

2008 No.

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

**The Authorised Investment Funds (Tax) (Amendment)
Regulations 2008**

Made - - - - - *12th March 2008*

Laid before the House of Commons *12th March 2008*

Coming into force - - - *6th April 2008*

The Treasury make the following Regulations in exercise of the powers conferred by sections 17(3) and 18 of the Finance (No. 2) Act 2005(a).

Citation and commencement

1. These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment) Regulations 2008 and shall come into force on 6th April 2008.

Amendment of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964)

2. The Authorised Investment Funds (Tax) Regulations 2006(b) are amended as follows.

Amendment of regulation 2

3. In regulation 2 (structure of Regulations), after “Part 4 deals with the treatment of participants in authorised investment funds;”, insert—

“Part 4A deals with Property AIFs;”.

Amendment of regulation 12

4. In regulation 12(3)(a) (accounts prepared in accordance with UK generally accepted accounting practice) for “on 21st November 2003” substitute “in December 2005”.

Insertion of Part 4A

5. After regulation 69 insert the following Part—

(a) 2005 c. 22.

(b) S.I. 2006/964; relevant amending instruments are S.I. 2006/3239 and 2007/683.

“PART 4A
PROPERTY AIFS
CHAPTER 1
PRELIMINARY PROVISIONS

Property AIFs

69A.—(1) This Part enables an open-ended investment company which meets the conditions in regulations 69D to 69O—

- (a) to benefit from the exemption from corporation tax in accordance with regulation 69Y(1), and
- (b) to have liabilities to tax imposed on the company and on participants in accordance with Chapters 3, 4 and 5 of this Part.

(2) In these Regulations an open-ended investment company to which this Part applies may be referred to as a “Property AIF”.

Structure of this Part

69B. The structure of this Part of these Regulations is as follows—

- This Chapter contains preliminary provisions;
- Chapter 2 deals with entry into and membership of the Property AIF regime;
- Chapter 3 deals with the tax treatment of Property AIFs;
- Chapter 4 deals with distributions made by Property AIFs;
- Chapter 5 deals with the treatment of participants in Property AIFs;
- Chapter 6 deals with compliance in relation to the Property AIF regime; and
- Chapter 7 contains provisions relating to an open-ended investment company’s leaving the Property AIF regime.

Key concepts

69C.—(1) In this Part “entry” means the time when this Part begins to apply to an open-ended investment company.

(2) In this Part “cessation” means the time when this Part ceases to apply to an open-ended investment company.

(3) In this Part, in relation to an open-ended investment company—

- (a) “F (pre-entry)” means the open-ended investment company before this Part begins to apply to it,
- (b) “F (tax-exempt)” means the open-ended investment company in so far as it carries on property investment business (within the meaning of regulation 69F) while this Part applies to it,
- (c) “F (residual)” means the open-ended investment company in so far as it carries on business other than property investment business while this Part applies to it, and
- (d) “F (post-cessation)” means the open-ended investment company after this Part has ceased to apply to it.

CHAPTER 2

ENTRY INTO AND MEMBERSHIP OF THE PROPERTY AIF REGIME

Conditions of membership of the Property AIF regime

Conditions for this Part to apply to company

69D. In order for this Part to apply to an open-ended investment company in respect of an accounting period, the following conditions must be met—

- (a) the property investment business condition (see regulation 69E);
- (b) the genuine diversity of ownership condition (see regulation 69J);
- (c) the corporate ownership condition (see regulation 693K);
- (d) the loan creditor condition (see regulation 694M);
- (e) the balance of business conditions (see regulation 69N); and
- (f) the notification condition (see regulation 69O).

The property investment business condition

The property investment business condition

69E.—(1) The property investment business condition is that the open-ended investment company must meet conditions A and B throughout the accounting period.

(2) Condition A is that the company's instrument of incorporation and its prospectus (including any supplements to the prospectus) include a statement that the company's investment objectives are—

- (a) to carry on property investment business, and
- (b) to manage cash raised from investors for investment in the property investment business.

(3) Condition B is that the company must carry on property investment business.

(4) In this Part "prospectus" includes any supplements to a prospectus.

Meaning of "property investment business"

69F.—(1) In this Part "property investment business" means business consisting of any one or more of—

- (a) property rental business (see regulation 69H);
- (b) owning shares in UK-REITs; and
- (c) owning shares or units in an entity in circumstances in which conditions A to C are met.

(2) In these Regulations "UK-REIT" means a company or group to which Part 4 of FA 2006 applies.

(3) Condition A is that the entity is—

- (a) a property company, or
- (b) a unit trust scheme or similar contractual arrangement—
 - (i) which is not a collective investment scheme,
 - (ii) which has defined capital,
 - (iii) which is listed on a recognised stock exchange, and
 - (iv) where there is no obligation on the manager of the scheme to provide opportunities for redemption of the investment.

(4) Condition B is that the entity is not within the charge to corporation tax.

(5) Condition C is that the entity is equivalent to a UK-REIT in the jurisdiction in which the property company is incorporated, or (as the case may be) in the jurisdiction in which the unit trust scheme or similar contractual arrangement carries on business.

(6) For the purposes of paragraph (3)(a) a property company is not equivalent to a UK-REIT if—

- (a) the shares forming the company’s ordinary share capital are not listed on a recognised stock exchange, or
- (b) it is a company to which section 236 of FISMA 2000(a) applies.

(7) In this regulation “recognised stock exchange” has the meaning given by section 1005(1) of ITA 2007(b).

(8) This regulation is subject to the further provisions in regulation 69G.

Property investment business: further provisions

69G.—(1) If an open-ended investment company to which this Part applies receives a distribution from a UK-REIT—

- (a) the distribution is income of F (tax-exempt) to the extent that the distribution represents business of C (tax-exempt) carried on by the UK-REIT, and
- (b) the distribution is income of F (residual) to the extent that the distribution represents business other than business of C (tax-exempt) carried on by the UK-REIT.

(2) In paragraph (1) “C (tax-exempt)” shall be construed in accordance with Part 4 of the Finance Act 2006.

(3) If an open-ended investment company to which this Part applies receives a distribution from an entity within regulation 69F(1)(c), the distribution is income of F (tax-exempt) except to the extent that the distribution is identified, at the time at which it is made, as arising from any activity of the entity that is not property rental business.

(4) For the purposes of this Part an asset is involved in property investment business if—

- (a) it is an estate, interest or right in or over land by the exploitation of which property rental business is conducted;
- (b) it consists of shares owned by the open-ended investment company in a UK-REIT; or
- (c) it consists of shares owned by the open-ended investment company in an entity within regulation 69F(1)(c).

Meaning of “property rental business”

69H.—(1) In this Part “property rental business” means—

- (a) property rental business within the meaning given by section 104 of FA 2006, and
- (b) the relevant business of an intermediate holding vehicle (see regulation 69I).

(2) For the purposes of paragraph (1)(b) the relevant business of an intermediate holding vehicle is its property rental business within the meaning given by section 104 of FA 2006, but disregarding subsection (1)(a) of that section.

(3) For the purposes of this Part an asset is involved in property rental business if—

- (a) it is an estate, interest or right in or over land by the exploitation of which property rental business is conducted, or
- (b) it consists of shares owned by the open-ended investment company in an intermediate holding vehicle.

(a) 2000 c. 8.

(b) Section 1005 was substituted by paragraph 1 of Schedule 26 to the Finance Act 2007 (c. 11).

Meaning of “intermediate holding vehicle”

69I.—(1) For the purposes of regulation 69H, an entity is an “intermediate holding vehicle” in an accounting period if it meets conditions A to F throughout the accounting period.

(2) Condition A is that the vehicle is a company, trust or partnership.

(3) Condition B is that the vehicle is not a collective investment scheme.

(4) Condition C is that the vehicle is wholly owned by the open-ended investment company (the “parent”) or another intermediate holding vehicle or series of intermediate holding vehicles wholly owned by the parent, unless and to the extent that local legislation or regulations relating to the intermediate holding vehicle holding the property specified in paragraph (5) requires a proportion of local ownership.

(5) Condition D is that the function of the intermediate holding vehicle is solely to enable the holding, by the parent, of estates, interests or rights in or over land outside the United Kingdom by the exploitation of which property rental business is conducted.

(6) Condition E is that the intermediate holding vehicle has its accounts consolidated with those of the parent.

(7) Condition F is that all property rental income of the intermediate holding vehicle (or the full proportion of that income representing the interest of the parent in the intermediate holding vehicle) must be reflected in the distribution accounts of the parent at the same time as that income is reflected in the accounts of the intermediate holding vehicle.

The genuine diversity of ownership condition

The genuine diversity of ownership condition

69J.—(1) The genuine diversity of ownership condition is that the open-ended investment company must meet conditions A to F throughout the accounting period.

This is subject to paragraphs (8) and (9).

(2) Condition A is that the company’s instrument of incorporation and prospectus in issue for the time being—

- (a) contain a statement that shares in the company will be widely available, and
- (b) specify the intended categories of investor.

(3) Condition B is that the specification of intended categories of investor referred to in paragraph (2)(b) does not have the effect of limiting the intended investors to a limited number of specific persons or specific groups of connected persons.

(4) Condition C is that shares in the company—

- (a) must be marketed and made available sufficiently widely to reach the intended categories of investors, and
- (b) must be marketed and made available in a manner appropriate to attract those categories of persons.

(5) Condition D is—

- (a) that a person may easily acquire shares in the company, and may acquire the shares in the same way as a person may acquire shares or units in other authorised investment funds that are widely available, or
- (b) in the case of a qualified investor scheme, that a person qualified to invest may, without difficulty, obtain information about the company and acquire shares in it.

(6) Condition E is that the minimum investment is not unreasonably high in view of the risk profile of the company or the intended categories of investors.

