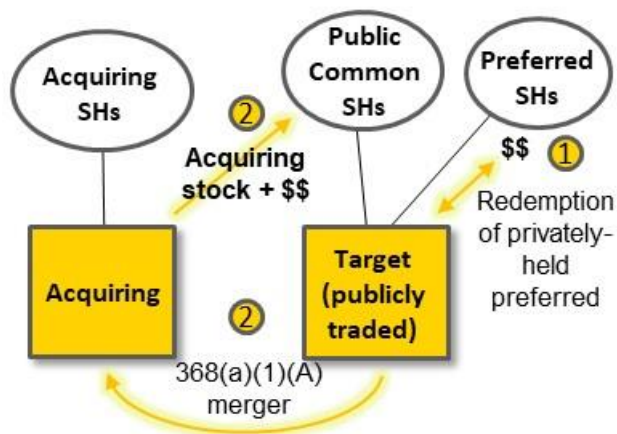


## Technical Developments and Musings

**Excise tax guidance for the new year.** The government released widely-anticipated, just-in-time guidance addressing the stock repurchase excise tax, which applies to stock repurchases beginning in 2023. [Notice 2023-2](#) announces forthcoming proposed regulations and rules for the excise tax, which taxpayers may rely

upon on in the interim. Much of the notice focuses on fact patterns that extend well beyond the typical ongoing stock repurchase program. The Notice provides welcome confirmation that stock sale transactions involving publicly traded corporations that technically are treated as redemptions under §304 are *not* treated as repurchases for excise tax purposes. But there are numerous transactions that will attract an excise tax. For example, under the Notice, the target corporation illustrated here will be treated as engaging in stock repurchases for purposes of the excise tax as a result of two different transactions occurring in the same taxable year, even in absence of an ongoing stock repurchase program. First, the Notice prescribes that, if the corporation is a covered corporation, redemptions of other classes of stock, including redemptions of preferred stock in accordance with terms put in place long before the excise tax was enacted, are repurchases. In addition, the Notice treats “boot” in an acquisitive reorganization as a repurchase by the target corporation to the extent of the boot. For further, see [Tax Alert 2023-0054](#).

### Stock buyback excise tax applies to common transactions



**Corporate alternative minimum tax guidance too.** Another widely anticipated guidance package, released at the same time as the excise tax notice, addresses the new 15% corporate alternative minimum tax. [Notice 2023-7](#) is styled similar to the excise tax notice, providing interim reliance rules in advance of proposed regulations. Very broadly, the notice confirms that financial statement gain or loss arising from wholly tax-free acquisitive and divisive reorganizations generally should be excluded from a taxpayer's adjusted financial statement income. It also provides a simplified method for determining whether an entity constitutes an "applicable corporation" and the depreciation adjustment for §168 (MACRS) property, among other guidance. For further info, see [Tax Alert 2023-0091](#).

**Consolidated group members would be single shareholder for certain Subpart F/GILTI purposes.** Additional guidance released in December included [proposed regulations](#) addressing Subpart F (or GILTI) income inclusions for certain United States shareholders that are members of a consolidated group. The regulations propose a new special consolidated return rule targeting a narrow fact pattern, pursuant to which all members of a consolidated group would be treated as a single US shareholder for purposes of determining the part of the year during which such shareholder did not own (within the meaning of §958(a)) CFC stock. The rule aims to prevent a reduction in a US shareholder's pro rata income share in a tax year in which a CFC distributed previously-taxed earnings and profits (PTEP) to another CFC and ownership of the distributing CFC has shifted between group members. Although proposed, such regulations could possibly apply to 2022 transactions if finalized by April 15, 2023. For further info, see [Tax Alert 2022-1933](#).