



Delivering a fresh perspective

The 21st Century New Deal – Version 4.0

An analysis of the Qualified Opportunity Zones (“QOZs”)
Final Regulations and Corrective Amendments

December 31, 2022

Notice

The information contained herein is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. The information is not designed to reach a conclusion regarding the U.S. federal income tax consequences of any particular transaction. No decision to act, or not to act, should be made based on the content of this presentation. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Furthermore, the information discussed herein is based on final regulations, as published in the Federal Register on January 13, 2020 and effective for taxable years beginning after March 13, 2020, inclusive of corrective amendments released on April 1, 2020 and August 5, 2021 (together, the Regulations).*

*Taxpayers may no longer rely on the proposed regulations for tax years beginning on or after March 13, 2020. Additional proposed regulations were issued on April 14, 2021 relating to foreign qualified opportunity fund investors and the ability to amend working capital plans following a federally declared disaster. Taxpayers may rely on the portion of these proposed regulations addressing amended working capital plans for tax years beginning after December 31, 2019.

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Introduction: QOZs and Federal Tax Benefits

Qualified Opportunity Zones

QOZs- Generally



Qualified Opportunity Zone (“QOZ”) rules allow the deferral and partial exclusion of certain gains from the sale or exchange of an asset if those gains are reinvested in a Qualified Opportunity Fund (“QOF”) or in various Qualified Opportunity Funds (“QOFs”). Additionally, the appreciation of the assets within a QOF may be excluded from tax if the QOF interest has been held for at least 10 years.



8,764 low-income census tracts were designated as QOZs in 2018 under Internal Revenue Service (“IRS”) Notice 2018-48 and in 2019 under IRS Notice 2019-42.



Final regulations were published on January 13, 2020 and are effective for taxable years beginning after March 13, 2020. Corrective amendments were published on April 1, 2020 and August 5, 2021.

QOZs – Impact Investing

- 12% of US census tracts are designated as QOZs. These tracts have lower incomes, higher poverty rates, and higher unemployment rates than eligible non-designated tracts. Nearly all of these census tracts were chosen for their need for capital as underserved and under capitalized communities.
- Investments in QOZs that are also designated low-moderate income (“LMI”) neighborhoods under the Community Reinvestment Act (“CRA”) may qualify for CRA credits under proposals to modernize the CRA Program. As financial institutions are evaluated for their CRA activities, investing in QOZs may improve their CRA scores.
- QOZs naturally fit within the Environmental, Social, and Governance mandates that investors are increasingly pushing for and many businesses may have already implemented.
- Job creation in QOZs can help meet Diversity, Equity, and Inclusion goals.

Program Overview



A taxpayer must sell property to an unrelated person and realize a capital gain on the sale.



The taxpayer's capital gain is deferred to the extent the taxpayer within 180 days of the sale (subject to elective time periods) invests an amount up to the capital gain in the QOF and the taxpayer makes the section 1400Z-2 deferral election on its tax return.



Eligible gains that a taxpayer reinvests into a QOF are deferred until the earlier of the date the QOF interest is sold or exchanged or December 31, 2026. Certain gains may be partially excluded from recognition.



The amount of gain included in income as of December 31, 2026 is the lesser of:

- The deferred gain (except to the extent excluded), or
- The fair market value of the QOF investment over the taxpayer's basis in the QOF investment.



Gain on a sale of an investor's QOF interest or in certain situations the sale of investments by a QOF (including both depreciation and amortization recapture) may be permanently excluded, if the investor has held the QOF interest for at least 10 years.

QOZ Benefits (D, R, E)

Deferral (D) (Benefit #1)	Gain deferral: Taxpayer defers capital gains tax on gains invested in the QOF (“Deferred Gains”). Taxpayer does not receive any initial basis for the deferred gains invested in the QOF.
	Estimated benefit: Capital gains deferred until December 31, 2026
	Benefit description: Time-value of money until December 31, 2026
Reduction (R) (Benefit #2)	Basis step-up: Taxpayer steps up its basis with respect to the deferred gains invested in the QOF.
	Estimated benefit: Basis with respect to Deferred Gains invested in the QOF stepped-up by 10% of the Deferred Gain after 5 years (investments made on or before December 31, 2021) and by an additional 5% after 7 years of QOF investment (investments made on or before December 31, 2019).
	Benefit description: Amount of Deferred Gains invested in the QOF that is ultimately recognized is reduced by 10-15%.* This benefit is only available for investments made in tax years prior to 2022.
Exclusion (E) (Benefit #3)	Appreciation exclusion: Taxpayer excludes appreciation gain (including depreciation/amortization recapture) through basis step-up upon disposition of QOF investment or in certain situations on the allocation of gains from the sale of assets of the QOF after Taxpayer has held its QOF interest for at least 10 years.
	Estimated benefit: 100% basis step-up or 100% exclusion of gains
	Benefit description: Elimination of tax on appreciation of QOF investment upon disposal after 10 years

*The deferred gain recognized may be further reduced to the extent the fair market value of the investment is less than the deferred gain as of December 31, 2026.





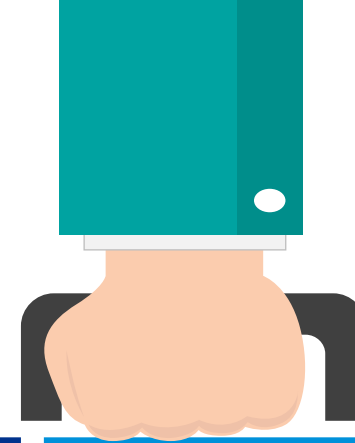
Investing in a QOF

Qualified Opportunity Zones

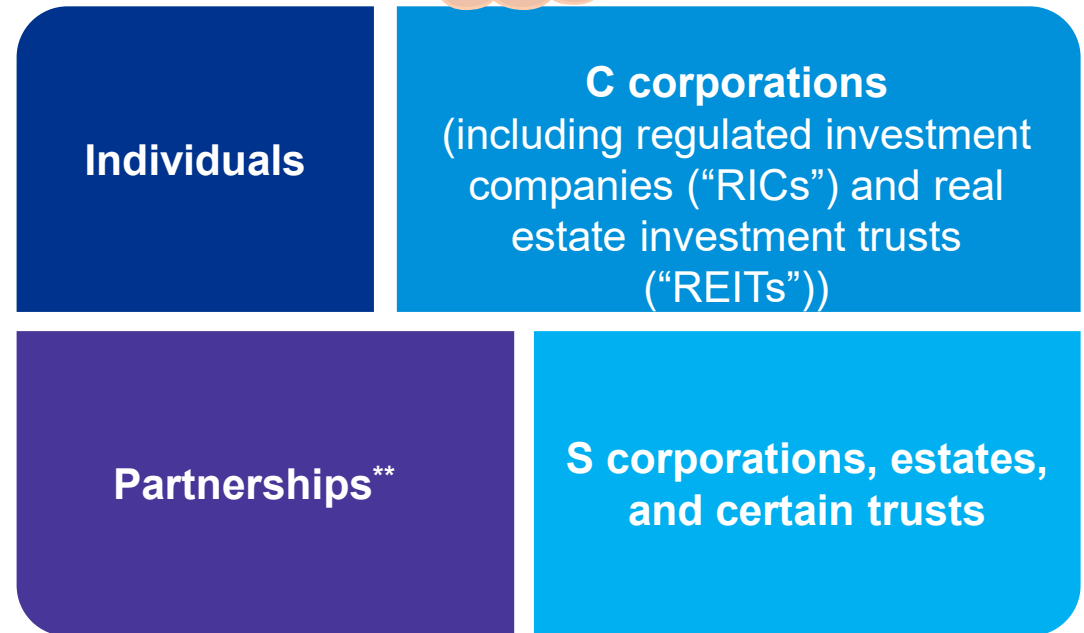
QOZ Investment Overview

An “Eligible Taxpayer” can elect to defer “Eligible Gain” under the QOZ program to the extent that the Eligible Taxpayer during the “180-Day Period” makes a “Qualifying Investment” in a QOF.

Who is an “Eligible Taxpayer”? *



The Regulations provide that **taxpayers (including non US taxpayers and tax exempt taxpayers with capital gains subject to US federal income tax) are eligible** to elect gain deferral, including:

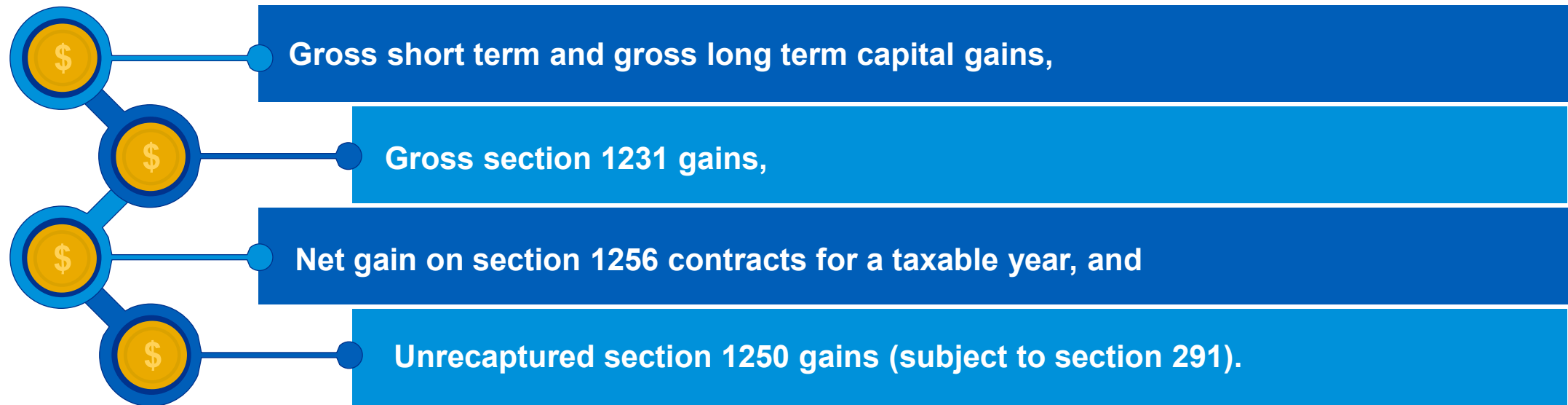


*See Treas. Reg. §1.1400Z2(a)-1(b)(13).

** See Treas. Reg. §1.1400Z2(f)-1(c)(2)(ii) – anti-abuse rule regarding the use of partnerships by persons not subject to US tax

What is “Eligible Gain”?

Gain is eligible for deferral if the gain is from the sale or exchange of property with an unrelated party* and the gain is treated as a capital gain for federal income tax purposes, including:



* Related party status is determined under sections 267(b) and 707(b), using a greater than 20% threshold.

See Treas. Reg. §1.1400Z2(a)-1(b)(11).

What is the “180-Day Period”?

A taxpayer generally has 180 days, beginning on the date of sale, to acquire a Qualifying Investment in a QOF

Special Rules:

— Net Section 1256 gain:

- The 180-day period generally begins on the last day of the tax year.
- Special rules apply to certain identified straddles.

— Installment Sale gain:

- Taxpayer may choose to begin the 180-day period either on the date payment is received or the last day of the taxpayer’s tax year in which the gain would have been recognized under the installment method.

— REIT/RIC Capital Gain Dividends:

- Distributed Capital Gains: The 180-day period begins on the last day of the shareholder’s tax year in which the dividend would otherwise be recognized but the shareholder may elect to begin the 180-day period on the date of the dividend distribution
- Undistributed Capital Gains: The 180-day period with respect to included undistributed capital gain begins (at the election of the shareholder) either on the last day of the RIC/REIT taxable year or the last day of the shareholder’s tax year in which the amount would otherwise be recognized

See Treas. Reg. §1.1400Z2(a)-1(b)(7)(i) and (ii); (b)(11)(vi) and (viii)



What is the “180-Day Period”?

180-Day Period for Pass-through Entity Gains

— Partnership Level Deferral

- If a partnership elects to defer Eligible Gain, the partnership must make the QOF investment during the 180-day period beginning on the date of sale.
- Eligible Gain deferred by the partnership is not included in the partners’ distributive shares currently.
- The partnership must disclose to each partner the partner’s distributive share of the deferred Eligible Gain.

— Partner Level Deferral

- To the extent the partnership does not elect to defer any Eligible Gain, each partner may elect to defer its distributive share of the Eligible Gain from the partnership.
- General Rule: A partner’s 180-day period to reinvest its distributive share of partnership Eligible Gain begins on the last day of the partnership’s taxable year
- Elections:
 - A partner may elect to begin the 180-day period on the same day as the partnership (e.g., the partnership’s date of sale); or
 - A partner may elect to begin the 180-day period on the due date for the partnership’s tax return, without extensions, for the year in which the gain was realized (e.g., March 15th of the following year for a calendar year end partnership).

— Analogous rules apply to S corporations, non-grantor trusts, estates, and their shareholders and beneficiaries.

See Treas. Reg. §§ 1.1400Z2(a)-1(c)(8) and (9); 1.1400Z2(b)-1(h).



What is a “Qualifying Investment”?



A “Qualifying Investment” in a QOF means that portion of an “Eligible Interest” in a QOF to the extent a deferral election is made with respect to the interest and the IRS has been timely notified of the deferral election.

An “Eligible Interest” in a QOF is an equity interest issued by the QOF, including preferred stock or a partnership interest with special allocations. Eligible Interest does not include any debt instrument.

An Eligible Interest in a QOF generally ceases to be a Qualifying Investment upon, and to the extent of, the occurrence of an inclusion event.

See Treas. Reg. §1.1400Z2(a)-1(b)(12) and Treas. Reg §1.1400Z2(a)-1(b)(34)

What is a “Qualifying Investment”?



There are a few ways for an investor to acquire a Qualifying Investment in a QOF.

- The most straightforward approach is for an investor to make a cash or property contribution to a QOF in exchange for equity:
 - Cash contributions generally result in the receipt of a Qualifying Investment
 - Property contributions to a QOF (to the extent covered by sections 351(a) or 721(a)) also can result in a Qualifying Investment to the extent of the investor’s adjusted basis in the contributed property.
 - Taxable transfers of property to a QOF in exchange for an equity interest in the QOF may also be a Qualifying Investment (e.g., transfers not subject to sections 351(a) or 721(a)).

See Treas. Reg. §1.1400Z2(a)-1(c)(5)

What is a “Qualifying Investment”?



Taxpayers may also acquire a Qualifying Investment in a QOF by purchasing QOF interests from existing QOF owners (“secondary purchase”).

- If the acquisition is made within the 180-Day Period of an Eligible Gain, the QOF interest will be a Qualifying Investment in the hands of the secondary purchaser.



A QOF interest acquired in exchange for services is not a Qualifying Investment (e.g., QOZ Benefits are not available for carried interest).



An investor who acquires a Qualifying Investment in a QOF and a Non-Qualifying Investment (e.g., services, contribution of appreciated property, or any contribution in excess of Eligible Gains) is considered to own two separate interests in the QOF (the “mixed-fund” investment).

- The Treas. Regulations provide a series of rules on how to maintain a mixed-fund investment.

See Treas. Reg. §1.1400Z2(a)-1(c)(5)



QOF Requirements

Qualified Opportunity Zones

QOF Requirements

Partnership or Corporation



An entity classified as a corporation* or partnership for Federal income tax purposes which is created or organized in either:

- one of the 50 US States;
- District of Columbia;
- federally recognized tribe (Indian tribal government); or
- US territory

is an “Eligible Entity” that can self-certify to be treated as a QOF.

Organization documents[^] of a QOF must include:

- A statement that the entity was organized or reorganized (a QOF can be an existing entity) for the purpose of investing in QOZ Property; and
- A description of the trade or business(es) that the QOF is engaged in (directly or indirectly).

See Treas. Reg. §1.1400Z2(d)-1(a)(1)(i), (ii), and (iii).

[^]Includes formation documents filed with the relevant state agency under the laws of that state and internal documents of the entity that govern the rights of its equity holders and the management and operations of the entity.

