



TAX NEWS & VIEWS PODCAST

Episode - Your M&A guide: Decoding the 1% stock buyback excise tax

Host

Carrie Falkenhayn, Tax Partner, Deloitte Tax LLP

Speakers

Benjamin Handler, Tax Partner, Deloitte Tax LLP

Sandra Lopez, Tax Manager, Deloitte Tax LLP

Carrie Falkenhayn: From Deloitte Tax, welcome to the Tax News and Views podcast series. In this series, we talk to specialists from Deloitte about the latest business issues and developments. I'm Carrie Falkenhayn, your host for Tax News and Views. And today, we're going to be talking about the 1% excise tax on share repurchases and the impact it's having on M&A transactions.

As you might recall, Section 4501 was enacted as part of the Inflation Reduction Act, and it imposed a new 1% excise tax on the repurchase by publicly traded U.S. companies and certain foreign companies, on their stock repurchases. Back in April of 2024, the IRS and Treasury released proposed regulations that went through the types of transactions that would be considered repurchases, and how to calculate the excise tax basis, as well as many other matters. The proposed regulations also expanded on an earlier notice that addressed certain key points around the excise tax. Then, in November of 2025, the IRS and Treasury released final regulations that substantially revised and scaled back some of the approaches taken in those proposed regulations. So, with me today, I have two of my colleagues from the M&A Transaction Group at Deloitte. I have Ben Handler and Sandra Lopez, and they're going to talk about some of these changes, as well as their effect on M&A transactions. Welcome both of you, and Ben, I'm gonna start with you, and why don't you walk us through what's changed?

Benjamin Handler: Well, I think many commentators stated that the proposed regulations were too focused on corner cases and ordinary business transactions that were typically undertaken for non-tax reasons, and perhaps shouldn't be subject to the excise tax.

Carrie Falkenhayn: And can you give me an example around that?

Benjamin Handler: So, under the proposed regulations proceeds received in a leverage buyout or other take-private transaction that were sourced either from the target or from borrowing by the target or borrowing by a merger subsidiary were not excluded in the excise tax base. Now, there were reasons why the proposed regulations did that under the tax code. These amounts are treated in exactly the same manner as share buybacks quote-unquote redemptions under Section 317, and the excise tax keys off of that definition.

Carrie Falkenhayn: So what did that mean for M&A transactions then?

Benjamin Handler: Under the proposed regulations, with proper planning, it was sometimes possible to mitigate the excise tax on take-private transactions, but it did limit participants' flexibility to structure and finance these types of deals. For example, Target Cash couldn't be used to pay the purchase price. And detailed tracing was often required to document that the use of the funds were limited to certain permissible liabilities and expenses. In addition, debt, that was incurred to take the company private had to be incurred by the acquisition vehicle rather than the target or merger subsidiary, which limited potential debt push-down structures. So the final regulations, their approach involves exempting all take private transactions from the accidental tax, regardless of how the proceeds are sourced. They also provide a similar approach to acquisitive tax-free reorganizations that have cash or other non-stock components.

Carrie Falkenhayn: And I'm sure organizations find those, new provisions, certainly helpful as they execute on those transactions. But let's just talk more broadly. Is all stock repurchased by a publicly traded company covered under these rules?

Sandra Lopez: Generally, yes, though with exceptions. An important thing to remember is that even non-publicly traded classes of stock may be covered, as long as some class of stock of that corporation is traded on an established securities market. So, for example, if low-vote common stock of a corporation is publicly traded, then non-publicly traded high-vote stock is covered by the excise tax. And if common stock is publicly traded, then non-publicly traded preferred stock is covered too, unless an exception applies. The final regulations do provide some exceptions, though. In particular, they exclude quote-unquote plain vanilla preferred stock described in Section 1504A4. That is generally non-convertible, non-voting, and non-participating preferred stock. Treasury and the IRS acknowledge that this type of stock is more akin to debt instruments, and therefore do not implicate the policy concerns underlying the excise tax. This exception provides more flexibility for financing acquisitions, including by re-establishing parity between debt and plain vanilla preferred stock. That being said, it's important to remember that the redemption of other types of non-publicly traded preferred stock by a corporation with publicly traded common stock may still be subject to the excise tax. This includes preferred stock with voting, conversion, or participation rights. Additionally, the excise tax doesn't apply to quote-unquote additional Tier 1 preferred stock, meaning certain non-cumulative perpetual preferred instruments that are issued primarily by financial institutions to satisfy regulatory capital requirements. And finally, beyond that, the final regulations also provide transition relief by accepting any repurchase of mandatory redeemable stock or of stock subject to a unilateral holder put option, provided that the stock was outstanding prior to August 16th, 2022.

