Cooley

IRS Announces Transition Guidance for Stock Buyback
Excise Tax

July 11, 2023

The Inflation Reduction Act of 2022 added Internal Revenue Code Section 4501, which imposes a 1% excise tax on certain repurchases of stock of publicly traded US corporations effected after December 31, 2022. As described in a January 2023 Cooley M&A blog post, this stock buyback tax may apply to certain transactions that are not conventionally regarded as stock buybacks, in addition to straightforward repurchases by public companies. The US Treasury Department and the IRS intend to issue forthcoming regulations addressing the application of the stock buyback tax, including rules for determining the amount of the stock buyback tax owed, and procedures for reporting and paying the tax.

The IRS has announced in transition guidance that, until the time to be specified in the forthcoming regulations, taxpayers are not required to report or pay the stock buyback tax. **Note:** The IRS transition guidance only suspends the reporting and payment of the stock buyback tax temporarily. The tax is still expected to apply to repurchases after December 31, 2022, and taxpayers are instructed to monitor and record any such transactions.

For any taxable year ending after December 31, 2022, but prior to publication of the regulations, the regulations are expected to provide that any liability for the stock buyback tax for such taxable year will be reported on the Form 720 (Quarterly Federal Excise Tax Return) due for the first full quarter after the date of publication of the regulations, and the deadline for payment will be the same as the filing deadline. There will be no addition to tax for failure to file a return reporting the stock buyback tax, or for failure to pay the tax, before the time to be specified in the forthcoming regulations. For subsequent taxable years, the regulations are expected to provide that the stock buyback tax will be reported and paid once per taxable year on the Form 720 due for the first full quarter after the close of the taxpayer's taxable year.

The forthcoming regulations also are expected to require corporations subject to the stock buyback tax to keep complete and detailed records regarding any stock repurchases that are completed after December 31, 2022 – including repurchases that are completed before the regulations are finalized – and to retain these records as long as their contents may become material.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Eileen Marshall Washington, DC	emarshall@cooley.com +1 202 728 7083

Aaron Pomeroy Colorado	apomeroy@cooley.com +1 720 566 4108
Timothy Shapiro Palo Alto	tshapiro@cooley.com +1 650 843 5403
Rick Jantz San Diego	rjantz@cooley.com +1 858 550 6150

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.