

Multiple Asset Exchanges

Some business or investment assets, such as a hotel or farm, consist of both real and personal property. Tax rules require all properties, both real and personal, in a multiple asset exchange to be grouped into like-kind or like-class groups. Treas. Reg. §1.1031(j)-1. Deferred gain and basis must also be allocated across the exchange groups. The value to structuring an exchange as a multiple asset exchange, rather than as a separate exchange for each unit, is that a multiple asset exchange provides an exception to the general rule that requires a property-for-property comparison when computing gain and basis. The aggregate value, liabilities and basis of all units within a specific exchange group are computed and gain is recognized only to the extent of a difference in the aggregate values of the exchange groups relinquished and replaced. Treas. Reg. §1.1031(j)-1(b). The resulting basis for the replacement property is determined separately for each exchange group, rather than for the whole property. Treas. Reg. §1.1031(j)-1(c). This may result in deferral of a greater proportion of the gain than if the transaction were structured as several separate exchanges of individual units of property.

Historically, the Internal Revenue Service issued Rev. Rul. 57-365 stating that an exchange of identical business assets, including real and personal property, of two telephone companies would be considered “property of like kind” within the meaning of IRC §1031. In 1989, Rev. Rul. 89-121 addressed the “identical business asset” rule set forth in Rev. Rul. 57-365, clarifying that the mere fact that multiple assets comprise a business or an integrated economic investment does not mean that they may be treated as the disposition of a single property. The IRS stated that a review of the underlying assets pursuant to Rev. Rul. 55-79 was required to determine whether the property was to be considered of like kind. Accordingly, pure “business swaps” are no longer allowed.

Real property may only be exchanged for other real property and personal property assets may only be exchanged for other like-kind or like-class personal property assets. For example, in the exchange of an apartment building for another apartment building, the value of the relinquished real estate must be matched against the replacement real estate, and the value of the relinquished washers, dryers, refrigerators and stoves must be matched against the replacement appliances. Similarly, an agricultural exchange would require matching up of real estate exchange groups and agricultural machinery exchange groups. Similar issues arise with the exchange of cost segregated Relinquished Property. Care must be taken to ensure that the Replacement Property contains an equal or greater value of IRC §1245 assets to avoid recapture boot.

The goodwill of one business is never considered to be like-kind to the goodwill of another business, and thus its value may not be included among the assets exchanged, notwithstanding that in some business sales, goodwill may be the single most valuable asset. Treas. Reg. §1.1031(a)-2(c)(2). The reasoning is that due to the inherent uniqueness of any single business, the goodwill or going concern value of two businesses could not possibly have the same nature or quality.

A careful review of most commercial real property transactions will often reveal a large amount of depreciated personal property being sold in addition to the real property. By taking the time to review the impact of these additional assets, and contemplating a multiple asset exchange, an Exchanger may be able to defer much more of the taxable gain than the Exchanger originally considered. Due to the complexities of multiple asset exchanges, Exchangers are strongly advised to obtain competent tax and legal counsel prior to the exchange.