



Build-to-Suit & Improvement 1031 Exchanges

What is a Build-to-Suit/Improvement Exchange?

A Build-to-Suit Exchange (BTS) is where an Exchanger purchases land to build the desired structure as the Replacement Property. An Improvement Exchange entails the Exchanger purchasing Replacement Property with the intention to improve the structure. Once the Exchanger takes title to the property, any improvements are considered payment for labor and materials and such payment is not the purchase of like kind property.

Process of a Build-to-Suit/Improvement Exchange

In order to have a valid Build-to-Suit/Improvement Exchange, the Exchanger must utilize the exchange funds for the construction or improvement costs within the 180 day exchange period. They do not need to be completed during this period. Similar to a Reverse Exchange, an Exchange Accommodation Titleholder (EAT) creates a Special Purpose Entity (SPE), typically an LLC, to take legal title to the property during the period of construction. The SPE will take title to the Replacement Property on behalf of the Exchanger and “park” the title until the earlier of the construction or improvements being completed OR the 180th day. Once the EAT transfers ownership of the property to the Exchanger, the Exchanger has acquired improved like-kind real estate including the increased value of the improvements.

Other Considerations

Build-to-Suit and Improvement Exchanges can be set-up on a forward or reverse basis. If the Exchanger sells the Relinquished Property prior to acquiring the Replacement Property then a forward type parking arrangement would occur and the EAT would fund the cost of the property acquisition and improvements from the exchange funds held from the Relinquished Property sale.

Alternatively, if the Exchanger acquires the Replacement Property prior to the sale of their Relinquished Property, a reverse parking exchange would occur and the Exchanger would have to provide the EAT the funds personally for property acquisition and improvements or arrange for a bank loan. In either case, the loan would be paid back at the time the Exchanger sells the Relinquished Property and funds the exchange account.

Reasons For Build-to-Suit or Improvement Exchanges

Below are a few of the reasons or factors that contribute to the need for a Build-to-Suit or Improvement Exchange:

- **Utilize All Exchange Funds:**

The primary reason to utilize these types of exchanges is to be able to utilize all the funds in the exchange account. Often the purchase price of the Replacement Property is less than the sale price of the Relinquished Property. The cost of the desired improvements can be made with the excess funds enabling the Exchanger to avoid “boot” and a taxable event.

- **Meet Specific Criteria:**

Frequently a BTS is used when the Exchanger has specific criteria for the business use property, such as a factory or place of business, and is unable to find a pre-existing property that fits those needs so the Exchanger must construct or improve to satisfy the specific property requirements.

- **Competitive Real Estate Market**

In a competitive market, finding desirable Replacement Property within the 45-day Identification Period can be difficult. Build-to-Suit/Improvements Exchanges allow for a larger pool of potential Replacement property given the ability to customize the property as needed.

- **Cost Savings**

Sometimes the Exchanger is able to find vacant property that can be acquired and constructed at a cost less than the sale price of a comparable already constructed property.

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