

April 16, 2024

IRS Issues Proposed Regulations on Stock Buyback Tax

Proposed Regulations Would Modify Certain Aspects of Initial IRS Guidance

SUMMARY

On April 9, 2024, the IRS and the Department of the Treasury issued two Notices of Proposed Rulemaking (the “Proposed Regulations”) providing further guidance on the application of Section 4501 of the Internal Revenue Code, which imposes a 1% excise tax on certain repurchases of corporate stock (such tax, the “Excise Tax”).¹ The Proposed Regulations expand on and modify the initial guidance provided in Notice 2023-2 (the “Notice”) on December 27, 2022. Notable provisions of the Proposed Regulations include:

- Rules treating repurchases of foreign corporate stock “funded” by a domestic entity as subject to the Excise Tax are significantly narrowed.
- Most preferred stock continues to be treated as “stock” potentially subject to the Excise Tax. However, repurchases of preferred stock qualifying as “tier 1 preferred capital” are excluded from the Excise Tax.
- Redemptions in complete liquidation continue to be generally exempt from the Excise Tax (of particular relevance to SPACs, which were not afforded special relief).
- The Notice’s M&A-related framework generally continues to apply, with certain modifications.

BACKGROUND

On August 16, 2022, President Biden signed the Inflation Reduction Act into law, which included the imposition of the Excise Tax on certain repurchases of corporate stock after December 31, 2022. The Excise Tax generally applies to domestic corporations whose stock is traded on an established securities market (such a corporation, a “Covered Corporation”).² Under the statute, the Excise Tax is equal to 1% of the fair market value of “repurchases” with respect to stock of the Covered Corporation, generally including redemptions by the Covered Corporation and transactions that the Department of the Treasury determines

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to be “economically similar” to redemptions,³ subject to certain statutory exceptions, including for repurchases in connection with tax-free reorganizations.⁴ The statute also provides that the amount of redemptions subject to the Excise Tax in a taxable year is reduced by the fair market value of stock issuances made within the same year by the Covered Corporation (the “Netting Rule”).⁵ The statute also included regulatory powers to carry out the purposes of the Section, including addressing special classes of stock and preferred stock.⁶

On December 27, 2022, the IRS and the Department of the Treasury issued the Notice, which provided initial guidance on the application of Section 4501 with respect to, among other things, redemptions of preferred stock, redemptions in complete liquidation, tax-free reorganizations, repurchases of foreign corporate stock, and leveraged buyouts.

DISCUSSION

A. Foreign-Parented Groups

For foreign corporations traded on an established securities market (a “Foreign Covered Corporation”), the Excise Tax statute is generally limited (except in the case of certain “inverted” corporations) to purchases of the stock of a Foreign Covered Corporation by a 50%-owned U.S. affiliate.⁷ However, the Notice would have dramatically increased the scope of the Excise Tax to repurchases by Foreign Covered Corporations or their 50%-owned foreign affiliates of stock of the Foreign Covered Corporation by providing that such repurchases “funded” by a 50%-owned U.S. affiliate would be subject to the Excise Tax if a “principal purpose” of such funding was to avoid the Excise Tax.⁸ Further, such purpose would have been deemed to exist “per se” if the acquisition occurs within two years of a funding by any means (other than distribution) from a U.S. affiliate (the “Notice Funding Rule”).⁹ The Notice Funding Rule was criticized as being overbroad in comparison to targeted statutory language which applied to relatively rare transactions.¹⁰ Under the Notice, ordinary course cash management transactions involving a U.S. member of a foreign-parented group, even those unrelated to repurchase activity, could result in repurchases by the foreign parent becoming subject to the Excise Tax.

While the Proposed Regulations retain the general structure of the Notice Funding Rule, including the general principal purpose test, the Proposed Regulations contain significant modifications. In particular, the Proposed Regulations materially narrowed the wide scope of the per se rule by replacing it with a rebuttable presumption targeting only certain downstream fundings. Under the Proposed Regulations, a principal purpose is presumed to exist if a 50%-owned U.S. affiliate of a Foreign Covered Corporation funds by any means a downstream entity (e.g., a foreign subsidiary of a 50%-owned U.S. affiliate), and the funding occurs within two years of an acquisition of stock of the Foreign Covered Corporation by or on behalf of such downstream entity.¹¹ This presumption may be rebutted by facts and circumstances clearly establishing the absence of a principal purpose of avoiding the Excise Tax.¹²