Qualifications

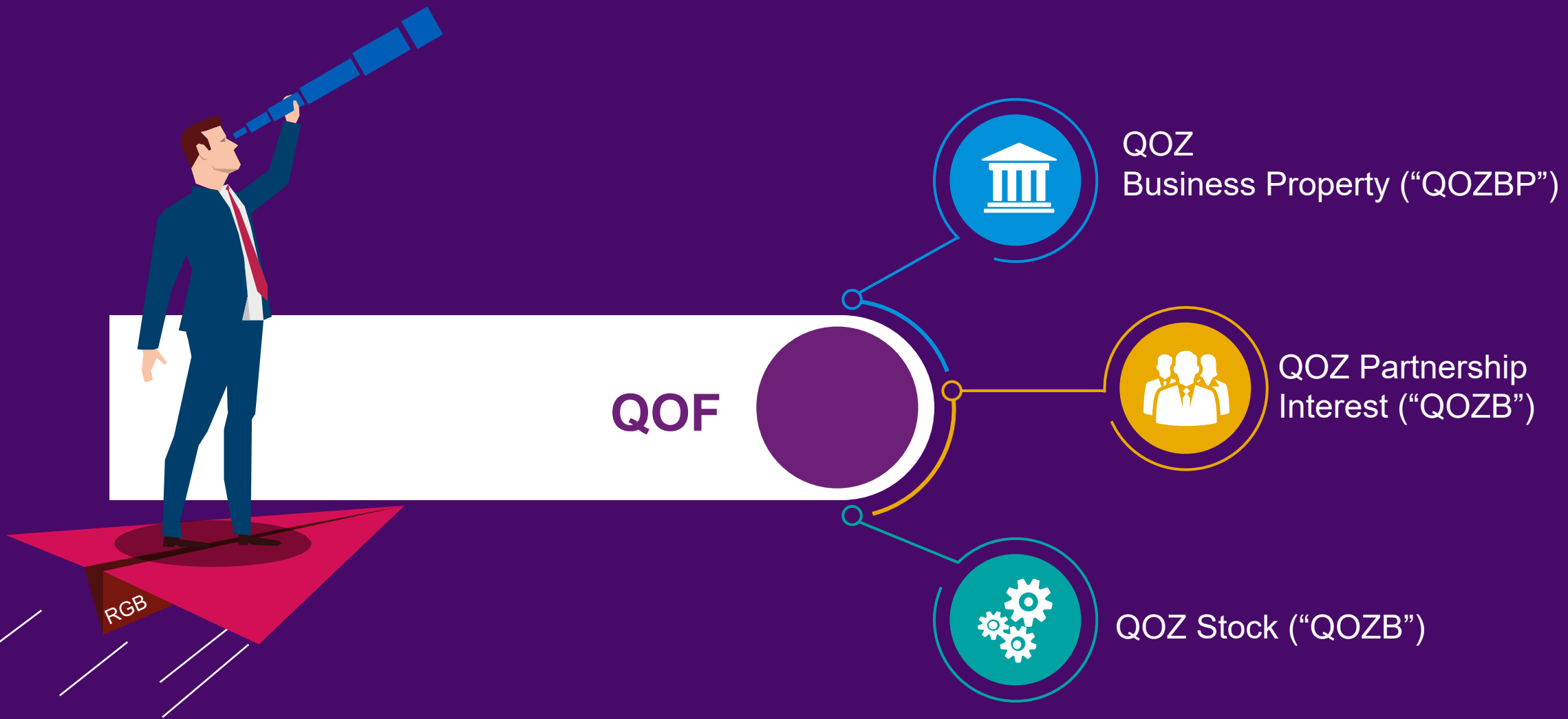


- A QOF elects to self-certify (beginning in a specific month in a tax year) with Form 8996 and thereafter the QOF has an annual asset test.
- Generally, a QOF must invest and hold at least 90% of its assets (“90% Investment Standard”) in QOZ Property determined by the average of the percentage of QOZ Property held in the QOF as measured: (i) on the last day of the first 6-month period of each tax year; and, (ii) on the last day of each tax year (which is always a testing date).
 - Last day of tax year is the only testing date if QOF’s tax year is less than 6 months and therefore the 90% Investment Standard is determined based on only one test date percentage for that tax year.
 - QOF is subject to a penalty for each month in a taxable year in which the QOF fails to meet the 90% Investment Standard.
- A QOF may elect to self-decertify.

See Treas. Reg. §1.1400Z2(d)-1(a)(2) and Treas. Reg. §1.1400Z2(d)-1(a)(3)

* A QOF may be a member of a consolidated group of corporations. Application of the consolidated return rules is outside the scope of this presentation.

Overview of Eligible “QOZ Property”



QOZBP as QOZ Property for a QOF

QOZBP Definition



- Property Owned by a QOF. Any tangible property used by a QOF in a trade or business within the meaning of section 162 which was acquired by the QOF by purchase (as defined in section 179(d)(2)) after December 31, 2017 from an unrelated party.*
 - The original use of the property in the QOZ must commence with the QOF or the QOF must substantially improve the property.
- Property Leased by a QOF. Any tangible property used by a QOF in a trade or business within the meaning of section 162 under a lease entered into after December 31, 2017 under market rate terms (subject to additional requirements for related party* leases).
- Use Requirement. To be QOZBP, substantially all (70%) of the use of the property during substantially all (90%) of the QOF's holding period for the property must be in a QOZ.
- Each of these requirements is explored in greater detail beginning on slide 42.

* Related party status is determined under sections 267(b) and 707(b), using a greater than 20% threshold.

See Treas. Reg. §1.1400Z2(d)-2



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Corporate Stock or Partnership Interest as QOZ Property (QOZB Investment)

QOZ Stock



- Stock (common or preferred) acquired by the QOF after 2017, at its original issue from the corporation solely in exchange for cash;*
- At the time such stock was issued, the corporation was a QOZB (or, in the case of a new corporation, the corporation was being organized for purposes of being a QOZB); and,
- For a QOF's ownership in stock to be treated as QOZ Property for purposes of the QOF 90% Investment Standard, the QOZB must have qualified as a QOZB for at least 90% of the QOF's holding period in the QOZB. See Treas. Reg. §1.1400Z2(d)-1(c)(2)(i)(C)(1).

* Must be a domestic entity (organized in one of the 50 US States, District of Columbia, federally recognized tribe (Indian tribal government), or US territory that is taxed as a corporation to be an Eligible Entity that can be a QOZB. (See Treas. Reg. §1.1400Z2(d)-1(a)(1)(i), (ii), and (iii))

QOZ Partnership interest



- Any capital or profits interest (common or preferred) acquired by the QOF after 2017, from the partnership solely in exchange for cash;*
- At the time the interest was acquired, the partnership was a QOZB (or, in the case of a new partnership, such partnership was being organized for purposes of being a QOZB); and,
- For a QOF's ownership in a partnership to be treated as QOZ Property for purposes of the QOF 90% Investment Standard, the QOZB must have qualified as a QOZB for at least 90% of the QOF's holding period in the QOZB. See Treas. Reg. §1.1400Z2(d)-1(c)(3)(i)(C)(1).

* Must be a domestic entity (organized in one of the 50 US States, District of Columbia, federally recognized tribe (Indian tribal government), or US territory that is taxed as a partnership to be an Eligible Entity that can be a QOZB. (See Treas. Reg. §1.1400Z2(d)-1(a)(1)(i), (ii), and (iii))

90% Investment Standard of a QOF

For each year an entity is a QOF, it is required to hold at least 90% of its total assets in QOZ Property which is determined as follows:

The average (unless there is only one testing date in a tax year) of the percentage of QOZ Property held by the QOF over the total assets held by the QOF on the QOF's two testing dates:

- on the last day of the first 6 months of the taxable year of the QOF; and,
- on the last day of the taxable year of the QOF (which is always a testing date).



An Eligible Entity can self-certify to be a QOF in any month of the Eligible Entity's taxable year under Treas. Reg. § 1.1400Z2(d)-1(a)(2)(iv). The first testing period does not begin at the start of the Eligible Entity's taxable year but rather begins on the month the Eligible Entity elects to self-certify as a QOF.

If the Eligible Entity does not specify a specific month on its self-certification, then the self-certification is treated as taking effect in the first month of that taxable year.

In order for an Eligible Taxpayer to invest Eligible Gains into the QOF, the QOF must have self-certified in the month when the contribution of capital occurred or in a month prior to the capital contribution.

Determining Value of Assets for 90% Investment Standard

Each year, a QOF with applicable financial statements generally may use either the asset values that are reported on the QOF's financial statements or the alternative method. A QOF without an applicable financial statement uses the alternative method. Under the alternative method, the value of any QOF asset that was purchased or constructed by the QOF for FMV is the unadjusted cost basis of the asset. Any other property of the QOF is valued under the alternative method at the property's FMV on the testing date. Special rules apply to leased property.

See Treas. Reg. §1.1400Z2(d)-1(b).

90% Investment Standard of a QOF

The Preamble in the Regulations confirms that all assets that are cognizable for Federal Income tax purposes are required to be valued on a testing date in determining the 90% Investment Standard.

Certain expenses from organizing or operating a QOF do not create cognizable assets. Therefore, it appears that organization costs under section 248(b) and section 709(b)(3), stock offering costs and partnership syndication costs under section 709(a), start-up costs under section 195(c), or similar costs are not taken into account for purposes of the 90% Investment Standard.



The Regulations also provide an election for a QOF to exclude amounts contributed to the QOF within 6 months of a testing date (if held in cash, cash-equivalents, or certain short-term debt instruments with a maturity of 18 months or less) from its 90% Investment Standard on that subsequent testing date. See Treas. Reg. §1.1400Z2(d)-1(b)(2)(i)(B).

An exclusion of 100% of the QOF's total assets on a testing date under this rule may not cause the QOF to fail the 90% Investment Standard (100% is the deemed calculation of zero QOZ Property over zero total assets).

90% QOZ Property holding period for an investment in a QOZB

During at least 90% of a QOF's holding period for an investment in a corporation or an interest in a partnership, determined on a cumulative basis beginning when the QOF purchased the interest in the entity, the entity must qualify as a QOZB.

Failure to Meet 90% Investment Standard for QOFs

Generally, a QOF that does not meet the 90% Investment Standard in a tax year does not lose its status as a QOF. Instead, the QOF is subject to a penalty for each month during the tax year the QOF does not meet the 90% Investment Standard.

The monthly penalty is calculated on an amount equal to 90% of the QOF's total aggregate assets over the amount of QOZ Property held by the QOF as of the end of each month (the Shortfall). The monthly penalty equals the Shortfall multiplied by the underpayment rate under section 6621(a)(2) for that month.

As of June 2022, the underpayment rate was 5% or a monthly charge of .416667% for any shortfall for June.

See section 1400Z-2(f)



As a result of COVID relief under Notice 2020-39 and Notice 2021-10, many QOFs have not been subject to penalties (automatic reasonable cause exception under section 1400Z-2(f)(3)) for failure to maintain the 90% Investment Standard in calendar years 2020 and 2021. Most QOFs formed in 2020 had their first testing date (subject to penalties) on June 30, 2022.

QOF's that were formed in either 2018 or 2019 were subject to the 90% Investment Standard in those years but were also eligible to avoid penalties in 2020 and 2021 and became subject to penalties once again beginning on June 30, 2022.

Anti-Abuse Rules under Treas. Reg. § 1.1400Z2(f)-1(c)

Certain transactions whose significant purpose is to achieve a Federal income tax result that is inconsistent with the purpose of section 1400Z-2 and the regulations may be recast or recharacterized for Federal tax purposes as appropriate to achieve tax results consistent with the purpose of Section 1400Z-2 and regulations (e.g., invalidating a QOF, a QOZB, or creating a mixed-fund investment).

The final regulations provide six examples of abusive transactions that may be recast.



QOZB Requirements

Qualified Opportunity Zones

QOZB Requirements

A QOZB is an Eligible Entity (“Organization Test”) engaged in a trade or business within the meaning of section 162 (“Trade or Business Test”) that also passes each of the following five tests (collectively the “QOZB Tests”) in each of the QOZB’s tax years:

01 Tangible Property Test

Substantially all (70 percent) of the tangible property owned or leased by the QOZB is QOZBP

02 Gross Income Test

At least 50 percent of the QOZB’s total gross income is from the active conduct of the QOZB’s trade or business in the QOZ

03 Intangible Property Test

A substantial portion (40 percent) of the QOZB’s intangible property is used in the active conduct of the trade or business in the QOZ

04 Nonqualified Financial Property (“NQFP”) Test

Less than five percent of the average of the aggregate unadjusted bases of the QOZB’s property is attributable to nonqualified financial property other than reasonable amounts of working capital (“WC”)

05 Sin Business Test

The entity is not engaged in a business listed in section 144(c)(6)(B):

- Private or commercial golf course
- Country club
- Massage parlor
- Hot tub facility
- Suntan facility
- Racetrack or other facility used for gambling
- Any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

See Treas. Reg. §1.1400Z2(d)-1(d)(1)-(4)



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Organization Test

A QOZB must be an Eligible Entity

- To be an “Eligible Entity,” the QOZB must be:
 - Classified as a corporation or partnership for Federal income tax purposes
 - Created or organized in either one of the 50 US States, District of Columbia, federally recognized tribe (Indian tribal government), or a US territory
 - Entities organized in a US territory must conduct a trade or business in the territory in which it is organized.
- Both a newly organized entity and an existing entity may be an Eligible Entity.
- Unlike a QOF, an Eligible Entity does not self-certify to be a QOZB.

See Treas. Reg. §1.1400Z2(d)-1(a)(1)



Trade or Business Test

A QOZB must be engaged in a trade or business within the meaning of section 162.

- To be engaged in a “trade or business” under section 162, an entity generally is required to:
 - Enter into and carry on an activity with a good faith intention to earn a profit; and
 - Engage in the activity on a regular and continuous basis.
- For QOZBs, the ownership and operation (including leasing) of real property is generally considered the active conduct of a trade or business.
 - However, “merely entering into a triple-net-lease with respect to real property owned by the QOZB” does not constitute the active conduct of a trade or business by the QOZB.
 - The final regulations provide two examples of the application of these rules to rental real estate.

See Treas. Reg. §1.1400Z2(d)-1(d)(3)(iii)



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70% Tangible Property Test

**Substantially all of the tangible property of a QOZB must be QOZBP.
For this purpose, “substantially all” means 70%**

QOZBP Definition for a QOZB:

- Property Owned by a QOZB. Any tangible property used by a QOZB in a trade or business within the meaning of section 162 which was acquired by a QOF by purchase (as defined in section 179(d)(2)) after December 31, 2017 from an unrelated party.*
 - The original use of the property in the QOZ must commence with the QOZB or the QOZB must substantially improve the property.
- Property Leased by a QOZB. Any tangible property used by the QOZB in a trade or business within the meaning of section 162 under a lease entered into after December 31, 2017 under market rate terms (subject to additional requirements for related party* leases).
- Use Requirement. To be QOZBP, substantially all (70%) of the use of the property during substantially all (90%) of the QOZB’s holding period for the property must be in a QOZ.
- Each of these requirements is explored in greater detail later beginning on slide 42.

* Related party status is determined under sections 267(b) and 707(b), using a greater than 20% threshold.

See Treas. Reg. §1.1400Z2(d)-2



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70% Tangible Property Test

**Substantially all of the tangible property of a QOZB must be QOZBP.
For this purpose, “substantially all” means 70%**

— All or Nothing Test:

- If 70% or more of a QOZB’s tangible property is QOZBP then 100% of the QOF’s interest in the QOZB satisfies the 70% Tangible Property Test.
- If less than 70% of a QOZB’s tangible property is QOZBP, NONE of the QOF’s interest in the QOZB is QOZ Property.

50% Gross Income Test (and Related Safe Harbors)

A QOZB must earn at least 50 percent of its gross income from the active conduct of a trade or business in a QOZ (or in multiple QOZs).

The Regulations provide three safe harbors for satisfying the 50% Gross Income test:

- Hours Test – At least 50% of the services performed by the QOZB’s employees, guaranteed payment partners, and independent contractors are performed within QOZs (based on the hours of all employees, guaranteed payment partners, and independent contractors).
- Compensation Test – At least 50% of the amounts paid by the QOZB to employees, guaranteed payment partners, and independent contractors is paid for work performed within QOZs (based on all compensation paid to employees, guaranteed payment partners, and independent contractors).
- Functional Test – The QOZB’s tangible property located in QOZs and the management and operational functions performed within QOZs are each necessary to generate at least 50% of the QOZB’s gross income.
- ❖ Absent qualification for one of these safe harbors, a QOZB can still satisfy the 50% gross income test based on an “all facts and circumstances” test.

See Treas. Reg. §1.1400Z2(d)-1(d)(3)(i).



40% Intangible Property Test

A substantial portion of a QOZB's intangible property must be used in the active conduct of a trade or business in a QOZ.

For this purpose, “substantial portion” is defined as at least 40%

- For this purpose, intangible property of a QOZB is used in the active conduct of a trade or business in a QOZ if:
 - The use of the intangible property is normal, usual, or customary in the conduct of the trade or business; and
 - The intangible property is used in a QOZ in the performance of an activity of the trade or business that contributes to the generation of gross income for the trade or business.

See Treas. Reg. §1.1400Z2(d)-1(d)(3)(ii).



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5% NQFP Test

For each taxable year, less than 5% of the average of the aggregate unadjusted bases of the QOZB's assets may be attributable to NQFP.

- NQFP generally includes cash, debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations.
 - No regulations regarding “other similar property” have been issued.
- Certain assets are not included as NQFP:
 - Reasonable amounts of WC (cash, cash equivalents, or debt instrument with a term of 18 months or less) - See section 1397(C)(e)(1);
 - WC held in compliance with the working capital safe harbor Treas. Reg. §1.1400Z2(d)-1(d)(3)(v); and,
 - Debt instruments described in section 1221(a)(4) - (ordinary course receivables).
- NQFP Test is applied using an averaging approach (e.g., daily, monthly, quarterly, semi-annually, or annually).

