

Technical Developments and Musings

Stockless partial liquidations and the buyback excise tax. For publicly traded corporations, a relatively low-profile transaction is becoming more cumbersome if not more costly. Historically, such taxpayers were not particularly concerned with the corporate-level effects of a special, or “large,” pro rata dividend to its shareholders following the sale of a division (or the sale of a subsidiary for which a §338(h)(10) election is made), i.e., whether the dividend might also constitute a partial liquidation that supports §302(a) “exchange”

treatment to individual shareholders. In any event, if there were sufficient earnings, such distribution would be bifurcated for income tax purposes, with dividend treatment as to non-individual shareholders. But [proposed stock buyback excise tax regulations](#) significantly change this calculus: the regulations clearly contemplate that a “stockless” partial liquidation is within the scope of the §4501 excise tax, i.e., will be treated as a “repurchase” of stock for excise tax purposes even though no stock of the covered corporation is actually exchanged by shareholders. See, e.g., Rev. Rul. 77-245. What’s more, even if individual shareholders comprise a relatively small amount of the overall shareholder base, if the distribution qualifies as a partial liquidation as to this subset, the proposed regulations apparently treat the *entirety* of the distribution as a repurchase for excise tax purposes. The corporation’s only means of rebutting this presumption is to obtain detailed “certification” statements from non-individual shareholders (e.g., mutual funds or investment partnerships with corporate partners) so as to treat the distribution, to



such extent, as a dividend for excise tax purposes. Of course, obtaining such certifications will likely require significant effort, with no guarantees as to any particular shareholder’s cooperation. In sum, for publicly traded corporations, the proposed regulations have significantly raised the tax planning and administration stakes for determining whether a similar series of steps will qualify as a partial liquidation.

Other buyback tax developments. The aforementioned proposed stock buyback regulations cover a wide array of subjects beyond partial liquidations. For example, inbound corporate groups may have difficulty discerning the contours of a “principal purpose” rule directed toward US subsidiaries that “fund” buybacks of a publicly traded foreign parent, whereas banks will likely appreciate that redemptions of preferred stock that qualify as Tier 1 capital are generally exempt from excise tax. Generally, any taxpayer with an excise tax liability should be aware that the IRS is neither expecting payment nor returns until final regulations are released. For further info on the proposed regulations, see [Tax Alert 2024-0786](#) (overview), [Tax Alert 2024-0946](#) (broker reporting) and [Tax Alert 2024-0785](#) (compliance and procedural considerations).

Professional corporations included in consolidated return. In [PLR 202417008](#), IRS ruled that two professional corporations that were owned by professionals in accordance with state laws requiring such ownership would become members of a consolidated group upon execution of various contracts that altered the economic relationships as between the professionals and certain consolidated group members.