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In addition, the Proposed Regulations clarify certain aspects of the principal purpose rule applicable to all repurchases, including those outside the scope of the rebuttable presumption. Under the Notice, if a 50%-owned U.S. affiliate funded its foreign parent with a principal purpose to fund a repurchase, it was unclear if such transaction would be treated as having a principal purpose of “avoiding” the Excise Tax even if that U.S. affiliate would never have itself effected the repurchase (as required on the face of the statute).¹³ The Proposed Regulations make clear that if a principal purpose of a funding transaction is to directly or indirectly fund a repurchase, then the requisite avoidance purpose exists.¹⁴

B. M&A Transactions

The Excise Tax generally applies to “repurchases,” which include both redemptions of Covered Corporation stock for cash or other property and any “economically similar” transactions.¹⁵ The Notice provided numerous examples of redemptions and an (exclusive) listing of economically similar transactions.¹⁶ Certain M&A transactions could be treated as repurchases, including leveraged buyouts and other acquisitions funded by the target and “boot” in certain types of tax-free reorganizations, among others.¹⁷ The Proposed Regulations retain both such examples and exclusive list, with certain modifications.¹⁸ Certain aspects of the Proposed Regulations relating to M&A transactions are described below.

1. LBOs and Other “Take Private” Transactions

Consistent with the Notice, the Proposed Regulations continue to treat leveraged buyouts (“LBOs”) and other taxable acquisitions of the stock of a target corporation in a “take private” transaction as repurchases for the purposes of the Excise Tax to the extent treated as funded by the target corporation, unless a statutory exception applies.¹⁹ This approach may create planning opportunities to avoid the Excise Tax by borrowing at the acquiring-entity level rather than the target-level. LBOs and other taxable take private transactions are subject to the Excise Tax even if the target corporation’s stock is no longer traded on an established securities market or is otherwise not a Covered Corporation at the conclusion of the repurchase transaction.²⁰

The Proposed Regulations clarify how stock issuances will be treated when an LBO or other “take private” transaction results in the target ceasing to be a Covered Corporation. Any stock issued by such target corporation in the same taxable year as the cessation transaction will only be taken into account for the purposes of the Netting Rule if such stock was issued during the period in which the target corporation was a Covered Corporation.²¹ Certain repurchases after the target ceases to be a Covered Corporation may nevertheless be treated as repurchases subject to the Excise Tax if such cessation is pursuant to a plan that includes a repurchase and such repurchases are pursuant to such plan.²²

2. Tax-Free Reorganizations

Consistent with the Notice, the Proposed Regulations continue to treat exchanges of shares of a Covered Corporation by its shareholders in an “acquisitive reorganization,” an “E” reorganization or an “F” reorganization as repurchases economically similar to redemptions and thus subject to the Excise Tax to

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the extent of taxable “boot.”²³ Subject to certain exceptions, the Proposed Regulations treat all amounts, whether or not funded by the Covered Corporation and including such amounts in exchange for tax-free consideration (in the form of acquiror stock), as repurchases. However, statutory exceptions effectively limit the Excise Tax to cash consideration or other taxable “boot” in the reorganization.²⁴

Notably, the Proposed Regulations continue to treat tax-free transactions very differently from taxable transactions. As discussed above, whether taxable transactions are subject to the Excise Tax generally depends on whether the consideration is sourced from the target or the acquiring entity, whereas the IRS and the Department of the Treasury explicitly declined to adopt a similar sourcing rule for tax-free reorganizations.²⁵ In addition, the Proposed Regulations continue to treat different forms of tax-free transactions differently, even where economically similar. In particular, the Proposed Regulations do not include tax-free “B” reorganizations and “Section 351” contributions within their scope.²⁶ This diverging treatment may on the margins affect whether and how to structure certain transactions in a tax-free manner.

