

## Treasury and IRS Issue Initial Guidance on Stock Buyback Tax and Corporate Minimum Tax

***New guidance clarifies certain key points on implementing the 1% tax that generally applies to public company stock buybacks and the 15% corporate minimum tax that generally applies to corporations with book income exceeding \$1 billion.***

### Key Points:

- Redemptions of preferred stock, whether convertible, publicly traded, or issued before 2023, are generally subject to the buyback tax as long as the corporation has any class of stock that is publicly traded.
- Cash paid to public target corporation shareholders in a fully taxable acquisition of target stock, if sourced from target (including via a borrowing by target or by a merger sub that merges into target), such as in a leveraged take-private, is generally subject to the buyback tax.
- “Boot” (including cash) provided to public target shareholders in most tax-free reorganizations is subject to the buyback tax, whether funded by target, acquirer, or a merger sub.
- Redemptions that are part of a complete liquidation, including in the case of a SPAC, are generally exempt from the buyback tax.
- For 2023 only, a safe harbor will permit qualifying corporations to use a simplified approach to establish that they are not subject to the minimum tax.
- Exclusions from book income are provided with respect to specified tax-free corporate and partnership transactions, along with cancellation of indebtedness income arising from debt restructurings, while corresponding adjustments are mandated for asset basis and other attributes, thereby requiring an entire new set of books for determining the minimum tax.
- The guidance provides detailed rules on when “applicable corporation” status terminates in connection with mergers and acquisitions and other corporate transactions and how groups are then reconstituted for these purposes.

The US Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) have issued administrative guidance on the application of the 1% tax imposed on public company stock buybacks that occur after December 31, 2022, and the 15% corporate minimum tax that applies to corporations with

book income exceeding \$1 billion<sup>1</sup> in tax years beginning after December 31, 2022. Notices [2023-2](#) and [2023-7](#) (the Notices),<sup>2</sup> both released on December 27, 2022, provide highly anticipated guidance on implementing these significant new tax provisions enacted in August 2022 as part of the Inflation Reduction Act (the Act), but also leave important questions unanswered.

This Client Alert discusses the buyback tax and the minimum tax and how these provisions (as further developed in the new guidance) may affect corporate tax planning, illustrated through examples and observations.

## I. Notice 2023-2: Guidance Regarding Tax on Public Company Stock Buybacks

The Notice provides initial guidance and describes proposed regulations that the IRS intends to issue addressing the application of the nondeductible 1% tax on net stock buybacks that was enacted as part of the Act. The buyback tax applies to the fair market value of any stock that is repurchased by a “covered corporation”<sup>3</sup> or its “specified affiliates” (i.e., any direct or indirect subsidiary in which the corporation owns a 50% or greater equity interest) after December 31, 2022. The buyback tax is generally equal to 1% of (i) the fair market value of all stock repurchased in the taxable year (the buyback tax base) by a covered corporation /less (ii) the fair market value of all stock issued by the covered corporation in the same taxable year (the Netting Rule).

### Preferred Stock, Convertible Debt, Stock Options, and Warrants

The Notice clarifies that the buyback tax will apply to redemptions of preferred stock, including preferred stock issued before 2023, regardless of whether the preferred stock is publicly traded, convertible into common stock, or mandatorily redeemable, as long as the corporation has some class of outstanding stock that is publicly traded or listed on an interdealer quotation system. The Notice requests comments on redemptions of preferred stock, so some relief with respect to preferred stock could be provided in future guidance.

The Notice does not address whether the buyback tax will apply to repurchases by a covered corporation of its own convertible debt, options, warrants, or other derivatives but instead requests comments for future guidance.

#### Observation:

Corporations should carefully consider the timing of preferred stock redemptions and stock (common or preferred) issuances to avoid needless mismatches of issuances relative to redemptions under the Netting Rule.

### Taxable Reverse Mergers With Cash Proceeds (Including Leveraged Acquisitions and Take-Privates) Paid to Public Target Shareholders

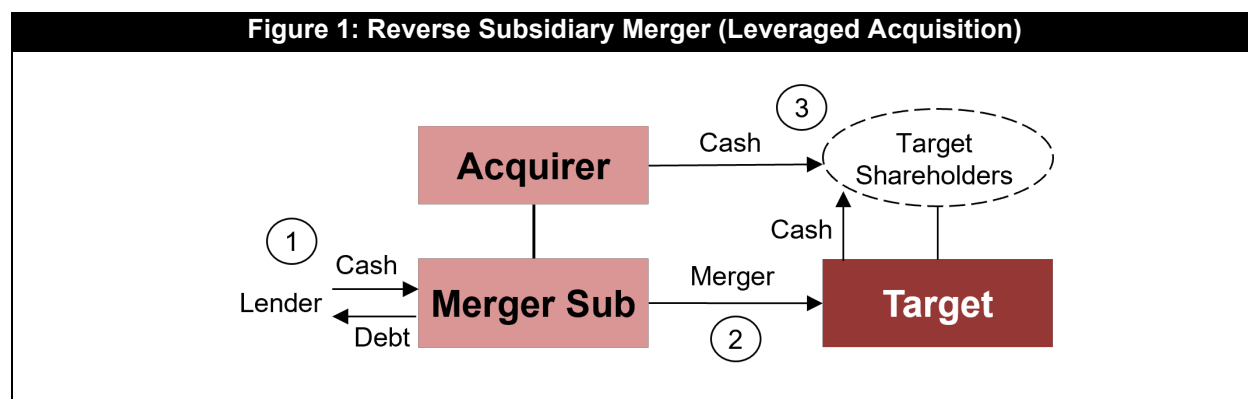
Most acquisitions of publicly traded corporations, especially all-cash deals, are, for tax and non-tax reasons, structured as reverse subsidiary mergers. In such a structure, an acquiring entity forms a new subsidiary that merges into the target corporation, which is a covered corporation (Target) with target shareholders receiving the merger consideration. In a reverse merger that is fully taxable to the Target shareholders, the shareholders will typically receive all or a portion of their consideration in cash or property other than acquiring corporation (Acquirer) stock (for simplicity, we will refer only to cash).

