

FORWARD EXCHANGES

AN OVERVIEW



Internal Revenue Code (IRC) Section 1031 (Code Section 1031) allows a Taxpayer to defer current recognition of capital gains tax on the exchange of property that is held either for productive use in a trade or business or for investment. Tax-deferred exchanges are also known as like-kind exchanges, 1031 exchanges or Starker exchanges.

The Treasury Regulations under Section 1.1031 (or 1031 Regulations) issued in 1991, provide detailed guidance to taxpayers attempting to structure a tax-deferred exchange in accordance with Code Section 1031.

In a deferred exchange, pursuant to an agreement, the Taxpayer transfers property held for productive use in a trade or business, or for investment (Relinquished Property) and

subsequently receives property to be held for productive use in a trade or business, or for investment (Replacement Property).

In order to qualify for tax-deferral, the transaction must be structured as an exchange of properties, as distinguished from a transfer of property for money followed by a re-investment in Replacement Property.

In a forward delayed exchange, the Taxpayer transfers Relinquished Property prior to receiving Replacement Property.

In September of 2000, the IRS issued guidance on “parking arrangements” (also known as reverse exchanges) in the form of Revenue Procedure 2000-37.