

IRS Notice 2021-10 Provides Additional Short-term Relief for Qualified Opportunity Fund Requirements

PROFESSIONALS

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January 22, 2021

PRACTICE AREAS

Opportunity Zones

As a result of the continuing COVID-19 impact on businesses and individuals the IRS released a second Notice (IRS Notice 2021-10) on January 19, 2021 to provide Opportunity Zone (OZ) investors with additional time to roll capital gains into a Qualified Opportunity Fund (QOF), as well as additional time to make “substantial improvements” to acquired property and additional time to acquire Qualified Opportunity Zone Business Property (QOZBP). This Notice follows the June 2020 Notice 2020-39 which extended various 2019 and 2020 OZ Program deadlines and testing dates – generally through December 31st. The extended relief under 2021-10 is generally through March 31, 2021.

Details of the relief given by Notice 2021-10 are outlined below:

- **180-day investment period.** Previously, Notice 2020-39 had postponed the investment period to December 31, 2020. Notice 2021-10 further postpones the last day of the 180-day investment period to March 31, 2021, *if* the last day of the original 180-day investment period fell on or after April 1, 2020.

This extension opens up “late” OZ formation and funding for taxpayers that had 2019 K-1 capital gains (including IRC Section 1231 gains) or non-K-1 gains for “directly held” capital gains on or after October 5, 2019. Amended 2019 tax returns can be filed to report the extended funding.

This Notice also allows another three months, through March 31, 2021, for taxpayers who generated “direct” or indirect (e.g. K-1) gains with an original 180-day reinvestment deadline on or after April 1, 2020. Taxpayers with 2020 K-1 related capital gains generally have until September 10, 2021 to form and fund a Qualified Opportunity Fund (QOF) under the general OZ Regulations –

with no impact from 2021-10.

- **30-month substantial improvement period.** The effective dates of the 30-month substantial improvement period are delayed for the period beginning on April 1, 2020 and ending on March 31, 2021. Notice 2020-39 had previously delayed the effective period through December 31, 2020. Therefore, this is really just 3 month extension.
- **90-percent investment standard.** Failure to meet the 90-percent QOZBP investment standard is deemed to be “due to reasonable cause” for a QOF whose last day of the first 6-month period of the table year or for a QOF whose last day of the taxable year falls between April 1, 2020 and June 30, 2021. Furthermore, these failures will be disregarded for purposes of determining whether the QOF, or any otherwise qualifying investments, satisfy the OZ requirements moving forward. It is unclear whether this provision will only apply to QOFs formed prior to 2021, or whether QOFs formed in 2021 will also get this relief.
- **Working Capital Safe Harbor for QOZBs.** All QOZBs holding working capital assets intended to be covered by the working capital safe harbor **before** June 30, 2021 have 24 additional months for a maximum safe harbor period of not more than 55 months, and not more than 86 months total for “start-up” businesses. These limits include the relief given under Notice 2020-39. No differentiation was made under Notice 2020-39, which extended the period for working capital assets covered by a plan before December 31, 2020.

Generally, taxpayers must form and fund any QOZB (subsidiary entities) prior to June 30, 2021 in order to be assured of the additional 24 month extension to invest in Qualified Opportunity Zone Business Property (QOZBP). This allows fairly broad interim investment options for up to 55 months while deciding what specific QOZBP to invest in. In addition, the OZ Regulations require that the fund have a valid business plan and cash flow summary as to how the funds will likely be spent over the working capital safe-harbor period.

- **12-month reinvestment period.** To the extent a QOF or QOZB sells an asset during the 10-year holding period, the QOF has a 12-month period to reinvest the proceeds without violating the QOZBP test. If any QOF's 12-month reinvestment period for interim tax gains includes June 30, 2020 that QOF receives not more than 12 additional months, for a maximum reinvestment period of 24 months to reinvest the proceeds into other QOZBP. This includes relief under Notice 2020-39, where the 12-month replacement period included January 20, 2020 (the date designated as the start of the Pandemic).

Although all of these relief provisions are automatic, taxpayers are still required to timely comply with filing requirements for Forms 8949 (deferral) and 8997 (statement of QOF investments). They must also continue to comply with the 70%/ 30% qualified/ non-qualified assets requirement **at the QOZB level** as Notice 2021-10 and Notice 2020-39 do not provide any relief or extensions for this QOZB-level testing requirement.

Please contact your HCVT professional or one of our OZ Team members to answer any questions you may have about Notice 2021-10 and the implications it may have on your upcoming tax planning. Additional OZ information and OZ Team contact information can be obtained at: <https://www.hcv.com/services-federal-qualified-opportunity-zone>