3. Mergers and Acquisitions with Post-Closing Price Adjustments

The Proposed Regulations clarify certain aspects of shares issued in a transaction as part of an earnout or potentially subject to an indemnification payment (such shares, “Post-Closing Adjustment Shares”). The Proposed Regulations maintain the Notice approach of treating Post-Closing Adjustment Shares as issued when the ownership of the stock transfers to the recipient for federal income tax purposes.²⁷ The fair market value of Post-Closing Adjustment Shares is their trading price on the date of issuance rather than on the date of forfeiture or repurchase, consistent with the general valuation rules in the Proposed Regulations.²⁸

The Notice did not treat forfeiture as a repurchase because it was neither a redemption nor treated as an economically similar transaction.²⁹ However, the Proposed Regulations treat such forfeiture as a repurchase if the corresponding issuance of the Post-Closing Adjustment Shares would be counted under the Netting Rule.³⁰ The amount of the repurchase of the Post-Closing Adjustment Shares is the market price of the forfeited stock on the date of forfeiture, even if the actual purchase is at a negotiated below-market price.³¹

4. Spin-offs, Split-ups and Split-offs

The Proposed Regulations continue to treat spin-offs as transactions which are not economically similar to redemptions and therefore not subject to the Excise Tax.³² Split-ups, which were not discussed in the Notice, in which a parent corporation splits its assets into more than one “spin-co” and distributes those spin-cos in liquidation of the parent corporation, are similarly excluded from the Excise Tax.³³ However, the Proposed Regulations clarify guidance from the Notice and provide that “boot” paid by a Covered Corporation in exchange for its stock in a spin-off or a split-up would be a repurchase subject to the Excise Tax.³⁴

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Split-offs (which typically involve an exchange of stock of the “parent” for the stock of the “spin-co”) are still considered to be economically similar to redemptions under the Proposed Regulations, whether or not there is taxable “boot,” and are therefore treated as repurchases.³⁵ However, the exchange by parent shareholders of their parent stock for stock of the spin-co is exempted, effectively limiting the imposition of the Excise Tax to the extent of taxable “boot,” and making the issuance of spin-co stock in the split-off ineligible for the Netting Rule.³⁶

5. Liquidations

The Proposed Regulations generally maintain the complete liquidation rules described in the Notice. Distributions in complete liquidation of a Covered Corporation and other distributions by such Covered Corporation in the same taxable year in which the final distribution is made continue to generally not be repurchases.³⁷ However, if the Covered Corporation has both a controlling corporate shareholder (generally, at least 80% by voting power and value) and one or more other shareholders, the Proposed Regulations continue the Notice’s approach of applying the Excise Tax to liquidating distributions to the non-controlling shareholders.³⁸ The Proposed Regulations further clarify that the Excise Tax will apply to distributions in the taxable year of the final distribution in such cases.³⁹ While not addressed in the Notice, the Proposed Regulations treat partial liquidations involving actual or constructive redemptions of stock as repurchases subject to the Excise Tax.⁴⁰

6. SPAC Considerations

The Notice did not provide specific rules for special purpose acquisition companies (“SPACs”). Several commenters requested clarification or exceptions for SPACs, including exempting non-liquidating SPAC redemptions from the Excise Tax. However, the Proposed Regulations declined to adopt such exceptions as the Department of the Treasury and IRS expressed the view that the general rules sufficiently address SPACs. For example, SPAC liquidations are subject to the general liquidation rules.⁴¹ Similarly, redemptions of stock pursuant to a mandatory redemption right or a unilateral holder put option are subject to the same general rules as other redemptions.⁴² Under general Netting Rule principles, where the de-SPAC transaction involves an issuance of SPAC shares, the Netting Rule may be used to offset such redemptions with issuances.⁴³ However, there are many cases in which such Netting Rule may not be available – including if mandatory redemption occurs in a different taxable year than issuance of shares in a de-SPAC transaction, de-SPAC transactions where the SPAC is not itself the acquiring corporation, and issuances of exchange rights “Up-SPAC” transactions.⁴⁴

7. Repurchases Involving a Constructive Specified Affiliate

The Proposed Regulations address the treatment of certain acquisitions by a Covered Corporation of a corporation or partnership that owns stock in the Covered Corporation – including situations in which “hook stock” results from an acquisition. The Proposed Regulations generally treat such acquisitions as repurchases if the target owns stock of the Covered Corporation that represents more than 1% of the fair

market value of the target's assets and such stock was acquired after December 31, 2022.⁴⁵ This rule would apply regardless of whether the acquisition is taxable or tax-free.⁴⁶ The stock of the Covered Corporation owned by the target is treated as repurchased at the time the target becomes a 50%-owned affiliate of the Covered Corporation.⁴⁷

