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Proposed Regulations Provide Some Clarity for Opportunity Zone Tax Incentive

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The Treasury Department and Internal Revenue Service issued proposed regulations and other guidance on the new "opportunity zone" tax incentive on October 19, 2018. This tax incentive encourages investment in certain distressed and underserved areas by allowing investors to reinvest capital gain from almost any sale and defer (and to some extent permanently eliminate) tax on that gain. If the opportunity zone investment is held long enough, it is possible to never pay tax on any post-acquisition appreciation on the investment.

The recently issued guidance provides clarity on the following aspects of an opportunity zone investment:

- only gain treated as capital gain for federal income tax purposes is eligible for deferral;
- any taxpayer that recognizes eligible gain can take advantage of the tax incentive (including individuals, C corporations, partnerships, partners in partnerships, S corporations, S corporation shareholders, trusts, and estates);
- for purposes of the substantial improvement test, if a taxpayer purchases land and a building, the land does not have to be separately improved to be qualified property and only the basis of the building is considered in determining whether it has been substantially improved;
- for purposes of the asset tests, a qualified opportunity fund that files an applicable financial statement for the taxable year uses the asset values on that financial statement and a qualified opportunity fund that does not file an applicable financial statement uses the cost basis of its assets;
- "substantially all" means "at least 70 percent" for purposes of determining whether substantially all of the tangible property owned or leased by a taxpayer is qualified property; and
- cash designated for acquisition, construction and/or substantial improvement of property may be held for up to 31 months if there is a schedule consistent with the ordinary start-up of a trade or business to spend the funds.

The Treasury Department and Internal Revenue Service also indicated that additional guidance would be issued.

A map and list of the designated qualified opportunity zones can be accessed at this site: https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx.

For more information, please contact Adam M. Cohen, Sarah R. Haradon or Trent A. Timmons.
