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December 19, 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: Base Erosion and Anti-Abuse Tax*

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 “Base Erosion and Anti-Abuse Tax” (RIN: 1545-BO56). We received the rule on December 5, 2019. It was published in the *Federal Register* as final regulations on December 6, 2019. 84 Fed. Reg. 66968. The effective date of the rule is December 6, 2019.

The final regulations implement the base erosion and anti-abuse tax, designed to prevent the reduction of tax liability by certain large corporate taxpayers through certain payments made to foreign-related parties and certain tax credits. The final rule also provides reporting requirements related to this tax. The final rule affects corporations with substantial gross receipts that make payments to foreign-related parties. The final rule also affects any reporting corporations required to furnish information relating to certain related-party transactions and information relating to a trade or business conducted within the United States by a foreign corporation.

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 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). IRS stated it was claiming good cause because the statutory requirements are already in effect and thus taxpayers may be required to make payments under the statute. IRS asserts the final rule provides crucial guidance for taxpayers on how to apply the statute, correctly calculate their liability, and accurately file their U.S. federal

income tax returns. According to IRS, because the statutory requirements are already in effect, a 60-day delay in the final rule 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
“BASE EROSION AND ANTI-ABUSE TAX”
(RIN: 1545-BO56)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) stated the final rule may alter the way businesses transact with related versus unrelated parties. According to IRS, businesses may make changes to financial arrangements, supply chain arrangements, or the locations of business activity, each in ways that increase or reduce the volume of payments made to a foreign affiliate that qualify as base erosion payments, relative to the decisions they would make under alternative regulatory approaches, including the no-action baseline. IRS also stated these differences in business activities may have economic effects beyond their effects on taxpayers' tax liabilities.

IRS further stated the final rule provides certainty and clarity to taxpayers regarding the meaning of terms and calculations they are required to apply under the statutory provisions. According to IRS, in the absence of the enhanced specificity provided by the final rule, similarly situated taxpayers may interpret the statutory rules differently, potentially resulting in inefficient patterns of economic activity.

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

IRS certified that the 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

IRS determined the 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 Act's statutory threshold.

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

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

On December 21, 2018, IRS published a proposed rule. 83 Fed. Reg. 65956. A public hearing was held on March 25, 2019. IRS also received written comments with respect to the proposed rule. IRS responded to the comments in the final rule. IRS also waived the required delay in the effective date for good cause. IRS stated it was claiming good cause because the statutory requirements are already in effect and thus taxpayers may be required to make payments under the statute. IRS asserts the final rule provides crucial guidance for taxpayers on how to apply

the statute, correctly calculate their liability, and accurately file their U.S. federal income tax returns. According to IRS, because the statutory requirements are already in effect, a delay in the final rule is unnecessary and contrary to the public interest.

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

IRS determined that this final rule contains information collection requirements (ICRs) under the Act. The ICRs were submitted to the Office of Management and Budget (OMB) for review. IRS Forms 5471 (including Schedule G), 5472, 8858, and 8991 are associated with OMB Control Number 1545-0123. IRS estimated a total burden time of 3.157 billion hours with total estimated monetized costs of \$58.148 billion for this control number. Form 5471 (including Schedule G) and Form 8858 are also associated with OMB Control Number 1545-0074. IRS estimated a total burden time of 1.784 billion hours with total estimated monetized costs of \$31.764 billion for this control number. These burden estimates are aggregate for the entire control number and not just for this final rule.

Statutory authorization for the rule

IRS promulgated the final rule under sections 59A and 7805 of title 26, United States Code.

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

IRS stated the final rule was determined to be economically significant and reviewed by OMB.

Executive Order No. 13,132 (Federalism)

IRS determined the 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.