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Window of Opportunity: The IRS Issues Initial Guidance on Qualified Opportunity Zone Rules

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It is extremely rare that a section of the US Internal Revenue Code of 1986, as amended (the "Code"), achieves rock star status. It's fair to say that the Code equivalent of the Beatles is Section 401(k), the section providing rules for retirement savings. This Code section is known to virtually all Americans. Recently enacted Code § 1400Z-2 clearly has a shot at equivalent fame. This Code section provides taxpayers through 2026 with a 180-day window from the date of the recognition of certain capital gains to invest in a Qualified Opportunity Zone Fund (sometimes a "QOF") and defer the tax on the lesser of the amount invested and the gains. The Treasury estimates that over $100 billion will be invested through these structures.[2] If the investment is held long enough, a portion of those gains can escape tax altogether. If this Code section had been around when George Harrison penned *Taxman*, maybe the song wouldn't have been so negative about taxes. This Legal Update provides an overview of the initial collection of guidance, including 74 pages of proposed regulations, a revenue ruling and forms.

Overview

Broadly speaking, the QOF rules operate as follows. An eligible taxpayer invests an amount equal to the gain that the taxpayer desires to defer in a QOF. The QOF may be a partnership or corporation. This rule prevents the taxpayers who recognized the gains to be deferred from making qualified opportunity zone investments directly. The QOF then must make an investment in qualified opportunity zone property. Qualified opportunity zone property may be qualified opportunity zone stock, qualified opportunity zone partnership interests or qualified opportunity business property. We provided an overview of the statutory scheme in our prior Legal Update, *Gain Deferral Using Qualified Opportunity Zone Investment Strategies*.[3]

Mechanically, the statute operates as follows. The taxpayer is initially deemed to have a zero tax basis in the QOF, despite having invested cash.[4] If they hold the investment for at least five years, they increase their basis in the QOF by 10 percent of the amount of the originally deferred gain (and the tax on 10 percent of the deferred gain is essentially forgiven).[5] After they have held the property for at least seven years, they increase their basis in the QOF by another 5 percent of the originally deferred gain (and the tax on 5 percent of the deferred gain is essentially forgiven).[6] If they hold their QOF investment for at least 10 years, they may elect, on the date of disposition, to increase their basis to the fair market value of the investment, thus providing a tax-free return on the QOF investment.[7] The investor must pay tax on the excess of the originally deferred gain over its basis in the QOF investment, on December 31, 2026 (which by 2026 coul be incresed to 15 percent of the original deferred gain), or earlier if they dispose of their QOF investment.[8]

Gains Eligible for Deferral

Eligible taxpayers (discussed below) are able to defer the tax only on capital gains through QOF investments. The preamble to the proposed regulations states that the Internal Revenue Service (IRS) considered, but rejected, allowing deferral of ordinary gains as inconsistent with Congress's intent. The capital gains eligible for deferral include gains from both actual and deemed sales or exchanges (the latter of which might include, for example, disguised sales of property between partnerships and partners).[9]

Taxpayers Eligible to Defer Gain

The proposed regulations take an expansive view on taxpayers who are eligible to defer gain. The list of taxpayers eligible to defer gain under the qualified opportunity zone rules include individuals, C corporations (including regulated investment companies (RICs) and real estate investment trusts (REITs)), partnerships and other pass-through entities.[10]

Partnerships and other pass-through entities pose special issues and the proposed regulations provide initial guidance for these situations. Specifically, a partnership may elect to defer gain.[11] The partners are required to include the gain in income at the end of the deferral period, that is, when recognized by the partnership.[12] There is no indication that the gain is personal to a partner or that it is triggered on the sale of a partnership interest. Accordingly, a partner who acquires the interest of a person who was a partner at the time of the deferral election should be allocated the gain when it is recognized. To the extent that a partnership does not elect to defer gain eligible for investment pursuant to the Qualified Opportunity Zone rules, the gain is attributed to the individual partners, and the partners may elect to defer their allocable share of the gain under the qualified opportunity zone rules.[13]