C. Capital Markets

1. Definition of Stock; Tier 1 Capital Preferred Stock

The Notice took a broad view of “stock” to include any instrument issued by a corporation that is or is treated as stock for federal income tax purposes at the time of issuance, regardless of whether the instrument is traded on an established securities market.⁴⁸ The statute provides regulatory authority to address “special classes of stock and preferred stock” and some speculated or recommended that regulations may provide exclusions or other relief for, among other things, “plain vanilla” preferred, participating preferred, mandatorily redeemable stock, convertible debt, and tracking stock.⁴⁹ Some commentators noted that such stock is often used in a manner similar to debt-funding, with mandatory redemption features not being akin to a “buyback” of stock.⁵⁰ However, the Proposed Regulations generally declined to provide any special rules for such stock, instead providing that the definition of “stock” should generally track general federal income tax principles.⁵¹ However, the Notice did provide that “additional tier 1 preferred stock” that qualifies as additional tier 1 capital for purposes of regulatory requirements for regulated financial institutions is excluded from the Excise Tax because of the unique regulatory and risk management framework in which such stock is routinely issued and redeemed.⁵²

2. Options and Similar Financial Instruments

The Proposed Regulations provide several clarifying rules for options and similar financial instruments. For physically settled contracts, the fair market value of shares acquired or issued upon physical settlement is the fair market value of the shares on the date of exercise rather than the strike price.⁵³ For cash settled contracts, net cash settlement generally results in neither a repurchase nor an issuance for the Excise Tax.⁵⁴ However, cash settlement of a deep-in-the-money option that is treated as constructively exercised at the time of grant will be treated as a repurchase at the date of settlement.⁵⁵ Forward contracts, by contrast, are subject to general federal income tax principles for the purposes of the Excise Tax and do not have special rules.⁵⁶ The Excise Tax applies to an integrated transaction (for example, a convertible debt instrument integrated with certain hedges) on a separate basis to each component of the integrated transaction.⁵⁷

3. Accelerated Share Repurchase

The Proposed Regulations retained the approach in the Notice, which described by way of example the treatment of an accelerated share repurchase (“ASR”) transaction. In a typical ASR transaction, a company enters into a forward contract with a dealer. On the “prepayment date,” the company delivers the prepayment amount and receives a certain percentage of the total to-be-repurchased shares based on the

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market price of the shares on the prepayment date. Depending on the market price on the final settlement date, the dealer may deliver more shares to the company, or the company may return shares or cash to the dealer on the final settlement date. For federal income tax purposes, an ASR transaction is generally treated as two separate repurchases, one on the prepayment date and the other on the final settlement date.⁵⁸ Under the example of the Notice, which assumed that the ASR would be so treated for federal income tax purposes, if the prepayment date preceded the effective date of the Excise Tax, the prepayment date repurchase would not be treated as subject to the Excise Tax, but the final settlement date repurchase would be subject to the Excise Tax. The Proposed Regulations retain the example but decline to adopt a special rule to determine the repurchase date for ASR transactions, stating that the determination of the date on which tax ownership of shares is transferred is inherently a factual question.⁵⁹

4. Dealer in Securities

The Proposed Regulations retain the approach in the Notice to exclude repurchases by a dealer in securities in the ordinary course of business from the Excise Tax.⁶⁰ This exception is available to the extent the dealer accounts for the stock as securities held primarily for sale to customers in the dealer's ordinary course of business, disposes of the stock within a time period consistent with the holding of the stock for sale to customers in the ordinary course of business, and does not sell or otherwise transfer the stock to an applicable acquiror or the Covered Corporation, as applicable, other than a sale or transfer to a dealer that otherwise satisfies the requirements of the exception.⁶¹ Stock issuances by such a dealer in the ordinary course of business are similarly disregarded for purposes of the Netting Rule.⁶²

5. IPOs

The Proposed Regulations provide guidance for corporations that become Covered Corporations during a taxable year – for example, when a corporation is first treated as traded on an established securities market. The Proposed Regulations state that a corporation is treated as a Covered Corporation starting on an “initiation date” that begins when the traded stock is first traded on a “regular way” basis and not a “when-issued” basis.⁶³ The Proposed Regulations also clarify that when a corporation becomes a Covered Corporation, shares issued on or after the initiation date would be counted for purposes of the Netting Rule, but shares issued before the initiation date would not be counted for purposes of the Netting Rule.⁶⁴

D. Request for Comments

The preamble to the Proposed Regulations contains a request for comments on all aspects of the Proposed Regulations, including (i) the application of the Excise Tax regulations to a series of transactions or events that occurs across multiple time zones, (ii) the proposed treatment of E and F reorganizations, and (iii) the types of foreign-based plans that should be included in the definition of an “employer-sponsored retirement plan.”⁶⁵

