

GAO@100 Highlights

Highlights of [GAO-21-277](#), a report to the Chairman, Committee on Finance, U.S. Senate

Why GAO Did This Study

TCJA made sweeping changes to taxing U.S. corporations' international activities: (1) a transition tax on untaxed overseas earnings of foreign subsidiaries that accrued prior to 2017; (2) a tax on the net income earned by foreign subsidiaries exceeding a specified threshold of certain assets; (3) a deduction for income from certain foreign-derived sales of property or services exceeding a specified threshold of certain assets; and (4) a tax on certain payments made to a related foreign party referred to as base erosion payments.

GAO was asked to review IRS's implementation of TCJA and early effects of the law. This report: (1) describes how TCJA's international provisions may be affecting U.S.-based corporations' international business activities; and (2) assesses IRS's and Treasury's development of relevant regulations and guidance to implement the provisions. GAO interviewed representatives from eight companies' tax departments randomly selected from among the 100 largest U.S.-based companies and compared relevant regulations and guidance against procedural requirements.

What GAO Recommends

GAO makes three recommendations to Treasury and IRS: develop more specific paperwork burden estimates for future TCJA regulations; quantify anticipated benefits and costs of these regulations; and identify ways to obtain public comment for significant guidance when appropriate. Treasury and IRS generally agreed with the goals of the recommendations but described challenges. GAO believes the recommendations are valid.

View [GAO-21-277](#). For more information, contact Jessica Lucas-Judy, (202) 512-6806, lucasjudj@gao.gov

April 2021

TAX CUTS AND JOBS ACT

Future Rulemaking Should Provide Greater Detail on Paperwork Burden and Economic Effects of International Business Provisions

What GAO Found

GAO's interviews with officials representing eight selected U.S.-based companies revealed considerable uncertainty in how the international business provisions of Public Law 115-97—commonly known as the Tax Cuts and Jobs Act of 2017 (TCJA)—may be affecting business planning decisions. Some companies reported making specific changes, such as moving intellectual property back to the U.S. in response to a new deduction for income earned from certain foreign-derived sales of property or services attributed to assets located in the U.S. Preliminary studies on another provision taxing net income earned by foreign subsidiaries exceeding a specified threshold of certain assets hypothesized that this provision could encourage moving tangible property outside the U.S. Other business representatives emphasized the importance of nontax factors in business planning decisions, such as entering foreign markets where executives believe potential customers may be located.

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) proposed eight regulations and finalized six of them to implement four international provisions of TCJA between December 2017 and October 2020 (the most current information available at the time of GAO's review) and used guidance to supplement the regulations. The agency generally complied with legal requirements for issuing regulations and offered public comment opportunities for some guidance. However, Treasury and IRS did not fully address expectations set in government-wide guidance related to Paperwork Reduction Act (PRA) burden estimates, economic analysis requirements for regulations, and public comment on significant guidance:

- IRS generally did not provide specific estimates of the incremental paperwork burden of TCJA's international regulations and instead estimated the total burden for all business tax forms. The Office of Information and Regulatory Affairs' PRA guide says agencies should estimate the time and money required for an information collection. GAO's interviews with representatives of selected companies show why it is important for IRS to consider burden because representatives reported challenges, such as gathering required information from foreign subsidiaries.
- Anticipated economic benefits and costs of Treasury's and IRS's regulations were generally not quantified. An executive order requires agencies to provide such information to the extent feasible for regulations with the largest anticipated economic effects. As a result, Treasury and IRS made important decisions about regulations, such as whether to allow foreign military sales to be eligible for a U.S. deduction, without more specific information about the potential economic effects.
- IRS did not provide an opportunity for public comment before issuing revenue procedures related to TCJA's international provisions. The Office of Management and Budget identified ensuring public comment opportunities for significant guidance when appropriate as a leading practice that agencies should follow. The President recently directed a government-wide review of agency guidance processes.