(7) Condition F is that, in comparison with charges imposed on larger investors, charges imposed on smaller investors will not be greater than is commercially normal and reasonable.

(8) The open-ended investment company meets the genuine diversity of ownership condition if—

- (a) an investor in the company is a unit trust scheme (a “feeder fund”), and
- (b) paragraphs (2) to (7) are met in relation to the company after taking into account the intended investors in the feeder fund.

(9) If paragraph (8) applies—

- (a) the open-ended investment company and the feeder fund must have the same manager (or proposed manager),
- (b) a notice under regulation 69O must be accompanied by the feeder fund’s trust deed and prospectus in issue, and
- (c) paragraphs (7) and (8) of regulation 69P apply in relation to the feeder fund’s trust deed and prospectus as they apply to the open-ended investment company’s instrument of incorporation and prospectus (or, as the case may be, to the proposed company’s instrument of incorporation and prospectus).

(10) For the purposes of this regulation—

- (a) sections 993 and 994 of ITA 2007 (connected persons) apply in the case of a person chargeable to income tax, and
- (b) section 839 of ICTA(a) (connected persons) applies in the case of a person chargeable to corporation tax.

The corporate ownership condition

The corporate ownership condition

69K.—(1) The corporate ownership condition is that the open-ended investment company must meet conditions A to C and (if applicable) condition D at the time that this Part begins to apply to the company and throughout the accounting period.

This is subject to regulation 69L(1).

(2) Condition A is that no body corporate is beneficially entitled (directly or indirectly) to 10% or more of the net asset value of the fund.

(3) Condition A is treated as met if—

- (a) the company has taken reasonable steps to prevent a body corporate from acquiring a holding of 10% or more of the net asset value of the fund,
- (b) a body corporate has nevertheless acquired such a holding,
- (c) immediately upon becoming aware of the situation, the company has taken steps to ensure that the holding is reduced below 10% of the net asset value of the fund, and
- (d) the company has continued, with all reasonable speed, to take steps to ensure that the holding is so reduced.

(4) Condition B is that the company’s instrument of incorporation and its prospectus include provisions under which any body corporate which becomes a shareholder in the company—

(a) Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4), paragraph 25 of Schedule 13 to the Finance Act 2006 (c. 25) and paragraph 223 to Schedule 1 to the Income Tax Act 2007 (c. 3), and by S.I. 1988/745 and 2005/3229.

- (a) must undertake not to acquire 10% or more of the share capital of the company, and
 - (b) must undertake, on becoming aware that it has acquired 10% or more of the share capital of the company, to reduce its holding of that share capital below 10%.
- (5) Condition C is that the company's instrument of incorporation and its prospectus include provisions under which a body corporate acquiring shares in the company must give a certificate in accordance with paragraph (6) or (7).
- (6) The certificate is a certificate that the body corporate acquiring shares holds the shares as beneficial owner.
- (7) The certificate is a certificate that the body corporate acquiring shares holds some or all of those shares otherwise than as a beneficial owner, but that the body corporate—
- (a) holds less than 10% of the share capital of the company on behalf of itself or any one other corporate beneficial owner, and
 - (b) has obtained the undertakings in the terms specified in sub-paragraphs (a) and (b) of paragraph (4) from every other body corporate on whose behalf it owns shares in the company otherwise than as a beneficial owner.
- (8) Condition D is that, in a case in which the body corporate acquiring shares in the company gives a certificate in accordance with paragraph (7), the body corporate acquiring the shares has undertaken to disclose the following information to the manager of the company if the manager so requires—
- (a) the names of any body corporate on whose behalf the body corporate owns shares in the company otherwise than as a beneficial owner, and
 - (b) the extent of the holding of that body corporate in the company.

The corporate ownership condition: further provisions

- 69L.**—(1) The open-ended investment company meets conditions B and C of the corporate ownership condition if it provides in its instrument of incorporation and its prospectus that a body corporate is prohibited from acquiring shares in the open-ended investment company.
- (2) The open-ended investment company meets conditions B and C of the corporate ownership condition if—
- (a) it provides in its instrument of incorporation and its prospectus that a body corporate is prohibited from acquiring shares in the open-ended investment company,
 - (b) a body corporate (“BC”) acquires shares in the open-ended investment company,
 - (c) BC does not hold those shares as beneficial owner, and
 - (d) BC gives a certificate in accordance with paragraph (3).
- (3) The certificate is a certificate—
- (a) that BC does not hold any of the shares in the open-ended investment company as beneficial owner, and
 - (b) that none of the beneficial owners of BC's shares in the open-ended investment company is a body corporate.
- (4) Paragraph (5) applies if the trustees of a unit trust scheme—
- (a) hold shares in the open-ended investment company, and
 - (b) are chargeable, in the United Kingdom, either to income tax or to corporation tax in their capacity as trustees of that unit trust scheme.
- (5) For the purposes of regulation 69K the trustees are treated as the beneficial owners of the shares; and a person holding units in the unit trust shall not be treated as beneficially

entitled (directly or indirectly) to 10% or more of the net asset value of the open-ended investment company's fund by virtue of holding the units.

(6) In this Part "body corporate" means—

- (a) a body corporate incorporated under the laws of any part of the United Kingdom or any other territory, or
- (b) an entity which is treated as a body corporate for tax purposes—
 - (i) in accordance with the law of a territory outside the United Kingdom with which relevant arrangements have been entered into, or
 - (ii) in accordance with an international agreement containing relevant arrangements.

(7) In paragraph (6) "relevant arrangements" means arrangements which—

- (a) have been entered into with a view to affording relief from double taxation, and
- (b) have effect by virtue of an Order in Council under section 788 of ICTA(a).

The loan creditor condition

The loan creditor condition

69M.—(1) The loan creditor condition is that the open-ended investment company must meet conditions A to C throughout the accounting period in the case of any loan relationship to which the company is party as debtor.

(2) Condition A is that, in the case of a debtor relationship of the company, the person standing in the position of a creditor as respects the debt in question is not entitled to an amount by way of interest which depends to any extent on—

- (a) the results of all or part of the open-ended investment company's business, or
- (b) the value of any of the company's assets.

(3) For the purposes of condition A, a loan shall not be treated as dependent on the results of the company's business by reason only that the terms of the loan provide—

- (a) for the interest to be reduced in the event of results improving, or
- (b) for the interest to be increased in the event of results deteriorating.

(4) Condition B is that, in the case of a debtor relationship of the company, the person standing in the position of a creditor as respects the debt in question is not entitled to an amount by way of interest which exceeds a reasonable commercial return on the consideration lent.

(5) Condition C is that, in the case of a debtor relationship of the company, the person standing in the position of a creditor as respects the debt in question is entitled on repayment to an amount which—

- (a) does not exceed the consideration lent, or
- (b) is reasonably comparable with the amount generally repayable (in respect of an equal amount of consideration) under the terms of issue of securities listed on a recognised stock exchange.

(6) In this regulation "loan relationship" and "debtor relationship" shall be construed in accordance with Chapter 2 of Part 4 of FA 1996 (loan relationships).

(a) Section 788 was amended by paragraphs 1 and 2 of Schedule 30 to the Finance Act 2000 (c. 17), section 88 of the Finance Act 2002 (c. 23), section 198 of the Finance Act 2003 (c. 14), paragraph 321 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5) and section 176 of, and Part 8(2) of Schedule 26 to, the Finance Act 2006 (c. 25).

The balance of business conditions

The balance of business conditions

69N.—(1) The balance of business conditions are that conditions A and B must be met.

(2) Condition A is that the net income of F (tax-exempt) for an accounting period (determined in accordance with regulation 69Z1) is—

- (a) at least 40% of the open-ended investment company’s net income (as defined in regulation 69Z) where this Part applies to a newly qualified company in its first accounting period, or
- (b) at least 60% of the open-ended investment company’s net income (as defined in regulation 69Z) where this Part applies to a company in an accounting period in any other circumstances.

(3) Condition B is that the value of the assets involved in property investment business is—

- (a) at least 40% of the total value of the assets held by the open-ended investment company at the end of the accounting period where this Part applies to a newly qualified company in its first accounting period, or
- (b) at least 60% of the total value of the assets held by the open-ended investment company at the end of the accounting period where this Part applies to a company in an accounting period in any other circumstances.

(4) For the purposes of condition B—

- (a) assets must be valued in accordance with generally accepted accounting practice,
- (b) where generally accepted accounting practice offers a choice of valuation between cost basis and fair value, fair value must be used, and
- (c) no account shall be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).

(5) In this Part a “newly qualified company” means a company—

- (a) to which this Part applies immediately upon its authorisation, and
- (b) which has not been an authorised investment fund before that authorisation.

The notification condition

The notification condition

69O.—(1) The notification condition is that conditions A and B must be met.

(2) Condition A is—

- (a) that the manager of an existing open-ended investment company has given notice for this Part to apply to the company, or
- (b) if it is proposed to incorporate an open-ended investment company, that the person expected to become the manager of the open-ended investment company on its incorporation (the “applicant”) has given notice for this Part to apply to the company.

(3) Condition B is that the notice given under paragraph (2) has taken effect.

(4) If notice is given under paragraph (2)(a), the company must obtain any necessary shareholder and regulatory approvals to its instrument of incorporation and prospectus before giving the notice.

(5) If notice is given under paragraph (2)(b), the terms of the proposed company’s instrument of incorporation must be such that the proposed company, on its incorporation, will be required to meet—

- (a) the property investment business condition (see regulation 69E), and
 - (b) the genuine diversity of ownership condition (see regulation 69J).
- (6) In this Part—
- the “applicant” means the person referred to in paragraph (2)(b),
 - an “existing company notice” means a notice given under paragraph (2)(a), and
 - a “future company notice” means a notice given under paragraph (2)(b).

Form and timing of notice under regulation 69O

69P.—(1) A notice under regulation 69O must be given in writing to the Commissioners.

