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IRS Extends Relief/Suspends Penalties for Qualified Opportunity Funds and their investors (Notice 2021-10)

March 9, 2021

Summary Table for Qualified Opportunity Zone (QOZ) Program COVID-19 Relief

The following table summarizes the five types of automatic COVID-19-related relief available under Notice 2021-10, 2021-7 I.R.B. 888 (Feb. 16, 2021) for eligible taxpayers electing to defer and partially exclude capital gains timely rolled over into Qualified Opportunity Fund (QOF) investments, as well as the Qualified Opportunity Zone Businesses (QOZBs) in which such QOFs invest.

Relief under Notice 2021-10

Automatic Extension of 180-Day Period for Investing in a QOF until March 31, 2021

Beneficiaries	General Rule for 180-Day Period	Applicable Period	Relief Provided	Procedural Requirements
Investors in a QOF, known as "eligible taxpayers," including any person that is required to report the recognition of capital gains during the tax year for federal income tax purposes, including individuals, partnerships, S corporations, C corporations (including regulated investment companies (RICs) and real estate investment trusts (REITs)), trusts, estates, and tax-exempt organizations and state colleges and universities subject to tax on unrelated business taxable income under section 511.	To obtain the QOZ Program's tax benefits, an eligible taxpayer must reinvest some or all of their eligible capital gain into a QOF within a 180-day period, generally beginning on the date the gain would have been recognized for federal income tax purposes if the eligible taxpayer did not elect to defer recognition of that gain under section 1400Z-2(a), subject to special rules in regulations promulgated thereunder for both passthrough entities' owners who can choose a 180-day period beginning on the unextended due date of the passthrough's federal income tax return (*e.g.*, Mar. 16, 2020 for owners of partnership and S corporations in 2019, and Mar. 15, 2021 for such owners in 2020), and (2) taxpayers realizing certain types of capital gain treated as having a 180-day period that commences at year-end, including, but not limited to, section 1231 gains from 2019, net 1256 gains for 2019 or 2020, gain from 2019 or 2020 installment sales, and REIT and RIC shareholders' capital gain dividends and undistributed capital gains respectively received or recognized in the 2019 or 2020 tax year.	Eligible taxpayers with 180-day periods beginning on or after Oct. 5, 2019, have until March 31, 2021, to make the investment in a QOF (the "Applicable Period"), even if the 180-day reinvestment period would have otherwise expired, including: (a) taxpayers that on or after October 5, 2019 realized eligible capital gain that would be recognized for federal income tax purposes if no election were made under section 1400Z-2(a)(1)(A) on Form 8949 to defer recognition of that gain, including, but not limited to, those required to include a portion of their deferred gain from a QOF in income because of an inclusion events with respect to a QOF investment, and (b) taxpayers that began a 180-day period for making an investment in a QOF on or after October 5, 2019 with respect to certain types of gain governed by special rules set forth in section 1400Z-2 regulations for determining when that period commences, including: (1) 2019 and 2020 Qualified Section 1231 Gains from the sale or exchange of business property held for more than one year, regardless of when that gain was realized; (2) 2019 and 2020 Capital Gains and Qualified Section 1231 Gains received, or deemed to be received, by a partner, shareholder or beneficiary as an allocable share of such gain from a partnership, Subchapter S Corporation or nongrantor trust or estate, respectively ("Passthrough Entities"); (3) 2019 and 2020 Net Capital Gain from Contracts Marked to Market under Section 1256 (including regulated futures contracts, foreign currency contracts, nonequity options, dealer equity options and dealer securities futures contracts), and net capital gain from an identified straddle or mixed straddle account or other positions marked to market on the last business day of the taxable year, to the extent gain from such straddles can be deferred under section 1400Z-2(a)(1)(A) and Treas. Reg. § 1.1400Z2(a)-1(b)(11)(vi)(C); (4) 2019 and 2020 Eligible Gain from Installment Sales, taken into account pursuant to the installment method under section 453, so long as the last day of the taxable year in which one or more payments under the installment sale was received was on or after October 5, 2019 (*e.g.*, December 31, 2019, and December 31, 2020, for calendar-year taxpayers), regardless of when the installment sale occurred or when during the taxable year payment was received; (5) 2019 and 2020 Capital Gains Dividends received by a shareholder of a real estate investment trust (REIT) or regulated investment company (RIC) designated for that shareholder by the REIT or reported for that shareholder by the RIC for that shareholder's tax year ending on or after October 5, 2019; and (6) 2019 and 2020 Undistributed Capital Gains retained by a REIT or RIC for a tax year that is designated for inclusion in shareholder income for that shareholder's taxable year if either (i) the last day of that shareholder's tax year or (ii) the last day of the REIT or RIC's tax year ends on or after October 5, 2019.	180-day period extended to March 31, 2021 for 180-day periods that began on or after October 5, 2019, which would otherwise have expired on or before March 30, 2021. Any taxpayer that realized gain on October 5, 2019, would receive an extension of their 180-day period to 543 days within which to make a tax-deferred investment in a QOF. A calendar year taxpayer that realized gain on January 1, 2019 within one of the six categories of gain described in the preceding column, with Applicable Periods commencing at year-end, would have a total of 821 days from January 1, 2019 to March 31, 2021 within which to reinvest in a QOF and elect deferral.	This relief is automatic, but a taxpayer will still need to make a valid deferral election on Form 8949, *Sales and Other Dispositions of Capital Assets*, by attaching that form, together with Form 8997, *Initial and Annual Statements of Qualified Opportunity Fund Investments*, to a timely-filed federal income tax return (including extensions) or an amended federal income tax return for the tax year in which the gain would be recognized if section 1400Z-2(a)(1) did not apply to defer recognition of the gain. In addition, even taxpayers in an overall net operating loss (NOL) position in 2019 or 2020 may seek to take advantage of Notice 2021-10 to defer and potentially reduce eligible gain realized as the deferral election may generate additional NOL refund opportunities under the 5-year carry back rules enacted as part of the CARES Act.

