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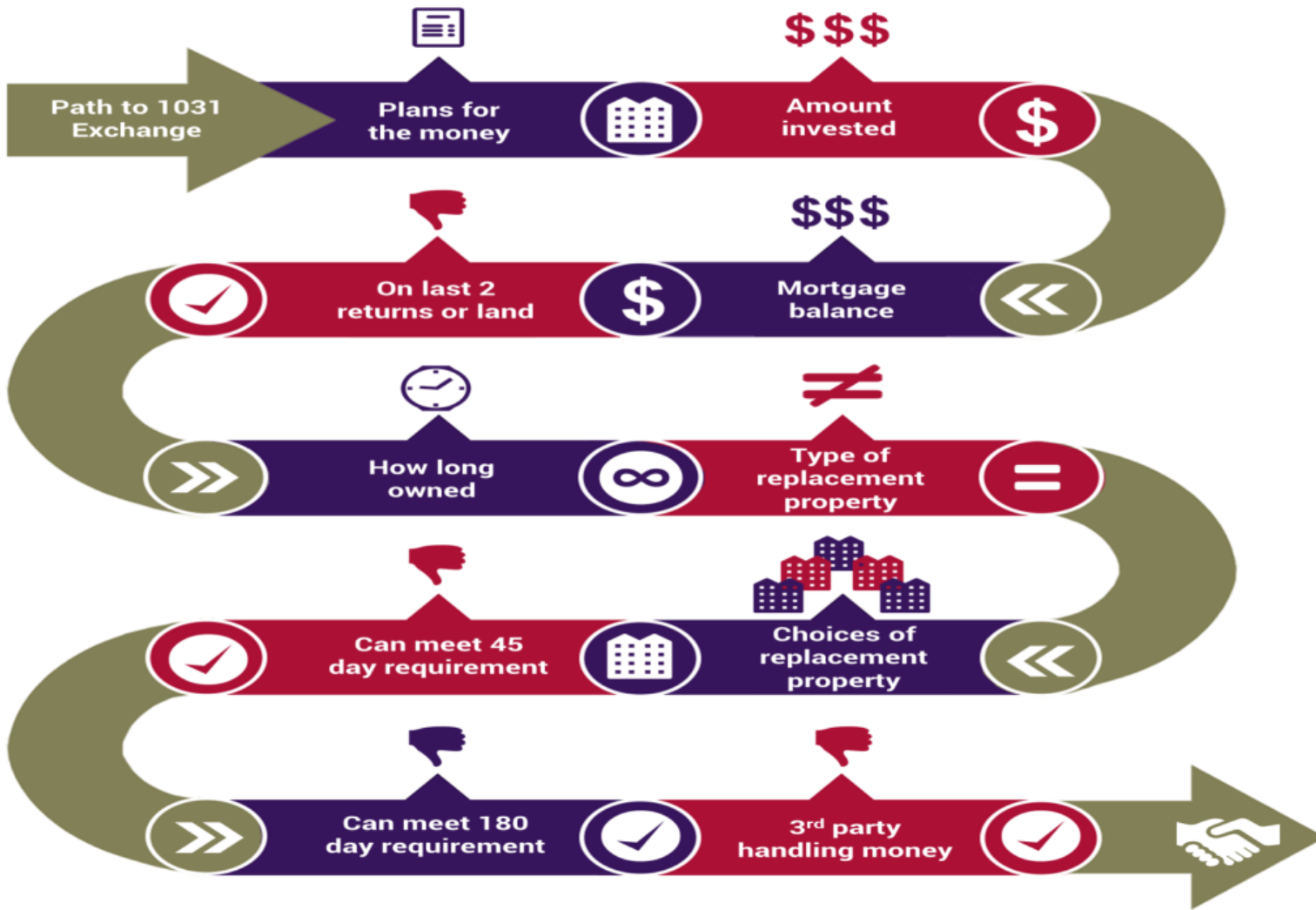
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WHAT IS A 1031 EXCHANGE?



A real estate transaction that allows you to defer taxes when you exchange **“LIKE-KIND” BUSINESS, INCOME OR INVESTMENT PROPERTIES.**

DOES YOUR SITUATION QUALIFY FOR A SECTION 1031 EXCHANGE?



