A fundamental change of the professional sports landscape under the 2017 U.S. tax reform?

The end of like-kind exchanges for U.S. sports trades

BY BEATE ERWIN[1]

The New York Times reported recently that the National Basketball Association ("NBA") and Major League Baseball ("MLB") are reaching out to both Congress and the Trump administration to learn more about a change that could fundamentally alter how sports franchises do business.[2] Those businesses have long been able to make trades of player contracts tax-free, or, more precisely, tax deferred – at least until the player was ultimately sold.

From 2018 onwards, U.S. sports teams may face higher taxes on player trades as a result of the 2017 tax reform – an unexpected and possibly inadvertent consequence of restrictions imposed by the new law. The Tax Cuts and Jobs Act ("TCJA")[3] introduced a limitation on the use of like-kind exchanges,[4] a provision that provides taxpayers with an opportunity to defer income tax on the unrealized gain in qualifying exchanges ("nonrecognition treatment"). Under the revised rule, the nonrecognition treatment is limited to "real" property, i.e., land and buildings. As a result, in player-for-player trades, professional sports teams will recognize gain and pay tax on the appreciation in value of a traded player's contract. The better the player performed since signing with the team – especially if that person signed at a relatively low salary – the higher the potential tax bill.

Trades are a frequent occurrence in professional sports leagues. In the first three months of 2018, there have been several high-profile trades, including a three-team, three-person exchange in which the MLB's New York Yankees picked up infielder/outfielder Brandon Drury. At about the same time, the NFL's Kansas City Chiefs traded quarterback Alex Smith to the Washington Redskins for a third-round pick and cornerback Kendall Fuller. Alex Smith immediately signed a 4-year contract for US$ 94 million.

At least one North Texas sports owner, however, is not too concerned that Congress' US$ 1.5 trillion tax overhaul may include a hefty new tax on professional sports franchises. In an interview with a local newspaper earlier this spring, Dallas Mavericks owner Mark Cuban stated that the team will not alter its roster strategy, even if the Internal Revenue Service ("IRS") interprets a one-word change in the sweeping legislation as potentially imposing capital gains taxes any time a team trades a player. "It won't change our approach either way," he said, not elaborating further in a brief e-mail to The Dallas Morning News.[5] Perhaps he understands that the current increase in tax at the time of the trade is more or less offset by amortization deductions over the life of the acquired contract.

Like-kind exchanges – the concept

In most instances, nonrecognition for a like-kind exchange is not the equivalent of non-taxation, except when a player remains with his club for the balance of the contract. Nonetheless, it allows for a deferral of the taxation of income or gain until a specified transaction occurs that requires the recognition of gross income at a later point in time.[6] Conceptually, two types of nonrecognition provisions can be distinguished:

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2 See https://www.nytimes.com/2018/03/19/us/politics/baseball-tax-law-.html, dated 18 March 2018 (accessed 1 June 2018).

3 Pub. L. No. 115-97, par. 13303; signed by President Trump on 22 December 2017, with most provisions taking effect as of 1 January 2018.

4 Code par. 1031.

5 *The Dallas Morning News,* March 30, 2018; see https://www.dallasnews.com/news/politics/2018/03/30/mark-cuban-reacting-change-gop-tax-law-could-hit-sports-teams-hard (accessed 1 June 2018).

6 One example is Code par.1031(d). Similar provisions include Code par. 1033(b), 1035(d), 1036(c), 1038(c), 1040(c), 1041(b), 1042(d).

1 one relates to the transfer of property resulting in a "transferred property" basis – also referred to as "carryover" basis;[7]
2 the second type is the exchange of property with substituted basis as a result.

While the definition is not always clear,[8] like-kind exchanges under Code par. 1031 fall under the second type of deferral provisions.[9] Under this rule, a taxpayer's acquisition of one property in exchange for another is afforded full or, if cash is paid in addition to a qualifying asset, partial nonrecognition of the gain or loss realized from the exchange. This goal is accomplished through the concept of substituted basis. The property is treated as "exchanged basis property" in the hands of the taxpayer. Accordingly, its basis is determined by reference to the taxpayer's basis in the property formerly held.[10] Taxation is triggered when the asset received in the exchange is ultimately sold.