Relief under Notice 2021-10 (cont.)

Automatic Elimination of 2020 and 2021 Penalties for Certain QOFs that hold less than 90% of their Assets in QOZ Property

Beneficiaries	General Rule for QOF Penalties under Section 1400Z-2(f)	Applicable Period	Relief Provided	Procedural Requirements
Qualified Opportunity Funds (QOFs)	A QOF must hold on average at least 90% of its assets in QOZ Property (the "90% Investment Standard"), as measured by the percentages of QOZ Property held in the QOF on (1) the last day of the first 6-month period of the tax year of the QOF, and (2) the last day of the tax year of the QOF (each, a "semiannual testing date"). If the QOF fails to satisfy the 90% requirement, the QOF must pay a penalty for each month it fails to meet the requirement, equal to the shortfall multiplied by the underpayment rate established under section 6621(a)(2), unless reasonable cause is shown for the failure.	QOFs for which (1) the last day of the first 6-month period of the tax year of the QOF falls between April 1, 2020 and June 30, 2021, or (2) the last day of the tax year of the QOF, falls between April 1, 2020 and June 30, 2021, including: (1) All QOFs organized as partnerships or corporations for federal income tax purposes and self-certified as QOFs on or before January 31, 2021; (2) All other self-certified QOFs with a fiscal tax year ending between April 1, 2020 and June 30, 2021; and (3) All QOFs dissolved or otherwise decertified on or before June 30, 2021.	Abatement of any and all penalties in tax years 2020 and 2021 under section 1400Z-2(f) that would otherwise be imposed on QOFs with at least one semiannual testing date in the applicable period between April 1, 2020, and June 30, 2021.	QOFs must still accurately complete and timely file Form 8996, *Qualified Opportunity Fund*, for 2020 and/or 2021, as applicable, but mark "0" in Part IV, Line 8 (Penalty). For a QOF that is seeking to mitigate penalties, while preserving deferral through 2021, by decertifying before the expiration of the relief from penalties, the QOF must accurately complete and timely file Form 8996, *Qualified Opportunity Fund*, for 2021, and follow the instructions to be provided by the IRS with respect to voluntary decertification. While the draft version of Form 8996 allowed QOFs to decertify by checking a box on Line 6 of Part I in the form, this option was removed from the final version of Form 8996, published in February 2021, leaving the process for QOF decertification to future revisions of the form. Please contact Deloitte Tax with any questions on this decertification process and strategies to maximize its benefits in light of Notice 2021-10.

Relief under Notice 2021-10 (cont.)

Automatic 24-Month Extension of Working Capital Safe Harbor (WCSH) Period for QOZBs

Beneficiaries	General Rule for 31-Month and 62-Month WCSH	Applicable Period	Relief Provided	Procedural Requirements
Qualified Opportunity Zone Businesses (QOZBs)	Final regulations under section 1400Z-2 generally provide a QOZB with one or more periods of 31 months from the date of receipt by the QOZB of each debt or equity infusion to spend working capital held throughout the 31-month period in cash, cash equivalents and debt instruments with a term of 18 months or less ("working capital assets"), and spent in accordance with a written plan and schedule ("31-month WCSH"), provided that the maximum period of time for a QOZB to benefit from multiple 31-month WCSH periods cannot exceed 62 months in the aggregate ("62-month WCSH"). If, however, a QOZB project that otherwise meets the requirements of the 31-month WCSH is located within a QOZ designated as a part of a federally declared disaster area, such as COVID-19 disasters declared in every QOZ beginning on January 20, 2020, the QOZB may receive up to an additional 24 months to consume its working capital assets, provided the project is delayed due to that disaster.	Any QOZB with a WCSH plan and schedule that otherwise satisfies the safe harbor's requirements at any time between January 20, 2020 and June 29, 2021.	All QOZBs holding working capital assets intended to be covered by an otherwise valid 31-month WCSH schedule that includes some or all of the period between January 20, 2020 and June 29, 2021, may receive (1) not more than 24 months' extension of the 31-month WCSH for total of 55 months to expend working capital assets during the applicable 31-month safe-harbor period, and (2) if covered by an integrated master plan in place for spending working capital from multiple cash infusions, not more than 24 months' extension of the 62-month WCSH for a total of 86 months in the aggregate to spend all working capital assets covered by more than one 31-month WCSH periods.	None, other than having a written WCSH plan and 31-month written schedule in place for expending working capital in place by June 29, 2021.

