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US Treasury Issues Opportunity Zones Guidance

By Madison Lisotto Whalen

Qualified Opportunity Zones, created by the 2017 Tax Cuts and Jobs Act, were designed to spur investment in distressed communities throughout the country through tax benefits. Since 8,700 QOZs have been identified, this has become an important and ever-evolving topic related to business and tax law. Recently, the U.S. Department of the Treasury released additional opportunity zone guidance in IR-2019-75, April 17, 2019:

"The proposed regulations allow the deferral of all or part of a gain that is invested into a Qualified Opportunity Fund (QO Fund) that would otherwise be includible in income. The gain is deferred until the investment is sold or exchanged or December 31, 2026, whichever is earlier. If the investment is held for at least 10 years, investors may be able to permanently exclude gain from the sale or exchange of an investment in a QO Fund.

Qualified opportunity zone business property is tangible property used in a trade or business of the QO Fund if the property was purchased after December 31, 2017. The guidance permits tangible property acquired after December 31, 2017 under a market rate lease to qualify as "qualified opportunity zone business property" if, during substantially all of the holding period of the property, substantially all of the use of the property was in a qualified opportunity zone.

A key part of the newly released guidance clarifies the "substantially all" requirements for the holding period and use of the tangible business property:

- For use of the property, at least 70 percent of the property must be used in a qualified opportunity zone.
- For the holding period of the property, tangible property must be qualified opportunity zone business property for at least 90 percent of the QO Fund's or qualified opportunity zone business's holding period.
- The partnership or corporation must be a qualified opportunity zone business for at least 90 percent of the QO Fund's holding period.

The guidance notes that there are situations where deferred gains may become taxable if an investor transfers their interest in a QO Fund. For example, if the transfer is done by gift, the deferred gain may become taxable. However, inheritance by a surviving spouse is not a taxable transfer, nor is a transfer, upon death, of an ownership interest in a QO Fund to an estate or a revocable trust that becomes irrevocable upon death."

Please contact any of the listed Roetzel attorneys for more information on Qualified Opportunity Zones.

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