See sections 1400Z-2(d)(3)(A)(ii) and 1397C(e)



5% NQFP Test - The Working Capital Safe Harbor Plan (“WCSHP”)

The WCSHP applies at the QOZB level and is intended to allow a QOZB to raise proceeds for investment in a project over a period of time.

- **A QOZB may treat any amount of WC as reasonable for purposes of the NQFP test for a period of up to 31 months, if:**
 - There is a written plan that identifies the WC as property intended to be used in a trade or business in the QOZ;
 - There is a schedule consistent with the ordinary start-up of a trade or business for the expenditure of the WC and under that schedule the WC will be spent within 31 months of receipt (“WCSHP Period”); and,
 - The WC is actually used in a manner that is substantially consistent with the schedule.
- WC identified in a WCSHP must be held in cash, cash equivalents, and/or debt instruments not exceeding 18-months.
- WC identified in a WCSHP can come from a variety of sources, including capital contributions, borrowings, and certain state and local grants.
- A QOZB may have sequential or overlapping WCSHP Periods in connection with subsequent capital infusions.
- QOZBs are not required to file the written WCSHPs with their tax returns but generally should retain them in their records.

See Treas. Reg. §1.1400Z2(d)-1(d)(3)(v).



5% NQFP Test- The Working Capital Safe Harbor Plan (“WCSHP”)

The WCSHP applies at the QOZB level and is intended to allow a QOZB to raise proceeds for investment in a project over a period of time.

— Governmental Delay Exception:

- The 31 month WCSHP Period may be paused if a QOZB is waiting on governmental action for which the application is complete.

— Federally Declared Disaster Exception:

- A QOZB located in a QOZ within a federally declared disaster may receive not more than an additional 24 months to consume its WC assets (as long as it otherwise meets the requirements of the WCSHP).
- Because the occurrence of the federal disaster may affect the QOZB’s ability to complete the project that was otherwise described in its WCSHP, proposed regulations were issued on April 14, 2021 which provide that a QOZB may revise or replace its WCSHP in connection with a federal disaster declaration.
 - Revisions of a WCSHP must be adopted no later than 120 days after the close of the incident period for the disaster.
 - QOZBs may rely on this portion of the 2021 proposed regulations for tax years beginning after December 31, 2019.

See Treas. Reg. §1.1400Z2(d)-1(d)(3)(v) and proposed Treas. Reg. §1.1400Z2(d)-1(d)(3)(v)(D).



The WCSHP Impact on the QOZB Tests

While operating under a WCSHP, the Regulations provide a QOZB with relief from, or a modification to, several of the normal QOZB Tests (all of these tests apply without regard to whether the QOZB is a start up or is operating an existing trade or business), including:

- Trade or Business Test
 - Remains applicable
- 70% Tangible Property Test
 - Generally remains applicable
 - During the WCSHP Period, any tangible property that is acquired, leased, or constructed using the WC and that is expected to be used in a trade or business of the QOZB at the end of the WCSHP Period, is treated as qualifying tangible property for purposes of the 70% tangible property test.
- 50% Gross Income Test
 - Generally remains applicable
 - To the extent the QOZB generates gross income from its WC (e.g., interest income), the QOZB may treat such income from WC as “good” gross income for purposes of the gross income test (i.e. gross income from the active conduct of a trade or business in the QOZ).
- 40% Intangible Property Test
 - Generally remains applicable
 - If a QOZB acquires intangible property by purchase or license pursuant to its WCSHP, the QOZB may treat such intangible property as satisfying the use requirement during the period in which the business is operating in a manner consistent with the WCSHP.
- 5% NQFP Test
 - Generally remains applicable
 - During the WCSHP Period, any WC identified but not yet consumed under the WCSHP is not treated as NQFP.
- Sin Business Test
 - Remains applicable



WCSHP – Additional Relief for Start-Up Businesses

While operating under a WCSHP, a start-up QOZB is entitled to additional relief from certain QOZB Tests, including:

- 62-Month Maximum Period to begin a Trade or Business
 - A QOZB must be engaged in a trade or business within the meaning of Section 162 for each taxable year.
 - A QOZB that is a start-up business and is utilizing one or more WCSHPs may be treated as satisfying the Trade or Business Test during the WCSHP Periods for which it is a start-up business (not to exceed 62 months).
 - This safe harbor is useful for phased developments or businesses with extended start-up periods and the QOF expects later rounds of investments during the development/start-up period.
- 70% Tangible Property Test for Start-Up Businesses
 - During the WCSHP, a QOZB that is a start-up business is deemed to satisfy the 70% Tangible Property Test.
 - As a consequence of this treatment, a QOZB that has non-qualifying tangible property, either because (i) the property was contributed to the QOZB (rather than acquired by purchase) or (ii) the property was acquired from a related party, will have time, (i.e., the length of the WCSHP Period), to acquire or improve tangible property so that it can satisfy the 70% Tangible Property Test by the end of the start-up period.
- 50% Gross Income Test (subject to the previous Safe Harbor Relief), 40% Intangible Property Test (subject to the previous Safe Harbor Relief), 5% NQFP Test (subject to the previous Safe Harbor Relief), and Sin Business Test all remain applicable during the start-up period.

See Treas. Reg. §1.1400Z2(d)-1(d)(3)(vi).



Summary of WCSHP Benefits

WCSHP Benefits Differ for Start-Up Businesses and Existing Businesses

	Start-Up Businesses	Existing Businesses
Duration	Unlimited overlapping or sequential 31-month periods subject to each period independently satisfying the WCSHP requirements.	Unlimited overlapping or sequential 31-month periods subject to each period independently satisfying the WCSHP requirements.
Trade or Business Test	Potentially waived during WCSHP Period(s) for up to 62 months; generally applicable thereafter	Generally applicable during WCSHP Period(s)
70% Property Test	Potentially waived during WCSHP Period(s) for up to 62 months; generally applicable thereafter; Safe harbor for property on which WC is being expended	Generally applicable during WCSHP Period(s); Safe harbor for property on which WC is being expended
50% Gross Income Test	Applicable during WCSHP Period(s); gross income from WC is “good” gross income during WCSHP period(s)	Applicable during WCSHP Period(s); gross income from WC is “good” gross income during WCSHP period(s)
40% Intangible Property Test	40% use test is waived for those intangibles purchased or licensed pursuant to the written WCSHP during the same WCSHP Period	40% use test is waived for those intangibles purchased or licensed pursuant to the written WCSHP during the same WCSHP Period
5% NQFP Test	WC subject to a valid WCSHP is treated as a reasonable amount of WC (and therefore are not NQFP) during the WCSHP period	WC subject to a valid WCSHP is treated as a reasonable amount of WC (and therefore are not NQFP) during the WCSHP period. Additionally, WC utilized for the operation of an existing trade or business can also be a reasonable amount of WC (and therefore are not NQFP).
Sin Business	Applicable during WCSHP Period	Applicable during WCSHP Period

Sin Business Test (and Limited Exceptions)

A QOZB may not engage in, or lease property to, the trades or businesses listed in section 144(c)(6)(B) -- The Sin Businesses

- *De minimis* amounts of gross income attributable to a “sin business” will not cause a trade or business to fail to be a QOZB.
 - *De minimis* is defined as less than 5% of gross income.
- Leasing a *de minimis* amount of property to a “sin business” will not cause a trade or business to fail to be a QOZB.
 - A *de minimis* amount of property is defined as:
 - Less than 5% of the net rentable square feet for real property; and
 - Less than 5% of the value for all other tangible property

See Treas. Reg. §1.1400Z2(d)-1(d)(4).



QOZB Annual Testing

An Eligible Entity determines if it satisfies the QOZB Tests at the end of its taxable year.

- An eligible entity's status as a QOZB (determined on the last day of the QOZB's tax year) applies for the entire tax year.
 - Exception: Although a QOZB determines its status on the last day of its tax year, the Regulations indicate that, for tangible property, a QOZB must determine whether the property satisfies the Use Requirement of the QOZBP definition on a semiannual basis.
- A QOF determines whether it satisfies the 90% Investment Standard using a semiannual averaging approach.
 - The different timing of these tests creates an inherent inconsistency between when the QOF is determining whether a QOZB is QOZ Property and when the QOZB is determining whether it has satisfied the QOZB Tests.
 - Two safe harbors are provided to address the inconsistency.

See Section 1400Z-2(d)(1); Treas. Reg. §1.1400Z2(d)-1(d)(1).



QOZB Annual Testing

An Eligible Entity determines if it satisfies the QOZB Tests at the end of its taxable year.

- **QOF Testing Safe Harbors.** For QOF testing dates that do not align with the QOZB testing date, the Regulations provide two potential safe harbors to assist a QOF in determining its compliance with the 90% Investment Standard.
 - Prior Year-End Safe Harbor: On a particular semiannual testing date, a QOF may treat an interest in a QOZB as QOZ Property if the QOZB that has been a QOZB for at least 90% of the QOF's cumulative holding period for the QOZB interest beginning on the date of the initial certification of the QOF and ending on the last day of the QOZB's most recent taxable year ending on or before to the QOF's semiannual testing date.
 - Under this safe harbor, if the QOZB would not have been a QOZB as of the end of its last taxable year ending on or before a semiannual testing date, the QOZB must cure the failure under the cure provisions before the QOF files its tax return.
 - Cure: If a QOZB causes a QOF to fail the 90% investment standard, the QOF may still treat the interest in the QOZB as QOZ Property if the trade or business corrects the failure within six months of the date on which the interest lost its qualification. Each QOF is permitted only one cure for a trade or business.

See Treas. Reg. §1.1400Z2(d)-1(b)(2)(C); (d)(6).





QOZBP Requirements

Qualified Opportunity Zones

QOZBP - Introduction

The definition of QOZBP is key to compliance with the requirements of section 1400Z-2.

- 90% of a QOF's assets must be QOZ Property.
 - If a QOF holds tangible property directly, it is QOZ Property only if it is QOZBP.
 - If a QOF holds tangible property indirectly through a QOZB, 70% of the QOZB's tangible property must be QOZBP.
- Tangible property owned or leased by an Eligible Entity may be QOZBP.
 - The standards that apply to owned and leased property differ.

QOZBP - Overview

Property Owned by the Eligible Entity

- Trade or Business Requirement: The property must be used in the Eligible Entity's trade or business.
- Acquisition Requirement: The property must be acquired by purchase (as defined in section 179(d)(2)) after December 31, 2017 from an unrelated party*
- Original Use/Substantial Improvement Requirement: The original use of the property in the QOZ must commence with the Eligible Entity or the Eligible Entity must substantially improve the property.
- The Use Requirement: Substantially all (70%) of the use of the property during substantially all (90%) of the Eligible Entity's holding period for the property must be in a QOZ.

Property Leased by the Eligible Entity

- Trade or Business Requirement: The property must be used in the Eligible Entity's trade or business.
- Acquisition Requirement: Possession of the leased property must be acquired under a lease entered into after December 31, 2017.
- Arm's Length Terms: The terms of the lease must be market.
- Leased Real Property Rule: At the time the lease is entered into, there can be no plan for the lessee to purchase leased real property for a price other than FMV at the time of acquisition.
- The Use Requirement: Substantially all (70%) of the use of the property during substantially all (90%) of the Eligible Entity's holding period for the property must be in a QOZ.
- Additional rules apply to leases between related parties.*

*Related party status is determined under sections 267(b) and section 707(b), using a greater than 20% threshold. .



QOZBP – Acquisition Requirement (Owned Property)

Tangible property owned by an Eligible Entity must be acquired by purchase from an unrelated party after December 31, 2017.

- Purchase is defined in section 179(d)(2).
 - Does not include transactions in which an Eligible Entity determines its basis in the property by reference to the transferor’s basis (e.g., section 721 or section 351 contributions are not purchases)
 - Does not include property with a basis determined under section 1014.
- Tangible property that is manufactured, constructed, or produced by an Eligible Entity is considered “purchased” as long as the manufacturing, construction or production began after December 31, 2017.
- Inventory produced by an Eligible Entity after December 31, 2017 is deemed to satisfy the Acquisition Requirement.
- For purchased real property, at the time of acquisition, there can be no intent for the seller to repurchase the real property from an Eligible Entity at a price other than FMV at the time of the repurchase.

QOZBP – Original Use / Substantial Improvement (Owned Property)

Original Use

- Original use generally begins when property is first placed in service for depreciation or amortization purposes in the QOZ (“original use property”).
- Newly-purchased but previously used property may qualify as original use property if it has not been previously used in the QOZ. (If it has been used in the QOZ, it must be substantially improved).
- Special original use rules apply to certain real property that is vacant, is a brownfield site, or is acquired from a government.
- Tenant improvements to leased property are considered original use property.
- Inventory produced after December 31, 2017 is deemed to satisfy the Original Use/Substantial Improvement Requirement.

See, Treas. Reg. §1.1400Z2(d)-2(b)(3).

Substantial Improvement

- Substantial improvement generally requires the Eligible Entity to make investments that more than double the basis of the property during any 30-month period of time after acquisition (30-month Substantial Improvement Period).
- Special rules apply for determining the substantial improvement of real property (described below).
- Substantial improvement in certain cases may be determined on an aggregate basis.
- Although the original use/substantial improvement requirement generally does not apply to leased property, there is an anti-abuse rule that is meant to prevent circumvention of the substantial improvement rules through the use of leases.

See, Treas. Reg. §1.1400Z2(d)-2(b)(4).

QOZBP – Substantial Improvement Rule (Owned Property)

The original use of the property in the QOZ must commence with the QOF/QOZB or the Eligible Entity must substantially improve the property.

- The determination of whether the basis of tangible property has been doubled may be made on an aggregate basis in the following situations:
 - An Eligible Entity may include the cost of purchased property that would otherwise be QOZBP (e.g., original use property) in determining whether additions to non-original use property meet the substantial improvement test if the purchased property and the non-original use property are used in the same trade or business and in the same (or contiguous) QOZ and the purchased property improves the functionality of the non-original use property.
 - Eligible building groups may be aggregated and substantial improvement determined by looking at the group of buildings as a single property. Certain requirements apply depending on whether the buildings are located on a parcel of land described in a single deed or contiguous parcels described in multiple deeds.

See Treas. Reg. §1.1400Z2(d)-2(b)(4)(iii), (v).



QOZBP – Substantial Improvement Rule (Owned Property)

Special Rule for Improved Real Property.

- If an Eligible Entity purchases a building on land located within a QOZ that is not original use property, only the building needs to be substantially improved to be QOZBP.
 - Substantial improvement is determined by reference to the basis of the building only (i.e., double the basis of the purchased building).
 - There is no requirement that the land be substantially improved.
 - Care should be taken to justify the purchase price allocation between land and building.
- Betterments to land to ameliorate a material condition or defect that existed prior to the acquisition are generally included in determining whether property has been substantially improved.

See Treas. Reg. §1.1400Z2(d)-2(b)(4)(iv).



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QOZBP – Substantial Improvement Rule (Owned Property)

Special Rule for Unimproved or Minimally Improved Land.

- If an Eligible Entity purchases unimproved or minimally improved land, the Eligible Entity must intend to improve the land by “more than insubstantial amount” within the 30 months immediately following the date of acquisition.
- If the Eligible Entity does not have this intent to improve the land by “more than an insubstantial amount” within the 30 months after acquisition, the Eligible Entity must substantially improve the land or it is not QOZBP.

See Treas. Reg. §1.1400Z2(d)-2(b)(4)(iv).



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QOZBP – Substantial Improvement Rule (Owned Property)

Other Owned Property

- Tangible personal property (including machinery and equipment, computers, office furniture and fixtures) is subject to the same requirements (e.g., original use or substantial improvement requirements) as real property.
 - Used tangible personal property relocated into a QOZ can satisfy the original use requirement to be QOZBP if the used tangible personal property had not been previously used or placed in service in the QOZ.
 - Used tangible personal property relocated into a QOZ that cannot satisfy the original use requirement would need to be substantially improved in order to be QOZBP.
- Inventory located in a QOZ can qualify as QOZBP
 - Raw materials may be considered inventory for these purposes.
 - Note that inventory may be excluded from each of the 90% Investment Standard for QOFs and the 70% tangible property test for QOZBs at the election of the Eligible Entity.

QOZBP – Leased Property Considerations

Property leased by an Eligible Entity may be QOZBP if the requirements for leased property are satisfied.

- The value of leased property is either 1) determined in accordance with ASC 842 if utilizing the Applicable Financial Statement Method; or 2) equal to the present value of each payment under the lease as determined by Treas. Reg. §1.1400Z2(d)-1(b)(4)(iii).
- Leased property generally does not need to be either original use property or substantially improved.
- Prepaid leases that create a deemed loan (debt) under section 467 may result in a NQFP issue for a QOZB.

See Treas. Reg. §1.1400Z2(d)-2(b)(4)(iv).



