

Treasury Official Previews Guidance On Buyback Tax, Corporate AMT

by Chandra Wallace

Forthcoming proposed rules for the 1 percent stock buyback tax and corporate alternative minimum tax are weeks and months away, respectively, according to a Treasury official.

Proposed rules for the buyback tax, enacted in August 2022 as part of the Inflation Reduction Act, “are very far along in clearance, the final stage of review for regulations,” Treasury Tax Legislative Counsel Krishna Vallabhaneni said March 18 at a Tax Executives Institute conference. That reg package is “not coming out this week, but shortly,” he said.

The release of regulations implementing both the stock buyback tax and the corporate AMT — which government officials indicated might be forthcoming by the end of 2023 or early 2024 — may have been affected by the February departure of Lily Batchelder, former assistant secretary for tax policy at Treasury. Her replacement, acting Assistant Secretary Aviva Aron-Dine, will need to sign off on both reg packages before they can be released.

The corporate AMT rules are likely months away, Vallabhaneni said, although he added that “even that might be too long — it might be too long to say ‘months’ on that.” The minimum tax rules will address mark-to-market adjustments for unrealized gains and losses and include a simplified safe harbor method for determining whether a corporation or corporate group is subject to the tax, he said.

“Proposed regs are fully going to address how the mark-to-market variety of methodologies should be applied,” Vallabhaneni clarified in response to an attendee question.

“For periods before the proposed regs, and also for periods going forward, I think there’s definitely going to be a clear . . . relatively straightforward safe harbor” similar to the one defined for the corporate AMT in Notice 2023-7, 2023-3 IRB 390, Vallabhaneni said. That notice includes a safe harbor that applies only for the first tax year that began after December 31, 2022.

Buyback Tax Clues

Addressing the stock buyback tax's unpopular "funding rule" in Notice 2023-2, 2023-3 IRB 374, Vallabhaneni noted that the government has received "quite a bit of feedback," and told attendees and the conference that "hopefully you'll like what happens in the proposed rules better." The concerns underlying the rule haven't changed, he added, but the manner of addressing them may change in the proposed rules.

For payment of the buyback excise tax, Vallabhaneni clarified that the proposed regs aren't likely to require companies to pay in the same quarter that the regs come out. For companies with fiscal years that would otherwise make the tax payment fall in that quarter, payment is expected to be due in the next full quarter, as is provided in the interim guidance in Notice 2023-2.

"I don't think there's any plan to jam folks one way or the other on this," Vallabhaneni said about the timing of payment requirements. "I think whatever we would put out would be consistent with the guidance [already] out there." ■