

# TaxNewsFlash

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## Final regulations: Guidance on 1% excise tax on repurchases of corporate stock

The U.S. Treasury Department and IRS today released [final regulations](#) (T.D. 10037) providing guidance regarding application of the 1% excise tax on repurchases of corporate stock made after December 31, 2022.

### Prior guidance

The Treasury Department and IRS in January 2023 published Notice 2023-2 to provide initial guidance regarding the application of the stock repurchase excise tax. However, in July 2023, Treasury and the IRS published Announcement 2023-18, announcing that taxpayers would not be required to report or pay the stock repurchase excise tax before the time specified in forthcoming regulations. In April 2024, Treasury and the IRS published two sets of proposed regulations implementing the stock repurchase excise tax for repurchases made after December 31, 2022 (and obsoleting Notice 2023-2)—one addressing computational issues and the other addressing procedural issues. The proposed procedural regulations were finalized in July 2024.

### Final regulations

Today's final regulations finalize the proposed computational regulations, and make corresponding amendments to the final procedural regulations, with modifications in response to the comments received.

In particular, the final regulations do not include the proposed (and controversial) "funding rule" that would have imposed the stock repurchase excise tax on a U.S. corporation deemed to have funded by any means, directly or indirectly, its non-U.S. parent corporation's stock repurchases, with a principal purpose of avoiding the excise tax (with such principal purpose presumed to exist if a principal purpose of the funding was to fund, directly or indirectly, a repurchase of the non-U.S. parent stock). Thus, a U.S. subsidiary of a non-U.S. publicly-traded corporation remains potentially subject to the excise tax if it purchases the stock of its non-U.S. parent from an unrelated seller, but it will not be more generally subject to the excise tax with respect to a repurchase by its non-U.S. parent, even if the non-U.S. parent uses funds sourced from the U.S. subsidiary.

In addition, the final regulations provide new exceptions from application of the stock repurchase excise tax for:

- Repurchases of “plain vanilla” preferred stock described in section 1504(a)(4), as well as other special classes of stock and certain mandatorily redeemable or puttable stock issued prior to August 16, 2022, under the grant of authority in section 4501(f)
- Redemptions by a covered corporation that occur as part of a transaction in which the covered corporation ceases to be a covered corporation (such as a leveraged “take-private” transaction)
- Complete liquidations to which sections 331 and 332 both apply
- Exchanges by the target corporation shareholders of their target corporation stock in exchange for acquiring stock and boot pursuant to an acquisitive reorganization plan
- E or F reorganizations in which the recapitalizing corporation’s shareholders receive only qualifying property
- Stock repurchases by certain non-RIC funds

Because the final regulations did not adopt certain proposed rules, such as the funding rule, and modify the proposed computational regulations (including by excepting take-private and acquisitive reorganization transactions), some taxpayers may have overpaid the tax. The final regulations provide procedural guidance for such taxpayers to file refund claims.

While the final regulations are effective on November 24, 2025, the final regulations generally apply (with certain exceptions) to (1) repurchases of stock of a covered corporation occurring after December 31, 2022, and (2) issuances and provisions of stock of a covered corporation occurring during tax years ending after December 31, 2022.

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