



Export control update: Introduction of Global Authorization for Intra-Company Transfers (GAICT) for export of SCOMET items/software/technology

July 30, 2019

Vide a Public Notice¹ issued on July 24, 2019, a new Para 2.79F has been inserted in the Handbook of Procedures (**HBP**) of the Foreign Trade Policy 2015-20 (**FTP**) for granting an advance bulk license “GAICT” for re-export of SCOMET items/software/technology (‘SCOMET items’) to overseas group companies availing license exception for original exports of such items to India. The scheme, obviating the need of case to case basis pre-export authorization, applies to re-export of all SCOMET items other than SCOMET items of Categories 0 (Nuclear materials), 1B, 1C (Toxic chemicals, to the extent re-exports to States not party to CWC), 3A401 (Prescribed high explosives, etc.), 5 (aerospace systems, etc.) and 6 (Munitions List).

Eligibility and key conditions for obtaining GAICT

GAICT will be granted only for re-exports by way of transfers of SCOMET items by an Indian subsidiary to:

- (i) Foreign parent company and/or
- (ii) Subsidiaries of the foreign parent company

under a Master Services Agreement/Contract (MSA) between the Indian subsidiary and its parent company for carrying out services (including design, encryption, research, development, delivery, validation, testing), where the overseas company is **availing a license exception for original exports to India**.

Other key conditions:

- The SCOMET items intended to be re-exported should not have undergone change in functionality and classification pursuant to services carried out by the Indian exporter
- Indian exporter is required to furnish its own certified/approved Internal Compliance Program (ICP) or demonstrate compliance to ICP of the foreign parent company
- Indian exporter is required to declare that the re-exported items would be used for the purposes for which it is intended by the overseas group company
- On-site inspection of the Indian exporter, if required, should be allowed

Key procedural requirements for issuance of the GAICT

- Application for obtaining GAICT shall be required to be filed online in Form ANF 20(b)², accompanied by the following key details / documents:
 - Proof of corporate relationship with the overseas group company
 - Copy of MSA between Indian exporter and foreign parent company
 - Documentary proof of License Exception granted in the original country of export
 - Certified / approved ICP of the exporter or self-certified copy of ICP of the foreign parent company along with an undertaking to adopt the same
 - SCOMET classification, detailed description and technical specifications
- Such applications would be assessed by the Inter-Ministerial Working Group (IMWG)

Validity of GAICT

GAICT shall be valid for a period of three (3) years from issuance. However, the same would be terminated earlier if validity of license exception in the country of export (with respect to product or eligible entities) or MSA expires earlier.

Ongoing compliances for exports made under GAICT

For any exports made under GAICT, the Indian exporter shall be required to:

- Submit quarterly details of exports in proforma ANF 2O(c)²;
- Submit copy of EUC for such exports in Appendix 2S(iv)² format along with such quarterly details
- Maintain records of all such export documents for a period of 5 years

Other relevant points

- Further re-export of such SCOMET items by the overseas group company shall be subject to export control regulations of the country of export
- GAICT shall not be granted for the countries/entities covered under the UNSC embargo or sanctions list, etc.
- GAICT shall be liable to be revoked/suspended on receipt of adverse reports on proliferation concern or non-submission of mandatory reports within prescribed time or non-fulfilment of other conditions

ELP Comments

- The present scheme for issuance of GAICT marks the first ever scheme for issuance of advance and bulk license in India, although description and technical details of SCOMET items are required to be submitted while making application for GAICT.
- The benefits of the scheme however appear to be restricted to service entities in India re-exporting imported items back to their overseas group company and would cover such re-exports of encrypted IT products, etc. of Category 8.
- The scheme mainly seems to cover re-exports by service providers and hence, re-exports of trading companies may not be covered under the scheme.
- While the scheme also covers re-export of software and technology, it may be covered only to the extent it is established that functionality and classification of the same have remained same post original import into India.
- While the requirement of ICP has been provided, nature or broad guidelines of compliance program expected by the authorities in this regard have not been laid down as of now.
- Exports to overseas company's service providers/contracted facilities under Bill to Ship to arrangement appear to be not covered under the scheme as of now and hence, any specific shipping arrangements for export of SCOMET items to overseas group company need to be examined from this perspective.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com.

¹The text of the Public Notice no. 20/2015-20 dated July 24, 2019 may be accessed at

http://dft.gov.in/sites/default/files/PN%2020%20dated%20%2018.07.2019%20on%20GAICT%20Eng_0.pdf

²Forms ANF 2O(b), ANF 2O(c) and Appendix 2S(iv) would be notified separately.

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