



IRS releases Announcement 2023-18 on reporting and payments of stock repurchase excise tax Tax Alert

Overview

On June 29, 2023, the IRS released [Announcement 2023-18](#) (the “Announcement”), which announces that no reporting or payments of the new excise tax imposed on certain stock repurchases are required before the time specified in forthcoming Treasury regulations.

Background

The Inflation Reduction Act ([P.L. 117-169](#)), signed into law by President Biden on August 16, 2022, includes a new [section 4501](#), which imposes an excise tax of 1 percent on repurchases of stock by certain publicly-traded corporations (the “Excise Tax”) beginning after December 31, 2022. A [prior Tax Alert](#) (dated August 12, 2022) provided a summary discussion of the provisions of the Excise Tax.

On December 27, 2022, the U.S. Treasury Department (“Treasury”) and the Internal Revenue Service (“Service”) released [Notice 2023-2](#) (the “Notice”), which announces that Treasury and the Service intend to issue proposed Treasury regulations addressing the application of the Excise Tax. To provide taxpayers with interim guidance until the publication of the proposed Treasury regulations, the Notice describes certain rules and procedures that Treasury and the Service intend to include in the proposed Treasury regulations. A [prior Tax Alert](#) (dated December 30, 2022) provided a summary discussion of the Notice.

Section 4 of the Notice provides that the Excise Tax is anticipated to be reported on [Form 720](#), *Quarterly Federal Excise Tax Return*, which will be accompanied by an additional to-be-created form that is intended to aid taxpayers with the computation of the Excise Tax and which taxpayers will be required to attach to Form 720. On December 28, 2022, the Service issued draft [Form 7208](#), *Excise Tax on Repurchase of Corporate Stock*, which is the to-be-created form described in the preceding sentence.

Although Form 720 generally is required to be filed quarterly for other excise taxes, Treasury and the Service expect that the Excise Tax will be reported only

once for each taxable year on the last day of the first full fiscal quarter following the close of the taxable year. The Notice contains the following example: a taxpayer with a taxable year ending on December 31, 2023, would report its stock repurchase excise tax on the Form 720 for the first quarter of 2024, due April 30, 2024. The Notice also provides that under the proposed Treasury regulations, the deadline for the payment of the Excise Tax is expected to be the same as the filing deadline for the Form 720, and no extensions will be permitted for reporting or paying the Excise Tax.

Under [section 6651\(a\)\(1\)](#), if a tax return is not filed by the applicable due date (including validly obtained extensions), a penalty is imposed for each month (or fraction of a month) that the tax return is late equal to 5 percent of the tax liability due for the taxable year. The amount of the penalty is limited to a maximum of 25 percent of such tax liability. In addition, under section 6651(a)(2), if a taxpayer fails to timely pay the tax liability due for the taxable year, a penalty is imposed for each month (or fraction of a month) that the tax liability has not been paid equal to 0.5 percent of such tax liability. The amount of such penalty is limited to a maximum of 25 percent of such tax liability, provided that if both such penalties apply to a particular month, the failure to file penalty (5 percent) is reduced by the failure to pay penalty (0.5 percent) such that the maximum amount of penalties payable is equal to 47.5 of the tax liability due.

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The Announcement confirms that no taxpayer is required to report the Excise Tax on any returns filed with the Service, or make any payments of the Excise Tax, before the time specified in forthcoming Treasury regulations.

The Announcement provides that for taxpayers with a taxable year ending after December 31, 2022, but prior to publication of the forthcoming Treasury regulations, such Treasury regulations are expected to provide that the Excise Tax for such taxable year will be reported on the Form 720 that is due for the first full quarter after the date of publication of the forthcoming Treasury regulations, and the payment of any Excise Tax liability will be due on the same date.

The Announcement also provides that there will be no addition to tax under section 6651(a) (or any other provision of the Code) for a taxpayer's failure to file a return reporting the Excise Tax, or pay any Excise Tax liability, before the time specified in the forthcoming Treasury regulations.

Finally, the Announcement states that Treasury and the Service expect that the forthcoming Treasury regulations will require corporations subject to the Excise Tax to keep complete and detailed records relating to stock repurchases (including stock repurchases made after December 31, 2022, but before the forthcoming Treasury regulations are published) and to retain these records as long as their contents may become material.

The Announcement provides immediate relief for non-calendar year taxpayers (*i.e.*, fiscal-year taxpayers). In particular, for many fiscal-year taxpayers the first taxable year ending after December 31, 2022 has already ended or will end soon and, although the Notice provided guidance relating to the reporting and payment of the Excise Tax, such guidance only set forth what Treasury and the Service anticipated and expected with respect to such reporting and payment. In addition, to the extent the forthcoming Treasury regulations are different than the operating rules contained in the Notice, taxpayers will not have previously reported and paid Excise Tax based on rules that may no longer be applicable.



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