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KPMG report: Proposed regulations define "real property" for like-kind exchanges

Favorable like-kind exchange treatment is now limited to certain exchanges of real property, so taxpayers that intend to defer gain need to focus on what new proposed regulations say about real property.

The 2017 tax law (Pub. L. No. 115-97) that is often referred to as the "Tax Cuts and Jobs Act" (TJCA) made a significant change in a taxpayer's ability to defer gain under the like-kind exchange rules of section 1031. In particular, the TJCA narrowed section 1031 so that it applies 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), including personal property associated with real property, generally is no longer eligible for deferral under section 1031. There is no exception for de minimis or "incidental" personal property associated with real property, such as furniture and fixtures common to hotel properties.

Because section 1031 is now limited to real property, the definition of what property constitutes real property for purposes of section 1031 has taken on increased importance. The U.S. Treasury Department and IRS in June 2020 issued proposed regulations that define, for the first time, the term "real property" for purposes of section 1031. This article:

- Provides an overview of the proposed definition of "real property"
- Summarizes the framework set forth by the proposed regulations for determining whether any particular item of property is to be considered real property for purposes of section 1031
- Discusses some of the technical ambiguities generated—or at least not fully addressed—by the proposed regulations

Read a **[September 2020 report]** [PDF 167 KB] prepared by KPMG LLP: *What's News in Tax: Familiar Things Made New: Proposed Regulations Define "Real Property" for Like-Kind Exchanges*

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