

The Risk of Voluntary Self Disclosure: Takeaways From the Exyte BIS Settlement

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The U.S. Department of Commerce's Bureau of Industry and Security (BIS) recently [entered](#) into a settlement agreement with German entity Exyte Management GmbH (Exyte) due to in-country transfers by distributors of one of its Chinese subsidiaries of EAR99 items to Semiconductor Manufacturing International (Beijing) Corporation (SMIC Beijing), which is on the BIS Entity List. Although Exyte voluntarily self-disclosed the conduct, only EAR99 items were involved, and the distributors of the subsidiaries were remote from Exyte itself, a \$1.5 million civil penalty was imposed for transactions valued at only about \$2.8 million.

This settlement is a reminder that, in sensitive cases such as those involving China and Entity List parties, a voluntary self-disclosure can mitigate, but does not always eliminate, the risk of a monetary penalty. This emphasizes the difficult choice companies often face in deciding whether to submit a voluntary self-disclosure to BIS.

These questions are likely to become even more pressing over the next few years, as the current Trump administration has made clear its objective to significantly increase BIS's enforcement activity. Among other concrete steps in that direction, a large funding boost for BIS enforcement is poised to be enacted. At the same time, however, BIS has lost nearly all of its most experienced senior personnel over the past year, raising questions about how the agency will manage such a dramatic anticipated increase in enforcement. While the Exyte case is not unprecedented, it is unusual, and it is worth asking whether this is a signal of BIS beginning to depart from some of its traditionally more lenient policies.

The Exyte Settlement

Exyte Shanghai Ltd. "caused, counseled, procured, and aided" 13 in-country transfers of 884 EAR99 items, in some cases indirectly through China-based suppliers and distributors, to SMIC Beijing between 2021 and 2022. The items, valued at approximately \$2.8 million, included voltage sag protectors, a programmable logic controller, flowmeters, exhaust stack flowmeters, and pressure transmitters, all used in semiconductor fabrication facilities.

Exyte Shanghai Ltd. allegedly knew that SMIC Beijing was the end user but failed "to appreciate" that a license requirement under the EAR applied to in-country transfers to an Entity List party. Specifically, BIS attributed the violations to "Exyte's inadequate corporate compliance controls with respect to the applicability of U.S. export controls over in-country transfers by local Chinese suppliers."

"Upon learning of these in-country transfers, Exyte investigated the matter, voluntarily disclosed the transactions

to BIS, and retained outside counsel to investigate.” Despite this, BIS assessed a \$1.5 million civil penalty.

BIS’s Track Record With Voluntary Self-Disclosure Cases

The Exyte outcome stands in some tension with BIS’s general statements on voluntary self-disclosures, which stress that nearly all have been resolved in the past through no-action or warning letters rather than civil penalties. For example, in 2024, BIS published its [final rule](#) on the voluntary self-disclosure process and penalty guidelines (discussed in detail [here](#)), emphasizing that BIS is “making clear in the BIS Penalty Guidelines that for violations of a lower value and with minimal aggravating factors, OEE’s [Office of Export Enforcement] preference is to impose non-monetary penalties to shore up a company’s compliance program, which is more effective in these types of cases.” BIS officials have made quite specific comforting statements to this effect in a variety of public and private settings in recent years, emphasizing how unusual it is for penalties to be imposed in response to a voluntary self-disclosure.

Exyte is part of a small group of cases initiated by voluntary self-disclosure where BIS has imposed monetary penalties, which tend to be in high-priority national security contexts. For example, in October 2024, under the Biden administration and previous agency leadership, BIS [imposed](#) a \$500,000 civil penalty on GlobalFoundries U.S. Inc. for 74 shipments of semiconductor wafers valued at approximately \$17.1 million to a Chinese company on the Entity List. Similarly, in December 2024, BIS [imposed](#) a \$3.3 million civil penalty on Integra Technologies, Inc. for shipments valued at \$6.67 million of transistors and related products, including Common High Priority List items, to Russian end users. In both matters, the companies voluntarily self-disclosed the violations and cooperated with BIS. Like Exyte, however, these matters involved semiconductor-related items and restricted parties (Entity List or Russia).

Implications of Exyte: “No-Penalty” Outcomes Are Not Guaranteed

Voluntary self-disclosure continues to carry “great weight” as a mitigating factor. At the same time, the Exyte settlement confirms that BIS will impose civil penalties even in voluntary self-disclosure cases where there is a strong nexus to major U.S. policy concerns such as Entity List parties, Russia, semiconductors, etc., particularly where significant compliance program weaknesses are present.

The biggest question for companies to wrestle with is whether these trends will continue to hold going forward as this administration takes new approaches to enforcement of export controls. If the government becomes more aggressive about penalizing voluntary self-disclosures, companies may be more inclined to resolve these issues internally.

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