
November 25, 2025

Final Regulations on Excise Tax on Stock Repurchases

In General & Summary

On Friday, November 21, the Department of the Treasury and the Internal Revenue Service (“IRS”) released final Treasury Regulations on the scope and applicability of the corporate stock repurchase excise tax (the “Final Regulations”), which was imposed by the Inflation Reduction Act of 2022 (H.R. 5376). The Final Regulations preserve the core framework of the April 12, 2024 proposed regulations (the “Proposed Regulations”)¹ for the non-deductible 1% excise tax on repurchases of corporate stock (the “Excise Tax”).² Among other things, the Final Regulations narrow the scope of the tax and reverse course with respect to its applicability on several typical merger and acquisition structures. Taxpayers generally may choose to apply the Final Regulations retroactively to repurchases occurring after December 31, 2022.³ In certain cases, taxpayers may file amended returns and obtain refunds of the Excise Tax paid with respect to prior periods (e.g., if the tax was paid under the broader rules of the Proposed Regulations).

Key Changes from the Proposed Regulations

Nearly all of the changes reduce the scope of the Excise Tax as compared to the Proposed Regulations.

- **M&A Transactions.** The Final Regulations provide that redemptions that occur as part of an acquisitive reorganization, leveraged buyout (“LBO”) or other “take-private” transaction are generally not subject to the Excise Tax.
- **Liquidations.** All liquidations subject to Sections 331 and 332⁴ (including those subject to both sections) are exempted from the Excise Tax.
- **Preferred Stock.** As with the Proposed Regulations, the Final Regulations confirm that the Excise Tax applies to the redemption of Preferred Stock, but add some helpful exceptions:
 - ◆ **Section 1504(a)(4) Stock Excluded.** Redemptions of preferred stock described in Section 1504(a)(4) (i.e., “plain-vanilla” preferred stock) are excluded from the Excise Tax.
 - ◆ **Transition Rule for other Preferred Stock.** Section 317(b) redemptions of any stock issued before August 16, 2022 will not be treated as a repurchase if the stock was subject to mandatory redemption by the redeeming corporation or a unilateral put option by the holder.

¹ Proposed Regulations §§ 58.4501-1 through 58.4501-7, April 12, 2024.

² For previous discussion and analysis of the Proposed Regulations on the Excise Tax and the IRS Notice 2023-2, see our Client Memoranda published April 17, 2024, “[New Proposed Regulations on Excise Tax on Stock Purchases](#)” and December 29, 2022, “[IRS Issues Guidance on Excise Tax on Stock Repurchases and Corporate Alternative Minimum Tax](#).”

³ See Final Regulations, Summary of Comments and Explanation of Revisions, X.A. NB: the special rules for the acquisition and repurchase of certain foreign stock contained in § 58.4501-7 only apply to transactions that occur after April 12, 2024.

⁴ Unless otherwise provided, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

- **Non-U.S. Affiliate Funding Rule.** The Final Regulations did not adopt the funding rule from the Proposed Regulations that treated U.S. affiliates of some foreign corporations as engaging in a repurchase subject to the Excise Tax when those affiliates funded, directly or indirectly, their foreign affiliate's stock repurchase with a principal purpose of avoiding the Excise Tax.
- **Amended Returns; Refund.** Corporations that filed a Form 7208 applying the more stringent Proposed Regulations or prior Notice 2023-2 computations may be able to file a Form 720-X with amended Forms 7208 to obtain a refund of the Excise Tax for prior periods.⁵

Excise Tax Generally

Section 4501 imposes a non-deductible 1% excise tax on repurchases of any stock of any U.S. corporation that has any publicly traded shares (a "Covered Corporation").⁶ "Repurchase" is broadly defined as a Section 317(b) redemption, with some exceptions, and any economically similar transaction, as well as the acquisition of a Covered Corporation's stock by certain of its affiliates from a third party.⁷ The Final Regulations contain both (1) an exclusive list of transactions that are 317(b) redemptions but not repurchases and (2) an exclusive list of economically similar transactions that will be treated as repurchases.⁸