Like-kind exchanges – pre-TCJA law

For exchanges completed prior to 1 January 2018, a taxpayer did not recognize gain on the exchange of property held for productive use in a trade or business or for investment if that property was exchanged solely for the same type of property which was to be held either for productive use in a trade or business or for investment.[11] Under pre-TCJA law, for purposes of this rule the term property comprised real property and personal property, including intangible personal property such as patents and other intellectual property such as contracts.[12] Hence, a prerequisite to qualify for 1031 like-kind exchange treatment was that the player contract would be classified as intangible personal property that is depreciable under Code par. 167.

With respect to the latter, Revenue Ruling ("Rev. Rul.") 67-379[13] dealt with the proper classification and income tax treatment of the acquisition costs in excess of salary of one-year professional baseball player contracts. Because the player was effectively bound by a reserve clause to the team for a period longer than a year, the IRS concluded that the cost paid or incurred could be recovered through the depreciation allowance. Thus, the contract period during which the player is precluded from playing is considered part of the depreciation period of Code par.167. The ruling concludes that the player contract is an intangible asset the cost of which consists of two elements:

1 amounts paid or incurred upon the purchase of the player's contract, and
2 the bonus paid to the player for signing the player's contract.

Similarly, in Rev. Rul. 71-137 dealing with a football player contract under which the player is bound to the team for longer than one year under a renewal option clause, the IRS considered the contract to be an intangible asset. Again, the measure of the acquisition costs of the contract includes the bonus paid to the player for signing the contract. Interestingly, the conclusions in the rulings appear to imply that the IRS would accept a method of estimating the duration of these player contracts, notwithstanding the many variables that enter into the annual renegotiation process.[14]

Historically, the IRS viewed two teams trading players as trading those players' contracts. In line with the classification of player contracts described above, the IRS took the position that these contracts were like-kind property.[15] On this premise, upon exchanging contracts, teams could apply the like-kind exchange exception. As a result, the trading teams did not have to recognize gain or loss for U.S. federal income tax purposes, except to the extent cash was received.

Nonrecognition was limited to assets of the same class, e.g., the same general asset class or within the same product class for depreciable tangible property. Moreover, property used predominantly within the United States would not

7 *E.g.*, transfers between spouses under Code par. 1041, and gifts under Code par. 1015.

8 For instance, contributions to controlled corporations in exchange for stock under Code par. 351 and contributions of property to partnerships under Code par. 721 are referenced as examples for both types; cf., BNA Portfolio 501-4th: *Gross Income: Overview and Conceptual Aspects*, IV.F.3.

9 Other examples include the receipt of stock for property contributed to a controlled corporation (Code par. 351), and the receipt of a partnership interest for property contributed to a partnership (Code par. 721). See, however, previous FN for classification issues.

10 Code par. 7701(a)(44).

11 Code par. 1031(a)(1) under pre-TCJA law.

12 Exchanges of stock in trade and other property held primarily for sale, stocks (other than shares in certain mutual ditch, reservoir, or irrigation companies), bonds, or notes, other securities or evidences of indebtedness or interest, interests in a partnership, certificates of trust or beneficial interest, or choses in action were excluded from non-recognition treatment under this rule. Code par. 1031(a)(2) under pre-TCJA law.

13 1967-2 C.B. 127.