If your situation falls off the path, you will not qualify

6 Rules for Structuring 1031 Exchanges



01. Property Use

Both your old and new property must qualify as investment or business use
Holding period for each is generally one year and one day

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45

02. 45-Day Identification Period

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You have the earlier of 180 days or the due date of your tax return to close on the purchase of one or more properties from the 45-day list

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04. Qualified Intermediary (QI)

IRS mandates that you use an independent QI to prepare the legal documents for your exchange

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Must purchase and take title to your new property exactly as you held title to your old property
Use of single member LLCs may be permitted



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06. Reinvestment Requirement (Equal-Or-Up Rule)

To defer all of your capital gain tax, must buy a property equal or higher in value than the one you sold
Must reinvest all of the cash proceeds from your sale

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Must reinvest all of the cash proceeds from you sale

What is Like Kind Real Property?

- “Section 1031(a) requires a comparison of the exchanged properties to ascertain whether the nature and character of the transferred rights in and to the respective properties are **substantially alike**.”
- “In making this comparison, consideration must be given to the respective interests in the physical properties, the nature of the title conveyed, the rights of the parties, the duration nature or character of the properties as distinguished from their grade or quality.”

Koch v. C.I.R., 71 T.C 54, 54, 65 (1978)

Like, Not Identical

Examples of Like-Kind Real Property

Commercial building and an unimproved lot (Burkhard Inv. Co. v. U.S., 100 F.2d 642 (9th Cir. 1938))

City real estate and a ranch or a farm (Treas. Reg. Sec. 1.1031(c)(2); Rutland v. C.I.R., T.C. Memo. 1977-8)

Tenancy-in-common interest and a fee interest (Rev. Rul. 79-44)

A fee and a leasehold with 30 Years or more to run (Treas. Reg. Sec. 1.1031(c)(2); Rev. Rul. 78-72)

A remainder Interest in one property and a life estate in Another property where the life tenant has a life expectancy of at least 30 years (Rev. Rul. 78-4)

A fee Interest and a condominium unit (Rev. Rul. 77-423)

More Examples of Like-Kind Real Property

A fee interest and a perpetual easement (PLR 9215049)

Cell towers affixed to land and cable telecommunication signal distribution

property affixed to land (PLR 201706009)

A fee interest and shares in a co-op which includes a long-term occupancy

right (PLR 200137032)

A fee interest and perpetual water rights (Rev. Rul. 55-749)

(Beware of the Weichens Case and limited duration)

A fee interest and most mineral estates (Rev. Rul. 73-428; Rev. Rul. 72-117)

A fee interest in land and a fee interest in land with unharvested crops (Rev. Rul. 59-229)

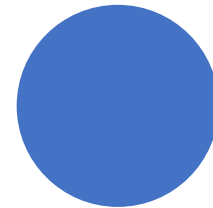
Examples of Real Property Which Are NOT Like Kind:

- A leasehold of less than 30 years and a fee in another property (VIP Indus. Inc. v. C.I.R., T.C. Memo. 2013-157)
- A fee interest in land and building and a building only (at least in IRS's view) (Rev. Proc. 2004-51)
- A fee interest in timberland and limited duration cutting rights (Oregon Lumber Co.v.C.I.R., 20 T.C. 192 (1953))
- Water rights of limited duration and a fee interest (Wiechens v. U.S., 228 F. Supp. 2d 1080 (D. Ariz. 2002))
- Attached railroad track and unattached railroad track (TAM 200424001) – A fee interest and a “carved out” mineral interest (i.e., a “production payment”) (C.I.R. v. P.G. Lake, Inc., 356 U.S. 260 (1958))

A More Recent IRS View

- ILM 201238027 (Sept. 21, 2012)

“[S]tate law property classifications are not determinative of whether property is of like kind. Rather, the Service should consider all facts and circumstances, including state law and federal tax law classifications as appropriate.”



Resulting Principles on What is Real Property

Identical assets are like-kind regardless of their classification under state law (however, now, it is critical to determine if such assets constitute “real property”).

Where state laws classify assets differently, federal law will uniformly determine the “real vs. personal” property classification.

Thus, assets classified under state law as real property may not be like-kind to other real property regardless of comparable ownership rights.



Problem Areas in Exchanges

“Qualified use” requirements-holding property

“Exchange” requirement-not a sale & purchase

“Boot” – equal or up in equity and debt

Interplay of Section 121 exclusion

Second or “vacation” homes

Rev. Proc. 2008-16 and 14 day de minimus rule



BUILD TO SUITE PROPERTY

Identification Issues

45 day identification period

Changing identifications already made
– revocation within 45 day period

Replacement property received within
45-day period

To-be-built replacement property:
identifying future improvements

Identification Issues (cont.)

