

# CLIENT ALERT

December 20, 2019

1

## TAX

### **BREAKING UPDATE: FINAL OPPORTUNITY ZONE REGULATIONS ISSUED**

by *Jeremy J. Schirra*

On December 19, 2019, the U.S. Department of the Treasury issued final regulations pertaining to Section 1400Z-2 of the Internal Revenue Code ("**Code**") governing the rules for gains invested in opportunity zones. These regulations are now codified in Treasury Regulation Sections 1.1400Z2(a)-1 through 1.1400Z2(f)-1, Section 1.1502-14Z and Section 1.1504-3 (the "**Final OZ Regulations**"). A copy of the complete document submitted to the Federal Register by the Treasury can be found [here](#).

Those who have yearend transactions that are reliant upon the first two tranches of opportunity zone guidance issued on October 29, 2019 and on May 1, 2019 (collectively, the "**Prior OZ Guidance**") need not despair – the *general applicability* of the Final OZ Regulations can be postponed with respect to tax years beginning after December 21, 2017 and on or before the date that is sixty days after the publication of the OZ Regulations in the Federal Register so long as the prior guidance is applied consistently.<sup>1</sup>

The purpose of this update is to notify clients of the issuance of the Final OZ Regulations.

However, three items of note in the Final OZ Regulations are:

- Unlike the rules of the Prior OZ Guidance, eligible gains that may be deferred under the opportunity zone program now include 1231(b) gains and such gains are not required to be recharacterized as ordinary income by sections 1245 or 1250 and without regarding to whether section 1231(a) would determine those gains as capital or ordinary. For those who are unfamiliar with Section 1231, this change is worthy of discussion with your tax professional.
- The Final OZ Regulations retain the general rule of the Prior OZ Guidance that gains eligible for the benefits of opportunity zone investments are limited to capital gains and not ordinary gains; some commenters on the Prior OZ Guidance advocated that the use of the term "gain" in Section 1400Z-2(a)(1) of the Code include ordinary income (inclusive of Section 1245 gain).
- The Final OZ Regulations alleviate several concerns regarding brownfield development projects, including whether buildings located on brownfield sites qualify as "original use" property.

<sup>1</sup> Note, for example, that taxpayers relying on the Prior OZ Guidance must still apply Section 1.1400Z2(2)-1 of the Final OZ Regulations with respect to any elections under Section 1400Z-2 of the Code.

*This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of tax law. The foregoing content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions relating to any of the topics covered.*

FOR MORE INFORMATION CONTACT:



**Jeremy J. Schirra** is Of Counsel in Dickinson Wright's Columbus office. He can be reached at 614-744-2942 or [jschirra@dickinsonwright.com](mailto:jschirra@dickinsonwright.com).