IPA
Institute for Portfolio Alternatives

U.S. TAX POLICY

The IPA supports common-sense and impactful tax policy affecting portfolio diversifying investments. These policies provide capital for U.S. based investment, improve market liquidity, and support infrastructure opportunities for business and Americans.

TAX PARITY FOR NON-TRADED REITS

The IPA supports a technical amendment to FIRPTA to extend the exception for publicly-traded REITs to public non-traded REITs.

- Unless an exception applies, the Foreign Investment in Real Property Investment Act of 1980 ("FIRPTA") imposes a capital gains tax and U.S. tax return filing obligation on foreign investors in U.S. real estate. The latter has been shown to discourage capital formation and investment that could be used to create jobs and improve U.S. real estate and infrastructure.
- In the current economic environment, where there is a critical need for additional investment in U.S. real estate, a minor change to the FIRPTA rules applicable to REITs, to better align them with market developments, could materially expand available resources of capital.
- The proposed change in law would expand the existing FIRPTA exception for small foreign shareholders—no more than 10% of the REIT—of publicly traded REITs to also benefit those foreign shareholder of public non-traded REITs. Creating parity between exchange traded and public non-traded REITs is consistent with long-standing tax policy – minor shareholders in widely-held companies should not be subject to FIRPTA.
- Public non-traded REITs evolved beginning in 2017 and, in doing so addressed a growing concern with the volatility of public markets, created access to best-in-class alternative asset managers that previously primarily served institutional or high-wealth investors and enabled regular liquidity even in the absence of public trading through the issuance and redemption of shares. This evolution has brought increased interest in public non-traded REITs, yet FIRPTA continues to be a significant barrier for foreign investors.
- Academic studies have shown that a mere increase to the definition of a "small" foreign shareholder in exchange traded REITs from 5% to 10% in 2015, as part of the PATH Act has resulted in a significant increase in foreign investment in exchange traded REITs, so we believe applying this exception from FIRPTA to non-traded REITs should result in additional flows of foreign capital into U.S. commercial real estate, especially areas of critical need like multifamily housing.[1]
- The IPA urges Congress to support parity between publicly traded and public non-traded REITs, which provides a greater incentive for foreign capital to flow into U.S. real estate markets.

[1] Recent surveys of non-traded REITs indicated that approximately 63% of their total real estate investments are in workforce housing, defined as multifamily housing with rent less than 25% of mean family income in the surrounding area.

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1031 LIKE-KIND EXCHANGES

The IPA opposes any proposal to restrict or eliminate like-kind exchanges.

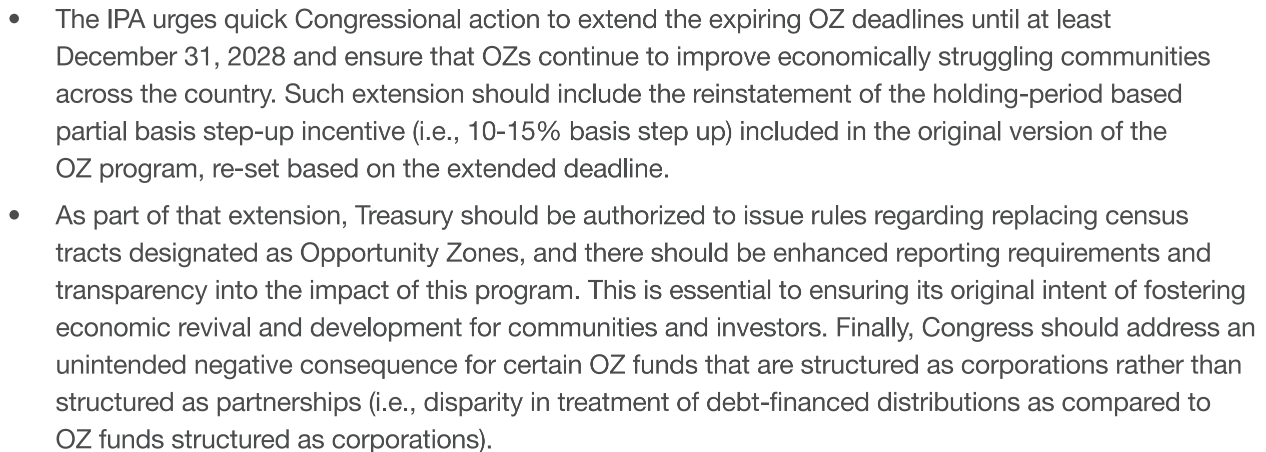
- Since 1921, Section 1031 like-kind exchanges have been one of the most powerful economic tools in the U.S. tax code and have positively impacted our economy.
- Section 1031 like-kind exchanges support the health of U.S. commercial real estate and real estate markets, and the preservation of family-owned farms, ranches, and forestland. Also, Section 1031 like-kind exchanges increase the supply of affordable rental housing by filling gaps in housing supply not adequately financed by other incentives. This economic tool also generates much-needed tax revenue and jobs.
- Section 1031 like-kind exchanges prevent real properties from languishing, or being underutilized and under-invested, and help small and minority-owned businesses expand and grow. For many Americans, for example small business owners who many lack access to an alternative retirement savings plan while having a significant amount of equity or net worth tied up in real property, Section 1031 like-kind exchanges are a principal tool for retirement savings.
- Section 1031 provides only a tax deferral; taxes must ultimately be paid on the gains.[2]
- The President's budget for fiscal year 2024 again called for the elimination or severely limiting of Section 1031 like-kind exchanges.
- The IPA opposes any proposal to restrict or eliminate Section 1031 like-kind exchanges. Section 1031 is grounded in sound tax policy that generates broad economic and environmental benefits that serve the public interest. Section 1031 should continue to be preserved in its current form.

