



June 2020

## IRS Provides COVID-19 Relief for Qualified Opportunity Funds and Their Investors

On Friday, June 5, 2020, the Internal Revenue Service (IRS) issued [Notice 2020-39](#) providing relief for Qualified Opportunity Funds (QOFs) and their investors (QOF investors), and clarified previously issued relief to Qualified Opportunity Zone Businesses (QOZBs) affected by the president's declarations of major disasters caused by the Coronavirus Disease 2019 (COVID-19) pandemic (which now apply in all 50 states, Washington, D.C., and five U.S. territories).

The guidance provides the following relief measures:

### 1. 180-day period for investing capital gain proceeds in a QOF

- Relief to a QOF investor whose last day of its relevant 180-day investment period within which it must invest its eligible gains in a QOF falls on or after April 1, 2020, and before Dec. 31, 2020: the guidance postpones the last-day deadline until Dec. 31, 2020.
  - For example, a QOF investor whose relevant 180-day investment period would normally end on June 15, 2020, has until Dec. 31, 2020, to invest those eligible gains in a QOF.
  - The QOF investor is not required to contact the IRS or provide any documentation with its returns.
  - The QOF investor must still prepare and timely file a complete and accurate Form 8949 (Sales and Other Dispositions of Capital Assets) and Form 8997 (Initial and Annual Statement of Qualified

Opportunity Fund (QOF) Investments), and make a valid deferral election to defer the capital gain.

## **2. QOF 90-percent investment test**

- Relief to a QOF whose last day of its first six-month testing period, the mid-point of its taxable year, or the last day of its taxable year (collectively, the 2020 testing dates) falls on a date between April 1, 2020, and Dec. 31, 2020, inclusive: the guidance disregards any failure by that QOF to meet its 90% investment standard on such testing dates (i.e., the next testing date on which the QOF will be required to meet its 90% investment standard will be its first testing date that occurs after Dec. 31, 2020).
- In addition, a QOF that fails to satisfy the 90% investment standard on the 2020 testing dates is not subject to penalties because it is treated as automatically showing reasonable cause for such failure.
  - The QOF is not required to contact the IRS or provide any documentation with its returns.
  - The QOF must still prepare and timely file a complete and accurate Form 8996 (Qualified Opportunity Fund) with one exception: the QOF should show the amount of the Line 14 penalty on Part IV, line 8 as zero (“0”).
  - Despite the foregoing, QOFs should still actively evaluate and make efforts to deploy capital into Qualified Opportunity Zone Property (including QOZBs) during the relief period, because QOFs are still required to maintain their qualifying purpose of being formed to invest in Qualified Opportunity Zone Property.

## **3. 12-month reinvestment period for QOFs**

- Relief to a QOF that received proceeds from the return of capital or the sale or disposition of some or all of its qualified opportunity zone property and whose 12-month reinvestment period includes Jan. 20, 2020 (i.e., the date of the major disaster): the guidance extends the 12-month period within which the QOF is permitted to reinvest some or all of such proceeds in Qualified Opportunity Zone Property (including QOZBs) up to an additional 12 months for a total of 24 months.
  - For example, if the QOF received proceeds from the sale of qualified opportunity zone property on Jan. 1, 2020, the last day to reinvest such proceeds will be 24 months later, on Dec. 31, 2021.

## **4. 30-month “substantial improvement” period for QOFs and QOZBs**

- Relief to a QOF or a QOZB that is subject to the requirement to make substantial improvements to purchased tangible property over a 30-month period – i.e., the doubling-of-basis requirement: the guidance disregards the nine-month period that falls between April 1, 2020, and Dec. 31, 2020, inclusive.
  - In other words, the guidance suspends the running of the 30-month clock effective April 1, 2020 and will not restart the clock again until Jan. 1, 2021.

## **5. QOZB 31-month “working capital” safe harbor**

- Relief to a QOZB that holds working capital assets that become subject to the QOZB’s working-capital-safe-harbor designation and written plan before Dec. 31, 2020: the guidance extends the 31-month period within which the QOZB must spend such designated amounts of working capital assets for not more than an additional 24 months.

- For example, if a QOZB holds working capital pursuant to the safe harbor during 2020, the QOZB's up to 31-month period for expending reasonable amounts of working capital assets is extended to not more than 55 months.
- This relief requires the QOZB to meet all the requirements of the working capital safe harbor, including a timely written designation of the amounts subject to the working capital safe harbor, a written plan for spending such amounts, and the consumption of such amounts by the QOZB in a manner that is substantially consistent with both the written designation and the written plan.

**Additional legislative relief considered:** Additional legislative proposals are being drafted for consideration by Congress in response to the disruption of the economy caused by the COVID-19 pandemic. Among other things, those proposals, if adopted, would encourage investors to invest more equity in Qualified Opportunity Zones, and would apply the current tax rate to the deferred eligible gains in 2026 (rather than, as provided under the current rules, the tax rate that would be in effect in 2026).

As always, investors should consult their tax advisors to determine how these new rules may apply to their particular circumstances.

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