



*Tax Cuts and Jobs Act:
Assessment of the Implementation
of the International Provisions*

September 16, 2019

Reference Number: 2019-34-064

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HIGHLIGHTS

TAX CUTS AND JOBS ACT: ASSESSMENT OF THE IMPLEMENTATION OF THE INTERNATIONAL PROVISIONS

Highlights

**Final Report issued on
September 16, 2019**

Highlights of Reference Number: 2019-34-064
to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

On December 22, 2017, the Tax Cuts and Jobs Act (hereafter referred to as the "Act") was enacted into law. The Act was the most significant revision of the U.S. tax code in more than 30 years. According to the IRS, implementing the Act is its highest priority.

The Act's international reforms included shifting towards more of a quasi-territorial system for multinational corporations. This reduces the incentive for domestic companies to place assets overseas, while seeking to protect the U.S. domestic tax base from tax avoidance by both domestic and foreign-based multinationals. The Act contains 119 provisions that are administered by the IRS and affect both domestic and international taxes. Twenty-three of the 119 tax provisions affected the administration of international taxation.

This included significant provisions such as the Global Intangible Low-Taxed Income by U.S. Shareholders meant to reduce the incentive for U.S.-based multinational corporations to shift profits out of the United States into low- or zero-tax jurisdictions. The Act also introduced the base erosion and anti-abuse tax, designed to prevent certain U.S. corporations with average annual gross receipts during a three-year period of at least \$500 million from reducing their "regular tax liability" by "base erosion payments" made to "foreign related parties."

WHY TIGTA DID THE AUDIT

This audit was initiated to assess the IRS's overall plan to implement key international provisions of the Act.

WHAT TIGTA FOUND

The IRS encountered significant challenges in the development of timely guidance needed to implement international provisions. This affected the Large Business and International Division's ability to develop compliance plans and provide training to its employees.

The Act required the development of new tax forms and instructions as well as significant revisions to existing tax forms that increased the reporting burden for affected taxpayers. For instance, Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, required 22 changes.

The Large Business and International Division also encountered significant challenges related to the processing of certain electronically filed Tax Year 2018 tax returns because of the compressed delivery deadlines for processing changes, the timing of the issuance of guidance, and the Federal Government shutdown. As a result, the Large Business and International Division will have less tax return information available for data analytics critical to the development and implementation of compliance plans during Processing Year 2019.

Lastly, the Large Business and International Division encountered hiring and training challenges in its implementation of the international provisions during Calendar Years 2018 and 2019. As a result, the Large Business and International Division did not have sufficient subject matter expertise to respond to taxpayers' inquiries and develop compliance strategies to ensure that taxpayers comply with the Act's filing requirements for the international provisions.

WHAT TIGTA RECOMMENDED

TIGTA made no recommendations. However, key IRS officials reviewed this report prior to its issuance and agreed with the facts and conclusions presented.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 16, 2019

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Tax Cuts and Jobs Act: Assessment of the
Implementation of the International Provisions (Audit # 201830028)

This report presents the results of our review to assess the Internal Revenue Service’s overall plan to implement key international provisions of the Tax Cuts and Jobs Act.¹ This review is included in the Treasury Inspector General for Tax Administration’s Fiscal Year 2019 Annual Audit Plan and address the major management challenge of Impact of Global Economy on Tax Administration.

Management’s complete response to the draft report is included as Appendix VIII.

If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

¹ Pub. L. No. 115-97. Officially known as “An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for Fiscal Year 2018.”



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Abbreviations

BEAT	Base Erosion and Anti-Abuse Tax
CFC	Controlled Foreign Corporation
FDII	Foreign-Derived Intangible Income
GILTI	Global Intangible Low-Taxed Income
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
JCT	Joint Committee on Taxation
LB&I	Large Business and International
NPRM	Notice of Proposed Rulemaking
STFC	Specified 10-Percent Owned Foreign Corporation
TIGTA	Treasury Inspector General for Tax Administration



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Background

On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act (hereafter referred to as the “Act”).¹ The Act contains 119 provisions that are administered by the Internal Revenue Service (IRS) and affect both domestic and international taxes. The Joint Committee on Taxation (JCT) estimates a net reduction in tax of almost \$1.5 trillion over Fiscal Years 2018 through 2027.² The Act was the most significant revision of the U.S. tax code in more than 30 years. According to the IRS, implementing the Act is its highest priority.

The Act contained 23 provisions that affect the administration of international taxation by the IRS.

IRS officials indicated that they would implement the new law in a way that serves taxpayers, facilitates tax compliance, and protects sensitive data by initially focusing on the following areas:

- Creating new and revised taxpayer forms, instructions, and publications.
- Providing technical support to taxpayers on issues involving interpretations of the law and related published guidance.
- Training IRS employees on the new law and helping the public, tax professionals, and other industry partners understand how the law applies to them by issuing timely guidance.
- Reprogramming information technology systems, with special focus on return processing and compliance systems (the backbone of the tax system).³

The Act’s international reforms included shifting towards more of a quasi-territorial system for multinational corporations. This reduces the incentive for domestic companies to place assets overseas, while seeking to protect the U.S. domestic tax base from tax avoidance by both domestic and foreign-based multinationals. Twenty-three of the 119 tax provisions affected the administration of international taxation by the IRS.⁴ In March 2018, the IRS determined that

¹ Pub. L. No. 115-97. Officially known as “An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for Fiscal Year 2018.”

² See Appendix VII for a glossary of terms.

³ IRS, Strategic Plan, Fiscal Years 2018 through 2022.

⁴ Appendix IV lists all 23 provisions and provides detailed descriptions.



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five of its top 10 (of 119) higher priority provisions for implementation affected international taxation.⁵ Figure 1 lists these five Internal Revenue Code (I.R.C.) provisions:

Figure 1: International Priority Provisions

Act Provision	I.R.C. Sections (§§) ⁶	Title
13501	864(c)(8), 1446	Treatment of Gain or Loss of Foreign Persons From Sale or Exchange of Interests in Partnerships Engaged in Trade or Business Within the United States.
14103	965	Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System of Taxation.
14201	951A	Current Year Inclusion of Global Intangible Low-Taxed Income (GILTI) by U.S. Shareholders.
14202	250	Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income.
14401	59A	Base Erosion and Anti-Abuse Tax (BEAT).

Source: IRS Tax Reform Implementation Office. For the remainder of the report, we refer to these provisions by their I.R.C. Section. Please note that abbreviations are not part of the actual title.

We selected four of the five international provisions that the IRS had identified as high priority for more in-depth testing of IRS implementation during this review.⁷ We also included the implementation of Act Provision 14101, I.R.C. § 245A, in our review because of the large number of taxpayers that it potentially affects. This provision provides that a U.S. corporate shareholder will be entitled to a 100 percent dividends received deduction for foreign-source dividends paid by 10 percent–owned foreign subsidiaries.⁸ The following is a general summary of each of the provisions reviewed in this audit:

⁵ The priority provisions were identified based on the following factors: 1) requires detailed and integrated tracking due to the complexity, criticality, potential risk, and “nonstandard” nature of implementation; 2) is likely to attract public scrutiny; 3) requires detailed mapping of dependencies across Tax Forms and Publications, Information Technology, Counsel, Communications and Liaison, and other organizations; 4) requires intense coordination with external stakeholders; 5) requires significant modifications to information technology systems or development of new systems; and 6) expected to be implemented after April 2018. Appendix VI lists the Top 10 priority provisions identified by the IRS.

⁶ We only included the more significant I.R.C. sections that were added, amended, or repealed.

⁷ We conducted a separate audit on the implementation of Provision 14103. Treasury Inspector General for Tax Administration, Ref. No. 2019-34-033, *Implementation of the Tax Cuts and Jobs Act Deemed Repatriation Tax Presented Significant Challenges* (May 2019).

⁸ Appendix VI lists ten of the 13 high-priority provisions identified by the IRS.



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Treatment of Gain or Loss of Foreign Persons From Sale or Exchange of Interests in Partnerships Engaged in Trade or Business Within the United States (I.R.C. §§ 864(c)(8) and 1446(f)): The Act clarifies the U.S. tax treatment of foreign partners that transfer certain partnership interests by providing that any gain or loss of a foreign transferor from the transfer of an interest, owned directly or indirectly, in a partnership that is engaged in any trade or business within the United States is treated as an effectively connected gain or loss to the extent such gain or loss does not exceed the amount that would be treated as an effectively connected gain or loss to the foreign transferor if the partnership had sold all of its assets for fair market value on the date of transfer. The Act provides a withholding provision designed to implement § 864(c)(8). Specifically, the Act provides that if a portion of the gain on any transfer of an interest in a partnership would be treated as effectively connected with the conduct of a trade or business within the United States under § 864(c)(8), the transferee of such interest is required to deduct and withhold a tax equal to 10 percent of the amount realized on the transfer. The JCT estimated that, for Fiscal Years 2018 through 2027, this provision would generate revenue for the U.S. Government of \$3.8 billion.

Provision 14101 – Deduction for Foreign-Source Portion of Dividends Received by Domestic Corporations From Specified 10-Percent Owned Foreign Corporations (I.R.C. § 245A): The Act provides that when a U.S. corporation owns at least 10 percent of a foreign corporation, the U.S. corporation may claim a deduction equal to the foreign-source portion of any dividend received from the “specified 10-percent owned foreign corporation” (STFC). Because § 245A provides a full deduction for the foreign-source portion of a dividend from an STFC, such dividends are exempt from U.S. tax. Thus, U.S. shareholders that claim the § 245A dividend deduction cannot also claim the benefit of the foreign tax credit or foreign tax deduction.⁹ Of the five provisions covered by this review that were included in the Act, § 245A may have the most significant impact on the international landscape as it was intended to move the U.S. international tax regime away from a worldwide system of taxation.¹⁰ The JCT estimated that, for Fiscal Years 2018 through 2027, this provision would reduce the taxes paid by these corporations by \$223.6 billion.

