Matthew Peurach

The opportunity found in the zone

Federally qualified opportunity zones and funds are the talk of the investing community; here's why

Many areas need economic revitalization through new capital investment, and a new plan introduced by the U.S. Treasury has been approved in all 50 states, five territories and the District of Columbia. One of the people actively involved in the surge of investor interest in the new revitalization plan is **Matthew Peurach,** a partner at Morris, Manning & Martin, who works in the law firm's corporate, investment funds, real estate capital markets and tax practices.

What are "qualified opportunity zones," and what is the appeal to investors?

Qualified opportunity zones, also called opportunity zones, are low-income communities designated by the U.S. Treasury as areas needing economic revitalization through new capital investment. They have been approved in all 50 states, five territories and the District of Columbia. Taxpayers redirect gains from prior investments into these zones through an investment vehicle referred to as a "qualified opportunity fund." To be eligible, a taxpayer must reinvest gain from an earlier asset's sale or exchange into the new fund within 180 days of the date of such sale or exchange. The fund then uses the capital to acquire qualified assets located within the zones.

The program offers three main tax benefits to taxpayers who rollover gains into a qualified opportunity fund:

- The taxpayer defers paying tax on the original gain up until Dec. 31, 2026
- The taxpayer receives two basis increases with respect to the investment, one on the fifth anniversary and the other on the seventh anniversary of the investment. This eliminates from gross income 15 percent of the original gain rolled into the fund
- If the investment is held for 10 years, the taxpayer excludes from gross income *any gain* attributable to the appreciation in the fund's investments

How much interest is there in doing these deals?

The investor and fund-sponsor appetite has been remarkable. The phone is ringing off the hook with both investors looking to source investments for their gains, as well as sponsors looking to place these investments in their newly formed funds. We expect the deal flow to continue to expand at a rapid pace, particularly once the U.S. Treasury releases further guidance on some of the ambiguities in the law, which was part of the Tax Cuts and Jobs Act of 2017.

What kinds of deals are getting done and by what types of investors?

So far, the deal flow has run the gamut from small, single-asset developments to large, multi-asset, blind-pool offerings. In addition, we are seeing investments in a wide variety of asset classes, including multifamily, retail, office, industrial and mixed-use. Similarly, we have seen significant diversity in the investor base, ranging from retail investors to multinational corporations.

Is there any controversy or cons to opportunity-zone deals?

To become a qualified opportunity fund, an eligible entity self-certifies by completing a form and attaching it to its federal income tax return. No approval or action by the IRS is required. Some have questioned whether a more formal vetting process should be imposed by the federal government. We view the lack of red tape as being one of the most attractive aspects of the program, allowing the ability for investors to act efficiently to help transform an economically distressed area. Given the significant amount of deal flow we have seen already, we believe the Treasury was correct to allow for self-certification.

What are the unknowns at this point for those looking to invest in opportunity zones?

Much ambiguity in the legislation exists; we are awaiting further guidance from Treasury officials. Some unknowns include the identification of the taxpayer eligible to reinvest gain in a fund, the type of gain that is eligible to be reinvested, and the time period during which the fund has to deploy capital into qualified assets, among many others. Notwithstanding this ambiguity, we are optimistic that the Treasury will implement the statute in a flexible manner in order to achieve the spirit of the program — to encourage economic investment for the revitalization of low-income communities. ■

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