Cash proceeds paid to Target shareholders may be:

- a. funded by Acquirer (paid by Acquirer directly to Target shareholders, as depicted in step (3) below);
- b. deemed funded by Acquirer (contributed by Acquirer to a newly formed Merger Sub);
- c. funded by Target (paid by Target to the Target shareholders and sourced from Target's funds, including a borrowing); or
- d. deemed funded by Target (e.g., Merger Sub borrows and merges into Target, as depicted in steps (1) and (2) below).

The Notice clarifies that, to the extent the cash proceeds paid to Target shareholders are funded or deemed funded by Target (scenarios (c) and (d) above), Target will be subject to the buyback tax. In contrast, the buyback tax should not apply to scenarios (a) and (b) because in those situations the cash from Acquirer is not treated as a "redemption" of Target stock.

In each case, any Acquirer stock issued to the Target shareholders is utilizable for purposes of the Netting Rule. See Figures A-1, A-2, and A-3 in Appendix A to this Client Alert.



**Observation:**

To avoid the buyback tax in a taxable reverse merger, the cash proceeds should be funded or deemed funded by Acquirer (i.e., in a leveraged acquisition, consideration should be given to sourcing cash from the Acquirer, including any borrowing) so that Acquirer is treated for tax purposes as purchasing all of the Target stock. In order to avoid any risk of the cash being sourced to Target, any "debt push-down" of the borrowing by the Acquirer should be avoided in connection with the acquisition. This must be balanced against any state income tax benefit that might be obtained from a debt push-down.

**Acquisitions of "Private" Corporations**

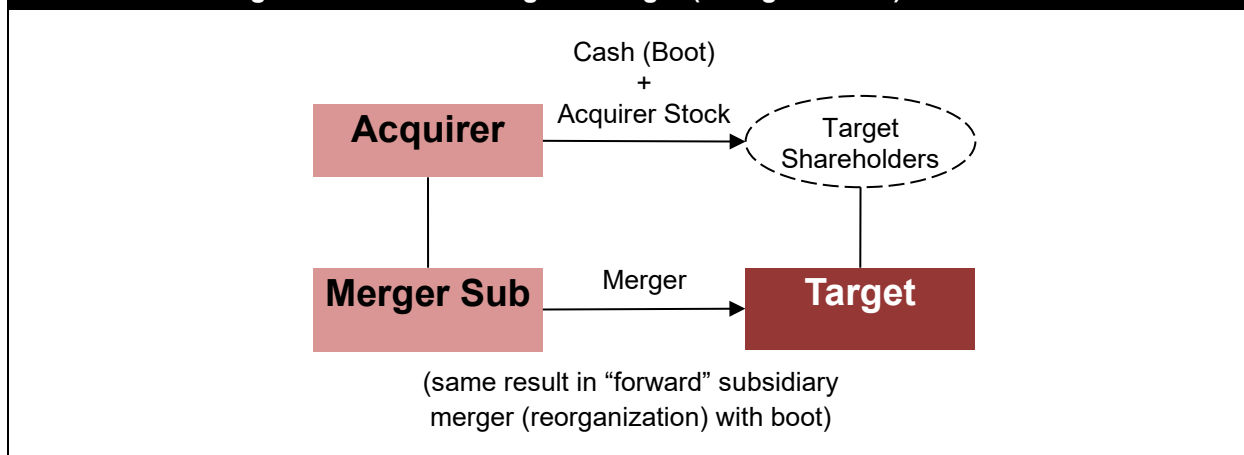
The buyback tax does not apply to acquisitions of corporations that are not covered corporations (i.e., the corporation does not have a class of stock that is publicly traded or listed on an interdealer quotation system). Acquirer may utilize any stock issued to shareholders of the private corporation for purposes of the Netting Rule.

