KILPATRICK TOWNSEND

3 TAKEAWAYS

2020 Roundup: Key U.S. Sanctions Takeaways

Throughout 2020, the U.S. government continued to expand its trade-related sanctions programs and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") published 16 sanctions enforcement actions. We have previously addressed key takeaways from OFAC's enforcement actions through September of 2020—read Here and Here. Below are notable sanctions takeaways from 2020.

1

Intercompany orders should go through appropriate due diligence; sales through intermediaries can still present a risk. On October 20, 2020, OFAC announced its enforcement action and a $4.14 million settlement with Berkshire Hathaway Inc. ("Berkshire") for apparent violations of the Iranian Transactions and Sanctions Regulations ("ITSR") by its indirectly wholly-owned Turkish subsidiary: Iscar Turkey. Iscar Turkey sold cutting tools and related inserts to two third-party Turkish distributors with knowledge that such goods would be shipped to a distributor in Iran for resell to Iranian end-users, including several entities that were later identified as meeting the definition of "Government of Iran" under the ITSR. Additionally, Iscar Turkey purchased goods produced by other Berkshire subsidiaries to fulfill orders destined for Iran. OFAC noted that several Berkshire foreign subsidiaries received via email order information from Iscar Turkey containing an Iranian address in the email chain indicating that the distributor was in Iran, including where the email referenced a customer in the email chain known to a subsidiary to be located in Iran. Despite these warning signs, only one intercompany order was flagged and stopped. There was also evidence that the Turkish distributors used false invoices to give the impression that goods were going to other Turkish companies rather than Iran. Although the transaction value of the goods sold was only $383,443, and the violations were voluntarily disclosed to OFAC, the agency determined that the violations were "egregious" due to the willful nature of the subsidiary's conduct. OFAC raised how this enforcement action highlights the importance of performing appropriate due diligence with regard to subsidiaries or affiliates known to transact with sanctioned parties or territories, or that present a high risk based on, for example, their geographic region, even when the product is provided through intercompany orders. Equally important is the need to verify the accuracy of end-users and the associated underlying paperwork for goods shipped through third-country distributors. Indirect sales through intermediaries will not shield a U.S. parent from potential sanctions, particularly when it knows or should know that the intermediary will ship items to sanctioned parties or territories.

2

If you collect diligence information from customers, corroborate the representations. On December 30, 2020, OFAC announced its enforcement action and settlement with BitGo, Inc. ("BitGo"), a tech company, in connection with apparent violations of multiple sanctions programs. BitGo processes digital currency transactions on behalf of users with BitGo's "hot wallet" secure digital wallet management services. Individuals located in Crimea, Cuba, Iran, Sudan, and Syria signed up for "hot wallet" accounts and accessed BigGo's online platform to conduct digital currency transactions. BitGo tracked its users' IP addresses, but did not use the information for sanctions compliance purposes. Additionally, at one point, BitGo had amended its practices to require all new accountholders to verify the country in which they are located. BitGo relied on the user's attestation regarding their location, but did not perform additional verification or due diligence on the location of the user. As a reminder of the enforcement action involving a major European bank reviewed in our September 2020 Key Takeaways publication (available Here), an entity must exercise a degree of caution or care to conduct additional due diligence in order to corroborate a customer's representation, especially when facilitating or engaging in online commerce or processing transactions using digital currency.

3

Any U.S. financial system connection can trigger an enforcement action. In 2020, OFAC made it clear that foreign companies with headquarters outside of the U.S. can and would be subject to sanctions enforcement actions when their transactions involve sanctioned parties or countries and utilize the U.S. financial system. In addition to the matter involving Essentra FZE Co. Ltd. reviewed in our September 2020 Key Takeaways publication, on December 28, 2020, OFAC announced its enforcement action against National Commercial Bank ("NCB"), headquartered in Saudi Arabia, and apparent violations of the Sudanese and Syrian sanctions programs. OFAC's investigation identified various U.S. dollar transactions, totaling close to $6 million, to or through the U.S. financial system in circumstances where a benefit of NCB's services was received by Sudanese or Syrian counterparties, or that involved goods originating in or transitioning through Sudan or Syria.

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