

Abraham Accords Alter the Impact of U.S. Antiboycott Laws on Companies Doing Business in the UAE

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In September 2020, the United Arab Emirates, Israel and the U.S. signed the Abraham Accords, establishing diplomatic and commercial relations between the UAE and Israel. In August 2020, the UAE issued Federal Decree-Law No. 4 of 2020, formally terminating its participation in the Arab boycott of Israel. As a result, the U.S. Commerce Department's Bureau of Industry and Security recently amended the antiboycott provisions set forth in Part 760 of the Export Administration Regulations (EAR). Supplement No. 17 to Part 760, published on June 9, 2021, sets forth the Commerce Department's position that, as a result of these actions taken by the UAE, certain requests for information, action, or agreement from the UAE, which were presumed boycott-related prior to August 16, 2020, are no longer presumed boycott-related if made after August 16, 2020, and thus are no longer prohibited or reportable under Part 760 of the EAR.

Notably, the U.S. Treasury Department also removed the UAE from its list of "boycotting countries" as published in the Federal Register on April 8, 2021. This action by the Treasury Department has both substantive and reporting implications under the antiboycott provisions set forth in Section 999 of the Internal Revenue Code (Code).

U.S. Antiboycott Laws

By way of background, there are two U.S. antiboycott laws – Part 760 of the EAR and Code Section 999. Each was enacted in the 1970s to prohibit or penalize certain forms of participation in or cooperation with unsanctioned foreign boycotts by U.S. persons, including their controlled foreign subsidiaries, and U.S. taxpayers, including members of their "controlled groups" (within the meaning of Code Section 993(a)(3)). While both U.S. antiboycott laws apply to any foreign boycott not sanctioned under U.S. law, the focus of both laws was the boycott of Israel by certain Middle Eastern countries, which remains the only boycott of practical relevance today.

Both U.S. antiboycott laws are highly technical and somewhat arcane. The two laws, though enacted at roughly the same time, contain important differences and inconsistencies and can be a trap for the unwary. Failure to comply with these laws can subject U.S. persons and taxpayers to civil and criminal penalties under the EAR, severe tax penalties under Code Section 999, and adverse publicity and reputational harm.

Care is Still Needed for UAE Transactions

The recent revisions to both antiboycott laws with respect to the UAE do not mean that U.S. companies and persons doing business in the UAE no longer need to be careful regarding possible boycott requests. Such requests could still be received for a variety of reasons, including mistake, the use of outdated forms, or an overzealous UAE official. A boycott request received from the government or an entity in the UAE could still give rise to both substantive and reporting consequences under both U.S. antiboycott laws.

Countries Still on Treasury's "Boycotting Countries" List

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Moreover, the Treasury Department still lists Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, and Yemen as "boycotting countries." Consequently, companies doing or seeking to do business in any of these countries, or whose controlled foreign subsidiaries or controlled group members are doing so, still need to be alert for boycott-related requests from these countries. Such requests could violate the EAR, give rise to penalties under Code Section 999, and trigger reporting obligations under both U.S. antiboycott laws. In addition, any commercial "operation" or attempt to do business in any of these "boycotting countries" is reportable to the Internal Revenue Service annually on Form 5713, regardless of whether a boycott request has been received and regardless of whether the "operation" has produced any income.

Suggested Guidance

To avoid substantive and reporting violations or penalties under both U.S. antiboycott laws, companies doing business internationally should establish and maintain an effective antiboycott compliance program. Having such a compliance program will enable them to identify prohibited, penalized, and reportable boycott requests in a timely manner, eliminate or negotiate acceptable changes to problematic boycott-related provisions or requirements, and comply with the reporting requirements of these U.S. laws.

Please contact the authors if you have any questions or require assistance.