Provision 14201 – Current Year Inclusion of Global Intangible Low-Taxed Income by U.S. Shareholders (I.R.C. § 951A): The Act includes in a U.S. shareholder’s Federal gross income its pro rata share of certain undistributed income of controlled foreign corporations (CFCs).¹¹ The income inclusion is described as GILTI. The Act effectively defines GILTI as an amount

⁹ I.R.C. § 245A(d)(1), (2).

¹⁰ Commentators have noted that prior to the Act, the United States was one of few industrialized countries with both a worldwide system of taxation and a relatively high corporate tax rate compared to those of other industrialized countries. This created the incentive for U.S. companies to keep earnings offshore because such earnings were not taxed until repatriated to the United States. The § 245A dividend received deduction is intended to encourage U.S. companies to repatriate their accumulated earnings and invest them in the United States. *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 292-294 (2018).

¹¹ I.R.C. § 951A.



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equal to the excess of certain CFC income over an implied 10 percent rate of return on certain CFCs adjusted basis in certain tangible depreciable property that is used to generate tested income. The GILTI provision is meant to reduce the incentive for U.S.-based multinational corporations to shift profits out of the United States into low- or zero-tax jurisdictions. As subsequently described, another provision of the Act allows U.S. shareholders to generally deduct 50 percent of their GILTI, making the effective rate of tax 10.5 percent, *i.e.*, one-half of the corporate tax rate of 21 percent.¹² Under the Act, U.S. shareholders are also permitted to take a deemed paid foreign tax credit of 80 percent of the CFCs' foreign tax attributable to income taken into account in determining their GILTI. The JCT estimated that, for Fiscal Years 2018 through 2027, this provision would generate revenue for the U.S. Government of \$112.4 billion.

Provision 14202 – Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income (I.R.C. § 250): As previously described, U.S. shareholders may deduct 50 percent of their GILTI. The provision also allows domestic corporations to deduct 37.5 percent of their FDII. I.R.C. § 250 describes how taxpayers may claim the GILTI and FDII deductions and also substantively describes FDII. The practical impact of §§ 951A and 250 in tandem is to effectively repeal tax deferral for multinational enterprises with low-tax offshore structures and to deter companies from locating intangible property outside the United States.¹³ The JCT estimated that, for Fiscal Years 2018 through 2027, this provision would reduce taxes paid by \$63.8 billion.

Provision 14401 – Base Erosion and Anti-Abuse Tax (I.R.C. § 59A): This tax is designed to prevent certain U.S. corporations with average annual gross receipts during a three-year period of at least \$500 million from reducing their “regular tax liability” by “base erosion payments” made to “foreign related parties.”¹⁴ The BEAT is generally determined by comparing 10 percent (5 percent for tax years beginning in Calendar Year 2018 and 12.5 percent for tax years beginning after Calendar Year 2025) of the taxpayer’s modified taxable income to the taxpayer’s regular tax liability. The JCT estimated that, for Fiscal Years 2018 through 2027, this provision would generate revenue for the U.S. Government of \$149.6 billion.

Implementation of international provisions

The IRS established the Tax Reform Implementation Office with centralized responsibility for leading the Service-wide, coordinated implementation of the new Act provisions. According to the IRS, the Tax Reform Implementation Office was responsible for ensuring a disciplined, project management approach to the planning and execution of this complex initiative, which touched on virtually every organization within the IRS and required significant changes to tax administration. The Tax Reform Implementation Office also oversaw the related forms, publications, information technology systems, training content and public guidance that needed

¹² I.R.C. § 250.

¹³ *Tax Cuts and Jobs Act, Law Explanation and Analysis*, CCH Publication, p. 340-341 (2018).

¹⁴ I.R.C. § 59A.



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to be updated or developed. The Tax Reform Implementation Office formally ended on March 2, 2019, when it transitioned its duties to the business operating divisions.

The Large Business and International (LB&I) Division was the designated operating division responsible for the implementation of the international tax provisions. This includes coordinating with the other IRS divisions and functions that have a role in the implementation of the provisions. Other IRS organizations with a significant role in the implementation of these provisions include:

- Office of Chief Counsel – Responsible for the drafting and publishing of guidance such as regulations, notices, and revenue procedures.
- Information Technology organization – Responsible for making needed system modifications.

Once the LB&I Division was assigned responsibility for the implementation of these provisions, it was required to develop an implementation action plan. The LB&I Division action plan outlines the steps that needed to be taken to implement the international provisions as well as detailed estimated delivery dates associated with the various steps to be taken for implementation.¹⁵ The steps needed to implement the international provisions included issuing guidance to taxpayers describing the new law and its requirements, developing new tax forms and instructions and modifying existing ones, providing training to IRS employees, and updating the Internal Revenue Manual.

This audit was conducted while changes were being made to the implementation of the international provisions of the Act and while the IRS was updating its implementation strategy. Changes and updates that occurred after we concluded our analyses in July 2019 may not be reflected in this report. This review was performed with information obtained from the Tax Reform Implementation Office, the LB&I Division, the Office of Chief Counsel, and the Information Technology organization. The review was performed during the period March 2018 through July 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹⁵ Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2018-44-027, *Tax Cuts and Jobs Act: Assessment of Implementation Planning Efforts* (April 2018).



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Results of Review

The Tax Cuts and Jobs Act significantly affected the administration of international taxation by the IRS. The Act contained 23 international provisions that required the development of guidance to describe the new laws and requirements to taxpayers, the development of new tax forms and instructions as well as the modification of others, the modification of computer systems to process new and revised tax forms, and the hiring and training of personnel with subject matter expertise. The IRS encountered significant challenges in the implementation of international provisions, which affected its ability to develop timely guidance, process tax returns, and hire subject matter experts and train personnel. The partial Federal Government shutdown slowed the IRS's ability to overcome these challenges.

*Delays in the Issuance of Final Regulations Have Affected the
Implementation of the International Provisions*

According to the Internal Revenue Manual, the mission of the IRS is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all. It is the duty of the IRS to correctly apply the laws enacted by Congress; determine the reasonable meaning of various I.R.C. provisions in light of the congressional purpose in enacting them; and perform this work in a fair and impartial manner, with neither a Government nor a taxpayer point of view.¹⁶

The IRS's Office of Chief Counsel is solely responsible for issuing published guidance, but the process involves collaborating with other Governmental functions. The Department of the Treasury (hereafter referred to as the Treasury Department) makes the final decision as to what form the published guidance will take and the information conveyed in the published guidance. The Treasury Department's Office of Tax Policy has the responsibility to establish policy criteria reflected in regulations and rulings and, together with the IRS and Office of Chief Counsel, prepare regulations and rulings. The Office of Chief Counsel will also coordinate with IRS business operating divisions to ensure that the resulting published guidance can be implemented through IRS forms and computer systems.¹⁷

The Treasury Department and the IRS have determined thus far that the implementation of 18 of the 23 international provisions needed the issuance of 39 guidance products.¹⁸ This included the

¹⁶ IRM 32.1.1.1, *Role of Published Guidance in Tax Administration* (August 11, 2004).

¹⁷ TIGTA, Ref. No. 2019-14-025, *Status of the Office of Chief Counsel's Issuance of Tax Cuts and Jobs Act Guidance* (May 2019).

¹⁸ A complete list of the guidance issued and planned for the 23 provisions can be found in Appendix V. This does not include the issuance of forms, instructions, publications, and other soft guidance for filing tax returns.



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issuance of 16 Treasury Regulations, 15 Notices of Proposed Rulemaking (NPRM), six notices, and two revenue procedures.¹⁹ As of July 10, 2019, the IRS issued 24 of 39 planned products. Figure 2 shows the types of guidance planned and issued for the 23 international provisions.

Figure 2: Guidance for International Provisions (as of July 10, 2019)

Type of Guidance	Number of Provisions Affected	Total Planned	Total Issued
Treasury Regulations	18	16	4
Notice of Proposed Rulemaking (Proposed Regulations)	18	15	12
Notices	2	6	6
Revenue Procedures	2	2	2

Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of IRS guidance found on www.IRS.gov and a May 2019 TIGTA audit report on the Act (detailed below).

TIGTA issued a report in May 2019 on the status of the Office of Chief Counsel’s efforts to develop and issue published guidance related to the Act, and that report provides a more thorough description of the IRS’s process to develop and issue guidance. That report concluded that, as of March 2019, the Office of Chief Counsel made significant progress in identifying, creating, and issuing the guidance needed to educate the public. However, the number of tax law changes in the Act and the short implementation period made the task of providing timely guidance more challenging, and much work remained to issue complete guidance. A number of factors complicated the Office of Chief Counsel’s efforts to issue public guidance, such as the sheer volume and scope of the Act provisions, the review and approval process, and hiring constraints.²⁰ In addition, the demand for published guidance was immediate because most provisions of the tax law went into effect on January 1, 2018, affecting tax returns filed in early Calendar Year 2019. This was particularly pertinent to the implementation of international

¹⁹ An NPRM (or proposed regulation), a form of IRS guidance, is a public pronouncement which may contain guidance that involves substantive interpretations of the I.R.C. or other provisions of the law. These are proposed regulations as the IRS seeks input from the public and other stakeholders before publishing final regulations. Treasury Regulations (also referred to as Treasury Decisions) carry the force and effect of law. Notices are also public pronouncements (as with NPRMs), and may similarly contain guidance that involves substantive interpretations of the I.R.C. or other provisions of the law. Revenue procedures are official statements of a procedure that affects the rights or duties of taxpayers or other members of the public under the I.R.C., related statutes, tax treaties, and regulations that should be a matter of public knowledge. A revenue procedure provides return filing or other instructions concerning an IRS position.