## Acquisitive Tax-Free Reorganizations

The Notice addresses questions as to whether and to what extent “boot” (cash and other non-qualifying property) provided to public Target shareholders in an acquisitive tax-free “reorganization” (i.e., an “A” (merger), an “(a)(2)(D)” (forward subsidiary merger), “(a)(2)(E)” (reverse subsidiary merger), and “C” and certain “D” (asset transfer) reorganizations) is subject to the buyback tax. Specifically, the Notice provides that the buyback tax will apply to such transactions, but only to the extent Target stock is exchanged for “boot.”<sup>4</sup> Notably, a Section 351<sup>5</sup> transaction that does not qualify as a tax-free reorganization is not subject to this rule under the Notice.

Acquirer stock issued as consideration to the public Target shareholders in a reorganization is not utilizable for purposes of the Netting Rule. See Figures A-1, A-2, and A-3 in Appendix A.

**Figure 2: Reverse Triangular Merger (Reorganization) With Boot**

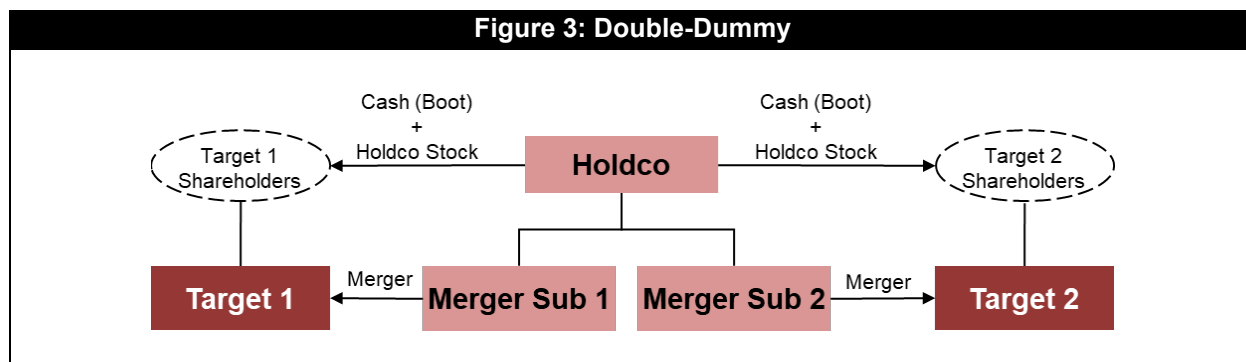


### Observation:

As illustrated above, very similarly structured transactions — a fully taxable reverse subsidiary merger versus one that qualifies as a reorganization — can result in materially different outcomes. The buyback tax is dependent on cash sourcing in the taxable transaction while cash sourcing is irrelevant in a reorganization.

## Double-Dummy Structure

In a typical all-public double-dummy structure, a newly formed public corporation (Holdco) forms two merger subs that merge into the two constituent corporations as depicted on the following page.



In some cases, this structure is used because a more conventional structure, like a reverse subsidiary merger, will not qualify as a tax-free reorganization (because, for example, there is too much cash consideration), but the double-dummy can qualify as a Section 351 transaction that often provides comparable tax-free treatment to the public shareholders. In a qualifying Section 351 transaction that is not a reorganization, (i) cash provided to a target corporation's shareholders does not appear to be subject to the buyback tax as long as not funded by that Target and (ii) the Holdco stock issued in the transaction should be entitled to be used for purposes of the Netting Rule if issued in the same tax year in which Holdco redeems stock. See Figure A-3 in Appendix A for an example of the Netting Rule's application to a double-dummy transaction.

**Observation:**

For purposes of the buyback tax, the treatment of boot in this double-dummy structure, where it does not qualify as a reorganization, is similar to the result in the fully taxable reverse subsidiary merger structure, notwithstanding that the federal income tax consequences of a double dummy transaction are typically more similar to a reorganization.

**SPAC Transactions**

*SPAC Liquidations.* The Notice provides that the buyback tax generally does not apply to distributions in complete liquidation and dissolution of a domestic special purpose acquisition company (SPAC), which should apply to such distributions made after the SPAC adopts a plan of liquidation. While the Notice appears to intend to exempt from the buyback tax distributions or redemptions made in the same taxable year as dissolution of the SPAC, but prior to the adoption of a plan of liquidation, certain ambiguities remain.

**Observation:**

To minimize the risk of the buyback tax applying in a complete liquidation and dissolution of a SPAC, absent further guidance, a SPAC may wish to ensure that all liquidating distributions (i.e., the redemption payments) are made after the adoption of a plan of liquidation.

*De-SPAC Transactions.* The buyback tax generally applies to redemptions by domestic SPACs that are not in complete liquidation of a SPAC (e.g., in connection with cash redemptions upon de-SPAC transactions, subject to the Netting Rule). The SPAC will generally be able to apply the Netting Rule and reduce its buyback tax base by the fair market value of any SPAC stock issued in a private investment in

public equity (PIPE) and any SPAC stock issued to shareholders of a private target corporation in connection with the de-SPAC transaction. In each case, in order to reduce the amount of tax due on the de-SPAC redemptions through use of the Netting Rule, the SPAC stock must be issued in the same taxable year as the redemptions and by the same entity that effects the redemptions (e.g., in the case of a domestication from a Cayman entity to a US entity — in which the US entity effects the SPAC redemptions — the US entity, not the Cayman entity, must issue the SPAC stock in the PIPE). See Figures A-2 and A-3 in Appendix A for examples of the Netting Rule’s application to certain de-SPAC transactions.