QOZBP – Related Party Lease Considerations

Property leased by an Eligible Entity may be QOZBP if the requirements for leased property are satisfied.

- Additional requirements apply to property leased by an Eligible Entity from a related party:
 - Prepayment Restriction: The lease cannot contain a prepayment of more than 12 months.
 - Required Purchase of Tangible Personal Property: If the original use of leased tangible personal property does not commence with the lessee, the lessee must become the owner of tangible property that is QOZBP having a value that is not less than the value of the leased tangible personal property.
 - There must be a substantial overlap in the QOZ(s) that the Eligible Entity uses the leased tangible personal property and the acquired QOZBP.
 - The additional QOZBP must be acquired during the period that begins on the date the Eligible Entity acquires possession of the leased tangible personal property and ends at the earlier of 1) 30-months thereafter; or 2) the last day of the lease term.

* Related party status is determined under sections 267(b) and 707(b), using a greater than 20 percent threshold.

See Treas. Reg. §1.1400Z2(d)-2(b)(4)(iv).



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The Use Requirement (Owned and Leased Property)

During substantially all (90%) of a QOF's/QOZB's holding period for tangible property, substantially all (70%) of the use of the property must be within one or more QOZs.

- Tangible property satisfies the 70% use portion of the Use Requirement if it is “Qualified Tangible Property:”
 - Based on the number of days between two consecutive semiannual testing dates, not less than 70% of the total utilization of the tangible property by the trade or business occurs within a QOZ.
 - If tangible property is used in more than one QOZ, this determination is made by aggregating the days of use in each QOZ.
- Safe harbors are provided for:
 - Tangible property used in a trade or business that renders services both inside and outside a QOZ
 - Short-term leasing businesses
 - Inventory in transit from a supplier to a facility in a QOZ or from a facility in a QOZ to customers outside the QOZ

See Treas. Reg. §1.1400Z2(d)-2(d).



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COVID-19 Relief – Notice 2021-10

Qualified Opportunity Zones

COVID-19 Relief for QOFs and QOZBs

Notice 2021-10 (in expansion of Notice 2020-39) provided extensions of time and other concessions for QOZ investments. Though none of the provisions in Notice 2021-10 are applicable in tax years after December 31, 2021, some of the relief provided by the Notice may have a continuing impact on a QOF or QOZB.

Specifically:

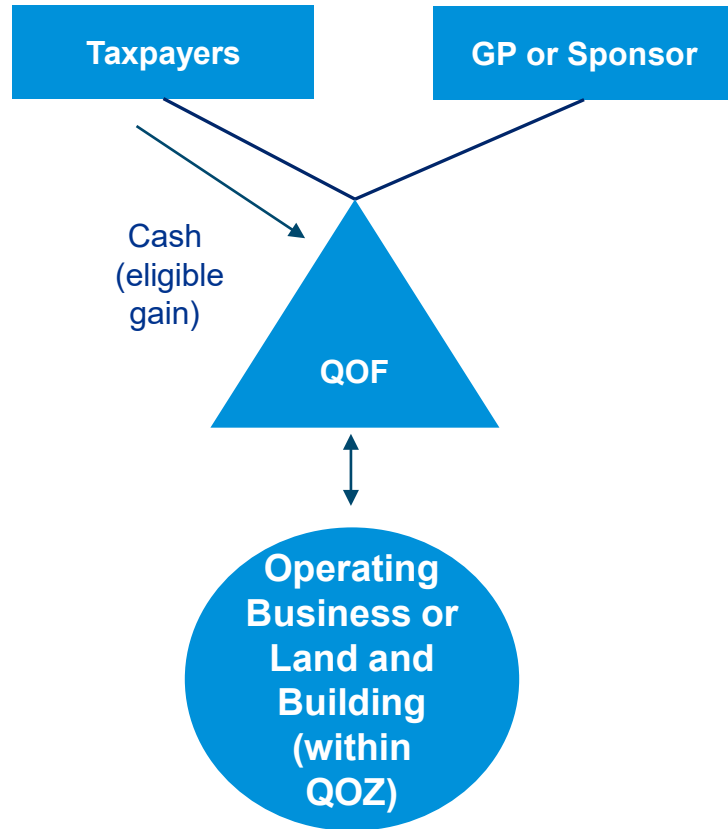
- The substantial improvement period was tolled for the time period between April 1, 2020 and March 31, 2021. Thus, many QOFs and QOZBs have a substantial improvement period of up to 42 months for property acquired prior to March 31, 2021.
- QOFs formed prior to February 2021 were able to avail themselves of the reasonable cause exception for QOF testing failures (the 90% Investment Standard) in 2020 and 2021. As a result, many QOFs will face their first testing date with potential penalties on June 30, 2022.
- QOZBs that held assets covered by a WCSHP before June 30, 2021 were granted 24-month extensions of their WCSHP Periods for a maximum safe harbor period of up to 55 months (86 months for start-up businesses).
- A QOF's reinvestment of proceeds timeframe was extended to 24 months if the QOF's original reinvestment period included June 30, 2020, meaning that this extension could have applied to a QOF through June 30, 2022.



QOZ Structures

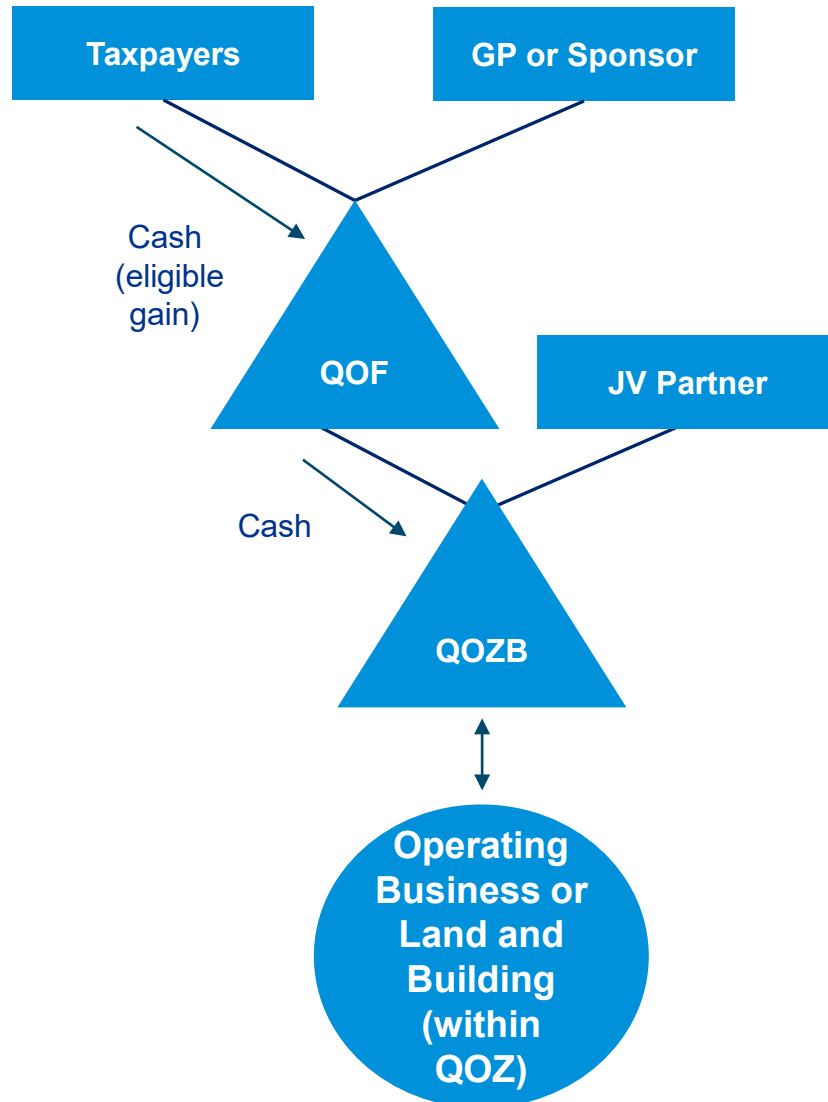
Qualified Opportunity Zones

Illustrative One-Tier Structure



- QOF receives cash contributions from Eligible Taxpayers and makes direct investments in QOZBP
- QOF must satisfy the 90% Investment Standard test
 - The only assets of the QOF that will qualify for the 90% Investment Standard are QOZBP owned or leased by the QOF
 - QOF may not rely on a WCSHP. All financial assets, including cash and account receivables, are not QOZBP
 - Certain assets may be excluded from the 90% Investment Standard
 - Intangible assets are not QOZBP

Illustrative Two-Tier Structure



- QOF receives cash contributions from Eligible Taxpayers and QOF contributes cash to a QOZB. QOZB purchases QOZBP.
- QOZB is subject to the QOZB Tests and may rely on a WCSHP for the deployment of the contributed cash in its trade or business.
- JV Partner may contribute assets (cash or appreciated property) into the QOZB and may also be entitled to a promote from the QOZB.
- JV Partner may want to crystallize its promote interest at the QOZB upon certain events (refinancing, property stabilization, etc.).

One-Tier v. Two-Tier Structure – Comparison Table

One-Tier Structure: Direct Ownership by QOF QOF directly owns QOZBP used in its trade or business	Two-Tier Structure: Indirect Ownership by QOF QOF owns QOZBP indirectly through a QOZB
Trade or Business Requirement needed for tangible property to be QOZBP	Trade or Business Requirement for the QOZB
90% Investment Standard (90% of the QOF's assets must be QOZ Property)	Substantially All (70%) of the tangible property owned or leased by the QOZB must be QOZBP
No 50% Gross Income test	50% of the QOZB's gross income must be from active conduct of trade or business within a QOZ(s)
Intangible property is not QOZBP (Counted towards the 10% non-QOZ Property allowance)	A substantial portion (40%) of the QOZB's intangible property must be used in the active conduct of the trade or business within a QOZ(s)
Financial property is not QOZBP (Counted towards the 10% non-QOZ Property allowance)	<5% of the average of the aggregate unadjusted bases of the QOZB's total assets may be attributable to non-qualified financial property (except for reasonable amounts of working capital or ordinary course receivables)
WCSHP is not available	WCSHP is available
No technical prohibition on "Sin Businesses"	QOZB can NOT be engaged in more than a de minimis "Sin Business"
Allow non-cash capital contributions and purchases of existing interests	Does not allow a QOF to make non-cash capital contributions to the QOZB or purchase existing QOZB interests
Self-certification by the QOF on its tax return and penalties for failure to meet the 90% Investment Standard (see Form 8996)	No QOZB-level self-certification requirement ; QOZB entity satisfaction of the QOZB Tests necessary for the QOF 90% Investment Standard



Operations and Interim Sales of Assets of QOFs and QOZBs

Qualified Opportunity Zones

Operations of QOF/QOZB – Operating Income and Deductions



QOF Partnerships

- An investor in a QOF partnership receives an initial outside basis of zero in its qualifying investment in the QOF partnership
 - Net loss allocations will generally be suspended under Section 704(d) (absent prior net income allocations or debt allocations)
- The investor's initial basis may be increased for debt allocations under the general section 752 rules
- Basis step-ups for investments held for five or seven years prior to December 31, 2026 (10% and 5%, respectively) are treated as increasing outside basis in a QOF partnership



QOF Corporations

- An investor in a QOF corporation receives an initial outside basis of zero in its qualifying investment (stock) in the QOF corporation



QOZBs (whether taxed as a partnership or a corporation)

- There are no differences in the tax treatment of the operating income and deductions.

See Section 1400Z-2(b)(2)(B)(i); Treas. Reg. §1.1400Z2(b)-1(g)(4)



Operations of QOF/QOZB – Interim Sales and Rollovers



If a QOF or QOZB sells property during its initial 10-year holding period, gain or loss on the sale will be recognized and will flow out to the QOF owners (assuming a partnership structure).



If within 12 months of the sale the QOF reinvests the sale proceeds (attributable to the original deferred gain) into other QOZ Property, the QOF investor's initial capital gain deferral may remain in effect and the holding period of the qualifying investment may be unaffected.

- The 12-month reinvestment period may be extended if the QOF is waiting on government action the application for which is complete (similar to the QOZB WCSHP).
- The 12-month reinvestment period may also be extended if the reinvestment is delayed because of a federally declared disaster.



If the proceeds attributable to a QOF investor's original investment are not reinvested by the QOF, but are distributed to the QOF investor, the QOF investor may have an inclusion event which reduces its qualifying investment in the QOF. The QOF investor's holding period continues to run with respect to the remaining portion of the QOF investor's qualifying investment.

See Treas. Reg. §1.1400Z2(f)-1(b)



Operations of QOF– Inclusion Events



The Regulations contain a general inclusion rule and a long list of “inclusion events” that will trigger recognition of a QOF investor’s original deferred gain prior to December 31, 2026.

- An event generally triggers inclusion if:
 - It reduces a taxpayer’s direct equity interest in the qualifying investment;
 - A taxpayer receives property that is treated as a distribution for federal income tax purposes with respect to its qualifying investment;
 - A taxpayer claims a worthlessness deduction with respect to its qualifying investment;
or
 - The QOF loses its status as a QOF.

See Treas. Reg. §1.1400Z2(b)-1(c)

Examples of Inclusion Events

The following are generally inclusion events

- The QOF ceases to exist for tax purposes or decertifies as a QOF
- Conversion of a QOF corporation to a QOF partnership or vice versa
- Gift of a qualifying interest by the investor
- Transfer of a qualifying interest between spouses or incident to divorce under section 1041
- Change in grantor trust status (other than on death)
- Complete liquidation of a corporate investor in a QOF – if section 336(a) applies
- Distributions by a QOF partnership to the extent FMV of the distributed property exceeds the partner's basis in its partnership interest
- S corporation distributions treated as sale/exchange under section 1368(b)(2)
- Corporate distributions to which sections 301(c)(3) or 1059(a)(2) applies

The following are generally NOT inclusion events

- Transfer of a qualifying investment on death (generally)
- Making, revoking, or terminating an S election
- Contribution to, distribution from, a grantor trust (by the grantor)
- Certain conversions of QSST to ESBT
- Contribution of a qualifying investment to a partnership – to extent section 721(a) applies
- Certain partnership mergers under section 708(b)(2)(A)
- Complete liquidation of a corporate investor in a QOF – if section 337(a) applies
- Distributions under section 301(c)(1) or (c)(2)
- Certain qualifying section 381 transactions

See Treas. Reg. §1.1400Z2(b)-1(c)



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Operations of QOF/QOZB – Operating Distributions



QOF Partnerships

- The disguised sale rules in section 707(a)(2)(B), including the two year rebuttable presumption, are applicable to QOF partnerships.
 - If a contribution and distribution are recast as a disguised sale, the investor may not have a qualifying investment in a QOF.
 - Special rules apply when applying the disguised sale rules to QOF partnerships.
 - Cash contributed by the investor is treated as zero basis non-cash property
 - The debt-financed distribution exception is generally not available.


See Treas. Reg. §1.1400Z2(a)-1(c)(6)(iii)

Operations of QOF/QOZB – Operating Distributions

QOF Partnerships

Distributions of property by a QOF partnership with respect to a qualifying investment are inclusion events to the extent the FMV of the distributed property exceeds the investor's basis in its qualifying investment.

 Distributions of taxable income from a QOF partnership generally do not adversely affect the qualifying investment as long as these distributions do not exceed the cumulative taxable income for an investor (i.e., do not exceed the investor's tax basis in the qualifying investment).

 After a general two-year presumed disguised sale period, debt-financed distributions from a QOF partnership generally do not cause an inclusion event provided the distributee partner has basis for the distribution.

See Treas. Reg. §1.1400Z2(b)-1(c)(6)(iii)



Operations of QOF/QOZB – Operating Distributions



QOF Corporation

Distributions of earnings & profits from a QOF Corporation generally should not adversely affect the qualifying investment as long as these distributions do not exceed the cumulative earnings & profits for the QOF Corporation.

- Such distributions may cause an inclusion event if the cash and FMV of other property distributed exceeds the corporation's earnings & profits and the shareholder's basis in its QOF stock.



QOZB (whether taxed as a partnership or a corporation)

- There are no differences in the tax treatment of operating distributions.

See Treas. Reg. §1.1400Z2(b)-1(c)(8)



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Dispositions after the 10-year Holding Period (Exclusion Benefit)

Qualified Opportunity Zones

Dispositions after 10-Year Holding Period Benefit (“Exclusion Benefit”)



Disposition of Qualifying Investment in a QOF:

— After a taxpayer has held its qualifying investment in a QOF for 10 years, gain from the sale or exchange of the QOF interest can be excluded.



The exclusion of gain is achieved by the taxpayer making an election to step-up its basis in the QOF interest to the FMV of the interest (including debt) at the date of disposition.

— This step-up election is available at any time after the 10-year holding period, but no later than December 31, 2047.

— If the QOF is a partnership, the basis of the QOF partnership’s assets are also stepped-up with respect to the selling partner at the time of the election (in the same manner as if the partner made a cash purchase with a section 754 election in place).

