

Qualified Opportunity Zone Investments

The Qualified Opportunity Zone (QOZ) program was created by the Tax Cuts and Jobs Act to encourage the development of low-income communities by providing preferential tax treatment for investments made in those communities. Investors seeking to take advantage of the potentially significant tax benefits afforded by the QOZ program must understand its detailed requirements to properly structure their investments.



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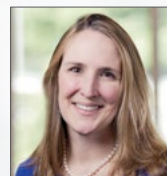
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Under the Tax Cuts and Jobs Act, changes were made to the Internal Revenue Code (Code) that provide tax benefits to investors in Qualified Opportunity Zones (QOZs) (26 U.S.C. §§ 1400Z-1 and 1400Z-2). QOZs are low-income communities that are:

- Identified and proposed by the chief executive officers of the 50 states and other US possessions.
- Designated by the Secretary of the Treasury.

The designation of a QOZ is intended to promote economic development and job creation by encouraging new long-term investment in the identified community.

QOZs have been identified in all 50 states, the District of Columbia, and five US possessions. The final list and a map of designated QOZs are available at cdfifund.gov.

Investments in QOZs may allow investors to:

- Temporarily defer recognition of capital gains that are reinvested in a Qualified Opportunity Fund (QOF).
- Reduce the amount of recognized deferred capital gains by an increase in basis.
- Exempt from taxation any appreciation in their QOF investment, if certain requirements are met.

To date, the Treasury Department and the Internal Revenue Service (IRS) have issued the following proposed Treasury Regulations (Proposed Regulations) and guidance on the QOZ program requirements:

- Proposed Regulations issued October 19, 2018 (2018 Regulations).
- Proposed Regulations issued April 17, 2019 (2019 Regulations).
- Revenue Ruling 2018-29 (Nov. 5, 2018).

Investors are permitted to rely on this guidance even though the Proposed Regulations are not finalized.

This article discusses:

- The criteria for structuring and investing in QOFs.
- The requirements applicable to property held by a QOF.
- The potential tax benefits provided by the QOZ program to investors.

QUALIFIED OPPORTUNITY FUNDS

To qualify for the tax benefits provided by the QOZ program, an investor must invest capital gains in a QOF. Investors should understand:

- The general requirements applicable to QOFs.
- The 90% asset test for QOF assets.
- The process for self-certification as a QOF.

GENERAL REQUIREMENTS

A QOF is an investment vehicle that:

- Is formed in a US state, the District of Columbia, or a US possession. A QOF that is formed in a US possession must only invest in that possession.

- Is taxed as either a corporation or a partnership for federal income tax purposes (for more information, search [Choice of Entity: Tax Issues](#) on Practical Law).
- Is organized for the purpose of investing in QOZ Property (see below *Qualified Opportunity Zone Property*).
- Holds at least 90% of its assets in QOZ Property. (I.R.C. § 1400Z-2(d)(1).)

While limited liability companies (LLCs) taxed as partnerships are eligible for the QOZ program, single-member LLCs are not eligible because they are disregarded entities for federal income tax purposes.



Search [Forming a Corporation Checklist](#), [Forming a Limited Partnership Checklist](#), and [Forming an LLC Checklist](#) for information on the issues to consider when forming a new entity.

The investment in a QOF must be an equity investment, which includes preferred stock or a partnership interest with special allocations. The investment cannot be a debt instrument or a deemed contribution of money under Section 752(a) of the Code (an increase in a partner's share of or assumption of partnership liabilities by a partner). However, the Proposed Regulations clarify that an investor may:

- Use its equity investment in a QOF as collateral for a loan (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(3)(i), (ii), 83 Fed. Reg. 54279 (Oct. 29, 2018)).
- Invest cash or other property in a QOF (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(9)(i), 84 Fed. Reg. 18652 (May 1, 2019)).

