

THOUGHT LEADERSHIP

LEGAL UPDATES

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Inflation Reduction Act Imposes New Tax on Buybacks

The Repurchase of Corporate Stock provision of the Inflation Reduction Act of 2022 (IRA), often called the stock-buyback provision, imposes a one percent excise tax on the repurchase or redemption of stock by covered corporations. The provision also grants the U.S. Treasury Department the authority to publish regulations that would subject “economically similar” transactions to the tax. Covered corporations include any domestic corporations with stock traded on an established securities market, but the tax only applies when the total value of stock repurchased in a taxable year exceeds \$1 million. Additionally, the taxable amount is limited to the fair market value of the repurchased stock over the fair market value of stock issued by the corporation during the year. In other words, the tax applies to the net value of shares retired during the year. The tax applies to repurchases after December 31, 2022, and it is nondeductible.

Covered corporations are also subject to the tax if certain controlled affiliates purchase stock of the covered corporation. Such affiliates include (i) any corporation that is more than fifty percent owned by the covered corporation and (ii) any partnership in which a covered corporation has more than a fifty percent capital or profits interest.

Special rules are imposed for certain foreign corporations and their controlled affiliates. If a domestic affiliate of a publicly traded foreign corporation purchases stock of the foreign corporation, then the affiliate is subject to the tax. Another special rule addresses the inversion of a domestic corporation, which could impose a tax on the foreign parent company under certain circumstances.

The provision also provides exclusions. The tax does not apply:

To the extent that a repurchase is part of a tax-free reorganization where no gain or loss is recognized by the shareholder;

In any case where the value of repurchased stock is contributed to an employer-sponsored retirement plan, employee stock ownership plan, or similar plan;

In any case of a repurchase by a dealer in securities in the ordinary course of business;

In any case of a repurchase by a regulated investment company or real estate investment trust; and

To the extent that a repurchase is treated as a dividend.

What this means to you

Corporations that are or think they may qualify as covered corporations, and who think they may engage in a stock repurchase or redemption transaction, or an “economically similar” transaction, should consult a tax professional regarding the applicability of the tax and tax-free options to accomplish similar objectives.

Contact us

Husch Blackwell will continue monitoring developments surrounding the implementation of the Inflation Reduction Act. Please contact our team of tax law professionals if you have any related questions.