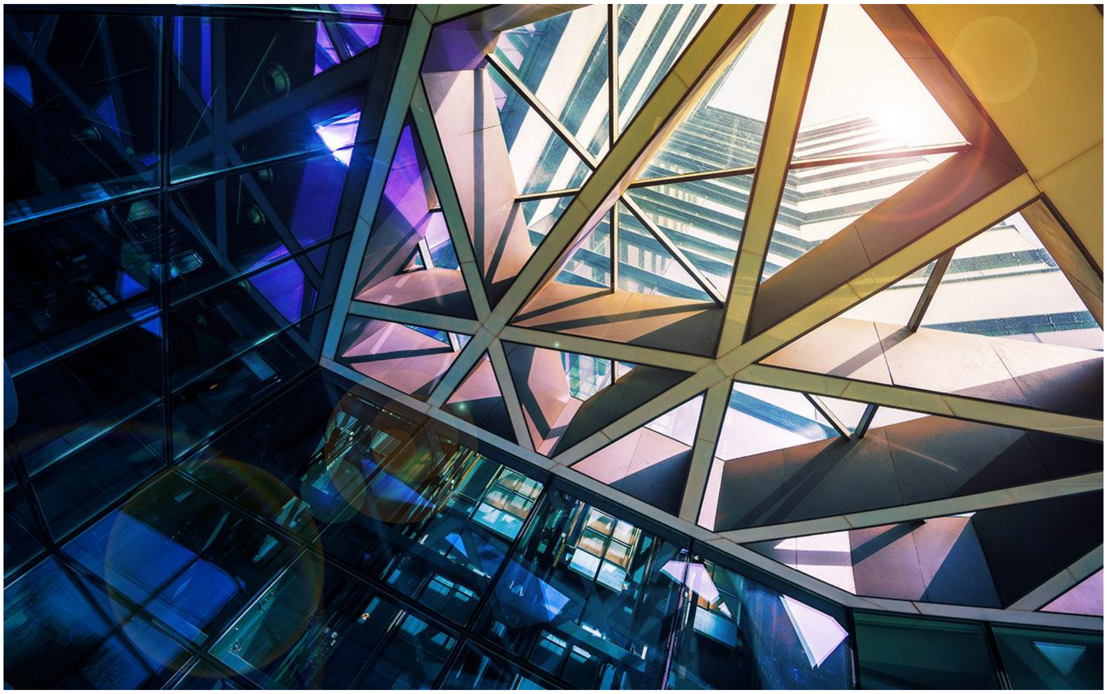
Additional Nelson Mullins Alerts



October 26, 2018

Treasury Releases Initial Guidance Regarding Opportunity Zone Investments

The IRS and Treasury Department released their first set of proposed regulations on October 19, 2018, to clarify and provide guidance regarding the implementation of the Qualified Opportunity Zone program contained in the Tax Cuts and Jobs Act.

The Qualified Opportunity Zone program is intended to spur investment in certain economically-distressed communities that have been designated as "Opportunity Zones." Investments made in accordance with the Qualified Opportunity Zone program are eligible for preferential tax treatment, including a deferral of tax on capital gains invested, a potential step-up in basis for the capital gains invested and a potential permanent exclusion from taxable income of capital gains accrued following an appropriate investment in an opportunity fund.

The proposed regulations provided guidance and clarification regarding the following:

- Only gain treated as capital gain will be eligible for deferral via investment in a Qualified Opportunity Fund ("**QOF**"). This includes gain from events or circumstances that have been "deemed" sales or exchanges by various other provisions of the tax code.

- Partnerships are eligible to made a gain deferral election. In the event that a partnership does not make an election, the partners in such partnership may make a gain deferral election on an individual basis.

- The 180 day clock for investing eligible gains with respect to a partner in a partnership commences on the last day of the partnership's taxable year unless the partner makes an election to start the 180 day clock on the day the partnership realized such gain (i.e. the date of the sale or exchange giving rise to the gain).

- Debt instruments are not an eligible interest in a QOF.

- The tax attributes of a deferred gain are preserved through the deferral period and are taken into account by the taxpayer when the gain is recognized (either in 2027 or on the date the taxpayer sells their interest in the QOZ, if earlier than December 31, 2026).

- Taxpayers who hold their interest in a QOF for more than 10 years have until December 31, 2047 to make an election to get a full basis step-up for such interest (and avoid tax on the appreciation of such interest).

- Investment vehicles will need to self-certify their status as a QOF and designate when their status as a QOF began.

- Pre-existing entities are eligible to be QOFs or qualified opportunity zone businesses (provided that they comply with the applicable rules for treatment as a QOF or qualified opportunity zone business).

- Under a new safe harbor, qualified opportunity zone businesses may hold cash for up to 31 months without jeopardizing their status as a qualified opportunity zone business.

- Qualified opportunity zone businesses may hold up to 30 percent of their tangible property in locations outside of qualified opportunity zones.

- A QOF that purchases land with an existing building on it located in a qualified opportunity zone will only need to invest an amount that exceeds the purchase price allocable to the building (and not the land) to have "substantially improved" their investment.

The IRS and Treasury Department continue to work on additional regulations, which are anticipated prior to the end of the year. Nelson Mullins is further analyzing and monitoring this rapidly-evolving area of law and will provide more detailed analysis shortly, along with additional updates as they develop.

Nelson Mullins' multi-disciplinary team is well positioned to guide investors, developers and fund managers through the complexities of this significant opportunity. To learn more about the Qualified Opportunity Zone program, please contact any of the attorneys listed below or your regular Nelson Mullins contact:

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