²⁰ TIGTA, Ref. No. 2019-14-025, *Status of the Office of Chief Counsel’s Issuance of Tax Cuts and Jobs Act Guidance* (May 2019).



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provisions, as illustrated by the deemed repatriation tax of § 965 that was effective for Calendar Year 2017 affecting returns filed during early Calendar Year 2018.

During this audit, the Office of Chief Counsel stated that the Federal Government shutdown somewhat slowed the development of guidance for the international provisions of the Act for the following reasons:

- Time that otherwise would have been spent on developing guidance was diverted to addressing administrative shutdown topics such as considering who was allowed to work on different subject matters.
- The Treasury Office of Tax Policy, with which the Office of Chief Counsel works closely in issuing guidance, was initially furloughed and this affected its ability to work with the Treasury Department on guidance projects.
- The Office of the Federal Register could publish guidance only if certain criteria were met, the process of drafting a letter explaining why the guidance met the criteria was time-consuming, and the dynamic with that office was such that the Office of Chief Counsel was delayed in scheduling a hearing on the proposed regulations for § 951A.

For the five significant international provisions reviewed during this audit, the IRS has published 13 guidance products, including seven NPRMs and three Treasury Regulations. The IRS still plans to issue five final regulations. Figure 3 details the published guidance for the five provisions, including the planned guidance.²¹

**Figure 3: Published Guidance for International
I.R.C. §§ 864, 1446, 245A, 951A, 250, and 59A (as of June 28, 2019)**

Act Provision	I.R.C. §§ ²²	Provision Title	Published Guidance Issued or Planned	Date Publicly Available
13501	864(c)(8), 1446	Treatment of Gain or Loss of Foreign Persons From Sale or Exchange of Interests in Partnerships Engaged in Trade or Business Within the United States	Notice 2018-08	12/29/2017
			Notice 2018-29	4/2/2018
			REG-113604-18 (NPRM)	12/20/2018
			REG-105476-18 (NPRM)	5/7/2019
			2 Treasury Regulations Planned	

²¹ Appendix V provides a list of guidance issued and planned for all 23 international provisions.

²² We included only the more significant I.R.C. sections related to the Act provisions that were added, amended, or repealed.



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Act Provision	I.R.C. §§ ²²	Provision Title	Published Guidance Issued or Planned	Date Publicly Available
14101	245A	Deduction for Foreign-Source Portion of Dividends Received by Domestic Corporations From Specified 10-Percent Owned Foreign Corporations	REG-114540-18 (NPRM) ²³	10/31/2018
			Treas. Reg. 9859 (REG-114540-18)	5/22/2019
			REG-106282-18 (NPRM) ²⁴	6/14/2019
			Treas. Reg. 9865 ²⁵	6/14/2019
			1 Treasury Regulation Planned	
14201	951A	Current Year Inclusion of Global Intangible Low-Taxed Income by U.S. Shareholders	Revenue Procedure 2018-48	9/13/2018
			REG-104390-18 (NPRM)	9/13/2018
			Treas. Reg. 9866 (REG-104390-18)	6/14/2019
14202	250	Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income	REG-104464-18 (NPRM)	3/4/2019
			1 Treasury Regulation Planned	
14401	59A	Base Erosion and Anti-Abuse Tax	REG-104259-18 (NPRM)	12/13/2018
			1 Treasury Regulation Planned	

Source: IRS guidance found on www.irs.gov. Note: Treas. Reg. = Treasury Regulation.

According to the Administrative Procedure Act, agencies must follow an open public process when they issue regulations.²⁶ The NPRM is the official document that announces and explains an agency's plan to address a problem or accomplish a goal. All proposed rules must be published in the Federal Register to notify the public and to give them an opportunity to submit comments.

²³ NPRM providing guidance coordinating I.R.C. § 956 with the participation exemption system for taxing foreign-source income under § 245A.

²⁴ NPRM by cross-reference to final temporary regulations (TD 9865).

²⁵ Final Temporary Regulations.

²⁶ The Administrative Procedure Act, Pub. L. 79-404, 60 Stat. 237, enacted June 11, 1946, is the U.S. Federal statute that governs the way in which administrative agencies of the Federal Government of the United States may propose and establish regulations.



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The proposed rule and the public comments received form the basis of the final regulation.²⁷ With the issuance of the NPRMs, the IRS solicited and received stakeholders' comments for it to consider in drafting the final Treasury Regulations. For the §§ 951A, 250, and 59A NPRMs, the IRS received numerous comments and concerns from the various stakeholders such as U.S. Congressmen, law firms, and various industry groups. For the five significant provisions evaluated during this review, a summary of the guidance issued and of select comments received from stakeholders is provided.

Provision 13501 (I.R.C. §§ 864(c)(8) and 1446)

When the Act passed, stakeholders indicated that, in the case of a disposition of a publicly traded partnership interest, applying the new § 1446(f) without guidance presents significant practical problems. For example, according to the IRS, stakeholders indicated that a transferee of an interest in a publicly traded partnership typically will be unable to determine whether the transferor partner is foreign or domestic or whether any portion of a transferor partner's gain would be treated under new § 864(c)(8) as an effectively connected gain.

In response, the Treasury Department and the IRS made available to the public a notice on December 29, 2017, to announce that they were suspending the application of new § 1446(f) of the I.R.C. in the case of a disposition of certain publicly traded partnership interests.²⁸ The notice clarified that the temporary suspension is limited to dispositions of partnership interests that are publicly traded and does not extend to non-publicly traded partnership interests. The notice also expressed the intention to issue future regulations or other guidance on how to withhold, deposit, and report tax withheld under the new § 1446(f) and requested comments related to this notice. In response, the Treasury Department and the IRS received comments from stakeholders requesting that the temporary suspension also include non-publicly traded partnership interests until guidance is issued under the new § 1446(f).

On April 2, 2018, the Treasury Department and the IRS made available to the public guidance providing temporary rules and announcing an intent to issue proposed regulations under § 1446(f) with respect to transfers of certain non-publicly traded partnership interests.²⁹ The notice also provided interim guidance on reporting and paying the amount required to be withheld under § 1446(f).

On December 20, 2018, the Treasury Department and the IRS made available to the public proposed regulations under § 864(c)(8). The proposed regulations provide rules for determining the amount of gain or loss treated as effectively connected with the conduct of a trade or business within the United States under § 864(c)(8). Additionally, the proposed regulations contained rules coordinating § 864(c)(8) with other provisions of the I.R.C., such as §§ 741 and 751 and

²⁷ *A Guide to the Rulemaking Process*, Prepared by the Office of the Federal Register.

²⁸ Notice 2018-08, *Revised Timeline and Other Guidance Regarding the Implementation of New Section 1446(f)*.

²⁹ Notice 2018-29, *Guidance Regarding the Implementation of New Section 1446(f) for Partnership Interests That Are Not Publicly Traded*.



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§ 897.³⁰ We identified one comment from a stakeholder indicating, among other items, that the proposed regulations should more clearly address the interaction of § 864(c)(8) with domestic law provisions that provide for an exemption from U.S. Federal income taxes on a partner's share of effectively connected income in which a partner is eligible for such an exemption. On May 7, 2019, the Treasury Department and the IRS made available to the public proposed regulations under § 1446(f),³¹ which provide the withholding and reporting requirements related to the transactions described in the December proposed regulations.

Provision 14101 (I.R.C. § 245A)

On October 31, 2018, the Treasury Department and the IRS made available to the public proposed regulations reducing the amount determined under § 956 for certain domestic corporations that own stock in CFCs.³² These regulations have the effect of extending the dividends received deduction under § 245A to a domestic corporate U.S. shareholder otherwise experiencing a § 956 inclusion. According to the IRS, no substantive comments were received and final Treasury Regulations were made available to the public on May 22, 2019.³³

On June 14, 2019, the Treasury Department and the IRS made available to the public final temporary regulations that limit the dividends received deduction available for certain dividends received from current or former CFCs.³⁴ According to the document, the text of these temporary regulations also serves as the text of the proposed regulations set forth in a notice of proposed rulemaking published in the Federal Register. The Treasury Department and the IRS requested comments on these rules.

Provision 14201 (I.R.C. § 951A) and Provision 14202 (I.R.C. § 250)

On September 13, 2018, the Treasury Department and the IRS made available to the public proposed regulations under § 951A, providing guidance related to GILTI.³⁵ The proposed regulations included:

- Providing guidance for U.S. shareholders to determine the amount of GILTI to include in gross income.
- Revising the definition of "pro rata share," for GILTI and subpart F income inclusions.

³⁰ NPRM, REG-113604-18, *Gain or Loss of Foreign Persons from Sale or Exchange of Certain Partnership Interests*.

³¹ NPRM, REG-105476-18, *Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in the Conduct of a U.S. Trade or Business*.

³² NPRM, REG-114540-18, *Amount Determined Under Section 965 for Corporate U.S. Shareholders*.

³³ Final Regulations, Treasury Decision 9859.

³⁴ Final temporary regulations, Treasury Decision 9865, *Limitation on Deduction for Dividends Received From Certain Foreign Corporations and Amounts Eligible for Section 954 Look-Through Exception*.

³⁵ NPRM, REG-104390-18, *Guidance Related to Section 951A (Global Intangible Low-Taxed Income)*.



