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## IRS Concludes Certain Cryptocurrency Exchanges Are Not Like-Kind Prior to 2018

The IRS, in [ILM 202124008](#), found that exchanges of certain types of cryptocurrency for other types of cryptocurrency, if completed prior to Jan. 1, 2018, do not qualify as like-kind exchanges under Section 1031. (All Section references are to the Internal Revenue Code of 1986, as amended.) Under Section 1031 (prior to changes made by the 2017 Tax Cuts and Jobs Act), a taxpayer does not recognize any gain or loss on the exchange of property held for the productive use in a trade or business or for investment if such property is exchanged solely for property of like-kind which is to be held either for productive use in a trade or business or for investment. Section 1031 also applied to certain exchanges of personal property. Treasury Regulation Section 1.1031(a)-1(b) defines “like-kind” to mean the nature or character of the property and not the grade or quality.

In the ILM, the IRS specifically reviewed an exchange of Bitcoin for Ether, Bitcoin for Litecoin and Ether for Litecoin and found that such exchanges, if completed prior to Jan. 1, 2018, did not qualify as like-kind exchanges under Section 1031. Bitcoin, Ether, and Litecoin are all forms of cryptocurrency. However, the IRS notes in the ILM that, in 2016 and 2017 (the years at issue), Bitcoin and Ether held a special position in the cryptocurrency market, separate from Litecoin, as either currency generally would need to be a part of a pair in trading or an “on and off-ramp” for investments and transactions in other cryptocurrencies, like Litecoin. As such, either Bitcoin or Ether differed in both nature and character from Litecoin and would not qualify as like-kind property for purposes of Section 1031. Further, the IRS explains that Bitcoin and Ether were also fundamentally different from each other because of the difference in overall design, intended use, and actual use. For example, the Bitcoin network is designed to act as a payment network for which Bitcoin acts as the unit of payment whereas, the Ethereum blockchain was intended to act as a payment network and as a platform for operating smart contracts and other applications, with Ether working as the “fuel” for these features. These differences cause neither Bitcoin nor Ether to qualify as like-kind property for the other under Section 1031.

## IRS Issues Practice Unit on GILTI

The IRS has issued a practice unit on the [Concepts of Global Intangible Low-Taxed Income Under Section 951A](#). Section 951A was added to the Code as part of the 2017 Tax Cuts and Jobs Act. Section 951A requires certain U.S. shareholders of controlled foreign corporations (CFCs) to include their global intangible low-taxed income (GILTI) in their gross income for tax years beginning on or after Jan. 1, 2018. The practice unit explains that rather than explicitly identifying intangible income, the GILTI provisions approximate the intangible income of a CFC by assuming a 10% rate of return on the tangible assets of the CFC, and any income in excess of that “normal return” on assets is effectively treated as intangible income. The practice unit covers key concepts of Section 951A, like, terminology, taxpayers subject to the section, the formula and computation for determining GILTI, and other various aspects of the provisions.

## PA DOR COVID-19 Telework Guidance to End June 30

The Pennsylvania Department of Revenue’s (DOR) [prior guidance](#) relating to telework and

the related tax implications during the COVID-19 pandemic is effective until June 30, 2021, and [current tax law](#) will govern as of July 1, 2021. (See our prior coverage [here](#).) The guidance previously provided that the sourcing of an employee's income does not change if such employee is temporarily working from home because of the pandemic. As such, the compensation of non-Pennsylvania residents who were working in Pennsylvania prior to the pandemic remained sourced to Pennsylvania and the compensation of Pennsylvania residents who were working out-of-state before the pandemic remained sourced to the other state. As of July 1, 2021, current tax law will govern. For example, a Pennsylvania resident who is required to telework full-time from home in Pennsylvania rather than the employer's location outside of the state should treat their compensation as Pennsylvania source income. Conversely, a non-resident employee who is required to telework full-time from home in another state should treat their compensation as non-Pennsylvania source income even if their employer is located in Pennsylvania.



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