



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

B-332605

October 26, 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: 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-BP36). We received the rule on October 8, 2020. It was published in the *Federal Register* as final regulations on October 9, 2020. 85 Fed. Reg. 64346. The stated effective date of the rule is December 8, 2020.

IRS states the final rule provides guidance on the base erosion and anti-abuse tax added as section 59A to the Internal Revenue Code by the Tax Cuts and Jobs Act. Pub. L. No. 115-97 (Dec. 22, 2017). According to IRS, this final rule addresses the base erosion and anti-abuse tax imposed on certain large corporate taxpayers with respect to certain payments made to foreign-related parties.

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). As noted above, the final regulations were published in the *Federal Register* on October 9, 2020. 85 Fed. Reg. 64346. The Senate received the rule on October 21, 2020. 166 Cong. Rec. S6504 (daily ed. Oct. 25, 2020). To date, the *Congressional Record* does not reflect the date of receipt by the House of Representatives. The rule has a stated effective date of

December 8, 2020. Therefore, the rule does not have the required 60-day delay in its effective date.

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 cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the typed name and title.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carrie E. Mudd
Director, Legal Processing Division
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-BP36)

(i) Cost-benefit analysis

The Internal Revenue Service (IRS) conducted an economic analysis of this final rule compared to a no-action baseline that reflects anticipated federal income tax-related behavior in the absence of the rule. The economic analysis included a discussion of the economic effects of the election to waive deductions. The analysis also discussed the waiver of reinsurance payments and the number of affected taxpayers.

(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 within the meaning of 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 \$100 million in 1995 dollars, 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 6, 2019, IRS published proposed regulations. 84 Fed. Reg. 67046. 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 information collection requirements under the Act. The new information collection is associated with Form 8991, Office of Management and Budget (OMB) Control Number 1545-0123. IRS stated that no burden estimates specific to the rule are currently available, and that the Department of the Treasury (Treasury) has not estimated the burden, including that of any new information collections, related to the requirements under the rule.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

According to IRS, this final rule has been designated as subject to review under the Order pursuant to an April 11, 2018, Memorandum of Agreement (MOA) between Treasury and OMB regarding review of tax regulations. IRS stated that the Office of Information and Regulatory Affairs within OMB has designated the rule as economically significant under the MOA. Accordingly, IRS stated that OMB reviewed the rule.

Executive Order No. 13132 (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.