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Tax

Acts

Tax relief

IRS extends compliance relief for QOFs and their investors

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On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, in response to the COVID-19 pandemic. The emergency declaration instructed the Secretary of the Treasury to provide relief from tax deadlines.

Accordingly, Notice 2020-23 was issued to provide relief to taxpayers by postponing due dates with respect to certain taxpayers and government acts. Shortly thereafter, the IRS issued Notice 2020-39, providing relief for qualified opportunity funds (QOFs) and their investors. **On January 19, 2021**, the Internal Revenue Service (IRS) issued Notice 2021-10, extending the relief, and providing additional relief guidelines for QOFs and their investors, as discussed.

180-day investment requirement

Rule: In general, an eligible taxpayer has a 180-day period beginning on the date of the sale or exchange with an unrelated person to invest a qualifying capital gain in a QOF.

Extension: If the last day of the 180-day investment period falls on or after April 1, 2020, and before March 31, 2021, the last day of that 180-day investment period is automatically postponed to March 31, 2021. Taxpayers will still need to make a valid deferral election in accordance with the instructions to Form 8949, complete Form 8997, and file the completed forms with a timely filed federal income tax return (including extensions) for the applicable taxable year.

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30-month substantial improvement period

Rule: The substantial improvement rule set forth for qualified opportunity zone business property (QOZBP) is met only if, during any 30-month period beginning after the date of acquisition of the post-2017 acquired tangible property, there are additions to basis with respect to the property held by the QOF that, in the aggregate, exceed the QOF's adjusted basis of that property as of the beginning of that 30-month period.

Extension: For purposes of the substantial improvement requirement, the period beginning on April 1, 2020, and ending on March 31, 2021, is disregarded in determining any 30-month substantial improvement period. In other words, the 30-month substantial improvement period is tolled during the period beginning on April 1, 2020 and ending on March 31, 2021.

90% investment standard

Rule: A QOF is defined as any investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (QOZP), other than another QOF. This definition requires the QOF to hold at least 90% of its assets in QOZP, determined by the average of the percentage of QOZP held by the QOF:

- on the last day of the first 6-month period of the taxable year of the QOF, and
- on the last day of the taxable year of the QOF.

If the average of the percentages on these semi-annual testing dates fails to meet the 90% investment standard, generally, the QOF pays a penalty for each month that the QOF failed to meet that standard. However, no penalty is imposed if the QOF shows the failure is due to reasonable cause.

Extension: In the case of a QOF whose last day of the first 6-month period of a taxable year, or last day of a taxable year, falls within the period beginning on April 1, 2020, and ending on June 30, 2021, any failure to satisfy the 90% investment standard is considered due to reasonable cause. Therefore, any failure to satisfy the 90% investment standard for the taxable year is not taken into account to determine if the QOF or any otherwise qualifying investments in the QOF, satisfies the requirements.

This relief is automatic, as such, no action is required from the QOF. However, the QOF must accurately complete all lines on 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 Form 8996 must be filed with the QOF's timely filed federal income tax return (including extensions) for the affected taxable year.

Working capital safe harbor for qualified opportunity zone business (QOZB)

Rule: An entity must meet certain requirements to be a QOZB, including that less than 5% of the average of the aggregate unadjusted bases of the entity's property be attributable to nonqualified financial property (excluding reasonable amounts of working capital that are held in cash, cash equivalents, or debt instruments with a term of 18 months or less). The regulations provide QOZBs with a safe harbor for treating an amount of working capital as reasonable if certain requirements are satisfied. One of those requirements is that there is a written schedule consistent with the ordinary start-up of a trade or business for the expenditure of the working capital assets within 31 months of the receipt by the business of the assets. A QOZB may extend the working capital safe harbor period to a maximum 62-month period if certain additional requirements are met.

If the QOZB is located in a QOZ within a Federally declared disaster, the QOZB may receive not more than an additional 24 months to expend its working capital assets, as long as the QOZB otherwise meets the requirements of the working capital safe harbor. Therefore, a QOZB may, if each applicable requirement is satisfied, have up to a maximum 86-months to expend working capital assets if the QOZB is located in a QOZ within a Federally declared disaster.

Extension: As a result of the emergency declaration, all QOZBs holding working capital assets intended to be covered by the working capital safe harbor before June 30, 2021, receive not more than an additional 24 months, including any relief provided under Notice 2020-39, for a maximum safe harbor period of not more than 55 months total (not more than 86 months total for start-up businesses), to expend the working capital assets of the QOZB, as long as the QOZB otherwise meets the requirements to qualify for the working capital safe harbor.

12-month reinvestment period for QOFs

Rule: Generally, if a QOF sells or disposes of some or all of its QOZP or if a distribution with respect to the QOF's qualified opportunity zone stock is treated as a return of capital in the QOF's hands, and if the QOF reinvests some or all of the proceeds in QOZP by the last day of the 12-month period beginning on the date of the distribution, sale, or disposition, then the proceeds are treated as QOZP for purposes of the 90% investment standard. This treatment is available to a QOF only to the extent that, prior to the reinvestment, the proceeds were continuously held in cash, cash equivalents, or debt instruments with a term of 18 months or less. Furthermore, if the QOF's plan to reinvest some or all of the proceeds in QOZP is delayed due to a Federally declared disaster, the QOF may receive not more than an additional 12 months to reinvest the proceeds, provided that the QOF invests the proceeds in the manner it originally intended before the disaster.

Extension: If any QOF's 12-month reinvestment period includes June 30, 2020, the QOF receives not more than an additional 12 months, including any relief provided under Notice 2020-39, for a maximum reinvestment period of not more than 24 months total, to reinvest in QOZP, some or all of the proceeds received from the return of capital or the sale or disposition of some or all of the QOF's QOZP, provided that the QOF satisfies the requirements, and reinvests the proceeds in the manner it originally intended.

Prior grants or reliefs

Notice 2021-10 modifies Notice 2020-23, while simultaneously expanding Notice 2020-39.

We are committed to keeping you up to date with all tax-related developments. Please contact our Tax Department should additional information be required regarding this or any other tax issue. We will be glad to assist you.

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