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# inBrief

## US Antiboycott Regulations Modified

By Charles Laubach | 26 April 2021

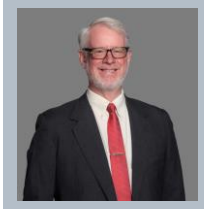
The most recent edition of Federal Register, which appeared earlier this month, announces the removal of the United Arab Emirates from the list maintained by the US Department of Treasury of countries that observe the Arab League Boycott of Israel. This fact will substantially ease compliance burdens for American businesses operating in the UAE, although it does not eliminate the compliance burdens entirely.

The United States never supported the Arab League Boycott of Israel. But it went further than simple non-support by designating the Boycott of Israel as an unsanctioned Boycott. Persons who cooperated with or supported an unsanctioned Boycott could be subject to penalties under two different statutes, the Internal Revenue Code and the Export Administration Act.

The Treasury Department promulgates regulations under the Internal Revenue Code. Those regulations prohibit a US taxpayer from taking an act in furtherance of an unsanctioned boycott or from entering into an agreement to do so. Non-compliance could lead to loss of tax benefits and exposure of the taxpayer to tax penalties. The Treasury Regulations contain the well-known “apply” - “comply” distinction, which has probably led to more violations of US antiboycott law than any other feature of the regulations.

In the regulations, the Treasury Department adopted the position that a US taxpayer could not permissibly enter into an agreement to “comply” with the law of a country that participated in the Arab League Boycott of Israel unless the agreement to “comply” contained modifying language that carved out the Boycott laws of the boycotting country. In contrast, an agreement that the laws of the boycotting country shall “apply” to a US taxpayer’s operations in that country would not be prohibited.

### The Author



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Moving from the abstract to the concrete, consider the two following provisions:

**“Shall Comply”**

The contractor agrees that it shall comply with the laws, regulations, requirements and administrative practices of the State of the United Arab Emirates in the course of performance of this contract in the State.

**“Shall Apply”**

The contractor agrees that the laws, regulations, requirements and administrative practices of the State of the United Arab Emirates shall apply to performance of this contract in the State.

Under the Treasury regulations, sanctions would be imposed for agreeing to the first provision, but not the second provision. Of course, many unintentional violations occurred, as this “shall comply” language is common in public sector contracts in the UAE.

And if the issue was spotted, alternative language would have to be negotiated. In either case, the receipt of the request to participate in the Boycott would have to be reported to the Treasury Department by the taxpayer, and a failure to report would constitute a further violation.

That should now be behind us. Because of the amendment of the Treasury Department regulations, it is no longer a breach of the Treasury regulations to agree that a party shall “comply” with the laws of the UAE, since those laws no longer contain an obligation to comply with the Arab League Boycott of Israel. Likewise, receipt of such “comply” language no longer needs to be reported to the Treasury Department.

The actions of the Treasury Department constitute a belated acknowledgment of the Abraham Accords, which were announced in August 2020 and signed in September 2020, in connection with which the UAE repealed its Boycott Law, Federal Law No. 15 of 1972. (See our **Legal Alert dated 31 August 2020).** With this development, the UAE now joins the Kingdom of Bahrain and the Sultanate of Oman, previously recognized by the Treasury Department as non-Boycotting countries.

Although the Treasury Department regulations have been amended, the antiboycott provisions of the Internal Revenue Code and the Export Administration Act remain in effect. Agreeing to language that contains an overt obligation to commit Boycott-related acts continues to be prohibited. Because of this, it would still be prohibited for an American business to agree to contractual language that contained references to Israel, the Boycott or the blacklist. It may also be prohibited to agree to other clauses if there is a Boycott purpose to such clauses. For these reasons, and until Boycott language has been purged from all public sector contracts used in the UAE, continued vigilance will be necessary.

It is up to the Commerce Department to amend the Export Administration Act implementing regulations in light of the Abraham Accords. This may be expected in the coming months. ■

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