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Proposed regulations: Opportunity zones, deferral of gains (text of regulations)

The U.S. Treasury Department and IRS today released proposed regulations (REG-115420-18) along with a revenue ruling as guidance under section 1400Z-2 as added to the Code by the new U.S. tax law.

Read text of the [proposed regulations](#) [PDF 239 KB] (74 pages)

Section 1400Z-2 relates to gains that may be deferred as a result of a taxpayer's investment in a qualified opportunity fund (QOF), and was added to the Code by the new tax law (Pub. L. No. 115-97 enacted December 22, 2017).

As noted in a related IRS release ([IR-2018-206](#)), opportunity zones are designed to provide tax benefits that encourage investment in distressed communities. Under a nomination process completed earlier this year, 8,761 communities in all 50 states, the District of Columbia, and five U.S. territories were designated as qualified opportunity zones. Opportunity zones retain their designation for 10 years. Investors may defer tax on almost any capital gain up to December 31, 2026, by (1) making an appropriate investment in a zone, (2) making an election after December 21, 2017, and (3) satisfying other requirements.

According to the IRS release, "almost all capital gains qualify for deferral" and concerning capital gain of a partnership, the rules allow either a partnership or its partners to elect deferral. Similar rules apply to other pass-through entities, such as S corporations and their shareholders, and estates and trusts and their beneficiaries.

According to the preamble, the proposed regulations address:

- The type of gains that may be deferred by investors
- The time by which corresponding amounts must be invested in QOFs
- The manner in which investors may elect to defer specified gains

The proposed regulations also include guidance for QOFs, including rules for self-certification, valuation of QOF assets, and guidance on qualified opportunity zone businesses.

[Rev. Rul. 2018-29](#) [PDF 41 KB] provides guidance for taxpayers on the “original use” requirement for land purchased after 2017 in qualified opportunity zones. Form 8996 (not yet released) is to be used by investment vehicles to self-certify as QOFs.

The purpose of this report is to provide text of the regulations and revenue ruling. Initial impressions on these regulations and IRS guidance will be provided in a future edition of *TaxNewsFlash*.

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