Issues with adequate description

Partial interest in property (TIC)

Acreage issues – 75% - 125% rule

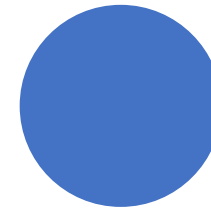
Identification in the “alternative” or
with maximum number of “finalists”



Related Party Exchanges

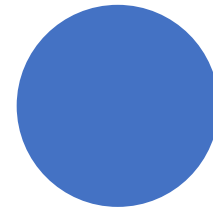


- Rule: if an exchange transaction occurs between “related parties” and within two (2) years after the exchange, either party “cashes out”, both parties’ exchanges will be disallowed
- Purpose: Prevent “basis shifting” between related parties

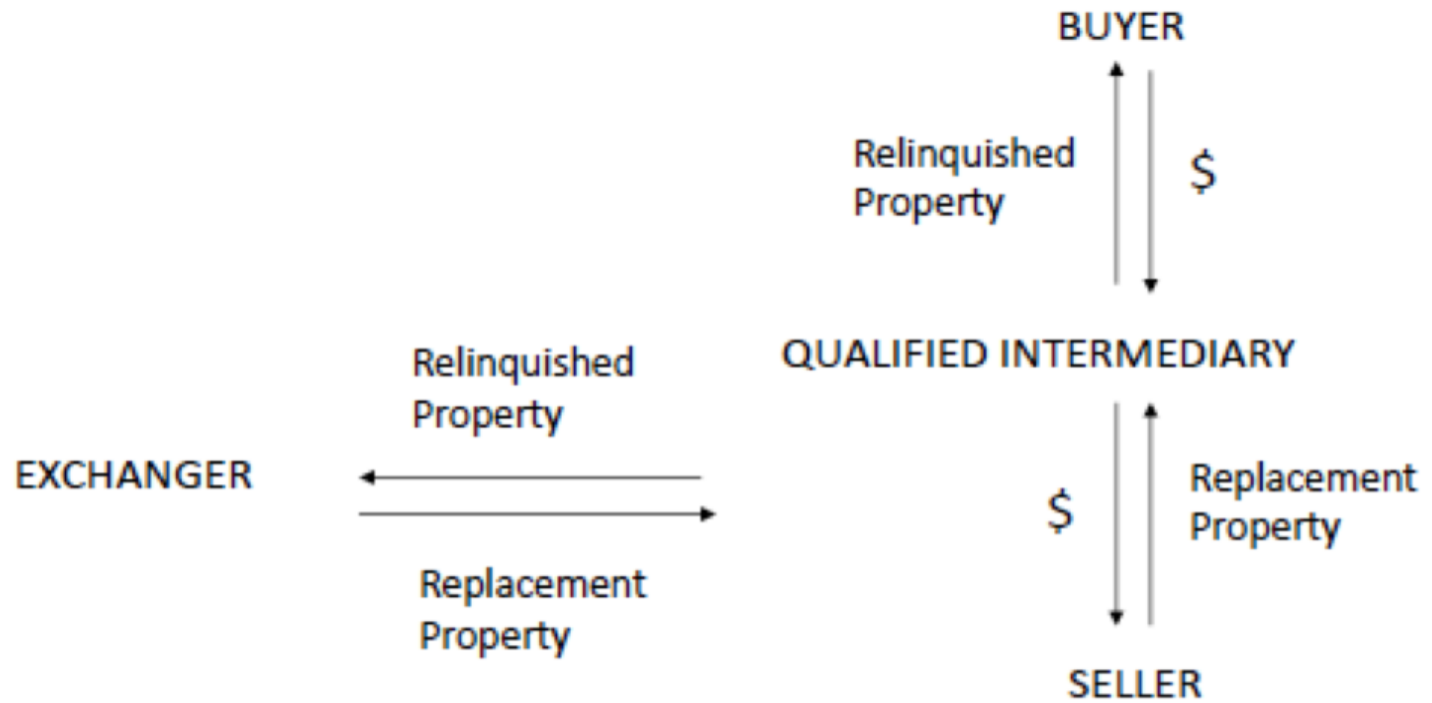


Related Party Exchanges (cont.)

