

Capital Ideas: The Taxation of Derivative Gains and Losses

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This report explores the history of the taxation of derivative gains and losses, in the hope of making some sense of where we are now, as well as some suggestions about improving the state of the law. The primary focus is on section 1234A, although in reaching some conclusions on that provision, this report will explore several features of the code that bear on its origins and its current role: the capital gains preference; the definition of capital asset; the sale or exchange requirement and its corollary, the extinguishment doctrine; the assignment of income (AOI) and substitute for ordinary income (SOI) doctrines; the hedging, integration, and straddle rules; and the limitation on deductibility of capital losses.

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