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Permanent or Temporary Deferral of Tax on Gains: Opportunity Zones - Ballard Spahr

The new tax law, known as the Tax Cuts and Jobs Act, allows states, the District of Columbia, U.S. possessions, and Puerto Rico to designate Qualified Opportunity Zones to encourage new capital investment in low income census tracts by allowing a taxpayer to defer eligible gain by investing in a Qualified Opportunity Zone. Each Qualified Opportunity Zone exists until the December 31 on or after the 10th anniversary of its designation. (See our e-alerts addressing how opportunity zones are designated and the Treasury's expanded list of eligible opportunity zones).

The Opportunity Zone tax incentives are designed to encourage investors to redirect gain from prior investments into investments in Opportunity Zones. Electing taxpayers will be able to defer, and in some cases permanently exclude, certain gains by investing in a Qualified Opportunity Fund. To be eligible, within 180 days of a sale or exchange, a taxpayer must roll-over gain into a Qualified Opportunity Fund and the Qualified Opportunity Fund must use that cash to purchase Qualified Opportunity Zone Property. A Qualified Opportunity Fund is a corporation, LLC, or partnership organized for the purpose of investing in Qualified Opportunity Zone Property that satisfies certain other rules set forth below.

The Qualified Opportunity Zone tax incentives build on incentives provided under the New Markets Tax Credit (NMTC) program and prior capital gains exclusion programs for investments in federally-designated enterprise zones, empowerment zones, and renewal communities. Unlike the NMTC program, however, there is no national limitation on the amount of gain that can be deferred or excluded under this program. Many of the specifics related to the investments and the parameters for the tax relief will need to be clarified by the IRS and the Community Development Financial Institutions Fund (CDFI Fund), which are jointly administering the Qualified Opportunity Zone program. Ballard Spahr will monitor guidance and provide additional updates as guidance is released.

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Ballard Spahr LLP

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