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- Anti-abuse rules for tax avoidance transactions.
- New rules for basis adjustments because of the use of tested losses.

The Treasury Department and the IRS received numerous comments on the proposed regulations for consideration. In general, these comments identified potential issues arising under the proposed regulations and suggested solutions. Some of the more common recommended solutions included exclusion of high-taxed income from the gross income test; recommendations that anti-abuse rules be clarified; application of § 245A to dividend income; and basis reduction for net used tested loss included in consolidated GILTI calculation.

The IRS considered the comments received and made modifications to the final regulations. For instance, the Treasury Department and the IRS clarified the pro rata share anti-abuse rule in response to several comments submitted by stakeholders. The IRS made available to the public the final regulations on June 14, 2019.³⁶

On March 4, 2019, the Treasury Department and the IRS made available to the public proposed regulations under § 250.³⁷ These proposed regulations provide guidance on both the computation of the deductions available under § 250 and determination of FDII. In addition, the proposed regulations provide rules for the computation of FDII in the consolidated tax return context. They also include anti-abuse rules such as anti-avoidance rules for calculating a domestic corporation's qualified business asset investment.

The Treasury Department and the IRS have received numerous comments from stakeholders on the FDII provision. For instance, several comments were received regarding the documentation needed to substantiate FDII transactions. The Treasury Department has responded indicating that the final regulations will give companies more options for proving they are qualified for the FDII deduction. Other comments vary by industry and include:

- FDII services should include maintenance, repair, or similar services performed on property temporarily in the United States.
- Request for specific guidance related to the classification of digital services.
- Whether taxpayers must apportion net operating losses incurred before the FDII regulations were effective to FDII, wondering how it affects the net operating loss incurred prior to the effective date of the Treasury Regulations.

The proposed regulations apply to domestic corporations with tax years ending on or after March 4, 2019. Therefore, taxpayers do not have to apply them to Tax Year 2018. The Treasury Department and the IRS provided a transition rule for documentation requirements for tax years

³⁶ Final and Temporary Regulations, Treasury Decision 9866, *Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits*.

³⁷ NPRM, REG-104464-18, *Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income*.



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beginning before March 4, 2019. As a result, calendar year taxpayers may rely on that rule for all of 2019.

Provision 14401 (I.R.C. § 59A)

On December 13, 2018, the IRS made available to the public proposed regulations under § 59A providing guidance on the application of BEAT rules for determining whether a taxpayer is an applicable taxpayer and rules for computing the taxpayer's BEAT liability.³⁸ The proposed regulations also included specific provisions addressing:

- Statutory aggregation rules.
- Application of the BEAT to partnerships and consolidated groups.
- Treatment of noncash payments as base erosion payments.
- Application of various exceptions from base erosion payments in certain circumstances.
- Accounting for net operating loss carryforwards when computing modified taxable income.

The IRS received numerous comments from stakeholders in response to the proposed regulations. In general, these comments identified potential issues arising under the proposed regulations and made recommendations for consideration in the drafting of the final regulations. Some of the more common issues included recommendations regarding the computation of modified taxable income, requests for an exclusion for payments subject to a subpart F inclusion, requests for guidance relating to transactions in which a taxpayer serves as a middleman for a payment to a foreign related party, recommendations regarding an exception for corporate nonrecognition transactions, and additional guidance relating to insurance and reinsurance.

I.R.C. § 7805(b) provides that any regulation made available to the public within 18 months of a statute's enactment can have retroactive application to the date of enactment. Generally, the final regulations for these international provisions needed to be finalized by June 22, 2019, in order to allow guidance to be applied retroactively to the date of the law's passage.³⁹ If the IRS finalized the Treasury Regulations by June 22, 2019, then the new rules would generally apply to taxable years beginning after December 31, 2017. I.R.C. § 7805(b) also allows that final regulations can be made retroactive to the date on which the proposed regulations are filed with the Federal Register. If the regulations were not finalized by June 22, 2019, they would apply to taxable years ending on or after the date the proposed regulations were published. For instance, the proposed regulations for § 59A (BEAT) were published in the Federal Register on

³⁸ NPRM, REG-104259-18, *BEAT*.

³⁹ June 22, 2019, is 18 months from the Act's enactment date of December 22, 2017.



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December 17, 2018. Because the IRS missed the June 22, 2019, deadline, the proposed regulations would still apply to taxable periods ending on or after December 17, 2018. That would allow the proposed regulations to apply to taxable years ending on December 31, 2018. However, if the IRS makes substantive revisions to the proposed regulations, it may decide not to apply those revisions retroactively.

The IRS fully finalized only four (for §§ 245A, 951A, and 965) of the 16 proposed regulations related to the implementation of the 23 international provisions. As of July 10, 2019, the IRS has issued nine other proposed regulations that are generally waiting to be finalized.⁴⁰ Four of the nine were issued during Calendar Year 2018. Figure 4 lists the nine regulations:

Figure 4: Proposed Regulations Not Finalized by July 10, 2019

Proposed Regulation	Date Publicly Available	Related Act Provision(s)	I.R.C. §§ ⁴¹
REG-105600-18 ⁴²	11/28/2018	14301 14302 14303 14304 14502	78, 863(b), 864(e), 902, 904(d), 904(g), 960
REG-104259-18	12/13/2018	14401	59A
REG-113604-18	12/20/2018	13501	864(c)(8), 1446
REG-104352-18	12/20/2018	14222	245A, 267A
REG-104464-18	3/4/2019	14202	250
REG-105476-18	5/7/2019	13501	864(c)(8), 1446
REG-106282-18	6/14/2019	14101	245A
REG-101828-19	6/14/2019	14213 14214	951(b), 958(b)
REG-105474-18	7/10/2019	14501	1297

Source: IRS guidance found on www.irs.gov.

⁴⁰ The three does not include Treasury Regulation 9865. This was issued as a Final Temporary Regulation.

⁴¹ We included only the more significant I.R.C. sections that were added, amended, or repealed.

⁴² Portions of the proposed regulations contained in REG-105600-18, released on November 28, 2018, under §§ 78, 861, and 965 were finalized together with the final regulations under I.R.C. § 951A released on June 14, 2019 (Treasury Regulation 9866).



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There are still three proposed regulations remaining to be issued. Given the number of regulations that need to be finalized and how these regulations interact with each other, taxpayers will likely discover problems as they work with the regulations and apply them to their facts.

The LB&I Division raised several concerns related to the issuance of final regulations. As recently as February 2019, LB&I Division management indicated that they continue to have concerns with employee training and compliance planning due to the timing of the guidance. They also continued to face difficulties with informing employees on how to handle taxpayer inquiries in areas in which there is uncertainty on certain technical aspects, especially with the international provisions. The LB&I Division noted particular concerns in the timing of final regulations for §§ 951A (GILTI), 250 (FDII) and 59A (Base Erosion) as these three provisions are the most significant new provisions affecting cross-border business transactions and the tax policy aim of preventing base erosion.

Implementation of the International Provisions Required the Development of New Tax Forms and Instructions and Significant Changes to Existing Forms

The implementation of the international provisions required the development of new tax products, such as tax forms and instructions, and the modification of existing products so that taxpayers can comply with their tax obligations starting with Tax Year 2018. Implementation of the 23 international provisions required the LB&I Division to create 19 new tax products and revise 92 existing tax products for Tax Year 2018. These 111 tax products included 51 tax forms and schedules, 54 tax form instructions, and six publications. Figure 5 contains a breakdown of the tax products that were newly developed or revised for the implementation of the 23 international provisions.

Figure 5: Tax Forms, Instructions, and Publications Developed or Modified for International Provisions

Type of Tax Year 2018 Product	Total New Products	Total Revised Products	Total
Tax Forms and Schedules	9	42	51
Tax Form Instructions	9	45	54
Publications	1	5	6
Total	19	92	111

Source: The LB&I Division and TIGTA review of tax forms and instructions found on www.irs.gov.

The IRS's Tax Forms and Publication function and the LB&I Division reviewed the new legislation and identified the tax forms, instructions, and publications that needed to be developed and updated. Once the new forms and instructions are developed, the IRS will make



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draft versions of the tax forms and instructions available to internal and then external stakeholders for comment at www.irs.gov/DraftForms and provide them with the opportunity to submit comments. For the five provisions reviewed during this audit, the IRS developed three new tax forms and related instructions for Tax Year 2018 and is currently in the process of developing another new form for Tax Year 2020. The following provides more information on the four new tax forms.

- Form 8991, *Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts*. Posted to the IRS website on February 5, 2019, this form will be used by the applicable taxpayer to determine the base erosion minimum tax amount for the year. This includes determining the taxpayer's base erosion payments and tax benefits as well as determining the credits that reduce regular tax liability in computing the base erosion minimum tax amount (§ 59A).
- Form 8992, *U.S. Shareholder Calculation of Global Intangible Low-Taxed Income*. Posted to the IRS website on January 8, 2019, this form will be used to compute a U.S. shareholder's GILTI inclusion (§ 951A).
- Form 8993, *Section 250 Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income*. Posted to the IRS website on December 26, 2018, this form will be used to figure the amount of the eligible deduction for FDII and GILTI under § 250.
- Form 8288-C, *Statement of Withholding Under Section 1446(f)(4) for Withholding on Dispositions by Foreign Persons of Partnership Interests*. The IRS is in the process of developing this form for when a transferee of a partnership interest from a foreign partner does not fully withhold under § 1446(f)(1). In such an instance, the partnership is required under § 1446(f)(4) to withhold and report on distributions that the partnership makes to the transferee. The taxpayer reports this on Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*, and Form 8288-C, *Statement of Withholding Under Section 1446(f)(4) for Withholding on Dispositions by Foreign Persons of Partnership Interests*.