E. Effective Date and Reliance

The Proposed Regulations generally apply to transactions that occur after April 12, 2024.⁶⁶ However, certain rules for foreign corporations will apply to transactions that occur after December 31, 2022 and on or before April 12, 2024.⁶⁷ Specifically, rules similar to the Notice Funding Rule, including the per se rule, will apply with respect to a funding that occurs on or after December 27, 2022 provided that the covered purchase occurs after December 31, 2022 and on or before April 12, 2024.⁶⁸ However, a Covered Corporation may choose to apply all of the rules of the Proposed Regulations, including the rebuttable presumption rule, to transactions occurring after December 31, 2022.⁶⁹

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ENDNOTES

- 1 References herein to a “Section” are to sections of the Internal Revenue Code and the Treasury regulations (“Treasury Regulations” or “Treas. Reg.”) promulgated thereunder. All “§” references are to sections of the Proposed Regulations.
- 2 Section 4501(a), (d)(2). The Excise Tax also generally applies to a corporation that became a surrogate foreign corporation under Section 7874(a)(2)(B) (the so-called “anti-inversion rules”) after September 20, 2021.
- 3 Section 4501(c)(1).
- 4 Section 4501(e).
- 5 Section 4501(c)(3).
- 6 Section 4501(f).
- 7 Section 4501(d)(1). See §58.4501-5(b)(40), Example 40, in which a foreign corporation the stock of which is traded on an established securities market is treated as a domestic corporation under Section 7874(b) and is therefore a Covered Corporation for the purposes of the Excise Tax.
- 8 Preamble XVI.D.1. “Funding” is broadly defined to include distributions, debt, or capital contributions.
- 9 *Id.*
- 10 *E.g.*, foreign law may prohibit a subsidiary from owning stock of its ultimate parent entity.
- 11 §58.4501-7(e)(2). Downstream entities for such purposes are foreign 50%-owned affiliates of a Covered Corporation (i) 25% or more of the stock of which is owned (by vote or by value), directly or indirectly, by, individually or in aggregate, one or more U.S. 50%-owned affiliates of a Foreign Covered Corporation, or (ii) 25% or more of the capital interests or profits interests of which is held, directly or indirectly, by, individually or in aggregate, one or more U.S. 50%-owned affiliates of a Foreign Covered Corporation. §58.4501-7(b)(2)(xi).
- 12 *Id.* See also §58.4501-7(p)(5) and (6) for examples of the rebuttable presumption.
- 13 See Preamble XVI.D.3.b., which discusses certain stakeholders raising this ambiguity in the Notice principal purpose rule.
- 14 §58.4501-7(e)(1).
- 15 Section 4501(c)(1), defining “repurchase” as “(A) a redemption within the meaning of section 317(b) with regard to the stock of a covered corporation, and (B) any transaction determined by the Secretary to be economically similar to a transaction described in [(A)].” Section 317(b) defines a “redemption” as the corporation acquiring “its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock.” Section 317(a) defines “property” as money, securities, and any other property other than the corporation’s own stock (and the rights to acquire such stock).
- 16 Preamble XIV.F.; Notice Section 3.09.
- 17 Preamble VII.A.; §58.4501-2(e)(4).
- 18 §§58.4501-5(b)(3) and (4); §58.4501-2(e)(4). The exclusive list of economically similar transactions in the Proposed Regulations includes, in addition to the items from the list in the Notice, certain forfeitures of stock subject to post-closing price adjustments and the clawback stock subject to a clawback agreement.
- 19 Preamble VII.A.
- 20 Preamble IV.A.2.
- 21 §58.4501-4(b)(2).

