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IRS Issues Taxpayer-Friendly Regulations on Section 1031 Like-Kind Exchanges

Tax Planning & Structuring

Real Estate

The IRS earlier this month released proposed regulations on Section 1031 like-kind exchanges that may help taxpayers who were facing tax consequences due to changes made to Section 1031 by the Tax Cuts and Jobs Act of 2017 related to the tax treatment of personal property involved in the exchange.

These taxpayer-friendly changes come on the heels of the IRS extending deadlines for Section 1031 like-kind exchanges in response to the economic upheaval caused by the COVID-19 pandemic, as we [previously wrote about](#).

Notably, the latest regulations help taxpayers by expanding the definition of “real property,” offering clarification about the types of property that qualify for 1031 like-kind exchanges. Specifically, the regulations expand the definition of real property to include:

- Land and improvements to land
- Structural components of inherently permanent structures
- “Unsevered” natural products of land such as timber, mines, plants and wells, and
- Certain intangible property such as licenses and permits, so long as they derive their value from the real property.

In addition, the regulations provide that personal property incidental to real property is disregarded in determining whether a taxpayer has properly identified replacement property under Section 1031.

The result of the proposed regulations is two-fold, as it both provides additional certainty over what types of property will be included in the definition of “real property” and qualify for like-kind exchanges under Section 1031, as well as expands the definition of “real property,” resulting in more flexibility for taxpayers utilizing the safe harbor of 1031 exchanges.

The IRS has indicated that taxpayers may rely on the proposed regulations before the final regulations are published.