



NEW IRS GUIDANCE ON OPPORTUNITY ZONE INVESTMENTS

April 16, 2019

On April 17, 2019, the IRS and U.S. Treasury Department issued proposed regulations (Proposed Treas. Reg. Sec. 1400Z-2), that provide new guidance for qualified "Opportunity Funds" investing in "Opportunity Zones."

Under the proposed regulations, taxpayers may defer realized gains by reinvesting them in qualified Opportunity Funds, that conduct or own trades or businesses with property and business activity within qualified Opportunity Zones. These deferred gains may then be partially excluded from gross income if certain holding periods are met.

Qualified Opportunity Funds were created in December of 2017, as part of The Tax Cuts and Jobs Act, to promote investment in low-income or distressed areas designated as qualified Opportunity Zones. There are approximately 8,700 IRS-designated qualified Opportunity Zones in the United States. Treasury Department mapping tools are available to identify their locations.

Eligible investments in qualified Opportunity Funds can potentially achieve three primary tax benefits: (1) a temporary deferral of capital gains if reinvested in a qualified Opportunity Fund within 180 days after recognition of such gains; (2) an exclusion of up to 15% of such reinvested gain; and (3) a permanent exclusion of all gain, other than reinvested gain, realized in a qualified Opportunity Fund held for a 10-year period.

Taxpayers eligible to defer gains under the proposed regulations include individuals, C corporations, pass-through entities and trusts and estates. Gain that may be deferred is gain that is "treated as capital," would be recognized for federal income tax purposes before 2027, and does not arise from a sale or exchange with a related party.

Qualified Opportunity Funds must conduct or own trades or businesses with property and business activity within qualified Opportunity Zones. At least 90% of Opportunity Fund assets must be held as qualified Opportunity Zone property, which may include Opportunity Zone business property, stock, or partnership interests.

Generally, within 180 days of a sale or exchange eligible gain, a qualified taxpayer may elect to reinvest all or a portion of the gain into a qualified Opportunity Fund, deferring its recognition until December 31, 2026, or, if earlier, the date such qualified Opportunity Fund interest is sold or exchanged.

If the taxpayer holds the qualified Opportunity Fund interest for a 5-year period, 10% of the deferred gain is permanently excluded. Once the holding period reaches 7 years, an additional 5% of the gain is excluded. If the holding period reaches 10 years, the gain arising after the 2026 recognition date is entirely excluded.

Under the proposed regulations, the government has the right to revise a transaction (or series of transactions), so that same would not qualify for the Opportunity Zone tax benefits, if a significant transactional purpose is to achieve a tax result inconsistent with the statutory purposes of qualified Opportunity Funds. Such IRS determinations are based on the facts and circumstances of a given transaction. These anti-abuse provisions are similar to traditional anti-abuse IRS regulations that apply to non-Opportunity Fund investments.

While the proposed regulations add some clarity for taxpayers, there remains a great deal of uncertainty with these investments. Anyone considering such investments should obtain tax advice before entering into the transaction.

Please consult your accountant, tax advisor or attorney for further information. The foregoing has been prepared for general informational purposes only, and is not intended as tax or legal advice.