

OPINION



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THE 123'S OF THE OPPORTUNITY ZONES -PART FOUR-

Puerto Rico, like other U.S. jurisdictions, was included in the designation of Qualified Opportunity Zones ("QOZ"). Unlike the states, which could only designate 25 percent of their low-income areas as QOZ, Puerto Rico was able to designate 100 percent of its low-income areas. Thus, out of the nearly 8,700 QOZs, 863 are in Puerto Rico.

Although federal legislation was passed on December 2017, it was not until mid-2018 that the incentives began to receive more attention from investors and developers. In Puerto Rico, aware of the competition for new capital that had been unleashed between QOZs, by November 2018, a bill, that was eventually signed into law on May 14, 2019, was introduced to provide similar benefits in Puerto Rico and conform to federal rules: The 2019 Act for the Development of the Opportunity Zones of Economic Development of Puerto Rico. Later, on July 1, 2019, the provisions of this Law 21 were included in Law 60-2019, Puerto Rico's Incentives Code.

The primary purpose of Law 21 was to create the legal framework for investment in QOZs in Puerto Rico and to adopt tax rules for the benefit of investors in Puerto Rico. As part of this process, the Puerto Rico Internal Revenue Code was amended to establish federal-like incentives for deferring recognition and exclusion of capital gains invested in QOZ, if the property in which it is invested is located in Puerto Rico. However, when these provisions were included in Puerto Rico's Incentives Code, it is not clear that this amendment remains in force. We look forward to a clarification soon.

To increase the attractiveness of investing in Puerto Rico, Law 21 also introduces a new tax incentives program for projects or businesses that qualify as priority projects and do not qualify for any of the other tax incentives laws that exist in Puerto Rico (e.g. manufacturing, tourism, green energy, etc.).

A priority project is a business or activity carried out for profit that will contribute to the diversification, recovery

or economic or social transformation of the community in the area. A seven-person committee appointed by the same law must produce a list of those businesses or activities that will be considered a priority project. These businesses can request an exemption grant of 15 years that provides the following tax benefits:

- For income tax –
 - Fixed rate of 18.5 percent on eligible business net income
 - 18.5 percent fixed rate on rents, royalties or licenses to non-resident entities or individuals
 - 100 percent income tax exemption on dividends or distributions
 - 100 percent income tax exemption on interest on loans and other eligible business obligations of an eligible business
 - A minimum guaranteed credit of 5 percent of the eligible investment
- For real and personal property - minimum of 25 percent exemption. Municipalities may grant up to 75 percent at their discretion.
- For municipal license - minimum of 25 percent exemption. Municipalities may grant up to 75 percent at their discretion.
- For other municipal taxes, including construction excise - minimum of 25 percent exemption. Municipalities may grant up to 75 percent at their discretion.

If a project or business is not included in the list, it can make a request to be designated as a priority project.

Law 21 also provides for a special process for the processing of permits. All permits that are necessary for a priority project in an opportunity zone will be requested directly to the Office of Permits' Management ("OGPe") no matter where it is located or the type of project. OGPe is required to consult with municipalities where the priority project will be located.

The QOZ program and Law 21-2019 together with the robust tax incentives program in Puerto Rico, definitely make Puerto Rico the best jurisdiction to invest. But, first, the project should be a good project for everyone involved. All related business considerations must be evaluated. Our particular recipe, will make of a good project, a better one!