Section 10B Deep Dive – Responses to Questions

28 November 2024

These responses are designed to assist you in understanding Defence Export Control's regulatory framework. It is not legal advice nor intended to be legal advice and it may therefore include some generalisations about the law. Some provisions of the law referred to have exceptions or prerequisites, not all of which may be described here. Defence does not guarantee the accuracy, currency or completeness of any information contained in this document. Your particular circumstances and activities must be taken into account when determining how the law applies to you. These responses are therefore not a substitute for obtaining your own legal advice and does not imply that other regulatory obligations would not be applicable to certain activities

If a Part 2 DSGL good or technology is not on the Very Sensitive list, is it automatically on the Sensitive list?

No. The Very Sensitive and Sensitive lists in Part 2 of the DSGL are separate – the majority of Part 2 DSGL goods and technology are not on either of the Very Sensitive or Sensitive lists. Only a select subset of Part 2 DSGL goods and technology are on these lists, which is located at towards the end of the DSGL.

Would Part 1 DSGL goods or technology supplied from one FCL country to another FCL country require a permit under Section 10B?

The FCL exception for Section 10B activities only applies to a supply of Part 2 DSGL goods or technology on the 'Sensitive List' or 'Very Sensitive List', if that supply occurs wholly within, from, or to an FCL country. Therefore, Part 1 DSGL goods and technology are not eligible to use the FCL exception for section 10B supplies. However, other exemptions or exceptions may apply such that a permit is not required.

Noting extraterritoriality, will there be a program similar to the US' Blue Lantern Program to monitor Section 10B activities?

DEC's approach to compliance – including monitoring – is under review, and will be updated where appropriate to reflect the intent of the legislative changes.

Will DEC need to receive AUKUS pre-notification for Section 10B supplies?

There are no pre-notification requirements for a supply, which satisfies the requirements of section 10B but is utilising the AUKUS exemption. Pre-notification is only required for use of the AUKUS exemption (license-free environment) when exporting or suppling from Australia to the US or UK (i.e. conducting a 13E Customs (PE) Regs export or Section 10 DTC Act supply).

Is there any liability for the original exporter not informing overseas supplier of their Section 10B obligations?

Section 10B does not impose liability on the original exporter or supplier to inform the overseas party of their continuing export controls obligations under Australian law. The relevant offences only applies to the overseas supplier who subsequently conducts a section 10B activity. However, DEC encourages exporters and suppliers to inform overseas end-users of their continuing obligations under Section 10B. Non-compliance by overseas recipients/end-users with Section 10B may be considered by DEC as part of risk assessments for future permits sought by the original exporter/supplier if they are supplying or exporting DSGL goods or technology to that same overseas recipient/end-user.

Note: There may be certain circumstances where specific conditions have been imposed by DEC on an original exporter's or supplier's permit, requiring them to inform other parties of certain matters. If such conditions have been imposed on a permit, the permit holder must comply with those conditions.

Are there prescribed markings on DSGL goods or technology (similar for ITAR) to inform persons outside Australia of potential re-transfer obligations?

There are no current marking requirements to indicate that DSGL goods or technology may be subject to the Section 10B offence, because it only applies in specific circumstances.