Qualified Opportunity Funds and Eligible Investments

A QOF must be a partnership or corporation formed under US law (a "Fund") that makes an election to be treated as a QOF as of a specified month in 2018 or later and that holds at least 90 percent of its assets in eligible property or eligible partnership interests or stock.[14] The eligible taxpayer deferring capital must invest in "equity" for income tax purposes. However, if the QOF is a corporation, the investment can be preferred equity, and if the QOF is a partnership, the investment can benefit from "special allocations;" such a special allocation can effectively result in a preference for the taxpayer with respect to cash flow from operations or in a liquidation.[15]

CHOICE OF ENTITY

A QOF must be an entity classified as a partnership or corporation for federal income tax purposes and be organized under the law of one of the 50 states, District of Columbia or a US possession. It can be a limited liability company that (i) elects to be taxed as a corporation or (ii) has two or members (each of which are recognized as separate "taxpayers" for federal income tax purposes) and that is characterized as a partnership for federal income tax purposes. (A limited liability company with a single member that does not make a corporate election is not eligible to be a QOF as it would be characterized as a "disregarded" entity for federal income purposes.)

If a QOF is organized under the law of a US possession, it must be organized for the purpose of investing in a business operated in that possession. For instance, a QOF formed under the law of Puerto Rico must have the purpose of investing in Puerto Rico (and not, for example, New York or the US Virgin Islands). For this purpose, a US possession is defined as American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico and the US Virgin Islands.

Presumably, a QOF can be either a C corporation or an S corporation, as both are "corporations" for purposes of federal tax law. Oddly, the proposed regulations expressly provide that an S corporation can be an investor in a QOF but are silent on whether a QOF can be an S corporation, but the general of definition of "corporation" in the Code suggests that an S corporation does qualify.

PRE-EXISTING ENTITIES

A pre-existing entity can elect to be a QOF. However, only assets acquired by a pre-existing entity after 2017 count towards the requirement that 90 percent of a QOF's assets constitute eligible property or investments.[16] Although the proposed regulations allow a QOF to both identify the taxable year in which the entity becomes a QOF and (as noted above) to choose the first month within that year to be treated as a QOF, a pre-existing entity with material pre-2018 assets electing to be a QOF would be at a disadvantage in meeting the requirement that 90 percent of the assets be eligible property or investments. Thus, the owners of such existing entities with material pre-2018 assets would be better served to a form a new entity to be their QOF.

THE 90 PERCENT QUALIFYING ASSETS TEST

A QOF must hold 90 percent of its assets in "qualified opportunity zone property," which can be one of three items: (1) newly issued stock of a corporation, (2) newly issued partnership interests and (3) tangible business property in a qualified opportunity zone. For stock or a partnership interest to constitute qualified opportunity zone business property for purposes of the 90 percent test, the corporation or partnership must conduct a "qualified opportunity business."

The proposed regulations, in something of a gift, require that if the QOF invests in a partnership or corporation to meet the qualified opportunity business requirement, only 70 percent of the tangible property of the subsidiary corporation or partnership be held for use in qualified opportunity zone business property.[17] For instance, if a QOF has $10 million in assets and wants to hold only $6.3 million in qualified opportunity zone business property, it can do so by investing $9 million in a partnership and having the partnership invest $6.3 million (i.e., 70 percent of its assets) in qualified opportunity zone business property. For instance, the operating partnership could hold the remaining $2.7 million in the form of $450,000 (i.e., 5 percent of its assets) in cash or other financial instruments and $2.25 million in non-qualifying tangible assets, such as real estate in the Hamptons. The QOF could hold its remaining $1 million (i.e., $10 million less the $9 million invested in the partnership subsidiary) in cash, bonds, the S&P 500, etc.

In contrast, if the QOF opted to purchase the qualified opportunity zone business property itself, it would have to buy $9 million of qualified opportunity zone business property, all of which would have to constitute tangible assets, and could then hold the remaining $1 million in cash, stocks, the S&P 500, Hamptons real estate, etc. (but without the 5 percent limit on financial assets).

