



COVID-19 Update

May 1, 2020

IRS Grants Relief to Deadlines for “Like-Kind” Section 1031 Exchanges

Like-kind exchange transactions under Section 1031 of the Internal Revenue Code of 1986 (the “Code”) must abide by strict deadlines to identify replacement property and close on the purchase of the replacement property. Tax filing deadlines and certain “time-sensitive actions,” including Section 1031 exchange deadlines, that must be taken between April 1 and July 14, 2020 have been extended to at least July 15, 2020.

This guidance is pursuant to IRS [Notice 2020-23](#) invoking [Revenue Procedure 2018-58](#) in response to the presidentially declared national emergency on March 13, 2020. While IRS Notice 2020-23 provides welcome relief, it could cause unusual timing issues and potentially raise contractual issues with the other parties to the transaction, such as with the seller of the replacement property and possibly with the qualified intermediary.

Who is eligible for this relief?

All taxpayers engaged in a like-kind exchange under an existing arrangement or an arrangement in the near future are eligible for an extension of time to either identify replacement property or to close on the purchase of the replacement property.

Under the IRS guidance there are two potential extensions available, with one such extension being clearly available and the second probably being available in some manner, subject to IRS clarification, expected in the near future.

- A. 1031 Extension Clearly Available. Regardless of when relinquished property closing occurs, if either the 45-day identification period or the 180-day exchange

period ends between April 1, 2020 and July 14, 2020, then the end date for only the action that falls within such dates is extended, and only to July 15, 2020.

- B. 1031 Alternative Extension which will hopefully be Clarified. Limited to where relinquished property closing occurred on or before March 13, 2020 and either the 45-day identification period or the 180-day exchange period ends on or after March 13, 2020. There are two possible approaches to applying this alternative extended period, which needs to be clarified.
1. Under one interpretation, the 45-day identification period or the 180-day exchange period ending on or after March 13, 2020 could be extended 120 days in all events. Unlike the first extension period that ends on July 15, 2020, this alternative extension could push the closing of a replacement property to January 2021 under certain facts.
 2. Under another interpretation of the alternative extension, if the 45-day identification period or the 180-day exchange period ends on or after April 1, 2020 and on or before July 14, 2020, then the period would be extended 120 days. If this is the proper application of the alternative extension, the maximum extension could not extend past mid-November 2020. Also, under this scenario, it is possible that only the 45-day identification period is extended but the 180-day exchange period is not, and such dates could cause problems with insufficient time to close on the replacement property.

The following examples illustrate only the extension stated in (A) above that is clearly available. There are many permutations with the alternative extension that need to be clarified, if available at all, and it would not be worthwhile to present such numerous possible scenarios, given that IRS clarification is expected soon.

The permitted extension periods are slightly different in the context of a reverse exchange involving a Qualified Exchange Accommodation Titleholder, and this summary does not address such periods.

Examples of Extensions Clearly Available

What is the extension period granted for a like-kind exchange?

If a 45-day identification period or the 180-day exchange period ends on or after April 1 and before July 15, 2020, then such period is extended until July 15, 2020.

What if my identification period or exchange period ends on July 14? A one-day extension isn't very helpful.

Under the clearly available guidance, the identification period and exchange period are only extended to July 15, 2020.

What if I sold property and already identified replacement property before the IRS issued this relief, and my 180-day exchange period ends between April 1 and July 15, 2020?

You are not granted additional relief with respect to replacement property previously identified after the identification period is closed. You will be granted an extension through July 15, 2020 to close if the exchange period ends between April 1 and July 15, 2020, but there is no opportunity to modify or add to the replacement property or properties previously identified.

What if the purchase price of my replacement property has gone down, and I am unable to invest the full amount of my gain into the property I previously identified?

If your previously identified property goes down in value and you have not identified a second replacement property, you may be required to recognize some of the gain because

you cannot further identify any replacement property if your 45-day identification period has concluded. However, if you sold property on April 1, 2020, your 45-day identification period is extended from May 15 to July 15, so you would have additional time to identify replacement property. If, however, your 45-day identification period ended before April 1, 2020, the clearly available relief does not provide additional time to identify replacement property.

What if I have already signed a purchase agreement with an agreed upon closing date? Do I still get the extension of time?

Not necessarily. Parties to existing purchase agreements must adhere to the timeframes for closing agreed to within those purchase agreements. If a buyer under an existing purchase agreement wishes to take advantage of the IRS extension, but the existing purchase agreement does not provide such right to the buyer, then you will need to work with the seller to amend the purchase agreement to avoid potential liability for breach. If you are considering utilizing an extension granted by the IRS in this relief, you should raise the issue promptly and review the terms of the purchase agreement in case modification is required. If you have not yet entered into a purchase agreement, be sure to include a provision addressing the IRS extension of the time period.

If the 180-day exchange period is extended, will the last date for the Qualified Intermediary to release the funds also be extended?

Possibly not. The extension is applicable only to Affected Taxpayers, which is limited to the taxpayer with the obligation to pay federal income taxes or file federal income tax returns. The Qualified Intermediary is not such person. In some cases, this can be useful, but in other cases we would want the extension to apply to all parties, including the Qualified Intermediary.

Will the IRS provide any more detailed rules to help apply the extensions in real life?

On April 14, 2020, a representative from the IRS Office of Associate Chief Counsel stated that IRS intends to issue responses to Frequently Asked Questions addressing how to apply the extensions granted in IRS Notice 2020-23 to Code Section 1031 exchanges. We expect the IRS to publish the FAQs in the coming weeks, and it should address the 120-day relief pursuant to the alternative extensions described above.

Separately, the IRS is also expected to issue regulations discussing what constitutes real property for purposes of a Section 1031 exchange following the 2017 Tax Act. These regulations have been reviewed by the Office of Management and Budget and were returned to the IRS in mid-April.

FOR MORE INFORMATION

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You can also contact any member of our [Real Estate](#) practice group.

Additional Resources

A firmwide multidisciplinary task force to address clients' business and legal concerns and needs related to the COVID-19 pandemic has been assembled. Please see our [COVID-19 Task Force](#) page for additional information and resources.

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