90% ASSET TEST

A QOF must hold at least 90% of its assets in QOZ Property. The QOF's property holdings are determined by the average of the percentage of QOZ Property held by the QOF, as measured on the last day of both:

- The first six-month period of the taxable year of the QOF.
- The taxable year of the QOF.

(I.R.C. § 1400Z-2(d)(1).)

The 2018 Regulations provide a special rule that allows an entity to choose to become a QOF in a month other than the first month of the taxable year (Prop. Treas. Reg. § 1.1400Z2(d)-1(a)(1)(iii), 83 Fed. Reg. 54279 (Oct. 29, 2018)). However, regardless of when an entity becomes a QOF, the last day of the taxable year is a testing date. Therefore, if an entity becomes a QOF in the seventh (or a later) month of a 12-month taxable year, the 90% asset test is applied to the QOF's assets on only the last day of the taxable year (Prop. Treas. Reg. § 1.1400Z2(d)-1(a)(2)(i), 83 Fed. Reg. 54279 (Oct. 29, 2018)).

The 2019 Regulations include the following rules for the 90% asset test:

- To provide relief to a QOF that receives an investment shortly before a test date, the QOF may apply the 90% asset test without taking into account any investment received in the preceding six months, provided those investments are held in:

- cash or cash equivalents; or
- debt instruments with a term of 18 months or less.

(Prop. Treas. Reg. § 1.1400Z2(d)-1(b), 84 Fed. Reg. 18652 (May 1, 2019).)

- Sale proceeds from the distribution, sale, or disposition of the QOF's assets will count as QOZ Property for purposes of the 90% asset test, provided that:

- they are reinvested in other QOZ Property within 12 months of the distribution, sale, or disposition, subject to extension for government-related delays; and
- before reinvestment they are continuously held in cash, cash equivalents, or debt instruments with a term of 18 months or less.

(Prop. Treas. Reg. § 1.1400Z2(f)-1(b), 84 Fed. Reg. 18652 (May 1, 2019).)

For purposes of the 90% asset test, the Proposed Regulations allow the QOF to use either:

- The asset values reported on the QOF's applicable financial statement for the taxable year.
- The QOF's cost basis for owned assets and present values of lease payments for leased assets.

(Prop. Treas. Reg. § 1.1400Z2(d)-1(b), 84 Fed. Reg. 18652 (May 1, 2019).)

A taxpayer's applicable financial statement is generally a financial statement prepared under US GAAP (generally accepted accounting principles) that either:

- Is required to be filed with the Securities and Exchange Commission.
- Is required to be provided to the federal government or any of its agencies (other than the IRS).
- The taxpayer reasonably anticipates will be directly relied on for the purposes for which it was given and is:
 - given to creditors for purposes of making lending decisions;
 - given to equity holders for purposes of evaluating their investment in the taxpayer; or
 - provided for other substantial non-tax purposes.

(Treas. Reg. § 1.475(a)-4(h).)

SELF-CERTIFICATION AS A QOF

Any taxpayer that is a corporation or a partnership for federal income tax purposes may self-certify as a QOF using Form 8996. The QOF attaches this form to its annual tax return.

The 2018 Regulations clarify that a pre-existing entity may self-certify as a QOF if:

- The QOF requirements under Code Section 1400Z-2(d) are met.
- Its QOZ Property is acquired after December 31, 2017.

(Prop. Treas. Reg. § 1.1400Z2(d)-1(a)(3), 83 Fed. Reg. 54279 (Oct. 29, 2018).)

The 2018 Regulations allow a QOF to both:

- Identify the taxable year in which the entity becomes a QOF.
- Choose the first month in that year to be treated as a QOF.

(Prop. Treas. Reg. § 1.1400Z2(d)-1(a)(1), 83 Fed. Reg. 54279 (Oct. 29, 2018).)

A gain deferral election is not effective for an investment that is made before an eligible entity certifies as a QOF.

