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Practice Update

Substantial Income Tax Benefits Await Real Estate Investors in Florida's Qualified Opportunity Zones

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On June 14, 2018, the U.S. Treasury Department and the Internal Revenue Service announced the final round of census tracts in low-income communities in the State of Florida which are designated as "qualified opportunity zones" for federal income tax purposes. The tracts in Florida are listed and described here. There are "qualified opportunity zones" in all 50 states, Washington D.C., and five U.S. possessions. Under a new tax provision enacted under the Tax Cuts and Jobs Act, investors and developers who invest into certain types of investment fund vehicles (referred to herein as Zone Funds) that are involved in qualified opportunity zone projects can realize substantial federal income tax benefits from their investments.

Under the new law, there are two main federal income tax benefits for an investment made in a Zone Fund:

1. The temporary deferral of income tax on gain from the sale of property if the gain is reinvested or rolled-over into a Zone Fund within 180 days of the date the property was sold (with a potential to eliminate 15 percent of this deferred gain); and
2. The permanent elimination of the gain from the investment in the Zone Fund itself if the

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investment is held for at least 10 years.

A Zone Fund is generally an investment vehicle formed as a corporation or partnership in which 90 percent or more of its assets are comprised of:

1. Qualified Opportunity Zone Business Property (generally meaning tangible property used or located in a qualified opportunity zone and purchased after December 31, 2017, where the Zone Fund is the original user of the property or the property is substantially improved by the Zone Fund); or
2. Interests in corporations or partnerships that conduct a Qualified Opportunity Zone Business (generally meaning a business in which substantially all of the tangible property owned or leased is Qualified Opportunity Zone Business Property, other than the business of a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises).

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The federal income tax benefits are limited to sales between unrelated parties and should be available to U.S. and foreign individuals, corporations, and other entities that reinvest gains into Zone Funds.

The temporary deferral lasts until the earlier of the year of the sale of the Zone Fund investment or December 31, 2026. Ten percent of the deferred gain may be effectively eliminated if the investment is held for at least five years, with an additional elimination of five percent of the deferred gain if held for at least seven years (these eliminations are effectuated via basis increases).

The permanent elimination (effectuated in the form of a basis increase) is aimed at post-investment appreciation and requires that deferred gain be invested into a Zone Fund which the investor holds for at least 10 years.

The rules for the types of qualifying properties, businesses, and eligible holding company structures must be strictly adhered to in order to ensure that the investment, and in turn the federal income tax benefits described above, may be obtained.

It is expected that the U.S. Treasury Department will be issuing regulations and other guidance in the near future addressing and clarifying certain important tax issues and ambiguities in the law.

Real estate investment and development in qualified opportunity zones may find additional incentives from local government jurisdictions and quasi-governmental agencies supporting urban revitalization efforts. In Miami-Dade County alone, there are 67 qualified opportunity zones – many of which overlap with census tracts identified as former enterprise/empowerment zones, transit corridors, and community redevelopment agency (CRA) boundaries. City and County officials may view these qualified opportunity zones as areas for (a) economic development to leverage tax-advantaged investments in underserved communities and emerging neighborhoods with existing public dollars available to support redevelopment aimed at revitalization of slum and blight conditions, job creation, and affordable and workforce housing, and (b) encouraging additional density and/or development intensity and accompanying zoning adjustments.

Investors, property owners, and developers who own property in a qualified opportunity zone or are considering an investment in a qualified opportunity zone should consult with qualified tax and real estate counsel in order to determine their eligibility for these income tax benefits.

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