

# REAL ESTATE WEEKLY

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## Don't miss tax benefit deadline of Opportunity Zone program

The clock is ticking on a major benefit of the Opportunity Zone program. On December 31, 2019, the 15 percent capital gain tax discount benefit under the Opportunity Zone regulations expires as the seven-year timeframe necessary to receive such 15 percent capital gain tax discount benefit by the year 2026 becomes unattainable. This will leave the remaining benefits of the Opportunity Zone program for tax payers at a 10 percent capital gain tax discount benefit on the taxes to be paid in 2026 on capital gains invested into Qualified Opportunity Zone Funds (QOZF) and an exemption on any new gain realized from the investment on the capital gain initially invested after 10 years. While the loss of the five percent capital gain tax discount benefit may seem small in comparison to the overall benefits, it still is a third of the upfront deferral benefit, and it has taxpayer investors on the hunt for QOZFs with viable projects in Opportunity Zones.

The short time frame for capital gain taxpayers to find QOZFs with viable projects in Qualified Opportunity Zones has possible investors concerned about their ability to invest their capital gains and do proper due diligence on QOZFs with viable projects in Opportunity Zones. A couple guiding principles for choosing the right QOZF remain the same as from the onset:

1) Taxpayers with capital gains, or that are expecting capital gains before the end of 2019, need to search for QOZFs with viable shovel-ready real estate projects and a strong track record. While there is an excess of QOZFs with real estate projects, fewer than expected are offering shovel-ready projects with investor-friendly returns. Even though the regulations

### Legal Viewpoints

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provide for a few tolling/safe harbor time periods, each day that a shovel is not in the ground is a day of concern over the viability from the taxpayer.

2) Project First. As the QOZF market has matured, certain large funds have settled into charging high fees that put greater stress on the increased value by year 10 of the investment, thereby almost eliminating the tax savings gained in 2026 when the capital gain tax deferral ends and possibly at the 10-year point if the actual increased value of the projects fail to reach the anticipated increased value projections that the investment is based on. This tightening of possible realized gain reinforces the fact that investors shall look to invest in the project or a pipeline of projects and not just a QOZF that will look for projects.

As a result, developers with shovel-ready, or close to shovel-ready, projects in Opportunity Zones make the safest investments as QOZFs, and, in fact, several have already been busy restructuring their projects to accommodate already-interested investors and new investors. However, since these deal structures can vary in complexity, it remains vital that investors engage properly experienced professionals who know what questions to ask and what documents to review.

Still, if investors and QOZFs miss 2019, not to worry, there are practical benefits that make this program a unique and valuable tool for investors which should be noted.

First, since a QOZF can be any investment vehicle organized as a corporation or partnership for the purpose of investing in Qualified Opportunity Zone Property, the barrier to entry is low and permits investors of all sizes, not just larger institutional investors, REITs, Insurance Companies and funds, to find or create their own QOZF in order to utilize the benefits of the Opportunity Zone program.

Second, with less of a tax benefit deferral, QOZFs that are charging high fees may have to decrease their fees to generate the amount of investment that they have modeled, thereby, providing the same effective return/benefit to the investor at a lower cost.

Overall, on December 31, 2019, there will be a loss of the five percent capital gain tax discount benefit. While most of the Opportunity Zone program benefits for the taxpayers remain available, this date shall serve as a reminder that time is ticking away on the Opportunity Zone program, a program that does not just provide tax benefits to investments but also aims to provide development, jobs and income for low-income communities in the Opportunity Zones.



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