



# Hot Topics: The Traps and Opportunities of Debt Restructurings

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# Today's Panelists



**Jennifer Sabin**

[Jennifer Sabin](#) is a partner in the New York office of Gibson Dunn. She represents clients in a broad range of domestic and international tax matters, including taxable and tax-free mergers and acquisitions (public and private), capital markets transactions, financings, spin-offs, joint ventures, and restructurings. Her practice also includes formation of, and transactions undertaken by, private equity, hedge funds, and asset managers.



**Edward Wei**

[Edward Wei](#) is a partner in the New York office of Gibson Dunn and member of the Tax Practice Group. Edward's practice focuses on a wide range of U.S. and international tax matters, such as public company spin-offs, mergers, acquisitions and joint ventures (including de-SPAC transactions), private equity, bankruptcy and out-of-court restructurings, debt and equity capital markets (including issuances involving SPAC and UP-C structures), and real estate transactions.



**Lorna Wilson**

[Lorna Wilson](#) is a partner in Gibson Dunn's Los Angeles office and a member of the firm's Tax Practice Group. Lorna's practice focuses on federal income tax matters, including corporate, limited liability company, and partnership tax matters in both the U.S. and international contexts. She has worked on a variety of transactions, including taxable and tax-free mergers, acquisitions, dispositions and reorganizations, joint ventures, investment funds, public and private offerings of stock, debt and derivatives, and financing transactions. Lorna additionally has extensive experience in tax planning for real estate transactions, including advising on investments in real estate by U.S. and non-U.S. investors, including foreign governments, dispositions of real estate, real estate investment trust (REIT) matters and California state and local real estate tax issues, including property and transfer taxes issues.

# Agenda

- 01** Introduction
- 02** Market Trends and Structures Utilized in the Debt Restructuring Market
- 03** Traps and Opportunities for Restructuring Distressed Real Estate
- 04** Traps and Opportunities for Private Funds and CLO Vehicles
- 05** Risks Related to Receipt of Fees and Other Forms of Consideration

# Market Trends and Structures Utilized in the Debt Restructuring Market

# Market Trends and Structures Utilized in the Debt Restructuring Market

- Significant Modification? (Treas. Reg. § 1001-3)
  - What is being modified?
    - Maturity, principal, interest, covenants, guarantee/collateral
  - Debt/equity testing considerations
- If significant modification, potential consequences
  - Publicly traded?
  - COD? Loss to holders?
  - Taxable exchange
  - Recapitalization
- Investment Units
  - Pro rata allocation and consider OID (1273(c)(2))
- Use of penny warrants (stock for tax purposes Rev. Rul. 82-150)

# Traps and Opportunities for Restructuring Distressed Real Estate

# Traps and Opportunities for Restructuring Distressed Real Estate

- Distressed Real Estate Workouts – What's at Stake?
  - COD Income; Exclusions to COD Income
  - Sale Gain / Loss
  - Limitations on Depreciation/Interest Deductions
  - Transfer Taxes
- Common Transactions
  - Discounted Payoffs
  - Foreclosures/ Short Sales
  - Debt Workouts – A/B Structures
- Planning Techniques
  - COD Income vs. Sale Gain / Loss
    - Integrated versus Non-Integrated Transaction
    - Triggering sale / exchange
  - Mitigating COD Income
    - Friendly Party Debt Purchase
    - Incorporation
    - Contingent Payment Debt Instruments
    - Debt vs. Equity



# Traps and Opportunities for Private Funds and CLO Vehicles

# Traps and Opportunities for Private Funds and CLO Vehicles

- Background
- Common Structures
  - Debt modifications
  - Debt exchanges
  - New debt issuances
- Tax issues
  - Loan origination concerns and counter-arguments
  - Creditor tax treatment from the restructuring
  - Ownership of equity
  - Subordinated debt

# Risks Related to Receipt of Fees and Other Forms of Consideration

# Risks Related to Receipt of Fees and Other Forms of Consideration

- Fee economics
- Rationale for payment of fees
- Examples of fees
  - Upfront
  - Exit
  - Consent
  - Backstop
  - Commitment
  - Structuring/work/steering committee
- Tax issues
  - Characterization risk
  - Arguments and theories
  - Tax reporting





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