QUALIFIED OPPORTUNITY ZONE PROPERTY

To comply with the requirements of the QOZ program:

- A QOF must be organized to invest in QOZ Property.
- An entity that issues stock or partnership interests to a QOF must qualify as a QOZ Business (see below *QOZ Business*).

TYPES OF QOZ PROPERTY

QOZ Property includes QOZ:

- Stock.
- Partnership interests.
- Business property.

(I.R.C. § 1400Z-2(d)(2)(A).)

QOZ Stock

If an entity is classified as a corporation for federal income tax purposes, an equity interest in the entity qualifies as QOZ stock if:

- The stock is acquired by a QOF after December 31, 2017, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash.
- As of the time the stock is issued, the corporation is a QOZ Business (or, in the case of a new corporation, is being organized for purposes of being a QOZ Business).
- During substantially all the QOF's holding period for the stock, the corporation is a QOZ Business. The 2019 Regulations define "substantially all" for this purpose as at least 90%.

(I.R.C. § 1400Z-2(d)(2)(B).)

QOZ Partnership Interests

If an entity is classified as a partnership for federal income tax purposes, an equity interest in the entity qualifies as a QOZ partnership interest if:

- The partnership interest is acquired by a QOF after December 31, 2017 from the entity solely in exchange for cash.
- As of the time the interest is issued, the entity is a QOZ Business (or, in the case of a new entity, is being organized for purposes of being a QOZ Business).
- During substantially all the QOF's holding period for the interest, the entity is a QOZ Business. The 2019 Regulations define substantially all for this purpose as at least 90%.

(I.R.C. § 1400Z-2(d)(2)(C).)

QOZ Business Property

Tangible property used in a trade or business of a QOF or QOZ Business qualifies as QOZ business property if:

- The tangible property was acquired by the QOF or QOZ Business by purchase or lease after December 31, 2017.

- During at least 90% of the QOF's or QOB Business's holding period or lease term for the tangible property, at least 70% of the use of the tangible property was in a QOZ.
- For purchased tangible property, it was purchased from an unrelated party (no more than 20% common ownership) and:
 - the original use of the tangible property in the QOZ commences with the QOF or QOZ Business; or
 - the QOF or QOZ Business substantially improves the tangible property.
- For leased tangible property:
 - the lease is market rate; and
 - if the lessor and lessee are related parties, no prepayment of rent exceeds 12 months and, if the original use of leased personal property in the QOZ does not commence with the lessee, the lessee must purchase tangible property that is QOZ business property within 30 months having a value not less than the value of the leased personal property.

(I.R.C. § 1400Z-2(d)(2)(D); Prop. Treas. Reg. § 1.1400Z2(d)-1(c), 84 Fed. Reg. 18652 (May 1, 2019).)

Revenue Ruling 2018-29 addresses the original use requirement for two types of tangible property:

- **Land.** Given the permanence of land, its original use can never commence with a QOF or QOZ Business and, therefore, the original use requirement does not apply to the land on which a building is located. However, the 2019 Regulations require land to be used in a trade or business of a QOF or QOZ Business to prevent "land banking."
- **Existing buildings.** The original use of an existing building located on land does not commence with the QOF or QOZ Business. They instead must substantially improve the building for the building to qualify as QOZ Property. For purposes of determining whether the building is substantially improved:
 - the land's adjusted basis is not included in a building's adjusted basis; and
 - the land on which a substantially improved building is located does not itself need to be separately substantially improved for the building to qualify as QOZ Property.
 (Rev. Rul. 2018-29.)

The 2019 Regulations provide the following additional clarifications:

- **Commencement date.** Original use of property commences on the date any person first places the property in service in the QOZ for purposes of depreciation or amortization.
- **Vacant buildings.** A building or other structure that has been vacant for at least five years before its purchase by a QOF or QOZ Business satisfies the original use requirement.
- **Leased tangible property.** The original use requirement does not apply to leased tangible property. Improvements made by a lessee to leased property satisfy the original use requirement.
- **Used property.** Used tangible property satisfies the original use requirement if it was not previously used in that QOZ by any person.