(2) An existing company notice must be given at least 28 days before the beginning of the specified period.

This is subject to the following paragraphs of this regulation.

(3) A future company notice must be given at least 42 days before the date of the expected incorporation and authorisation.

This is subject to the following paragraphs of this regulation.

(4) A notice under regulation 69O may be withdrawn or amended at any time before it takes effect—

- (a) by the manager (in the case of an existing company notice), or
- (b) by the applicant (in the case of a future company notice).

(5) If a notice under regulation 69O is amended before it is due to take effect, regulation 69O shall apply to the amended notice.

(6) But if HM Revenue and Customs give notice that they are satisfied that the amended notice is valid, the amended notice shall take effect as if given on the date of the original notice.

(7) An existing company notice may be given at any time before the beginning of the specified period if—

- (a) HM Revenue and Customs have given clearance under regulation 69U, and
- (b) the manager of the open-ended investment company certifies that there have been no changes in substance between—
 - (i) the form in which the company’s instrument of incorporation and its prospectus were considered by HM Revenue and Customs before giving the clearance, and
 - (ii) the form in which it is proposed that those documents will apply at the beginning of the specified period.

(8) A future company notice may be given at any time before the proposed company is authorised and incorporated if—

- (a) HM Revenue and Customs have given clearance under regulation 69U, and
- (b) the applicant certifies that there have been no changes in substance between—
 - (i) the form in which the proposed company’s instrument of incorporation and its prospectus were considered by HM Revenue and Customs before giving the clearance, and
 - (ii) the form in which it is proposed that those documents will apply at the time when the proposed company is authorised.

Contents of notice under regulation 69O

69Q.—(1) This regulation applies if notice is given under regulation 69O.

(2) An existing company notice must specify the accounting period from the beginning of which this Part is to apply to the company (the “specified accounting period”).

(3) An existing company notice must be accompanied by—

- (a) a statement by the manager of the open-ended investment company that the conditions specified in regulations 69E to 69N are reasonably expected to be met in respect of the company throughout the specified accounting period;
- (b) the following documents relating to the company—
 - (i) its instrument of incorporation, and
 - (ii) its prospectus;
- (c) a copy of the application to the Financial Services Authority for agreement to changes in the company’s instrument of incorporation and its prospectus; and
- (d) copies of any documents accompanying the application mentioned in sub-paragraph (c) to the extent that those documents do not fall within sub-paragraphs (a) and (b).

(4) A future company notice must specify that this Part will apply to the proposed company from the date of its incorporation and authorisation.

(5) A future company notice must be accompanied by—

- (a) a statement by the applicant that the conditions specified in regulations 69E to 69N are reasonably expected to be met in respect of the proposed company throughout its first accounting period;
- (b) the following documents relating to the proposed company—
 - (i) its proposed instrument of incorporation, and
 - (ii) its proposed prospectus (including any supplements to the proposed prospectus);
- (c) a copy of the application to the Financial Services Authority for approval of the proposed company as an open-ended investment company; and
- (d) copies of any documents accompanying the application mentioned in sub-paragraph (c) to the extent that those documents do not fall within sub-paragraphs (a) and (b).

Procedural matters relating to the giving of notice for this Part to apply

Notice: further provisions: quashing notices

69R.—(1) This regulation applies if any of conditions A to C are met.

(2) Condition A is that an existing company notice is given, but the notice is not accompanied by the documents specified in regulation 69Q(3)(b).

(3) Condition B is that a future company notice is given, but the notice is not accompanied by the documents specified in regulation 69Q(5)(b).

(4) Condition C is that a person gives a notice under regulation 69O in circumstances where the documents supplied do not demonstrate that the open-ended investment company (or the proposed open-ended investment company) will meet all the conditions of membership of the Property AIF regime.

(5) HM Revenue and Customs may give a notice (a “quashing notice”) quashing the notice given under regulation 69O—

- (a) to the manager of the open-ended investment company if an existing company notice has been given, or
- (b) to the applicant if a future company notice has been given.

Procedure relating to quashing notices

69S.—(1) HM Revenue and Customs must not give a quashing notice until—

- (a) they have given a notice (a “preliminary notice”) to the person giving the notice under regulation 69O specifying the reasons why the preliminary notice is given, and
- (b) they have given the person giving the notice under regulation 69O a period of 28 days to rectify the matters specified in the preliminary notice.

Paragraph (1)(b) is subject to paragraphs (7) to (9).

(2) HM Revenue and Customs must give a preliminary notice within a period of 28 days beginning with the day on which they receive the notice given under regulation 69O.

(3) HM Revenue and Customs must—

- (a) give a quashing notice, or
- (b) give notice to the manager of the open-ended investment company or to the applicant (as the case may be) that they are satisfied that the matters specified in the preliminary notice have been rectified,

within a period of 28 days beginning on the day specified in paragraph (4).

(4) The day specified is whichever is the earlier to occur of—

- (a) the day immediately following the expiry of the period specified in the preliminary notice, and
- (b) the day on which HM Revenue and Customs receive notice from the manager of the open-ended investment company or from the applicant (as the case may be) that the manager or applicant thinks—
 - (i) that the matters specified in the preliminary notice have been rectified, or
 - (ii) that the original notice given under regulation 69O is valid.

(5) If HM Revenue and Customs give a preliminary notice, the open-ended investment company (or, as the case may be, the proposed open-ended investment company) in respect of which the notice is given may not enter the Property AIF regime until HM Revenue and Customs have notified the manager of the company (or, as the case may be, the applicant) that they are satisfied that the matters specified in the preliminary notice have been rectified.

(6) If HM Revenue and Customs give a quashing notice, and the person to whom the notice is given appeals, the open-ended investment company (or, as the case may be, the proposed open-ended investment company) in respect of which the notice is given may not enter the Property AIF regime until the appeal is determined.

(7) The period of 28 days mentioned in paragraph (1)(b) is replaced by the period referred to in paragraph (9) if, within that 28 day period, the conditions specified in paragraph (8) are met.

(8) The conditions are that—

- (a) HM Revenue and Customs and the applicant are in agreement as to the changes needed to the notice or to the documents accompanying the notice (or to both),
- (b) the applicant has given notice to HM Revenue and Customs stating that the changes referred to in sub-paragraph (a) will take a specified period (which is longer than 28 days) to effect, and
- (c) HM Revenue and Customs have given notice to the applicant accepting the statement made in the notice given under sub-paragraph (b).

(9) The period is the specified period mentioned in paragraph (8)(b).

Appeal against quashing notice

69T.—(1) A person to whom a quashing notice is given may appeal to the Special Commissioners.

(2) The notice of appeal must be given to HM Revenue and Customs within a period of 28 days beginning with the day on which the quashing notice is given.

(3) On an appeal the Special Commissioners shall determine whether it was just and reasonable for HM Revenue and Customs to give the quashing notice.

(4) If the Special Commissioners allow the appeal—

- (a) they may direct that this Part shall apply to the open-ended investment company (or, as the case may be to the proposed open-ended investment company), and
- (b) they may specify the date from which this Part shall so apply.

(5) The date mentioned in paragraph (4)(b)—

- (a) must not be earlier than the beginning of the specified accounting period if an existing company notice has been given, and
- (b) must not be earlier than the date of incorporation and authorisation if a future company notice has been given.

Clearance applications

Clearance in relation to the genuine diversity of ownership condition

69U.—(1) An application for clearance that an open-ended investment company meets the genuine diversity of ownership condition may be made in writing to HM Revenue and Customs—

- (a) by the manager of an open-ended investment company, or
- (b) if it is proposed to incorporate an open-ended investment company, by the applicant.

(2) An application for clearance must be accompanied by the company's instrument of incorporation and its prospectus in the form in which it is proposed that those documents will apply at the beginning of the first accounting period in which this Part will apply to the open-ended investment company.

(3) The officer of Revenue and Customs dealing with the application for clearance may require the manager of the company to provide further particulars if the officer thinks that full particulars of the company (or of the proposed company) have not been provided.

(4) HM Revenue and Customs must notify the person making the application within 28 days of the receipt of the particulars (or, if paragraph (3) applies, of all further particulars required) that they—

- (a) give clearance that the company meets the genuine diversity of ownership condition;
- (b) give that clearance subject to conditions; or
- (c) refuse to give that clearance.

(5) The company may not rely on a clearance given under this regulation if—

- (a) at the beginning of the first accounting period in which this Part applies to the company, a relevant statement in the company's instrument of incorporation or its prospectus is not in accordance with a relevant statement in the documents considered by HM Revenue and Customs before giving clearance,
- (b) the company acts in contravention of a relevant statement in its instrument of incorporation or prospectus in issue for the time being, or
- (c) the company amends a relevant statement in its instrument of incorporation or prospectus in issue for the time being.

(6) But paragraph (5)(c) does not apply if the company has obtained a clearance given under this regulation which applies to the amendment.

Consequences of entry

Effects of entry

69V.—(1) Property rental business of F (pre-entry) shall be treated for the purposes of corporation tax as ceasing at entry.

(2) Assets which immediately before entry are involved in property rental business of F (pre-entry) shall be treated for the purposes of corporation tax as being sold by F (pre-entry) immediately before entry and reacquired by F (tax-exempt) immediately after entry.

(3) For the purposes of corporation tax, on entry one accounting period of the open-ended investment company shall end and another shall begin.

(4) On entry a new distribution period of the open-ended investment company shall begin.

(5) The sale and reacquisition deemed under paragraph (2) shall not have effect for the purposes of tax in respect of chargeable gains.

(6) For the purposes of CAA 2001, the sale and reacquisition deemed under paragraph (2)—

- (a) shall not give rise to allowances or charges, and
- (b) shall not make it possible to make an election under section 198 or 199 of that Act (apportionment).