Relief under Notice 2021-10 (cont.)

Automatic Tolling of 30-Month Substantial Improvement Period for 12 Months Ending March 31, 2021

Beneficiaries	General Rule for Substantial Improvement:	Applicable Period	Relief Provided	Procedural Requirements
QOFs and QOZBs undertaking the substantial improvement of tangible property between April 1, 2020 to March 31, 2021	If the QOF or QOZB is not the first person to place tangible property into service in a QOZ, the QOF or QOZB must "substantially improve" the property for such property to be Qualified Opportunity Zone Business Property ("QOZBP"). Tangible property is treated as substantially improved by a QOF (or QOZB) only if, during any 30-month period, beginning after the acquisition date of such property, additions to the basis of the property in the hands of the QOF (or QOZB) exceed the QOF or QOZB's adjusted basis of that property as of the beginning of that 30-month period ("30- month substantial improvement period"). For QOFs and QOZBs, tangible property purchased for use in a trade or business that is undergoing the substantial improvement process, but has not been placed in service or used by the applicable entity in its trade or business, satisfies the requirements of being QOZBP for the 30-month substantial improvement period with respect to that property.	30-month substantial improvement periods with respect to tangible property that include some or all of the period between April 1, 2020 and March 31, 2021.	Tolls the 30-month substantial improvement period for QOFs and QOZBs with respect to tangible property undergoing improvement at any time during the 12 months from April 1, 2020 to March 31, 2021. QOFs and QOZBs that are substantially improving property throughout Notice 2021-10's tolling period for substantial improvement receive a maximum 42-month substantial improvement period to more than double the basis of tangible property, and any QOF or QOZB that initially acquires and commences substantial improvement of tangible property between April 1, 2020 and March 31, 2021 will not be required to make additions to the basis of property exceeding at least 100% of the property's adjusted basis at the beginning of the substantial improvement period before September 30, 2023 (after 30 months beginning on April 1, 2021).	None, except that the relief only benefits QOFs and QOZBs that are actually improving tangible property that has been previously used within a QOZ.

Relief under Notice 2021-10 (cont.)

Automatic 12-Month Extension of QOFs' Safe Harbor Period to Reinvest Proceeds from QOZ Property

Beneficiaries	General Rule for QOFs Reinvesting Proceeds from QOZ Property	Applicable Period	Relief Provided	Procedural Requirements
QOFs that receive a return of capital from a qualifying investment in a QOZB or proceeds from the sale or disposition of QOZ property between January 20, 2019 and June 30, 2020.	Final regulations under section 1400Z-2 generally provide a QOF with a period of 12 months to reinvest the return of capital from investments in QOZ Stock and QOZ Partnership Interests of a QOZB, and to reinvest proceeds received from the sale or disposition of QOZ Property without paying a penalty under section 1400Z-2(f). However, the QOF may extend its reinvestment period to 24 months if a QOF's plan to reinvest some or all of its proceeds in QOZ Property is delayed due to a federally declared disaster, including, but not limited to, those declared for the COVID-19 pandemic in every jurisdiction where a QOZ is located beginning on January 20, 2020, provided that the QOF invests such proceeds in the manner originally intended before the disaster.	Relief is available only if a QOF received a return of capital from a QOZB, such as a distribution by the QOZB to the QOF to the extent that it does not exceed the amount of capital that the QOF originally invested in the QOZB, or proceeds from the sale, exchange or other disposition of QOZ property between January 20, 2019 and June 30, 2020. **Note**: there is nothing that a QOF can do prospectively to trigger this provision, since the return of capital or disposition proceeds would have to have been received by the QOF and held as working capital assets since June 30, 2020.	Extends from 12 to 24 months QOFs' safe-harbor period for reinvesting proceeds from the return of capital on, or the sale or disposition of, QOZ property, if such proceeds were received during the 18-month period between January 20, 2019 and June 30, 2020 (that is, during this period of the federally-declared disaster for the COVID-19 pandemic). QOFs receive up to an additional 12 months on top of the otherwise applicable 12-month safe harbor (for a total of 24 months) to reinvest some or all of the proceeds from a return of capital or sale or other disposition of QOZ Property received any time between January 20, 2019 and June 30, 2020, provided that (1) the QOF continuously holds such proceeds before their reinvestment in cash, cash equivalents, or debt instruments with a term of 18 months or less, and (2) reinvests the proceeds in the manner originally intended before June 30, 2020.	No procedural requirements but proceeds from QOZ Property must be continuously held in working capital assets and reinvestment of QOZ Property must be within the same QOZ(s) as originally contemplated before COVID-19 emergency.

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