14 Rev. Rul. 71-137. See *Laird v. United States*, 556 F2d 1224 (5th Cir. 1977), cert. denied, 434 US 1014 (1978) (useful life of 5.25 years held reasonable for particular team), available (after logging in) at https://checkpoint.riag.com/app/main/docLinkNew?DocID=ie51abd601bcf11dc834ac7f8ee2eaa77&SrcDocId=ToBTT%3A153.1-1&feature=tcheckpoint&lastCpReqId=17c9037&tabPg=40; *First Northwest Indus. of Am., Inc. v. Comm.*, 70 TC 817 (1978), rev'd on other issues, 649 F2d 707 (9th Cir. 1981) (professional football players), available (after logging in) at https://checkpoint.riag.com/app/main/docLinkNew?DocID=ie51abd601bcf11dc834ac7f8ee2eaa77&SrcDocId=ToBTT%3A153.1-1&feature=tcheckpoint&lastCpReqId=17c9037&tabPg=40; Rev. Rul. 67-379, 1967-2 CB 127 (baseball player contracts depreciable), available (after logging in) at https://checkpoint.riag.com/app/main/docLinkNew?DocID=ie51abd601bcf11dc834ac7f8ee2eaa77&SrcDocId=ToBTT%3A153.1-1&feature=tcheckpoint&lastCpReqId=17c9037&tabPg=40. See also Code par. 1056 (limiting amount of purchase price of team that can be allocated to player contracts); Selig v. United States, 565 F. Supp. 524 (ED Wis. 1983), aff'd, 740 F2d 572 (7th Cir. 1984) (extensive discussion of allocation problem apart from Code par. 1056), available (after logging in) at https://checkpoint.riag.com/app/main/docLinkNew?DocID=ie51abd601bcf11dc834ac7f8ee2eaa77&SrcDocId=ToBTT%3A153.1-1&feature=tcheckpoint&lastCpReqId=17c9037&tabPg=40.

15 See Rev. Rul. 67-380, 1967-2 C.B. 291, and Rev. Rul. 71-137, 1971-1 C.B. 137.

qualify if exchanged for property predominantly used outside the United States. If both property qualifying for nonrecognition and property not so qualifying are received, any gain realized is recognized only to the extent of the sum of the money and the fair market value of the other non-qualifying property received in the exchange.[16] Other requirements apply if one of the players is to be identified later. In that case, the law places time limitations on the identification of the property received in the exchange and on the timing of the exchange.[17]

Contrary to the exchange of player contracts, the question whether an exchange of franchises would qualify for nonrecognition treatment under Code par. 1031 under pre-TCJA law was not unequivocal. While the Tax Court held in one case that the exchange of the original franchise for a different franchise was considered a chose in action and thus denied 1031 like-kind exchange treatment under the statute.[18] However, IRS regulations provided for a less stringent approach. Depending on facts and circumstances, Code par. 1031 was deemed applicable.[19] In the context of professional sports franchises, this may be a hypothetical question. In any event, with the changes under the TCJA described in more detail below, this issue has become moot.

The end of like-kind exchanges for sports trades under the TCJA

The TCJA changed the rules for like-kind exchanges to allow nonrecognition treatment only for exchanges of real property held for productive use in a trade or business or for investment, provided that the real property is exchanged solely for real property of like kind.[20] [21]

Prevalent to sports trades, exchanges of personal property and intangible property occurring after 31 December 2017, do not fall within the scope of Code par. 1031. Because 1031 like-kind treatment no longer applies to player trades, teams may be required to recognize gain or loss for U.S. federal income tax purposes when a player is traded for a player and the contracts are not deemed to be of equivalent value.

Generally, taxable gain or loss is the difference between the fair market value of property at the time of its sale or exchange and the taxpayer's basis in the property. A team will have tax basis in the player's contract equal to the cost to acquire the player, possibly including amounts due to the player for future services. The value of a player rests in his or her future performance, which is difficult to predict. Teams may have to adopt or develop a method of valuing player contracts for tax purposes, such as actuarial values based on player age, the average length of a professional sports career, and amounts paid to other players with similar statistics, which occurs every year when a player in baseball is tied to his team but is eligible for arbitration. Teams trading players would then recognize gain or loss on a contract when a player is traded equal to the difference between the contract's actuarial (or other) value and the team's basis in the contract.