(7) For the purposes of CAA 2001, anything done by or to F (pre-entry) before entry in relation to an asset which is deemed under paragraph (2) to be sold and reacquired shall be treated after entry as having been done by or to F (tax-exempt).

Duration

69W. Once this Part has begun to apply to an open-ended investment company it shall continue to apply unless and until it ceases to apply in accordance with Chapter 7 of this Part.

CHAPTER 3

THE TAX TREATMENT OF PROPERTY AIFS

Categories of business

Ring-fencing of tax-exempt business

69X.—(1) For the purposes of corporation tax, the business of F (tax-exempt) shall be treated as a separate business (distinct from—

- (a) any business carried on by F (pre-entry),
- (b) any business carried on by F (residual), and
- (c) any business carried on by F (post-cessation)).

(2) For the purposes of corporation tax, F (tax-exempt) shall be treated as a separate company (distinct from—

- (a) F (pre-entry),
- (b) F (residual), and
- (c) F (post-cessation)).

(3) In particular—

- (a) a loss incurred by F (tax-exempt) may not be set off against the net income of F (residual),
- (b) a loss incurred in respect of F (residual) may not be set off against the net income of F (tax exempt),
- (c) a loss incurred in respect of F (pre-entry) may not be set off against the net income of F (tax-exempt) (but this regulation does not prevent a loss of that kind from being set off against profits of F (residual)),
- (d) a loss incurred by F (tax-exempt) may not be set off against profits arising to F (post-cessation) (in respect of business of any kind), and
- (e) receipts accruing after entry but relating to business of F (pre-entry) shall not be treated as receipts of F (tax-exempt).

(4) In paragraph (3) a reference to a loss includes a reference to a deficit, expense, charge or allowance.

(5) Section 392B of ICTA(a) (ring-fencing of losses from overseas property business) shall not apply to business of F (tax-exempt).

(6) Paragraphs 5B and 5C of Schedule 28AA to ICTA(b) (transfer pricing: exemption for small and medium enterprises) shall not apply to an open-ended investment company to which this Part applies (whether to F (tax-exempt) or to F (residual)).

Chargeability to tax

Chargeability to corporation tax

69Y.—(1) The net income of F (tax-exempt) (see regulation 69Z1) shall not be charged to corporation tax.

(2) The net income of F (residual) (see regulation 69Z3) shall be charged to corporation tax at the rate applicable for open-ended investment companies (see section 468A(1) of ICTA(c)).

Meaning of “net income”

69Z.—(1) In this Part the “net income” of an open-ended investment company for an accounting period means, in the case of an open-ended investment company that prepares accounts in accordance with UK generally accepted accounting practice, the amount falling to be dealt with under the heading “Net income/(expense) before taxation” in the company’s statement of total return for the accounting period.

(2) In paragraph (1) “the company’s statement of total return for the accounting period” is to be construed in accordance with regulation 12.

Calculation of net income of F (tax-exempt)

69Z1.—(1) This regulation applies to determine the net income of F (tax-exempt) for the purposes of this Part.

(2) Section 21A of ICTA(d) (calculation of profits of Schedule A business) shall apply to income arising from the business of F (tax-exempt).

(a) Section 392B was inserted by paragraph 28 of Schedule 5 to the Finance Act 1998 (c. 36).
 (b) Schedule 28AA was inserted by Schedule 16 to the Finance Act 1998; and paragraphs 5B and 5C were inserted by section 31(4) of the Finance Act 2004 (c. 12).
 (c) Section 468A was inserted by section 16 of the Finance (No. 2) Act 2005 (c. 22) and section 468A(1) was amended by section 26(5) of the Finance Act 2006 (c. 25) and paragraph 86 of Schedule 1 to the Income Tax Act 2007 (c. 3).
 (d) Section 21A was inserted by paragraph 4 of Schedule 5 to the Finance Act 1998 (c. 36), and amended by paragraph 1 of Schedule 23 to the Finance Act 2001 (c. 9), paragraph 7 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), paragraph 3 of Schedule 35 and Part 3 of Schedule 42 to the Finance Act 2004 (c. 12) and paragraph 12 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(3) Paragraph 2(3) of section 15(1) of ICTA(a) (Schedule A: disregard of credits and debits from loan relationships and derivative contracts) shall not apply in respect of—

- (a) a loan relationship if or in so far as it relates to tax-exempt business,
- (b) a hedging derivative contract if or in so far as it relates to tax-exempt business, or
- (c) embedded derivatives if or in so far as the host contract is entered into for the purposes of tax-exempt business.

(4) For the purposes of paragraph (3)—

- (a) a derivative contract is hedging in relation to a company if or in so far as it is acquired as a hedge of risk in relation to an asset by the exploitation of which tax-exempt business is conducted,
- (b) a derivative contract is hedging in relation to a company if or in so far as it is acquired as a hedge of risk in relation to a liability incurred in connection with tax-exempt business,
- (c) a designation of a contract as wholly or partly hedging for the purposes of a company's accounts shall be conclusive, and
- (d) “embedded derivatives” and “host contract” shall be construed—
 - (i) in accordance with section 94A of FA 1996(b) in relation to loan contracts with embedded derivatives,
 - (ii) in accordance with paragraph 2A of Schedule 26 to FA 2002(c) in relation to non-financial contracts with embedded derivatives,
 - (iii) in accordance with paragraph 2B of Schedule 26 to FA 2002(d) in relation to hybrid derivatives.

(5) In paragraph (4)(a) the reference to an asset includes a reference to—

- (a) the value of an asset, and
- (b) profits attributable to it.

(6) Net income shall be computed without regard to items giving rise to credits or debits which would be within Schedule 26 to FA 2002(e) (derivative contracts) but for paragraph 4(2)(b) of that Schedule (exclusion of share-based and unit-trust-based contracts).

(7) Income and expenditure relating partly to tax-exempt business and partly to non-tax-exempt business shall be apportioned reasonably.

(8) Section 3(1) of CAA 2001(f) (claims for capital allowances) shall not apply; and any allowance which the company could claim under that section shall be made automatically and reflected in the calculation of net income.

Components of income arising to F (residual)

69Z2.—(1) For the purposes of this Part the income arising to F (residual) consists of—

- (a) distributions qualifying for exemption under section 208 of ICTA, and
- (b) income arising from the business of F (residual).

(a) In section 15(1) the charge to tax under Schedule A was substituted by paragraph 1 of Schedule 5 to the Finance Act 1998 (c. 36); and paragraph 2(3) of that charge was amended by paragraph 2 of Schedule 27 and Part 3(10) of Schedule 40 to the Finance Act 2002 (c. 23).

(b) 1996 c. 8; section 94A was inserted by paragraph 13 of Schedule 10 to the Finance Act 2004 (c. 12) and amended by paragraph 28 of Schedule 4 to the Finance Act 2005 (c. 7).

(c) 2002 c. 23; paragraph 2A of Schedule 26 was inserted by S.I. 2006/3269.

(d) Paragraph 2B of Schedule 26 was inserted by S.I. 2006/3269.

(e) 2002 c. 23; in paragraph 4, sub-paragraph (2) was substituted by S.I. 2005/646 and paragraph (b) was amended by S.I. 2005/2082 and 3440 and 2006/3269.

(f) 2001 c. 2.

(2) Section 21A of ICTA (calculation of profits of Schedule A business) shall apply to income arising from the business of F (residual) if and to the extent that income arising from the business of F (residual) is chargeable to corporation tax under Schedule A.

Calculation of net income of F (residual)

69Z3. Use this regulation to determine the net income of F (residual) for the purposes of this Part.

First rule

Determine the amount of the income arising to F (residual).

Second rule

Deduct any amounts whose deduction is required or allowed under the Corporation Tax Acts (including any distributions qualifying for exemption under section 208 of ICTA).

In this Part the amount so found is called the “pre-distribution amount”.

Third rule

Deduct the amount attributed to PAIF distributions (interest) under regulation 69Z14(b).

The result is the net income of F (residual).

Breaches of conditions

Breach of the genuine diversity of ownership condition

69Z4.—(1) This regulation applies if an open-ended investment company to which this Part applies is in breach of the genuine diversity of ownership condition.

(2) Within 28 days of becoming aware of the breach, the company must provide the following information to the Commissioners—

- (a) the date on which the condition first ceased to be met;
- (b) the date on which the company became aware of the breach;
- (c) details of the condition that was breached;
- (d) the nature of the breach;
- (e) the steps the company proposes to take to rectify the breach; and
- (f) the date by which the company proposes to rectify the breach.

(3) The date referred to in paragraph (2)(f) must be the earliest date by which the objective of complying with the genuine diversity of ownership condition may reasonably be achieved.

(4) The Commissioners may give a termination notice to the company if—

- (a) the steps that the company proposes to take will not rectify the breach, or
- (b) the date by which the company proposes to rectify the breach is not the earliest date by which the objective of remedying the genuine diversity ownership condition may reasonably be achieved.

(5) If there are three different breaches of the genuine diversity of ownership condition in three different accounting periods in a period of ten years beginning with the first day of the accounting period in which the company becomes aware of the first of those breaches, the Commissioners may give a termination notice to the company.

Breach of the corporate ownership condition

69Z5.—(1) This regulation applies if an open-ended investment company to which this Part applies is in breach of the corporate ownership condition.

(2) If there is a breach which is caused by the action of a shareholder in the company and the company has not taken reasonable steps to prevent the breach (so that, accordingly, there is a charge to corporation tax under regulation 69Z12) (a “specified breach”), this Part shall continue to apply to the company despite the breach (but see paragraph (3) and regulation 69Z8).

(3) If there are three specified breaches in a period of ten years beginning with the first day of the accounting period in which the first specified breach occurs, the Commissioners may give a termination notice to the company.

Breach of the loan creditor condition

69Z6.—(1) This regulation applies if an open-ended investment company to which this Part applies is in breach of the loan creditor condition.

