

Qualified Opportunity Funds

A Guide for Real Estate Investors

There are a variety of tax incentives included in the 2017 Tax Cuts and Jobs Act (TCJA) designed to spur long-term economic development in economically distressed communities. The Qualified Opportunity Zones (QOZs) Program provides an avenue to invest in these communities through the instrument of Qualified Opportunity Funds (QOFs) to reap tax benefits such as a temporary deferral of tax on gains, the elimination of up to 15% of the tax on the deferred gain, and potential exclusion from tax on gains generated from the appreciation of investments within the QOF.

According to a report from Real Capital Analytics, opportunity zones account for 10% of the investable universe and have averaged \$50 billion in annual acquisition volume in recent years, so there is considerable interest in this investment strategy.

While the incentives for investing in Qualified Opportunity Zones can be significant, they can often be complex, and there are still many unanswered questions about compliance. To address this uncertainty and help real estate investors navigate this tricky terrain, EisnerAmper has created *Qualified Opportunity Funds: A Guide for Real Estate Investors*.

Contents



Follow the link below to download a copy of
Qualified Opportunity Funds: A How-To Guide for Real Estate Investment Funds
eisneramper.com/howtoqof

About EisnerAmper

EisnerAmper LLP provides audit, accounting and tax services; valuation, due diligence, internal audit and risk management, litigation consulting and forensic accounting; as well as technology, compliance and regulatory, operational consulting and other professional services to a broad range of clients. The firm's dedicated Real Estate Private Equity practice supports real estate private equity and opportunity funds in complex matters, such as navigating operating agreements, waterfall provisions and specific investor-ownership issues. EisnerAmper specialists have worked in all segments of the industry, including commercial, residential, hospitality, mixed use, industrial and retail properties. They understand the intricacies of these funds, providing specialized services to mitigate challenges and leverage opportunities.

EISNERAMPER

eisneramper.com

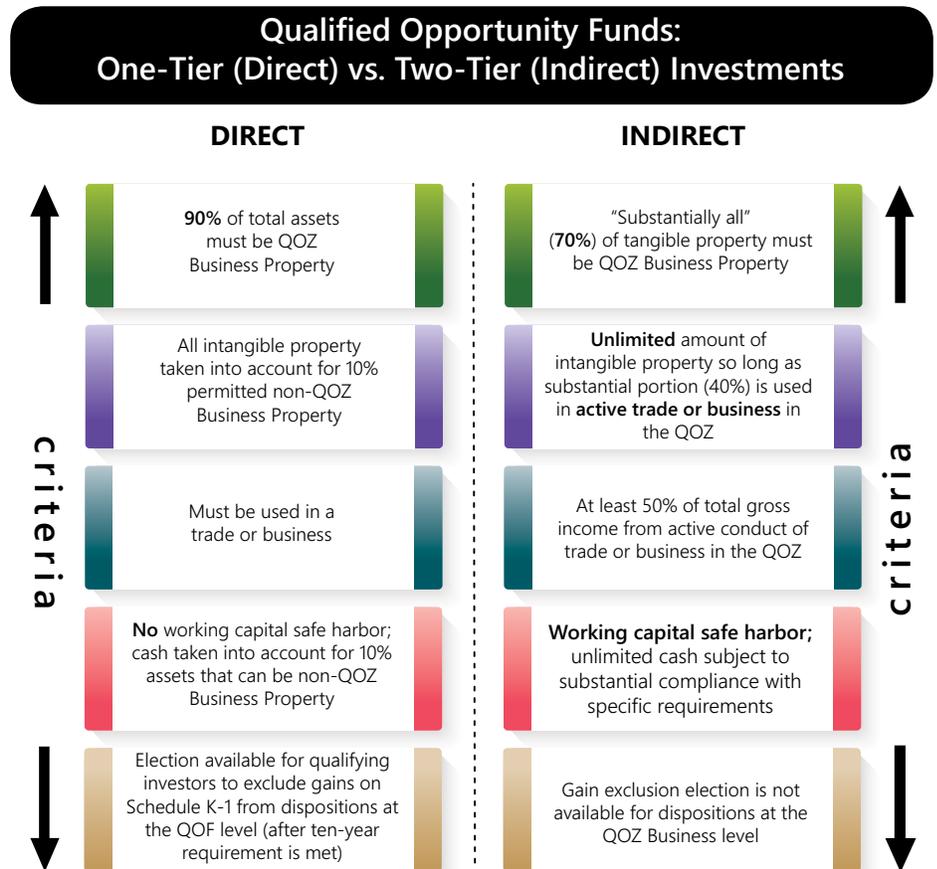


Direct vs. Indirect Investments

The proposed regulations provide specific provisions that require a taxpayer to carefully compare the single-tier, or direct investment structure, versus the indirect, or two-tier investment structure. The charts on the following pages are examples of formations of one- and two-tier structures.

The asset test requirements, working capital safe harbor, and investor gain exclusion election are three key items that must be analyzed in each structure.

In an indirect investment configuration, the overall structure can have as little as 63% of QOZ Business Property in order to pass the 90% asset test as opposed to a single-tier structure which requires 90% of its assets to be QOZ Business Property. The asset test at the QOF level is 90%, whereas it is only 70% at the QOZ Business level. Furthermore, it should be noted that the 90% test at the QOF level uses a fraction, the denominator of which is all assets of the QOF. At the QOZ Business level, however, the 70% test uses a fraction, the denominator of which is all tangible property owned by the QOZ Business.



Therefore, complying with the test is less onerous at the QOZ Business level.

The working capital safe harbor which allows a QOZ Business to maintain working capital for up to 31 months without failing the asset test is not allowed at the QOF level. It is only available for a QOZ Business and therefore only allowed for the two-tier structure.

The proposed regulations provide that where a taxpayer has held a qualifying investment in a QOF for at least ten years and the QOF disposes of QOZ property, the taxpayer may make an election to exclude from gross income some or all of the capital gain from such disposition which is reported on the Schedule K-1 that the taxpayer receives. This election is only available for gains generated at the QOF level. Gains incurred at the QOZ Business level in a two-tier structure may not be eligible for the election in accordance with the current proposed regulations.