

Treasury and OMB reach accord on tax regulatory review

The Department of Treasury and the Office of Management and Budget (OMB) released a joint agreement on April 12 that grants OMB broader authority in reviewing tax regulations and ends a turf war that the two agencies had been conducting in recent months.

The Memorandum of Agreement (MOA), replaces a similar memorandum from 1983 (and a 1993 letter from the Treasury General Counsel reaffirming the 1983 memorandum) which had largely exempted Treasury regulations from the OMB review process under the Office of Information and Regulatory Affairs (OIRA). The change was precipitated by the Trump administration's release last year of Executive Order 13789, which asked Treasury and OMB to seek out tax regulations that impose "an undue financial burden on [US] taxpayers, ...add undue complexity to federal tax laws, or...exceed the statutory authority of the Internal Revenue Service." (For prior coverage, see *Tax News & Views*, Vol. 18, No. 15, Apr. 28, 2017.)

URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180413_4_suppA.pdf

URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170428_2.html

The MOA takes effect immediately, meaning that many – though not all – of the yet-to-be-released regulations implementing provisions of the tax reconciliation legislation (P.L. 115-97) enacted late last year will go through OIRA as well as Treasury. Under this review standard, a cost-benefit analysis of the regulation must be completed as well as a period set aside for stakeholders to comment on proposed rules. To make sure this additional review does not create a delay in getting out anticipated guidance related to the 2017 tax act, the MOA outlines a 45-day target for OIRA review, with a shorter period for regulatory actions deemed by Treasury to be particularly urgent.

Treasury Secretary Steven Mnuchin said in a statement released April 12 that the "updated review framework will increase scrutiny of regulations most likely to impose new costs, while preserving Treasury's ability to ensure taxpayers receive timely, clear rules and guidance on how to comply with our tax code."

The MOA makes clear that Treasury regulations will remain subject to heightened OIRA review procedures outlined by President Bill Clinton in Executive Order 12866 if they (1) will interfere with those promulgated by another agency, (2) raise a novel legal or policy issue, or (3) have an annual nonrevenue effect on the economy of \$100 million or more, measured against a no-action baseline. According to the MOA, regulations that fall into these categories cannot be published in the Federal Register until OMB has either waived or concluded its review. Additionally, Treasury will now be required to advise OMB of planned regulations on a quarterly basis.

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