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July 8, 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: Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits*

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 (Treasury) and the Internal Revenue Service (IRS) entitled “Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits” (RINs: 1545-BO54; 1545-BO62). We received the rule on June 18, 2019. It was published in the *Federal Register* as final and temporary regulations on June 21, 2019. 84 Fed. Reg. 29288. The effective date of the rule is June 21, 2019.

The final rule governs the amount of global intangible low-taxed income included in the gross income of certain United States shareholders of foreign corporations, including United States shareholders that are members of a consolidated group. The rule also includes provisions relating to the determination of a United States shareholder's pro rata share of a controlled foreign corporation's (CFC's) subpart F income included in the shareholder's gross income, as well as certain reporting requirements relating to inclusions of subpart F income and global intangible low-taxed income. Subpart F income includes income from passive investments, income from transactions with entities related to the CFC, and insurance income as well as certain other easily manipulated income. Finally, this rule addresses certain foreign tax credit provisions applicable to persons who directly or indirectly own stock in foreign corporations.

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). However, the 60-day delay in effective date can be waived if an agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the findings and a brief statement thereof in the

rule issued. 5 U.S.C. § 808(2). The Treasury Department and IRS found, for good cause, that a 60-day delay in the effective date of this final rule was unnecessary and contrary to the public interest. The statutory provisions to which this rule relates, in certain cases, apply to taxable years that have already ended. In certain cases, taxpayers may be required to file returns reflecting federal income liability during the 60-day period that begins after this rule is published in the *Federal Register*. Because taxpayers must already comply with the statutory provisions, Treasury and IRS found that a 60-day delay in the effective date of the final regulations is unnecessary and contrary to the public interest.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Martin V. Franks
Chief, Publications and Regulations Branch
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
“GUIDANCE RELATED TO SECTION 951A
(GLOBAL INTANGIBLE LOW-TAXED INCOME) AND
CERTAIN GUIDANCE RELATED TO FOREIGN TAX CREDITS”
(RINs: 1545-BO54; 1545-BO62)

(i) Cost-benefit analysis

To assess the economic effects of these final regulations, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) considered economic effects arising from three sorts of provisions of these final regulations. These are (i) effects arising from provisions that provide enhanced certainty and clarity; (ii) effects arising from provisions to prevent tax-avoidance behavior; and (iii) effects arising from other provisions. Treasury and IRS did not make quantitative estimates of these effects. Treasury and IRS stated that they do not have readily available data to project which taxpayers are affected by this final rule and, thus, the agencies concluded, it is not currently feasible to estimate the economic effects of the rule relative to a baseline.

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

Treasury and IRS certified 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 \$154 million (\$100 million, adjusted for inflation) threshold.

(iv) Other relevant information or requirements under acts and executive orders

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

On October 10, 2018, Treasury and IRS published a proposed rule concerning global intangible low-taxed income. 83 Fed. Reg. 51072. A public hearing on this proposed rule was held on February 13, 2019. In addition, on December 7, 2018, Treasury and IRS published proposed regulations relating to foreign tax credits, certain provisions of which are finalized in this rule. 83 Fed. Reg. 63200. A public hearing on this second proposed rule was scheduled for March 14, 2019, but it was not held because there were no requests to speak. Treasury and IRS also received written comments with respect to these proposed rules.

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

Treasury and IRS determined that this final rule added new collections of information. The reporting burdens associated with the information collections in the final rule regulations are included in the aggregated burden estimates for Office of Management and Budget (OMB) control numbers 1545-0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of \$58.148 billion (in 2017 dollars)), 1545-0074 (which represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of \$31.764 billion (in 2017 dollars)), 1545-0092 (which represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of \$9.950 billion (in 2016 dollars)), and 1545-0047 (which represents a total estimated burden time, including all other related forms and schedules for tax-exempt organizations, of 50.450 million hours and total estimated monetized costs of \$1,297,300,000 (in 2017 dollars)). These overall burden estimates are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be revised as a result of the information collections in this final rule. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the regulations. According to the agencies, no burden estimates specific to the forms affected by this final rule are currently available.

Treasury and IRS requested comments on all aspects of information collection burdens related to this final rule, including estimates for how much time it would take to comply with the paperwork burdens for each relevant form and ways for IRS to minimize the paperwork burden. Proposed revisions to these forms that reflect the information collections contained in this final rule will be made available for public comment and will not be finalized until after these forms have been approved by OMB under PRA.

Statutory authorization for the rule

Treasury and IRS promulgated this final rule under the authority of sections 245A(g), 864(e)(7), 882(c)(1)(A), 951A, 954(b)(5), 1502, 6038, 7701(a), and 7805 of title 26, United States Code.

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

The Office of Management and Budget (OMB) designated this final rule as subject to review under Executive Order 12,866 pursuant to the April 11, 2018, Memorandum of Agreement between Treasury and OMB regarding review of tax regulations. OMB designated the rule as economically significant under section 1(c) of the Memorandum of Agreement. Accordingly, the final regulations have been reviewed by OMB's Office of Information and Regulatory Affairs.

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.