**Observation:**

If a de-SPAC transaction includes a domestication of the SPAC from a foreign jurisdiction to the United States followed by a de-SPAC transaction with a target that is not a covered corporation, the SPAC should ensure that the domestication is completed prior to issuing any SPAC stock in a PIPE or as consideration in the de-SPAC transaction to allow the SPAC to reduce its buyback tax base by such issued SPAC stock.

If possible and economical in light of other factors, a domestic SPAC should consider avoiding a double-dummy structure or other structures in which the SPAC is not the resulting public entity because the SPAC will not be able to reduce its buyback tax base by the issuances of stock in the de-SPAC transaction or in a PIPE if made by an entity other than the SPAC.

**Tax-Free Split-Offs and Spin-Offs**

The Notice provides that the buyback tax applies if a covered corporation distributes a subsidiary corporation’s stock in a qualifying “split-off” transaction (i.e., a portion of the covered corporation’s shareholders exchange their stock in the covered corporation for stock in a subsidiary corporation and, in some cases, cash), but only to the portion of the covered corporation’s stock that is redeemed with cash. The buyback tax does not apply to a qualifying “spin-off” transaction (i.e., all of a covered corporation’s shareholders receive a pro rata share of a subsidiary corporation’s stock and, in some cases, cash) regardless of whether cash is distributed in such transaction because there is no redemption of the covered corporation’s stock.

**Other Significant Aspects**

*Required Evidence for Dividend Exception.* There is a statutory exception to the buyback tax for a repurchase that is treated as a dividend to the shareholder. The Notice provides that in order to satisfy this exception, the corporation must (i) satisfy dividend information reporting requirements to the shareholder, (ii) receive a qualifying certification from the shareholder as to dividend treatment, and (iii) demonstrate it has sufficient earnings and profits to give rise to the dividend.

*Netting Rule.* The Notice provides that stock issued in an “acquisitive reorganization” or split-off of a covered corporation, while not giving rise to the buyback tax as noted above, cannot be used for purposes of the Netting Rule.<sup>6</sup> In contrast, stock issued in a fully taxable transaction, in a “B” reorganization or in a Section 351 transaction (such as a double-dummy structure that is not a reorganization) is utilizable when applying the Netting Rule to the issuer corporation. Finally, stock issued to a “specified affiliate” of the public corporation and stock distributed by the public corporation to its shareholders is not utilizable for the Netting Rule. See Appendix A for examples of the application of the Netting Rules to acquisitive transactions.

*Cash in Lieu of Fractional Shares.* The Notice provides that cash in lieu of fractional shares in a reorganization or settlement of an option or financial instrument is not subject to the buyback tax if such cash is not separately bargained for consideration.

*Request for Comments.* In addition, the Notice requests comments in a wide range of areas both subject to and not subject to the Notice, including whether to apply the buyback tax to bankrupt or troubled companies.

## II. Notice 2023-7: Guidance Regarding Corporate Minimum Tax

The Act imposes a 15% minimum tax on the adjusted financial statement income (AFSI) of an “applicable corporation,” generally defined as any corporation (other than an S corporation, regulated investment company, or real estate investment trust) that meets the AFSI test in one or more tax years ending after December 31, 2021, and prior to the current tax year in question. The AFSI test will generally be met for a particular tax year if the average annual AFSI of a corporation (applying certain aggregation rules) in the three tax years ending prior to the current tax year exceeds \$1 billion and, for any corporation that is part of a “foreign-parented multinational group,” the AFSI of the US entities in that group over the same period exceeds \$100 million.

Given that the minimum tax imposes an entirely new quasi-book tax regime on certain corporations, the Act left open several questions to be addressed in future regulations and guidance. In addition to announcing forthcoming regulations, the Notice provides interim guidance to help taxpayers in answering certain key questions as they assess the effect of the minimum tax for the 2023 tax year and beyond.

### Observation:

Despite providing needed guidance in certain areas, the Notice fails to address many questions that taxpayers may have, and the IRS requests comments on a wide range of outstanding questions.

Discussed below are some of the notable areas of guidance included in the Notice.

### Simplified Method for Determining Applicable Corporation Status in 2023

Some corporations may find modest relief through a limited safe harbor method included in the Notice for determining applicable corporation status for the 2023 tax year. Under the safe harbor, a corporation computes its aggregated AFSI only taking into account certain limited adjustments. This partially adjusted AFSI is then tested against modified AFSI thresholds, which are reduced to \$500 million (from \$1 billion) and \$50 million (from \$100 million), respectively.

### Observation:

The safe harbor only serves as a transitional rule to assist corporations in determining their application corporation status for 2023. Absent future guidance from Treasury and the IRS, beginning in 2024 all taxpayers will be required to determine their applicable corporation status based on the full suite of the Act’s complex calculations for the 2021, 2022, and 2023 tax years.