The rationale the IRS gave for this leniency is that this "clarity [i.e., the 70 percent standard] provides taxpayers greater certainty when evaluating potential investment opportunities as to whether the potential investment would satisfy the statutory requirements." This seems to be saying that QOFs will have greater comfort investing in lower-tier entities if the trigger for losing their QOF status is the subsidiary entity having 30 percent ineligible assets rather than the much smaller 10 percent threshold.

The preamble to the proposed regulations also note that if a QOF sells qualified opportunity zone property shortly before a testing date in a manner that may jeopardize the QOF's satisfaction of the 90 percent test, the QOF should be permitted to bring itself into compliance within "a reasonable amount of time." Soon-to-be proposed additional regulations are expected to provide guidance on such reinvestment activity by QOFs, mainly on (i) what constitutes "a reasonable amount of time" and (ii) the income tax treatment of any gains that the QOF reinvests during that period.

Qualified Opportunity Zone Business Requirements

If the QOF opts for the qualified opportunity zone business route, rather than directly investing in qualified opportunity zone property, that business is subject to four requirements that would otherwise be avoided if the QOF owned the qualified opportunity zone business property directly.

Fifty Percent "Active" Gross Income

First, 50 percent of the Qualified Opportunity Zone Business's gross income must be from the "active conduct of" a business in a qualified opportunity zone.[18] The proposed regulations reserve on the definition of the "active conduct" of a business. [19] The Code has a variety of definitions of "active" in various contexts. One of the primary questions regarding of what "active" means is to what extent net leasing can qualify as active. Another question is to what extent an active business can be conducted by independent contractors rather than employees.

A Substantial Portion of the Intangible Assets Must Be Used in the "Active" Business

To the extent the qualified opportunity zone business owns intangible assets, a substantial portion of such assets must be used in the active business.[20] As noted above, the proposed regulations have not defined "active business." Also, it is not clear if "substantial" portion will mean 90 percent, 70 percent or some other percentage.

Five Percent Limit on Financial Assets

The business is treated as a qualified opportunity zone business only if it meets the requirements specified in Code § 1397C(b)(8).[21] This statute limits the amount of "nonqualified financial property" that can be held in the business to 5 percent of the average unadjusted bases of property held in such trade or business. Nonqualified financial property means debt, stock, partnership interests, options, futures, swaps and similar property.[22] Working capital held in cash (or cash equivalents) is not treated as nonqualified financial property.[23] Under the QOF statute, because the QOF is tested for compliance on its semi-annual and annual anniversaries, this rule could be read to provide only a maximum six-month period for cash to be invested in the qualified opportunity zone property.[24]

The proposed regulations provide certain QOFs relief from the requirement to quickly put cash to work in order to avoid disqualification. Specifically, if the QOF prepares a written plan to invest its cash in tangible property (real or personal) in the opportunity zone within 31 months, cash will not be treated as nonqualified financial property during that period.[25] The working capital must be expended in a manner that is substantially consistent with the plan.[26]

Furthermore, the investment earnings on the cash or cash equivalents satisfying the requirements outlined in the preceding paragraph do not count against the requirement that at least 50 percent of the qualified opportunity business's gross income be from an active business. Thus, depending on how long it takes a qualified opportunity business to invest cash in tangible property in a qualified opportunity zone, a qualified opportunity business could hold solely cash equivalents for almost 31 months.

No Sin Businesses

Finally, a qualified opportunity business may not operate so-called "sin businesses" that are statutorily enumerated: golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack, casino or sale of alcohol to be consumed away from the premises. There does not appear to be a prohibition on leasing real estate to such businesses so long as the qualified opportunity business is not operating the sin business itself.[27]

Qualified Opportunity Zone Business Property

Qualified opportunity zone business property is tangible property (e.g., equipment, real estate) used in business in a qualified opportunity zone that is either (i) land in a qualified opportunity zone, (ii) a building in a qualified opportunity zone that is first used by the QOF or the qualified opportunity business, (iii) a building in a qualified opportunity zone that was previously used but is "substantially improved" (as discussed below) by the QOF or the qualified opportunity business, (iv) equipment that was never previously used in a qualified opportunity zone or (v) equipment that was previously used in a qualified opportunity zone but is "substantially improved" by the QOF or the qualified opportunity business.[28]

