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January 2, 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: Foreign Tax Credit Guidance Related to the Tax Cuts and Jobs Act, Overall Foreign Loss Recapture, and Foreign Tax Redeterminations*

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 “Foreign Tax Credit Guidance Related to the Tax Cuts and Jobs Act, Overall Foreign Loss Recapture, and Foreign Tax Redeterminations” (RINs: 1545-BP19, 1545-BK55, 1545-AC09). We received the rule on December 17, 2019. It was published in the *Federal Register* as “final and temporary regulations, and removal of temporary regulations” on December 17, 2019. 84 Fed. Reg. 69022. The effective date of the rule is December 17, 2019.

The final rule specifies the methodologies and approaches necessary to conform the existing regulations to changes specified in the Tax Cuts and Jobs Act (TCJA). IRS stated that the final rule provides guidance for taxpayers to determine the amount of their foreign tax credits (FTC) and how to compute their FTC limitation. In addition, IRS stated that the final rule addresses how FTC carryovers are allocated across the new separate categories created by TCJA. According to IRS, the final rule also addresses certain potentially abusive borrowing arrangements and clarifies the regulatory environment by updating inoperative language in parts of the regulations that have not previously been updated to reflect changes made in 1978. IRS stated that the final rule eases transitional administrative burdens associated with the implementation of TCJA. In addition, this rule finalizes proposed regulations on overall foreign losses and a U.S. taxpayer’s obligation to notify IRS of a foreign tax redetermination.

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 that the 60-day delay in the effective date is unnecessary and contrary to the public interest because the delay would place certain taxpayers in the unusual position of having to determine whether to file U.S. income tax returns during the pre-effective date period based on final regulations that are not yet effective. In addition, IRS stated that if taxpayers chose not to follow the final regulations and did not amend their returns after the regulations became effective, it would place significant strain on IRS to ensure that taxpayers correctly calculated their tax liabilities.

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
“FOREIGN TAX CREDIT GUIDANCE RELATED TO THE
TAX CUTS AND JOBS ACT, OVERALL FOREIGN LOSS RECAPTURE,
AND FOREIGN TAX REDETERMINATIONS”
(RINs: 1545-BP19, 1545-BK55, 1545-AC09)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) assessed the benefits and costs of the final rule relative to a non-action baseline reflecting anticipated federal income tax-related behavior in the absence of these regulations. IRS stated that this final rule provides certainty and clarity to taxpayers regarding the allocation of income, expenses, and foreign tax credit carryovers to the separate income categories. IRS also stated that this final rule helps to ensure that taxpayers face more uniform incentives when making economic decisions. Lastly, IRS stated that, in general, economic performance is enhanced when businesses face more uniform signals about tax treatment.

IRS, however, noted that it has not undertaken quantitative estimates of the economic effects of this final rule. Therefore, IRS does not have available data or models to estimate with reasonable precision: (1) the tax stances that taxpayers would likely take in the absence of this final rule or under alternative regulatory approaches; (2) the difference in economic decisions that taxpayers might make between the final regulations and the no-action baseline or alternative regulatory approaches; or (3) how this difference in business activities will affect U.S. economic activity.

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

IRS certified that this final rule will not have a significant economic impact on a substantial number of small entities under RFA.

(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 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 approximately \$154 million (\$100 million adjusted for inflation).

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

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

On December 7, 2018, IRS published a proposed rule. 83 Fed. Reg. 63200. IRS received written comments with respect to the proposed regulations. IRS responded to comments in the

final rule, but also stated that it did not generally address comments that do not pertain to the rules in the proposed regulation or that are otherwise outside the scope of the rule, but that those comments may be considered in future guidance projects addressing the issues discussed in the comments. IRS stated that it scheduled a public hearing on the proposed regulations on March 14, 2019, but it was not held because there were no requests to speak.

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

IRS determined that this final rule contains information collection requirements (ICRs) under the Act. IRS estimates a total burden, including all other related forms and schedules, of 3.157 billion hours and total estimate monetized costs of \$58.148 billion. The Office of Management and Budget (OMB) Control Number is 1545-0123. This burden estimate is an overall estimate for the package of forms associated with this control number and includes, but is not isolated to, ICRs related to this rule. According to IRS, no burden estimates specific to the forms affected by this rule are currently available.

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 submitted it to OMB for review.

Executive Order No. 13,132 (Federalism)

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.