See Treas. Reg. §1.1400Z2(c)-1(b)(1)-(2)

Dispositions 10-Year Holding Period Benefit (“Exclusion Benefit”)



– Property dispositions by a QOF

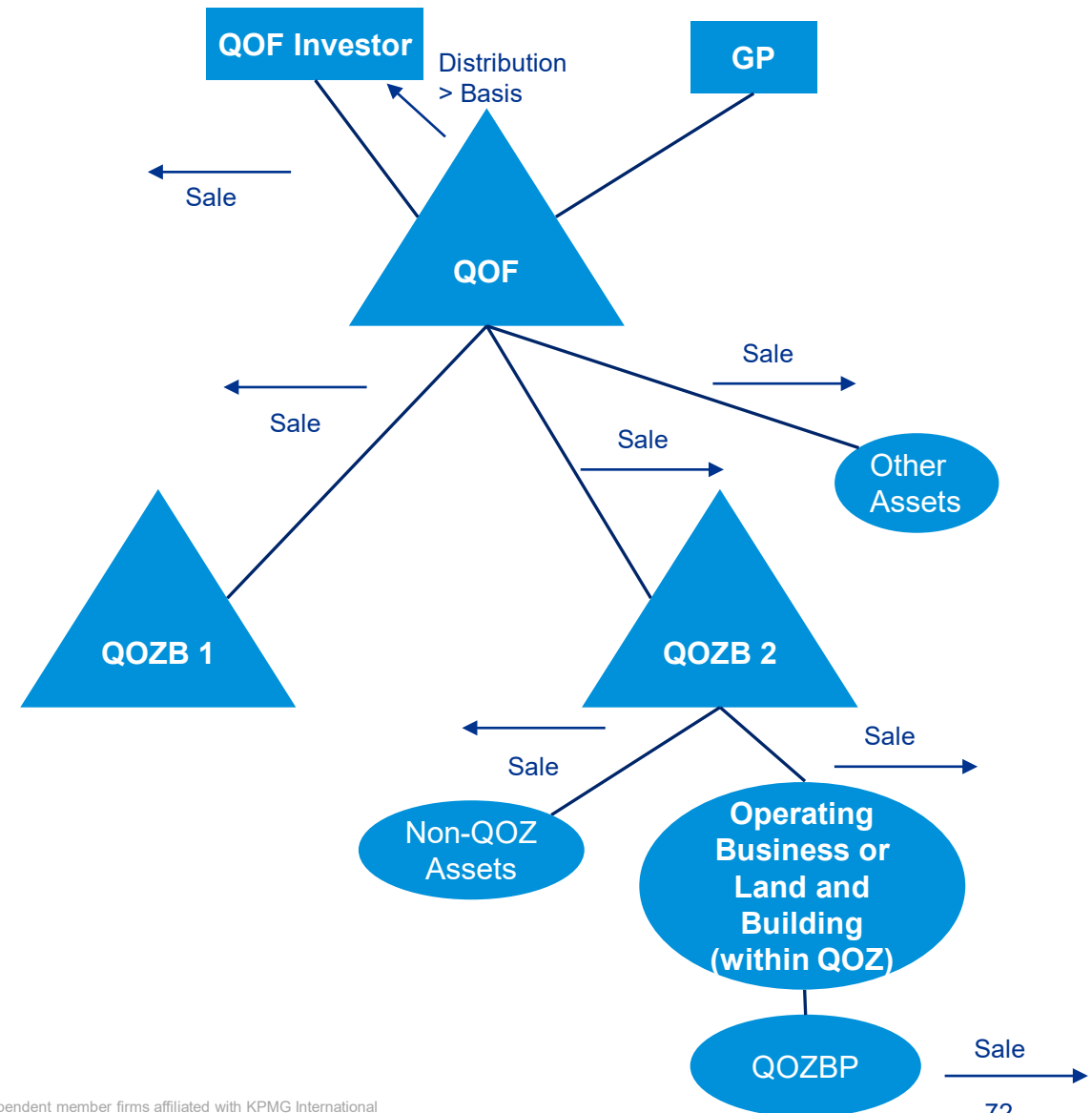
- If the QOF is a partnership or S corporation, an investor in the QOF with a qualifying investment that has been held for at least 10 years may elect to exclude gain allocated to the investor by the QOF from the disposition of property held directly by the QOF or indirectly by the QOF through one or more partnerships.
 - Gain eligible for exclusion from an investor’s schedule K-1 from the QOF partnership or S corporation includes section 1231 gains, gains from section 1245 or 1250 recapture, unrecaptured section 1250 gains, and section 1221 gains (capital assets)
 - Gain from the sale of inventory in the ordinary course of business is not eligible for exclusion
- Similar rules apply for property dispositions by a partnership QOZB.
- This benefit is generally not available for investors in QOF C corporations or for gains realized by a corporate QOZB.
- Special exclusion rules apply to capital gain dividends by RICs and REITS

See Treas. Reg. §1.1400Z2(c)-1(b)(2)

Exclusion Benefit Options for QOF Investor in a Partnership Structure

For a QOF that is taxed as a partnership and has invested in QOZBs that are also taxed as partnerships, this structure provides flexibility as to the level at which dispositions may occur with the Exclusion Benefit for the QOF investors. The Exclusion Benefit also applies to gain recognized by a QOF investor under section 731(a) from distributions by a QOF partnership that exceed the investor's basis in its QOF partnership interest.

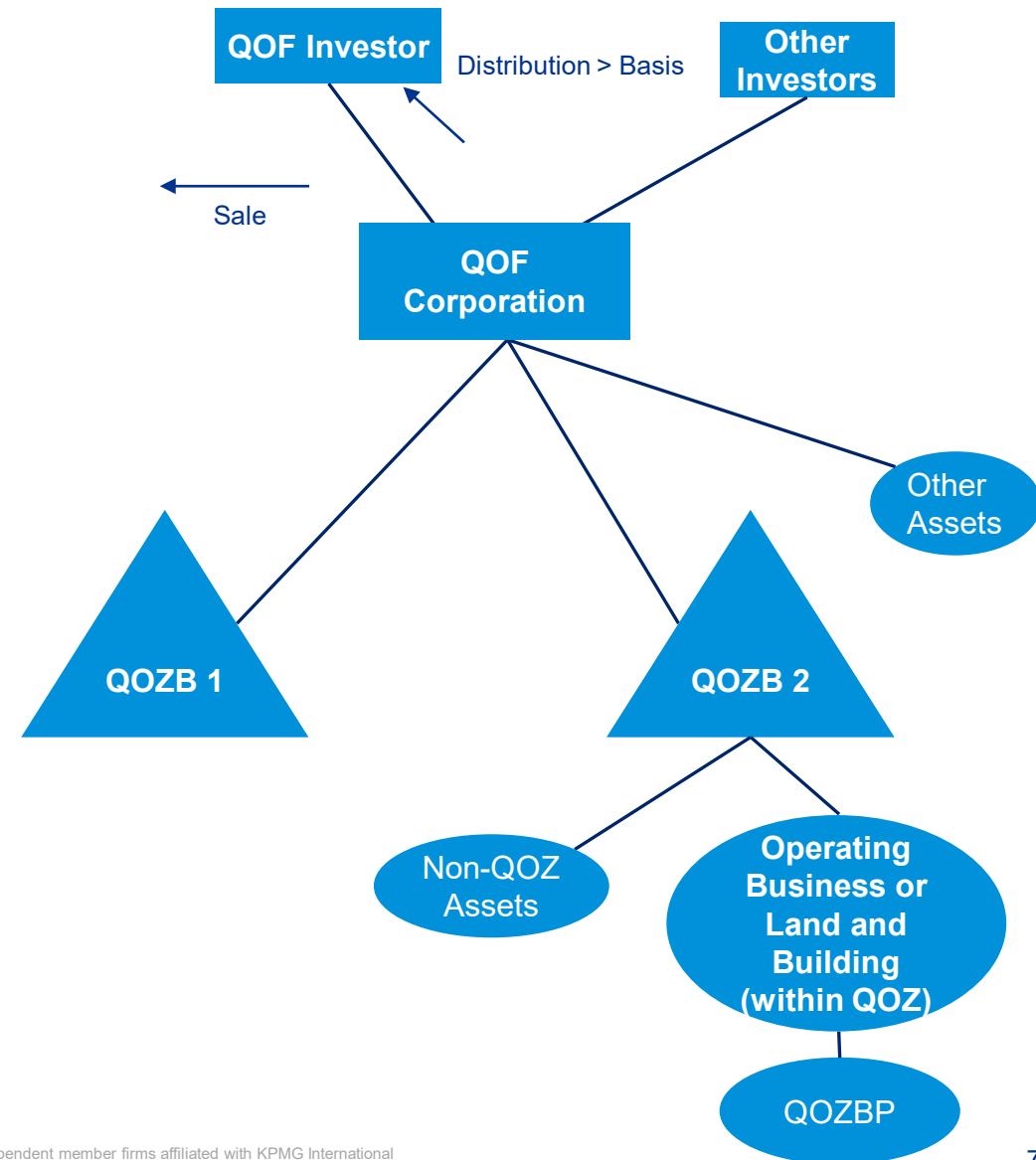
Similar rules apply to a QOF taxed as an S corporation (with QOZBs taxed as partnerships), including a potential Exclusion Benefit for section 301(c)(3) distributions to the shareholders.



Exclusion Benefit Options for QOF Investor in a Corporation Structure

For a QOF which is a C corporation, a QOF investor must sell its QOF stock or receive a section 301(c)(3) distribution from the QOF to achieve the Exclusion Benefit.

The sale of the underlying QOZB 1, QOZB 2, Other Assets or the sale of Non-QOZ Assets, Operating Business, or QOZBP may be part of the adoption of the plan of liquidation that may cause a section 331 distribution. Generally, a plan of liquidation has a limited time to be adopted and finalized.

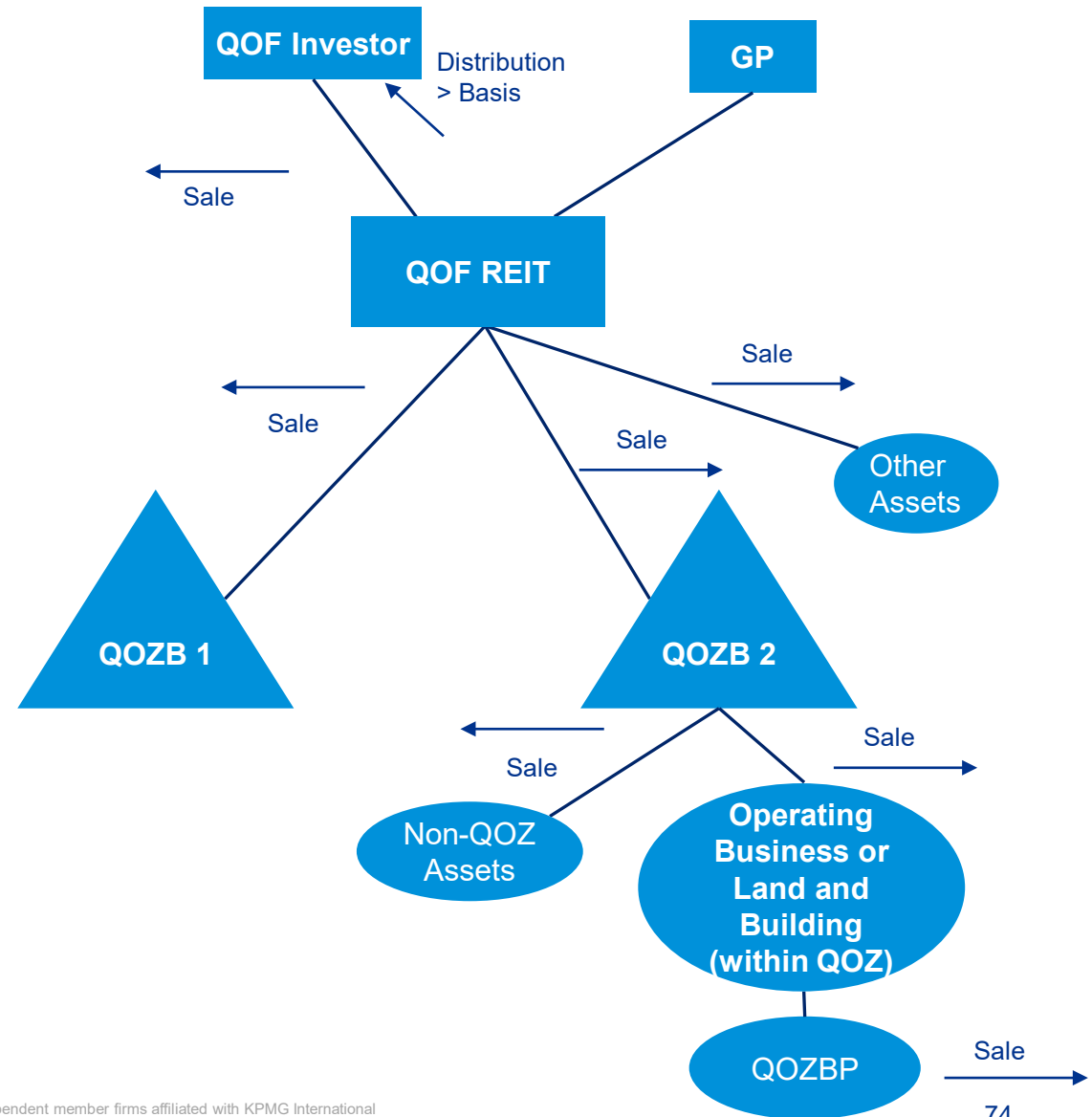


Exclusion Benefit Options for QOF Investor in a REIT Structure

For a QOF which is taxed as a REIT under sections 856 through 860, the QOF investors may achieve the Exclusion Benefit in the same manner as an investor in a C corporation (i.e., sell the QOF stock or receive a section 301(c)(3) distribution from the QOF).

In addition to these methods, a QOF investor in a QOF REIT may elect the Exclusion Benefit to the extent the QOF investor receives a capital gain dividend from the REIT designated under section 857(b)(3)(B) generated from either the sale of a QOZB or the sale of Other Assets held by the REIT. It is possible that the Exclusion Benefit may extend to the REIT's distributive share of capital gains (including section 1231 gains) from the sale of QOZBP and the sale of Non-QOZ Assets from a QOZB.

Similar rules apply for a QOF taxed as a Regulated Investment Company ("RIC") under sections 851 through 855.

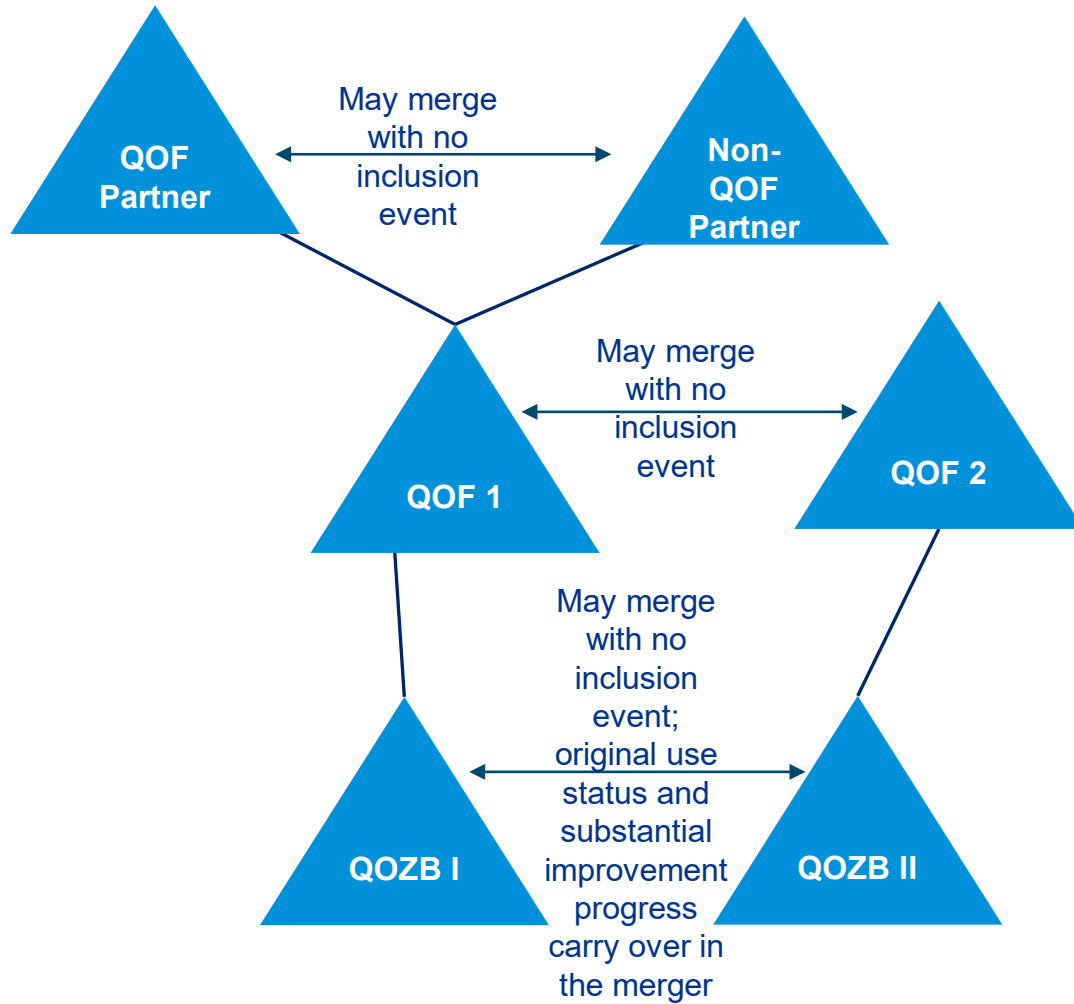




QOZ Mergers

Qualified Opportunity Zones

Special Partnership Merger Rules



Certain partnership merger transactions receive special treatment under the Regulations.

