



TaxNewsFlash

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Notice 2021-10: Additional relief for qualified opportunity zones and investors (COVID-19)

The IRS released an advance version of Notice 2021-10 providing additional relief for “qualified opportunity funds” (QOFs) and their investors in response to the coronavirus (COVID-19) pandemic.

[Notice 2021-10](#) [PDF 153 KB] extends the relief for QOFs and their investors—relief previously provided by Notice 2020-39.

Summary

Notice 2020-39, in addition to providing relief for QOFs and their investors in response to the COVID-19 pandemic, addressed the application of certain relief provisions in the regulations under section 1400Z-2. Read [TaxNewsFlash](#)

Notice 2021-10 extends the relief provided under Notice 2020-39 as follows:

180-day investment requirement for QOF investors

Generally, taxpayers may elect to exclude from gross income capital gains from the sale to, or exchange with, an unrelated person of any property held by the taxpayer invested in a QOF during the 180-day period beginning from the date of such sale or exchange. Notice 2021-10 provides that if the last day of the 180-day investment period within which a taxpayer must make an investment in a QOF falls on or after April 1, 2020, and before March 31, 2021, the last day of that 180-day investment period is automatically postponed to March 31, 2021.

30-month substantial improvement period for QOFs and qualified opportunity zone businesses (QOZB)

Generally, QOFs have 30 months within which to substantially improve property to qualify as QOZB property. Notice 2021-10 provides that the 30-month substantial improvement period for property held by a QOF or a QOZB for the period beginning on April 1, 2020, and ending on March 31, 2021, is disregarded in determining any 30-month substantial improvement period. Consequently, the 30-month

substantial improvement period is tolled during the period beginning on April 1, 2020, and ending on March 31, 2021.

90% investment standard

A QOF is required to hold at least 90% of its assets in qualified opportunity zone (QOZ) property, determined by the average of the percentage of QOZ property held by that QOF as measured (1) on the last day of the first six-month period of the tax year of the QOF, and (2) on the last day of the tax year of the QOF.

Notice 2021-10 provides that in the case of a QOF whose (1) last day of the first six-month period of a tax year or (2) last day of a tax year falls within the period beginning on April 1, 2020, and ending on June 30, 2021, any failure by that QOF to satisfy the 90% investment standard for that tax year of the QOF is due to reasonable cause under section 1400Z-2(f)(3). Thus, any failure by that QOF to satisfy the 90% investment standard for that tax year is not taken into account for purposes of determining whether the QOF or any otherwise qualifying investments in that QOF satisfy the requirements of section 1400Z-2 and the section 1400Z-2 regulations for any tax year of the QOF.

Working capital safe harbor for QOZBs

As originally provided under the opportunity zone regulations, the working capital safe harbor allows a QOZB to treat any amount of working capital (if held in cash, cash equivalents, and/or debt instruments not exceeding 18 months) as reasonable for a period of up to 31 months, if:

- There is a plan that identifies the working capital as property intended to be used in a trade or business in the QOZ;
- There is a schedule consistent with the ordinary start-up of a trade or business for the expenditure of the working capital, and under that schedule, the working capital will be spent within 31 months of receipt; and,
- The working capital is used in a manner that is substantially consistent with the schedule.

Notice 2021-10 provides that as a result of the federally declared COVID-19 emergency declaration, all QOZBs holding working capital assets intended to be covered by the working capital safe harbor before June 30, 2021, and if receive not more than an additional 24 months (including any relief provided under Notice 2020-39) qualify for a maximum safe harbor period of not more than 55 months total (not more than 86 months total for start-up businesses) in which to expend the working capital assets of the QOZB, provided all other opportunity zones rules are satisfied.

12-month reinvestment period for QOFs

If a QOF sells or disposes of some or all of QOZ property or if a distribution with respect to the QOF's QOZ stock is treated as a return of capital in the QOF's hands, and if the QOF reinvests some or all of the proceeds in QOZ property by the last day of the 12-month period beginning on the date of the distribution, sale or disposition, then the proceeds are treated as QOZ property for purposes of the 90% investment standard.

This treatment is available to a QOF only to the extent that, prior to the reinvestment in qualified opportunity zone property, the reinvested proceeds are continuously held in cash, cash equivalents or debt instruments with a term of 18 months or less.

Notice 2021-10 states that If any QOF's 12-month reinvestment period includes June 30, 2020, that QOF receives not more than an additional 12 months, including any relief provided under Notice 2020-

39, for a maximum reinvestment period of not more than 24 months total, to reinvest in QOZ property provided that the QOF otherwise satisfies the opportunity zone rules and invests the proceeds in the manner originally intended before June 30, 2020.

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