

# the exchange

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## PLR 201027036

### Sale of Relinquished Property to Related Party Does Not Run Afoul of IRC Section 1031(f)(4)

In **PLR 201027036** the IRS concludes that the sale of relinquished property to a related party, that does not intend to hold the property for two years, does not run afoul of the restrictions under IRC §1031(f)(4).

Taxpayer is the parent corporation of a group of corporations that conduct a global leasing business. Company X is a domestic corporation that is wholly owned by Taxpayer. Company X indirectly owns Company Y and Company Z, both domestic corporations. Company X also directly or indirectly owns Company F, which is organized in country G and is a controlled foreign corporation. Company F is classified as a corporation for U.S. federal income tax purposes. Companies X, Y, Z, and F are related parties under IRC §267(b)(3).

In the course of its leasing operations, Taxpayer may dispose of, or release, an asset at the end of the lease term. As market conditions dictate, Taxpayer may also dismantle the asset and sell the component parts.

Taxpayer proposes to sell the off-lease assets owned by Company F to Company Y, who will dismantle the assets and sell the component parts within a two year window.

Alternatively, Taxpayer may sell off-lease assets owned by Company F to Company Z who may release the assets or consign the assets such that the assets will be sold within a two year window.

Taxpayer represents that it will acquire replacement assets from a third-party manufacturer that is not a related party and that the transaction will be facilitated by a Qualified Intermediary.

The IRS concludes that Taxpayer is exchanging property with a Qualified Intermediary and not with a related party, thereby rendering the analysis under IRC§1031(f)(1) irrelevant.

Additionally, the IRS asserts the transaction does not run afoul of the provisions of IRC §1031(f)(4) which seek to exclude from non-recognition of gain treatment any transaction, or series of transactions, structured to avoid the purposes of IRC §1031(f).

In its analysis, the IRS posits that Company F and Companies Y and Z did not exchange properties either directly or indirectly through a Qualified Intermediary and that Company F did not transfer relinquished property to Company Y and Company Z in an attempt to circumvent the related party rules found at IRC §1031(f). Further, the parties did not seek to exchange high basis property for low basis property in anticipation of the sale of the low basis property and as such, the exchange qualifies for non-recognition.

Finally, the ruling concludes that because the income from a controlled foreign corporation is computed as if the entity were a domestic corporation, a valid like-kind exchange is respected when computing Company F's income. As such, Company F has income from the transaction only to the extent of any gain recognized under Section 1031



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