

Treasury and IRS Issue Final Regulations on Excise Tax on Share Repurchases by Publicly Traded Corporations

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On November 24, 2025, the U.S. Department of the Treasury and the Internal Revenue Service issued final regulations (T.D. 10037) regarding the 1% excise tax on certain stock repurchases and economically similar transactions (corporate “repurchases”) by publicly traded U.S. corporations (covered corporations) on or after January 1, 2023, as described in Section 4501.¹ The final regulations address many of the concerns raised in response to the proposed regulations issued last year, narrowing the scope of the excise tax in several significant respects.

For a summary of key areas of the proposed regulations, see our April 17, 2024, *Alert*: [“Treasury and IRS Issue Proposed Regulations on Excise Tax on Share Repurchases by Publicly Traded Corporations.”](#)

Key Aspects of the Final Regulations

- **Exclusion of Leveraged Buyouts and Take-Privates:** The final regulations provide that the excise tax does not apply to redemptions by a covered corporation that occur as part of a transaction in which the corporation ceases to be a covered corporation (e.g., take-private transactions and leveraged buyouts). This is a major departure from the proposed regulations, which would have imposed the excise tax on the target-funded portion of the consideration in such transactions. According to the preamble to the final regulations, Treasury and IRS concluded that Congress did not intend for the excise tax to apply to transactions that “fundamentally restructure corporate ownership or control through combinations of separate business entities.”
- **Exclusion of Acquisitive Reorganizations:** Addressing concerns that the proposed regulations were overly broad and could capture ordinary M&A activity, the final

regulations remove acquisitive reorganizations from the exclusive list of transactions treated as “economically similar” to redemptions for excise tax purposes. This means the exchange by target shareholders of their stock for consideration in an acquisitive reorganization is not treated as a repurchase subject to the excise tax – even if the shareholders also receive “boot” (i.e., cash, other property and non-qualified preferred stock). In addition, the final regulations eliminate the provision in the proposed regulations that would have prevented the acquirer from reducing its excise tax base by the aggregate fair market value of stock issued by a target covered corporation in an acquisitive reorganization.

- **Elimination of the “Funding Rule” for Foreign Corporations:** The final regulations eliminate the so-called “funding rule,” which would have imposed the excise tax on publicly traded foreign corporation’s stock repurchases or acquisitions to the extent funded (directly or indirectly) by a U.S. subsidiary with a principal purpose of avoiding the excise tax. The proposed rule was widely criticized as overly expansive and administratively burdensome.
- **Spin-Offs and Split-Offs:** The final regulations clarify that tax-free spin-offs (pro rata distributions of controlled corporation stock) are not treated as repurchases or economically similar transactions and therefore are not subject to the excise tax, except to the extent shareholders receive boot in the transaction. In contrast, split-offs (non-pro rata exchanges of controlled corporation stock for parent stock) are treated as economically similar to redemptions – although a reorganization exception effectively limits the application of the excise tax to boot for split-offs as well. The final regulations also clarify that a covered corporation cannot reduce its excise tax base by the value of its stock issued in either spin-off or split-off transactions.
- **Relief for Certain Preferred and Mandatorily Redeemable Stock:** Treasury and IRS rejected calls to broadly exclude redemptions of all preferred stock from the excise tax. The final regulations do, however, exclude redemptions of preferred stock described in Section 1504(a)(4) (i.e., “plain vanilla” preferred stock), which the preamble describes as “more akin to repaying debt.” In addition, transition relief is provided for repurchases of mandatorily redeemable stock and stock subject to a unilateral put option by the holder, provided such stock was issued prior to the enactment of the excise tax (i.e., prior to August 16, 2022). While the final regulations do not adopt any rules specific to SPACs, this transition relief means that SPACs with redeemable shares issued prior to August 16, 2022, are able to redeem those shares without triggering the excise tax.

With limited exceptions, the final regulations apply to repurchases on or after January 1, 2023. The preamble discusses refund procedures for covered corporations that

previously paid the excise tax but would not be required to do so under the final regulations.

For questions regarding the final regulations and the application of the excise tax, please reach out to any member of the Kirkland tax team, including the authors below.

1. Section references are to the Internal Revenue Code of 1986, as amended. [↩](#)

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