

Alert | International Trade/Mergers & Acquisitions



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M&A Considerations in the Event of IEEPA Tariff Refunds

The Supreme Court of the United States (SCOTUS) is expected to rule imminently on the legality of the tariffs imposed by President Donald Trump through executive authority under the International Emergency Economic Powers Act of 1977 (the IEEPA-based tariffs). If SCOTUS strikes down the IEEPA-based tariffs, the implications may be significant: an aggregate amount in excess of \$150 billion in tariff proceeds may become refundable to importers. Given the scale of the tariffs collected to date, such a ruling may represent one of the largest refund events tied to trade policy in modern U.S. history and might raise complex questions around entitlement, timing, and mechanics of recovery.

For M&A transactions, this uncertainty has concrete deal-structuring implications. Even if the administration pursues alternative statutory or regulatory avenues to re-impose tariffs prospectively, refunds attributable to IEEPA-based tariffs from pre-closing periods may remain a live issue. M&A parties, particularly in equity transactions, should consider proactively addressing which party is entitled to any tariff refunds arising from periods prior to closing. On the sell-side, where a portfolio company has borne IEEPA-based tariffs, sellers should consider ensuring that the buyer's obligations under the post-closing tax covenants clearly preserve the seller's entitlement to such refunds. For certain importers, the potential refund of IEEPA-based tariffs may represent substantial value, beyond the range of typical pre-closing tax refunds, making silence or ambiguity in the purchase agreement a potential economic risk.

If the parties' intent is that the seller retains the benefit of these refunds, the parties may wish to make explicit reference to tariff-related refunds in the relevant defined terms and operative provisions, thereby eliminating uncertainty around post-closing property rights. Conversely, on the buy-side, particularly in competitive auction processes, it may be prudent for buyers to instruct tax accountants and other

advisors, early in the due diligence process, to estimate the potential magnitude of any refunds. Armed with that analysis, a buyer can decide whether to make that value legible in its bid as part of overall value delivery to the seller or, alternatively, to reserve it as a negotiating lever later in the process, including as a potential source of set-off against an aggressive headline price or known, material diligence issues that fall outside the scope of representation and warranty insurance coverage.

Ultimately, the prospect of widespread tariff refunds underscores how external legal and regulatory developments have the ability to create latent value—or risk—within M&A transactions. Parties that fail to address these issues upfront may find themselves in post-closing disputes over assets neither side fully priced into the deal. By anticipating the potential impact of a SCOTUS ruling and allocating tariff refund rights with precision, parties may be able to strike deal terms that reduce uncertainty and protect value consistent with the overall economic bargain.

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