

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

B-333545

September 13, 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: Additional Guidance Regarding Limitation on Deduction for Business Interest Expense*

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 “Additional Guidance Regarding Limitation on Deduction for Business Interest Expense” (RIN: 1545-BP73). We received the rule on January 14, 2021. It was published in the *Federal Register* as final regulations on January 19, 2021.¹ 86 Fed. Reg. 5496. The effective date is January 13, 2021.

IRS stated that the final rule provides additional guidance regarding the limitation on the deduction for business interest expense under section 163(j) of the Internal Revenue Code (Code), title 26, United States Code, to reflect amendments made by the law commonly known as the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) and the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). Specifically, IRS stated that the rule addresses the application of the limitation in contexts involving passthrough entities, regulated investment companies (RICs), and controlled foreign corporations. The regulations also provide guidance regarding the definitions of real property development, real property redevelopment, and syndicate. The rule, according to IRS, affects taxpayers that have business interest expense, particularly passthrough entities, their partners and shareholders, as well as foreign corporations and their United States shareholders. The rule also affects RICs that have business interest income, RIC shareholders that have business interest expense, and corporations that are members of a consolidated group.

¹ The due date for this major rule report was February 3, 2021. 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). 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 states that this final rule resolves ambiguity, prevents abuse through the application of several anti-abuse rules, and grants taxpayer relief that would not be available based solely on section 163(j) of the Code.

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 style with a large initial 'S' and 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carrie Mudd
Chief, 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
“ADDITIONAL GUIDANCE REGARDING LIMITATION
ON DEDUCTION FOR BUSINESS INTEREST EXPENSE”
(RIN: 1545-BP73)

(i) Cost-benefit analysis

The Department of Treasury, Internal Revenue Service (IRS) conducted an economic analysis of this final rule. IRS stated that the rule provides certainty and clarity to taxpayers. Also, IRS stated that it projects that the rule will have an annual economic effect greater than \$100 million (\$2020) relative to the no-action baseline. IRS stated that its determination is based on the substantial volume of business interest payments in the economy and the general responsiveness of business investment to effective tax rates, one component of which is the deductibility of interest expense. In addition, IRS stated that it projects the rule will increase investment in the United States and increase the proportion that is debt-financed, relative to the no-action baseline.

IRS also stated that the rule is projected to lead to a decrease in federal tax revenue relative to the no-action baseline, which may increase the federal deficit relative to the no-action baseline. According to IRS, this may lead to a decrease in investment by taxpayers not directly affected by the rule. IRS stated that it determined that the rule provides a net benefit to the United States economy relative to the no-action baseline.

(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 would not have a significant economic impact on a substantial number of small entities.

(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, in the aggregate, or on the private sector, in excess of \$100 million in 1995 dollars.

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

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

On September 14, 2020, IRS published a proposed rule. 85 Fed. Reg. 56846. IRS received approximately 20 written comments. IRS responded to comments in this final rule with the exception of comments outside the scope of the rule.

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

IRS determined that this final rule contains information collection requirements under PRA. IRS stated that the reporting burdens associated with the information collections are included in the aggregated burden estimates for Office of Management and Budget (OMB) control numbers 1545-0074 in the case of individual filers and 1545-0123 in the case of business filers. The overall burden estimates associated with those OMB control numbers, according to IRS, are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of the information collections in 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)

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 government or preempt state law within the meaning of the Order.