



# IRS Takes Narrow View of Pre-2018 Cryptocurrency Like-Kind Exchanges

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June 21, 2021

For pre-2018 cryptocurrency trades, some investors have relied on a like-kind exchange position to protect trading gains from taxation. Under general income tax principles, the exchange of one cryptocurrency for another triggers taxation on any gain in the cryptocurrency disposed of by the taxpayer. However, for transactions before 2018, Section 1031 could defer investors' gains in this situation if the two exchanged cryptocurrencies were of like kind.

Since 2018, the Tax Cuts and Jobs Act has restricted like-kind exchange treatment to real property. However, the issue remains relevant and hotly contested as the IRS continues a significant campaign to identify and audit cryptocurrency investors, including those who have not reported income from their cryptocurrency transactions.

In a memorandum dated June 8, the IRS offered its first formal analysis of this issue. The memorandum concludes that exchanges of Bitcoin for Ether, Bitcoin for Litecoin and Ether for Litecoin all fail to qualify as like-kind exchanges under the pre-2018 Section 1031. In distinguishing the cryptocurrencies, the Service claims that Litecoin plays a different role in the cryptocurrency market from that of Bitcoin and Ether and points to Ether's smart contracts as setting it apart from Litecoin and Bitcoin.

The memorandum is nonbinding and no court has yet ruled on the application of Section 1031 to cryptocurrency trades. For more on this issue, see IPB's analysis of whether cryptocurrency trades can qualify for like-kind exchange treatment under Section 1031.

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If you face a high-stakes cryptocurrency tax issue, including potential past noncompliance and ongoing or contemplated transactions, please reach out to a member of our team to discuss available strategies.