Second Set of Opportunity Zone Proposed Regulations Contain Plethora of Guidance

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The Treasury Department and Internal Revenue Service issued a second set of proposed regulations on the new "opportunity zone" tax incentive on April 17, 2019. 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 new set of proposed regulations provides clarity on many aspects of an opportunity zone investment, including the following:

- taxpayers can invest in an opportunity zone by contributing cash or property to a qualified opportunity fund or by purchasing an interest in a qualified opportunity fund from another investor, but an interest received in exchange for services (e.g., a carried interest) will not be eligible for opportunity zone benefits;
- net section 1231 gain must be reinvested within 180 days after the last day of a taxpayer's taxable year, not within 180 days after the gain is recognized;
- taxpayers can elect to exclude capital gain recognized on an asset sale by a qualified opportunity fund if the taxpayer's 10-year holding period is met, though the election does not impact any ordinary income recognized on the sale (e.g., depreciation recapture); and
- taxpayers are not required to recognize gain on a debt-financed distribution from a qualified opportunity fund that is classified as a partnership if the distribution does not exceed the taxpayer's basis in its interest, but the distribution may reduce amounts treated as invested in the qualified opportunity fund to the extent that modified disguised sale rules apply.

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.

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