

IRS Issues Additional COVID-19 Relief to Opportunity Zones

In response to the impact of COVID-19 on Opportunity Zone (“OZ”) investments and investors, the IRS issued a third notice on January 19, 2021 (Notice 2021-10), which builds on the relief it previously granted on April 9, 2020 (Notice 2020-23) and June 4, 2020 (Notice 2020-39).

The notice grants additional relief to qualified opportunity funds (“QOF”), OZ businesses, and investors by extending the 180-day investment requirement for QOF investors, the 30-month substantial improvement period for OZ property, the 90% investment standard for QOFs, the working capital safe harbor for OZ businesses and the 12-month reinvestment period for QOFs.

- First, the notice extends the 180-day investment window from April 1, 2020, to March 21, 2021. Investors will be granted this extension automatically but must make and file the appropriate deferral elections with their income tax returns for the year in which the gain would be ordinarily recognized but for the special treatment of OZ gains. See Forms 8949 and 8997.
- Second, the IRS is granting relief by excluding the year beginning April 1, 2020, and ending March 31, 2021, from its calculation of the 30-month substantial improvement period for OZ property. This will provide relief from, among other things, COVID-19 construction delays.
- Third, assuming all other requirements are met, the IRS will find that a QOF’s failure to meet the 90% investment standard is due to reasonable cause if either the: (a) last day of the first six-month period of the QOF’s taxable year; or (b) last day of a taxable year fell between April 1, 2020, and June 30, 2021. This relief will be automatic, but the taxpayer should put a zero in Part IV, Line 8 of Form 8996.
- Fourth, all OZ businesses holding working capital assets intended to be covered by the safe harbor rule before June 30, 2021, will have up to an additional 24 months to expend said working capital assets as long as all the other requirements are met. This relief is on top of that granted under Notice 2020-39 and provides a maximum safe harbor relief period of not more than 55 months total (86 months for start-ups).
- Finally, the IRS extended the QOF’s 12-month reinvestment period for up to 12 months if the QOF’s reinvestment period included June 30, 2020, and all other requirements are met. This relief is in addition to that granted by Notice 2020-39 and creates a maximum reinvestment period of 24 months.



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