

Treasury Issues Guidance Clarifying Aspects of Opportunity Zone Program

Much-anticipated specifics should spur investment in new program.

The U.S. Treasury Department on October 19, 2018, released proposed regulations and a revenue ruling concerning the Opportunity Zone program, which was enacted as part of 2017's Tax Cuts and Jobs Act. The program provides taxpayers that realize capital gains and invest those gains within 180 days in a "qualified opportunity fund" the ability to defer all, and eliminate a portion of, that gain, and to potentially eliminate gain on the appreciation of the investment itself. The qualified opportunity fund must invest 90 percent of its assets in certain qualifying businesses ("OZ Businesses") and assets in state and federally designated opportunity zones. In addition to other changes, the proposed regulations:

- Clarify that only gain treated as capital gain is eligible for deferral;
- Allow taxpayers to defer gains that have been allocated to them through partnerships and other pass-through entities (and not just gains from the sales and exchanges they themselves have undertaken);
- Provide taxpayers with gain from pass-through entities 180 days from the end of the pass-through entity's tax year to make opportunity fund investments (rather than 180 days from the date an asset is sold by the pass-through entity);
- For opportunity zone investments held for 10 years or more, allow taxpayers to avoid tax on appreciation of such investments until December 31, 2047, if the investments are sold or exchanged prior to that date;
- Provide OZ Businesses a "safe harbor" to, under certain circumstances, hold capital for up to 31 months without violating nonqualified financial property limitations; and
- Enable OZ Businesses to hold up to 30 percent of their tangible property outside opportunity zones or as otherwise nonqualifying assets.

The revenue ruling excludes land values from the calculations that are used to determine whether property is "substantially improved" or used for the first time.

Finally, the regulations solicit comments on several issues and indicate that additional proposed regulations will be issued soon, with topics including the holding period for assets and the definition of "active conduct of a trade or business." Jones Day is monitoring these developments and expects to participate in making comments.



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