(2) If the company is inadvertently in breach of the loan creditor condition but rectifies the breach within a period of 28 days beginning with the day on which the company first becomes aware of the breach, this Part shall continue to apply to the company despite the breach (but see paragraphs (5) and (6) and regulation 69Z8).

(3) If the company is inadvertently in breach of the loan creditor condition but does not rectify the breach within a period of 28 days beginning with the day on which the company first becomes aware of the breach, the Commissioners may give a termination notice to the company.

(4) If the company is intentionally or negligently in breach of the loan creditor condition, the Commissioners may give a termination notice to the company.

(5) If the company is in breach of the same condition specified in paragraphs (2) to (5) of regulation 69M in two different accounting periods in a period of ten years beginning with the first day of the accounting period in which the company becomes aware of the first of those breaches, the Commissioners may give a termination notice to the company.

(6) If the company is in breach of the conditions specified in paragraphs (2) to (5) of regulation 69M in three different accounting periods in a period of ten years beginning with the first day of the accounting period in which the company becomes aware of the first of those breaches, the Commissioners may give a termination notice to the company.

Breach of balance of business conditions

69Z7.—(1) Paragraph (2) applies if a newly qualified company—

- (a) is in breach of condition A set out in regulation 69N(2)(a) in its first accounting period, or
- (b) is in breach of condition B set out in regulation 69N(3)(a) at the end of its first accounting period.

(2) This Part shall cease to apply to the company at the end of its first accounting period and regulation 69Z41 shall apply.

(3) Paragraphs (4) to (7) apply if an open-ended-investment company to which this Part applies—

- (a) is in breach of condition A set out in regulation 69N(2)(b) in an accounting period, or
- (b) is in breach of condition B set out in regulation 69N(3)(b) at the end of an accounting period.

(4) If the conditions specified in paragraph (6) are met, this Part shall continue to apply to the company despite the breach (but see paragraph (7) and regulation 69Z8).

(5) If the conditions specified in paragraph (6) are not met, the Commissioners may give a termination notice to the company.

(6) The conditions are that—

- (a) property investment business is at least 50% of the company’s net income in the accounting period,
- (b) the value of the assets involved in property investment business is at least 50% of the total value of assets held by the company at the end of the accounting period.

(7) If this regulation applies to a company in three different accounting periods in a period of ten years beginning with the first day of the accounting period in which the company becomes aware of the first of those breaches, the Commissioners may give a termination notice to the company.

Multiple breaches of separate conditions

69Z8.—(1) This regulation applies in relation to an open-ended investment company to which this Part applies if—

- (a) there has been a breach of at least two of the conditions in regulations 69E to 69N,
- (b) at least one of the conditions breached is contained in a different regulation from that containing another of those breached, and
- (c) there have been five breaches in a period of ten years beginning with the first day of the accounting period in which the first breach occurs.

(2) The Commissioners may give a termination notice to the company.

Further provisions

Profit/financing costs in the case of a Property AIF that is a qualified investor scheme

69Z9.—(1) This regulation applies if conditions A and B are met.

(2) Condition A is that an open-ended investment company to which this Part applies is a qualified investor scheme.

(3) Condition B is that the result of the following calculation is less than 1.25 in respect of an accounting period—

$$\frac{\textit{Income}}{\textit{Financing Costs}}$$

(4) In paragraph (3)—

“Income” means the amount of the net income of F (tax-exempt) arising in the accounting period (before the offset of capital allowances, of losses from a previous accounting period, and of amounts taken into account under regulation 69Z1(3)), and

“Financing Costs” means the amount of the financing costs incurred in that period in respect of the business of F (tax-exempt).

(5) An amount shall be charged to corporation tax.

(6) That amount is determined as follows—

Step One

Determine the financing costs which, given the actual income, would produce the result of 1.25 in the calculation specified in paragraph (3) (the “theoretical financing costs”).

Step Two

Determine the amount by which the actual financing costs exceed the theoretical financing costs (“the excess financing cost”).

Step Three

Divide the main rate at which corporation tax is charged for the accounting period by the rate at which corporation tax is charged on an open-ended investment company for the accounting period (see section 468A(1) of ICTA(a)) to determine the multiplier.

Step Four

Multiply the excess financing cost by the multiplier.

The result is the amount charged to tax.

(7) For the purposes of paragraphs (3) and (4) “financing costs” are the costs of debt finance; and in calculating the costs of debt finance in respect of an accounting period the matters to be taken into account include—

- (a) costs giving rise to debits in respect of debtor relationships of the company under Chapter 2 of Part 4 of FA 1996 (loan relationships), other than debits in respect of exchange losses from such relationships (within the meaning of section 103(1A) and (1B) of that Act(b)),
- (b) any exchange gain or loss from a debtor relationship within the meaning of that Chapter in relation to debt finance,
- (c) any credit or debit falling to be brought into account under Schedule 26 to FA 2002 (derivative contracts) in relation to debt finance,
- (d) the financing cost implicit in a payment under a finance lease, and
- (e) any other costs arising from what would be considered, in accordance with generally accepted accounting practice, to be a financing transaction.

(8) No loss, deficit, expense or allowance may be set off against the amount charged to tax by paragraph (5).

Cancellation of tax advantage

69Z10.—(1) This regulation applies if a company to which this Part applies has tried to obtain a tax advantage for itself or another person.

(2) The Commissioners may give a notice to the company specifying the tax advantage.

(3) If the Commissioners give a notice to the company under paragraph (2) a tax advantage obtained by the company shall be counteracted, in accordance with the notice, by an adjustment by way of—

- (a) an assessment;
- (b) the cancellation of a right of repayment;
- (c) a requirement to return a repayment already made; or
- (d) the computation or recomputation of profits or gains, or liability to tax, on a basis specified by the Commissioners in the notice.

(4) The Commissioners may (in addition to the adjustment under paragraph (3)) assess the company to such additional amount of income tax under Case VI of Schedule D as they think is equivalent to the value of the tax advantage.

(5) For the purposes of this regulation “tax advantage” has the meaning given by section 709 of ICTA(c).

(6) But a company does not obtain a tax advantage by reason only of this Part applying to it, unless it does anything (whether before or during the application of this Part) which is wholly or principally designed to create or inflate or apply a loss, deduction or expense (whether or not suffered or incurred by the company).

(a) Section 468A was inserted by section 16 of the Finance (No. 2) Act 2005 (c. 22) and section 468A(1) was amended by section 26(5) of the Finance Act 2006 (c. 25) and paragraph 86 of Schedule 1 to the Income Tax Act 2007 (c. 3).

(b) Subsections (1A) and (1B) of section 103 of the Finance Act 1996 were inserted by paragraph 7(3) of Schedule 23 to the Finance Act 2002 (c. 23).

(c) Section 709 was amended by section 73 of the Finance Act 1997 (c. 16), paragraph 19 of Schedule 4 and Part II(9) of Schedule 8 to the Finance (No. 2) Act 1997 (c. 58) and paragraph 161 of Schedule 1 to the Income Tax Act 2007 (c. 3).

Appeal against notice under regulation 69Z10

69Z11.—(1) If a notice is given to a company under regulation 69Z10, the company may appeal to the Special Commissioners.

(2) The notice of appeal must be given to HM Revenue and Customs within a period of 28 days beginning with the day on which the notice under regulation 69Z10 is given.

(3) On an appeal the Special Commissioners may—

- (a) affirm, vary or cancel the notice, and
- (b) affirm, vary or quash an assessment made under regulation 69Z10(4).

Distribution to holder of excessive rights: charge to tax

69Z12.—(1) This regulation applies if an open-ended investment company to which this Part applies—

- (a) makes a distribution to, or in respect of, a holder of excessive rights (see regulation 69Z13), and
- (b) the company has not taken reasonable steps to prevent the possibility of such a distribution being made.

(2) The company is treated as having received an amount of income calculated in accordance with paragraph (3).

(3) The amount of the income is determined by the formula—

$$I \times P$$

(4) In paragraph (3)—

I is the net income of F (tax-exempt) distributable in accordance with regulation 69Z14(a);
P is the percentage of the rights to the net asset value of the company held by, or on behalf of, the holder of excessive rights.

(5) The amount determined in accordance with paragraph (3) shall be charged to corporation tax as if it were income of F (residual) chargeable under Case VI of Schedule D arising in the accounting period in which the distribution mentioned in paragraph (1) was made by the company.

(6) No loss, deficit, expense or allowance may be set off against the amount charged to tax by paragraph (5).

Meaning of “holder of excessive rights”

69Z13.—(1) In this Part a “holder of excessive rights” means a body corporate which—

- (a) is a participant in an open-ended investment company to which this Part applies, and
- (b) is beneficially entitled to shares representing rights to 10% or more of the net asset value of the company.

(2) Paragraphs (4) and (5) of regulation 69L apply for the purposes of paragraph (1) as they apply for the purposes of regulation 69K.

(3) In this Part an “excessive holding” means the holding of a holder of excessive rights.

CHAPTER 4
DISTRIBUTIONS MADE BY PROPERTY AIFS

Attribution of distributions

69Z14. The total amount shown in the distribution accounts of an open-ended investment company to which this Part applies as available for distribution to participants shall be attributed—

- (a) first, to property income distributions up to the amount of the net income of F (tax-exempt) (determined in accordance with regulation 69Z1),
- (b) secondly, to PAIF distributions (interest) up to the pre-distribution amount (determined in accordance with regulation 69Z3), and
- (c) finally, to PAIF distributions (dividends).

Property income distributions

69Z15.—(1) This regulation applies if—

- (a) an open-ended investment company to which this Part applies makes a distribution, and
- (b) the amount distributed includes sums attributed to property income distributions.

(2) The Tax Acts shall have effect as if the sums were payments made on the distribution date by the company to the participants in proportion to their rights.

(3) Regulation 69Z18 (property income distributions: liability to tax of participants) explains how a property income distribution received by a participant is treated.

