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Taxpayer-Favorable Final Opportunity Zone Regulations Issued

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On December 20, 2019, the Treasury Department and Internal Revenue Service issued final regulations on “opportunity zones” and these regulations are scheduled to be published by the Federal Register on January 13, 2020. 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 a limited 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 final regulations made a number of changes from the proposed regulations in ways that provide clarity in a number of areas and more taxpayer-favorable rules in other areas, including the following:

- taxpayers can invest section 1231 gains (regardless of whether they have section 1231 losses) within 180 days after the gain is recognized;
- a taxpayer that is a partner in a partnership with a gain can invest within 180 days of when the partnership recognizes the gain, within 180 days of the end of the partnership's taxable year or within 180 days of when the partnership's tax return is due (without extensions);
- taxpayers that sell assets using the installment method can invest gains within 180 days of receiving an installment payment or within 180 days of the end of the year in which the gain is recognized under the installment method;
- allowing aggregation of property for the “substantial improvement” rule;
- reducing the time a building must be vacant before it can be treated as new to 3 years (or, in some circumstances, 1 year);
- permitting overlapping and sequential “working capital” safe harbors for up to a maximum of 62-months; and
- allowing the elimination of gain on non-inventory assets held by a qualified opportunity fund or any partnership owned by such fund.

For more information, please visit www.hollandhart.com/opportunity-zones or contact Adam Cohen, Sarah Haradon or Trent Timmons.

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