

Exchanges of Foreign Property

Exchangers may freely exchange properties throughout the United States, trading property in one state for replacement property in another state. However, foreign real property is not like-kind to United States real property, which is limited to the 50 states and the District of Columbia (IRC §1031(h) and §7701(a)(9)). Temporary Regulations issued in 2005 (T.D. 9194) provide a limited exception to this rule, permitting exchanges, under certain circumstances, of U.S. based property and property located within the U.S. Virgin Islands, Guam and the Northern Mariana Islands. Treas. Reg. §1.932-1(T)(g)(ii)(E) and §1.935-1(T)(c)(ii)(E). Note that property located in other U.S. Territories, such as Puerto Rico and American Samoa, is not like-kind to property located within the United States.

U.S. taxpayers anticipating a gain on the sale of foreign property and intending to buy other foreign property may benefit by structuring the transaction as an IRC §1031 exchange because foreign property is considered to be like-kind to other foreign property. For example, Canadian rental real estate in Vancouver may be exchanged for commercial real estate in Toronto.