The Real Estate Roundtable

Real Estate Like-Kind Exchanges

Tax Policy

Summary

Currently, the tax code allows taxpayers to defer capital gain when exchanging real property used in a trade or business for a property of a like-kind. The prior Biden administration proposed restrictions on gains deferred through like-kind exchanges. **RER advocates for preserving the current tax treatment of like-kind exchanges.**

Key Takeaways

- **15-20 percent of commercial transactions** involve a like-kind exchange. Exchanges get languishing properties into the hands of new owners who improve them and put them to their best use.
- Academic and outside research has found that exchanges spur capital expenditures, increase investment, create jobs for skilled tradesmen and others, reduce unnecessary economic risk, lower rents, and support property values.
- Like-kind exchanges allow businesses to grow organically with less unsustainable debt, creating a ladder of economic opportunity for minority-, veteran- and women-owned businesses and cash-poor entrepreneurs that lack access to traditional financing.
- Land conservation organizations rely on exchanges to **preserve open spaces for public use** or environmental protection.

Background

Like-Kind Exchanges

- Since 1921, the tax code has allowed taxpayers to defer capital gain when exchanging real property used in a trade or business for a property of a like-kind, which today is covered in Section 1031.
- In 2017, Congress narrowed Section 1031 by disallowing its use for personal property (art, collectibles, etc.).
- The previous Biden administration would have restricted gains deferred through like-kind exchanges to no more than $500K per year ($1M/couple). A similar proposal has appeared in the last six budgets submitted by Democratic administrations.

Recommendations

Preserve Current Policy on Like-Kind Exchanges: The existing tax treatment of like-kind exchanges under Section 1031 supports healthy real estate markets and property values.

- Like-kind exchanges helped **stabilize property markets** at the height of the COVID-19 lockdown. Exchanges are even more important during periods of market stress when external financing is harder to obtain.
- **Section 1031 is facilitating a smoother transition** as real estate assets are re-purposed in the post-COVID economy.
- Roughly **40 percent** of like-kind exchanges involve rental housing. Section 1031 helps fill gaps in the financing of affordable housing. Unlike the low-income housing tax credit, developers can use Section 1031 to **finance land acquisition costs for new affordable housing projects.**
- Exchanges help low-income, hard-hit and distressed communities where outside sources of capital are less available. Section 1031 also **supports public services** (police, education) by boosting transfer/recording/property taxes (nearly 3/4 of all local tax revenue).
- Section 1031 **is consistent with corporate and partnership tax rules** that defer gains when the proceeds are retained and reinvested in businesses (sections 721, 731, 351, and 368).