(4) In these Regulations a “property income distribution” means a sum attributed to property income distributions which is distributed (including a payment made to a participant who is not chargeable to income tax or corporation tax).

PAIF distributions (interest)

69Z16.—(1) This regulation applies if—

- (a) an open-ended investment company to which this Part applies makes a distribution, and
- (b) the amount distributed includes sums attributed to PAIF distributions (interest).

(2) The Tax Acts shall have effect as if the sums were payments of yearly interest made on the distribution date by the company to the participants in proportion to their rights.

(3) In this Part a “PAIF distribution (interest)” means a sum attributed to PAIF distributions (interest) which is distributed (including a payment made to a participant who is not chargeable to income tax).

PAIF distributions (dividends)

69Z17.—(1) This regulation applies if—

- (a) an open-ended investment company to which this Part applies makes a distribution, and
- (b) the amount distributed includes sums attributed to PAIF distributions (dividends).

(2) The Tax Acts shall have effect as if the sums were dividends on shares paid on the distribution date by the company to the participants in proportion to their rights.

(3) In this Part a “PAIF distribution (dividends)” means a sum attributed to PAIF distributions (dividends) which is distributed (including a dividend treated as paid to a participant who is not chargeable to corporation tax).

CHAPTER 5

THE TREATMENT OF PARTICIPANTS IN PROPERTY AIFS

Treatment of distributions: liability to tax of participants

Property income distributions: liability to tax of participants

69Z18.—(1) A property income distribution received by a participant in an open-ended investment company to which this Part applies shall be treated—

- (a) in the case of a participant within the charge to corporation tax, as profits of a Schedule A business, and
- (b) in the case of a participant within the charge to income tax, as the profits of a UK property business (within the meaning of section 264 of ITTOIA 2005).

(2) A distribution received by a participant who is not resident in the United Kingdom—

- (a) if the participant is a company within the charge to corporation tax, shall be chargeable to tax as profits of a Schedule A business,
- (b) if the participant is a person other than a company within the charge to corporation tax, shall be chargeable to tax as profits of a UK property business (within the meaning of section 264 of ITTOIA 2005), and
- (c) in either case shall not be chargeable to tax by virtue of sections 971 and 972 of ITA 2007 (non-resident landlords).

(3) Paragraph (1) shall not apply in relation to a participant if and in so far as the participant—

- (a) is a dealer in respect of distributions (within the meaning of section 95 of ICTA(a)),
- (b) is a dealer in securities who is charged to tax under Part 2 of ITTOIA 2005 (trading income) in respect of distributions made by companies,
- (c) is an individual member of Lloyd's (within the meaning given by section 184(1) of FA 1993(b)) and the distribution is made in respect of assets forming part of—
 - (i) a premium trust fund of his (within the meaning given by section 174 of FA 1993(c)), or
 - (ii) an ancillary trust fund of his (within the meaning given by section 176 of FA 1993(d)), or
- (d) is a corporate member of Lloyd's (within the meaning given by section 230(1) of FA 1994) and the distribution is made in respect of assets forming part of—
 - (i) a premium trust fund of his (within the meaning given by section 222 of FA 1994(e)), or
 - (ii) an ancillary trust fund of his (within the meaning given by section 223 of FA 1994).

(4) Section 114(1)(a) of ICTA(f) (partnerships with companies as members) does not disapply paragraph (1).

-
- (a) Section 95 was amended by paragraph 8(1) of Schedule 7 to the Finance Act 1997 (c. 16), section 24(1) to (9) of the Finance (No. 2) Act 1997 (c. 58), Part 3(6) of Schedule 43 to the Finance Act 2003 (c. 14), section 137(2) of the Finance Act 2004 (c. 12) and paragraph 74 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).
 - (b) Section 184(1) was relevantly amended by paragraph 8 of Schedule 21 to the Finance Act 1994 (c. 9).
 - (c) Section 174 was amended by paragraph 3 of Schedule 21 to the Finance Act 1994, Part V(18) of Schedule 41 to the Finance Act 1996 (c. 8), paragraph 6(a) of Schedule 10 to the Finance Act 1997 (c. 16) and S.I. 2001/3629.
 - (d) Section 176 was amended by Part V(3) of Schedule 41 to the Finance Act 1996 (c. 8) and paragraph 357 to Schedule 1 to the Income Tax Act 2007 (c. 3).
 - (e) Section 222 was amended by Part V(18) of Schedule 41 to the Finance Act 1996 and paragraph 6(b) of Schedule 10 to the Finance Act 1997.
 - (f) Section 114(1) was amended by section 215(2)(a) of the Finance Act 1994 and section 125(4) of the Finance Act 1995 (c. 4).

(5) Sections 231 of ICTA(a) and 397 of ITTOIA 2005(b) (tax credits in respect of qualifying distributions) shall not apply to property income distributions.

(6) Property income distributions received by one participant acting in one capacity shall be treated, for the purposes of paragraph (1), as the profits of a single business which is separate from—

- (a) any other Schedule A business carried on by the participant,
- (b) any other UK property business (within the meaning of section 264 of ITTOIA 2005) carried on by the participant,
- (c) any overseas property business (within the meaning of section 70A(4) of ICTA(c)) carried on by the participant, and
- (d) any overseas property business (within the meaning of section 265 of ITTOIA 2005) carried on by the participant.

(7) In the case of a participant which is a partnership, paragraph (6) applies to receipts by a partner of a share of any distribution as it applies to receipts by a participant.

PAIF distributions (interest): liability to tax of participants

69Z19.—(1) A PAIF distribution (interest) received by a participant in an open-ended investment company to which this Part applies shall be treated as if it were a payment of yearly interest.

(2) Sections 231 of ICTA and 397 of ITTOIA 2005 (tax credits in respect of qualifying distributions) shall not apply to PAIF distributions (interest).

Property distributions (dividends): liability to tax of participants

69Z20.—(1) A PAIF distribution (dividends) received by a participant in an open-ended investment company to which this Part applies shall be treated as if it were a dividend on shares.

(2) If a PAIF distribution (dividends) is made for a distribution period to a participant chargeable to corporation tax, regulations 48 to 52A(d) shall not apply to the distribution.

Distributions made after cessation

69Z21.—(1) This regulation applies if an open-ended investment company—

- (a) is a company to which this Part applies in respect of an accounting period,
- (b) makes a distribution in respect of that accounting period, and
- (c) the distribution is made after cessation.

(2) Regulations 69Z18 to 69Z20 apply in relation to the distribution.

Deduction of tax from distributions

Deduction of tax from property income distributions

69Z22.—(1) On making a property income distribution, an open-ended investment company to which this Part applies must deduct a sum representing income tax at the basic rate in force for the tax year in which the distribution date falls.

(a) Section 231 was amended by section 106(1) of and Part IV of Schedule 17 to the Finance Act 1989 (c. 26), paragraph 2 of Schedule 7 to the Finance Act 1990 (c. 29), sections 19(1), 22(6) and 30(1) to (7) of and Part II(9) of Schedule 8 to the Finance (No. 2) Act 1997 (c. 58), Part 2(1) of Schedule 33 to the Finance Act 2001 (c. 9) and paragraph 113 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(b) Section 397 was amended by paragraph 515 of Schedule 1 to the Income Tax Act 2007 (c. 3).

(c) Section 70A was inserted by paragraph 25 of Schedule 5 to the Finance Act 1998 (c. 36).

(d) Regulation 52A was inserted by S.I. 2006/3239 and amended by S.I. 2007/683.

(2) A property income distribution shall be treated as having been received by the participant after deduction of income tax at the basic rate for the year of assessment in which the distribution date falls, from a corresponding gross amount.

(3) The sum is accordingly taken into account under sections 59B(a) and 59D(b) of TMA 1970 (see also paragraph 8 of Schedule 18 to the Finance Act 1998(c)) in determining the income tax or corporation tax payable by, or repayable to, the participant.

(4) This regulation is subject to regulation 69Z24 (distribution payments to be made without deduction of tax).

Deduction of tax from PAIF distributions (interest)

69Z23.—(1) On making a PAIF distribution (interest), an open-ended investment company to which this Part applies must deduct a sum representing income tax at the savings rate in force for the tax year in which the PAIF distribution (interest) is made.

(2) Accordingly, the sum is one to which section 874 of ITA 2007 applies.

(3) In paragraph (1) the “savings rate” means the rate of income tax specified in section 7 of ITA 2007.

(4) This regulation is subject to regulation 69Z24 (distribution payments to be made without deduction of tax).

Distribution payments to be made without deduction of tax

69Z24.—(1) On making a distribution, an open-ended investment company to which this Part applies must not deduct any sum representing income tax if the company reasonably believes that conditions A and B are met.

(2) Condition A is that if the distribution were made by a UK-REIT out of the profits of C (tax-exempt), the distribution would be required to be made without any deduction representing income tax.

(3) Condition B is that if the distribution were a distribution of yearly interest, the distribution would be required to be made without any deduction representing income tax.

(4) If at the time it makes a distribution the company reasonably believes that conditions A and B are met, but in fact those conditions are not both met, these Regulations shall apply to the distribution as if it were never one which could be made without deduction of tax.

(5) In paragraph (2) “profits of C (tax-exempt)” shall be construed in accordance with Part 4 of FA 2006.

CHAPTER 6

COMPLIANCE IN RELATION TO THE PROPERTY AIF REGIME

Company tax return

Documents to be included with company tax return

69Z25.—(1) An open-ended investment company to which this Part applies must include documents A and B in its company tax return.

