



IRS issues long-awaited Coronavirus relief for Qualified Opportunity Funds - by Jennifer Porter, Clem Turner and Bozena Diaz

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On June 4th, 2020, the Internal Revenue Service (IRS) released the highly anticipated coronavirus relief for Qualified Opportunity Funds (QOFs) and their investors. The relief is contained in IRS Notice 2020-39.

By way of background, the Qualified Opportunity Zone (QOZ) provisions of Section 1400Z-2 were added to the Internal Revenue Code of 1986, as amended (the Code) by the Tax Cuts and Jobs Act of 2017.

IRS Notice 2020-39:

Addresses the application of certain relief provisions in the Section 1400Z-2 regulations;
Provides relief for certain failures by a QOF to meet the 90% investment standard; and
Postpones the time periods for satisfying certain other requirements.

The notice also confirms that:

The 24-month extension for the working capital safe harbor; and
The 12-month extension for QOFs to reinvest certain proceeds, both as provided under the Code Section 1400Z-2 Treasury Regulations, are available to otherwise qualifying QOFs and qualified opportunity zone businesses.

180-day Investment Requirement for QOF Investors

IRS Notice 2020-39 provides that, if the last day of a taxpayer's 180-day investment period to invest in a QOF falls on or after April 1st, 2020, and before December 31st, 2020, the taxpayer now has until December 31st, 2020 to make that investment. The 180th day for some of these taxpayers was already postponed through July 15th, 2020, by IRS Notice 2020-23.

The relief is automatic; however, a taxpayer will still need to make a valid deferral election in accordance with the instructions to IRS Form 8949, complete IRS Form 8997, and file the completed IRS Forms 8949 and 8997 with a timely filed Federal income tax return (including extensions) or amended Federal income tax return for the taxable year in which the gain would be recognized if Code Section 1400Z-2(a)(1) did not apply to defer recognition of the gain.

90% Investment Standard for QOFs

IRS Notice 2020-39 provides that, in the case of a QOF whose:

A. Last day of the first six-month period of the taxable year; or

B. Last day of the taxable year falls within the period beginning on April 1st, 2020, and ending on December 31st, 2020, any failure by that QOF to satisfy the 90% investment standard for that taxable year of the QOF is:

Due to reasonable cause under section 1400Z-2(f)(3); and

Will not prevent qualification of an entity as a QOF or an investment in a QOF from being a qualifying investment. Accordingly, the QOF will not be liable for the penalty under Code Section 1400Z-2(f) due to such a failure during this period.

Again, the relief is automatic; however, a QOF must accurately complete all lines on IRS Form 8996 filed with respect to each affected taxable year except that the QOF should place a "0" in Part IV, Line 8 (Penalty). The accurately completed IRS Form 8996 must be filed with the QOF's timely filed Federal income tax return (including extensions) for the affected taxable year(s).

30-Month Substantial Improvement Period for QOFs and Qualified Opportunity Zone Businesses

IRS Notice 2020-39 provides that, for purposes of the "substantial improvement" requirement with respect to property held by a QOF or a qualified opportunity zone business, the period between April 1st, 2020 and December 31st, 2020 is suspended (i.e., it is tolled) for purposes of the 30-month period during which property may be substantially improved.

Working Capital Safe Harbor for Qualified Opportunity Zone Businesses

IRS Notice 2020-39 confirms that, as a result of the Emergency Declaration (that is, the declaration of a Federally declared disaster for purposes of section 165(i)(5)(A)), all qualified opportunity zone businesses holding working capital assets intended to be covered by the working capital safe harbor before December 31st, 2020, receive up to an additional 24 months in which to expend their working capital.

12-Month Reinvestment Period for QOFs

In addition, IRS Notice 2020-39 clarifies that due to the pandemic, QOFs that received distributions of QOF stock or partnership interests as a return of capital or realized proceeds from a sale of that stock, partnership interest or qualified opportunity zone property have up to an additional 12 months to reinvest those amounts in the manner originally intended.

IR-2020-114

In a related release—IR-2020-114—the IRS reported that taxpayers that sold property for an eligible gain and that would normally have had 180 days to invest in a QOF to defer that gain may now have additional time due to the pandemic.

IRS Notice 2020-39 and related guidance are welcome relief to the many investors whose projects were put on hold because of the coronavirus pandemic. Chiesa Shahinian & Giantomasi PC (CSG) is staying abreast of all the new developments regarding qualified opportunity zones and is available to answer any questions you may have.

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