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## IRS Extends Deadline to Invest in QOFs Due to COVID-19

The IRS issued Notice 2020-39 (<https://www.irs.gov/pub/irs-drop/n-20-39.pdf>) in which it provides relief, under its authority to postpone certain deadlines by reason of a presidentially declared disaster, for qualified opportunity funds (QOFs) and their investors in response to the ongoing COVID-19 pandemic. Notice 2020-39 provides that if a taxpayer's 180th day to invest in a QOF would have fallen on or after April 1 and before Dec. 31, the taxpayer now has until Dec. 31 to invest that gain into a QOF. The IRS stated that the 180th day for some of these taxpayers was already postponed through July 15, 2020, by Notice 2020-23 (<https://www.irs.gov/pub/irs-drop/n-20-23.pdf>). Notice 2020-39 also addresses the application of certain relief provisions in the Section 1400Z-2 regulations, provides relief for certain failures by a QOF to meet the 90% investment standard, postpones the time periods for satisfying certain other requirements, and confirms that the 24-month extension for the working capital safe harbor and the 12-month extension for QOFs to reinvest certain proceeds are available to otherwise qualifying QOFs and qualified opportunity zone businesses. (Section references are to the Internal Revenue Code of 1986, as amended.)

## IRS Proposes Methods for Reporting Partner Capital Accounts

The IRS issued Notice 2020-43 (<https://www.irs.gov/pub/irs-drop/n-20-43.pdf>) in which it proposes two new methods – the Modified Outside Basis Method and the Modified Previously Taxed Capital Method – for reporting partner capital accounts on partnership income tax returns. The new methods are proposed to apply to partnership tax years that end on or after Dec. 31 and are proposed to be the exclusive methods for such reporting. The IRS requests comments on the proposed methods.

## IRS Issues Proposed Regulations Defining Real Property for 1031 Like-Kind Exchanges

The IRS has issued proposed reliance regulations (REG-117589-18) (<https://www.federalregister.gov/documents/2020/06/12/2020-11530/statutory-limitations-on-like-kind-exchanges>) that add a definition of real property for purposes of Section 1031 tax-free like-kind exchanges. The proposed regulations also provide a rule addressing a taxpayer's receipt of personal property that is incidental to real property the taxpayer receives in an otherwise tax-free like-kind exchange. Section 1031, as amended by the 2017 Tax Cuts and Jobs Act (TCJA), provides that no gain or loss is recognized on the exchange of "real property" held for productive use in a trade or business or for investment (relinquished real property) if the relinquished real property is exchanged solely for real property of a like-kind that is to be held either for productive use in a trade or business or for investment (replacement real property). Prior to the TCJA amendment, Section 1031 was not limited to real property; therefore, there was no need to define real property for purposes of Section 1031.

## IRS Issues Proposed Rules for Tax on Excess Tax-Exempt Organization Executive Compensation

The IRS has issued proposed regulations (REG-122345-18) (<https://www.federalregister.gov/documents/2020/06/11/2020-11859/tax-on-excess-tax-exempt-organization-executive-compensation>) on the excise tax applicable to tax-exempt organizations that pay covered employees more than \$1 million or that make any excess parachute payment paid to a covered employee. Under Section 4960(a), an "applicable tax-exempt organization" (which includes an organization exempt from tax under Section 501(a)) must pay a 21% excise tax

on (1) remuneration in excess of \$1 million paid to a “covered employee” (excess remuneration) plus (2) any “excess parachute payment” paid to a covered employee during the tax year. The proposed rules provide guidance for determining: (a) the amount of remuneration paid for a tax year (including for purposes of identifying covered employees); (b) whether a parachute payment is paid; (c) whether excess remuneration is paid and in what amount; (d) whether an excess parachute payment is paid and in what amount; and (e) the allocation of liability for the excise tax among related organizations.

### **IRS Updates Lists of Countries with 2020 Nonresident Alien Interest Reporting Requirements**

The IRS issued Revenue Procedure 2020-15 (<https://www.irs.gov/pub/irs-irbs/irb20-23.pdf>) in which it updates two lists of countries with which the U.S. has in effect an agreement that requires payors to report certain deposit interest paid to nonresident alien individuals who are residents of the other country under Treasury Regulation Sections 1.6049-8(a) and 1.6049-4(b)(5). One list is of countries with which the U.S. has in effect an income tax or other treaty or a bilateral agreement. The other list is of countries with which IRS has determined that the automatic exchange of information is appropriate.

### **IRS Issues Guidance Permitting States to Extend Empowerment Zone Designation**

The IRS issued Revenue Procedure 2020-16 (<https://www.irs.gov/pub/irs-drop/rp-20-16.pdf>), which provides an automatic procedure for a state or local government in which an empowerment zone is located to extend the empowerment zone designation made under Section 1391(a). An empowerment zone is an area of high poverty and unemployment located in an urban or rural area that is designated under Section 1391(a) by the Secretary of Housing and Urban Development or the Secretary



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of Agriculture. Qualifying taxpayers and businesses located within the boundaries of empowerment zones are eligible for Federal income tax incentives to promote economic development in those designated areas. For example, Section 1396 provides empowerment zone employment credits, and Section 1397A provides for an increase in expensing under Section 179.

### **IRS Outlines Capital Asset Holding Period Issues**

The IRS issued Legal Advice Issued by Associate Chief Counsel 2020-005 (<https://www.irs.gov/pub/lanoa/am-2020-005.pdf>) in which it discusses the effect on a sole shareholder’s holding period in corporate stock when the shareholder makes a transfer of money or other property to the corporation for no consideration (an example of what the IRS calls a meaningless gesture transaction). The memo also recommends that the IRS challenge transactions in which a shareholder’s purported holding period in stock of a wholly-owned corporation does not consider the effect of meaningless gesture transactions.