

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

B-333023

March 1, 2021

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
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: Guidance Related to the Allocation and Apportionment of Deductions and Foreign Taxes, Foreign Tax Redeterminations, Foreign Tax Credit Disallowance Under Section 965(g), Consolidated Groups, Hybrid Arrangements and Certain Payments Under Section 951A*

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 “Guidance Related to the Allocation and Apportionment of Deductions and Foreign Taxes, Foreign Tax Redeterminations, Foreign Tax Credit Disallowance Under Section 965(g), Consolidated Groups, Hybrid Arrangements and Certain Payments Under Section 951A” (RINs: 1545–BP21; 1545–BP22). We received the rule on November 2, 2020. It was published in the *Federal Register* as final and temporary regulations and removal of temporary regulations on November 12, 2020.¹ 85 Fed. Reg. 71998. The stated effective date of the rule is January 11, 2021.

According to IRS, this final rule provides guidance relating to the allocation and apportionment of deductions and creditable foreign taxes, the definition of financial services income, foreign tax redeterminations, availability of foreign tax credits under the transition tax, and the application of the foreign tax credit limitation to consolidated groups. Also, according to IRS, the rule provides guidance related to adjustments to hybrid deduction accounts to take into account certain inclusions in income by a United States shareholder, conduit financing arrangements involving hybrid instruments, and the treatment of certain payments under the global intangible low-taxed income provisions.

¹ The due date for this major rule report was December 2, 2020. Due to a processing error on our part, we are delayed in our issuance of this report.

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). This rule was published on November 12, 2020. 85 Fed. Reg. 71998. It was received by the Senate on November 12, 2020. 166 Cong. Rec. S7036 (daily ed. Nov. 17, 2020). It was received by the House of Representatives on November 17, 2020. 166 Cong. Rec. H7045 (daily ed. Dec. 8, 2020). The rule has a stated effective date of January 11, 2021. 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".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carrie Mudd
Director, Legal Processing Division
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
“GUIDANCE RELATED TO THE ALLOCATION AND APPORTIONMENT
OF DEDUCTIONS AND FOREIGN TAXES, FOREIGN TAX REDETERMINATIONS,
FOREIGN TAX CREDIT DISALLOWANCE UNDER SECTION 965(G),
CONSOLIDATED GROUPS, HYBRID ARRANGEMENTS AND
CERTAIN PAYMENTS UNDER SECTION 951A”
(RINs: 1545–BP21; 1545–BP22)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) conducted an economic analysis assessing the benefits and costs of this final rule relative to a no-action baseline reflecting anticipated federal income tax-related behavior in the absence of these regulations. This analysis included a summary of economic effects and the economic effects of specific provisions.

(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 in any one year 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 May 15, 2020, and August 11, 2020, IRS published proposed rules. 85 Fed. Reg. 29368; 85 Fed. Reg. 48485. IRS received comments and responded to the 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 that will be reflected in the PRA submission associated with Office of Management and Budget (OMB) Control Number 1545-1056. IRS stated that the total estimated burden time is 56,000 hours and the total estimated monetized costs are \$2,583,840, in 2017 dollars, and that IRS will request a revision of the paperwork burden prior to the expiration of OMB Control Number 1545-1056. IRS further stated that the rule could affect the information required to be reported on

Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," and Form 8992, "U.S. Shareholder Calculation of Global Intangible Low-Taxed Income." IRS indicated that changes to the burden estimate will be reflected in the PRA submissions for OMB Control Number 1545-0074 (for individuals) and OMB Control Number 1545-0123 (for business taxpayers).

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)

IRS stated that this final rule has been designated as subject to review under the Order pursuant to the Memorandum of Agreement (MOA) (April 11, 2018) between the Department of the Treasury and OMB regarding review of tax regulations. IRS also stated that the Office of Information and Regulatory Affairs has designated the rule as economically significant under section 1(c) of the MOA and, accordingly, OMB has 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.