impact of GST implementation in India. Such measures are essential to control undesired price rise due to change in tax structure. Especially when it is tough to precisely predict the changes and effects thereof. Such measures shall ensure that traders and suppliers do not make unreasonable profits by restricting the tax benefits and charging the tax hikes, causing price rise, in general. Such shall not only save the consumer market, but shall also alleviate confidence among them.

The measure has been introduced as Section 163 of the Revised Model GST Law – Draft (Nov 2016). It proposes to ‘*constitute an Authority, or entrust an existing Authority constituted under any law*’, which shall regulate prices during the temporary inflation phase for a prescribed period.

The anti-profiteering measure shall take into account practical aspects such as sudden shift in demand and supply, which usually affects profit margin and not put hardship to the traders. It is intended to assure consumers that excessive price is not charged by the suppliers. In absence of such as measure, it is highly probable that a soaring inflation may occur as has also been experienced in countries like Canada, Australia, Singapore, etc. right after GST (VAT) implementation.

Anti-profiteering measures have been used by many countries for combating a temporary price rise during the tax transition phase. However, the methodology of implementing anti-profiteering measures differs from one country to another. Selection of methodology may include consideration of several sensitive economic factors likesuppliers’

costs, supply and demand conditions, geographical and product markets, existing taxes on goods, etc. For instance, the Malaysian government chose to use the **Net Profit Margin methodology** to control prices. The method ascertains a Normal Profit Margin for each product on a base day (January 1, 2015 in Malaysia's case), and any profit charged by the dealers above this base margin is considered '*Unreasonably High Profit*'. Any person found guilty of charging such unreasonably high profit is charged with penalties. Alternatively, Australia followed the **Net Dollar Margin Rule** which served as the fundamental principle for its anti-profiteering guidelines. That is, if the new tax scheme - GST in this case - caused taxes and costs to fall by \$1, then prices should fall by at least \$1. At the same time if the cost of the business rose by \$1 under the new tax scheme, then prices may rise by no more than \$1.

Anti-profiteering measures are not new to India. The West Bengal Government had enacted **The West Bengal Anti-Profiteering Act, 1958** which was meant to curtail profiteering activities prevalent in the region during those days. Even now, this act is regularly amended to control profiteering in West Bengal.

The proposed anti-profiteering provision under Section 163 in the Model GST law is intended to curtail the possible outbreak of uncontrolled profiteering due to tax fluctuations, or supply-side pressures, or supply-demand conditions, etc. expected during and post implementation of GST in India. It provides to "*examine whether the input tax credit availed by any registered taxable person or the reduction in price on account of any reduction in tax rate have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.*" The intention of bringing in such anti-profiteering measures are certainly pious and for common good. However, certain pertinent questions do arise. They being:

- A. **Implementing Authority:** Which authority shall be entrusted to undertake the function is a major question. Forming a new body shall only cause chaos and the efforts shall be marred by lack of infrastructure of all sorts - whether be people, inter and intra departmental coordination or administrative presence. The only government body with the relevant policy implementation wherewithal and which is already in a

similar function is the Competition Commission of India (CCI). Enabling and entrusting the work to CCI may prove to be positive.

- B. **Time of implementation:** Implementation of the measures; most importantly, timing of implementation is cloudy. As delays in implementation of effective counter measures shall aggravate the harm, timely countering is necessary. In precedence, we are a nation of post-facto actions. In tempore actions are rather exceptions than being a norm. Implementation of the required measures and nipping of outraging profiteering at the bud seems to be a mirage.
- C. **Validity and Correctness:** Though the provisions may pass constitutional validity tests for being ‘reasonable restrictions’, exclusion of fluctuations caused due to regular trade would be an important factor for effectiveness. Administrative actions to be taken under the provisions shall certainly make the turf tougher for businesses. These shall certainly bring in a lot of litigation around the subject.
- D. **What should the businesses do?** It is necessary that the businesses along with the mammoth task of GST implementation keep a vision on safeguarding themselves against the wide powers to be entrusted by Section 163 (Draft Model GST Law – Nov 2016). Considering oneself safe, by stating that *we shall not be taking any undue advantage* shall not be enough. Active assessment and taking precautionary measures is a must, especially at a time when businesses are looking at GST as a tool to surge ahead.

Lessons can be drawn from the existing GST regimes in the world, like Malaysia, Canada, Singapore, Australia, etc., the implementation thereof and the situations or repercussions faced therein, to compose ourselves accordingly so as to prevent the occurrence of a similar scenario or combat any such circumstances if need be. Anti-profiteering is one such effective learning that may prospectively avoid extreme inflation in the economy, or at least control the rate of inflation that may occur, as also protect the customers from unreasonable and unwarranted extortions by the supplier and keep a check on those who hope to fetch undue benefits or profits in the tax-fluctuation scenario.