The final tax forms for Forms 8991, 8992, and 8993 were all available to taxpayers by February 5, 2019, for use in filing Tax Year 2018 returns. The IRS made the related instructions available by February 6, 2019. The implementation of §§ 245A, 951A, 250, and 59A also required changes to the Form 1120 series⁴³ of tax returns for corporations that required the reporting of amounts associated with these provisions. For instance, the following changes were made to the Tax Year 2018 Form 1120:

⁴³ Various corporate income tax returns, such as Form 1120, *U.S. Corporation Income Tax Return*, and Form 1120S, *U.S. Income Tax Return for an S Corporation*.



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- Schedule C (*Dividends, Inclusions, and Special Deductions*), Line 13, for the reporting of amounts related to the foreign-source portion of dividends that are received from the STFC (§ 245A).
- Schedule C, Line 17, for the reporting of GILTI from Form 8992 (§ 951A).
- Schedule C, Line 22, for the reporting of the § 250 deduction claimed for FDII and GILTI from Form 8993 (§ 250).
- Schedule J (*Tax Computation and Payment*), Line 3, for the reporting of BEAT from Form 8991 (§ 59A).

Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, also required significant revision after the passage of the Act. This form and its schedules is an informational return, not a tax return. Certain U.S. persons who are officers, directors, or shareholders in certain foreign corporations are required to file the form. The form and attached schedules are used to satisfy the reporting requirements of transactions between foreign corporations and U.S. persons. To provide perspective on the impact of these new provisions of Form 5471, IRS statistical data indicated that nearly 15,000 U.S. corporations completed and filed more than 90,200 Forms 5471 with their Tax Year 2014 income tax returns.⁴⁴

The Tax Year 2018 Form 5471 contained changes related to four of the five provisions that we focused on in our review.⁴⁵ For example, § 245A provides for a new subpart F inclusion for income from hybrid dividends of tiered corporations, and § 250 allows certain domestic corporations a deduction for the eligible percentage of FDII and GILTI. Overall, the Tax Year 2018 form contained 22 changes from the prior year's form.

Stakeholders have commented that the result of these revisions is an extensive expansion of information requirements and increased compliance costs for owners of foreign corporations, and especially CFCs. One stakeholder commented that the Tax Year 2018 version of Form 5471 has expanded to 16 pages (from eight pages in Tax Year 2017) and could increase to 37 pages under certain reporting conditions—and a separate Form 5471 is generally required for each foreign company.

The final Tax Year 2018 Form 5471 and schedules were made available to taxpayers in December 2018 and the instructions in January 2019. Failure to complete the form in its entirety can result in a penalty of \$10,000 for each Form 5471 that does not include complete and

⁴⁴ Most recent source of Form 5471 filings per the IRS, Statistics of Income Division, September 2017. According to the IRS, this information included only Category 4 filers of Form 5471 to avoid double counting of CFCs, income, and assets. Category 4 filers include a U.S. person who had control of a foreign corporation during the annual accounting period of the foreign corporation.

⁴⁵ International Provisions 14101, 14201, 14202, and 14401.



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accurate information.⁴⁶ As a result, the many changes to the Form 5471 have resulted in an increased reporting burden to affected taxpayers.⁴⁷

[The Challenges in Making Processing Changes for the 2019 Filing Season Affected the Large Business and International Division's Compliance Plans](#)

One of the goals of the IRS's Strategic Plan for Fiscal Years 2018 through 2022 is to protect the integrity of the tax system by encouraging compliance through administering and enforcing the tax code. A supporting objective is to identify and plan for compliance risks proactively, which includes creating comprehensive strategies to prevent and address noncompliance in high-risk areas.

A key focus of the LB&I Division's mission is to identify the highest potential compliance risks among taxpayers and to assign resources to address these potential risks. In Calendar Year 2017, the LB&I Division announced a new approach designed to address specific compliance issues it refers to as "campaigns." The compliance campaigns involve a more thorough analysis of data to support the identification and evaluation of a compliance issue; a more deliberate consideration of potential treatment streams; decisions about the resources to be deployed; identification of training, mentoring, networking, and tools needed; and a robust feedback mechanism to ensure that all elements of a campaign are continuously improved.

The international provisions contain some of the most significant revenue raisers of the Act. For instance, for Fiscal Years 2018 through 2027, § 59A has projected revenue of \$149.6 billion and § 951A has projected revenue of \$112.4 billion.⁴⁸ The LB&I Division has encountered significant challenges related to the processing of certain electronically filed Tax Year 2018 tax returns that has affected its ability to develop compliance plans for key international provisions. This occurred because of the compressed delivery deadlines for processing changes, the timing of the issuance of guidance, and the Federal Government shutdown. As a result, the LB&I Division will have less tax return information available for data analytics critical to the development and implementation of compliance plans during Processing Year 2019.

The LB&I Division, the Wage and Investment Division's Submission Processing function, and the Information Technology organization worked together to determine the computer programming changes necessary to process the new or revised tax forms. The IRS filing season delivery cycle for processing changes includes completion of business requirements, Work

⁴⁶ I.R.C. § 6038(b)(1). If any person fails to furnish, within the time prescribed, any information with respect to any foreign business entity required, such person shall pay a penalty of \$10,000 for each annual accounting period with respect to which such failure exists.

⁴⁷ Taxpayer burden is defined as the time or money taxpayers spend to comply with their Federal tax obligations.

⁴⁸ Though not included in this review, § 965 has projected revenue of \$338.8 billion in Fiscal Years 2018 through 2027.



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Request Notifications, Unified Work Requests, system development, and testing. As we previously reported, a normal filing season delivery cycle spans 17 months; however, to support the 2019 Filing Season, Unified Work Requests, requirements, and Work Request Notifications were worked under a compressed schedule. As a result, the Information Technology organization asked the business operating divisions to defer submitting the requirements to create new tax forms in an automated format that would enable them to collect data efficiently for compliance purposes.⁴⁹

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⁴⁹ TIGTA, Ref. No. 2019-24-035, *The Internal Revenue Service Completed Extensive Programming and Systems Changes in a Compressed Timeframe for the 2019 Filing Season* (June 2019).

⁵⁰ This information was provided by the IRS and are from the population of tax returns posted to the Business Master File through Processing Year 2019, Cycle 21. Cycle 21 data would be through May 22, 2019.

⁵¹ We identified this information from TIGTA’s Data Center Warehouse and the Form 1120 information as of Cycle 201925 through June 19, 2019. The GILTI and FDII information was not available for analysis.



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Hiring and Training Challenges Hindered the Implementation of the International Provisions

The recruitment of new employees and retention of existing employees is critical to ensuring the maintenance of a high-quality workforce capable of meeting the needs of the American public. Without a dedicated, highly skilled workforce, the IRS will be unable to successfully achieve its mission of providing America’s taxpayers with top quality service by helping them understand and meet their tax responsibilities and enforcing the law with integrity and fairness to all.

The LB&I Division encountered hiring and training challenges in its implementation of the international provisions during Calendar Years 2018 and 2019.⁵² As a result, the LB&I Division did not have sufficient subject matter expertise to respond to taxpayer questions and develop compliance strategies to ensure that taxpayers comply with the Act’s filing requirements for the international provisions.

During Calendar Year 2018, the LB&I Division identified a risk to its implementation of the international provisions related to the hiring of qualified personnel. Specifically, it noted that it struggled with the pace of hiring and it was unable to hire several senior advisors expected to help with developing training and compliance strategies. This diminished its ability to implement the provisions. According to the LB&I Division, it has lost nearly 40 percent of its personnel since Calendar Year 2011 and had difficulty hiring personnel with the skills needed for tax reform implementation.

LB&I Division management stated that in June 2019 they were able to hire two senior advisors to assist with the implementation of the international provisions. However, there were significant delays from the time they were approved to fill these positions in 2018 until the advisors were fully onboard. This was due to hiring priorities within the IRS’s Human Capital Office. Because of these additions, the LB&I Division believes this challenge has been alleviated.

The LB&I Division has also experienced challenges in providing training on the Act provisions to its employees. It was able to provide more generalized and informal training to its employees throughout Calendar Year 2018 and early Calendar Year 2019. For instance, it secured licenses from the Practising Law Institute for all its employees to be able to access external training on tax reform provisions. The LB&I Division had originally planned to deliver more specific and

⁵² The LB&I Division’s concerns relating to hiring and training would also pertain to the domestic provisions of the Act it is responsible for implementing.



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in-depth training to its employees during early Calendar Year 2019; however, because of the delay in the issuance of final guidance, which was exacerbated by the Federal Government shutdown, this training is expected to be delivered in the second quarter of Fiscal Year 2020.⁵³

The LB&I Division indicated that, because of the time frame for the final guidance, the training delivered during Fiscal Year 2019 was more general and that this could hinder its ability to respond to emerging compliance risks. It could not complete more specific training on the full range of international provisions until the IRS issued the final regulations. Once the IRS finalizes the guidance for the international provisions, the LB&I Division can develop more specific training that it can deliver in real time. It noted that employees working Compliance Assurance Process cases need real-time training on key provisions that are currently effective.⁵⁴ The LB&I Division acknowledged that it struggled to respond to some questions arising during the Compliance Assurance Process and will focus on those areas in developing additional content.

The LB&I Division noted that it will conduct face-to-face training for all personnel on the BEAT, GILTI, and FDII provisions and the deemed repatriation tax under § 965 (in addition to other Act provisions) in August and September 2019 based on the guidance issued so far. It also plans more in-depth training during the second quarter of Fiscal Year 2020 once the regulations are finalized. This will allow it to build in topics on the full range of international provisions.

