



## Final procedural regulations on reporting and payment of corporate stock buyback excise tax Tax Alert

### Overview

The Inflation Reduction Act of 2022 ([P.L. 117-169](#)) included new [section 4501](#), which imposes an excise tax of 1 percent on [repurchases](#) of stock by certain publicly traded corporations (the “Excise Tax”) beginning after December 31, 2022.

On December 27, 2022, the U.S. Treasury Department (“Treasury”) and the Internal Revenue Service (“Service”) released [Notice 2023-2](#) (the “Notice”), which announced that Treasury and the Service intended to issue proposed Treasury regulations addressing the application of the Excise Tax, and to provide taxpayers with interim guidance until the publication of such proposed regulations. See the [prior Deloitte Tax Alert](#) discussing the Notice.

On April 12, 2024, Treasury and the Service published proposed Treasury regulations ([REG-118499-23](#)) that would provide rules on procedure and administration applicable to the reporting and payment of the Excise Tax (the “Proposed Procedural Regulations”). Proposed Treasury regulations ([REG-115710-22](#)) that would provide operating rules relating to the computation of the Excise Tax were also published on April 12, 2024 (the “Proposed Computational Regulations”). See the [prior Deloitte Tax Alert](#) discussing these proposed regulations.

On June 28, 2024, Treasury and the Service released final Treasury regulations ([T.D. 10002](#), the “Final Procedural Regulations”) that provide guidance on how to report and pay the Excise Tax, and finalize, with certain modifications, the Proposed Procedural Regulations. This Treasury decision did not finalize the Proposed Computational Regulations.

### Reporting and Payment

In general, the Final Procedural Regulations provide that (i) the Excise Tax must be reported on [Form 720](#), *Quarterly Federal Excise Tax Return*, (ii) taxpayers must attach [Form 7208](#), *Excise Tax on Repurchase of Corporate Stock*, reflecting the computation of the Excise Tax (a draft of which is currently available, and a final version is expected to be released prior to the first due date for reporting

the Excise Tax), (iii) Excise Tax must be reported once per taxable year on the Form 720 that is due for the first full quarter after the close of the taxpayer's taxable year, and (iv) the deadline for payment of the Excise Tax is the same as the filing deadline. See Treas. Reg. §§ [58.6011-1\(a\)](#), [58.6071-1](#), [58.6091-1](#).

The Final Procedural Regulations provide that the term “stock repurchase excise tax return” means the Form 720 due for the first full calendar quarter after the end of the covered corporation's taxable year, with an attached Form 7208 or any other forms, schedules, or statements prescribed by the Service for the purpose of making a return to report the tax under chapter 37 of the Internal Revenue Code. Treas. Reg. § 58.6011-1(b).

The Final Procedural Regulations provide the following example: Corporation X is a covered corporation with a taxable year that ends on December 31. During its 2024 taxable year, Corporation X makes a repurchase within the meaning of section 4501(c)(1). Because Corporation X's taxable year ends in the fourth quarter of the calendar year, Corporation X must file a stock repurchase excise tax return reporting liability for the Excise Tax by the due date for a first-quarter Form 720 (*that is*, April 30, 2025).

For taxable years that ended on or prior to the issuance of the Final Procedural Regulations (*that is*, taxable year ending after December 31, 2022, and on or before June 28, 2024), the stock repurchase excise tax return for such taxable year must be filed by the due date of the Form 720 for the first full calendar quarter after June 28, 2024 (*that is*, October 31, 2024). If a covered corporation, or person treated as a covered corporation, has more than one taxable year ending after December 31, 2022, and on or before June 28, 2024, the covered corporation, or person treated as a covered corporation, should file a single Form 720 with two separate Forms 7208 (one for each taxable year) attached.

The Final Procedural Regulations provide the following example: Corporation Y is a covered corporation with a taxable year ending December 31, 2023. During its 2023 taxable year, Corporation Y makes a repurchase within the meaning of section 4501(c)(1). Corporation Y is required to file the stock repurchase excise tax return for its 2023 taxable year by the due date of the Form 720 for the first full calendar quarter after June 28, 2024. The due date for the Form 720 for the first full calendar quarter after June 28, 2024 (*that is*, the third quarter Form 720), is October 31, 2024.

This October 31, 2024 due date for taxable years that have already ended may be earlier than anticipated. The rules described in the Proposed Procedural Regulations generally were proposed to have applied to stock repurchase excise tax returns required to be filed after the date final regulations were **published** in the Federal Register, and during taxable years ending after the date final regulations were **published** in the Federal Register. In addition, the preamble for Proposed Procedural Regulations contained an illustrative example where Treasury regulations were finalized in September 2024 and, thus, the due date would have been January 31, 2025. The Final Procedural Regulations, however, apply to stock repurchase excise tax returns required to be filed after the date the Final Procedural Regulations are **filed** with the Federal Register, and during taxable years ending after the date the Final Procedural Regulations are **filed** in the Federal Register (*that is*, June 28, 2024). The preamble to the Final Procedural Regulations explains that the Treasury and the Service made this slight adjustment to the applicability dates to facilitate the Service's administration and enforcement of the Excise Tax and provide guidance to taxpayers as quickly as possible.

