



5x5 series: Insights and actions

# New Stock Repurchase Excise Tax



The Inflation Reduction Act of 2022 included a new section 4501 that imposes an excise tax on certain repurchases of stock by corporations (“Excise Tax”). The Excise Tax applies to repurchases of stock beginning after December 31, 2022. The Excise Tax is equal to (i) 1 percent of the aggregate fair market value of stock repurchased by a corporation during the taxable year (subject to certain exceptions) less (ii) the aggregate fair market value of stock issued by the corporation during such taxable year. Treasury and the IRS released Notice 2023-2 (“Notice”) on December 27, 2022, which (a) announces the intention to issue proposed Treasury regulations (“Proposed Regulations”) addressing the application of the Excise Tax, and (b) provides interim guidance until the publication of the Proposed Regulations. Notwithstanding the Notice, the Excise Tax presents many issues and additional guidance may be different than guidance provided in the Notice and may address issues not covered by the Notice.

## 5 insights you should know

The Excise Tax applies to domestic corporations whose stock is traded on an “established securities market” (within the meaning of section 7704), which includes NYSE, NASDAQ, certain foreign exchanges, and certain interdealer quotation systems. The Notice provides that the Excise Tax is reported and paid annually on the Form 720 due for the first full quarter following the close of the corporation’s taxable year (e.g., April 30, 2024, for calendar-year corporation for 2023).

Besides typical stock buybacks (e.g., open-market share repurchase programs, self-tender offers), the Notice contains rules that apply the Excise Tax to other types of transactions such as leveraged buy-outs and section 368(a) reorganizations that include cash consideration.

A repurchase includes purchases of stock of the publicly-traded corporation by “specified affiliates,” which generally means greater-than-50 percent corporate or partnership subsidiaries.

The reduction for stock issued during the taxable year includes stock issued or provided to employees of the publicly-traded corporation and its specified affiliates, including as a result of option exercises.

If a U.S. specified affiliate of a foreign corporation whose stock or ADRs/ADSs are traded on an established securities market repurchases the foreign corporation’s stock or, under the Notice, is treated as funding a repurchase by the foreign corporation (or a foreign affiliate), then the U.S. specified affiliate is liable for the Excise Tax (and is only permitted an adjustment for foreign corporation stock that the U.S. specified affiliate issues or provides to its own employees).

## 5 actions to take now

- 1 Track repurchase activity.** Taxpayers subject to the Excise Tax will need to track stock repurchases during the taxable year, including the fair market value of such repurchased stock and the availability of any exceptions (as the Excise Tax is not based on the net number of shares repurchased). Fair market value is the market price of the stock on the repurchase date determined under one of four methods.
- 2 Track issuance activity.** Taxpayers subject to the Excise Tax will need to track stock issuances during the taxable year, including the fair market value of such issued stock. The timing for taking into account stock issued or provided to employees, including employees of specified affiliates, will differ depending on the type of equity compensation.
- 3 Analyze significant transactions.** Acquisitions and other non-ordinary course transactions that involve stock of the taxpayer or an acquisition of a public target corporation should be analyzed to determine whether the Excise Tax could apply.
- 4 Foreign publicly-traded corporations.** The Notice contains rules regarding when a repurchase of stock of a foreign publicly-traded parent is treated as funded by a U.S. specified affiliate and thus subject to the Excise Tax. These rules are very broad, and their application is currently uncertain.
- 5 Monitor other guidance.** Be alert for updates from Deloitte Tax LLP regarding additional guidance from Treasury and the IRS to understand the impact of such guidance on the application of the Excise Tax to taxpayers.

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