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## QUICK FACT SHEET LIKE KIND EXCHANGES

### GENERALLY SPEAKING:

Under Section 1031 no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like-kind that is to be held either for productive use in a trade or business or for investment. If all requirements of Section 1031 are met, instead of immediate recognition, the gain with respect to the relinquished property reduces the beginning tax basis of the replacement property. Recognition of gain is thus deferred until the sale of the replacement property, but is further deferred if the replacement property is disposed of by the taxpayer in another like-kind exchange. Aircraft are personal property under the Section 1031 regulations.

### BASIC EXCHANGE REQUIREMENTS

Section 1031 provides three basic requirements for a like-kind exchange:

1. There must be an exchange of property;
2. Both the relinquished property and the replacement property must be held by the taxpayer for productive use in a trade or business or for investment; and
3. The replacement property must be of like-kind to the property relinquished.

### TYPES OF EXCHANGES:

**Simultaneous Exchange:** The replacement aircraft and relinquished aircraft are simultaneously exchanged between the taxpayer and the seller of the replacement aircraft.

**Deferred Exchange:** The taxpayer engages a qualified intermediary (QI). The taxpayer then transfers the relinquished aircraft to a third party buyer through the QI. The taxpayer may not actually or constructively receive the money or property from the transfer of the relinquished aircraft (the proceeds), so the proceeds of the transfer are held by the QI. An important role of the QI is to insulate the taxpayer from receipt of proceeds. Generally, the taxpayer must identify the replacement aircraft within 45 days and acquire title within 180 days (or the due date of the taxpayer's tax return, including extensions). The QI uses the proceeds for the acquisition of the replacement aircraft by the taxpayer.

**Reverse Exchange:** The taxpayer engages a QI and exchange accommodation title holder (EAT). In a reverse exchange, the taxpayer can either "park" the replacement aircraft or relinquished aircraft with the EAT. When the taxpayer parks the relinquished aircraft, the taxpayer, through the QI, simultaneously transfers the relinquished aircraft to the EAT and purchases the replacement aircraft. Once a third party buyer is found, the EAT sells the relinquished aircraft to the third party buyer. When the taxpayer parks the replacement aircraft, the EAT purchases the replacement aircraft instead of the taxpayer. Once a third party buyer is found, the taxpayer, through the QI, simultaneously transfers the relinquished aircraft to the third party buyer and the EAT transfers the replacement aircraft to the taxpayer. In both types of reverse exchanges, the relinquished aircraft must generally be sold to a third party buyer within 180 days of the acquisition of the replacement aircraft by the EAT or taxpayer. The taxpayer loans the EAT the funds to acquire the applicable aircraft. To secure such loan, the taxpayer will generally take out a mortgage on the aircraft and the EAT will exclusively dry lease the aircraft to the taxpayer.

### NOTES:

The form of the exchange is important and there are specific requirements that should be put in place before the exchange. The like-kind nonrecognition treatment is mandatory if the transaction as structured qualifies as a like-kind exchange. There are also special rules on related party exchanges and qualified trust or qualified escrow arrangements may be available.

An exchange is a reciprocal transfer of property, not a transfer of property for money consideration only. If, in the exchange, the taxpayer receives cash or other non-like-kind property in addition to like-kind replacement property then gain is recognized to the extent of such cash or other property received which is called "boot".

Non-commercial aircraft and helicopters are not automatically considered property of a like-kind with most other personal property including commercial aircraft. Property used predominantly within the United States and property used predominantly outside the United States are also not like-kind.

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