KPMG SMART PRACTICE

Voluntary disclosures: Submission is not the end

When it comes to export violations, voluntary self-disclosures are used to report potential violations to a government agency and can be an effective tool in mitigating consequences for violating export controls or sanctions laws. From low-level violations to large-scale ones, voluntary self-disclosures enable companies to report compliance violations while potentially limiting penalties. However, submitting the disclosure is only the first step towards improved compliance. The follow-on measures are equally as important in achieving and maintaining long-term compliance.

Root cause identification

Identifying the root cause that led to the violation is key – both to give regulators context but also for developing meaningful corrective actions ("CAs"). Identifying the root cause should not merely be viewed as a cursory exercise that must be completed as part of the disclosure. Rather, it should be a meaningful analysis that provides insight into the "how" and "why" of the violations as well as shaping the CAs. While the specifics of the root cause analysis will vary based on the type of violation, it typically includes interviews with the individuals involved in the violation and, if applicable, system audits. Often, a root cause analysis exposes key control weaknesses – meaning that a compliance process is fundamentally flawed. As a result, what appeared to be a one-off violation is, in fact, a systemic error discovered only as a result of a deep dive into the root cause. However, once these issues are identified they can be permanently corrected through tailored mitigation.

Tracking corrective actions

Voluntary self-disclosures typically include specific CAs that the company will implement to prevent future similar violations. The challenge for many companies is timely implementing and validating the CAs. However, when this follow-on work is not performed, similar violations will almost certainly occur. Having a plan at the outset will help ensure stakeholders are focused on completing the CAs. Prior to submitting the disclosure, the stakeholders for each CA should meet to determine priorities, timelines and budget. Further, there should be periodic "check-ins" to ensure that any challenges are identified and rectified. Once in place, these CAs should be tested to determine if they are achieving the targeted goal.

Different business, same issues

Sometimes, following a disclosure submission, companies become myopically focused on remediating the part of the business where the violation occurred. However, the best remediation plans include a temperature check into the other business units to determine if the same or similar violations occurred. In some cases, stakeholders are surprised to discover a similar compliance problem permeating other departments. There are numerous reasons this occurs: some of the most common include sharing informal workbooks, inaccurate classification determinations and incorrect understanding of applicable regulations. In such cases, the CAs may need to be adjusted to be more widely applicable.

Conducting risk assessments

Building periodic risk assessments into the compliance plan is critical to identifying and managing current risks, as well as spotting those that are on the horizon. A risk assessment will identify the biggest risk-drivers so that a strategy can be developed. Additionally, it provides an excellent opportunity to determine if the CAs supporting compliance are functioning as intended.

Lessons learned

An integral part of the remediation process is disseminating the lessons learned throughout the business. Providing an opportunity for employees to understand the events leading to the disclosure and the remedial steps gives important context for promoting compliance. The real-life impact to the company provides a good backdrop for explaining why additional training or process changes are important.

Following a voluntary self-disclosure submission, most companies strive to prevent additional violations. It is important to keep in mind that preventing future errors is driven by the follow-on work resulting from the disclosure, and not the disclosure itself. ■

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