## Effect of Consolidated Partnerships in Determining Applicable Corporation Status

A taxpayer that is a partner in a partnership only takes into account its distributive share of a partnership's AFSI for purposes of calculating its liability for the minimum tax (Distributive Share Rule). However, for purposes of determining whether a corporation is an applicable corporation, a special rule requires the AFSI of such corporation to be determined without regard to the Distributive Share Rule.

The Notice acknowledges that uncertainty exists as to whether the Distributive Share Rule applies for purposes of determining applicable corporation status if a corporation is a partner in a partnership and such corporation and partnership are not treated as a single employer under Section 52. In addressing the uncertainty, the Notice provides that the Distributive Share Rule is inapplicable in all circumstances in determining applicable corporation status.

### Observation:

In certain partnership structures in which the corporation and the partnership are not treated as a single employer under Section 52, the corporate partner may still consolidate the partnership into its financial statements due to having a controlling financial interest in the partnership (i.e., voting control). Absent further clarification from Treasury or the IRS, this could require the corporation in an "Up-C" structure to include 100% of the AFSI of the operating partnership in its own AFSI for purposes of determining whether it is an applicable corporation.

## Book Income Exclusions for Tax-Free Transactions and Required Corresponding Adjustments

The Notice provides rules to generally conform, for purposes of computing AFSI, the financial accounting consequences to the income tax consequences of certain transactions, including (i) certain tax-free corporate and partnership transactions (a Covered Nonrecognition Transaction) and (ii) debt restructurings. The Notice also limits the application of such conforming adjustments for taxable transactions (a Covered Recognition Transaction).

A party to a Covered Nonrecognition Transaction may recognize financial accounting gain or loss despite the fact that the transaction is tax free for income tax purposes. A party that incurs cancellation of indebtedness (COD) in a debt restructuring may recognize financial accounting gain despite such COD being excluded from income for income tax purposes.

In both situations, the Notice conforms, for purposes of computing AFSI, the resulting financial accounting gain or loss to generally mirror the lack of gain or loss that results for income tax purposes. In addition to excluding financial accounting gain or loss, the Notice mandates corresponding adjustments for the asset basis and other attributes to mirror the absence of a tax basis increase for Covered Nonrecognition Transactions and the Section 108(b) attribution reduction for excluded COD income, with some implementation details left for future guidance. As a result, the Notice effectively requires taxpayers that engage in the foregoing transactions to maintain an entire new set of books for determining the minimum tax.



**Observation:**

If any gain or loss is recognized in a predominately tax-free corporate or partnership transaction, then the Notice provides that the transaction generally will not qualify as a Covered Nonrecognition Transaction. Thus, taxpayers should be aware of the potentially punitive effects of incurring even minor amounts of gain or loss in transactions that are otherwise tax-free.

**Transactional Impact of “Applicable Corporation” Status and Reconstitution of Applicable Corporation Groups**

One of the open questions on the application of the minimum tax concerned the scenarios in which an applicable corporation could lose its status as an “applicable corporation” in the future. Generally, once a corporation is determined to be an applicable corporation, it will remain as such unless certain limited exceptions apply (e.g., a “change in ownership”) that, in all cases, require a determination by the Treasury Secretary that it would be inappropriate to continue to treat the corporation as an applicable corporation.

The Notice provides guidance for determining the applicable corporation status of a corporation following these particular categories of Covered Nonrecognition Transactions and Covered Recognition Transactions (collectively, Covered Transactions):

- a. an acquisition by an Acquirer group (Acquirer AFS Group) of a standalone target group (Target AFS Group);
- b. a carve-out acquisition by an Acquirer AFS Group of a Target (or a Target’s assets) from a Target AFS Group; and
- c. the distribution of stock of a controlled company (Controlled) from a distributing group (Distributing AFS Group).

In connection with each of the foregoing categories of Covered Transactions, the applicable corporation status of Target or Controlled generally terminates and a new AFS group is formed (the Test Group or Controlled AFS Group) that includes either (i) the three-year AFSI of the Acquirer AFS Group and the Target AFS Group, (ii) the three-year AFSI of the Acquirer AFS Group and the Target’s allocable share of the three-year AFSI of the Target AFS Group, or (iii) Controlled’s allocable share of the three-year AFSI of the Distributing AFS Group. See Appendix B for examples of the categories of Covered Transactions described above.

The Notice also clarifies that US GAAP principles will apply for purposes of identifying which entities constitute the Acquirer and the Target.

## APPENDIX A: Application of Netting Rule

Figures A-1, A-2 and A-3 provide simple examples of the Netting Rules' application with respect to stock issued by traditional corporate and SPAC acquirers in exchange for stock of "private" corporations and public Targets (i.e., covered corporations).

All dollar amounts shown in the Figures below are in millions (to avoid application of the *de minimis* exception).

