

ALERTS

Section 1031 Exchanges and Qualified Opportunity Zone Investments: IRS Extends Filing Deadlines

April 17, 2020

In response to the COVID-19 pandemic and resulting market slowdown, the IRS has granted a filing extension to taxpayers involved in Qualified Opportunity Zone investments and Section 1031 exchanges. The IRS notice, dated April 9, 2020, extends the filing deadline to July 15, 2020. This extension will help taxpayers avoid significant capital gains taxes caused by closing delays. However, it is unclear whether the Section 1031 deadline may actually be extended further than the July 15, 2020 deadline provided in the IRS's most recent notice.

Last month, the IRS extended the 2019 tax filing and payment deadline for taxpayers to July 15, 2020. Pursuant to the subsequent Notice 2020-23, dated April 9, 2020 ("Notice"), the IRS applied the extension more broadly to all taxpayers, including individuals, trusts, estates, corporations and other non-corporate tax filers that have a filing or payment deadline falling on or after April 1, 2020 and before July 15, 2020. Therefore, taxpayers involved in a Section 1031 exchange or a Qualified Opportunity Zone investment that is due to be performed on or after April 1, 2020 and before July 15, 2020, qualify for the July 15, 2020 deadline extension. The Notice does not specifically reference these transactions, but the Notice broadly refers to time-sensitive actions, a category which includes Section 1031 exchanges or Qualified Opportunity Zone investments.

Deadline for Section 1031 Exchanges

In a Section 1031 exchange, an investor who sells an investment property may defer payment of capital gains taxes by purchasing a “like-kind property” with the profits from the sale. Typically, the investor has 45 days from the sale of the investment property to identify a like-kind property and 180 days from the sale of the investment property to close the sale of the like-kind property.

Pursuant to the Notice, if the 45-day deadline to identify a property falls between April 1 and July 15, 2020, the deadline to identify will become July 15, 2020. In this case, the 180-day deadline would remain the same, as it would fall outside of the April 1 — July 15, 2020 range. Alternatively, if the 180-day deadline to close the sale of the like-kind property falls between April 1 and July 15, 2020, the deadline will become July 15, 2020.

However, the current Section 1031 extension is shorter than previous Section 1031 extensions under Revenue Procedure 2018-58, Section 17. Pursuant to Procedure 2018-58, the IRS may extend the 45- and 180-day deadlines by 120 days if a federally declared disaster occurs. In addition to providing more time, the 120-day extension provides more uniform relief than the Notice, while Section 1031 investors could receive extensions ranging from a few weeks to a few months under the Notice, all investors would receive 120 days of relief under Procedure 2018-58. Finally, the 120-day extension would provide relief to more taxpayers, as transactions with deadlines before April 1, 2020 but occurring during the pandemic may qualify.

Some argue that despite the broad language of the Notice, Procedure 2018-58 applies to Section 1031 exchanges in place of the Notice because Procedure 2018-58 may have been triggered by the IRS’s issuance of a notice for a federally declared disaster. Even if the Notice does supersede Procedure 2018-58, the broad language of the Notice leaves open the possibility that the IRS could provide more specific guidance permitting a longer extension in the future, or could invoke Procedure 2018-58, although the IRS has not expressed any intention to do so.

Deadline for Qualified Opportunity Zone Investments

In a Qualified Opportunity Zone investment, an investor who sells a property may potentially defer payment of capital gains taxes or exclude the gains from the investor’s income if the gains are invested in a Qualified

Opportunity Fund within 180 days of the sale. Pursuant to the Notice, if the deadline to invest in the Qualified Opportunity Fund falls between April 1 and July 15, 2020, the deadline to invest will become July 15, 2020.

Authored by Julian M. Wise.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the author.

This is a fast-moving topic and the information contained in this Alert is current as of the date it was published.

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