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# GST

## The New Tax System: an ACCC update

In July 1999 the Australian Competition and Consumer Commission issued the first edition of its price exploitation guidelines as required by the new Part VB of the Trade Practices Act — *Price Exploitation and the New Tax System*.

On 22 December 1999 legislative amendments to Part VB took effect. These amendments expanded the Commission's powers so it could act against any business that increases its prices now in anticipation of the New Tax System.

The guidelines have now been revised to reflect the amendments, and to clarify a number of issues relating to interpretation.

In particular, it was implicit in the first edition that prices should not rise by more than 10 per cent as a result of the New Tax System. This has now been expressly stated in the revised second edition to remove any uncertainty.

The guidelines can be applied across all sectors of the economy and are simple, clear and easy to understand.

## Commission price exploitation guidelines

### Fundamental principles

The guidelines require that:

- businesses should reduce prices to pass on the full effect of any net tax reductions;
- any increase in price based on the GST should include a full offset for indirect tax reductions and other New Tax System

related benefits (such as WST and diesel fuel rebates and grants);

- no markup should be applied to the GST component of price;
- prices should reflect only actual, not anticipated, tax increases;
- businesses should not take the opportunity to increase the difference between costs and prices in dollar terms (the net dollar margin rule); and
- in any event, no price should increase by more than 10 per cent as a result of the New Tax System changes (the price rule).

If the New Tax System changes cause taxes and costs to fall by \$1, then prices should fall by at least \$1. If, after taking into account tax and cost reductions resulting from the New Tax System, the costs of a business rise by \$1, then prices may rise by no more than that amount.

In any event, no price may rise by more than 10 per cent because of the New Tax System changes.

### The guidelines — summary of amendments

#### Legislative amendments

A *New Tax System (Indirect and Consequential Amendments) Act 1999* amended Part VB of the *Trade Practices Act 1974* to extend coverage to price changes before 1 July 2000. The section headed 'Anticipation of tax increases' in the revised guidelines explains the operation of the new powers.

#### The New Tax System price rule

The revised guidelines clarify that no price shall rise by more than 10 per cent because of the New Tax System.

In any investigation of prices the Commission will consider whether business has complied with:

- the 'net dollar margin' rule; and
- the 'price rule'.

A breach of either of these may constitute price exploitation.

#### *Rebates*

Currently a number of businesses receive rebates from their suppliers. The revised guidelines clarify that the effect of the rebate before 1 July 2000 may be included when calculating the net dollar margin of that good.

#### *Prices set based on other goods*

The prices of some goods or services are based on the prices of other goods or services (e.g. franchise fees based on franchise turnover/bankcard merchant service fees based on the value of the goods sold). In some cases GST may be excluded from the base price, but this will often not be the case.

Where GST is included in the base price the net dollar margin obtained by the supplier of the (dependent) goods or services could increase as a result of the New Tax System changes. These suppliers will be required to adjust their prices to ensure compliance with the guidelines.

#### *Pricing points and averaging margins across goods and services*

The Commission recognises that some retailers prefer to use particular price points (e.g. \$1.99, \$2.99, multiples of 5 or 10 cents). These are for marketing/convenience purposes.

The guidelines treat pricing points as a form of averaging and therefore are subject to the restrictions stated below, including the net dollar margin rule and the 10 per cent price rule.

The revised guidelines clarify how goods and services will be defined when applying the net dollar margin test.

The starting point is an individual item, but in some circumstances the test will be applied to a range of closely related goods and services.

A business may average across closely related goods and services where it can be demonstrated that:

- no price of an individual good or service exceeds the price rule;
- it is consistent with existing practice;
- it does not take advantage of market power and is not detrimental to competition;
- there is no averaging between goods and services that are GST-free and goods and services that are subject to GST; and
- the net dollar margin rule for the line of goods and/or services as a whole is adhered to.

#### *CPI escalators*

CPI escalators are a feature often used in contracts to ensure that the price of that contract is maintained in real terms. To prevent any price exploitation, the combined effect of the CPI escalator and the price adjustment resulting from the New Tax System changes cannot result in an increase in the net dollar margin, or breach the 10 per cent price rule.

#### *Long-term contracts*

The treatment of long-term contracts has been raised frequently with the Commission.

The revised guidelines state that the existence of a long-term contract does not negate the obligation to pass on savings. However, long-term non-reviewable contracts may prevent the parties to the contract from passing on savings.

