



## Federal Tax ADVISORY ■

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### Opportunity Zones

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By now, every law and accounting firm has published a summary of the opportunity zone regime adopted in the 2017 tax Act. It sort of follows in the line of geographically targeted tax benefits that can be traced to empowerment zones and enterprise communities in the 1993 budget Act. But the signature difference of this regime is that it does not preference capital gains earned in the zone: it preferences capital gains invested into the zones, and unlike Section 1031 does not require that the entire sale proceeds of the first investment be rolled over into the zone investment.

So far, mutual-fund-like investment vehicles have been slow to develop. Rather, traditional real estate developers have been trying to match up targeted investors with specific projects that might have been on their drawing boards anyway. Or, say the CEO of a corporation wants to build a building and lease it to the corporation. She can create her own qualified opportunity fund to do that.

The preamble of the [recently proposed regulations](#) even suggested that the investor could take the equity of the qualified opportunity zone and pledge it for a loan, thus potentially cashing out all of the sale proceeds of the original investment rolled into the new fund.

The rules defining the zone funds, businesses, and properties are quite complex. But one wonders how seriously they will be enforced and who will police them for the investors? Taxpayers investing through promoters should require contractual assurances from entities that can be expected to be around for 10 years that the rules will be satisfied.

The well-advertised deferral and haircut of 15% on the deferred gain sounds good, so long as the tax law is not changed within the 10-year period and rates on capital gains don't substantially increase. Although it is unlikely that rates could go up enough to negate the benefit of deferral, the possibility should be factored into the election.

For more information, please contact [Jack Cummings](#) at 919.862.2302.

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