

# Section 1031 Like-Kind Exchange Deadlines Extended

On April 9, 2020, the Internal Revenue Service (IRS) released Notice 2020-23 (updating Notice 2020-18 and 2020-20) extending various tax deadlines relating to the COVID-19 virus for "affected taxpayers." Among the deadlines extended were the commonly-used "safe harbors" of 45-day identification period and 180-day exchange period for taxpayers who are currently engaged in a Section 1031 like-kind exchange.

Prior IRS guidance on Internal Revenue Code Section 1031 provided taxpayers with a safe harbor window for compliance if, after a taxpayer sells relinquished property and deposits the proceeds, the taxpayer identified a replacement property within 45 days from the sale of the relinquished property and completed the purchase of a replacement property within 180 days of the sale of the relinquished property. The IRS extension was in response to a letter to the IRS from several real estate organizations expressing their concern about pending like-kind exchanges.

The safe harbor deadlines for 1031 like-kind exchanges have provided strict deadlines that, if followed, allow taxpayers to avoid immediate recognition of capital gain income. In recent years, we have seen the IRS scrutinize the technical requirements of these exchanges and challenge exchanges occurring outside of these safe harbor deadlines.

Notice 2020-23 expands the definition of an affected taxpayer to include any person performing a time-sensitive action that is required to be performed on or after April 1, 2020 and before July 15, 2020. The time-sensitive action must be listed in either IRS regulation Section 301.7508A-1(c)(1)(iv) – (vi) or Revenue Procedure 2018-58, 2018-50 IRB 990 (December 10, 2018). Section 1031 like-kind exchange deadlines are included as time-sensitive actions.

The recent notice provides that any affected taxpayer that has a 45-day or 180-day exchange period deadline on or after April 1, 2020 and before July 15, 2020, will have an automatic extension to July 15, 2020, of such deadline. This extension gives taxpayers time to complete their 1031 transactions without risk of falling outside of previously proscribed safe harbors and the corresponding risk of immediate recognition of capital gain income.

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One possible concern that taxpayers must be aware of is that the notice did not provide retroactive relief for deadlines that occurred prior to April 1, 2020. This may leave some taxpayers with unsuccessful Section 1031 like-kind exchanges and thus unexpected capital gain income.

If you have any questions about your like-kind transactions, please call your Reinhart attorney.

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