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April 1, 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: 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-BO71). We received the rule on March 18, 2019. It was published in the *Federal Register* as final regulations on February 8, 2019. 84 Fed. Reg. 2952.

The final rule concerns the deduction for qualified business income under section 199A of the Internal Revenue Code (Code). According to IRS, the regulations will affect individuals, partnerships, S corporations, trusts, and estates engaged in domestic trades or businesses. The regulations contain an anti-avoidance rule under section 643 of the Code to treat multiple trusts as a single trust in certain cases, which will affect trusts, their grantors, and beneficiaries. IRS states that the rule also requests additional comments on certain aspects of the deduction.

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 8, 2019. 84 Fed. Reg. 2952. It was received by the House of Representatives and the Senate on March 21, 2019. 165 Cong. Rec. H2794, S2039. The rule has a stated effective date of February 8, 2019. There is no finding of good cause and brief statement of reasons incorporated in the rule issued for the rule to take effect earlier than 60 days from publication or receipt by the Congress. See 5 U.S.C. § 808(2). Therefore the final rule does not have the required 60-day delay in its effective date. However, IRS reported to us that it found, for good cause, that a 60-day delay in the effective date 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 at (202) 512-7104.

signed

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-BO71)

(i) Cost-benefit analysis

The Internal Revenue Service (IRS) of the Department of the Treasury (Treasury) stated that Congress enacted section 199A of the Internal Revenue Code to provide individuals, estates, and trusts a deduction of up to 20 percent of Qualified Business Income (QBI) from domestic businesses, which includes trades or businesses operated as a sole proprietorship or through a partnership, S corporation, trust, or estate. As stated in the Summary of Comments and Explanation of Revisions in the final rule, IRS maintains that these regulations are necessary to provide taxpayers with computational, definitional, and anti-avoidance guidance regarding the application of section 199A. IRS also states that the final regulations provide guidance to taxpayers for purposes of calculating the section 199A deduction. They provide, according to IRS, clarity for taxpayers in determining their eligibility for the deduction and the amount of the allowed deduction. Among other benefits, IRS states that this clarity helps ensure that taxpayers all calculate the deduction in a similar manner, which encourages decision-making that is economically efficient contingent on the provisions of the overall Code.

The final regulations contain seven sections, six under section 199A (§§ 1.199A-1 through 1.199A-6) and one under section 643(f) (§ 1.643(f)-1). Each of §§ 1.199A-1 through 1.199A-6 provides rules relevant to the section 199A deduction and § 1.643(f)-1 would establish anti-abuse rules to prevent taxpayers from establishing multiple non-grantor trusts or contributing additional capital to multiple existing non-grantor trusts in order to avoid federal income tax, including abuse of section 199A. The rule then provides an economic analysis that describes the economic benefits and costs of each of the seven sections of the final regulations.

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

IRS determined that the collection of information in this final rulemaking will not have a significant economic impact. Accordingly, IRS maintains that a regulatory flexibility analysis under RFA (5 U.S.C. chapter 6) is not required.

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

IRS did not discuss the agency's actions relevant to the Unfunded Mandates Reform Act of 1995 in the final rule.

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

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

On August 16, 2018, IRS published a proposed rule. 83 Fed. Reg. 40,884. IRS held a public hearing on the rule on October 16, 2018. IRS also received written and electronic 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

IRS 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 Numbers 1545-0123, 1545-0074, and 1545-0092. IRS estimates the collection of information requirements imposed by the final rule will require 10,000,000 respondents to spend an estimated 2.5 hours per response for a total reporting burden of 25,000,000 hours.

Statutory authorization for the rule

According to IRS, this final rule was promulgated under the authority of sections 199A, 643, and 7805 of title 26, United States Code.

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

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

Executive Order No. 13,132 (Federalism)

IRS did not discuss the Order in the final rule.