What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

Gene Chianelli is a tax law attorney with more than 20 years of experience assisting private and public entities with state and federal tax policy, planning, and compliance. He is a member of the North Carolina Bar Association Tax Council and currently serves as an adjunct professor at Campbell University's Lundy-Fetterman School of Business, where he teaches advanced income taxation to law students and students enrolled in the school's Master of Trust and Wealth Management program.

UPDATE: Treasury Department Issues Highly-Anticipated Proposed Regulations on Opportunity Zones

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On April 17, 2019, the United States Department of the Treasury ("Treasury") issued its second round of proposed regulations related to investment in Qualified Opportunity Zones ("QOZs") and Qualified Opportunity Funds ("QOFs"). Treasury's first round of proposed regulations and other guidance on QOZs and QOFs was issued on October 26, 2018.

The Tax Cuts and Jobs Act of 2017 created the QOZ concept to provide tax advantages for investments in lower-income areas. Investors who realize certain capital gain income may reinvest in a QOF within 180 days to defer and potentially achieve exemption from capital gains tax from QOF investments.

Treasury's issuance of this latest round of proposed regulations was highly anticipated in the business community. It provides critical information to QOF sponsors, potential investors, and project owners and operators involved in operating businesses, real estate development, venture capital, and project finance in QOZs.

Of special interest in this new round of proposed regulations is guidance relating to the qualification criteria for operating businesses and venture capital and further clarity in the qualification criteria for real estate development projects. Smith Debnam stands ready to advise and assist clients in fund formation and investor utilization; sponsor, developer, and operator project qualification; and continued compliance under the QOZ incentive program.

We are reviewing the new round of proposed regulations and will offer our detailed analysis of them in the near future. For the time being, we point out that some "highlights" of the new proposed regulations include guidance on:

- Special elections by investors for sales of assets when investment in a QOF is longer than 10 years;
- The "operating business" rules, including clarification of the gross income and intangibles tests;

- The definition of "substantially all" when used in the QOZ and QOF statutes;
- REIT asset transfers;
- Treatment of leased property (related and unrelated parties);
- What constitutes "original use" of tangible property;
- Application of the "substantial improvement" test among multiple assets;
- Treatment of gain from interim sales of assets when a QOF investment is held for less than 10 years;
- Treatment of debt-financed distributions;
- Application of the "active trade or business" requirement
- Transfers of interests in QOFs at death;
- Treatment of special allocations;
- The 31-month working capital safe harbor established by the first set of proposed regulations; and
- The 90% semi-annual testing rules related to QOF proceeds raised in the prior six months.

The complete proposed regulations can be found on the IRS website here: https://www.irs.gov/pub/irs-drop/reg-120186-18-nprm.pdf.

Please contact Gene Chianelli at (919) 250-2231 or by e-mail at echianelli@smithdebnamlaw.com if you would like to discuss the new proposed regulations or any other issues related to QOZs or QOFs.

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