The "Substantial Improvement" Requirement

The "substantial improvement" requirement applies to tangible property, other than land, that was used in a qualified opportunity zone prior to its acquisition by the QOF (or the qualified opportunity business). To constitute a substantial improvement, the QOF (or qualified opportunity business) must invest more in the tangible property during any 30-month period than the adjusted basis in the property at the beginning of such period.[29] The proposed regulations and Revenue Ruling 2018-29 both make clear that basis attributable to land is excluded from this calculation.[30]

For instance, a QOF buys an existing commercial building for $10 million on March 1, 2019. Assume that $2 million is attributable to the land and $8 million is attributable to the structure. Both the statute and the proposed regulations support the conclusion that the building will be treated as satisfying the original use requirement if, at any time during the holding period of the building, the amount invested in rehabilitating the building over a 30-month period exceeds the adjusted basis of the building at the beginning of that 30-month period. In other words, the substantial improvement test appears to be a rolling, but non-recurring, test. There is no indication how this rule interacts with the bonus depreciation rules enacted as part of the Tax Cuts and Jobs Act. The bonus depreciation rules allow a taxpayer to fully expense certain assets (but not real estate) upon acquisition, resulting in a zero basis in those assets. A literal application of the QOF rules to those assets would mean that one cent of capital improvements resulted a substantial improvement to the assets.

Although the substantial improvement may be applied over "any" 30-month period, neither the proposed regulations nor Revenue Ruling 2018-29 clarify how long the QOF can wait to apply the substantial improvement requirement. The example in the revenue ruling meets the requirement in the first 30-month period but is silent as to how long that could have been deferred. The example in the revenue ruling uses a capital expenditure of 25 percent more than the acquisition cost of the existing asset. However, that is clearly just an example and not a rule.

The IRS is still considering how to determine whether equipment was previously used in a qualified opportunity zone and how to determine whether equipment owned by QOF is used in a qualified opportunity zone. This is a particularly challenging question for equipment that can be moved as there are multiple indicia of location, such as what the address is on the equipment's title (which could be a leasing company's address for leased equipment), where the equipment is stored or garaged and where the equipment is actually used (which may cover many geographic areas).

Although the statute does not expressly address the application of the substantial improvement requirement to land, the proposed regulations, as elaborated on in Revenue Ruling 2018-29 (discussed below), provide that the substantial improvement requirement does not apply to land.

The 180-Day Rule for Deferring Gain by Investing in a QOF

As noted above, taxpayers must invest an amount equal to the gain to be deferred in a QOF within 180 days of the sale of the property.[31] The proposed regulations provide that the 180-day period begins on the day on which the gain would be recognized if the taxpayer did not elect to defer recognition of that gain. In order to illustrate the rule, the proposed regulations list the following examples: (i) in regular-way trades of stock, the 180-day period begins on the trade date; (ii) for capital gain dividends received by RIC and REIT shareholders, the 180-day period begins on the day on which the dividend is paid; and (iii) the 180-day period for undistributed capital gains allocated to shareholders by RICs and REITs shareholders begins on the last day of the RIC's or REIT's taxable year.[32]

Special rules are provided for partnerships. Importantly, the 180-day clock does not begin with respect to gains allocated to partners until the last day of the taxable year of the partner that includes the year in which it was allocated the gain.[33] Similarly, the 180-day period with respect to Section 1256 net income begins on the last day of the taxpayer's taxable year (even if one or more Section 1256 contracts have been disposed of during the year).[34] Partners may elect, however, to have the 180-day period correspond to the partnership's 180-day period.[35] Analogous rules apply to other pass-through entities.[36]

The 10-Year Rule

A taxpayer is entitled to step up its basis in its investment in a QOF to fair market value if it has held that investment for at least 10 years.[37] This basis step-up after 10 years allows taxpayers who have held the QOF investment for the requisite holding period to avoid any tax on the disposition of the QOF investment. However, the statute provides that all QOFs in existence on December 31, 2026, will cease to be QOFs. This leads to the question as to what happens to taxpayers that invest in a QOF after December 31, 2018, as they will not meet the 10-year holding period before the QOF ceases to be deemed a QOF. The proposed regulations take a lenient approach and provide that taxpayers who have not met the 10-year holding period by December 31, 2026, can merely continue to hold their investment until the 10-year holding period is achieved, despite their QOF technically ceasing to be one.[38]