The Excise Tax is imposed on the fair market value of the stock repurchased, minus the fair market value of any stock issued (including certain stock that is issued to employees of the Covered Corporation or of certain affiliates as compensation for services) by such corporation during the taxable year (the "Netting Rule").⁹ Moreover, consistent with the Proposed Regulations, the Final Regulations do not permit carryforwards or carrybacks of unused reductions under the Netting Rule.¹⁰

Final Regulations

The Final Regulations meaningfully narrow the circumstances in which the Excise Tax will apply, largely favoring taxpayers.

M&A Issues

LBOs and "Take-Private" Transactions. Under the Proposed Regulations, to the extent that the consideration in an LBO or other taxable acquisition was funded by the target corporation's own cash or borrowed cash, the target was treated as repurchasing its own stock in a transaction subject to the Excise Tax. The Final Regulations take the position that Congress did not intend for the Excise Tax to apply to transactions such as LBOs that "fundamentally restructure ownership or control through combinations of separate business entities."¹¹ The Final Regulations therefore, generally, do not treat redemptions that occur as part of a transaction in which a corporation ceases to be publicly traded as a result of the transaction as repurchases subject to the Excise Tax.¹² Accordingly, the parties to such a transaction need not "trace" borrowed cash or cash on the target's balance sheet to uses other than stock repurchases.

The Proposed Regulations contained a constructive specified affiliate acquisition rule whereby an acquisition by a Covered Corporation of a corporation or a partnership that owns stock in the Covered Corporation generally would be treated as a repurchase of the Covered Corporation's stock and therefore subject to the Excise Tax.¹³ This could have created foot faults when a target happened to own some stock of an acquirer. The Final Regulations discard this rule, recognizing it as overly broad.¹⁴

⁵ See Final Regulations, Summary of Comments and Explanation of Revisions, X.B.

⁶ The Excise Tax also applies to certain corporations that have expatriated and are subject to the "inversion rules" of Section 7874. Special rules govern the applicability of the Excise Tax to repurchases of stock of certain foreign corporations. See Final Regulations § 58.4501-7.

⁷ See Final Regulations § 58.4501-2(f) (providing relevant tests for what entities qualify as affiliates).

⁸ See Final Regulations § 58.4501-2(e)(3) and -(4).

⁹ See IRC § 4501(c)(3). See also Final Regulations § 58.4501-4 and Final Regulations, Summary of Comments and Explanation of Revisions, VI.A.

¹⁰ Final Regulations § 58.4501-2(c)(2)(ii).

¹¹ Final Regulations, Summary of Comments and Explanation of Revisions, III.

¹² See § 58.4501-2(e)(3)(ii) and Final Regulations, Summary of Comments and Explanation of Revisions, III.

¹³ See Final Regulations, Summary of Comments and Explanation of Revisions, VII.

¹⁴ *Id.*

Acquisitive Reorganizations. The Final Regulations treat acquisitive reorganizations (i.e., an A reorganization (including triangular A reorganizations), a C reorganization, an acquisitive D reorganization and an acquisitive G reorganization), as transactions that “fundamentally restructure ownership or control through combinations of separate business entities” and therefore they do not treat the exchange by the target corporation shareholders of their target corporation stock pursuant to the plan of reorganization as subject to the Excise Tax.¹⁵

Spin-Offs, Split-Ups and Split-Offs. The treatment of spin-offs remains unchanged from the Proposed Regulations. Spin-offs are generally not a repurchase subject to the Excise Tax except to the extent of boot received for shares.¹⁶

The Final Regulations retain the Proposed Regulations’ conclusion that in a split-off qualifying under Section 355 by a distributing corporation that is a Covered Corporation, the exchange by the distributing corporation shareholders of their stock for the stock of a controlled corporation is a repurchase subject to the Excise Tax by the distributing corporation.¹⁷ Although the aforementioned exchange is a repurchase and thus subject to the Excise Tax, under the reorganization exception, the stock repurchase base is reduced to the extent that the shareholders receive qualified property and therefore a split-off should generally not result in a tax liability under the Excise Tax.