**Figure A-1: Netting Rule Application to Acquisitive Transactions**

### 2023 Transactions:

- February 1: Corporation X repurchases 100 shares of preferred stock with a FMV of \$100 per share (\$10,000);
- July 1: Corporation X issues 40 shares of common stock with a FMV of \$50 per share to the public in a secondary offering (\$2,000);
- August 1: Corporation X issues 60 shares of common stock with a FMV of \$60 per share to shareholders of Target CC1, a covered corporation, in a fully taxable transaction (\$3,600);
- September 1: Corporation X issues 100 shares of common stock with a FMV of \$60 per share to shareholders of Target CC2, a covered corporation, in a transaction that qualifies as a reorganization that is not a B reorganization (i.e., is issued in an "acquisitive reorganization") (\$6,000); and
- October 1: Corporation X issues 50 shares of common stock with a FMV of \$60 per share to shareholders of Private NCC, which is not a covered corporation, in a transaction that qualifies as a reorganization (\$3,000).
- **Corporation X's buyback tax liability for 2023 is \$14 (\$1,400 \* 1%).**

### Corporation X's Buyback Tax Base

Stock Redeemed	\$10,000.00
Stock Issued to the Public	(\$2,000.00)
Stock Issued to Target CC1	(\$3,600.00)
Stock Issued to Target CC2	N/A
Stock Issued to Private NCC	<u>(\$3,000.00)</u>
<b>Corp X's Total Buyback Tax Base</b>	<b>\$1,400.00</b>

### Figure A-2: Netting Rule Application to De-SPAC Domestication + Reorganization

#### 2023 Transactions:

- January 30: Cayman SPAC issues 300 shares of preferred stock with a FMV of \$15 per share in a PIPE (\$4,500);
  - January 30: Cayman SPAC domesticates to the US and is renamed "US SPAC";
  - February 1: US SPAC redeems 1,000 shares of Class A common stock with a FMV of \$10 per share (\$10,000);
  - February 1: US SPAC issues 200 shares of preferred stock with a FMV of \$15 per share in a PIPE (\$3,000); and
  - February 1: US SPAC issues 600 shares of Class A common stock with a FMV of \$10 per share to shareholders of Private NCC, which is not a covered corporation, in a transaction that qualifies as a reorganization (\$6,000).
- **US SPAC's buyback tax liability for 2023 is \$10 (\$1,000 \* 1%).**

#### US SPAC's Buyback Tax Base

Cayman SPAC Stock issued in PIPE	N/A
US SPAC Stock Redeemed	\$10,000.00
US SPAC Stock Issued in PIPE	(\$3,000.00)
US SPAC Stock Issued to Private NCC	<u>(\$6,000.00)</u>
<b>US SPAC's Total Buyback Tax Base</b>	<b>\$1,000.00</b>

### Figure A-3: Netting Rule Application to De-SPAC Double-Dummy

#### 2023 Transactions:

- February 1: US SPAC redeems 1,000 shares of US SPAC Class A common stock with a FMV of \$10 per share (\$10,000);
- February 1: Holdco issues 200 shares of Holdco preferred stock with a FMV of \$15 per share in a PIPE (\$3,000);
- February 1: Holdco issues 600 shares of Holdco Class A common stock with a FMV of \$10 per share to shareholders of Private NCC, which is not a covered corporation, in a transaction that qualifies as a reorganization (\$6,000); and
- February 1: Holdco issues 400 shares of Holdco Class A common stock with a FMV of \$10 per share to US SPAC's shareholders, in a transaction that qualifies as a reorganization that is not a "B" reorganization (i.e., is issued in an "acquisitive reorganization") (\$4,000).
- US SPAC's buyback tax liability for 2023 is \$100 (\$10,000 \* 1%); Holdco's buyback tax liability for 2023 is \$0 (no redemptions).**