⁵³ The LB&I Division also noted that, due to the lack of a timely budget, it was delayed in accomplishing the necessary approvals for the planned training leading to compressed time frames and complex logistical challenges.

⁵⁴ The Compliance Assurance Process is a cooperative effort between the IRS and taxpayers to conduct real-time audits of the largest corporate taxpayers, with a goal of determining the correct tax treatment of material activity prior to the filing of the tax return. Once the tax return is filed, there is a post-filing audit to determine if the tax return is consistent with the agreements made during the pre-filing process and whether there are any additional issues not identified that would require additional examination activity.



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Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to assess the IRS's overall plan to implement key international provisions of the Tax Cuts and Jobs Act.¹ To accomplish our objective, we:

- I. Determined whether the IRS took the necessary actions and properly implemented the international provisions of the Tax Cuts and Jobs Act.
 - A. Identified the 23 provisions of the Tax Cuts and Jobs Act and that had a connection to international taxation and determined the effective date of each. We selected Provisions 13501, 14101, 14201, 14202, and 14401 for expanded testing.
 - B. Identified the actions taken by the IRS to implement the 23 international provisions. We identified:
 1. Guidance provided to taxpayers and practitioners.
 2. Development of new and revised forms, schedules, instructions, and publications.
 3. Computer programming requirements.
 4. Employee hiring and training.
 5. Internal Revenue Manual updates and revisions.²
 6. Actions needed to ensure taxpayer compliance.
 - C. Interviewed IRS personnel regarding the actions taken by the IRS to implement the international provisions. This included the impact of the partial Federal Government shutdown that lasted 35 days from December 22, 2018, through January 25, 2019. Specifically, we interviewed personnel from the:
 1. LB&I Division.
 2. Wage and Investment Division.
 3. Office of Chief Counsel.
 4. Information Technology organization.

¹ Pub. L. No. 115-97. Officially known as "An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for Fiscal Year 2018."

² See Appendix VII for a glossary of terms.



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- II. Requested statistical information from the LB&I Division on the number of Tax Year 2018 tax forms filed related to the five provisions in our review through May 2019. We received information related to Provisions 14201, 14202, and 14401.
- III. Reviewed comments submitted by external stakeholders in response to guidance issued by the IRS on international tax provisions and the drafting of Tax Year 2018 Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*; Form 8991, *Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts*; Form 8992, *U.S. Shareholder Calculation of Global Intangible Low-Taxed Income*; and Form 8993, *Section 250 Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income*.
- IV. For the five provisions reviewed, identified and reviewed comments submitted to the Department of the Treasury and the IRS in response to the issued guidance. We also determined if the IRS reviewed comments submitted by taxpayers.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the IRS procedures for implementing the tax law, processing tax returns, and ensuring compliance with the tax law. We evaluated these controls through interviews and correspondence with IRS personnel and reviews of documentation related to the tracking of tax provisions included in the Tax Cuts and Jobs Act.



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Appendix II

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Appendix III

Report Distribution List

Deputy Commissioner for Services and Enforcement
Commissioner, Large Business and International Division
Commissioner, Wage and Investment Division
Chief Counsel
Chief Financial Officer
Chief Information Officer
Director, Enterprise Audit Management



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Appendix IV

*Descriptions of Tax Cuts and Jobs Act¹
International Provisions²*

Act Provision	I.R.C. ³ Sections ⁴	Provision Title (in Bold Blue) and Description
13501	864(c)(8), 1446	<p>Treatment of Gain or Loss of Foreign Persons From Sale or Exchange of Interests in Partnerships Engaged in Trade or Business Within the United States. The Tax Cuts and Jobs Act (hereafter referred to as the “Act”) clarifies the U.S. tax treatment of foreign partners that transfer certain partnership interests by providing that any gain or loss of a foreign transferor from the transfer of an interest, owned directly or indirectly, in a partnership that is engaged in any trade or business within the United States is treated as an effectively connected gain or loss to the extent such gain or loss does not exceed the amount that would be treated as an effectively connected gain or loss to the foreign transferor if the partnership had sold all of its assets for fair market value on the date of transfer. The Act provides a withholding provision designed to implement § 864(c)(8). Specifically, the Act provides that if a portion of the gain on any transfer of an interest in a partnership would be treated as effectively connected with the conduct of a trade or business within the United States under § 864(c)(8), the transferee of such interest is required to deduct and withhold a tax equal to 10 percent of the amount realized on the transfer. The provision requiring withholding on sales or exchanges of partnership interests was effective for sales, exchanges, and dispositions after December 31, 2017.</p>
13503	704	<p>Charitable Contributions and Foreign Taxes Taken Into Account in Determining Limitation on Allowance of Partner’s Share of Loss. Modifies the basis limitation on partner losses to provide that the limitation takes into account a partner’s distributive share of partnership charitable contributions paid or accrued to foreign countries and to possessions of the United States. Applies to partnership taxable years beginning after December 31, 2017.</p>

¹ Pub. L. No. 115-97. Officially known as “An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for Fiscal Year 2018.”

² According to the IRS, these were the 23 provisions of the Tax Cuts and Jobs Act with an international nexus.

³ See Appendix VII for a glossary of terms.

⁴ We included only the more significant I.R.C. sections that were added, amended, or repealed.



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Act Provision	I.R.C. ³ Sections ⁴	Provision Title (in Bold Blue) and Description
13604	4985(a)(1)	Increase in Excise Tax Rate for Stock Compensation of Insiders in Expatriated Corporations. Increases the 15 percent rate of excise tax, imposed on the value of stock compensation held by insiders of an expatriated corporation, to 20 percent. Applies to corporations first becoming expatriated corporations after the date of enactment (December 22, 2017).
14101	245A	Deduction for Foreign-Source Portion of Dividends Received by Domestic Corporations From Specified 10-Percent Owned Foreign Corporations. The Act provides that when a U.S. corporation owns at least 10 percent of a foreign corporation, the U.S. corporation may claim a deduction equal to the foreign-source portion of any dividend received from the STFC. Because § 245A provides a full deduction for the foreign-source portion of a dividend from an STFC, such dividends are exempt from U.S. tax. Thus, U.S. shareholders that claim the § 245A dividend deduction cannot also claim the benefit of the foreign tax credit or foreign tax deduction. ⁵ Of the five provisions covered by this review that were included in the Act, § 245A may have the most significant impact on the international landscape as it was intended to move the U.S. international tax regime away from a worldwide system of taxation. ⁶ It applies to distributions made after (and for purposes of determining a taxpayer's foreign tax credit limitation under § 904, deductions in taxable years ending after) December 31, 2017.
14102	1248, 961(d), 964(e), 91, 367(a)	Special Rules Relating to Sales or Transfers Involving Specified 10-Percent Owned Foreign Corporations. Amounts received by a domestic corporation upon the sale or exchange of stock in a foreign corporation held for at least one year that are treated as § 1248 dividends are also treated as dividends for purposes of the participation dividends received deduction. In addition, solely for purposes of determining a loss, a domestic corporation's basis in the stock of a STFC is reduced by the amount of the participation dividends received deduction allowable to the domestic corporation for dividends received with respect to that stock. ⁷ Effective for applicable transactions after December 31, 2017.

⁵ § 245A(d)(1), (2).

⁶ Commentators have noted that prior to the Act, the United States was one of few countries with both a worldwide system of taxation and a relatively high corporate tax rate compared to those of other industrialized countries. This created the incentive for U.S. companies to keep earnings offshore because such earnings were not taxed until repatriated to the United States. The § 245A dividend received deduction is intended to encourage U.S. companies to repatriate their accumulated earnings and invest them in the United States. *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 292–294 (2018).

⁷ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 298 (2018).



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Act Provision	I.R.C. ³ Sections ⁴	Provision Title (in Bold Blue) and Description
14103	965	<p>Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System of Taxation. The Act provides for a one-time deemed repatriation tax on U.S. shareholders of specified foreign corporations. This tax is imposed on U.S. shareholders through a deemed repatriation of foreign earnings and profits and is assessed on the U.S. shareholder's share of such foreign corporation's accumulated foreign earnings not previously subject to tax (post-1986). Earnings attributable to cash and cash equivalents under applicable rules will generally effectively be taxed at a rate of 15.5 percent, while all other assets will be taxed at a rate of 8 percent. Effective for the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to U.S. shareholders, for the taxable years in which or with which such taxable years of the foreign corporation's end.⁸</p>
14201	951A	<p>Current Year Inclusion of Global Intangible Low-Taxed Income by U.S. Shareholders. The Act includes in a U.S. shareholder's Federal gross income its pro rata share of certain undistributed income of CFCs.⁹ The income inclusion is described as GILTI. The Act effectively defines GILTI as an amount equal to the excess of certain CFC income over an implied 10 percent rate of return on certain CFCs' adjusted basis in certain tangible depreciable property that is used to generate tested income. GILTI is meant to reduce the incentive for U.S.-based multinational corporations to shift profits out of the United States into low- or zero-tax jurisdictions. As subsequently described, Provision 14202 of the Act allows U.S. shareholders to generally deduct 50 percent of their GILTI, making the effective rate of tax 10.5 percent, <i>i.e.</i>, one-half of the corporate tax rate of 21 percent.¹⁰ Under the Act, U.S. shareholders are also permitted to take a deemed paid foreign tax credit of 80 percent of the CFCs' foreign tax attributable to income taken into account in determining GILTI. This provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations' end.</p>

⁸ We conducted a separate audit on the implementation of this provision. TIGTA, Ref. No. 2019-34-033, *Implementation of the Tax Cuts and Jobs Act Deemed Repatriation Tax Presented Significant Challenges* (May 2019).