Complete Liquidations. Under the Proposed Regulations, distributions pursuant to a complete liquidation of a Covered Corporation under either Section 331 or 332 (but not both) would generally not be a “repurchase” subject to the Excise Tax. Thus, a liquidation that was covered by both Sections 332 and 331 (e.g., where a liquidating corporation made distributions to minority shareholders) would be subject to the Excise Tax to the extent of the distribution to the minority shareholders. The Final Regulations exclude distributions to which both Sections 331 and 332 apply as well as liquidations under either Section 331 or 332.¹⁸

Certain Capital Markets Issues

Certain Preferred Stock Redemptions Are Not Subject to the Excise Tax. Generally, redemptions of preferred stock are subject to the Excise Tax. However, the Final Regulations include a few new and notable exceptions, noted below.

1504(a)(4) Preferred Stock Excluded. The Final Regulations exclude from the scope of the Excise Tax redemptions of preferred stock described in Section 1504(a)(4) (i.e., “plain-vanilla” preferred stock).

Transition Relief for Preexisting Preferred Stock. The Final Regulations provide transitional relief for mandatorily redeemable stock or stock subject to a unilateral put option of the holder, if such stock was outstanding before August 16, 2022.

Non-U.S. Corporations and the “Funding Rule.” In the Proposed Regulations, a funding rule applied to a broad range of intercompany cash movement transactions (e.g., loans, distributions, capital contributions) where a U.S. entity funded the purchase of stock of a non-U.S. corporation and a principal purpose of the funding was to avoid the Excise Tax that would have otherwise been imposed had the U.S. entity purchased the stock directly. Commenters noted that this rule would not only be difficult to administer, but that it left unclear the timing of the determination of the principal purpose, which entity’s purpose to avoid the Excise Tax should be taken into account, and a basic insufficiency of clarity and examples of how the rule would operate. The Final Regulations withdrew the proposed funding rule altogether.

Convertible Debt. The Final Regulations maintain the view that convertible instruments properly characterized as debt under federal income tax principles at issuance do not fall within the scope of the Excise Tax and that such instruments do not need to be retested while the instrument is outstanding.¹⁹

¹⁵ See § 58.4501-2(e)(5)(v). See also Final Regulations, Summary of Comments and Explanation of Revisions, IV.C.

¹⁶ See § 58.4501-2(e)(5)(iii). See also Proposed Regulations, Explanation of Provisions, IX.A.

¹⁷ See § 58.4501-2(e)(4)(ii).

¹⁸ See § 58.4501-2(e)(5)(i) and Final Regulations, Summary of Comments and Explanation of Revisions, IV.B.

¹⁹ See Proposed Regulations § 58.4501-1(b)(29).

Distributions and Dividends. The Final Regulations continue to provide the exception that the portion of the repurchase that is treated as a dividend reduces the Covered Corporation's Excise Tax base in an amount equal to the fair market value of the stock repurchased. This exception comes with a rebuttable presumption that repurchases to which Section 302 or 356(a) apply do not qualify for dividend treatment.²⁰ A Covered Corporation may rebut this presumption with regard to a specific shareholder solely by establishing with sufficient evidence that the shareholder treats the repurchase as a dividend on its federal income tax return. The Final Regulations continue to provide a safe harbor in the form of shareholder certifications. In addition, under the Final Regulations, Taxpayers may substantiate dividend treatment based on known facts, the pro rata nature of distributions, ownership records, consistency in the corporation's own treatment (including withholding), and the availability of sufficient earnings and profits, subject to documentation and record-retention requirements.²¹

²⁰ See § 58.4501-3(g)(2).

²¹ See § 58.4501-3(g)(3).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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