Deloitte.

Canada
Tax

Canadian Indirect Tax News

Export controls - why this issue is climbing to the top of C-suite agendas

December 3, 2012 (12-9)

Today, export controls are a high-profile topic. They are one of the key tools used by governments to support national and international security policies and to assist in the prevention of the proliferation of weapons of mass destruction (WMD) and related terrorist activities.

What are export controls? Countries around the world, including Canada, maintain a comprehensive set of export control regulations which restrict the tangible and intangible movement of certain goods, software and technology across borders, regardless of the means of delivery. This includes, for example, providing technical support and even accessing servers from abroad in cases where controlled technology is involved.

Export controls affect companies operating in a variety of industrial sectors. In fact, in many cases, it is not always obvious that goods or technologies are subject to export controls, or that a particular action constitutes an export. For example, in addition to military-related products, export controls apply to many commercial “dual-use” goods, software and technology widely used in oil and gas, mining, nuclear, technology, media and telecommunications, aerospace and defence, life sciences, chemicals and manufacturing.

While businesses have always been subject to export control regulations and enforcement, three key trends are making this topic a key strategic issue at the top of the corporate agenda for many firms:

1. *Increase in the size of fines and sentences* - Penalties for violating export controls can significantly impact the bottom line. For example, it is not uncommon for enforcement agencies to impose fines in the seven to eight figure range. In addition to financial penalties, corporate violators also face significant business disruption and reputational damage, such as loss of contracts, drop in share prices, and supply chain delays. Earlier this year, a large Canadian company was fined US$75M and statutorily debarred for violating US export controls.

   More and more, enforcement agencies are seeking fines and custodial sentences against senior management and persons directly involved in non-compliant activity, in addition to fines against the corporation. For example, recently, a Canadian businessperson was sentenced to over four years in prison for violating Canadian export control regulations.

Contacts:

National Indirect Tax Leader
Robert Demers
514-393-5156

Quebec and Atlantic
Robert Demers
514-393-5156

Ontario
Michael Matthews
613-751-5310

Toronto
Rory Pike
416-874-3330

Danny Cisterna
416-601-6362

Doug Myrden
416-601-6197

Prairies
Dean Grubb
604-640-3266

Alberta
Jason Riche
403-267-1702

British Columbia
Janice Roper
604-640-3353

Related links:

Canadian Indirect Tax News **– archive**

Deloitte Tax Services

Update your subscription

2. *Increase in enforcement activities and global coordination* - With the increase in terrorist activities, global conflicts and efforts to prevent WMD proliferation, governments globally have adopted a more aggressive approach to enforcement, with more companies being found in violation of export controls than ever before.

   Enforcement agencies are also working together more closely to identify potential violators. For example, customs agencies in an importing country are screening imports and communicating potential violations to enforcement agencies in the exporting country. This has resulted in seized shipments, supply chain disruption, and investigations and audits by export control authorities.

3. *Increasing complexity of global supply chains* - Effective supply chain strategies are more important than ever before. Increasing international collaborations and logistics integration mean that companies must embed compliance with export controls regulations spanning multiple jurisdictions into supply chain strategies. In addition, businesses must also address US export controls regulations which are extraterritorial in nature and apply to US-origin goods, technology or software, US companies or US persons, wherever located. For example, goods manufactured in Canada may be subject to US export control regulations if US-controlled technology was used in the process.

In light of these trends, it is easy to see why export control compliance has become both a strategic issue and an operational imperative for companies. Businesses that have invested in a leading practice internal compliance program (ICP) understand the benefits of approaching this subject strategically and enjoy a competitive advantage over companies that continue to view export compliance solely as an administrative issue.

Creating a leading practice ICP can yield positive returns. Given the strategic importance of export compliance and the multidisciplinary expertise required to properly develop and implement effective ICPs, more and more companies are turning to outside advisors to build or enhance ICPs and to optimize global trade strategies.

When approached strategically, managing export compliance can minimize risk, improve performance, and reduce costs. And at the end of the day, isn't that what running a business is all about?

Deloitte's market leading Export Controls team has a global reputation for its quality and expertise. We have helped many clients, including Fortune 100 and FTSE 100 companies, develop and optimize their global trade strategy, so that the movement of goods and technology enables their overall business goals. Our team has a thorough understanding of the export control challenges faced by companies, including complying with Canadian, US, EU and other national export control and sanctions regulations. To find out more about how Deloitte can help you strategically manage export controls compliance, please contact your Deloitte advisor.

Alison Brady, Vancouver

30 Wellington Street West
P.O. Box 400
Stn Commerce Court
Toronto ON M5L 1B1 Canada