



BritishAmericanBusiness

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U.S. Internal Revenue Service (IRS)
Via Electronic Submission

August 2024

Re: Stock Buyback Excise Tax and risk of penalizing UK listed entities

I am writing on behalf of the members of BritishAmerican Business, to seek clarification on the regulations covering the US subsidiaries of foreign parent companies, as it applies to the Stock Buyback Excise Tax provision (further referred to as 'excise tax'), contained in the Inflation Reduction Act (IRA).

BritishAmerican Business (BAB) is the leading US-UK transatlantic trade association, incorporating the British-American Chamber of Commerce in the US and the American Chamber of Commerce in the UK. We are committed to strengthening the economic corridor between the US and the UK, and support policies and actions that enhance the environment for transatlantic trade and investment on behalf of our 450+ members.

Recent Regulatory Developments

We understand that, in general, the excise tax applies to a US domestic company buying its own shares (26 U.S. Code § 4501(a)). Very clearly, the statute does not apply the excise tax to a foreign parent company buying its own shares. However, we note that the tax applies to a US subsidiary company that directly buys shares of its publicly traded foreign parent company (§ 4501(d)), despite this being a very rare occurrence.

The challenge that our members have raised with BAB lies in the funding rule proposed by the US Treasury Department and Internal Revenue Service (IRS) in April 2024 (§ 58.4501-7(e)(1)). The rule creates a risk that the excise tax may ultimately be triggered by a foreign parent company buying its own shares if its US subsidiary has made payments to its parent as ordinary business transactions

or in the context of cash management & pooling - activities that are not subject to the excise tax under the plain language of the statute.

Specifically, the proposed funding rule requires a US subsidiary to pay the excise tax under § 4501(d) when it *“funds by any means” a stock repurchase by its foreign parent with “a principal purpose” of avoiding the excise tax.* This proposed rule provides that a funding has a *“principal purpose”* of avoiding the excise tax (by default) if it is done with a *“principal purpose”* of funding a repurchase of foreign parent stock. This rule would impute a “bad” purpose, regardless of whether the funding was made with any intention of avoiding the excise tax itself. So, for example, a US subsidiary with a track record over many years of paying dividends to its UK parent, which in turn buys back its PLC shares on the London Stock Exchange, might then be subject to the excise tax, even though this pattern of funding long pre-dates the conception of the excise tax and so clearly cannot be designed to avoid it.

Further, there is no guidance on how the *“principal purpose”* of a funding transaction will be determined, and this therefore risks that payment and fund transfers between a subsidiary and parent company, in the ordinary course of business, may be deemed, incorrectly, as having funded the share buyback. Ordinary business transactions and typical cash management arrangements can include, for example: cash pooling, dividends, short term loans & repayments, guaranty fees, payments for goods & services, royalty payments from US entities to their foreign counterparts, IP licensing payments from the U.S. affiliate, or interest payments based on an intra-group loan to the foreign entity. The lack of clarity on how purpose will ultimately be determined and in which circumstance also raises administrative and legal concerns.

Our concern, on behalf of our members, is that the application of this excise tax in these circumstances causes routine repurchases by foreign parents of their own stock to generate an automatic US excise tax on their US subsidiaries, to the extent those subsidiaries engage in operational or financial transactions with their foreign related parties. Where non-abusive transactions may incorrectly be classed as abusive - in each case, subsidiaries must prove against such an intended purpose. This not only results in uncertainty and a heavy practical burden for businesses moving forward, but it also increases the likelihood of disputes between IRS and taxpayers, which could have otherwise been avoided. In addition to this, the regulation also amounts to an extraterritorial tax on a non-US company and its shareholders, as it pairs payments made by a U.S. corporation with a foreign corporation’s stock repurchases without regard for funding from non-US affiliates or non-US business operations.

Further, the enactment of the excise and the proposed funding rule may motivate other jurisdictions to consider parallel taxes. This could result in double taxation on the same transaction for multinationals (within a foreign parent’s home country and in the US through its subsidiary). UK companies, for example, already suffer stamp duty on share buybacks, and no credit would be available for US excise tax on the same buybacks. Aggressive buyback rules could also motivate other jurisdictions to subject local subsidiaries of US corporations to retaliatory tax measures, including repurchases by publicly traded US multinationals if such similar funding rules were adopted. US headquartered multinationals are similarly concerned that they would then be exposed to duplicative taxation on the same buybacks. It is therefore in the wider interest that this issue is addressed to avoid multiple taxations on stock buyback transactions.

Conclusion

We would be grateful for clarification and confirmation that business payments and funds transfers (from a US subsidiary to its UK parent company) will not be deemed as having “*a principal purpose*” of avoiding the excise tax. Any final rule implementing the stock buybacks excise tax should include clear exemptions for ordinary-course transactions and short-term funding & cash management arrangements (including dividends, interest payments and cash pooling, license payments, and payments for services), that are not share repurchases nor attempts to evade the tax. This prevents unnecessary cost burdens on UK multinationals and provides greater confidence and clarity for such companies that do business in the US. Consequently, it also provides comfort to US multinationals that they will not in future be exposed to double- or multiple levels of taxation on stock buybacks they undertake.

Yours Sincerely

A handwritten signature in blue ink that reads "Duncan Edwards". The signature is written in a cursive, flowing style.

Duncan Edwards OBE
Chief Executive Officer
BritishAmerican Business