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# Securitization and Derivatives US Tax Update

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# Latest Update on Cryptocurrency Tax Reporting

- **US tax legislation expanded tax reporting for brokers who facilitate cryptocurrency transactions for transactions undertaken in 2023 and after.**
  - **The question as to who constitutes a broker for this purpose has generated considerable Congressional and industry attention**
- **2021 US tax legislation also mandates tax reporting for persons who accept cryptocurrency as consideration for goods & services, beginning with 2023 transactions.**
- **In late December 2022, the US Internal Revenue Service delayed the implementation of new reporting rules until it issues final regulations. IRS Announcement 2023-2.**

# Innovative Pharmaceutical Funding Transactions are Gaining Traction

- **US pharma funds are now providing funding to pharma start-ups in exchange for a percentage of revenues from sales of specific pharmaceuticals.**
- **Transactions are unlikely to be characterized as either debt or equity in the pharma company. Most likely US tax characterization is a joint venture.**
- **Joint venture formats raise the possibility of non-US partners in the pharma fund earning income that is subject to net US tax.**
- **Possible derivative structures to avoid US tax.**

# IRS adds Hedge Fund Lending to List of High Priority Items for Audits

- **Credit funds & offshore insurance companies can receive US-source interest free from US withholding tax.**
  - **Portfolio interest exception does not apply if the interest income is received in connection with the conduct of a US trade or business of lending**
- **If a credit fund becomes too involved with the loan origination, it can be treated as engaged in a lending business.**
- **In mid-2021, the IRS decided to make the issue of lending vs. buying secondary market debt an audit priority issue.**

# Litigation Funding – Derivative Use is Becoming an Industry Standard Financing Technique

- **Recent US tax case recharacterized transaction structured as debt as a prepayment for services.**
- **Case likely means that persons providing financing are receiving income that constitutes US trade or business income.**
- **Industry has responded by changing funding structures to use derivatives that should not generate US trade or business income.**
- **No IRS response as of yet. Effectiveness could hinge who is being funded and the underlying claim.**

# 2023 Withholding Rules Threaten Publicly-Traded Partnership Trading Outside of the US

- **Beginning in 2023, brokers clearing market transactions in companies treated as partnerships for US tax purposes are required to withhold US tax if partnership is engaged in the conduct of a US trade or business.**
- **PTPs can be both US companies trading shares outside of the US or non-US companies that have elected partnership treatment for US tax purposes.**
- **Brokers & Euroclear refuse to accept liability for US tax withholding even if PTP has no history of US trade or business income.**

# Thank you!

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