The Commission will assess these case by case. Where there is no opportunity to review the contract price and pass on the savings, the Commission may regard it as 'any other relevant matter'.

#### *Transfer prices*

The revised guidelines make it clear that international companies should not increase transfer prices for inputs to offset any savings.

#### *Compliance costs*

The initial guidelines stated that businesses should be able to recover in their prices any net

additional compliance costs reasonably incurred. The revised guidelines confirm this.

The revised guidelines also outline the types of factors that must offset compliance costs, and clarify that compliance costs cannot be used to increase in breach of the price rule. Where businesses use the New Tax System changes to introduce new and improved accounting, operational and management systems, these should be treated as general business costs.

#### *Cash rounding*

Cash rounding should not be confused with pricing points.

Cash rounding is used on the total of a bill to overcome the non-existence of 1 and 2 cent coins. This has been the guideline since 1991.

#### *GST-inclusive pricing*

All prices must include GST. The revised guidelines clarify the limited exceptions to this rule:

- auctions — if the basis on which the auction is carried out is clearly stated from the outset;
- business consumers — where the established practice is to list prices on a tax exclusive basis, provided it is clearly stated.

#### *Dual ticketing*

The Commission has received a number of submissions from businesses seeking greater flexibility on price marking of individual goods and shelves during the transition to new price displays after 1 July 2000.

Rather than limit the time for changing price displays to one night or day, some businesses preferred to be able to start earlier by using dual tickets — i.e. using a ticket which displays two prices, one which is valid until 30 June and another valid from 1 July 2000.

The revised guidelines clarify that dual ticketing may be used subject to the following conditions:

- they are only used for one month before 1 July 2000;
- they make clear reference to the date range;

- the tickets are removed within one month of 1 July 2000; and
- there are prominent signs alerting customers to the ticketing system and its significance.

#### *Temporary dual pricing*

Dual pricing occurs where the ticketed price of an item does not correspond with the actual price to be charged.

Retailers informed the Commission that in some circumstances it would not be physically possible to change the prices on every individual item within the store on one day — for example, a bookstore, with many thousands of books.

As the law currently stands, displaying one price and charging another is likely to constitute misleading or deceptive conduct. The revised guidelines recognise the retailers' dilemma and clarify the circumstances under which dual pricing may occur.

Put simply, the guidelines will allow the pre-GST price on an individual item to remain on an item:

- the period of time is kept as short as possible and definitely no longer than one month;
- electronic scanning equipment/databases are adjusted by start of business on 1 July 2000;
- shelf prices are adjusted by start of business on 10 July 2000 to reflect the actual selling price; and
- customers are warned (through prominent in-store signs and other methods) that ticketed prices may not include GST and therefore may not reflect the actual price to be charged.

#### *Other issues addressed*

In addition to the issues outlined above, changes were made to:

- describe the tobacco excise change that occurred on 1 November 1999;
- include examples of an input tax product, the effect of volume and rebates; and

- describe the types of information businesses are required to keep during the transition period.

## New Bill introduced into Parliament

On 16 March 2000 a Bill was introduced into Parliament that provides for 'misleading or deceptive conduct' to be part of the GST price exploitation provisions in Part VB.

Specifically, the Bill will prohibit conduct that falsely represents the effect of the New Tax System changes, or misleads or deceives a person about the effect of the tax reforms. The Bill will give the Commission powers to take action against GST-related misrepresentations by unincorporated entities operating within the States and Territories. It is currently before a Senate inquiry committee which is due to report in early May.

## GST Hotline

The GST Hotline (1300 302 502) is proving to be a very useful tool. Consumers and competitors are watching prices, and businesses with limited time and resources to seek professional advice can simply pick up the phone and talk to a Commission officer about their particular concern.

From 1 July 1999 to 22 March 2000 there were 27 497 complaints and inquiries logged into the Commission's reporting system. Of these, 13 364 (49 per cent) were GST matters — 6940 were inquiries and 6424 were complaints.

