

ALERT

Treasury Adds Iraq to List of Boycotting Countries

August 24, 2012

The U.S. Department of Commerce (Commerce) and the U.S. Department of the Treasury (Treasury) maintain separate anti-boycott laws and regulations. The Treasury rules—which impose reporting requirements on and deny certain tax benefits to taxpayers that cooperate with unsanctioned boycotts—apply to U.S. taxpayers and their related companies, regardless of whether a transaction involves any U.S. goods or services.

Treasury maintains a list of countries, which is updated periodically, that require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).^[1] On August 17, 2012, Treasury officially added Iraq to the list of boycotting countries.^[2] Iraq had previously been designated as “under review” by Treasury, but was not included on the formal list of boycotting countries. While some reports have suggested that Iraqi requirements that patent applicants make certain representations regarding Israel may be at least one of the reasons behind the formal inclusion of Iraq on Treasury’s boycotting countries list, Treasury did not provide an explanation for the addition of Iraq in its *Federal Register* notice.

It is important to screen all transactions for anti-boycott issues. Notably, Commerce’s regulations and Treasury’s rules are at times inconsistent with respect to conduct that constitutes cooperation with a foreign boycott. With respect to Treasury’s rules in particular, a primary concern and pitfall for many companies is the fact that under such rules, even a boilerplate contractual clause requiring compliance with the general laws of a foreign country on the boycott list may be deemed by Treasury as an agreement to cooperate with a boycott. Accordingly, companies should now be alert to such

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requests from Iraq, among other countries, and any other potential boycott requests that could implicate anti-boycott laws administered by Commerce and/or Treasury.

[1] Note that Commerce does not maintain an official boycott list, and, in fact, Commerce has published reportable and prohibited boycott requests from several countries that are not listed on Treasury's official boycott list (e.g., Bangladesh).

[2] *List of Countries Requiring Cooperation With an International Boycott*, 77 Fed. Reg. 49,864 (Dept of the Treasury, Aug. 17, 2012).