Like Kind Exchange also known as a 1031 exchange

Like-kind exchange basics

Sec. 1031(a)(1) provides that no gain or loss shall be recognized on the exchange of real property held for productive use in a trade or business or for investment if such real property is exchanged solely for real property of like kind, which is held either for productive use in a trade or business or investment. Taxpayers may sell business or investment property (relinquished property) and defer tax on the gain if the taxpayers reinvest in similar property (replacement property).

Personal property and property held primarily for sale do not qualify.

Sec. 1031 is very form-driven, and taxpayers must **satisfy a number of requirements and timing elements, or the deal fails.** One particularly important requirement addressed by the new regulations requires that the deal must be *structured as an exchange*; taxpayers cannot sell, get the proceeds, and then buy. Rather, they must either trade the property directly or use a qualified intermediary (QI) to buy and sell such that it looks like an exchange from the taxpayer's perspective.

Sec. 1031 only applies to real property. Any personal property transferred in a like-kind exchange is considered separately bought and sold, with undeferrable gain on the sale. Qualifying relinquished and replacement property now must satisfy two core requirements: (1) The property must be real property, and (2) the two types of property must be of like kind to one another.

Determining what counts as real property

Real property includes "land and improvements to land, unsevered natural products of land, and water and air space superjacent to land." From there, taxpayers have a facts-and-circumstances analysis to determine whether their assets qualify in one of those categories. Each distinct asset must be analyzed separately from any other assets to determine whether it counts as real property.