

# Additional Short-Term Relief Granted for Qualified Opportunity Funds and Investments

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As a result of the continuing COVID-19 impact on qualified opportunity funds (“QOFs”) and prospective investors therein, the IRS recently issued Notice 2021-10 (the “Notice”) in order to grant additional relief to QOF and investors therein. The Notice modifies and expands upon the prior relief provisions granted to QOFs and investors pursuant to Notice 2020-39. In particular, among other things, the Notice provides the following types of relief:

## **EXTENSION OF 180-DAY INVESTMENT PERIOD**

If the last day of a prospective investor’s 180-day investment period (for purposes of making a timely investment in a QOF) falls on or after April 1, 2020, and before March 31, 2021, the last day of that investment period is now postponed until March 31, 2021.

## **EXTENSION OF WORKING CAPITAL SAFE HARBOR PERIOD**

A qualified opportunity zone business (“QOZB”) owned by a QOF generally has a 31 months from the date of receipt of proceeds covered by a working capital safe harbor plan to spend those proceeds in accordance with the applicable plan. As a result of the Notice, a QOZB now has not more than an additional 24 months (including any similar relief previously provided under Notice 2020-39) to spend those working capital proceeds if they are covered by a working capital safe harbor plan in effect prior June 30, 2021.

## **EXTENSION OF PERIOD TO SUBSTANTIALLY IMPROVE PROPERTY**

Except in the case of raw land, a QOF or QOZB generally must be the original user of property or must “substantially improve” tangible property that it owns in order for such property to qualify as qualified opportunity zone business property (“QOZBP”). In general, property is considered to be “substantially improved” if the basis of the property is doubled within 30 months of being purchased by the QOF or QOZB, as applicable. Under the Notice, the period from April 1, 2020, through March 31, 2021, is disregarded, thereby giving a QOF or QOZB, as applicable, a substantial amount of additional time to spend the money necessary to substantially improve its property.

## **90% Test for QOFs**

In general, at least 90% of the assets of a QOF must be made up of qualified opportunity zone property, including QOZBP or interests in a QOZB (the 90% Test”). This is generally determined by examining the QOF’s assets twice per year – at the end of the first 6-month period of the taxable year and again on the last day of the taxable year. Under the Notice, in the case of a QOF whose (i) last day of the first 6-month period of a taxable year or (ii) last day of a taxable year falls within the period beginning on April 1, 2020, and ending on June 30, 2021, any failure by that QOF to satisfy the 90% Test is considered to be attributable to reasonable cause. Consequently, QOFs that fail to satisfy the 90% Test in 2020 and 2021 are exempt from any penalties that would otherwise be applicable.

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