March 11, 2019

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: Department of the Treasury, Internal Revenue Service: Regulations Regarding the Transition Tax Under Section 965 and Related Provisions

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled “Regulations Regarding the Transition Tax Under Section 965 and Related Provisions” (RIN: 1545-BO51). We received the rule on February 25, 2019. It was published in the Federal Register on February 5, 2019. 84 Fed. Reg. 1838. The effective date of the final rule was February 5, 2019.

The final rule implements section 965 of the Internal Revenue Code. Specifically, this final rule provides general rules and definitions under section 965, including general rules concerning section 965(a) inclusion amounts, general rules concerning section 965(c) deduction amounts, and rules concerning the treatment of certain specified foreign corporations as controlled foreign corporations (as defined in section 957) and certain controlled domestic partnerships as foreign partnerships.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The final rule was published in the Federal Register on February 5, 2019. 84 Fed. Reg. 1838. The rule was received by the Senate on February 26, 2019, and by the House on February 27, 2019. 165 Cong. Rec. H2310, S1591. The rule has a stated effective date of February 5, 2019. Therefore the final rule does not have the required 60-day delay in its effective date.
Enclosed is our assessment of IRS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact me at (202) 512-8156.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Martin V. Franks
    Chief, Publications and Regulations Branch
    Department of the Treasury
(i) Cost-benefit analysis

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) stated that the economic analysis of this final rule was substantially unchanged from the analysis of the proposed rule. IRS noted that the rule will enhance the performance of the U.S. economy by reducing uncertainty and ambiguity over interpretation of the section 965 requirements. Absent this final rule, according to IRS, different parties would likely interpret the statute in different ways. Such disparate interpretations could lead similarly situated taxpayers to calculate their tax liability differently and therefore possibly make organizational or investment decisions under different signals of economic value, an economically inefficient outcome.

Treasury and IRS also determined that there are multiple instances throughout the statute where the transition tax may be artificially inflated because of double counting of cash and earnings and profit due to multiple testing dates and chains of ownership. According to Treasury and IRS, double counting, as well as non-counting, is inequitable because similarly situated taxpayers may differ in terms of the amounts of income that fall into the specific categories that may be subject to double counting or non-counting. According to Treasury and IRS, as a result of this analysis, the final rule reduces double counting and non-counting and produces more equitable tax outcomes across otherwise similarly situated taxpayers by preventing: (1) double counting in computing the aggregate foreign cash position, for example, by disregarding receivables and payables between related specified foreign corporations with a common U.S. shareholder; and (2) double counting and non-counting in the computation of deferred earnings arising from amounts paid or incurred between related parties between measurement dates.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

Treasury and IRS determined that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Treasury and IRS determined that this final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of the approximate $150 million threshold.
(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On August 9, 2018, Treasury and IRS published a proposed rule. 83 Fed. Reg. 39,514. Treasury and IRS held a public hearing on the rule on October 22, 2018. Treasury and IRS also received written comments with respect to the proposed regulations, to which they responded to in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

Treasury and IRS identified 16 provisions of this final rule which contain information collection requirements. Treasury stated that the collection of information provided by this rule has been reviewed and approved by the Office of Management and Budget (OMB) under OMB Control Number 1545-2280. IRS estimates the collection of information requirements imposed by the final rule will require 100,000 respondents to spend 5 hours per response for a total reporting burden of 500,000 hours. With a valuation of the burden hours at $95 per hour, IRS estimates the reporting costs to taxpayers will be $47,500,000, a one-time paperwork burden.

Statutory authorization for the rule

Treasury and IRS promulgated this final rule under the authority of sections 902, 965, 989, and 7805 of title 26, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

OMB designated this final rule as economically significant under the Order and reviewed the rule.

Executive Order No. 13,132 (Federalism)

Treasury and IRS determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.