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Final regulations: Like-kind exchanges (text of regulations)

The IRS today posted to its website a version of final regulations (T.D. 9935) as guidance implementing legislative changes to the like-kind exchange rules under Code section 1031.

The 2017 tax law (Pub. L. No. 115-97), the law that is often referred to as the “Tax Cuts and Jobs Act” (TCJA), made amendments to section 1031 by limiting the like-kind exchange rules to exchanges of real property. The 2017 tax law also provided that the deferral rules under section 1031 are no longer allowed for an exchange of real property held primarily for sale. Further, real property located in the United States is not considered like-kind to real property located outside the United States.

The [final regulations](#) [PDF 384 KB] (75 pages) amend the current like-kind exchange regulations to add a definition of real property and thereby limit section 1031 treatment to like-kind exchanges of real property. The final regulations also provide a rule addressing a taxpayer’s receipt of personal property that is incidental to real property the taxpayer receives in an otherwise qualifying like-kind exchange of real property.

Based on an initial, quick review of the final regulations, it appears that Treasury and the IRS adopted many changes that were requested in comments made in response to the June 2020 proposed regulations.

According to a related IRS release—[IR-2020-262](#) (November 23, 2020)—the final regulations define real property to include land and generally anything permanently built on or attached to land. In general, real property also includes property that is characterized as real property under applicable state or local law. In addition, certain intangible property (such as leaseholds or easements) qualifies as real property under section 1031. Property not eligible for like-kind exchange treatment prior to enactment of the TCJA remains ineligible. Neither the TCJA nor the final regulations change whether the properties exchanged are of like kind.

The IRS release also explains that to report a like-kind exchange, taxpayers must file Form 8824, *Like-Kind Exchanges*, with their tax return for the year they transfer property as part of a like-kind exchange.

The version of the final regulations released by the IRS today includes the following statement:

This document has been submitted to the Office of the Federal Register (OFR) for publication and will be pending placement on public display at the OFR and publication in the Federal Register. The version of the final rule released today may vary slightly from the published document if minor editorial changes are made during the OFR review process. The document published in the Federal Register will be the official document.

The purpose of this edition of *TaxNewsFlash* is to provide text of the final regulations.

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