To the extent that the new law makes player trades more expensive, the consequences could vary: It could lead to

1 fewer trades overall;
2 fewer player-for-player trades;
3 more cash-for-player or player-for-draft pick deals;
4 enhance the development of alternative trading procedures that accomplish a trade without triggering adverse tax consequences; or
5 higher amortization over the balance of the contract acquired in the taxable exchange.

As alluded to by one of the NBA's team owners, the effects of this change in tax law under the TCJA may, however, be not as severe. While tax, undeniably, is a factor, other, perhaps stronger drivers for player trades may prevail.

The following describes potential consequences of the elimination of like-kind exchange treatment for sports trades. The most significant is that the trades of sports contracts will be subjected to immediate taxation upon exchange.

Sports trades under the TCJA – the path forward: capital gains treatment and the importance of valuation

Capital gains treatment – sale of single player contracts or as part of the sale of a franchise

Most franchises in the USA tend to be owned by L.L.C.'s with individuals as members. Under the TCJA, an individual will qualify for long-term capital gains taxation at a maximum rate of 20% where the property meets all of the following requirements:

1 it is used in a trade or business;[22]
2 it is held by the taxpayer for more than one year;
3 it is subject to depreciation under the general depreciation rules;[23] and

16 Code par. 1031(b), unchanged under the TCJA..

17 Code par. 1031(a)(3), unchanged under TCJA..

18 *Brook v. Commr.*, TC Memo 1964-285, 23 TCM 1730, 1742 n. 12, rev'd. 360 F2d 1011 (3d Cir. 1966) (trade of a book-binding franchise).

19 Treas. Regs. par. 1.1031(a)-2(c)(1). See also Treas. Regs. par. 1.197-2(g)(2)(iii). Note, however, that administrative guidance was not coherent with respect to exchange of intangibles such as goodwill and trademarks (Private Letter Ruling 200602034 (trademarks and tradenames not eligible for non-recognition under Code 1031; reversed in Chief Counsel Advice 200911006, dated 12 February 2009)).

20 Code par. 1031(a)(1) as amended by TCJA.

21 For exchanges completed after 31 December 2017, in view of increased expensing under Code par. 168(k) and Code par. 179 for tangible personal property and certain building improvements, Congress believed that Code par. 1031 should be limited to like-kind exchanges of real property not held primarily for sale. Code pat. 1031(a)(2) as amended by TCJA; see also Com. Report, 5046.

22 Code par. 1231(a)(3)(A) in conjunction with Code par. 1231(b)(1).

23 Code par. 1231(b)(1) with reference to depreciation under Code par. 167.

4 it is not a specified intangible asset.[24]

Because standard professional player contracts are considered to be property used in the trade or business that can be depreciated under Code par. 167, these contracts are assets described in Code par. 1231(b) when owned for more than 12 months by professional sports teams. Recognized gains from the sale or exchange of these player contracts will therefore be treated as "gains on sales or exchanges of property used in the trade or business" under Code par. 1231(a),[25] subject to the recapture provisions of Code par. 1245 where the cost of the contract has been previously amortized.

Until October 2004, the situation on a sale of a franchise was not so favorable. While contracts with professional athletes constituted intangible assets that were (and still are) amortizable over the useful lives of the contracts, the cost of obtaining professional sports franchises could not be amortized.[26] This disparity in treatment between the cost of a franchise and the cost of player contracts obviously created an incentive for the purchaser of an existing sports franchise to maximize the allocation of the purchase price to the player contracts.[27]

As part of the American Jobs Creation Act of 2004, Congress repealed Code par. 197(e)(6).[28] In repealing this provision, Congress noted that Code par. 197 had originally been enacted to minimize disputes between taxpayers and the IRS with respect to the valuation and useful lives of acquired intangible assets. Because sports franchises and the related intangible assets acquired in the same transaction were excluded from Code par. 197, the potential for disputes remained. This changed in 2004. Professional sports franchises, as well as any intangible asset acquired in connection with such a franchise occurring after 22 October 2004, have been amortizable over 15 years under Code par. 197.[29]