Furthermore, the IRS was concerned that "disposal after the ten-year holding period would diverge from otherwise desirable business conduct, and, absent the additional time some taxpayer may lose the [basis step up] benefit." Therefore, it allows the step-up to fair market value for any sale of an interest in a QOF until December 31, 2047.[39]

The proposed regulations are silent as to what requirements or filings the QOF must make after December 31, 2026, until the last interest in the former QOF is sold, which could be as late as December 31, 2047.[40] This presents an interesting policy decision for the IRS to address in subsequent proposed regulations as it is somewhat onerous to require QOFs to have to meet all of the requirements and make filings for an additional 19 years. However, if the investors are able to capture the step-up anytime during that 19 years, the IRS may not deem it appropriate for QOFs to sell all of their assets in opportunity zones after 2028 and become hedge funds.

Attributes of Included Income When Gain Deferral Ends

At the end of the deferral period (i.e., the earlier of the sale of the taxpayer's investment in the QOF and December 31, 2026), a taxpayer must include in income the excess of (i) the lesser of (A) the eligible gain that the taxpayer rolled-over or (B) the fair market value of the taxpayer's QOF's investment as of the end of the deferral period over (ii) the taxpayer's basis for the QOF investment.[41] The proposed regulations clarified that the gain to be included has the same attributes in the taxable year of inclusion that it would have had if tax on the gain had not been deferred. These attributes include those taken into account by Sections 1(h), 1222, 1256 and any other applicable provisions of the Code.

The proposed regulations address situations in which the taxpayer holds investment interests with identical rights (fungible interests) in a QOF that were acquired on different days. If, on a single day, the taxpayer disposes of less than all of these interests, then the first-in-first-out (FIFO) method must be used to identify which interests were disposed of. The FIFO method determines (i) whether the gain deferral election under Section 1400Z-2(a) is applicable to an investment or not; (ii) in case of a gain subject to a deferral election under Section 1400Z-2(a), the attributes of this gain at the time it is included in income; and (iii) the extent of an increase, if any, under Section 1400Z-2(b)(2)(B) in the basis of an investment interest that is disposed of.

If the FIFO method does not provide a complete answer, such as where gains with different attributes are invested in identical interests at the same time, the proposed regulations provide that a pro-rata method must be used to determine the character, and any other attributes, of the gain recognized. Examples in the proposed regulations illustrate the aforementioned rules.

Special Rules for Section 1256 Contracts and Straddles

Gain and loss from regulated futures contracts and other "Section 1256 contracts" is recognized on the mark-to-market method of accounting and is statutorily mandated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss.[42] The proposed regulations require holders of Section 1256 contracts to net gains and losses and only treat the amount of any net gain as eligible for an investment in a QOF.[43] If a Section 1256 contract is held as part of a straddle transaction, broadly defined, any gain from the Section 1256 contract is not eligible gain that can be deferred through an investment in a QOF.[44] The proposed regulations treat a transaction as a straddle for this purpose even if the offsetting position is not a position with respect to publicly traded property. Furthermore, if any Section 1256 contract is part of an offsetting positions transaction with a position that is not a Section 1256 contract, no Section 1256 net income may be deferred through an investment in a QOF.[45]

Section 1400Z-2(e) Investments from Mixed Funds

A taxpayer is not limited in their investment in a QOF solely to the amount of capital gain that the taxpayer desires to defer. The Code itself provides that in a case in which only a portion of the investment consists of gain to which an election under Code § 1400Z-2 (a) is in effect, the investment will be treated as two separate investments: (i) one investment will include only the amounts to which a deferral election under subsection (a) applies and (ii) any amounts to which an election does not apply will be treated as a separate investment not entitled to the benefits of the QOF rules.[46] The proposed regulations provide that if a taxpayer invests money in a QOF and does not make an election under Code § 1400Z-2(a) with respect to that investment, the investment will be treated as a separate investment to which the aforementioned provisions of Code § 1400Z-2(a), (b) and (c) do not apply.

