**8575. What exchanges of property qualify as like-kind exchanges and nonrecogntion treatment?**

IRC Section 1031(a) provides that no gain or loss is recognized if property held for productive use in trade or business or for investment is exchanged solely for property of a “like-kind” to be held for productive use in trade or business or for investment.[[1]](#footnote-1) IRC Section 1031 does not provide a permanent exclusion of gain or loss because the taxpayer’s basis in property exchanged transfers to the exchanged property to become the basis of that property.[[2]](#endnote-1) So if the taxpayer subsequently sells the property, the deferred gain or loss would be recognized.

The phrase "like-kind" refers to the nature or character of the property and not to its grade or quality.[[3]](#endnote-2) So, whether real property is improved or unimproved is not relevant because virtually all types of real property are deemed to be of the same nature or character. Perhaps for this reason, the Section 1031 nonrecognition provision is frequently used in connection with exchanges of real property. Interestingly, the regulations equate a leasehold interest with at least 30 years to run as being equivalent to an ownership interest in real property. [[4]](#endnote-3)

Only certain types of property are eligible for nonrecognition treatment under the rules applicable to like-kind exchanges.Exchanges of stock in trade (or other property held primarily for sale) and stocks, bonds, notes, and other securities or evidences of indebtedness or interest are specifically excluded under Section 1031, even though they might otherwise qualify as business or investment property.[[5]](#endnote-4) Additionally, IRC Section 1031(h) specifically excludes exchanges in which at least one of the properties is real property located outside the United States. Similarly, an exchange involving a partnership interest in a real estate partnership is specifically excluded from like-kind exchange treatment.[[6]](#endnote-5)

Though the like-kind exchange rules are well-settled in the area of real property, application of the "like-kind" standard is not so clear with respect to exchanges of personal property. In Revenue Ruling 82-166, the IRS ruled that an exchange of gold bullion (held for investment purposes) for silver bullion (which would also be held for investment purposes) did not qualify as a like-kind exchange, based on the finding that silver and gold are intrinsically different metals and are used in different ways; silver is essentially an industrial commodity while gold is primarily utilized as an investment in itself. Therefore, the IRS reasoned that an investment in one of the metals is fundamentally different from an investment in the other metal.[[7]](#endnote-6) Conversely, the IRS has found that trades of major league player contracts, as well as the exchange of gold bullion for Canadian Maple Leaf gold coins, qualified for like-kind treatment.[[8]](#endnote-7)

1. . IRC Sec. 1031(a)(1). [↑](#footnote-ref-1)
2. IRC 1031(d). [↑](#endnote-ref-1)
3. Treas. Reg. §1.1031(a)-1(b). [↑](#endnote-ref-2)
4. Treas. Reg. §1.1031(a)-1(c); *VIP Industries Inc. v. Commissioner*, TC Memo 2013-157. [↑](#endnote-ref-3)
5. IRC Sec. 1031(a)(2). [↑](#endnote-ref-4)
6. IRC Sec. 1031(a)(2)(D). [↑](#endnote-ref-5)
7. Rev. Rul. 82-166, 1982-2 CB 190. [↑](#endnote-ref-6)
8. Rev. Rul. 67-380, 1967-2 CB 291; Rev. Rul. 71-137, 1971-1 CB 104; Rev. Rul. 82-96, 1982-1 CB 113. [↑](#endnote-ref-7)