The most popular industries for GST were:

### Complaints

- 1125 (18%) general insurance
- 726 (11%) retailing not elsewhere classified
- 525 (8%) central government administration
- 460 (7%) specialised food retailing

- 355 (6%) supermarket and grocery stores
- 162 (3%) house construction
- 157 (2%) domestic appliance retailing
- 130 (2%) automotive fuel retailing
- 122 (2%) accommodation

### Inquiries

- 882 (13%) retailing
- 642 (9%) retail trade
- 449 (6%) general insurance
- 442 (6%) central government administration
- 399 (6%) finance and insurance
- 363 (5%) domestic appliance retailing
- 181 (3%) government administration and defence
- 128 (2%) personal and other services
- 127 (2%) business services

## Price monitoring

Since July 1999 the Commission has been monitoring prices to assess the effects of indirect tax changes on prices, and to identify potential cases of price exploitation by businesses.

### Coverage

The Commission's retail price surveys and databases will collect and monitor price changes for approximately 1000 consumer items.

The coverage will include:

- most items now subject to 22 per cent WST (and therefore generally expected to fall in price);
- food and household items bought in supermarkets;
- beer and cigarettes;
- petrol, diesel and auto LPG;

- motor vehicles;
- residential rents;
- building materials, products and house costs;
- clothing;
- restaurants;
- household services such as dry cleaning and shoe repairs; and
- some professional services.

The Commission intends to publish a 'key list' of price expectations and will integrate its expectations into the price survey database.

## New GST website



On 8 March 2000 the Commission launched the updated guidelines and unveiled its new GST-specific website. The website provides up-to-date information on pricing issues and allows consumers to make complaints online (<http://gst.acc.gov.au>).

In addition to general information about price exploitation, the website has business and consumer information, and Question and Answer icons, which allow the user to get detailed information free and quickly.

Businesses should use the 'auto update' facility to keep abreast of compliance issues and general updates.

## Compliance and enforcement

The Commission has already taken enforcement action against several businesses. Results include refunds to consumers who have been overcharged, apologies and corrective advertising by the business, and publicising the action taken.

The Commission has investigated, acted upon or finalised 186 matters in relation to GST. Nationally, 124 active matters are currently being investigated. Of these, 67 relate solely to Part VB (price exploitation).

### Tropical Homes (Townsville) Pty Ltd

In July 1999 Tropical Homes (Townsville) Pty Ltd placed two advertisements in the *Townsville Bulletin* on Saturday, 24 July 1999 and Saturday, 31 July 1999.

The advertisements stated:

'Beat the GST Offer! With new homes and land due to increase by up to 15% ...', and 'With prices predicted to rise up to 15% with the introduction of the GST ...'

The Commission took the view that the advertisements represented that the price of new homes and land would rise by up to 15 per cent once the GST was introduced. In fact, the introduction of the 10 per cent GST and the removal of the Wholesale Sales Tax on various inputs would result in an increase of less than 10 per cent in the price of new homes and land. Accordingly the Commission considered that Tropical Homes may have engaged in misleading conduct in contravention of ss 52 and 53(e) of the Trade Practices Act.

Tropical Homes provided a s. 87B undertaking regarding its future conduct, published a corrective advertisement, and has instituted a trade practices compliance program.

### Metricon Homes Pty Ltd

The Commission received several complaints that Metricon sales representatives made misleading assertions about the effect of the GST on building costs. The Commission was concerned they had asserted that, even if the

dwelling were constructed before 1 July 2000, no refund would be paid on the unused GST component. Metricon provided a s. 87B undertaking to cease and desist from the unlawful conduct and instigate a full trade practices compliance program.

### **Ray White Real Estate**

In July 1999 Ray White (Real Estate) Pty Ltd trading as Ray White Investor Services published an advertisement in the July edition of the *Express* in Townsville. The Commission considered that the advertisement, titled 'Property investors beat GST', represented that new homes and land would rise by up to 15 per cent once the goods and services tax was introduced.

Ray White (Real Estate) has provided a s. 87B undertaking in which it admitted that the representation in question constituted a contravention of s. 52 of the Act. It also provided undertakings as to future conduct, agreed to publish a corrective advertisement, and has instituted a trade practices compliance program.

### **QPR Auto Group**

QPR placed an advertisement during a two-week period on local television. The advertisement promoted the theme of 'beat the taxman' referring to the effect the GST would have on the price of used vehicles. The Commission considered the advertisement gave the impression that the price of used vehicles would increase as a result of the introduction of the GST.

However, the net effect of the New Tax System changes is likely to be a reduction in the price of used vehicles reflecting the removal of the WST on new cars and an overall reduction in new car prices.

As such, the Commission formed the view that Relyt P/L and S & S Thomson Investments P/L (QPR) may have engaged in misleading conduct in contravention of ss 52 and 53(e) of the Trade Practices Act.