⁹ § 951A.

¹⁰ § 250.



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Act Provision	I.R.C. ³ Sections ⁴	Provision Title (in Bold Blue) and Description
14202	250	Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income. U.S. shareholders may deduct 50 percent of their GILTI. The Act also created a provision that allows domestic corporations to deduct 37.5 percent of their FDII. Section 250 describes how taxpayers may claim the GILTI and FDII deductions and also substantively describes FDII. The practical effect of §§ 951A and 250 in tandem is to effectively repeal tax deferral for multinational enterprises with low-tax offshore structures and to no longer incentivize companies locating intangible property outside the U.S. ¹¹ Effective for taxable years beginning after December 31, 2017.
14211	954, 952(c)	Elimination of Inclusion of Foreign Base Company Oil Related Income. Eliminates foreign base company oil-related income as a category of foreign base company income. Effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations' end.
14212	955	Repeal of Inclusion Based on Withdrawal of Previously Excluded Subpart F Income From Qualified Investment. The subpart F inclusion for a CFC's previously excluded subpart F income withdrawn from foreign base company shipping operations is repealed. Also repealed is the subpart F inclusion for amounts withdrawn from qualified investment in less developed countries and decreases in export trade assets. ¹² Effective for taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations' end.
14213	958(b)	Modification of Stock Attribution Rules for Determining Status As a Controlled Foreign Corporation. Amends the ownership attribution rules so that certain stock of a foreign corporation owned by a foreign person is attributed to a U.S. person for purposes of determining whether the U.S. person is a U.S. shareholder of the foreign corporation and, therefore, whether the foreign corporation is a CFC. For instance, a corporation is considered as owning all of the stock owned directly or indirectly, by or for any person holding 50 percent or more in value of the corporation's stock, directly or indirectly. These rules are modified so that they cannot be applied to treat a U.S. person as owning stock owned by a person who is not a U.S. person. ¹³ Effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of such foreign corporations and for the taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations' end.

¹¹ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 340–341 (2018).

¹² *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 346 (2018).

¹³ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 348 (2018).



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Act Provision	I.R.C. ³ Sections ⁴	Provision Title (in Bold Blue) and Description
14214	951(b)	Modification of Definition of U.S. Shareholder. The definition of a U.S. shareholder is expanded to include a shareholder who owns 10 percent or more of a foreign corporation's stock by value. The definition of a U.S. shareholder now applies for purposes of Title 26. ¹⁴ Effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which such taxable years of foreign corporations' end.
14215	951(a)(1)	Elimination of Requirement That Corporation Must Be Controlled for 30 Days Before Subpart F Inclusions Apply. The requirement that a foreign corporation must be a CFC for an uninterrupted period of 30 days or more before a U.S. shareholder is required to include amounts in gross income under subpart F is eliminated. ¹⁵ Effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which such taxable years of foreign corporations' end.
14221	936(h)(3)(B), 367(d)(2), 482	Limitations on Income Shifting Through Intangible Property Transfers. The definition of intangible property is modified to include goodwill, going concern value, and workforce in place as well as any other item the value of which is not attributable to tangible property or services of any individual. The Secretary of the Treasury is authorized to require the use of certain valuation methods in determining the value of intangible property in the context of § 367(d) and § 482 intercompany pricing allocations. ¹⁶ Applies to transfers in taxable years beginning after December 31, 2017.
14222	267A	Certain Related Party Amounts Paid or Accrued in Hybrid Transactions or With Hybrid Entities. Denies a deduction for any disqualified related party amount paid or accrued pursuant to a hybrid transaction or by, or to, a hybrid entity. In general, a hybrid transaction is one that involves payment of interest or royalties that are not treated as such by the country of residence of the foreign recipient. And, in general, a hybrid entity is an entity that is treated as fiscally transparent for Federal income purposes but not so treated for purposes of the tax law of the foreign country of which the entity is resident, or vice versa. Applies to taxable years beginning after December 31, 2017.

¹⁴ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 349 (2018).

¹⁵ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 350 (2018).

¹⁶ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 361 (2018).



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Act Provision	I.R.C. ³ Sections ⁴	Provision Title (in Bold Blue) and Description
14223	1(h)(11)(C)(iii)	Shareholders of Surrogate Foreign Corporations Not Eligible for Reduced Rate on Dividends. Dividends received from surrogate foreign corporations are not eligible for lower tax rate treatment as qualified dividend income. A surrogate foreign corporation is a foreign corporation that: (1) acquires (after March 4, 2003) substantially all of the properties held by a U.S. corporation; (2) after the acquisition, the U.S. corporation's former shareholders own at least 60 percent of the stock (by vote or value) of the foreign acquiring corporation; and (3) the expanded affiliated group does not have substantial business activities in the country where the entity is organized or created compared to the total business activities of the expanded affiliated group. ¹⁷ Applies to dividends received from foreign corporations after the date of enactment of the Act.
14301	902, 960, 78	Repeal of Section 902 Indirect Foreign Tax Credits; Determination of Section 960 Credit on Current Year Basis. Section 902 deemed-paid foreign tax credit is repealed. The credit was allowed for income tax paid with respect to dividends received by a domestic corporation that owned 10 percent or more of the voting stock of a foreign corporation. The deemed-paid credit is repealed as a result of the implementation of the participation exemption system. Section 960 deemed-paid foreign tax credit is modified so that it is determined on a current year basis. ¹⁸ Applies to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations' end.
14302	904(d)	Separate Foreign Tax Credit Limitation Basket for Foreign Branch Income. A new foreign tax credit limitation basket is added for foreign branch income. Foreign branch income means the business profits of a U.S. person that are attributable to one or more qualified business units in one or more foreign countries. ¹⁹ Effective for taxable years beginning after December 31, 2017.
14303	863(b)	Source of Income From Sales of Inventory Determined Solely on Basis of Production Activities. The source of a taxpayer's income from the sale or exchange of inventory property is now solely determined by the location of production. Effective for taxable years beginning after December 31, 2017.

¹⁷ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 367–368 (2018).

¹⁸ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 323–325 (2018).

¹⁹ *Tax Cuts and Jobs Act, Law, Explanation and Analysis*, CCH Publication, p. 329–330 (2018).



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Act Provision	I.R.C. ³ Sections ⁴	Provision Title (in Bold Blue) and Description
14304	904(g)	Election to Increase Percentage of Domestic Taxable Income Offset by Overall Domestic Loss Treated As Foreign Source. A taxpayer who claims the foreign tax credit and has an overall domestic loss may elect to recapture pre-2018 unused overall domestic losses by recharacterizing up to 100 percent of the taxpayer's U.S. source taxable income as foreign-source taxable income, from 2018 through 2027. ²⁰ Applies to taxable years beginning after December 31, 2017.
14401	59A	Base Erosion and Anti-Abuse Tax. This tax is designed to prevent certain U.S. corporations with average annual gross receipts during a three-year period of at least \$500 million from reducing their "regular tax liability" by "base erosion payments" made to "foreign related parties." ²¹ BEAT is generally determined by comparing 10 percent (5 percent for tax years beginning in Calendar Year 2018 and 12.5 percent for tax years beginning after Calendar Year 2025) of the taxpayers modified taxable income to the taxpayer's regular tax liability. Applies to base erosion payments paid or accrued in taxable years beginning after December 31, 2017.
14501	1297	Restriction on Insurance Business Exception to Passive Foreign Investment Company Rules. The rules for determining what is not considered passive income for a passive foreign investment company has been modified. The test for nonpassive income that is based on whether a corporation is predominantly engaged in an insurance business has been replaced with a test based on the amount of corporation's insurance liabilities. ²² Applies to taxable years beginning after December 31, 2017.
14502	864(e)	Repeal of Fair Market Value Method of Interest Expense Apportionment. Taxpayers must determine U.S. Source and Foreign Source income for various purposes. The new law (1) prohibits members of a U.S.-affiliated group from allocating interest expense on the basis of the fair market value of assets for purposes of § 864(e) and (2) requires such members to allocate interest expense based on the adjusted tax basis of assets. Effective for taxable years beginning after December 31, 2017.

Source: TIGTA analysis of Tax Cuts and Jobs Act, Law, Explanation and Analysis, CCH Publication (2018), Legislative Update 2017-2: Overview of P.L.115-97 (H.R. 1), and Pub. L. No. 115-97.

²⁰ Tax Cuts and Jobs Act, Law, Explanation and Analysis, CCH Publication, p. 321–323 (2018).

²¹ § 59A.

²² Tax Cuts and Jobs Act, Law, Explanation and Analysis, CCH Publication, p. 370 (2018).



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Appendix V

*Guidance Issued for International Provisions
(as of July 10, 2019)*

Act Provision	Provision Title	Published Guidance Issued or Planned	Date Publicly Available
13501	Treatment of Gain or Loss of Foreign Persons From Sale or Exchange of Interests in Partnerships Engaged in Trade or Business Within the United States	Notice 2018-08	12/29/2017
		Notice 2018-29	4/2/2018
		REG-113604-18 NPRM	12/20/2018
		REG-105476-18 (NPRM)	5/7/2019
		2 Treasury Regulations Planned	
13503	Charitable Contributions and Foreign Taxes Taken Into Account in Determining Limitation on Allowance of Partner's Share of Loss	1 NPRM Planned	
		1 Treasury Regulation Planned	
13604	Increase in Excise Tax Rate for Stock Compensation of Insiders in Expatriated Corporations	No Planned Published Guidance	
14101 14102 ¹	Deduction for Foreign-Source Portion of Dividends Received by Domestic Corporations From Specified 10-Percent Owned Foreign Corporations and Special Rules Relating to Sales or Transfers Involving Specified 10-Percent Owned Foreign Corporations	REG-114540-18 (NPRM) ²	10/31/2018
		Treas. Reg. 9859 (REG-114540-18)	5/22/2019
		REG-106282-18 (NPRM) ³	6/14/2019
		Treas. Reg. 9865 ⁴	6/14/2019
		1 Treasury Regulation Planned	

¹ Provision 14102 applies only to REG-106282-18 and Treasury Regulation 9865.

