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# Global Tax Alert

News from Americas Tax Center

## Puerto Rico's Governor proposes tax incentives bill for Opportunity Zones

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### Background

The *Tax Cuts and Jobs Act* (the TCJA) created Opportunity Zones under Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code of the United States (the US Code). Under the Opportunity Zone rules, investors can defer capital gains taxes triggered by the sale of assets carried out before 1 January 2027, if all the gains are invested in a Qualified Opportunity Fund (QO Fund), which is an investment vehicle designed to invest in Opportunity Zone property (e.g., qualified opportunity zone stock, partnership interest, etc.). The QO Fund must hold at least 90% of its assets in Opportunity Zone property.<sup>1</sup>

Generally, an Opportunity Zone is an area within a state that qualifies as a low-income community, as defined in Section 45D(e) of the US Code. To qualify as a low-income community, the population census cannot have a poverty level of less than 20%, and the average family income cannot exceed 80% of the average state or metropolitan area income. For areas that do not meet the low-income community definition, the TCJA established a procedure under which states and territories could nominate areas for designation as Opportunity Zones.

In Puerto Rico, all low-income communities are automatically designated as Opportunity Zones. Additionally, another 26 areas have been designated as Opportunity Zones through the nomination procedure. In total, approximately 95% of Puerto Rico is considered a Qualified Opportunity Zone.

## Proposed bill

Senate Bill No. 1147 of 7 November 2018 (the Bill) proposes various amendments to Act No. 185-2014, as amended, known as the *Private Equity Fund Act* (Act 185-2014) and the Puerto Rico Internal Revenue Code of 2011, as amended. The Bill would provide tax and non-tax incentives at the state level with the purpose of providing additional benefits to QO Funds and other eligible businesses that choose to invest within the jurisdiction of Puerto Rico.

The Bill would establish the following tax incentives for eligible businesses for 15 years:

- ▶ A 20% fixed tax rate on the net income from Opportunity Zones
- ▶ Tax-free dividend distributions
- ▶ A tax exemption of 50% for patents and property tax
- ▶ A tax exemption of 90% for “priority residential projects” in Opportunity Zones
- ▶ A 100% exemption from construction taxes
- ▶ A maximum investment credit of 15% that is transferable
- ▶ A “priority credits system” for “priority projects” in Opportunity Zones
- ▶ Deferral of capital gains taxes for investment gains of QO Funds in Puerto Rico
- ▶ An income tax exemption for accrued interest on loans to tax-exempt businesses

In addition, to expedite the evaluation of permit requests for investments in Opportunity Zones, the Bill would establish that developments designated as “priority projects” in Opportunity Zones under the provisions of the bill would be declared as having pressing interest because, according to the Bill, those projects would attract private economic investment in Puerto Rico.

Because of the pressing interest in those projects, the Bill would establish a special procedure for requesting permits for “priority projects” that would ensure all the substantive legal requirements are satisfied. In accordance with that procedure, government agencies that are responsible for processing permits, licenses, franchises, queries and certifications for “priority projects” in Opportunity Zones will have to follow the terms and procedures established in Law 161-2009 (as amended), Law 75 of June 24, 1975 (as amended), Law 81-1991 (as amended) and Law 38-2017 (as amended). The substantive requirements applicable to permits would be established by law or regulations.

Additionally, the Bill would establish a procedure to expedite the issuance of permits requested by tax-exempt businesses or requested for projects.

## Implications

In addition to the federal income tax benefits provided by Sections 1400Z-1 and 1400Z-2 of the US Code, the Bill would establish considerable Puerto Rico income tax benefits that would make investing in Puerto Rico more economically attractive from a tax standpoint.

We will monitor the progress of the Bill and issue subsequent updates, including a more detailed and specific discussion of certain subject matters as pertinent.

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## Endnotes

1. See US Code Section 1400Z-2(d)(1).

For additional information with respect to this Alert, please contact the following:

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