(Prop. Treas. Reg. § 1.1400Z2(d)-1(c)(6), 84 Fed. Reg. 18652 (May 1, 2019).)

Tangible property is treated as substantially improved by the QOF only if, during any 30-month period beginning after the acquisition date of the property, the QOF adds to the basis of the property an amount equal to more than the adjusted basis of the property at the beginning of the 30-month period. The 2018 Regulations provide a special rule for buildings located on land wholly within a QOZ that only requires the substantial improvement to the building, and does not require the QOF to separately substantially improve the land on which the building is located. (Prop. Treas. Reg. §§ 1.1400Z2(d)-1(c)(8)(ii)(A), 1.1400Z2(d)-1(d)(4)(ii)(A), 83 Fed. Reg. 54279 (Oct. 29, 2018).)

The 2019 Regulations do not impose a substantial improvement requirement for leased real property, provided there is no plan, intent, or expectation that the QOF will purchase the real property for less than fair market value (Prop. Treas. Reg. § 1.1400Z2(d)-2(i)(E), 84 Fed. Reg. 18652 (May 1, 2019)).

QOZ BUSINESS

A trade or business is a QOZ Business if:

- Substantially all the tangible property owned or leased by the trade or business is QOZ business property. The 2018 Regulations define substantially all in this context as at least 70%. (Prop. Treas. Reg. § 1.1400Z2(d)-1(d)(3)(i), 83 Fed. Reg. 54279 (Oct. 29, 2018).)
- For each taxable year, at least 50% of its gross income is derived from the active conduct of a trade or business in the QOZ. The 2019 Regulations:
 - define a trade or business for purposes of the QOZ program as a trade or business within the meaning of Code Section 162;
 - provide that the ownership and operation (including leasing, provided the lease is not a triple-net lease) of real property qualifies as the active conduct of a trade or business; and
 - set out three safe harbors and a facts and circumstances test for determining whether the 50% gross income test is satisfied.

(Prop. Treas. Reg. §§ 1.1400Z2(d)-2(d)(3)(ii)(B), (d)(5), 84 Fed. Reg. 18652 (May 1, 2019).)

- A substantial portion of its intangible property is used in the active conduct of a trade or business in the QOZ. The 2019 Regulations define "substantial portion" in this context as at least 40%. (Prop. Treas. Reg. § 1.1400Z2(d)-2(d)(3)(ii)(A), 84 Fed. Reg. 18652 (May 1, 2019).)
- In each taxable year, less than 5% of the average aggregate unadjusted bases of its property is attributable to nonqualified financial property, subject to a working capital safe harbor. Nonqualified financial property is defined as:
 - debt;
 - stock;
 - partnership interests;
 - options;

If the investment in the QOF is held for ten or more years, the investor may elect to increase its basis in the QOF investment to the fair market value of the interest on the date sold or exchanged. The investor is not taxed on any capital gains resulting from the appreciation of the investment in the QOF.



- futures contracts;
 - forward contracts;
 - warrants;
 - notional principal contracts;
 - annuities; and
 - other similar property.
- It is not a “sin business,” defined as a:
- private or commercial golf course;
 - country club;
 - massage parlor;
 - hot tub facility;
 - suntan facility;
 - racetrack or other facility used for gambling; or
 - store, the principal business of which is the sale of alcoholic beverages for consumption off premises.
- (I.R.C. § 1400Z-2(d)(3).)

The Proposed Regulations provide for a working capital safe harbor. This allows a QOZ Business to hold reasonable amounts of working capital in:

- Cash.
- Cash equivalents.
- Debt instruments with a term of 18 months or less.

The working capital may be held for a period of up to 31 months if:

- There is a written plan that designates these amounts for:
 - the acquisition, construction, or substantial improvement of tangible property in the QOZ; or
 - the development of a trade or business in the QOZ.
- There is a written schedule consistent with the ordinary start up of a trade or business requiring the working capital assets to be spent within 31 months, subject to delay for government action on an application that is completed within the 31-month period.
- The business substantially complies with the plan and schedule.

