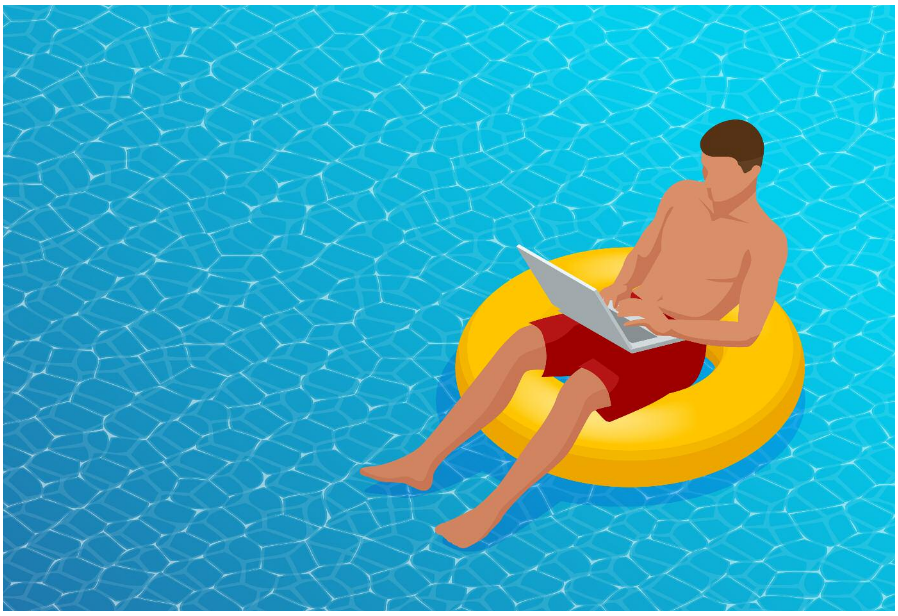

KPMG SMART PRACTICE

Export control implications of a remote workforce

In the last two years most employees have adapted to working from home and found innovative ways to execute tasks once performed only in person. However, as many companies lean into the flexibility of this new way of working, there are export control compliance considerations that must be managed on an unprecedented scale. By teaming with the Human Resources ("HR") group and training employees on how their activities intersect with export compliance, these risks can be limited.

In this new, flexible environment, employees no longer feel constrained to work in close proximity to their offices. This includes relocating temporarily overseas. While the business and tax implications from working overseas can be significant, there can also be export control implications. For employees whose roles either directly or indirectly implicate export-controlled technology, their laptops may either contain export-controlled technology, or the user may be able to retrieve and download export-controlled technology while working in the foreign country. Additionally, should their laptops be stolen or, more likely, require local service, a non-US person could have access to export-controlled information. Simply put, the risk of a violation increases substantially when a US-based employee is working overseas.

Further, even if working domestically, controlled technology is now highly portable as employees work from coffee shops, shared office spaces and home. This means that unauthorized persons are more likely to have access to employees' laptops and cell phones that contain export controlled technology. Even casual conversations between roommates may result in unauthorized exports.

> In this new, flexible environment, employees no longer feel constrained to work in close proximity to their offices.

While the last few years have been challenging from an employee management perspective, HR groups are now dealing with high levels of turnover and on-boarding – creating risk on two fronts. First may be the failure to identify a position that is either limited to a US person or requires obtaining a license for a non-US person. Second is monitoring US person status for current and new employees. Failure to correctly identify positions where non-US persons may require a license may lead to export control violations or company embarrassment if an offer must be rescinded. Further, in the last few years, current employees' US person status may have changed, impacting licensing requirements. However, given the turbulent environment, staying close to this issue could have slipped through the cracks.

Export compliance teams can work with their HR groups to verify that existing processes and procedures around US person status management are being followed. If not, developing a remediation plan to obtain the required information should be implemented followed by an analysis of whether deemed export licenses must be obtained. For new positions, the export compliance team should team with HR to develop language that flags positions where US person status may be required and lawfully gathers candidate information.

Additionally, validating that the company has policies and procedures in place regarding overseas work will help mitigate the risk of unauthorized exports. This may include policies requiring that the company be informed when relocation will occur, a clean computer/ clean phone program as well as export compliance training. Not only will these steps sensitize employees to the risks of working overseas but also provide visibility into how technology is moving around the globe.

As export compliance teams and HR look to the workplace of the future, a few simple steps can be taken:

- Review policies and procedures around employee travel
- Implement a clean electronics program
- Ask employees to confirm their US person status
- Align on the US person requirements for current and open positions
- Provide export compliance training tailored to a work-from-home environment

A proactive approach will help maintain export compliance in this more mobile workforce. ■

About the authors:

Steven Brotherton (San Francisco) is a Principal in the Global Export Controls & Sanctions practice of KPMG LLP and leader of the service line. sbrotherton@kpmg.com

Elizabeth Shingler (Richmond) is a Manager in the Global Export Controls and Sanctions practice of KPMG LLP. eshingler@kpmg.com

Reprinted with permission from the December 2021 issue of Export Compliance Manager.
www.exportcompliancemanager.com