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IRS Provides Relief for Qualified Opportunity Zone Funds and Investors

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In response to the COVID-19 pandemic, on June 4, 2020, the Internal Revenue Service (the "IRS") issued [Notice 2020-39](#) to provide additional guidance for Qualified Opportunity Zone Funds ("QOFs") and their investors. This guidance relaxes certain requirements for the "qualified opportunity zone," or "QOZ," tax incentive under Section 1400Z-2 of the Internal Revenue Code (the "Code") and the treasury regulations promulgated thereunder (the "QOZ Regulations").

180-Day Investment Period

To qualify for the incentive, a taxpayer must invest capital gains in a QOF within a 180-day period.

Notice 2020-39: If an investor's 180th day to invest in a QOF would have fallen between April 1, 2020 and December 31, 2020, the investor now has until December 31, 2020 to invest eligible gains in a QOF. The IRS had previously postponed this 180-day deadline to July 15, 2020 in [Notice 2020-23](#).

90% Asset Test

A QOF must hold at least 90% of its assets in "QOZ property," determined by averaging the percentage of QOZ property held on two semi-annual testing dates each year.

Notice 2020-39: A QOF's failure to hold less than 90% of its assets in QOZ property on any testing date between April 1, 2020 and December 31, 2020 will be considered due to reasonable cause, and thus, will not result in a statutory penalty under Code Section 1400Z-2(f) and will not prevent a QOF from otherwise satisfying the requirements of Code Section 1400Z-2.

30-Month Substantial Improvement Requirement

If QOZ property is not put to its original use in an opportunity zone, a QOF must "substantially improve" that property. The required expenditures to satisfy that substantial improvement requirement must be completed within a 30-month period beginning after the QOF acquired the QOZ property.

Notice 2020-39: The 30-month substantial improvement period tolls for the period beginning on April 1, 2020, and ending on December 31, 2020.



Working Capital Safe Harbor

Less than 5% of the property of a qualified opportunity zone business ("QOZB") can be attributable to "nonqualified financial property." The QOZ Regulations provide a safe harbor for QOZBs to hold cash in excess of the 5% limitation for up to 31 months if the cash is used as working capital. This period may be extended to 62 months if certain additional requirements are met.

Notice 2020-39: Notice 2020-39 reminds taxpayers that under the QOZ Regulations, this period may be extended for up to an additional 24 months due to the COVID-19 pandemic.

12-Month Reinvestment Period

When a QOF sells QOZ property or receives distributions for a QOZB before the end of the 10-year holding period, proceeds received by the QOF from the sale or the return of capital must be reinvested within 12 months for purposes of the 90% asset test.

Notice 2020-39: If the 12-month reinvestment period includes January 20, 2020, the QOF will receive up to an additional 12 months to reinvest in QOZ property.

These extensions and tolling of the many technical time-period requirements under the QOZ rules should give current investors and sponsors of QOFs more comfort that their projects affected by the COVID-19 pandemic will qualify for the intended QOZ tax benefits. It should also spur more investment into underserved areas of the country targeted by the QOZ legislation.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Los Angeles lawyers:

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