**Observation:** This October 31, 2024 due date for prior taxable years could very well be before the Final Computational Regulations are issued, which could potentially cause confusion if the Final Computational Regulations

## Recordkeeping Requirement

Under the Final Procedural Regulations, (i) any covered corporation, or any person treated as a covered corporation, that makes a repurchase or that is treated as making a repurchase is required to keep complete and detailed records sufficient to establish accurately the amount of repurchases, adjustments, or exceptions required to be shown on its stock repurchase excise tax return, (ii) the Service may require any covered corporation or person treated as a covered corporation to make such returns, render such statements, or keep such specific records as to enable the Service to determine whether the covered corporation or person treated as a covered corporation is liable for the Excise Tax, and (iii) the records required to be maintained must be available for inspection by the Service and retained for so long as their contents may become material. [Treas. Reg. § 58.6001-1\(a\)-\(c\)](#).

## Return Requirement

The Final Procedural Regulations would require any covered corporation, or any person treated as a covered corporation, other than a regulated investment company (as defined in [section 851](#), a RIC) or a real estate investment trust (as defined in [section 856\(a\)](#), a REIT), that makes a repurchase, or that is treated as making repurchase after December 31, 2022 to file a stock repurchase excise tax return with respect to any taxable year in which the covered corporation or person treated as a covered corporation makes a repurchase or is treated as making a repurchase. [Treas. Reg. § 58.6011-1\(a\)](#).

The language in the Final Procedural Regulations clarify that a stock repurchase excise tax return must be filed with respect to any taxable year in which the covered corporation or person treated as a covered corporation makes a repurchase or is treated as making a repurchase (*that is*, there is no filing requirement with respect to taxable years in which the covered corporation has not made a repurchase, or undertaken a transaction treated as a repurchase).

The preamble to the Final Procedural Regulations provides that the exception for RICs and REITs from the obligation to file a stock repurchase excise tax return is based on all of such corporation's repurchases of its stock qualifying for the statutory repurchase exception under section 4501(e)(5). However, no exception exists for RICs and REITs with respect to the recordkeeping requirement in [Treas. Reg. § 58.6001-1](#). As provided in the preamble to the Final Procedural Regulations, records establishing a RIC's or a REIT's repurchases, adjustments, and exceptions under the Excise Tax, could become relevant in the event a covered corporation ceases to qualify as a RIC or a REIT for the taxable year, or if the corporation revokes its election to be a REIT for the taxable year. In such cases, the corporation's repurchases would not qualify for the exception under section 4501(e)(5), and the information required to be retained under [Treas. Reg. § 58.6001-1](#) would be required to compute the corporation's Excise Tax liability.

## Signing of Stock Repurchase Excise Tax Return

Under the Final Procedural Regulations, any stock repurchase excise tax return, statement, or other document required to be made with respect to the Excise Tax would be required to be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the Treasury regulations, forms, or instructions



prescribed with respect to such return, statement, or document (*that is*, the person who signs the Form 720). [Treas. Reg. § 58.6061-1\(a\)](#).

## Tax Return Preparers

The Final Procedural Regulations provide additional rules that are applicable to tax return preparers. See *for example*, [Treas. Reg. § 58.6060-1](#) (reporting requirements for tax return preparers); [Treas. Reg. § 58.6107-1](#) (tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record); [Treas. Reg. § 58.6109-1](#) (tax return preparers must include identifying numbers of the preparer for returns or claims for refund); and [Treas. Reg. § 58.6696-1](#) (claims for credit or refund by tax return preparers).

## Tax Return Preparer Penalties

The Final Procedural Regulations incorporate the application of certain penalties. See *for example*, [Treas. Reg. § 58.6694-1\(a\)](#) (penalties applicable to tax return preparer); [Treas. Reg. § 58.6694-1\(b\)](#) (penalties for understatement due to an unreasonable position); [Treas. Reg. § 58.6694-1\(c\)](#) (penalties for understatement due to willful, reckless, or intentional conduct); and [Treas. Reg. § 58.6694-1\(d\)](#) (extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters). See also, [Treas. Reg. § 58.6695-1](#) (other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons).

## Applicability Dates

The Final Procedural Regulations generally apply to repurchases, adjustments, or exceptions required to be shown in any stock repurchase excise tax return required to be filed after June 28, 2024, and during taxable years ending after June 28, 2024.



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