Thus, in the event of a sale of player contracts as part of the sale of an entire franchise, the transaction will be governed by the ordinary rules on the sale or exchange of an amortizable Code par. 197 intangible asset as long as the seller receives no contingent payments and no significant power is retained by the seller.[30] Accordingly, the sale or exchange of a professional sports franchise and a player's contract used in the "trade or business" of that franchise generally can qualify for capital gain treatment under Code par. 1231 when held for more than one year.[31]

Nonetheless, a number of significant restrictions may limit the extent to which the transferor would recognize capital gain on the sale or exchange of a franchise. At a minimum, to the extent of prior 197 amortization deductions, gain will be characterized as ordinary income under the recapture rules of Code par. 1245.[32]

24 Code par. 1231(b)(1)(C) as amended by the TCJA. Assets covered by this provision are defined as patent, invention, model or design (whether or not patented), a secret formula or process, a copyright, a literary, musical or artistic composition, a letter or memorandum or similar property held by a person described in Code par. 1221(a)(3). The latter could be the creator, the taxpayer for whom certain intangibles were created, or whose basis for computing gain is determined by reference to the property's basis in the hands of one of the foregoing taxpayers.

25 Rev. Rul. 67-380 (for major league baseball club); Rev. Rul. 71-137 (for professional football teams).

26 Code par. 197 intangibles do not include any franchise to engage in professional baseball, basketball, football, or any other professional sport, and any item (even though otherwise qualifying as a par. 197 intangible) acquired in connection with such a franchise. Prop. Reg. par. 1.197-2(c)(10). Until 2004, the language was broadened to include items *"acquired in connection with such a franchise"*, including goodwill and going concern value, but only if acquired before 23 October 2004. Code par. 197(e)(6), before repeal by Pub. L. No. 108-357, par. 886, 118 Stat. 1418 (2004).

27 Note that this strategy was limited by Code par. 1056. Under this provision, if a franchise to conduct any sports enterprise was sold or exchanged and comprised the transfer of a player's contract, the transferee's basis in the contract could not exceed the sum of the transferor's adjusted basis immediately before the transfer plus any gain recognized by the transferor on the transfer of the contract. Furthermore, Code par. 1056 presumed that not more than 50% of the consideration paid by the transferee was allocable to player contracts. The presumption was rebuttable on the condition that the transferee able to establish that a specified amount above 50% was allocable to player contracts. No presumption existed, however, that an allocation of less than 50% of the consideration to player contracts was a proper allocation. Importantly, Code par. 1056 did not apply to exchanges of like-kind property qualifying under Code par. 1031.

28 Pub. L. No. 108-357, § 886(a), 118 Stat. 1418, 1641 (2004), available (after logging in) at https://checkpoint.riag.com/app/main/docLinkNew?DocID=i031551e87e3362da804f939edecd3cec&SrcDocId=ToTIN%3A202.3212-1&feature=tcheckpoint&lastCpReqId=17d1b6f&pinpnt=LEG108%3A4850.3629&tabPg=40&d=d#LEG108%3A4850.3629. The repeal of §§ 197(e)(6) (available (after logging in) at https://checkpoint.riag.com/app/main/docLinkNew?DocID=i980ab0f619d711dcb1a9c7f8ee2eaa77&SrcDocId=ToTIN%3A202.3212-1&feature=tcheckpoint&lastCpReqId=17d1b6f&pinpnt=TCODE%3A6043.1&tabPg=40&d=d#TCODE%3A6043.1) is effective for property acquired after 22 October 2004, the date of enactment. Id. at par. 886(c), 118 Stat. at 1641, available (after logging in) at https://checkpoint.riag.com/app/main/docLinkNew?DocID=i84b74b5e19d711dcb1a9c7f8ee2eaa77&SrcDocId=ToTIN%3A202.3212-1&feature=tcheckpoint&lastCpReqId=17d1b6f&tabPg=40. See S. Rep. No. 108-192, 108th Cong., 1st Sess. 190-92 (2003); HR Rep. No. 108-548, Part I, 108th Cong., 2d Sess. 358-60 (2004); HR Rep. No. 108-755, 108th Cong., 2d Sess. 752-53 (2004).