In giving a s. 87B undertaking the companies have provided undertakings as to future conduct and agreed to publish corrective advertisements. They have also undertaken to institute a trade practices compliance program.

### **Lennox Motors**

Lennox Phillip Pty Ltd placed an advertisement in the *Canberra Times* on 10 July 1999 that stated 'Beat the GST'. Lennox Motors provided a s. 87B undertaking that it would cease to use this headline in its advertising, would place a corrective advertisement and would develop and implement a trade practices compliance program.

### **Werribee Motors**

Werribee Motor Traders Pty Ltd trading as Werribee Mitsubishi and Daihatsu advertised on a leaflet 'Beat the GST Price Increase' in potential breach of ss 52 and 53(e) of the Trade Practices Act. Werribee Motors provided s. 87B undertakings that it would not engage in the conduct in future and would correct advertising and commence a trade practices compliance program.

### **Avonwood Homes Pty Ltd**

Avonwood agreed to instigate voluntarily a trade practices compliance program after the Commission informed them that their sales representatives were engaging in misleading or deceptive conduct. It appeared that Avonwood had drafted appropriate contractual GST clauses, but that a number of sales representatives were misrepresenting the effect of the GST on building costs. Avonwood undertook to develop a compliance program to minimise the chance of further occurrences.

### **Clarendon Homes (Australia) Pty Ltd**

The Commission received a number of complaints about misleading or deceptive representations being made by Clarendon sales representatives about the effect of the GST on building costs. Clarendon resolved to develop a company-wide trade practices compliance program to satisfy the Commission's concerns.

### **Hoyts**

A complaint against Hoyts about increases in the price of cinema tickets in anticipation of the GST was investigated. An administrative resolution was achieved, where Hoyts agreed to change its pricing policy.

## Zoeros Lifeskills Training

Zoeros Lifeskills Training provided a s. 87B undertaking to the Commission regarding representations that the price of its 'Turning Point' lifeskills course would rise from \$395 to \$495 in February 2000 as a result of the GST.

Zoeros undertook not to make representations about the GST where it does not have reasonable grounds for doing so, write to affected customers, and implement a compliance program to ensure staff are fully aware of their legal responsibilities under the Trade Practices Act.

## FAI Insurance

The Commission conducted an investigation into misleading Compulsory Third Party invoices issued by FAI. The invoices sought to levy GST on the supply of insurance that was to expire before the introduction of the New Tax System on 1 July 2000. Following the Commission's investigation, FAI has recognised that certain quarterly Compulsory Third Party invoices included erroneous information. FAI has undertaken to write to all affected policy owners and rebate the full amount incorrectly attributed to GST.

## Zurich Insurance

Zurich Australian Insurance Ltd has voluntarily agreed to refund almost \$50 000 to policyholders after it was found that its premiums had not properly accounted for cost reductions associated with the New Tax System.

The Commission wrote to Zurich about its method used to calculate the premiums on workers' compensation insurance after a customer complained to the GST Price Exploitation Hotline.

Zurich freely admitted that their calculations were incorrect and have taken swift corrective measures to ensure that all 348 customers get refunds.

In Western Australia, eight customers were overcharged a total of \$660.67, while a further 335 customers had been overcharged a total of \$48 012.49 in respect of payments made to brokers. Five Zurich customers from Tasmania were also overcharged.

## Public Compliance Commitments

In an innovative move the Commission has sent letters inviting Australia's major corporations to publicly demonstrate a commitment to pass on the full benefits of indirect tax reductions associated with the New Tax System.

The Public Compliance Commitments (PPC), signed by the Chief Executive Officer, state an intention to comply with the Commission's price exploitation guidelines, and show a measure of corporate leadership and good public intent on the part of big business.

Australia's top 100 corporations head the Commission's mailing list, although a number of corporations with an annual turnover of \$100 million or more have also been invited to publicly commit.

The list also includes major building and insurance corporations.

## Timetable

Although no fixed timetable or limitation is in place, the Commission anticipates that most corporations will make a commitment by at least May 2000. Of course, the Commission expects commitments to be made before 1 July 2000.

Several corporations have already made significant progress. Leading the way are Qantas and Ansett, who have both finalised their PCCs. These can be viewed on the Commission's website (<http://www.accc.gov.au>) within the public register section.

With the imminent introduction of the New Tax System, consumers will want to buy goods and services from corporations they can trust.