



## ALERTS

### DOJ Secures Largest Settlement Payment Yet For U.S. Sanctions Violations Involving North Korea

May 2, 2023

#### Highlights

The U.S. Department of Justice continues incentivizing robust compliance programs as British American Tobacco was charged in connection with tobacco sales to sanctioned entities in North Korea

Companies face coordinated enforcement by the DOJ and OFAC for violating sanctions regimes and Bank Secrecy Act requirements

U.S. and non-U.S. companies must consider how they will comply with U.S. sanctions and evaluate potential U.S. touchpoints

### U.K.-based company pays \$629 million for using Chinese shell companies to conceal tobacco sales to North Korea

On April 25, 2023, British American Tobacco (BAT), a London-based multinational tobacco manufacturing company, and its Singapore subsidiary [were charged in federal court in Washington, D.C.](#), with conspiracy to commit bank fraud and to violate the International Emergency Economic Powers Act. The charges involved millions of

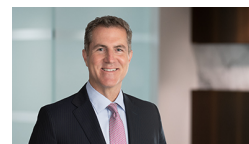
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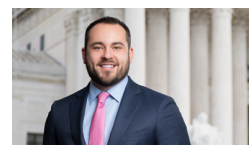
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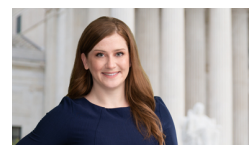
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dollars in tobacco sales to previously sanctioned entities in North Korea.

BAT's Singapore subsidiary, BAT Marketing (Singapore) Private Limited (BATMS), pled guilty to the charges and was sentenced to a three-year term of probation. BAT avoided a conviction, however, by entering into a three-year deferred prosecution agreement with the U.S. Department of Justice (DOJ), paying financial penalties totaling \$629,891,853, and agreeing to cooperate with the DOJ's ongoing investigation.

This prosecution and historic settlement of a foreign company indicates that the U.S. government will continue its aggressive investigation of sanctions violations across the globe, and will use all available tools—including rigorous enforcement of Bank Secrecy Act (BSA) requirements—to prosecute violators and encourage self-disclosure and cooperation.

Notably, the DOJ did not seek imposition of a monitor because it found that the company had subsequently implemented a robust compliance and ethics program – one that is now designed to prevent and detect future violations of the BSA or U.S. sanctions. Cooperation by BAT and BATMS with the DOJ's ongoing investigation has already yielded results, as the DOJ also unsealed criminal charges against a North Korean banker and several Chinese facilitators involved with the scheme.

According to the DOJ, the conspiracy to help North Korea evade sanctions on tobacco purchases spanned from 2007 to 2017, and involved a complex scheme whereby BATMS used an unnamed front company to sell and receive payment for tobacco sold to North Korean customers. While the transactions appeared innocuous, they actually involved North Korean banks sanctioned by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). To obscure these transactions, the banks used a global network of front companies to transfer funds to BATMS and, ultimately, BAT. As a result, U.S. banks unknowingly processed prohibited U.S. dollar-denominated transactions on behalf of BATMS and BAT – transactions that should have been blocked or frozen in the absence of required licenses.

The DOJ identified several factors leading to its decision to forgo seeking a conviction of BAT. In addition to the lack of any criminal history at the company, the DOJ emphasized its extensive cooperation with the government's investigation – including “providing valuable information that [] expanded and advanced the investigation” – and its significant remediation efforts, including the continued enhancement of its sanctions compliance program.

By pointing to these concrete steps companies can take to mitigate the penalties from sanctions and BSA violations, the DOJ hopes to incentivize companies to cooperate with investigators when allegations of wrongdoing arise and to refine their sanctions compliance programs to address the increase risks of dealing with sanctioned countries.

A separate settlement agreement between OFAC and BAT resulted in civil penalties of \$508,612,492, the largest penalty OFAC has ever imposed for a non-financial institution. This settlement agreement highlights risks for both non-U.S. companies and U.S. companies with foreign affiliates.

Multinational companies should consider reevaluating their U.S. touchpoints to determine if they could trigger sanctions compliance

## RELATED PRACTICE AREAS

International Trade

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requirements. Such touchpoints include payments in U.S. dollar denominations; U.S.-origin goods, software, and technology; U.S.-based services; and employment of U.S. persons abroad. Given cross-government coordination between the U.S. and its allies, particularly in the context of sanctions against Russia, companies should expect close scrutiny of activities having a connection to sanctioned parties or jurisdictions.

In addition, the government's continued focus on enforcement of U.S. sanctions and BSA requirements highlights how companies should consider reevaluating their compliance programs on a regular basis and ensuring they are tailored to the specific risks they face.

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