(Prop. Treas. Reg. § 1.1400Z2(d)-1(d)(5)(iii), (iv), 83 Fed. Reg. 54279 (Oct. 29, 2018).)

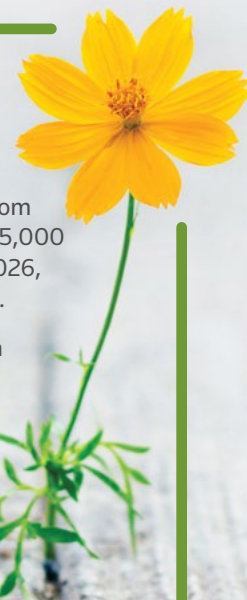
Any gross income earned from this working capital is counted toward the satisfaction of the 50% gross income test. The “use of intangible property” requirement for a QOZ Business is also treated as satisfied during any period in which the business is proceeding in a manner consistent with the plan and schedule described above.

QOZ PROGRAM TAX BENEFITS

There are three tax incentives to encourage investment in QOFs:

- **Temporary capital gains tax deferral.** An investor may defer income tax on gains from the sale or exchange of capital assets by reinvesting the amount of gain in a QOF within 180 days of the sale or exchange, with special rules for pass-through entities. Taxes are deferred until the earlier of:
 - the date the QOF investment is sold or exchanged (the 2019 Regulations provide guidance on identifying gain inclusion events (Prop. Treas. Reg. § 1.1400Z2(b)-1(c), 84 Fed. Reg. 18652 (May 1, 2019)); and
 - December 31, 2026.(I.R.C. § 1400Z-2(a), (b)(1).)
- **Step-up in basis and capital gains reduction.** If the investment in the QOF is held for five years, the investor receives an increase in basis equal to 10% of the deferred gain invested in the QOF. If the investment is held for another two years, up to December 31, 2026, the investor receives an additional increase in basis equal to 5% of the deferred gain invested in the QOF (for a total of 15%). (I.R.C. § 1400Z-2(b)(2).)
- **Tax exemption.** If the investment in the QOF is held for ten or more years, the investor may elect to increase its basis in the QOF investment to the fair market value of the interest on the date sold or exchanged. The investor is not taxed on any capital gains resulting from the appreciation of the investment in the QOF. This option is available until December 31, 2047. (I.R.C. § 1400Z-2(c); Prop. Treas. Reg. § 1.1400Z2(c)-1(b), 83 Fed. Reg. 54279 (Oct. 29, 2018).) In addition, the 2019 Regulations provide that if a QOF partnership or S-corporation sells directly owned QOZ Property after the ten-year holding period, an investor in the QOF may elect to exclude some or all of its allocated capital gain from gross income and receive the benefit of the fair market value basis increase. (Prop. Treas. Reg. § 1.1400Z2(c)-1(b)(2)(ii)(A)(1), 84 Fed. Reg. 18652 (May 1, 2019).)

QOZ Program: Example of Potential Tax Benefits



To illustrate the potential tax benefits provided by the QOZ program, if an investor realizes a gain of \$100,000 from the sale or exchange of a capital asset and reinvests that money into a QOF within 180 days, the tax on that \$100,000 is deferred until the earlier of:

- December 31, 2026.
- The date the investor disposes of its interest.

The investor's initial basis in its QOF investment is zero.

If the investor holds the investment for five years, the investor receives a \$10,000 increase in basis, which is excluded from income tax when the investor recognizes the deferred gain.

If the investor holds the investment for two more years, the

investor receives an additional \$5,000 increase in basis, amounting to a total of \$15,000 excluded from income tax. The investor must pay taxes on the \$85,000 balance of the deferred gain as of December 31, 2026, and its basis is increased to \$100,000 at that time.