Carrie Falkenhayn: So, we have some clarity, maybe some simplification, but certainly still a lot to think through in terms of stock repurchases, it sounds like. I also mentioned at the beginning, these rules can affect foreign parented groups. Can you take me through how these final regulations affect those groups?

Benjamin Handler: Yeah, so the statute imposes the excise tax on acquisitions of stock of foreign publicly traded companies only in certain limited circumstances, generally only where a U.S. subsidiary acquires stock of its foreign parent, or in the case of a recently inverted company. The proposed regulations

expanded on this regime, treating the U.S. subsidiary as acquiring its foreign parented stock if it directly or indirectly, quote-unquote, funded the foreign parents or foreign affiliates stock repurchase with a principal purpose to avoid the excise tax. And here, funded was defined very, very broadly, including things like distributions, debt repayments, or capital contributions. The proposed regulations also provided that there was a principal purpose of avoiding the excise tax if the purpose of the funding was to fund a repurchase.

Carrie Falkenhayn: So, what does that mean for foreign investment in U.S. companies?

Benjamin Handler: Well, in an M&A transaction, there are often a large number of intercompany transactions that surround the acquisition of a U.S. target by a foreign buyer. Often, the foreign parent must fund the U.S. acquisition company with non-U.S. cash or the proceeds from non-U.S. borrowing to close the transaction through either equity contributions or intercompany loans. And then post-closing, multinational companies often engage in a process of transferring intellectual property, subsidiaries, and other assets cross-border in order to integrate the newly acquired target into their existing legal entity structure, to align transfer pricing and supply chain structures. And there have been concerns that these transactions, or any resulting future payments of interest or principal or royalties or distributions on intercompany debt and licensings, could be viewed as a quote-unquote funding a share buyback by the foreign parent that happens to occur at the same time, but perhaps for different reasons. However, the final regulations completely eliminate the funding rule, meaning that foreign-parented multinationals will likely have more flexibility in financing any U.S. M&A activity and engaging in post-acquisition integration of the targets.

Carrie Falkenhayn: I'm sure that's very welcome news, for organizations contemplating those kinds of transactions. So, do these changes mean that M&A participants no longer need to worry about the stock buyback excise tax?

Sandra Lopez: That's a great question. The excise tax should still be part of any tax due diligence when a publicly traded target is involved. While the final regulations do provide more flexibility in the way we structure M&A transactions, there are still some traps for the unwary, so it's important that M&A professionals be involved in the structuring of transactions that involve publicly traded companies.

Carrie Falkenhayn: Got it. And what can M&A participants do if they want to learn more about the stock buyback excise tax and recently released regulations. I know, your group has put out a number of articles. What else would you recommend?

Sandra Lopez: Well, for anyone that wants to dig deeper, we've actually published a Deloitte Tax Alert that walks through the final regulations, with a specific focus on M&A transactions. It highlights the areas where Treasury and the IRS provided relief, like the private transactions, preferred stock, and cross-border structures, and also flags the situations where the excise tax can still come into play. That said, even with the clarity provided by the final regulations, these rules are still highly technical and very fact specific. Whether the excise tax applies depends on details like the type of consideration used, how the transaction is structured, or the nature of a company's equity instruments. So, in addition to staying current on the latest guidance, our recommendation is to reach out to an M&A tax professional to understand how these rules might apply to future transactions that you might undertake. Doing so early on in the deal process can make a real difference in avoiding surprises and can assist with structuring deals efficiently.

Carrie Falkenhayn: No, absolutely. And thank you, Sandra, and thank you, Ben, for sharing those insights. There certainly is a lot to think through, as organizations are looking at M&A transactions, even with all the changes brought about in the final regulations. So, I really appreciate you sharing that. To our audience, as we mentioned, there is more information that you can receive on this and many other topics. I would encourage you to go online and search tax at hand. It will bring you to the Deloitte landing page, where you can sign up to take a look at the alerts, and in particular, receive really personalized updates for you on topics of interest. As always, I hope you continue to tune in for our next episode, and in the meantime, take care, everyone. Be well.

This podcast is produced by Deloitte. The views and opinions expressed by podcast speakers and guests are solely their own and do not reflect the opinions of Deloitte. This podcast provides general information only and is not intended to constitute advice or services of any kind. For additional information about Deloitte, go to deloitte.com/about.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the "Deloitte" name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.