-
- (a) Section 59B was inserted by section 193 of the Finance Act 1994 (c. 9) and amended by section 115(6) of the Finance Act 1995 (c. 4), sections 122(2), 125(4), 126(2) and 127 of the Finance Act 1996 (c. 8), paragraph 14 of Schedule 29 to the Finance Act 2001 (c. 9), paragraph 131 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 145(7)(b) of the Finance Act 2003 (c. 14) and paragraph 377 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).
- (b) Section 59D was substituted by paragraph 29 of Schedule 19 to the Finance Act 1998 (c. 36) and amended by section 40(3) of the Finance Act 2002 (c. 23).
- (c) 1998 c. 36; paragraph 8 of Schedule 18 was amended by paragraph 5 of Schedule 16 to the Finance Act 2000 (c. 17), section 92(4) of and paragraph 5 of Schedule 17 to the Finance Act 2002 and section 26(7) of the Finance Act 2006 (c. 25).

(2) Document A is a calculation of the net income of F(tax-exempt) and F(residual) in accordance with regulations 69Z1 to 69Z3.

(3) Document B is a reconciliation between—

- (a) the net income of the company (see regulation 69Z), and
- (b) the total income shown in the distribution accounts as attributed in accordance with regulation 69Z14.

(4) In paragraph (1) “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998(a), as read with paragraph 4 of that Schedule.

(5) Section 98 of TMA 1970(b) applies to any failure to furnish any information, give any certificate or produce any document or record in accordance with any provision of this Chapter as it applies to any such failure in the case of any provision specified in the second column of the Table below that section.

Breaches of conditions in Chapter 2

Information to be provided by company to which this Part applies

69Z26.—(1) This regulation applies if an open-ended investment company to which this Part applies—

- (a) does not meet a condition set out in Chapter 2 of this Part (entry into and membership of the Property AIF regime), and
- (b) becomes aware that it does not meet the condition.

(2) As soon as reasonably practicable, the company must provide the following information to the Commissioners—

- (a) the date on which the condition first ceased to be met and the date (if any) on which the condition was satisfied again;
- (b) details of the condition that was breached;
- (c) the nature of the breach; and
- (d) what (if anything) the company has done to prevent the breach recurring.

(3) This regulation does not apply if the breach of condition is one to which regulation 69Z27 applies.

Holders of excessive rights

Information relating to holders of excessive rights

69Z27.—(1) This regulation applies if an open-ended investment company to which this Part applies becomes aware that it has made a distribution to, or in respect of, a holder of excessive rights.

(2) As soon as reasonably practicable, the company must provide the following information to the Commissioners—

- (a) the name of every person to whom, or in respect of whom, the distribution specified in paragraph (1) was made;
- (b) the address of every such person;
- (c) the amount or value of the distribution;

(a) 1998 c. 36.

(b) 1970 c. 9; section 98 was relevantly amended by section 164 of the Finance Act 1989 (c. 26) and section 68(3) of the Finance Act 1990 (c.29).

- (d) particulars of those persons' interests in the company, including details of the percentage of rights to the net asset value of the company represented by the shares held by those persons;
- (e) the steps the company took to prevent the acquisition of any excessive holding; and
- (f) the steps the company has taken, or is taking, to ensure that there is no longer any excessive holding in the company.

Information about possible breaches of conditions of membership of Property AIF regime

Information to be provided to officers of Revenue and Customs

69Z28.—(1) This regulation applies if an officer of Revenue and Customs thinks that an open-ended investment company to which this Part applies—

- (a) does not meet, or may not meet, a condition specified in Chapter 2 of this Part, or
- (b) has not rectified a breach of such a condition.

(2) The officer may serve a notice on the manager of the company.

(3) The notice may require the manager to provide any of the information specified in regulation 69Z26(2) or, as the case may be, regulation 69Z27(2).

(4) The manager must comply with the notice within a period of 28 days beginning with the day on which the notice is served.

Accounting for tax deducted from property income distributions

Payments in an accounting period

69Z29.—(1) This regulation applies if—

- (a) an open-ended investment company to which this Part applies makes a distribution in an accounting period of the company, and
- (b) the distribution includes sums attributed to property income distributions or to PAIF distributions (interest) (or to both) (referred to in this Chapter as a “relevant distribution”).

(2) The company must deliver a return to an officer of Revenue and Customs for each return period—

- (a) which falls within the accounting period, and
- (b) in which the company makes a relevant distribution.

(3) The return periods are—

- (a) the quarters ending on 31st March, 30th June, 30th September and 31st December (the “quarter days”); and
- (b) any shorter period which—
 - (i) starts on the first day of an accounting period and ends with the first or only quarter day in that accounting period;
 - (ii) begins immediately after the last or only quarter day in that accounting period and ends on the last day of that accounting period; or
 - (iii) is an accounting period which starts and ends within a quarter.

(4) The company must deliver the return during a period of 14 days beginning with the day immediately following the end of the return period.

(5) The return must show the amount of—

- (a) any relevant distributions made by the company in the return period, and

(b) the tax (if any) payable by the company in respect of those payments.

(6) The company must deliver, with the return for the return period which ends on the last day of an accounting period, a reconciliation statement showing, in relation to any distribution made during the accounting period, the amounts (if any) which are attributable to each of paragraphs (a) to (c) of regulation 69Z14 (attribution of distributions).

Collection and payment of tax

69Z30.—(1) Tax in respect of a relevant distribution is due at the time by which the return on which the distribution must be included is required to be delivered.

(2) The tax due is equal to the sum which the company is required to deduct from the relevant distribution under—

(a) regulation 69Z22(1) (deduction of tax from property income distributions), and

(b) regulation 69Z23(1) (deduction of tax from PAIF distributions (interest)).

(3) The tax is due from the company making the relevant distribution.

(4) The tax is payable without an officer of Revenue and Customs making any assessment.

Assessments where relevant distribution included in return

69Z31.—(1) This regulation applies if any tax in respect of a relevant distribution which is included in a return under this Chapter has not been paid at or before the time mentioned in regulation 69Z30.

(2) An officer of Revenue and Customs may make an assessment on the person who made the relevant distribution.

(3) Tax may be assessed under this regulation whether or not it has been paid when the assessment is made.

Assessments in other cases

69Z32.—(1) This regulation applies if an officer of Revenue and Customs thinks—

(a) that there is a relevant distribution which should have been included in a return under this Chapter and which has not been so included, or

(b) that a return under this Chapter is otherwise incorrect.

(2) An officer of Revenue and Customs may make an assessment on the person who made the relevant distribution to the best of the officer's judgement.

Application of Income Tax Acts provisions about time limits for assessments

69Z33.—(1) The provisions of the Income Tax Acts about the time within which an assessment may be made apply to assessments under this Chapter, so far as those provisions refer or relate to—

(a) the tax year for which an assessment is made, or

(b) the year to which an assessment relates.

(2) Paragraph (1) applies despite the fact that an assessment under this Chapter may relate to a return period which is not a tax year.

(3) The provisions of section 36 of TMA 1970(a) (fraudulent or negligent conduct) about the circumstances in which an assessment may be made out of time apply accordingly on the basis that any such assessment relates to the tax year in which the return period ends.

(4) Section 87 of TMA 1970(b) (interest on overdue income tax deducted at source) applies for the purposes of a payment due under regulation 69Z30 or an assessment made under regulation 69Z31 or 69Z32.

Certificates of deduction of tax

69Z34.—(1) A company making a relevant distribution which is subject to deduction of tax by virtue of regulation 69Z22(1) must furnish the recipient with a statement in writing showing—

- (a) the gross amount of the payment,
- (b) the amount of tax deducted, and
- (c) the actual amount paid.

(2) The duty imposed by subsection (1) is enforceable at the suit or instance of the recipient.

Company's duty to deliver amended return

69Z35.—(1) This regulation applies if an open-ended investment company to which this Part applies makes a distribution, and then becomes aware that—

- (a) anything which should have been included in a return delivered by the company under these Regulations has not been so included,
- (b) anything which should not have been included in a return delivered by the company under these Regulations has been so included, or
- (c) any other error has occurred in a return delivered by the company under these Regulations.

(2) The company must deliver an amended return correcting the error to an officer of Revenue and Customs without delay.

(3) If the company delivers an amended return such assessments, adjustments, setoffs or payments or repayments of tax as are necessary for achieving the objective mentioned in paragraph (4) must be made.

(4) The objective is that the resulting liabilities to income and corporation tax (including interest on unpaid or overpaid tax) of the company or any other person are the same as they would have been if a correct return had been delivered.

CHAPTER 7

LEAVING THE PROPERTY AIF REGIME

Termination by notice: company

69Z36.—(1) This regulation applies if an open-ended investment company to which this Part applies gives a notice under this regulation specifying a date at the end of which this Part is to cease to apply to the company.

(2) This Part shall cease to apply to the company at the end of that date.

(a) Section 36 was substituted by section 149(1) of the Finance Act 1989 (c. 26), and amended by paragraph 4(1) of Schedule 11 to the Finance Act 1990 (c. 29), paragraph 9(2) of Schedule 5 to the Finance (No. 2) Act 1992 (c. 48), paragraph 11 of Schedule 19 to the Finance Act 1994 (c. 9), paragraph 18 of Schedule 19 to the Finance Act 1998 (c. 36), Schedule 6 to the Tax Credits Act 2002 (c. 21) and paragraph 251 of Schedule 1 to the Income Tax Act 2007 (c. 3).

(b) Section 87 was substituted by paragraph 258 of Schedule 1 to the Income Tax Act 2007.

(3) A notice under paragraph (1) must be given in writing to the Commissioners.

(4) The date specified under paragraph (1) must be after the date on which the Commissioners receive the notice.

Termination by notice: Commissioners

69Z37.—(1) This regulation applies if the Commissioners give a notice in writing under this paragraph to an open-ended investment company to which this Part applies (a “termination notice”).

(2) This Part shall cease to apply to the company.

(3) The Commissioners may give a termination notice only if—

- (a) a provision contained in this Part provides that the Commissioners may give a termination notice,
- (b) there is an intentional or negligent breach of a condition in Chapter 2, or
- (c) there is an attempt to gain a tax advantage to which regulation 69Z10 applies.