ENDNOTES (CONTINUED)

- 22 §58.4501-2(d)(2)(ii).
- 23 §58.4501-2(e)(4)(i).
- 24 §58.4501-3(c); Section 4501(e).
- 25 Preamble VIII.B., with the Department of the Treasury and the IRS asserting that “[t]he plain language of the reorganization exception contains no reference to the source of the consideration for which the target corporation shareholders exchange their stock in a target redemptive distribution. Instead, the application of the reorganization exception to a target redemptive distribution in an acquisitive reorganization depends only on whether “gain or loss is recognized on such repurchase by the shareholder under chapter 1 by reason of such reorganization.” In other words, under the reorganization exception, the source of the consideration for which the target corporation shareholders exchange their stock in a target redemptive distribution is irrelevant in determining the application of the stock repurchase excise tax to acquisitive reorganizations.”
- 26 See §58.4501-1(b)(1), which declines to include tax-free “B” reorganizations and “Section 351” contributions in the definition of “acquisitive reorganization.”
- 27 §58.4501-4(d)(1).
- 28 §58.4501-4(e)(1). The Proposed Regulations provide that the fair market value of the repurchase is the market price of the stock on the date of the repurchase. §58.4501-2(h)(1). For stock traded on an established securities market (or of the same class and issue of stock that is so traded), the Proposed Regulations specify four acceptable methods to determine the market price: (i) daily VWAP on the date of repurchase; (ii) closing price on the date of repurchase; (iii) average of the high and low prices on the date of repurchase; and (iv) trading price at the time of the repurchase. §58.4501-2(h)(2). The market price of stock not traded on an established securities market is determined as of the date the stock is issued under the principles of Treasury Regulations Section 1.4095A-1(b)(5)(iv)(B)(1). §58.4501-2(h)(3). These rules are consistent with the initial guidance in the Notice.
- 29 Preamble XII.D.
- 30 §58.4501-2(e)(4)(vi).
- 31 §58.4501-2(h)(1).
- 32 §58.4501-2(e)(5)(iii)(A).
- 33 *Id.*; Preamble IX.A.
- 34 §58.4501-2(e)(5)(iii)(B).
- 35 §58.4501-2(e)(4)(iv).
- 36 §58.4501-3(c)(3); Section 4501(e)(1).
- 37 §58.4501-2(e)(5)(i) and (ii).
- 38 §58.4501-2(e)(4)(v).
- 39 §58.4501-2(e)(5)(ii).
- 40 §58.4501-5(b)(24) and (25), Examples 24 and 25.
- 41 Preamble XIV.G.2.
- 42 *Id.*
- 43 Preamble XIV.G.3.
- 44 *Id.*

ENDNOTES (CONTINUED)

- 45 §58.4501-2(f)(3)(i). Shares of stock of a Covered Corporation are treated as repurchased by the Covered Corporation if (A) a corporation or a partnership becomes a specified affiliate of the Covered Corporation, (B) at the time the corporation or partnership becomes a specified affiliate of the Covered Corporation, the corporation or partnership owns such shares, and such shares represent more than one percent of the fair market value of the assets of the corporation or partnership as determined at such time, and (C) the corporation or partnership acquired such shares after December 31, 2022.
- 46 Preamble XIV.D.
- 47 §58.4501-2(g)(4).
- 48 Preamble II.A.
- 49 Section 4501(f)(2).
- 50 Preamble II.A.1.
- 51 Preamble II.A.; §58.4501-1(b)(29).
- 52 §58.4501-1(b)(29)(ii); *see also* Preamble XVI.C.3.c.
- 53 §§58.4501-2(h)(1) and 58.4501-4(e)(1); *see also* §58.4501-5(b)(26) and (28) for examples illustrating this approach.
- 54 §§58.4501-2(e)(5)(v) and 58.4501-4(f)(12).
- 55 *Id.*
- 56 §§58.4501-2(h)(1) and 58.4501-4(e)(1).
- 57 §1.1275-6(f)(12)(iii).
- 58 §58.4501-5(b)(15) (Example 15). In this example, the prepayment date repurchase was not subject to the Excise Tax as it occurred prior to the effective date of the Proposed Regulations.
- 59 Preamble III.B.4.
- 60 §58.4501-3(e)(1).
- 61 §58.4501-3(e)(2).
- 62 §58.4501-4(f)(6).
- 63 §58.4501-2(d)(1), stating that a corporation becomes a Covered Corporation at the beginning of the corporation's "initiation date," and §58.4501-1(b)(15), defining "initiation date" as "the date on which stock of a corporation begins to be traded on an established securities market."
- 64 §58.4501-4(b)(2).
- 65 Preamble IV.A.5., VII.D and E, X.B.2, and VI.
- 66 §58.4501-7(r)(1).
- 67 §58.4501-7(r)(2).
- 68 §58.4501-7(o)(2). This includes using the per se principal purpose rule rather than the rebuttable presumption rule. §58.4501-7(o)(3).
- 69 §58.4501-7(r)(3).

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