A QOF partner that is a partnership may merge with another partnership without triggering an inclusion event for the QOF partner, even if the QOF partner is not the continuing partnership post-merger.

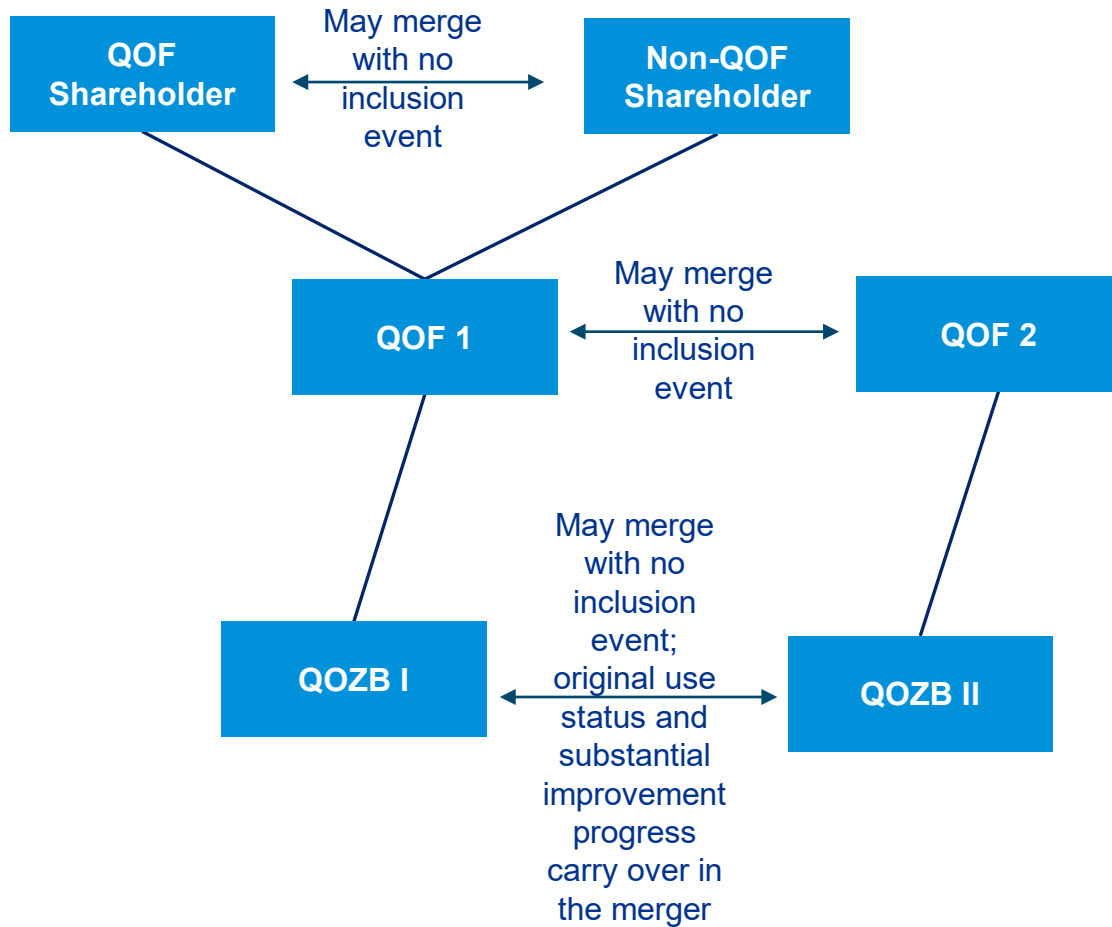
A QOF partnership may merge into a second QOF partnership without creating an inclusion event for the partners in the terminating QOF partnership.

A QOZB partnership may merge into a second QOZB partnership without impacting whether the assets of the terminating QOZB satisfy the original use or substantial improvement requirements.

See Treas. Reg. §1.1400Z2(b)-1(c)(6)(ii)(C); 1.14002(d)-1(c)(3)(ii)



Special Corporate Merger Rules



Certain corporate merger transactions also receive special treatment under the Regulations.

A QOF shareholder that is a corporation generally may merge with another corporation in a qualifying section 381 transaction without triggering an inclusion event with respect to the target corporation's qualifying investment.

A QOF corporation generally may merge into a second QOF corporation in a qualifying section 381 transaction without creating an inclusion event for the first QOF corporation.

A QOZB corporation may merge into a second QOZB corporation so long as the stock in the surviving QOZB is received solely in exchange for stock in the terminating QOZB in a transaction described in section 381(a)(2).

See Treas. Reg. §1.1400Z2(b)-1(c)(10)(i) and (ii); 1.1400Z2(d)-1(c)(2)(iii)

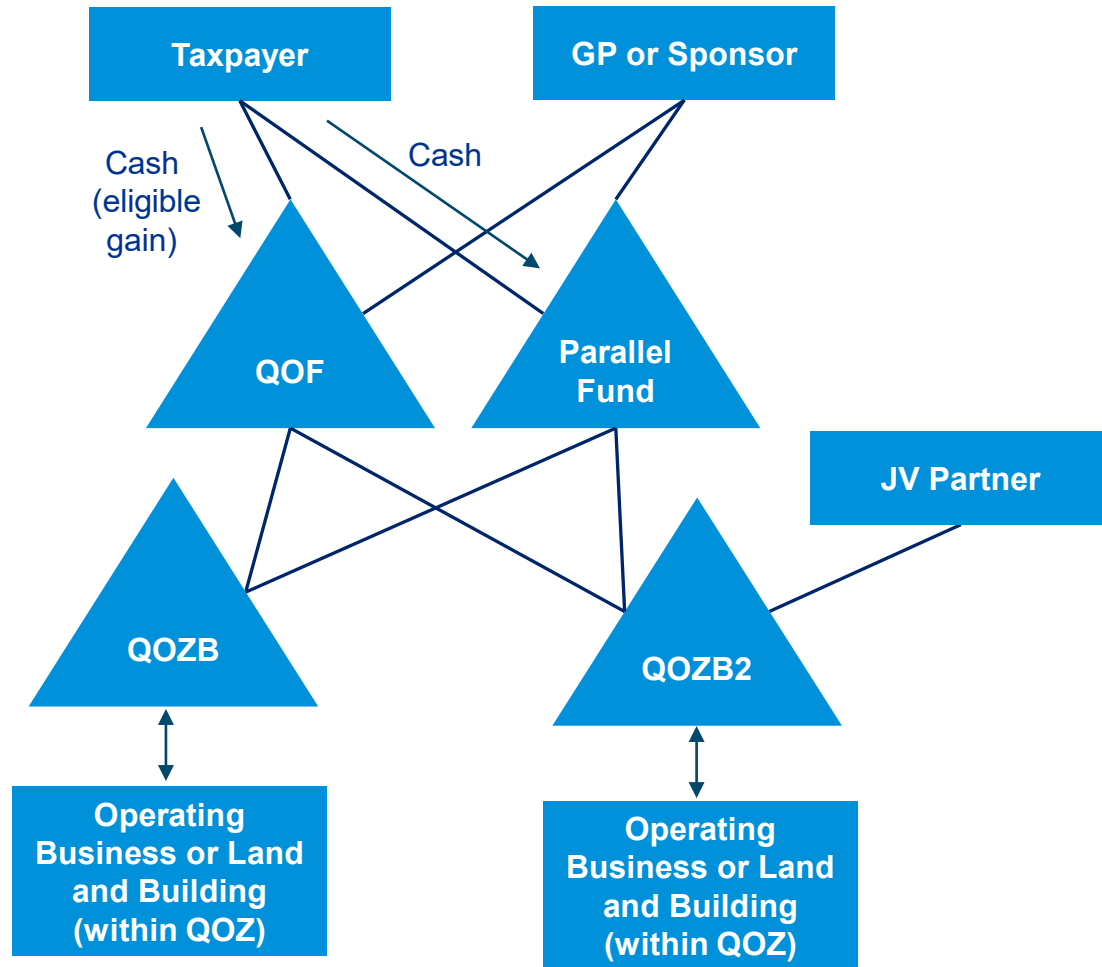




QOZ Fund Structures

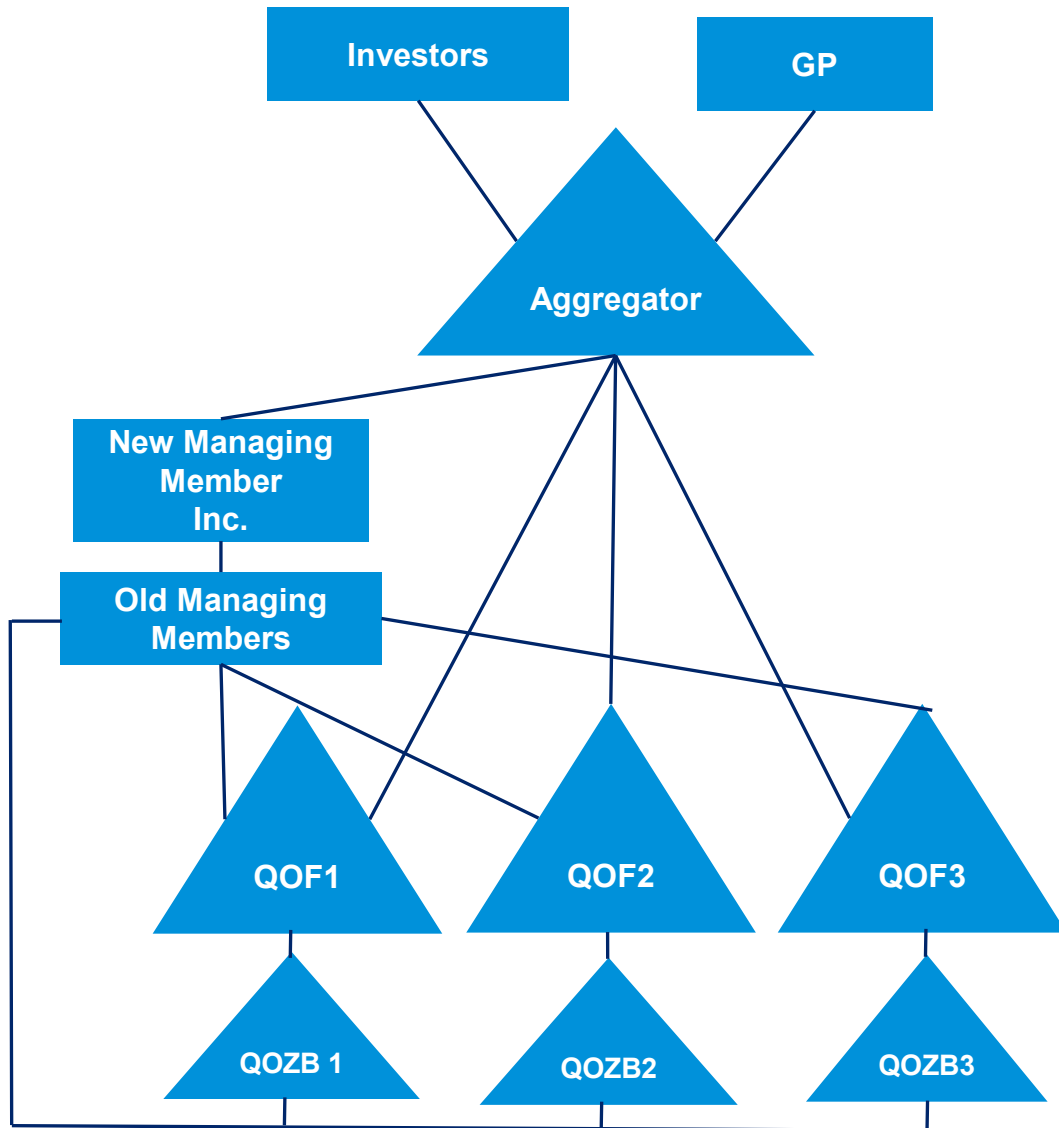
Qualified Opportunity Zones

Illustrative Parallel Fund Structure



- Taxpayer contributes cash directly to a QOF to the extent of its eligible gain. Any other cash to be invested in the QOF is contributed to Parallel Fund. (Taxpayer’s QOF interest is not a “mixed-funds investment”).
- QOF can invest in either (i) its own QOZB(s), or (ii) third-party managed QOZB(s).
- QOF may only hold up to 10% nonqualifying property, including cash and any contributed noncash property.
 - If non-cash appreciated property is contributed to the QOF, the contributor will hold a mixed-funds investment in the QOF.
- If desired, multiple QOFs may be formed and exit after 10 years may be by sale or exchange of individual QOF interests.
- Multiple unrelated QOFs may invest in the same QOZB.

Illustrative Aggregator Fund



- Various Investors previously establish their own QOFs/QOZBs
- Investors contribute their QOF interests to Aggregator in exchange for interests in Aggregator.
 - If the contribution is governed by section 721(a), the contribution is not an inclusion event.
- Investors sell their interest in Old Managing Members for cash
- Each QOF and Old Managing Members own interests in QOZBs.
 - QOFs remain Form 8996 filers
 - Form 8997 filing requirement and ability to elect the 10-year Exclusion Benefit shift from Investors to Aggregator.
 - Investors remain subject to the recognition of their deferred gain through their interest in the Aggregator.



Tax Reporting and Tax Elections

Qualified Opportunity Zones

Investor Reporting and Elections



Formation and Annual Filings

Form 8949 for Gain Deferral Election

Taxpayers will make deferral elections on Form 8949 (and Form 4797 for gross section 1231 gains), which will be attached to their Federal income tax returns for the taxable year in which the gain would have been recognized if it had not been deferred.

- A partnership or S corporation that makes a deferral election must notify all of its partners or shareholders of the deferral election and identify each partner's or shareholder's distributive share of the deferred gain
- An investor may make a gain deferral election on an amended tax return.

Form 8997 - Initial and Annual Statement of QOF Investments

Taxpayers with investments in QOFs report annually their deferred gains (short-term and long-term), name(s) and EIN(s) of QOF(s) investments, description of interest acquired, and any changes in the taxpayer's QOF holdings during the tax year.

Inclusion/Disposition Event Filings

Forms 8949 and 8997

QOF investors must report gain from the sale or exchange of a QOF investment and any other inclusion events on Form 8949. Such investors must also reflect such disposition on Form 8997.

On the sale or exchange of a QOF investment, the QOF investors should receive a Form 1099-B from the QOF to report the sale or exchange.

Any indirect owners of a QOF partnership who have an inclusion event must provide information to the QOF owner so the QOF owner may, in a timely manner, recognize an appropriate amount of deferred gain.

Section 1400Z-2(c) Election – 10-Year Exclusion Benefit

QOF investor must make an election on the disposition of a QOF interest on which the investor intends to apply the Exclusion Benefit. Similarly, a QOF investor in a partnership (or S corporation) must also make an election to exclude its allocable share of any gain recognized by the QOF partnership (or by a QOZB partnership). The IRS has not yet issued forms for effectuating these elections.

QOF and QOZB Reporting and Elections



Formation and Annual Filings

Form 8996 for Self-Certification, Annual Compliance, and Penalty Calculation

QOFs use Form 8996, *Qualified Opportunity Fund*, both for initial election to self-certify and for annual reporting of compliance with the 90% Investment Standard. Form 8996 must be attached to the taxpayer's Federal income tax return for each tax year the entity is taxed as a QOF. In addition, the IRS requires QOZ tract numbers, cost of tangible property, and EINs of QOZBs to be included in the annual reporting on Form 8996.

Note that section 9100 relief is required for a QOF to make a late initial election to self-certify as a QOF.

Though a QOZB is not required to report their status to the IRS, QOZBs must provide information to QOFs invested therein so the QOFs may complete Part VI of Form 8996. Additionally, a QOZB must annually report to the QOF or to the QOFs its compliance with or failure to comply with the QOZB Tests.

