



441 G St. N.W.
Washington, DC 20548

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July 8, 2020

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: Qualified Business Income Deduction*

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 "Qualified Business Income Deduction" (RIN: 1545-BP12). We received the rule on June 25, 2020. It was published in the *Federal Register* as final regulations on June 25, 2020. 85 Fed. Reg. 38060. The final rule has an effective date of August 24, 2020.

According to IRS, the final rule contains regulations concerning the deduction for qualified business income under section 199A of the Internal Revenue Code. IRS stated the regulations provide guidance on the treatment of previously suspended losses included in qualified business income. IRS further stated the regulations also provide guidance on the determination of the section 199A deduction for taxpayers that hold interests in regulated investment companies, split-interest trusts, and charitable remainder trusts.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date 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* as final regulations on June 25, 2020. 85 Fed. Reg. 38060. The Senate received the rule on July 1, but the *Congressional Record* does not indicate when the House of Representatives received it. 166 Cong. Rec. S4215 (daily ed. July 2, 2020). The agency informed us they mailed a copy of the rule to the House of Representatives on June 30. Email from Publications & Regulations Specialist, IRS to Senior Staff Attorney, GAO. The final rule has an effective date of August 24, 2020. Therefore, the final rule does not have the required 60-day delay.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large, stylized initial 'S'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Martin V. Franks
Chief, Publications and Regulations Branch
Internal Revenue Service
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
“QUALIFIED BUSINESS INCOME DEDUCTION”
(RIN: 1545-BP12)

(i) Cost-benefit analysis

The Internal Revenue Service (IRS) stated it measured the economic effects of the final rule by placing the regulations into three categories: (i) rules for the treatment of previously suspended losses in calculation of qualified business income; (ii) rules providing conduit treatment for qualified real estate investment trust dividends earned by a regulated investment company; and (iii) rules for applying section 199A to trusts and decedents' estates. For categories (i) and (iii), IRS estimated the regulations would provide certainty and clarity to taxpayers regarding terms and calculations necessary for taxpayers to determine their section 199A deduction. However, IRS stated it does not project meaningful changes in economic activity as a result of these provisions, relative to the no-action baseline.

As for category (ii), IRS estimated that individual investors seeking to invest in real estate would in general hold more diversified portfolios relative to the baseline due to these provisions. IRS further estimated the provisions will lead investors, on average, to hold more real estate in their portfolios (relative to the no-action baseline) and thus hold a smaller share of investment in other industries. IRS also stated several other economic benefits result from these regulations, including those flowing from enhanced financial diversification and reduced information-gathering costs, but these benefits were not quantified. However, IRS stated it estimated the provisions would provide up to \$336 million in annual benefits by allowing investors to avoid these costs to receive the deduction. IRS further estimated the compliance costs of the final rule alone to be approximately \$149 million (excluding any compliance cost savings). IRS also estimated the reduction of revenue to the government would impact the economy

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

IRS certified 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

In its submission to us, IRS indicated that it considered preparation of an analysis under the Act of this final rule to be not applicable.

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

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

On February 8, 2019, IRS published a proposed rule. 84 Fed. Reg. 3015. IRS received comments on the proposed rule and responded to them in the final rule.

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

IRS determined the final rule contains an information collection requirement (ICR) subject to the Act. The ICR is associated with Form 1099-DIV and Office of Management and Budget (OMB) Control Number 1545-0110. IRS estimated the burden of this ICR to be 1.567 million hours and \$149 million annually.

Statutory authorization for the rule

IRS promulgated the rule pursuant to sections 199A and 7805 of title 26, United States Code.

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

IRS stated OMB reviewed the final rule and determined it was economically significant.

Executive Order No. 13,132 (Federalism)

In its submission to us, IRS indicated that it considered preparation of an analysis under the Order of this final rule to be not applicable.