TCJA Weekly Update | 10.29.2018
Crystal Christenson, CPA, MST, Partner

First Guidance on New Opportunity Zones Issued

The Tax Cuts and Jobs Act (TCJA), signed into law by President Donald Trump on December 22, 2017, created a new section of the Internal Revenue Code, §1400Z, to incentivize long-term capital investments in Qualified Opportunity Zones (QOZ). On October 19, 2018, the Internal Revenue Service released four proposed regulations, a revenue ruling, and a draft form and instructions, providing long-awaited guidance on certain key issues regarding this new investment opportunity. While additional guidance is still expected before year-end, with final rules likely to come in the spring, this initial guidance is certain to trigger an uptick in investor interest and fund creation to take advantage of the significant tax benefits this provision provides.

QOZs are primarily low-income census tracts that were nominated by each state, U.S. possession, and Washington, D.C. and then certified by the Treasury. See here for a map of certified tracts across the United States.

Investors who reinvest their capital gains, on a timely basis, into Qualified Opportunity Funds (QOF) that in turn invest in qualifying businesses or assets in these certified zones will be able to:

- Defer the taxation of those reinvested capital gains for up to 8 years.
- Reduce the amount of the reinvested deferred gain that is eventually subject to tax by 10% if they hold their QOF investment for at least five years or by 15% if they hold their QOF investment for at least seven years.
- Pay no tax on any gains realized on their investment in the QOF if they hold their QOF investment for at least 10 years.

Not only will investors benefit by way of the above-noted tax deferral and tax abatement provisions, but this new law will provide businesses and real estate projects located in these zones with another source of capital for business growth and real estate development.

This first round of guidance includes information on the following:

- The types of gains that are eligible to be invested in QOFs
- The 180-day period during which investors must reinvest their gains into a QOF
- The manner in which investors elect to defer gains
- The deferral election in the case of gains generated by a pass-through entity
- How a corporation or partnership self-certifies as a QOF
- The valuation of QOF assets for purposes of the 90% asset test
- The application of the first-use and substantial-improvement rules regarding the purchase of vacant land or an existing building in a QOZ