If the investor holds the investment for a minimum of ten years, the investor has the option to avoid capital gains tax on any appreciation in the \$100,000 QOF investment in addition to the \$15,000 increase in basis. Therefore, after ten years, the investor may only pay tax on \$85,000 of gain.

To take advantage of the tax benefits of the QOZ program, investors must understand:

- The taxpayers that are eligible for gain deferral.
- The type of gains that are eligible for deferral.
- The 180-day rule.
- The rules for QOF investment holding periods.
- Additional QOF investment rules and considerations.

TAXPAYERS ELIGIBLE FOR GAIN DEFERRAL

All taxpayers that recognize capital gains for federal income tax purposes are eligible to elect deferral, including:

- Individuals.
- C-corporations.
- Regulated investment companies (RICs).
- Real estate investment trusts (REITs).
- Partnerships.
- Other pass-through entities (including certain common trust funds, qualified settlement funds, and disputed ownership funds).

(Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(1), 83 Fed. Reg. 54279 (Oct. 29, 2018).)

Regarding partnerships, either a partnership or a partner may elect deferral of capital gains. If a partnership elects to defer all or part of a capital gain by making an investment in a QOF:

- It must notify all of its partners of the deferral election.
- No part of the deferred gain is included in the distributive share of the partners.
- The gain is not included in the partners' basis.

If the partnership does not elect to defer the gain:

- The gain is included in the partners' distributive shares and basis.

- Each individual partner may elect its own deferral regarding the gain and must notify the partnership of its deferral election.

(Prop. Treas. Reg. §§ 1.1400Z2(a)-1(c)(1), (c)(2), and 1.1400Z2(b)-1(h)(1); 83 Fed. Reg. 54279 (Oct. 29, 2018).)

GAIN ELIGIBLE FOR DEFERRAL

Although the statute refers to gains from the sale of property, the Proposed Regulations clarify that only capital gains are eligible for deferral (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(2)(i)(A), 83 Fed. Reg. 54279 (Oct. 29, 2018)). Any type of capital gains is eligible. The Proposed Regulations also address two additional requirements for the deferral of gain. The gain must:

- Be gain that would be recognized by no later than December 31, 2026, if the QOZ provisions did not apply to defer recognition of the gain deferral (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(2)(i)(B), 83 Fed. Reg. 54279 (Oct. 29, 2018)).
- Arise from a sale or exchange with an unrelated person (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(2)(i)(C), 83 Fed. Reg. 54279 (Oct. 29, 2018)). To be unrelated persons, the two parties generally must have no more than 20% common ownership.

An investor may invest more than the capital gain amount, but only the capital gain amount receives tax deferral. In this case, the QOF investment is treated as two separate interests (one that qualifies for tax benefits and one that does not).

An investor may also:

- Opt not to invest the entire capital gain amount. Any capital gain not reinvested is subject to payment of tax.
- Split its capital gains for investment in multiple QOFs.

The 2019 Regulations allow a taxpayer to make an investment in a QOF by transferring cash or other property to the QOF, whether or not the transferor would recognize gain or loss on the property transferred. (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(9)(i), 84 Fed. Reg. 18652 (May 1, 2019).) However, any property contributed

to the QOF may not qualify as QOZ business property, which requires that the property be acquired from an unrelated person and that the basis of the property not be determined by reference to the transferor's basis.

The 2019 Regulations also provide that a partnership interest in a QOF received in exchange for services (carried interest) is not eligible for the QOZ tax benefits. Services are not considered as making an investment for purposes of the QOZ program. If an investor in a QOF partnership also receives a carried interest, while the tax rules provide that a partner has a unitary basis and capital account in its partnership interest, for purposes of the QOZ program the partner will be treated as holding two separate interests in the QOF.



Search [Carried Interest](#) for information on carried interest in US private equity funds, including the taxation of carried interest.

