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IRS Finalizes Regulations on Stock Buyback Excise Tax

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On November 24, 2025, the US Department of the Treasury and the IRS issued final regulations on Section 4501,[1] which imposes a 1% excise tax on certain repurchases of stock of publicly traded corporations and "economically similar" transactions.[2] Under proposed regulations issued on April 12, 2024, the excise tax could have applied to certain transactions not commonly regarded as stock buybacks.[3] The final regulations substantially narrow the scope of the excise tax by generally exempting such transactions from the excise tax.

Under the general framework of Section 4501, a public corporation's excise tax liability is 1% of the fair market value of all stock repurchases and economically equivalent transactions during a tax year, **reduced** under the "netting rule" by the fair market value of all stock issuances during the same taxable year, and **further reduced** by any transactions covered by certain statutory exceptions. Corporations engaging in any transaction potentially subject to the excise tax generally have quarterly tax reporting obligations, even if there is no net excise tax liability after accounting for reductions. By narrowing the scope of transactions potentially subject to the excise tax, the final regulations should reduce the reporting burden for many public companies.

M&A

Taxable leveraged buyouts and 'take-private' transactions

The final regulations provide that the acquisition of stock of a public company for cash in a "take-private" transaction where the company ceases to be publicly traded is not subject to the excise tax, regardless of whether the cash is sourced from, or otherwise funded by, the target (as in many leveraged buyouts). Under prior guidance, the excise tax could have applied to target-sourced cash payments and/or payments after the target had ceased to be publicly traded that were deemed to be in connection with the take-private transaction.

Tax-deferred transactions

The final regulations exempt acquisitive (i.e., two-party) reorganizations involving public company targets from the excise tax, regardless of whether cash or other nonstock property ("boot") is issued in the reorganization. Under prior guidance, acquisitive reorganizations involving public target corporations generally gave rise to potential excise tax liability to the extent of boot.

Restructurings

Single-entity reorganizations

Single-entity reorganizations of public companies, including tax-free "E" recapitalizations, remain subject to the excise tax, but only if the public company issues boot in the exchange. The final regulations exempt debt-for-debt exchanges and the issuance of stock for dividend arrearages from the excise tax.

Spinoffs and split-offs

Tax-free spinoffs, in which stock of a subsidiary corporation is distributed pro rata to a public company's shareholders, remain outside the scope of the excise tax, except to the extent boot is distributed. The final regulations confirm that "split-offs," in which stock of a subsidiary corporation is distributed in redemption of

public company stock, are subject to the excise tax. However, public companies engaging in a split-off would be able to reduce their excise tax base by the value of subsidiary stock permitted to be received by shareholders on a tax-free basis under Section 355, thereby limiting the scope of the excise tax to any boot issued in the split-off.

Liquidations

The final regulations provide that complete liquidations of a public company are excluded from the excise tax even when the corporation distributes amounts in liquidation to minority shareholders. Prior guidance would have treated amounts distributed to minority shareholders as subject to the excise tax.

Capital markets

The final regulations exempt repurchases of "plain vanilla" preferred stock described in Section 1504(a)(4) from the excise tax, because such stock is similar to debt and does not implicate the policy concerns motivating the excise tax. The final regulations also provide transition relief for mandatorily redeemable preferred stock and stock subject to unilateral put options of the holder, in each case, that was issued before August 16, 2022 (the date the excise tax became law), on the basis that the company had a preexisting, nondiscretionary redemption obligation predating the imposition of the excise tax. Lastly, the final regulations affirm that, with respect to "tax-integrated" debt transactions (e.g., the issuance of convertible debt and simultaneous entry into a derivative, such as a capped call or bond hedge, which are treated as a single debt instrument for US federal income tax purposes), the individual debt and derivative components are evaluated separately for purposes of the excise tax.

International

To the relief of non-US-parented groups, the final regulations eliminate the "funding rule," which would have subjected certain repurchases of a publicly traded foreign corporation's stock that are directly or indirectly funded by a US affiliate of the foreign corporation to the excise tax.

Other

The final regulations provide a number of additional changes:

- Simplifying the process for establishing that a stock repurchase is treated as a dividend under Section 301 and therefore not subject to the excise tax. Under prior guidance, a certification from each stockholder was required in order to rely upon the exception. While the final regulations still permit a stockholder certification, a public corporation also can make the determination on the basis of sufficient evidence in its books and records.
- Clarifying that instruments that are treated as stock for US federal income tax purposes but are not stock for legal purposes (such as pre-funded warrants or deep-in-the-money options) generally are treated as stock for purposes of the netting rule. Under prior guidance, the value of such instruments generally was disregarded for purposes of the netting rule.
- Coordinating the netting rule with exemptions from the excise tax.

The final regulations also reserve for the right of the Treasury and the IRS to identify additional types of transactions as "economically similar" and subject to the excise tax under future guidance, potentially on a retroactive basis, if doing so is needed to prevent abuse.

Applicability date; procedural rules

The final regulations generally apply to repurchases of a public company's stock occurring after December 31, 2022, and issuances of a public company's stock occurring during taxable years ending after December 31, 2022, the effective date of the excise tax. The final regulations provide rules to claim refunds if a taxpayer paid the excise tax based on rules that have been superseded in the final regulations.

1. References to “Sections” are to sections of the Internal Revenue Code of 1986, as amended.
2. Previous Cooley publications addressed general and special purpose acquisition company-specific implications of the excise tax, as well as the interim procedural rules for reporting and paying the excise tax.
3. The proposed regulations are discussed in this April 29, 2024, Cooley alert.

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