In the case of a QOF classified as a partnership, the deemed contribution of money described in Code § 752(a) from an increase in a partner's share of liabilities does not create or increase an investment in the fund that makes realized capital gains eligible for deferral. Thus, any basis increase resulting from a deemed Code § 752(a) contribution is not taken into account in determining the partner's investment subject to the deferral election under Code § 1400Z-2(a) or what portion is not subject to the deferral election under Code § 1400Z-2(a).

Disposition of the Investment

As a general rule, the original deferred gain from the sale of the capital asset must be recognized by the taxpayer when the taxpayer sells its interest in the QOF. The proposed regulations provide that a taxpayer may use its QOF's interest as collateral for a loan, however, whether as part of a purchase-money borrowing or otherwise, without triggering the deferred gain.[47]

The proposed regulations contain generous provisions for roll-overs. If a taxpayer disposes of all (but not less than all) of an investment in a QOF, triggering recognition on both of the deferred gain and the qualified opportunity zone property, the taxpayer may make a qualifying investment in a new QOF and roll-over the deferred gain.[48] The roll-over investment must be made prior to December 31, 2026, the date at which all deferred gains must be recognized.

Self-Certifications for QOFs

The proposed regulations permit corporations and partnerships (referred to as "eligible entities") to self-certify that they meet the requirements to be treated as QOFs.[49] The IRS released draft Form 8996 concomitantly with the proposed regulations. Entities that desire to be treated as QOFs must include this form with their regular tax returns.[50]

Revenue Ruling 2018-29

Contemporaneous with the release of the proposed regulations, the IRS issued a revenue ruling of particular interest to the real estate industry. The revenue ruling addresses the application of the "original use" requirement and the "substantial improvement" requirement in the real estate development context. Under the facts of the ruling, a taxpayer purchased a factory and the land on which it was situated (both wholly within a qualified opportunity zone) with the intent to convert the building into residential real property. After noting that the original use of land can never be considered to have commenced with a QOF, the IRS concluded that (1) the requirement that the original use of property commence with a QOF is not applicable to the land on which the building was situated, (2) the QOF's satisfaction of the "substantial improvement" requirement is measured by the QOF's additions to the adjusted basis of the building and (3) the QOF is not required to separately improve the land. This revenue ruling should provide considerable comfort to real estate investors seeking to develop or redevelop buildings situated on land located within qualified opportunity zones.

State Income Tax Effects

Most state income tax laws are structured so that deferral under Code § 1400Z-2(a) will apply for state income tax purposes as well. States generally conform to the current Code, which means that the starting point for state income tax calculations is, depending on the state scheme, a taxpayer's federal taxable income, net taxable income, adjusted gross income or gross income—each of which would include the benefits of making a QOF investment because Code § 1400Z-2(a) operates as an exclusion from gross income for gains that a taxpayer chooses to defer.

States often apply modifications to the federal calculation, but so far no state has specifically decoupled from Code § 1400Z-2. Accordingly, in each state that conforms to the current Code, all of the provisions of Code § 1400Z-2 would apply, together with the regulatory framework, unless and until the state specifically decouples from the Code section. Corporations, partnerships, REITs, RICs, individuals and other business entities that take advantage of deferral would therefore automatically exclude their applicable gains from state taxable income and eventually include future gains under the terms of Code § 1400Z-2(b). Because the gains are excluded from gross income, they should be excluded from state business income apportionment formulas as well.

The state benefits can be meaningful, often because states apply the same tax rate to capital gains and ordinary income. In New York, for example, a corporation that does business in New York City would be able to defer gain for purposes of the 6.5 percent New York State corporate tax and the 8.85 percent New York City corporate tax, and a partnership that does business in the City would be able to defer gain for purposes of the 4 percent New York City unincorporated business tax, and the New York State and City taxes applicable to its partners.

