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KPMG report: New safe harbor in proposed like-kind exchange regulations

A new safe harbor for the acquisition of incidental personal property as part of a like-kind exchange of real property could catch unsuspecting taxpayers by surprise.

The 2017 tax law (Pub. L. No. 115-97) known as the "Tax Cuts and Jobs Act" (TCJA) significantly curtailed a taxpayer's ability to defer gain under the like-kind exchange rules of section 1031. In particular, the TCJA narrowed section 1031(a) to apply only to an exchange of real property that is: (1) held for productive use in a trade or business or for investment; and (2) not held primarily for sale. As a result, for property exchanges occurring after December 31, 2017, gain (or loss) realized on the sale of personal property (both tangible and intangible) is no longer eligible for deferral under section 1031.

Because section 1031 is now limited to real property, the definition of what constitutes real property for purposes of section 1031 has taken on increased importance. The U.S. Treasury Department and IRS in June 2020 released proposed regulations the primary purpose of which was to define, for the first time, the term "real property" for section 1031 purposes. As part of the proposed regulations, the IRS also proposed a new safe harbor in the deferred like-kind exchange regulations for the acquisition of incidental personal property as part of a like-kind exchange of real property.

Read a **September 2020 report** [PDF 113 KB] prepared by KPMG LLP that provides an overview of the new proposed safe harbor and highlights certain traps embedded in the safe harbor that could catch unsuspecting taxpayers by surprise: *What's News in Tax: A Wolf in Sheep's Clothing: The IRS Creates a New Safe Harbor in Proposed Like-Kind Exchange Regulations*

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