OPPORTUNITY ZONE

- Added to the Tax Code through the Tax Cuts and Jobs Act on December 22, 2017
- First Qualified Opportunity Zones designated on April 18, 2018
- Investors can defer tax on any prior gains invested in a Qualified Opportunity Fund (QOF) until the earlier of the date on which the investment in a QOF is sold or exchanged, or December 31, 2026. If the QOF investment is held for longer than 5 years, there is a 10% exclusion of the deferred gain. If held for more than 7 years, the 10% becomes 15%
- If the investor holds the investment in the Opportunity Fund for at least ten years, the investor is eligible for an increase in basis of the QOF investment equal to its fair market value on the date that the QOF investment is sold or exchanged
- Qualified Opportunity Fund is an investment vehicle that is set up as either a partnership or corporation for investing in eligible property that is located in a Qualified Opportunity Zone.
October 19, 2018 – IRS and Treasury issued proposed regulations and other published guidance for the new Opportunity Zone tax incentive

The QOF must hold at least 90 percent of its assets in qualified Opportunity Zone property (investment standard)

The proposed regulations also provide that if at least 70 percent of the tangible business property owned or leased by a trade or business is qualified opportunity zone business property, the requirement that “substantially all” of such tangible business property is qualified opportunity zone business property can be satisfied if other requirements are met. If the tangible property is a building, the proposed regulations provide that “substantial improvement” is measured based only on the basis of the building (not of the underlying land)

Rev. Rul 2018-29

Form 8996 – Form used to self-certify as a QOF
The 2017 TCJA eliminated the deduction for any expenses related to activities generally considered entertainment, amusement or recreation.

Taxpayers may continue to deduct 50 percent of the cost of business meals if the taxpayer (or an employee of the taxpayer) is present and the food or beverages are not considered lavish or extravagant. The meals may be provided to a current or potential business customer, client, consultant or similar business contact.

Food and beverages that are provided during entertainment events will not be considered entertainment if purchased separately from the event.

Prior to 2018, a business could deduct up to 50 percent of entertainment expenses directly related to the active conduct of a trade or business or, if incurred immediately before or after a bona fide business discussion, associated with the active conduct of a trade or business.

Issued Notice 2018-36 on October 3, 2018 as interim guidance until regulations are published.
MEALS AND ENTERTAINMENT

- Taxpayers may deduct 50% of an otherwise allowable business meal expense if the following five requirements are met:
  - Expense must be considered an ordinary and necessary business expense under Section 162
  - Expense cannot be lavish or extravagant
  - The taxpayer or an employee must be present
  - Food and beverages must be provided to a current or potential business customer, client, consultant or similar business contact
  - Food and beverages must be purchased separately from any entertainment activity or the cost of food and beverages must be stated separately from the cost of entertainment (cannot be circumvented through inflating the charge for food and beverages)

- If a meal is provided at an entertainment event, then the food will be subject to the 50% limitation, but the cost of the event tickets will not be deductible at all. If the ticket price includes food (a sky suite for example), then all of the expense will be considered non-deductible entertainment.
IRS issued proposed regulations on November 26, 2018 for 163(j).

For tax years beginning after Dec. 31, 2017, the deduction for business interest expense is generally limited to the sum of a taxpayer’s business interest income, 30 percent of adjusted taxable income and floor plan financing interest. Taxpayers will use new Form 8990, Limitation on Business Interest Expense Under Section 163(j), to calculate and report their deduction and the amount of disallowed business interest expense to carry forward to the next tax year.

This limit does not apply to taxpayers whose average annual gross receipts are $25 million or less for the three prior tax years. This amount will be adjusted annually for inflation starting in 2019.
Proposed regulations cover the following:

- What constitutes interest for purposes of Section 163(j)
- Ordering and operating rules to address the interaction of the Section 163(j) limitation with other provisions of the Code
- The application of Section 163(j) to consolidated groups, partnerships, S corporations, controlled foreign corporations, and foreign persons with effectively connected income
- The treatment of disallowed business interest expense carryforwards
- Elections made available under Section 163(j)
- Allocating interest expense, interest income and other tax items when the taxpayer conducts a trade or business that is not subject to Section 163(j), as well as a trade or business that is subject to Section 163(j)
Under IRC Section 461(l) – Excess business losses of non-corporate taxpayers are not allowed for 2018 thru 2025

In simple terms, under this new rule, a taxpayer will only be able to deduct net business losses of up to $250,000 ($500,000 in the case of a joint return), regardless of how much non-business income he or she might have.

Current Law:

- Excess business losses are not allowed for the current tax year; they are treated as part of the taxpayer’s NOL and carried forward
  - Excess business loss = losses exceeding $250,000 for individuals ($500,000 for married filing jointly)
- NOL carryforwards are allowed for a tax year up to an amount equal to 80% of the taxpayer’s taxable income.
- The limitation applies at the partner or S corporation shareholder level after application of section 469 passive loss rules.

Issues:

- Partners or owners now limited in their ability to offset other income with pass-through losses.
- 1-year deferral as well as NOL haircut on using excess losses in future years.
In 2018, a married taxpayer filing jointly has investment income of $750,000. In addition, he has aggregate business losses of $1.2 million.

- The taxpayer’s excess business loss is $700,000 ($1.2 million aggregate loss - $500,000 threshold).
- The excess business loss is disallowed in 2018 and treated as part of his NOL carryforward to later years. As a result, the taxpayer’s gross income for 2018 is $250,000 ($750,000 investment income - $500,000 limited business loss).

This example illustrates how the new law could severely limit a taxpayer’s ability to offset his other income with his business losses and could result in a tax liability for 2018 where, under prior law, the taxpayer’s business losses would have been fully utilized.

For taxpayers that anticipate aggregate business losses above the threshold amount, they may need to engage in some additional tax planning and potentially prepare to pay tax liabilities where they previously would not have had a tax payment due.