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Endnotes

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2 US Department of the Treasury Office of Public Affairs, *Treasury Releases Proposed Regulations on Opportunity Zones Designed to Incentivize Investments in American Communities* (October 19, 2018).

3 Please find our prior Legal Update at https://www.mayerbrown.com/en-US/Gain-Deferral-Using-Qualified-Opportunity-Zone-Investment-Strategies-08-02-2018/.

4 Code § 1400Z-2(b)(2)(b)(i).

5 Code § 1400Z-2(b)(2)(B)(iii).

6 Code § 1400Z-2(b)(2)(B)(iv).

7 Code § 1400Z-2(c).

8 Code § 1400Z-2(b).

9 Prop. Treas. Reg. § 1.1400Z-2(b)(2).

10 Prop. Treas. Reg. § 1.1400Z-2(b)(1).

11 Prop. Treas. Reg. § 1.1400Z-2(c)(i).

12 Prop. Treas. Reg. § 1.1400Z-2(c)(ii).

13 Prop. Treas. Reg. § 1.1400Z-2(c)(2).

14 Code § 1400Z-2(d)(1).

15 Prop. Treas. Reg. 1.1400Z-2(b)(3).

16 Prop. Treas. Reg. § 1.1400Z-1(a)(3).

17 Prop. Treas. Reg. 1.1400Z-2(d)(3)(i).

18 Code § 1397C(b)(2) and Prop. Treas. Reg. § 1.1400Z-1(d)(5)(i).

[19] Code § 1397C(b)(2) and Prop. Treas. Reg. § 1.1400Z-1(d)(5)(ii)(B).

[20] Prop. Treas. Reg. § 1.1400Z-1(d)(5)(ii).

[21] Code § 1400Z-2(d)(3)(A)(ii).

[22] Code § 1397C(e).

[23] Code § 1397C(e)(1).

[24] *See* Code § 1400Z-2(d)(1).

[25] Prop. Treas. Reg. § 1.1400Z-2(d)(5)(iv).

[26] Prop. Treas. Reg. § 1.1400Z-2(d)(5)(iv)(C).

[27] Code § 144(c)(6)(B) and Prop. Treas. Reg. § 1.1400Z-1(d)(6).

[28] Code § 1400Z-2(d)(2)(D)(i).

[29] Prop. Treas. Reg. § 1.1400Z-2(d)(4)(i).

[30] Prop. Treas. Reg. § 1.1400Z-2(d)(4)(ii).

[31] Code § 1400Z-2(a)(1)(A).

[32] Prop. Treas. Reg. § 1.1400Z-2(b)(4)(Examples).

[33] Prop. Treas. Reg. § 1.1400Z-2(c)(2)(iii)(A).

[34] Prop. Treas. Reg. § 1.1400Z-2(b)(2)(iii).

[35] Prop. Treas. Reg. § 1.1400Z-2(c)(2)(iii)(B)

[36] Prop. Treas. Reg. § 1.1400Z-2(c)(3).

[37] Code § 1400Z-2(c).

[38] Prop. Treas. Reg. § 1.1400Z-2(c)(1)(b).

[39] Prop. Treas. Reg. § 1.1400Z-2(c)(1)(b).

[40] According to information provided by the Treasury during an October 19 press briefing, the next round of regulations will address the treatment of assets sold by a QOF, among other operational issues.

[41] Code § 1400Z-2(a)(1)(B) and (b).

[42] Code § 1256(a).

[43] Prop. Treas. Reg. § 1.1400Z-2(b)(2)(iii).

[44] Prop. Treas. Reg. § 1.1400Z-2(b)(2)(iv).

[45] Prop. Treas. Reg. § 1.1400Z-2(b)(2)(iii)(B).

[46] Code § 1400Z-2(e)(1).

[47] Prop. Treas. Reg. § 1.1400Z-2(b)(3)(ii).

[48] Prop. Treas. Reg. § 1.1400Z-2(b)(4)(Ex. 4).

[49] Prop. Treas. Reg. § 1.1400Z-2(d)(1).

[50] *See* Instructions for Form 8996 (Rev. December 2018).