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October 5, 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: Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income*

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), Internal Revenue Service (IRS) entitled “Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income” (RIN: 1545–BO55). We received the rule on July 13, 2020. It was published in the *Federal Register* as final regulations on July 15, 2020. 85 Fed. Reg. 43042. The stated effective date of these regulations is September 14, 2020. *Id.*

According to IRS, section 250 was added to the Internal Revenue Code by the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2208 (Dec. 22, 2017). The final regulations provide guidance under section 250 of Public Law 115-97 regarding the deduction for foreign-derived intangible income (FDII) and global intangible low-taxed income (GILTI), according to IRS. The agency stated that these regulations also coordinate the deduction for FDII and GILTI with other provisions in the Internal Revenue Code. IRS further stated that these regulations generally affect domestic corporations and individuals who elect to be subject to tax at corporate rates for purposes of inclusions under subpart F and GILTI.

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). It was published in the *Federal Register* as final regulations on July 15, 2020. 85 Fed. Reg. 43042. However, the *Congressional Record* does not reflect the date of receipt by either House of Congress. According to an IRS official, IRS mailed the rule using the United States Postal Service’s First-Class Mail service on July 15, 2020. See E-mail from Publications & Regulations Specialist, IRS, to Senior Staff Attorney, Appropriations Law Group, Office of General Counsel, GAO (Jul. 27, 2020, 11:56 AM EST). The rule has a stated effective date of September 14, 2020.

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, flowing style.

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  
“DEDUCTION FOR FOREIGN-DERIVED INTANGIBLE INCOME  
AND GLOBAL INTANGIBLE LOW-TAXED INCOME”  
(RIN: 1545–BO55)

(i) Cost-benefit analysis

According to the Internal Revenue Service (IRS), the Department of the Treasury (Treasury) and IRS expect that in the absence of this guidance taxpayers would undertake fewer eligible sales and services. Thus, IRS stated, the final regulations will generally enhance sales and services across certain eligible activities relative to the no-action baseline. IRS also stated that because of the scale of U.S. economic activity generally associated with foreign use (independent of any specific definition of foreign use) and because of the general responsiveness of economic activity to effective tax rates, which may be affected by the section 250 deduction, it projects that the final regulations will have annual economic effects greater than \$100 million (2020 dollars) relative to the no-action baseline. According to IRS, Treasury and IRS have not made quantitative estimates of the effects of these final regulations on the volume of eligible sales and services or on the overall size or composition of U.S. economic activity relative to the no-action baseline or regulatory alternatives. IRS stated that Treasury and IRS have not undertaken these estimates because they do not have sufficiently detailed data or models for: (i) the costs to taxpayers of establishing that particular transactions are eligible for the section 250 deduction (“substantiation requirements”) under various standards of substantiation; (ii) the effect of differences in substantiation requirements on economic activity, including both activities that are eligible for the section 250 deduction and activities not eligible for the section 250 deduction under the final regulations versus regulatory alternatives; and (iii) the economic effects of other clarifications in the final regulations, including the treatment of military sales, relative to the no-action baseline and regulatory alternatives. According to IRS, each of these items would be needed to provide sufficiently precise estimates of the effects of these final regulations.

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

IRS certified that this final regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. According to IRS, Treasury and the IRS have determined that the regulations may affect a substantial number of small entities, but have also concluded that the economic impact on small entities as a result of the information collection requirements (ICRs) in this regulation is not expected to be significant.

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

IRS determined that these regulations do not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of \$100 million in 1995 dollars, updated annually for inflation.

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

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

On March 6, 2019, Treasury and IRS published proposed regulations. 84 Fed. Reg. 8188. IRS published corrections to the proposed regulations on April 11, 2019, and April 12, 2019. 84 Fed. Reg. 14634; 84 Fed. Reg. 14901. IRS stated that it held a public hearing on the proposed regulations on July 10, 2019. IRS further stated that Treasury and IRS received written comments with respect to the proposed regulations. IRS responded to comments in this final rule.

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

IRS determined that this final rule contains ICRs under the Act and will submit them to the Office of Management and Budget (OMB). IRS created a new ICR, entitled "Form 8993" for businesses (OMB Control Number 1545-0123) and individuals (OMB Control Number 1545-0074). IRS also updated three ICRs for businesses, entitled "Form 1065, Schedule K-1," "Form 5471," and "Form 5472" (OMB Control Number 1545-0123). Finally, IRS updated one additional ICR for all other filers (mainly trusts and estates) under the Legacy system, entitled "Form 8865" (OMB Control Number 1545-1668). IRS stated that no burden estimates specific to the forms affected by the regulations are currently available. IRS further stated that Treasury and IRS have not estimated the burden, including that of any new ICRs, related to the requirements under the regulations.

Statutory authorization for the rule

IRS promulgated this final rule pursuant to section 7805 of title 26, United States Code.

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

IRS determined that this final rule is economically significant under the Order and OMB has completed its review of the regulations.

Executive Order No. 13,132 (Federalism)

IRS determined that these regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.