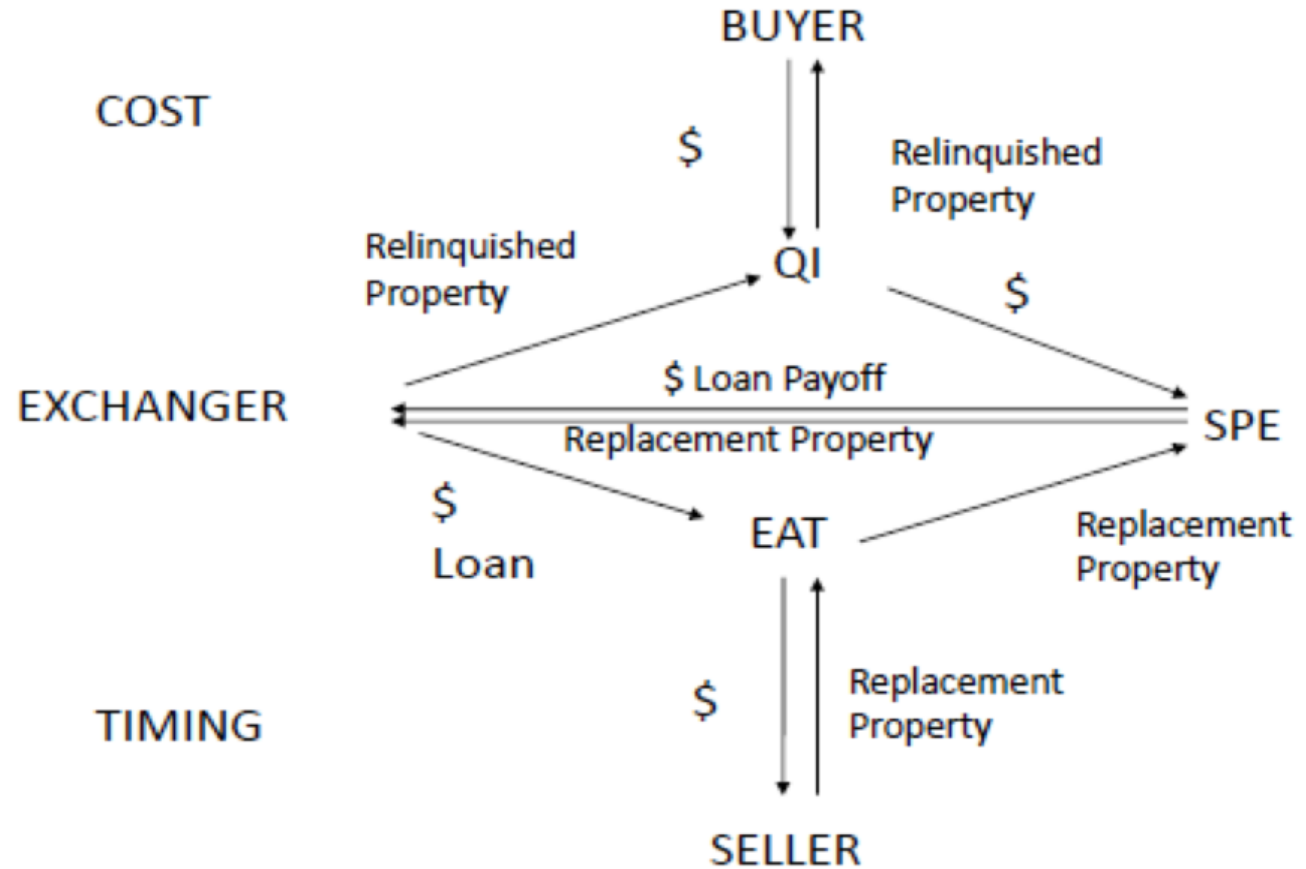
- Definition of “related party”
 - Lineal ancestors and descendants
 - Siblings
 - Entities and individual owners of 50% control (corporations, partnerships, LLC’s)
 - Corporations with common control (sister/brother affiliates)
 - Trust grantor or trustee and beneficiaries



Typical Forward Exchange



Typical Reverse Exchange



OPPORTUNITY ZONES

WHAT ARE THEY?

HOW DO MY CLIENTS BENEFIT?

comdev.mt.gov

<https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions>

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