Inclusion/Disposition Events

Form 8996

QOFs must include information about any partial or complete dispositions of interests therein on their annual Form 8996 filing.

Form 1099-B for QOF Reporting of Investor Inclusion Events

QOFs must file a Form 1099-B for each disposition of interests (or inclusion event) therein and furnish a copy of the form to the person who disposed of the QOF interest. This requirement also applies for partial dispositions of an interest in a QOF.

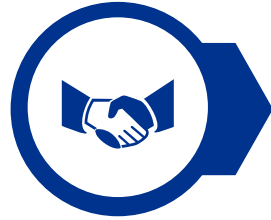


Comparing QOZ Investments to Other Incentivized Investments

Qualified Opportunity Zones

Section 1031- Deferred Like Kind Exchanges (“LKE”) compared to QOZ investments

Gains from deferred LKE Investments



- All proceeds from the original sale must be reinvested within 180 days of the sale
- Deferred gain is recognized upon taxable sale of the new property
- Basis in the new property is equal to the basis in the original property exchanged (assuming no additional amounts beyond sales proceeds)
- Future LKEs may be applied
- Domestic LKE property may be located anywhere in the US
- There is no basis step-up or gain reduction as a result of holding the new property for a period of time
- Generally, exchanges may occur between related parties (subject to anti-abuse rules)
- Under Tax Act, section 1031 only applies to real property exchanges

Gain from deferred QOZ Investments



- Any eligible gains elected to be deferred generally must be reinvested in a QOF within 180 days of the asset’s sale or exchange
- The deferred gain (less any basis step ups) generally is recognized on the earlier of the sale or exchange of the QOF interest or December 31, 2026
- Initial basis in the QOF investment is zero
- QOZB property must be located in a QOZ
- Deferred gain recognized on sale of entire QOF interest may be deferred by reinvesting in another QOF during the deferral period
- A basis step-up of 10% occurs if the interest in the QOF is held for at least 5 years and another 5% if the interest in the QOF is held for at least 7 years (only applicable to QOF investments made prior to 2022). After the QOF interest is held for 10 years, the basis in the interest may be increased to the FMV when sold or exchanged.
- Only gain on the sale or exchange with an unrelated person qualifies
- Eligible gains are those treated as capital gain from any property held by the taxpayer

Section 1202- Sale of Qualified Small Business Stock (“QSBS”) compared to Sale of QOF

Sale of QSBS



- Gain from the sale of QSBS stock (C corp stock <\$50M assets) can be excluded
- 5 year holding period for exclusion benefit
- Maximum exclusion of either \$10M or 10X invested basis (up to \$500M)
- QSBS must be originally issued to a non-corporate shareholder
- While the QSBS is outstanding, 80% of corp’s assets must be used in the active conduct of a “qualified trade or business” (no service businesses, hotel/motel/restaurant, etc.)
 - More than 10% of the corp’s assets can’t be stock or securities or real estate that is not used in a trade or business (rental RE and dealer activity doesn’t count)
- Working capital and investment assets must be used w/in 2 years to meet the trade/business requirement
- If held > 6 mos., can reinvest full amount realized from sale of QSBS stock in a new QSBS w/in 60 days

Sale from QOF



- Any capital gain can be rolled over into a QOF, deferred and partially excluded, and gain from new investment can be excluded
- 10 year holding period for exclusion benefit
- No limit on exclusion
- QOZB Property must meet original use/Substantial Improvement requirement
- QOZB Property must be used in a trade or business of the QOF/QOZB, and any QOZB must derive 50% of its income from the “active conduct of a trade or business” in a QOZ or within multiple QOZs
- Working capital generally must be spent by QOZB within 31 months to meet the 5% nonqualified financial property test and is a bad asset at the QOF level
- QOF property may be sold w/in the 10 year period and reinvested w/in 12 months into new QOF property (gain/loss is recognized but not a QOF “inclusion” event)



QOZ Investments Paired with other Federal Tax Credits and/or Incentives

Qualified Opportunity Zones

QOZ Investments Paired with other Federal Credits and/or Incentives

Investments in projects that generate tax incentives (including credits), such as renewable energy and low-income housing projects, can be strategically placed in QOZs to combine both incentives.

- Traditionally, tax equity investments offer investors a return in the form of tax credits, tax deductions, cash flow from operations, and sales proceeds.
- If appropriately integrated with a QOZ investment, an investor's internal rate of return may be substantially improved with the added QOZ benefits of gain deferral, gain reduction, and appreciation exclusion on disposition.
- Combining the tax benefits of a QOZ investment with those associated with other tax-incentivized projects can be very attractive to investors seeking to obtain tax-incentivized financial returns.
- QOZ benefits are available for the investors in QOFs
 - All other Federal tax credits and incentives are generally available to QOFs and QOZBs

QOZ Investments Paired with other Federal Credits and/or Incentives Cont'd.

Investments in projects that generate tax incentives (including credits), such as renewable energy and low-income housing projects, can be strategically placed in QOZs to combine both incentives.

- Federal tax credits and incentives that can be paired include:
 - Renewable energy tax credits/incentives and alternative fuel tax credits/incentives
 - Investment tax credits under Section 48
 - Production tax credits under Section 45
 - Tax credit under sections 30B, 30C, 30D, 40, 40A, 45, and 45Q
 - Excise tax incentives
 - Special accelerated deductions under Section 168(c), Section 168(k), Section 168(m), and Section 169
 - Real estate tax credits/incentives
 - Rehabilitation tax credits (Section 47)
 - Low income (Section 42)

QOZ Investments Paired with other Federal Credits and/or Incentives Cont'd.

Investments in projects that generate tax credits, such as renewable energy and low-income housing projects, can be strategically placed in QOZs to combine both incentives.

- New markets (Section 38)
 - Manufacture of energy efficient homes (Section 45L)
 - Purchase of energy efficient home improvements (Section 25C)
 - Installing renewable energy property in a residence (Section 25D)
 - Special accelerated deduction under Section 168(k) and Section 179D
- Employment Tax Credits
- Work Opportunity Tax Credit (“WOTC”) under Section 51



State Conformity for QOZ Investments and State and Local Credits and/or other Incentives

Qualified Opportunity Zones

State Conformity Considerations

— Types of Conformity

- Automatic, static, or selective
- Partial conformity based on QOZs located within the state (e.g., AR, HI)
- Nonconformity – based on choice or on lack of action by a static conformity state

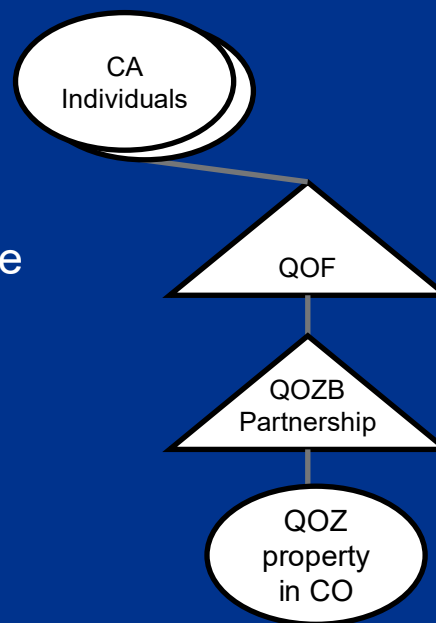
— State Sourcing Rules Will Impact Results

- Taxation of real estate sale, vs. stock sale, vs. sale of partnership interest
- Credit regime for cross-state investing

— NC updated IRC conformity but decoupled from IRC 1400Z

— AL legislation - subsidy for underperformance

— WV tax base subtraction (until TY2023) for income from activities within a WV QOZ



	Federal	CA (non-conforming)	CO (conforming)
Deferral	\$0 gain	\$100 gain	N/A
12/31/26	\$100 gain	\$0 gain	\$0 gain*
Exit	\$0 gain	\$200 gain**	\$0 gain
TOTAL	\$100	\$300	\$0

Illustrative example:

- **\$100 “eligible gain” from sale of stock**
*Deferred gain was not sourced to CO

- **\$100 invested in a RE-focused QOF**

- **Exit after 10 years for \$200 gain**

**CA residents include gain in their personal income tax base regardless of where sourced

State QOZ Conformity Categories

Please note that states may change conformity and that further state legislation is possible

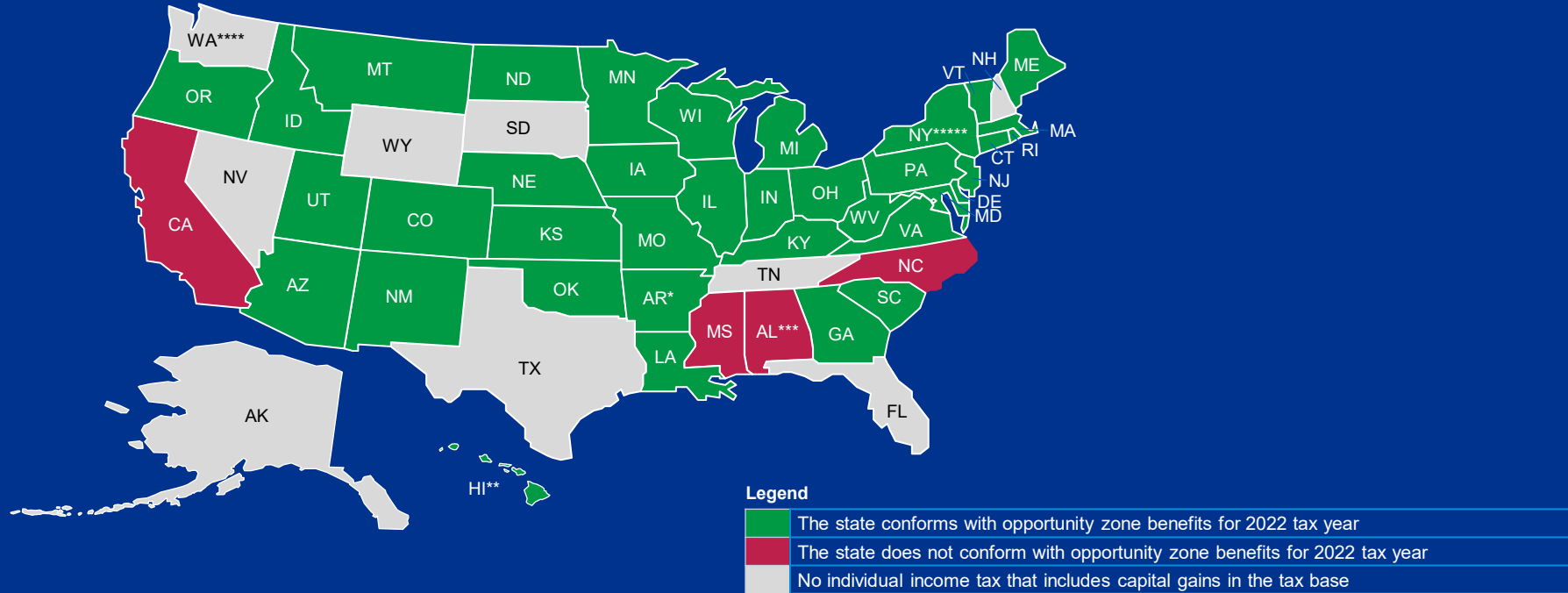
Corporations

- **38 states currently conforming** (rolling or updated state IRC conformity)
- **2 state updated IRC conformity in a limited manner (CA) or more robust manner (NC) but decoupled from IRC 1400Z**
- **1 state (NY) decouples from the initial deferral for gains that would be recognized starting in 2021**
- 2 states with only selective IRC conformity (AR, MS) - **of which one does not conform (MS)** and one conforms but only for QOZs located within this state (AR)
- 1 additional state, starting with TY19, conforms but only for QOZs located within such state (HI)
- 4 states impose gross receipts taxes and not corporate income tax (NV, OH, TX, WA)
- 2 states don't impose corporate income tax or gross receipts tax (SD, WY)
- DC also conforms but only for QOZs located within this jurisdiction per 2020 legislation

Individuals

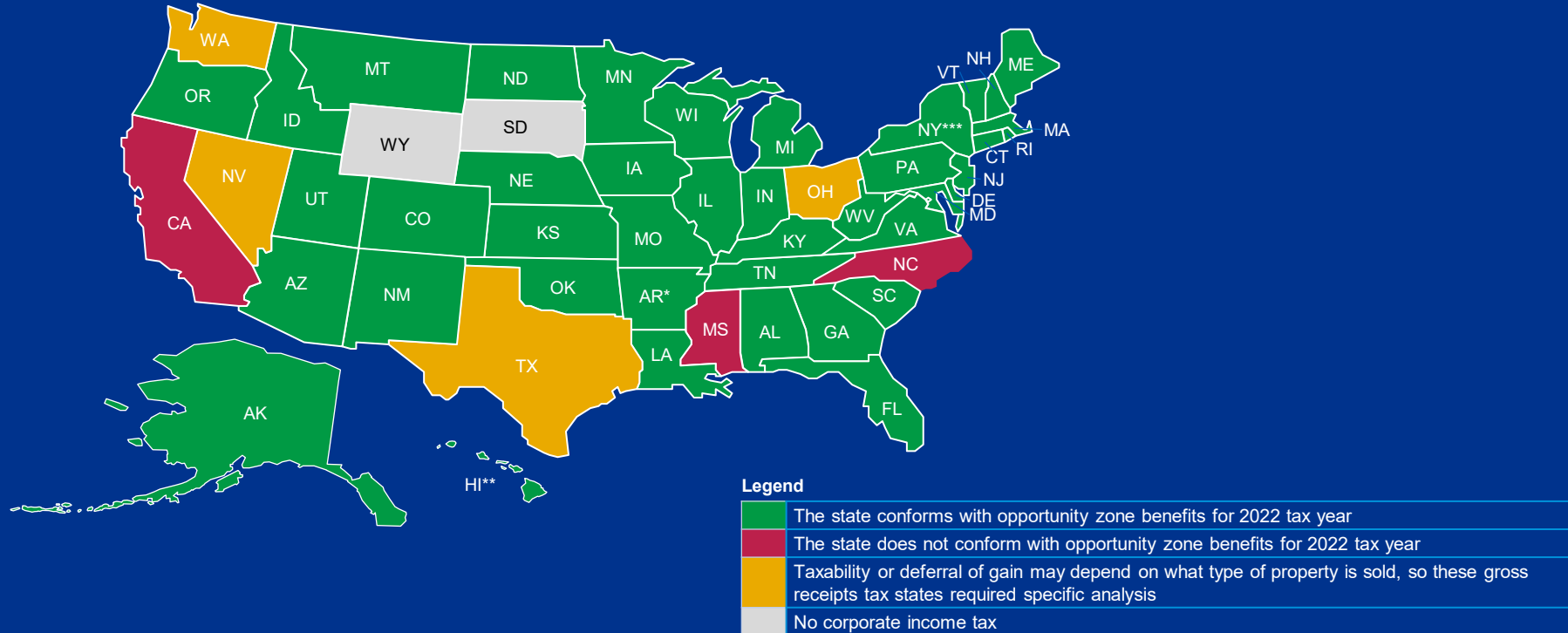
- **32 states currently conforming** (rolling or updated state IRC conformity)
- **2 state updated IRC conformity in a limited manner (CA) or more robust manner (NC) but decoupled from IRC 1400Z**
- **1 state (NY) decouples from the initial deferral for gains that would be recognized starting in 2021**
- 6 states where IRC conformity is different for personal income tax or only have selective IRC conformity (AL, AR, MA, MS, NJ, PA) - of which **one does not conform (MS)**, three conform (MA for tax years beginning 1/1/22 and after; NJ; PA for tax years beginning 1/1/20 and after), one conforms but only for QOZs located within this state (AR), and one conforms but only for QOZs located within this state if investment is made in a state "approved opportunity fund" (AL)
- 1 additional state, starting with TY19, conforms but only for QOZs located within such state (HI)
- 3 states don't impose personal income tax but impose gross receipts tax on certain businesses (NV, TX, WA), plus WA imposes a capital gains tax on individuals starting 1/1/2022
- 6 states don't impose personal income tax or gross receipts tax on individuals (AK, FL, NH, SD, TN, and WY)
- DC also conforms but only for QOZs located within this jurisdiction per 2020 legislation

State QOZ Conformity – Individual Income Tax



Information is current as of December 31, 2022
 State conformity to P.L. 115-123 (Puerto Rico) may vary from the above
 The District of Columbia only conforms with respect to QOZs located within this jurisdiction
 * Arkansas only conforms with respect to QOZs located within this state
 ** Hawaii only conforms with respect to QOZs located within this state
 *** Alabama conforms, effective 8/5/19, if investment is made in a state "approved opportunity fund"
 **** Washington imposes a capital gains tax on individuals starting 1/1/2022
 ***** New York decouples from the initial deferral to 2026 (for gains that would be recognized starting with 2021)

