International Boycott Reports, 2009 and 2010

by Melissa Costa

For Tax Year 2009, some 160 "U.S. persons" received about 3,500 requests to participate in boycotts unsanctioned by the United States, compared to 132 U.S. persons receiving about 3,200 requests in Tax Year 2010.[1] Those receiving requests composed 8.0 percent of the 1,995 U.S. persons who reported operations in, with, or related to countries known to participate in unsanctioned boycotts in 2009 and 5.7 percent of the 2,329 U.S. persons reporting such operations for 2010. Of those receiving requests, 28 agreed to participate in 2009 and 25 agreed in 2010. Just 19 U.S. persons reported tax consequences for 2009, and only 16 reported any for 2010.

Operations

Taxpayers file Form 5713, *International Boycott Report*, with their Federal income tax returns to report operations in countries known to participate in boycotts not condoned by the United States. For 2009 and 2010, corporations made up at least 85 percent of filers, while partnerships accounted for another 10 percent. Trusts, estates, and individuals accounted for most of the remainder.

More than 97 percent of these U.S. taxpayers reported operations in countries on the list of known boycotting countries maintained by the U.S. Department of Treasury. For 2009 and 2010, the list included Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen. These countries are known to participate in boycotts of Israel. While the anti-boycott laws target any boycotts not sanctioned by the United States, only about 3 percent of filers reported having operations in countries known to participate in boycotts of a country other than Israel in either year.

Types of Boycotts

Because the United States does not wish to infringe upon the right of any country to choose its own trading partners, the anti-boycott laws do not target primary boycotts, i.e., restrictions on the importation of goods and services originating in the boycotted country into the boycotting countries. Instead, anti-boycott laws are directed against secondary and tertiary boycotts. An example of such a boycott would be an agreement as condition of doing business directly or indirectly within a country, or with the Government, company, or national of the country, to refrain from doing business with or in a country that is the object of the boycott, or with the Government, companies, or nationals, of that country.

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Countries Issuing Boycott Requests

Figure A displays the number of persons receiving requests, number of requests received, and number of agreements, by boycotting country, for 2009 and 2010. Persons from Treasury-listed nations submitted about 81 percent of all boycott requests for both tax years. Entities from the United Arab Emirates made up the largest percentage of these requests, accounting for 42.3 percent in 2009 and 35.4 percent in 2010. Over 90 percent of the total number of boycott agreements for both tax years originated from entities in Treasury-listed countries. Entities in the United Arab Emirates made up the largest percentage of these agreements, accounting for 35.9 percent in 2009 and 57.1 percent in 2010.

The number of persons receiving boycott requests declined almost 18 percent between 2009 and 2010, while the number of requests issued by foreign persons decreased 9.5 percent, from 3,481 in 2009 to 3,152 in 2010. Requests from Yemeni persons had the largest change, with a drop of nearly 58 percent, from 186 to 79 requests. Requests from Syrian persons also fell substantially (down 34.6 percent), from 237 to 155. However, boycott requests from persons in the United Arab Emirates rose 8.0 percent, from 1,233 requests in 2009 to 1,332 requests in 2010. The most notable change in the number of requests from countries not on the Treasury list was the 29-percent decrease from Pakistani entities. Boycott requests from these entities fell from 207 in 2009 to 147 in 2010 (Figure B).

Tax Penalties

U.S. taxpayers who participated in an unsanctioned boycott may lose their right to claim the foreign tax credit, as well as the tax deferral available to U.S. shareholders of controlled foreign corporations (CFCs) and shareholders of Interest-Charge Domestic International Sales Corporations (IC-DISCs).[2,3] Taxpayers who had operations in a boycotting country were required to reduce the amount of foreign trade income qualifying for the

[1] As defined in Internal Revenue Code section 7701(a)(30), U.S. persons are U.S. citizens or residents, domestic partnerships, domestic corporations, and estates or trusts. This excludes foreign trusts or estates whose income from sources outside the United States is not includible in the income of their beneficiaries.

[2] A foreign corporation is considered to be a CFC if (on any day during the foreign corporation's tax year) U.S. shareholders own more than 50 percent of its outstanding voting stock, or more than 50 percent of the value of all its outstanding stock. For more information on CFCs, see Mahoney, Lee, and Miller, Randy, "Controlled Foreign Corporations, 2008," *SOI Bulletin*, Winter 2013, Volume 32, Number 3, pp. 169-235.

[3] To elect IC-DISC status, a domestic corporation must have "qualified export receipts" that constitute at least 95 percent of its gross receipts and must be able to classify at least 95 percent of its assets as "qualified export assets." Qualified export receipts are gross receipts from the sale of qualified export assets and other types of income related to exporting. Qualified export assets consist of property related to exporting. For more information on IC-DISCs, see Holik, Daniel, "Interest-Charge Domestic International Sales Corporations, Tax Year 2008," *SOI Bulletin*, Summer 2011, Volume 31, Number 1, pp. 116-139.