² NPRM providing guidance coordinating § 956 with the participation exemption system for taxing foreign-source income under § 245A (Provision 14101).

³ NPRM by cross-reference to temporary regulations (Treasury Regulation 9865).

⁴ Final Temporary Regulations.



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Act Provision	Provision Title	Published Guidance Issued or Planned	Date Publicly Available
14103	Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System of Taxation	Notice 2018-07	12/29/2017
		Notice 2018-13	1/19/2018
		Rev. Proc. 2018-17	2/13/2018
		Notice 2018-26	4/2/2018
		REG-104226-18 (NPRM)	8/2/2018
		Notice 2018-78	10/1/2018
		Treas. Reg. 9846 (REG-104226-18)	1/24/2019
14201	Current Year Inclusion of Global Intangible Low-Taxed Income by U.S. Shareholders	Rev. Proc. 2018-48	9/13/2018
		REG-104390-18 (NPRM)	9/13/2018
		Treas. Reg. 9866 (REG-104390-18)	6/14/2019
14202	Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income	REG-104464-18 (NPRM)	3/4/2019
		1 Treasury Regulation Planned	
14211	Elimination of Inclusion of Foreign Base Company Oil Related Income	No Planned Published Guidance	
14212	Repeal of Inclusion Based on Withdrawal of Previously Excluded Subpart F Income From Qualified Investment	No Planned Published Guidance	
14213 14214	Modification of Stock Attribution Rules for Determining Status As a Controlled Foreign Corporation, and Modification of Definition of U.S. Shareholder	REG-101828-19 (NPRM)	6/14/2019
		1 NPRM Planned	
		2 Treasury Regulations Planned	
14215	Elimination of Requirement That Corporation Must Be Controlled for 30 Days Before Subpart F Inclusions Apply	No Planned Published Guidance	
14221	Limitations on Income Shifting Through Intangible Property Transfers	1 NPRM Planned	
		1 Treasury Regulation Planned	



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Act Provision	Provision Title	Published Guidance Issued or Planned	Date Publicly Available
14222	Certain Related Party Amounts Paid or Accrued in Hybrid Transactions or With Hybrid Entities	REG-104352-18 (NPRM)	12/20/2018
		1 Treasury Regulation Planned	
14223	Shareholders of Surrogate Foreign Corporations Not Eligible for Reduced Rate on Dividends	No Planned Published Guidance	
14301 14302 14303 14304 14502	Repeal of Section 902 Indirect Foreign Tax Credits; Determination of Section 960 Credit on Current Year Basis; Separate Foreign Tax Credit Limitation Basket for Foreign Branch Income; Source of Income From Sales of Inventory Determined Solely on Basis of Production Activities; Election to Increase Percentage of Domestic Taxable Income Offset by Overall Domestic Loss Treated As Foreign Source; and Repeal of Fair Market Value Method of Interest Expense Apportionment	REG-105600-18 (NPRM)	11/28/2018
		1 Treasury Regulation Planned	
14401	Base Erosion and Anti-Abuse Tax	REG-104259-18 (NPRM)	12/13/2018
		1 Treasury Regulation Planned	
14501	Restriction on Insurance Business Exception to Passive Foreign Investment Company Rules	REG-105474-18 (NPRM)	7/10/2019
		1 Treasury Regulation Planned	

Source: IRS guidance found on www.irs.gov and TIGTA, Ref. No. 2019-14-025, Status of the Office of Chief Counsel's Issuance of Tax Cuts and Jobs Act Guidance (May 2019).

Note: Treas. Reg. = Treasury Regulation. Rev. Proc. = Revenue Procedure.



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Appendix VI

Internal Revenue Service Top Ten Priority Provisions

The IRS identified the following provisions as priority provisions for tracking and reporting purposes. This initial identification was completed based on the following criteria: 1) requires detailed and integrated tracking due to the complexity, criticality, potential risk, and “nonstandard” nature of implementation; 2) is likely to attract public scrutiny; 3) requires detailed mapping of dependencies across Tax Forms and Publications, Information Technology, Counsel, Communications and Liaison, and other organizations; 4) requires intense coordination with external stakeholders; 5) requires significant modifications to information technology systems or development of new systems; and 6) expected to be implemented after April 2018. Five of the top ten are international provisions.

Priority Order	Tax Administration	Provision	Division Owner	Provision Section Title
1	Domestic	11011	SB/SE	Deduction of Qualified Business Income
2	International	14103	LB&I	Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System of Taxation
3	International	14201	LB&I	Current Year Inclusion of Global Intangible Low-Taxed Income by U.S. Shareholders
4	International	14202	LB&I	Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income
5	International	14401	LB&I	Base Erosion and Anti-Abuse Tax
6	Domestic	13301	SB/SE	Limitation on Deduction of Interest
7	Domestic	13001	LB&I	21 Percent Corporate Tax Rate
8	Domestic	11022	W&I	Increase in Modification of Child Tax Credit
9	International	13501	LB&I	Treatment of Gain or Loss of Foreign Persons From Sale or Exchange of Interests in Partnerships Engaged in Trade or Business Within the United States
10	Domestic	13306	LB&I	Denial of Deduction for Certain Fines, Penalties, and Other Amounts

Source: Tax Reform Implementation Office.

Note: SB/SE = Small Business/Self-Employed. W&I = Wage and Investment.



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Appendix VII

Glossary of Terms

Term	Definition
Business Operating Division	One of the four major divisions of the IRS: LB&I Division, Small Business/Self-Employed Division, Tax Exempt and Government Entities Division, and Wage and Investment Division.
Consolidated Tax Return	Combines the tax liability of all includible corporations in an affiliated group. An affiliated group is one or more chains of includible corporations, connected through stock ownership, with a shared includible parent corporation.
Controlled Foreign Corporation	A corporate entity that is registered and conducts business in a different jurisdiction or country than the residency of the controlling owners. Control of the foreign company is defined, in the United States, according to the percentage of shares owned by U.S. citizens.
Data Center Warehouse	An online database maintained by TIGTA. The Data Center Warehouse pulls data from IRS system resources, such as IRS collection files and IRS examination files, for TIGTA access.
Filing Season	The period from January through mid-April when most individual income tax returns are filed.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Internal Revenue Code	Federal tax law begins with the I.R.C., enacted by Congress in Title 26 of the U.S. Code. It is the main body of domestic statutory tax law of the United States, organized topically, including laws covering income tax, payroll taxes, gift taxes, estate taxes, and statutory excise taxes. Its implementing agency is the IRS.
Internal Revenue Manual	Provides procedural guidance for IRS operations.
Master File	The IRS database that maintains transactions or records of tax accounts.
Processing Year	The calendar year in which the tax return or related document is processed by the IRS.
Quasi-Territorial System	A territorial system taxes businesses on only income earned within a country's borders. Under the Act, businesses pay a lower effective tax rate on foreign profits than on domestic earnings.



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Term	Definition
Submission Processing Function	The data processing arm of the IRS that processes paper and electronic submissions, corrects errors, and forwards data to the Computing Centers for analysis and posting to taxpayer accounts.
Tax Year	The 12-month period for which tax is calculated.
Unified Work Request	A process that provides a common framework to document, control, monitor, and track requests for changes to IRS computer systems and for support.
Work Request Notification	Used to document changes to a tax product or create a new tax product. The information from the Work Request Notification can be used to support any necessary work requested from the Information Technology organization.



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Appendix VIII


Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 9, 2019

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Douglas W. O'Donnell 
Commissioner, Large Business and International Division

SUBJECT: Draft Audit Report # 2018-30-028, Tax Cuts and Jobs Act:
Assessment of the Implementation of the International Provisions

Thank you for the opportunity to respond to the above referenced draft audit report. Like the implementation of most new and significant legislation, the implementation of the provisions of the Tax Cuts and Jobs Act (TCJA) is a broad and substantial undertaking for the IRS, particularly considering the state of our resources. The 23 international TCJA provisions constitute a significant re-write of the rules of international taxation. As noted in your report, our immediate implementation tasks entailed developing formal and informal guidance; making significant changes to our information technology systems and processing; updating tax forms, instructions, and educational materials; developing training for our employees; and ensuring stakeholder outreach.

We're also focused on hiring (to replenish prior reductions in our workforce) and delivering training to our technical employees (and new employees) so that they are positioned to effectively administer these provisions and interact with taxpayers on these issues. Looking ahead, we are working to understand taxpayer behavioral changes that will come about from these different provisions and the interplay between some of the provisions. We continue to refine our compliance and enforcement strategy for TCJA, including the development of campaigns, treatment streams, and taxpayer education. We will monitor compliance and make modifications as appropriate; and the continued integration of TCJA into our operations will proceed in a manner that is informed by our taxpayers' experience, responsive to stakeholder feedback, and maintains the appropriate balance between compliance burden and risk.

If you have any questions, please contact me, or a member of your staff may contact John Hinding, Director, Cross Border Activities Practice Area, at (202) 317-8686.