180-DAY RULE

To be eligible for QOZ program tax benefits, the Proposed Regulations require an investor to invest its capital gains in a QOF within a 180-day period. The 180-day period generally begins on the day the gain would be recognized for federal income tax purposes if the taxpayer did not elect to defer recognition of the gain under Code Section 1400Z-2. (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(4)(i), 83 Fed. Reg. 54279 (Oct. 29, 2018).)

There is an exception regarding the start of the 180-day period for partners in a partnership or other pass-through entity. A partner's 180-day period generally begins on the last day of the partnership's taxable year, which is the day on which the partner would otherwise recognize the gain if the gain was not deferred. If a partner knows the date of the partnership gain and that the partnership is not electing to defer the gain, the partner may instead choose to start the 180-day period on the same date as the beginning of the partnership's 180-day period. (Prop. Treas. Reg. § 1.1400Z2(a)-1(c)(2)(iii), 83 Fed. Reg. 54279 (Oct. 29, 2018).)

The 2019 Regulations introduced another exception to the general 180-day rule for Section 1231 property (real property used in a trade or business and held for more than one year). The 180-day period to invest capital gain net income from Section 1231 property starts on the last day of the taxable year. (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(2)(iii), 84 Fed. Reg. 18652 (May 1, 2019).)

QOF INVESTMENT HOLDING PERIODS

The 2019 Regulations provide specific rules for determining an investor's holding period of a QOF investment. Most notably:

- The holding period for the QOF investment does not include the period the investor held property that was transferred to the QOF in exchange for the investment.
- If an investor disposes of its QOF interest and reinvests in another QOF, the investor's holding period for its investment in the second QOF begins on the date of its investment in the second QOF, not the first QOF.

There are exceptions for certain mergers and acquisitions of QOF investments that allow for the tacking of a holding period in the initial QOF investment. (Prop. Treas. Reg. § 1.1400Z2(b)-1(d), 84 Fed. Reg. 18652 (May 1, 2019).)

ADDITIONAL RULES AND CONSIDERATIONS

Multiple QOF Investments

The 2018 Regulations address the treatment of multiple investments in a QOF by a single investor as follows:

- **First-in, first-out (FIFO) method.** This method must be used to identify the interest that was sold if a taxpayer:
 - holds investments with identical rights in a QOF that were acquired on different days; and
 - on a single day, disposes of less than all its interest.
- **Pro-rata method.** If after the application of the FIFO method, a taxpayer is treated as having disposed of less than all the investments that the taxpayer acquired on one day, and if the interests acquired on that day have different tax attributes, then a pro-rata allocation must be made to determine which interests were disposed of.

(Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(6), (7), 83 Fed. Reg. 54279 (Oct. 29, 2018).)

Rollover of QOF Investment

An investor may elect to defer gain from the disposition of all its QOF interest by reinvesting the gain in another QOF within 180 days from the sale, provided the rollover investment is made before December 31, 2026 (Prop. Treas. Reg. § 1.1400Z2(a)-1(b)(4)(ii)(D), ex. 4, 83 Fed. Reg. 54279 (Oct. 29, 2018)). The holding period for the original QOF investment does not get added to the new QOF investment holding period for the purpose of calculating tax benefits.

If the new QOF investment is held for at least ten years and disposed of before 2048, any future appreciation should be eligible for tax exemption.

Direct Versus Indirect Investment

There are advantages and disadvantages of a QOF investing in a QOZ through a subsidiary (by acquiring QOZ stock or QOZ partnership interests in a QOZ Business), versus investing directly in QOZ business property.

For example, when investing in a QOZ Business, only 70% of the tangible assets must consist of QOZ business property. On the other hand, up to 90% may be required if investing directly in QOZ business property. An investment in a QOZ Business can also take advantage of the working capital safe harbor and thus hold more working capital assets.

However, a QOZ Business is subject to additional restrictions, including the 50% active gross income test, restrictions on conducting sin businesses, and limits on holding nonqualified financial assets. Investors and sponsors should carefully consider these factors and their business needs when structuring their investment.

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