29 Code par. 197(d)(1)(F), par. 197(f)(4) referencing Code par. 1253(b). *"Section 197 intangibles include any franchise, trademark, or trade name. The term franchise has the meaning given in section 1253(b)(1) and includes any agreement that provides one of the parties to the agreement with the right to distribute, sell, or provide goods, services, or facilities, within a specified area."* Treas. Regs. §1.197-2(b)(10).

30 Code par. 1253.

31 Code par. 1231(a) and (b). For this purpose, Code par. 197 intangibles are treated as property subject to the allowance for depreciation under Code par. 167. Code par. 197(f)(7); Treas. Regs. par. 1.197-2(g)(8). See H.R. Rep. No. 213, 103d Cong, 1st Sess. 688 (1993). If, on the other hand, the losses from such sales or exchanges equal or exceed the gains, the gains and losses are treated as ordinary. Code par. 1231(a)(2) and par. 1231(a)(3)(B).

32 Code par. 1245(a)(1), available (after logging in) at https://checkpoint.

Valuation of player contracts

The significance of players as the key element with respect to the valuation of sports trades has been acknowledged by the court in Laird:

"Indeed, it is clear that the players are the primary assets of a professional football club. Without them, there could not be a game."

Citing the President and General Manager of the Dallas Cowboys, Tex Schramm, in his testimony in Laird, the court continued:

"[...] *The players are your principal product, and it is players who are responsible for you[r] winning. They are responsible for the fans coming to your stadium. They are responsible for the income that you receive on television. Without the players, in professional football, you don't have anything."*[33]

On the one hand, valuation, particularly in the context of players and their contracts, is not a precise science. As the court in First Northwest Industries stated, referencing *Anderson*:[34]

"The law is well settled that valuation of assets is a factual finding and is of necessity an approximation."[35]

On the other hand, it is not uncommon that, in an exchange of player contracts, one team will supplement its offer with cash, thereby indicating that the value of the player it offers to exchange is less than the other team's offering. This suggests that teams already have a business way to value their players' contracts even if, previously, the transaction was not subject to tax under the like-kind exemption under pre-TCJA law.

The elimination of nonrecognition treatment under like-kind exchange rules by the TCJA may prompt teams to seek the views of tax advisers as part of the increased attention that may be given in determining values ascribed to players and their contracts. In this context, a major issue relates to the valuation of sports trade contracts, namely, whether a contract – under which a player is being paid at a fair market rate – has value on the day it is entered.

The question in issue is how much value can be assigned to a contract upon signing? One argument could be that the player is paid fair market value. Accordingly, the contract, per se, would not have value. A different way of reasoning, however, is that, because a player is under contract at a set price, a player contract over time creates value. A contract may be assigned a positive or negative value according to some commentators. With respect to the latter, the fact that the contracts can extend far into the future, increases the likelihood that a player at the middle or end may become less productive and thus worth less than at the time of signing. Indeed, that is reflected as the contract is amortized. However, with more successes throughout their career, the opposite may hold true, too, when a potential decline in performance over the years may be offset by other factors such as celebrity status leading to higher marketability, spikes in merchandise sales, and increased attraction of fans.