#### US SPAC's Buyback Tax Base

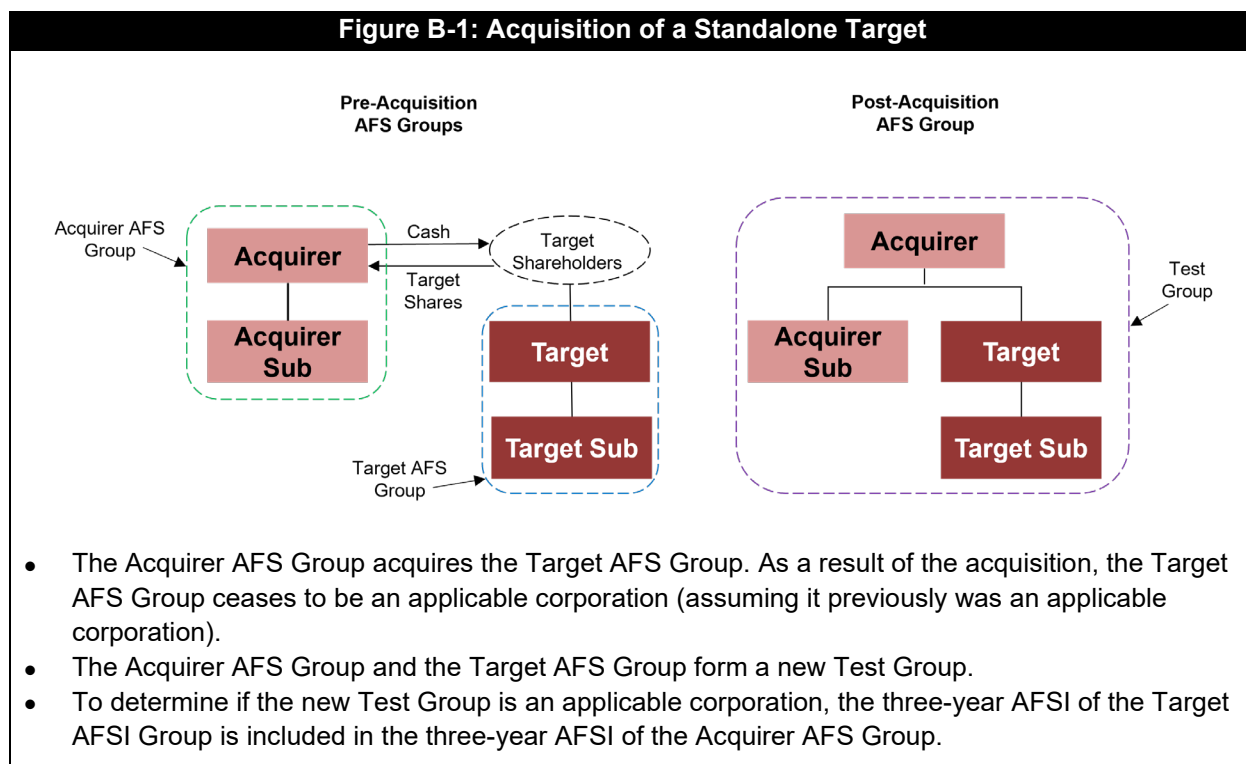
US SPAC Stock Redeemed	\$10,000.00
Holdco Stock Issued in PIPE	N/A
Holdco Stock Issued to Private NCC	N/A
Holdco Stock Issued to US SPAC	N/A
<b>US SPAC's Total Buyback Tax Base</b>	<b>\$10,000.00</b>

