

Don Shiman in Law360: '3 Issues Tax Pros Want Clarified in Buyback Tax Guidance'

October 18, 2022 Don Shiman

PRACTICES Tax, Corporate Tax

Haynes Boone Partner [Don Shiman](#) was featured in an *Law360* article. Below is an excerpt:

With an excise tax on stock buybacks slated to take effect in 2023, tax professionals are looking to the Internal Revenue Service to provide clarity on calculating the tax and on its applicability to mergers and acquisitions. ...

The buyback tax shouldn't be a problem for SPACs that succeed, said Don Shiman of Haynes Boone. That's because the tax is imposed on a net amount that's reduced by issuances of stock, Shiman said. The tax treatment of SPACs that fail, however, is unclear, he said. If the IRS doesn't exempt SPAC liquidations from the tax, it would be tantamount to a tax on investors, he said.

Shiman said it's inappropriate for the tax to apply to liquidated SPACs but it's unclear how many of them there are.

Preferred Stock

The law specifically directs the IRS to issue regulations on special classes of stock and preferred stock. Shiman said guidance addressing buybacks of preferred stock should be a top priority for the agency and the U.S. Department of the Treasury.

Preferred stock is essentially a form of financing, and many companies issue it, Shiman said. They may issue preferred stock instead of getting debt financing from a bank or credit fund, and it can be used for financing transactions such as investments in the company or making acquisitions, he said.

Without guidance exempting preferred stock arrangements from the tax, Shiman said he expects public companies would use debt financing rather than taxable preferred stock.

Shiman also raised concern about outstanding preferred stock. There's no grandfathering rule now, and as it stands, existing preferred stock issuances would be subject to the tax, he said.

"That's something that needs to be addressed sooner rather than later," he said. "I would think as an equitable matter that they should grandfather existing preferred stock."

Excerpted from *Law360*. To read the full article, [click here](#).