Notwithstanding a lack of guarantee for continued performance at the same level over an extended period of time, player contracts build on past successes. In this context, one example is NBA player LeBron James. Upon his return to Cleveland in July 2014, the NBA's four-time Most Valuable Player led the Cavaliers to the 2016 NBA title, the first in franchise history and the first major sports crown for the city in 52 years. Subsequent to the win, he re-signed his contract with the team for three more years in a deal worth US$ 100 million. His US$ 31 million salary in 2016-2017 made him only the third NBA player to earn US$ 30 million in a season. The others were Michael Jordan and Kobe Bryant.[36]

Although now playing at an even higher level, LeBron is also an example of how increased marketing/sponsoring value can offset lowered performance related expectation for purposes of valuation. In his case, having added Intel and Verizon to his endorsement portfolio, which already included Nike, Coca-Cola, Beats by Dre and Kia Motor. His lifetime deal with Nike could net him more than US$ 1 billion.[37] While endorsement contracts are entered into separately and thus not part of the compensation under the player's contract, they are intrinsically an element in determining the player's value with regards to his team contract.

Similar to other major revisions and new rules implemented under the TCJA, the IRS has not released guidance on this issue. At this point, sports teams may be best advised to have recourse to case law described in the foregoing in assigning value to player contracts.

Other potential consequences

Whether sports trades will be subject to increased scrutiny by the IRS?

The new tax law could lead to more litigation with the IRS if teams trading players value the contracts differently. Do both teams have to assert the player's contract the same value? Not necessarily by law. However, without any doubt, it would strengthen their position vis-à-vis

riag.com/app/main/docLinkNew?DocID=if6fb89a019d711dcb1a9c7f8ee2eaa77&SrcDocId=ToTIN%3A235.1363-1&feature=tcheckpoint&lastCpReqId=17c9d04&tabPg=40. See H.R. Rep. No. 213, 103d Cong., 1st Sess. 688 (1993). A special rule applies with respect to the determination of depreciation recapture under Code par. 1245 when more than one Code 197 intangible asset is disposed of in the same or a series of related transactions. Code par. 1245(b)(8).

33 *Laird*, App. at 204.

34 *Anderson v. Commr.*, 250 F.2d 242, 249 (5th Cir. 1957).

35 *First Northwest Industries*, p. 856.

36 See www.forbes.com/profile/lebron-james, dated 12 June 2017 (accessed 1 June 2018).

37 Id.

the IRS in a potential tax audit. As the incidences of valuation discrepancies grow in number, the IRS will be incentivized to challenge both values in separate IRS tax examinations. This is known as "protecting the fisc" because it prevents the IRS from being "whipsawed" by adopting a single value which is litigated. Consequently, by consulting each other, teams could limit this exposure in the absence of administrative valuation guidance. Of course, prudence suggests that the valuation should be supported by expert assessments and valuation reports.

Trickle-down effect?
Another potential consequence of the change in law is the impact on salaries and ticket prices. To the extent that the elimination of like-kind exchanges results in higher tax burdens for professional sports team owners, the increased tax costs could trickle down to the players via lower salaries or to sports fans via higher ticket prices.

Time value of money
Higher cost of trading may lead to fewer trades. However, the cost of losing like-kind exchanges may be relatively small, especially when considered on a net basis. Recognizing gain on a player contract on the one hand allows for tax basis on the other hand that can be amortized over the life of the contract. The deferral is replaced by upfront cost that is offset by a deduction over the life of the contract. In other words, it is a question of time value of money – money available at the present time is worth more than the same amount in the future as cash in hand may be invested in interest bearing instruments.

Conclusion

While the changes under the TCJA eliminated the option for nonrecognition treatment for sports trades from 2018 onwards, the effects may be limited to time value of money. Because professional sports teams are afforded the possibility of amortization of player contracts, the tax bill upfront does not result in an overall additional tax burden if considered on a net basis over the entire lifetime of the contract. However, the time value of money will change the economics of sports trades. Another issue is the valuation of player contracts. Absent guidance by the IRS on reasonable methods, professional sports teams are recommended to agree on the value assigned to the player's contracts upon exchange. This way the IRS's room for contention could be significantly limited, in particular, if the agreed values are substantiated by expert valuation reports.