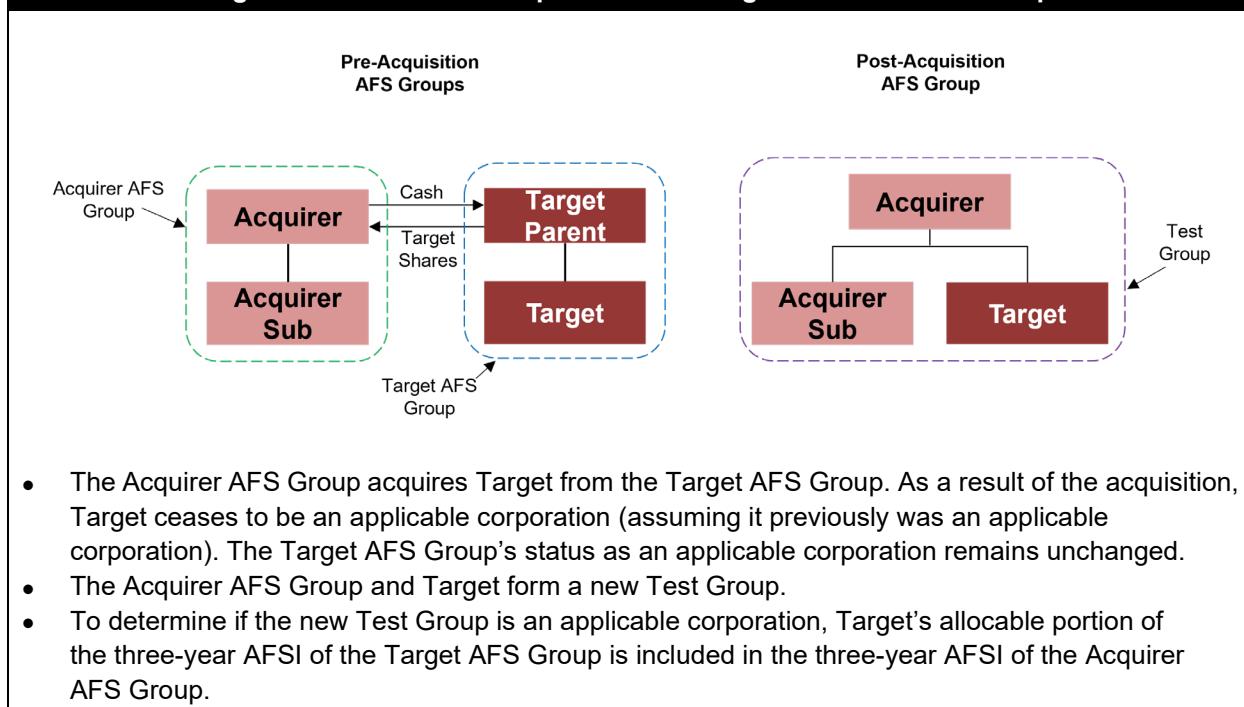
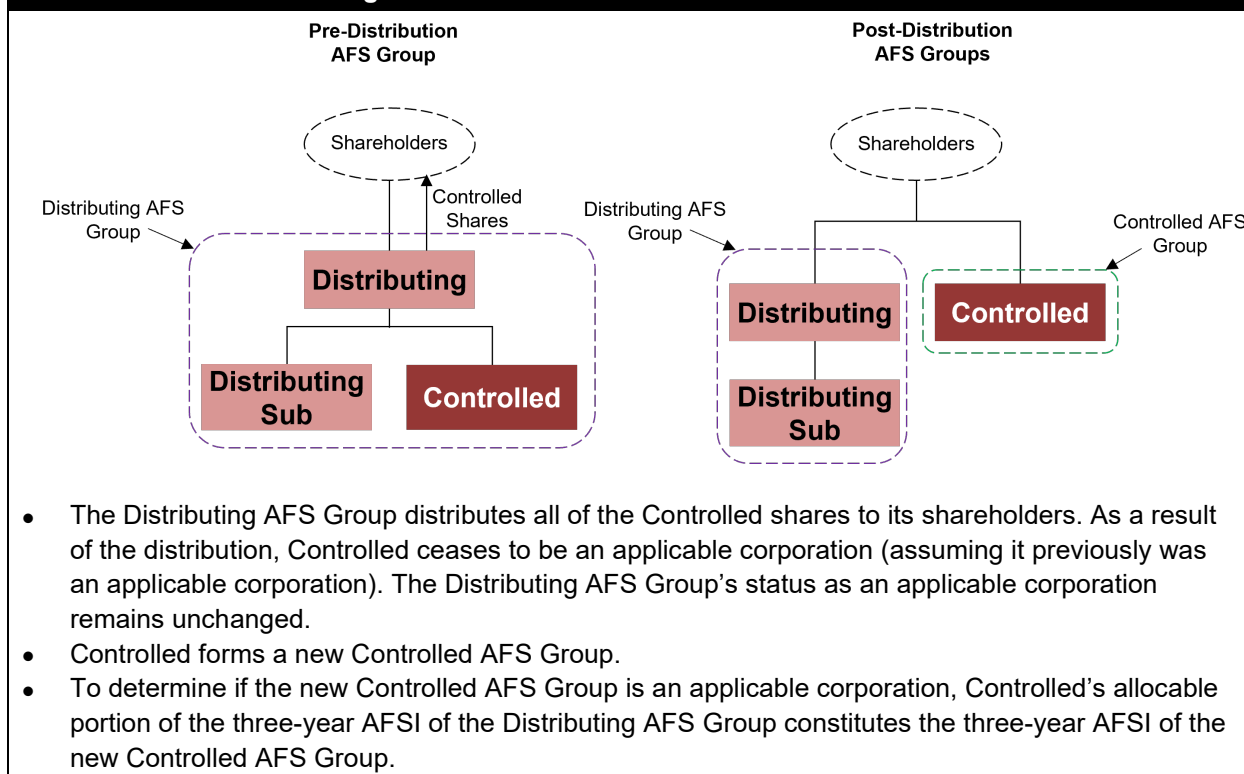
#### Holdco's Buyback Tax Base

US SPAC Stock Redeemed	N/A
Holdco Stock Issued in PIPE	(\$3,000.00)
Holdco Stock Issued to Private NCC	(\$6,000.00)
Holdco Stock Issued to US SPAC	N/A
<b>Holdco's Total Buyback Tax Base</b>	<b>(\$9,000.00)</b>

## APPENDIX B: Corporate Minimum Tax Covered Transactions Illustrations

Figures B-1, B-2, and B-3 below provide basic illustrations of how the Covered Transaction rules apply in the scenarios described above. For simplicity, the illustrations assume that the Acquirer is not currently an applicable corporation.



**Figure B-2: Carve-Out Acquisition of a Target From Another Group****Figure B-3: Distribution of Stock of Controlled**

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#### Endnotes

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- <sup>1</sup> All references to "\$" refer to US dollars.
- <sup>2</sup> Each reference to "Notice" refers to Notice 2023-2 (the stock buyback notice) or Notice 2023-7 (the corporate minimum tax notice), as the context requires.
- <sup>3</sup> A covered corporation is any domestic corporation whose stock is traded either on an established securities market (e.g., New York Stock Exchange, Nasdaq, London Stock Exchange, etc.) or on an interdealer quotation system that regularly disseminates firm quotations. The buyback tax also applies in limited circumstances to repurchases of stock of public foreign corporations, including when the purchaser is a US-connected specified affiliate. All examples in this Client Alert assume that the relevant corporation is a "covered corporation."
- <sup>4</sup> "E" (recapitalization) or "F" (mere change in a covered corporation's identity, form, or place of organization) reorganizations are subject to similar buyback tax consequences.
- <sup>5</sup> All references to "Section" are to sections of the Internal Revenue Code of 1986, as amended.
- <sup>6</sup> In addition, stock issued in "E" or "F" reorganizations will not be utilizable for purposes of applying the Netting Rule.