

International Trade Alert

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Treasury Removes UAE from List of Countries Requiring Cooperation with an International Boycott

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Key Points

- On April 8, the Treasury Department removed the UAE from its list of countries requiring cooperation with an international boycott, thereby removing the UAE from the scope of the Treasury Department's antiboycott rules. The removal comes in response to the normalization of UAE-Israel relations and a formal repeal of the UAE's boycott of Israel.
- This development does not have an effect on the Commerce Department's antiboycott regulations, which do not positively identify boycotting jurisdictions in the same way as the Treasury Department. However, in time, the Commerce Department could issue guidance or seek to revise its regulations, as it did with Egypt and Jordan following their normalization of relations with Israel.
- The countries that remain on the Treasury Department list are Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria and Yemen.

Background

U.S. antiboycott laws, which are divided into two separate regimes administered by the U.S. Department of the Treasury (the "Treasury Department") and the Department of Commerce (the "Commerce Department"), are designed to prevent U.S. persons from participating in foreign boycotts that the United States does not support. The Treasury Department administers one part of the United States' antiboycott laws, as set forth under rules established pursuant to Section 999 of the Internal Revenue Code (the "Treasury Rules"). Section 999 requires the Treasury, on a quarterly basis, to publish a list of countries that "require or may require participation in or cooperation with an international boycott" (the "List"). In practice, the Treasury has primarily applied the Treasury Rules in the context of the Arab League boycott of Israel and only certain Arab League nations boycotting Israel have been included on the List. Under the Treasury Rules, U.S. taxpayers are required to file annual reports to the Treasury describing their operations in countries included on the List, irrespective of whether they received any requests to cooperate with an international boycott or whether they complied with any such requests. Failure to report can carry financial penalties, and

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compliance with such requests can result in a loss of foreign tax credits and other tax-related penalties.

Removal of the UAE from the List

On April 8, the Treasury Department **removed** the United Arab Emirates (UAE) from the List. The removal comes in response to the normalization of UAE-Israel relations following a formal repeal of the UAE's boycott of Israel in August 2020 and the signing of the Abraham Accords in September 2020. The Treasury stated that it is removing the UAE from the List "due to issuance of Federal Decree Law No. 4 of 2020, which repealed [the UAE's] law mandating a boycott of Israel, and the subsequent actions that the UAE government has taken to implement the new policy."

The effect of the removal is that the Treasury Rules no longer automatically apply to activities with or in the UAE. As a consequence, unless a person or member of a "controlled group" otherwise knows or has reason to know that participation in or cooperation with an international boycott is a condition of doing business with the UAE or any person or company therein, the Treasury Rules will not apply to business with or in the UAE. Practically speaking, the removal of the UAE from the List ends the requirement to report on (i) business activities in or with the UAE and (ii) agreements to comply with the general laws of the UAE, unless persons subject to those rules receive a request that they have reason to know is boycott-related (e.g., the counterparty states that their request is made for boycott reasons).

Effect on the Commerce Department's Regulations

The Commerce Department administers the other part of the United States' antiboycott laws under the regulations set out in Part 760 of the Export Administration Regulations (EAR) (the "Commerce Regulations"). The Commerce Regulations, which apply to individual U.S. residents or nationals, "domestic concerns" and non-U.S. entities that are "controlled in fact" by a domestic concern, also carry reporting requirements and prohibit U.S. persons from taking certain action or providing certain information to comply with or support a foreign boycott that is not sanctioned by the United States. Unlike the Treasury Department, the Commerce Department does not publish a positive list of countries to which the Commerce Regulations apply. Rather, the Commerce Regulations apply whenever a U.S. person knows, or has reason to know, that the request they have received is motivated by support of the boycott of Israel, regardless of who the requesting party is or with which countries they are associated. Similar to the Treasury Rules, the Commerce Regulations are typically only applied in the context of the boycott of Israel.

Because the Commerce Regulations constitute an independent set of regulations, the Treasury Department's recent action with respect to the UAE does not affect them. However, Commerce may eventually seek to modify the application of the Commerce Regulations through guidance or an amendment to the Regulations. For example, when Israel normalized relations with Egypt and Jordan, Commerce published supplements to the Commerce Regulations clarifying that certain types of requests no longer needed to be considered boycott-related. In both instances, Commerce also included a reminder that "requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the Regulations, irrespective of the country or origin."

Conclusion

The removal of the UAE from the Treasury List will eliminate the reporting requirements under the Treasury Rules that require U.S. persons and members of controlled groups from reporting on business in the UAE as a matter of default under those rules. However, if a regulated person receives a request from the UAE, including persons or companies therein, that the person knows or has reason to know is boycott-related, they are still required to report that request and their action thereunder to the Treasury Department. Under the Commerce Regulations, companies should continue to evaluate potential boycott requests they receive from the UAE, or from UAE nationals, in the same manner as they have to date unless and until additional guidance is issued by Commerce.

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