OPPORTUNITY ZONES

The IPA supports an extension of Opportunity Zones until at least December 31, 2028.

- Opportunity Zones (OZs) are an economic development tool that incentivizes people to invest in distressed areas in the United States. Their purpose is to spur economic growth and job creation in low-income communities while providing tax benefits to investors.
- Originally enacted as part of the Tax Cuts and Jobs Act (TCJA) in 2017, one of the key benefits of, and driver of investments into, OZs is due to expire on December 31, 2026. OZ incentives allow taxpayers to postpone until December 31, 2026 taxes on capital gains if those profits are reinvested in opportunity funds, which are equity funds that invest in businesses and real property located in or adjacent to OZs.
- OZs are generally census tracts in low-income communities experiencing economic distress. The law generally allowed for up to 25 percent of a state's low-income community population census tracts to be designated by governors as qualified opportunity zones, with up to 5 percent of those tracts being moderate income adjacent tracts. There are more than 8,700 qualified opportunity zones in the 50 states and U.S. territories that were designated by the U.S. Treasury in 2018.
- Delays in the issuance of treasury regulations to sufficiently augment the brief statutory framework originally provided in the TCJA, and the onset of the Covid-19 pandemic, have diminished the full impact of OZs. Tax benefits associated with OZ investments are gradually phasing down and the economic value of the temporary tax deferral that applies to gains rolled into an OZ is declining as December 31, 2026 draws near.

[2] With one exception if such deferred gains are eliminated via basis step-up upon the transfer of property to a taxpayer's heirs at such taxpayer's death.



- The IPA urges quick Congressional action to extend the expiring OZ deadlines until at least December 31, 2028 and ensure that OZs continue to improve economically struggling communities across the country. Such extension should include the reinstatement of the holding-period based partial basis step-up incentive (i.e., 10-15% basis step up) included in the original version of the OZ program, re-set based on the extended deadline.
- As part of that extension, Treasury should be authorized to issue rules regarding replacing census tracts designated as Opportunity Zones, and there should be enhanced reporting requirements and transparency into the impact of this program. This is essential to ensuring its original intent of fostering economic revival and development for communities and investors. Finally, Congress should address an unintended negative consequence for certain OZ funds that are structured as corporations rather than structured as partnerships (i.e., disparity in treatment of debt-financed distributions as compared to OZ funds structured as corporations).

TAX PARITY FOR BUSINESS DEVELOPMENT COMPANIES

IPA supports tax parity for Business Development Company investors regarding the 20 percent deduction on Qualified Business Income as other similar entities.

- Business Development Companies (BDCs) are operationally similar to S-Corp Banks and BDC retail shareholders have a profile similar to REIT retail shareholders. For this reason, income from BDC and REIT investments have historically been taxed in the same way as those entities.
- By statute, the vast majority of BDC investments must be in private U.S. businesses only. BDCs are invested in approximately 5,000 small - and medium-sized business across the country.
- Under Sec. 199A of the Tax Code, taxpayers are generally allowed a deduction up to 20% of total qualified business income from a domestic flow-through entity. In the 2017 Tax Cut and Jobs Act, this 20% deduction was extended to REITs, S-Corp Banks, and most other pass-through entity shareholders. Despite the fact that BDCs and REITs are both subject to Sub-chapter M of the tax code, BDCs were excluded from this effort. Congress should address this disparity in the tax code and ensure that BDC investors continue to receive the same tax treatment as similar entities.
- By law, BDCs must invest at least 70% of their assets in private and small-cap U.S. businesses, creating jobs and helping fill a void in the capital markets. In actuality, 95.2% of BDC investments are made in U.S. entities.
- BDCs are currently held by the following types of investors: 50% Individuals, 30% IRAs and 20% Institutions. Only the individual retail investors – many of which are likely retirees – will benefit from the deduction.
- The IPA urges Congress to address this disparity in the tax code and ensure that BDCs continue to receive the same tax treatment as similar entities.

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