



THE FLORES GROUP

BUSINESS & TAX ADVISORS

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INTRODUCTION

Whenever you sell real estate and you have a gain, you generally have to pay tax on the gain at the time of sale. IRC Section 1031 provides an exception and allows you to postpone paying tax on the gain if you reinvest the proceeds in similar property as part of a qualifying like-kind exchange. Gain deferred in a like-kind exchange under IRC Section 1031 is tax-deferred, but it is not tax-free.

The exchange can include like-kind property exclusively or it can include like-kind property along with cash, liabilities and property that are not like-kind. If you receive cash, relief from debt, or property that is not like-kind, however, you may trigger some taxable gain in the year of the exchange. There can be both deferred and recognized gain in the same transaction when a taxpayer exchanges for like-kind property of lesser value.

WHO QUALIFIES FOR THE SECTION 1031 EXCHANGE?

Owners of investment and business property may qualify for a Section 1031 deferral. Individuals, C corporations, S corporations, partnerships (general or limited), limited liability companies, trusts and any other taxpaying entity may set up an exchange of business or investment properties for business or investment properties under Section 1031.

WHAT ARE THE DIFFERENT STRUCTURES OF A SECTION 1031 EXCHANGE?

To accomplish a Section 1031 exchange, there must be an exchange of properties. The simplest type of Section 1031 exchange is a simultaneous swap of one property for another.

Deferred exchanges are more complex but allow flexibility. They allow you to dispose of property and subsequently acquire one or more other like-kind replacement properties.

To qualify as a Section 1031 exchange, a deferred exchange must be distinguished from the case of a taxpayer simply selling one property and using the proceeds to purchase another property (which is a taxable transaction). Rather, in a deferred exchange, the disposition of the relinquished property and acquisition of the replacement property must be mutually dependent parts of an integrated transaction constituting an exchange of property. Taxpayers engaging in deferred exchanges generally use exchange

facilitators under exchange agreements pursuant to rules provided in the Income Tax Regulations.

WHAT PROPERTY QUALIFIES FOR A LIKE-KIND EXCHANGE?

Both properties must be held for use in a trade or business or for investment. Property used primarily for personal use, like a primary residence or a second home or vacation home, does not qualify for like-kind exchange treatment.

Both properties must be similar enough to qualify as "like-kind." Like-kind property is property of the same nature, character or class.

Quality or grade does not matter. Most real estate will be like-kind to other real estate. For example, real property that is improved with a residential rental house is like-kind to vacant land. One exception for real estate is that property within the United States is not like-kind to property outside of the United States. Also, improvements that are conveyed without land are not of like kind to land.

WHAT ARE THE TIME LIMITS TO COMPLETE A SECTION 1031 DEFERRED LIKE-KIND EXCHANGE?

While a like-kind exchange does not have to be a simultaneous swap of properties, you must meet two-time limits, or the entire gain will be taxable. These limits cannot be extended for any circumstance or hardship except in the case of presidentially declared disasters.

The first limit is that you have 45 days from the date you sell the relinquished property to identify potential replacement properties. The identification must be in writing, signed by you and delivered to a person involved in the exchange like the seller of the replacement property or the qualified intermediary. However, notice to your attorney, real estate agent, accountant or similar persons acting as your agent is not sufficient.

Replacement properties must be clearly described in the written identification. In the case of real estate, this means a legal description, street address or distinguishable name. Follow the IRS guidelines for the maximum number and value of properties that can be identified.

The second limit is that the replacement property must be received, and the exchange completed no later than 180 days after the sale of the exchanged property or the due date (with extensions) of the income tax return for the tax year in which the relinquished property was sold, whichever is earlier. The replacement property received must be substantially the same as property identified within the 45-day limit described above.

ARE THERE RESTRICTIONS FOR DEFERRED AND REVERSE EXCHANGES?

It is important to know that taking control of cash or other

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proceeds before the exchange is complete may disqualify the entire transaction from like-kind exchange treatment and make ALL gain immediately taxable.

If cash or other proceeds that are not like-kind property are received at the conclusion of the exchange, the transaction will still qualify as a like-kind exchange. Gain may be taxable, but only to the extent of the proceeds that are not like-kind property.

One way to avoid premature receipt of cash or other proceeds is to use a qualified intermediary or other exchange facilitator to hold those proceeds until the exchange is complete.

You cannot act as your own facilitator. In addition, your agent (including your real estate agent or broker, investment banker or broker, accountant, attorney, employee or anyone who has worked for you in those capacities within the previous two years) cannot act as your facilitator.

The basis of property acquired in a Section 1031 exchange is the basis of the property given up with some adjustments. This transfer of basis from the relinquished to the replacement property preserves the deferred gain for later recognition. A collateral affect is that the resulting depreciable basis is generally lower than what would otherwise be available if the replacement property were acquired in a taxable transaction.

When the replacement property is ultimately sold (not as part of another exchange), the original deferred gain, plus any additional gain realized since the purchase of the replacement property, is subject to tax.

HOW DO YOU COMPUTE THE BASIS IN THE NEW PROPERTY?

It is critical that you and your tax representative adjust and track basis correctly to comply with Section 1031 regulations.

Gain is deferred, but not forgiven, in a like-kind exchange. You must calculate and keep track of your basis in the new property you acquired in the exchange.

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CONCLUSION

The Flores Group provides international corporate and tax services to international investors and business persons. We have over 30 years of experience dealing with complex business and international structures and transactions. We have experienced bilingual Attorneys and CPA's to assist you with your legal, tax, and business projects. We are providing this Alert for your review and consideration.

SOURCE: INTERNAL REVENUE SERVICE (IRS)

This information is a presentation of the general rules and should not be used or relied upon for any particular investment or transaction. We recommend you consult your tax attorney or advisor for your specific situation. If you would like more information on these matters we would be glad to visit with you.

As required by United States Treasury Regulations, you should be aware that this communication is not intended or written by the sender to be used, and it cannot be used, by any recipient for the purpose of avoiding penalties that may be imposed on the recipient under United States federal tax laws.

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