What Attys Must Know As Congress Debates 1031 Program

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Alex DuFour addresses the changes being made by the Biden administration regarding the Section 1031 exchange program in *Law360*. The proposal would cap the amount of capital gains tax that can be deferred under the 1031 like-kind exchange program at $500,000 for individuals and $1 million for married couples and would also raise the rate on capital gains above that mark from 23.8% to 43.4%. This change could result in a steep decline in deal flow as real estate investors have relied on the ability to defer payment of capital gains by rolling profits into new purchases under the 1031 program for years.

According to Alex, the typical 1031 deal is in the $3 million to $5 million range, meaning the $500,000 and $1 million limits eliminate most of the benefits of the program for most investors.

“My sense is, if that goes away, that the volume will be reduced significantly,” said Alex.

While many professionals would be able to pivot and find non-1031 work, companies that operate as 1031 exchange intermediaries would be particularly hard hit. Such intermediaries hold sale proceeds before the proceeds are reinvested, a procedure that is required under Section 1031.

“There's a lot of cottage industries that [1031] supports,” Alex stated.

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