Tuesday, June 9, 2020

The IRS has granted additional relief to Opportunity Zone Funds and their investors, under IRS Revenue Procedure 2020-34 (the Revenue Procedure). This new relief is much more generous than what had been previously granted. It should now be much easier for investors to invest and for Opportunity Zone Funds to comply with the rules. The main benefits are the following:

### EXTENSION OF 180-DAY INVESTMENT PERIOD

Investors have a 180-day period in which to invest in an Opportunity Zone Fund. Under the Revenue Procedure, if that 180-day period would ordinarily end after March 31, 2020, the period may be extended until December 31, 2020. (Prior relief extended this period only until July 15, 2020.)

### OPPORTUNITY ZONE PENALTIES GENERALLY INAPPLICABLE FOR 2020

An Opportunity Zone Fund must generally satisfy various criteria, and these criteria are evaluated on two testing dates each year. If these criteria are not satisfied, special Opportunity Zone penalties may be imposed on the Opportunity Zone Fund. Under the Revenue Procedure, however, these penalties will generally not be imposed with respect to the 2020 tax year. (For funds that do not use the calendar year, the Opportunity Zone penalties will not be applied for a tax year that includes...
EXTENSION OF WORKING CAPITAL EXCEPTIONS

A "qualified opportunity zone business" generally has a 31-month safe harbor for holding working capital, and regulations allow for a 24-month extension when the business is located within a Federally declared disaster [area]. The Revenue Procedure confirms that this 24-month extension is available for any working capital held before December 31, 2020.

In addition, the working capital safe harbor (as well as associated safe harbors for, e.g., tangible property) may be availed of more than once, subject to a 62-month limitation. The Revenue Procedure provides that this 62-month limitation may also be extended by 24 months as a result of the COVID-19 disaster.

EXTENDED PERIOD FOR SUBSTANTIALLY IMPROVING PROPERTY

One way for an Opportunity Zone Fund to qualify as such is to "substantially improve" its tangible property, and property is "substantially improved" if the basis of the property is doubled within a 30-month period as a result of improvements that are made to the property. For example, if an Opportunity Zone Fund pays $1M to acquire a building and spends another $1M to improve the building within a 30-month period, the building will be substantially improved.

The Revenue Procedure extends this 30-month substantial improvement period. As a result of COVID-19, the period from April 1, 2020, through December 31, 2020, may be disregarded, which may give an Opportunity Zone Fund (or a qualified opportunity zone business) an additional nine months to double its basis in its property.

EXTENDED REINVESTMENT PERIOD

At least 90% of an Opportunity Zone Fund's assets must be "qualified opportunity zone property" (QOZP), which does not include cash. However, if an Opportunity Zone Fund receives proceeds from QOZP, the proceeds may be treated as QOZP if they are reinvested within 12 months and certain other conditions are satisfied. Regulations allow for a 12-month extension when the reinvestment is delayed due to a Federally declared disaster, provided that the proceeds are invested in the manner that was intended before the disaster.

The Revenue Procedure provides that this 12-month extension may be available if the fund's reinvestment period includes January 20, 2020.

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