State QOZ Conformity – Corporate Income Tax

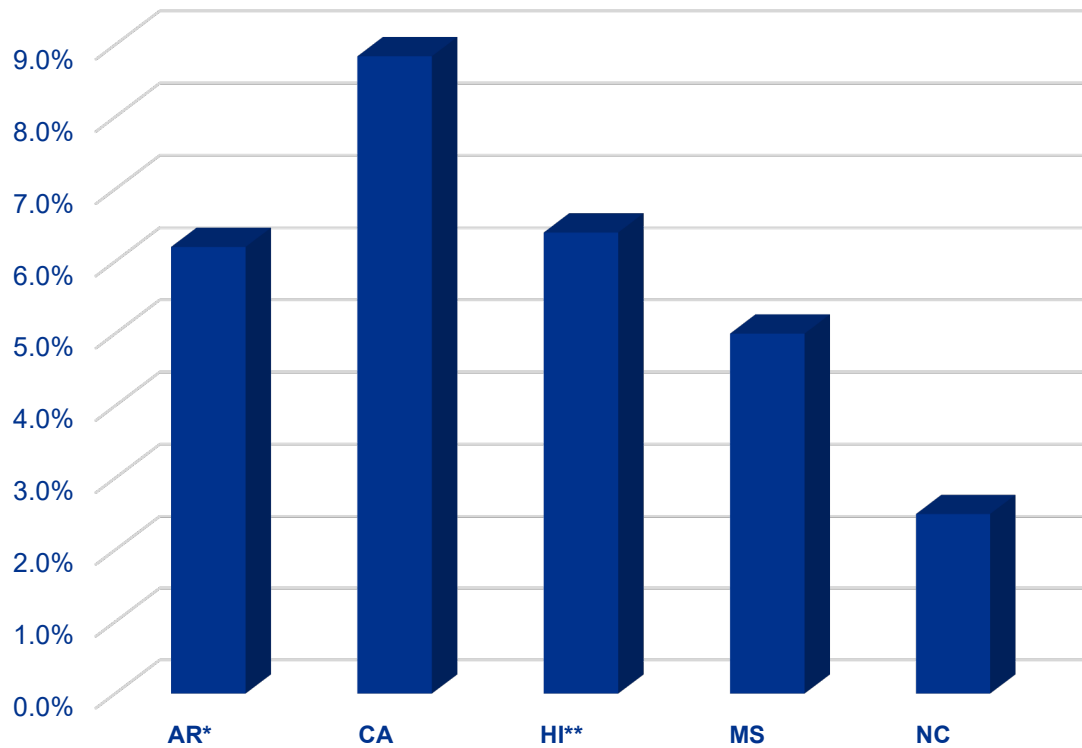


Information is current as of December 31, 2022
 State conformity to P.L. 115-123 (Puerto Rico) may vary from the above
 The District of Columbia only conforms with respect to QOZs located within this jurisdiction
 * Arkansas only conforms with respect to QOZs located within this state
 ** Hawaii only conforms with respect to QOZs located within this state
 *** New York decouples from the initial deferral to 2026 (for gains that would be recognized starting with 2021)

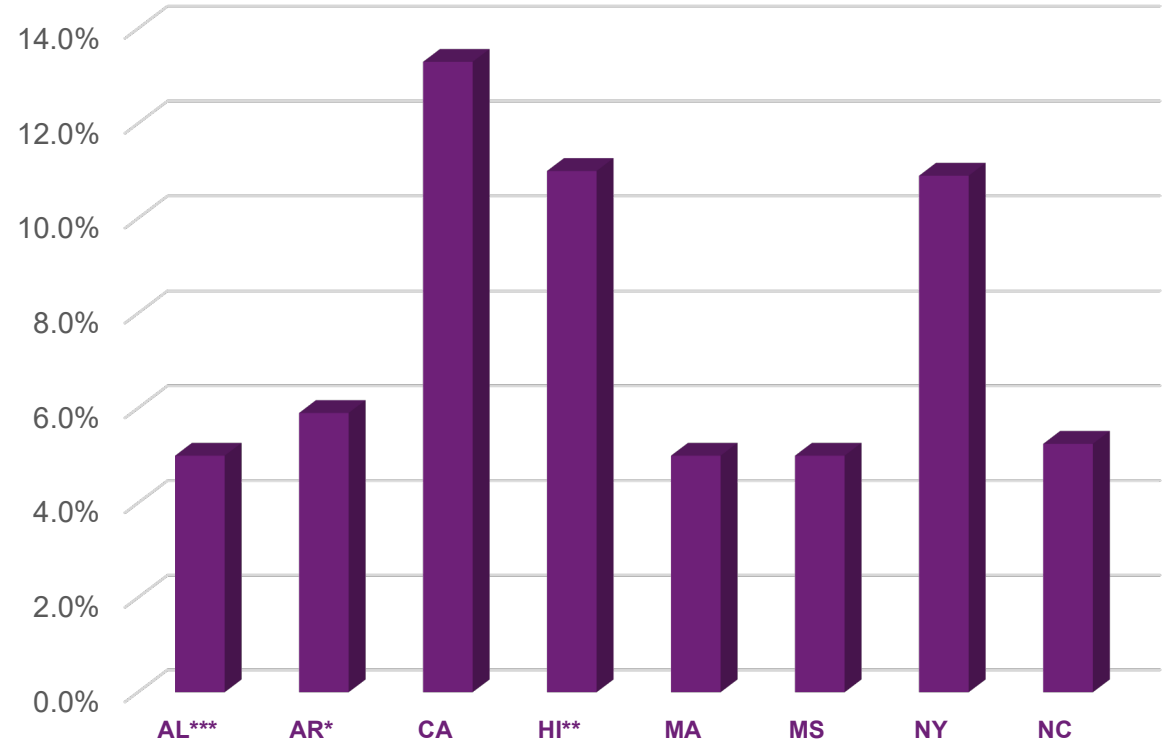
State Tax Rates – Tax year 2021 Highest Marginal Rate

Please note that states may change conformity and that further state legislation is possible

State Corporate Income Tax Rates



State Personal Income Tax Rates

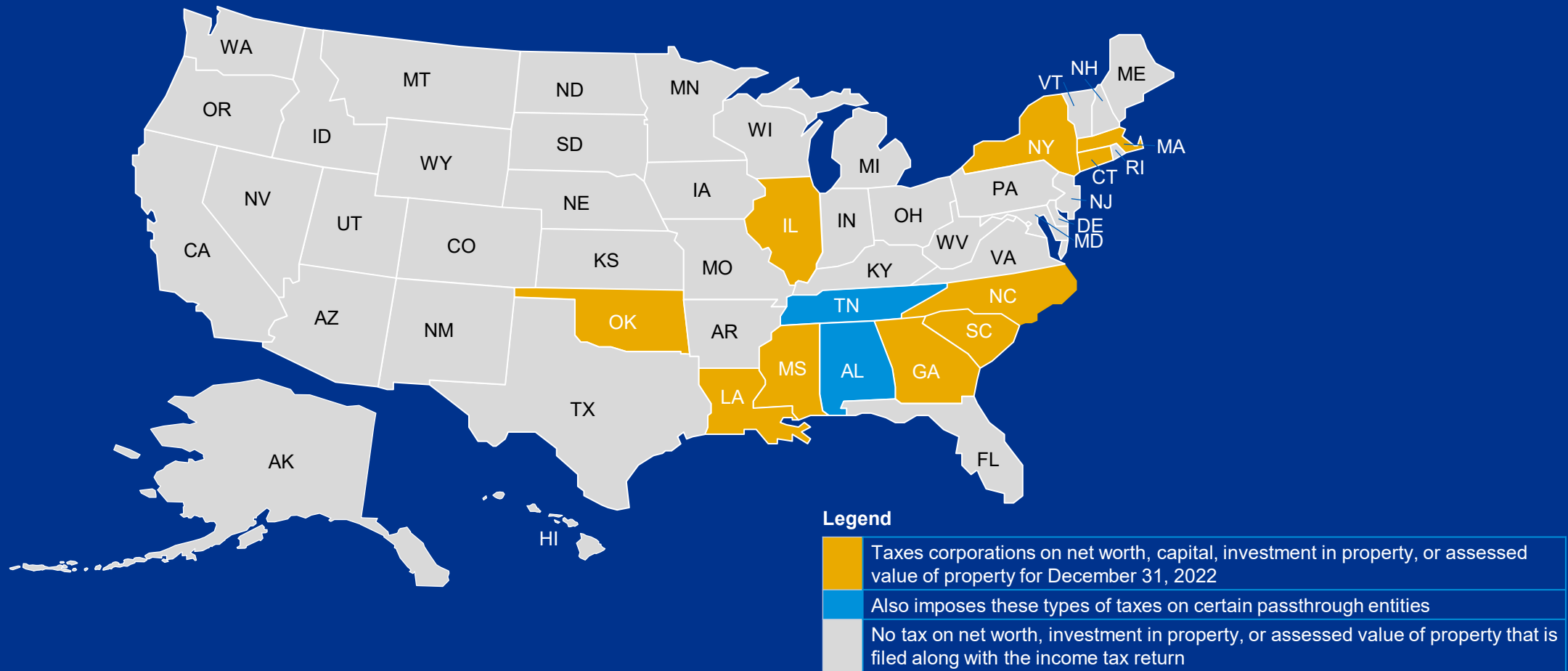


* Arkansas only conforms with respect to QOZs located within this state

** Hawaii only conforms with respect to QOZs located within this state

*** Alabama conforms, effective 8/5/2019, if investment is made in a state “approved opportunity fund”

State Taxes on net worth, capital, or property value



Information is current as of December 31, 2022
This map does not indicate property taxes imposed on tangible or real property

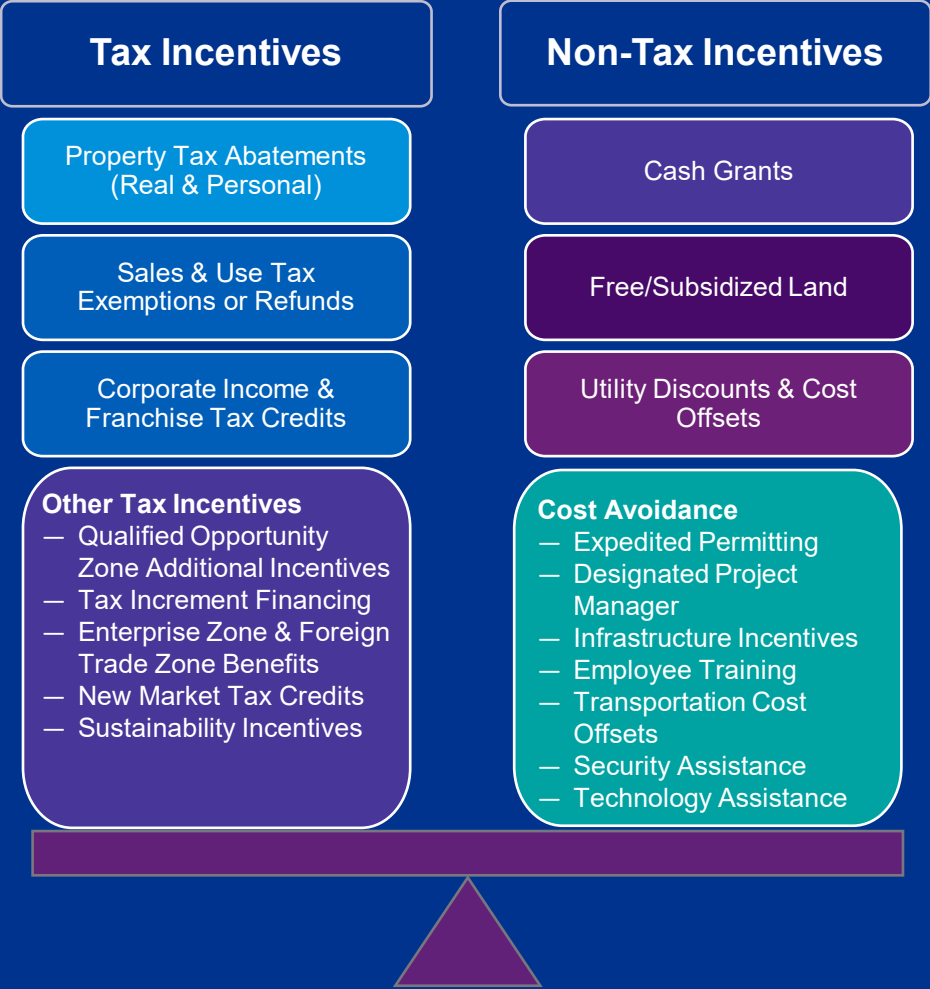
Business incentives come in a variety of forms

- States and many local communities rely on business incentives to stimulate investment and economic development.
- Frequently, incentive agreements result in a “win-win” situation for both the company and the jurisdictions involved.
- Incentives often have a significant impact on a company’s bottom-line when they are realizable and recognizable.
- Typically incentives can offset between 10% - 15% of project costs.

There are two categories of business incentives:

Statutory Tax Credits
 Established by jurisdictional statutes and are available “as of right” if qualifications are met.

Discretionary & Negotiated Incentives
 Granting jurisdictions distribute incentives including cash and/or grants to approved projects. Skilled negotiations with granting jurisdictions can result in increased incentives.





Impact Investing in QOZs

Qualified Opportunity Zones

QOZ Snapshot

- QOZs are home to 31 million people, 56 percent of whom are minorities
- The average QOZ has a poverty rate nearly double the national average
- The median income of families living in QOZs is 40 percent below the national average
- Prime age worklessness in QOZs is nearly 10 points higher than the U.S. as a whole
- Life expectancy for zone residents is four years shorter than it is for non-zone residents
- 71 percent of QOZs meet the U.S. Treasury Department’s definition of “severely distressed”
- More than 96 percent of QOZs do not show readily observable signs of gentrification

Source: Economic Innovation Group, “The State of Socioeconomic Need and Community change in Opportunity Zones,” December 2018.

Impact Investing Lens for QOZ Investments

- Legislative quid pro quo
- Increase capital/deal flow
- Incentives/inducements
- Marketing/investor demand
- Risk management
- Right thing to do



Even where an investor's objectives are purely commercial, successful projects will benefit from attention to existing community needs and priorities.



KPMG QOZ Services

Qualified Opportunity Zones

KPMG QOZ Services

QOZ advice will be provided to you by our leading specialists who advise on QOZ transactional and reporting related matters. Our QOZ team is in regular contact with officials from the IRS, Treasury, and other government entities on important issues and needed guidance in order to assist clients to successfully implement QOF and QOZB entities. Our QOZ services include:

Tax Services

- Provide a review for qualification purposes of the Eligible Gains to be deferred under the QOZ rules.
- Review from a tax perspective formation documents for the QOFs and QOZBs to be taxed as either a partnership or corporation and inclusion of the required language and disclosure to operate as a QOF.
- Review contribution and partnership agreements for potential federal and state tax implications.
- Assist the QOF in acquiring QOZB Property or investment in QOZBs (including assets to be acquired by the QOZB) to satisfy the QOF (and QOZB) qualified asset tests.
- Provide annual tax return reporting services with respect to the QOFs, QOZBs, and other related entities.
- Monitor ongoing compliance of QOF's 90% Investment Standard under the QOZ requirements for purposes of calculation of any annual tax penalty for failure to meet the Investment Standard.

KPMG QOZ Services

Tax Services Cont'd.

- Monitor ongoing compliance with annual QOZB Tests including compliance with the WCSHP documentation
- Planning and Structuring alternatives for QOFs and QOZBs
- Tax opinions related to qualification of QOFs and QOZBs
- Private Letter Ruling submissions (including section 9100 relief for late QOF self-certification).
- QOF and QOZB structuring, modeling, analysis, and maintenance.
- IRS and State examination support.
- Modeling of QOZ tax benefits and impact on Internal Rate of Return (“IRR”) for QOF investors.

KPMG QOZ Services

Advisory Services

- Design, implementation, and reporting for Impact Investing including each of the following components:
 - Socially Responsible Investing (“SRI”);
 - Environmental, Social, and Governance (“ESG”) factors;
 - Diversity, Equity, and Inclusion (“DEI”) Principles; and,
 - Sustainable Initiatives (“SI”).
- Valuation of QOFs Investments for 90% Investment Standards and valuation of QOZB’s tangible and intangible assets for QOZB Tangible Property Test, Intangible Property Test, and NQFP Test.
- Develop an unique ecosystem of internal and external data sources and tools to guide strategic investments in QOZs. Strategies can be tailored to an investor or developer’s geographic or special focus on key markets.
- Provide clients detailed analyses for QOZ development through use of solar irradiance data, socioeconomic data, market trends, state tax incentives, and other critical points of interest to foster strategic growth and improve investments.

Audit Services

- Annual, semi-annual, quarterly Audits and/or Review of QOFs/QOZBs.
- Analysis and disclosure for QOF’s Financial Statements and QOZB’s Financial Statements.
- Audit and/or Review of overall Impact Investing and/or specific components of Impact Investing, i.e. SRI, ESG, DEI, and SI



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Qualified Opportunity Zones

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