(4) A termination notice must state the reason for it.

(5) If a termination notice is given to an open-ended investment company, this Part shall be taken to have ceased to apply to the open-ended investment company at the end of the accounting period before the accounting period during which the event occurs (or the last event occurs) which caused the Commissioners to give the notice.

Appeal against termination notice

69Z38.—(1) An open-ended investment company to which a termination notice is given may appeal to the Special Commissioners.

(2) The notice of appeal must be given to HM Revenue and Customs within a period of 28 days beginning with the day on which the termination notice is given.

(3) On an appeal the Special Commissioners shall determine whether it was just and reasonable for HM Revenue and Customs to give the termination notice.

(4) If they decide that it was, they must confirm the notice.

(5) If they decide that it was not, they must set aside the notice.

Company ceasing to be authorised etc.

69Z39.—(1) This regulation applies if an open-ended investment company to which this Part applies—

- (a) ceases to be authorised by the Financial Services Authority,
- (b) ceases to be an open-ended investment company, or
- (c) ceases to carry on property investment business.

(2) This Part shall cease to apply to the company at the end of the date on which the company ceases to be authorised by the Financial Services Authority, to be an open-ended investment company, or to carry on property investment business (as the case may be).

Mergers

69Z40.—(1) This regulation applies if an open-ended investment company to which this Part applies—

- (a) is party to a merger or takeover, and
- (b) as a result, ceases to meet one or more of the conditions for this Part to apply.

(2) On the occurrence of the merger or takeover—

- (a) an accounting period of the company shall end at the end of the date of the merger or takeover, and
- (b) this Part shall cease to apply to the company at the end of that date.

Effects of cessation

69Z41.—(1) The business of F (tax-exempt) shall be treated for the purposes of corporation tax as ceasing immediately before cessation.

(2) Assets which immediately before cessation are involved in the business of F (tax-exempt) shall be treated for the purposes of corporation tax as being sold by F (tax-exempt) immediately before cessation and reacquired immediately after cessation by F (post-cessation).

(3) For the purposes of corporation tax, on cessation one accounting period of F (residual) shall end and an accounting period of F (post-cessation) shall begin.

(4) The sale and reacquisition deemed under paragraph (2) shall not have effect for the purposes of tax in respect of chargeable gains.

(5) For the purposes of CAA 2001, the sale and re-acquisition deemed under paragraph (2)—

- (a) shall not give rise to allowances or charges, and
- (b) shall not make it possible to make an election under section 198 or 199 of that Act (apportionment).

(6) For the purposes of CAA 2001, anything done by or to F (tax-exempt) before cessation in relation to an asset which is deemed under paragraph (2) to be sold and re-acquired shall be treated after cessation as having been done by or to F (post-cessation).”.

Amendment of Part 1 of the Schedule

6. In Part 1 of the Schedule (abbreviations of Acts) insert at the appropriate place—

“FA 1993	The Finance Act 1993 (c. 34)”
“FA 1994	The Finance Act 1994 (c. 9)”
“FA 2006	The Finance Act 2006 (c. 25)”
“ITA 2007	The Income Tax Act 2007 (c. 3)”.

Amendment of Part 2 of the Schedule

7. In Part 2 of the Schedule (index of defined expressions) insert at the appropriate place—

“Applicant (in Part 4A)	Regulation 69O(6)”
“Balance of business conditions (in Part 4A)	Regulation 69N”
“Body corporate (in Part 4A)	Regulation 69L(6)”
“Cessation (in Part 4A)	Regulation 69C(2)”
“Corporate ownership condition (in Part 4A)	Regulation 69K”
“Entry (in Part 4A)	Regulation 69C(1)”
“Excessive holding (in Part 4A)	Regulation 69Z13(3)”
“Existing company notice (in Part 4A)	Regulation 69O(6)”
“Future company notice (in Part 4A)	Regulation 69O(6)”
“F (post-cessation) (in Part 4A)	Regulation 69C(3)(d)”
“F (pre-entry) (in Part 4A)	Regulation 69C(3)(a)”
“F (residual) (in Part 4A)	Regulation 69C(3)(c)”

“F (tax-exempt) (in Part 4A)	Regulation 69C(3)(b)”
“Genuine diversity of ownership condition (in Part 4A)	Regulation 69J”
“Holder of excessive rights (in Part 4A)	Regulation 69Z13”
“Loan creditor condition (in Part 4A)	Regulation 69M”
“Net income (in Part 4A)	Regulation 69Z”
“Net income of F (residual) (in Part 4A)	Regulation 69Z2”
“Net income of F (tax-exempt) (in Part 4A)	Regulation 69Z1”
“Newly qualified company (in Part 4A)	Regulation 69N(5)”.
“PAIF distribution (dividends) (in Part 4A)	Regulation 69Z17(3)”
“PAIF distribution (interest) (in Part 4A)	Regulation 69Z16(3)”
“Pre-distribution amount (in Part 4A)	Regulation 69Z3”
“Property AIF	Regulation 69A(2)”
“Property income distribution	Regulation 69Z15(4)”
“Property investment business (in Part 4A)	Regulation 69F(1)”
“Property rental business (in Part 4A)	Regulation 69H(1)”
“Prospectus (in Part 4A)	Regulation 69E(4)”
“Relevant distribution (in Chapter 6 of Part 4A)	Regulation 69Z29(1)(b)”
“Specified accounting period (in Part 4A)	Regulation 69Q(2)”
“Termination notice (in Part 4A)	Regulation 69Z37(1)”
“UK-REIT	Regulation 69F(2)”.

[xx/yy/zz]

[abc]
[pqr]

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Authorised Investment Funds (Tax) Regulations (S.I. 2006/964) (“the principal Regulations”). The primary purpose of these Regulations is to insert a new Part 4A, dealing with property authorised investment funds (“Property AIFs”) into the principal Regulations.

Regulation 1 of these Regulations deals with citation and commencement, and regulation 2 provides for the principal Regulations to be amended. Regulations 3 and 4 make amendments to regulations 2 and 12 of the principal Regulations respectively.

Regulation 5 inserts the new Part 4A into the principal Regulations. Part 4A comprises regulations 69A to 69Z41 of the principal Regulations; and the new Part is divided into seven Chapters.

Chapter 1 of Part 4A contains preliminary provisions. Regulation 69A is of an introductory nature; regulation 69B sets out the structure of Part 4A; and regulation 69C defines a number of key concepts.

Chapter 2 of Part 4A is concerned with entry into the Property AIF regime. Regulation 69D specifies the conditions which an open-ended investment company must meet in order for Part 4A to apply to it in respect of an accounting period. The conditions are the property investment business condition (dealt with in regulations 69E to 69I); the genuine diversity of ownership condition (dealt with in regulation 69J); the corporate ownership condition (dealt with in regulations 69K and 69L); the loan creditor condition (dealt with in regulation 69M); the balance of business conditions (dealt with in regulation 69N); and the notification condition (dealt with in regulation 69O to 69Q). Regulations 69R to 69T deal with procedural matters arising in connection with the giving of a notice for Part 4A to apply; and regulation 69U deals with clearance applications. Regulations 69V and 69W are concerned with the consequences of entry into the Property AIF regime.

Chapter 3 of Part 4A is concerned with the tax treatment of Property AIFs. Regulation 69X provides for the ring-fencing of the property investment business carried on by a Property AIF to which Part 4A applies; and regulation 69Y provides that the net income from property investment business carried on by a Property AIF to which Part 4A applies shall not be charged to corporation tax. Regulations 69Z and 69Z1 are concerned with the meaning and calculation of that net income. Regulations 69Z2 and 69Z3 are concerned with the amounts chargeable to tax in respect of the other business carried on by a Property AIF to which Part 4A applies. Regulations 69Z4 to 69Z8 deal with the consequences where conditions for membership of the Property AIF regime are breached. Regulations 69Z9 to 69Z13 contain further provisions. Regulation 69Z9 imposes a charge to tax, in certain circumstances, upon a qualified investor scheme. Regulation 69Z10 permits the Commissioners for Her Majesty’s Revenue and Customs to give a notice to a Property AIF to counteract a tax advantage; the Property AIF may appeal against that notice (regulation 69Z11). Regulation 69Z12 imposes a charge to tax if a distribution is made to a “holder of excessive rights”: an expression defined in regulation 69Z13.

Chapter 4 of Part 4A is concerned with distributions made by Property AIFs. Regulation 69Z14 provides for the total amount shown in the distribution accounts of a Property AIF to be attributed in three different ways; and regulations 69Z15 to 69Z17 are concerned with the tax implications of the three different attributions.

Chapter 5 of Part 4A is concerned with the treatment of participants in Property AIFs. Regulations 69Z18 to 69Z21 are concerned with the tax liability of participants, and regulations 69Z22 to 69Z24 with the deduction of tax from distributions.

Chapter 6 of Part 4A is concerned with compliance. Regulations 69Z25 to 69Z28 deal with the action to be taken by a Property AIF in various circumstances; and regulations 69Z29 to 69Z35

are concerned with the duty of the Property AIF to account for tax deducted from property income distributions.

Chapter 7 of Part 4A is concerned with leaving the Property AIF regime. Regulations 69Z36 to 69Z40 provide for Part 4A to cease to apply to a company in various different circumstances; and regulation 69Z41 is concerned with the effects of cessation.

Regulations 6 and 7 make amendments to Parts 1 and 2 of the Schedule to the principal Regulations respectively.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available and accompanies the Explanatory Memorandum which is available alongside this instrument on the OPSI website.

EXPLANATORY MEMORANDUM TO
THE AUTHORISED INVESTMENT FUNDS (TAX) (AMENDMENT) REGULATIONS
2008

2008 No. XXXX

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

- 2.1 These Regulations amend the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) ("the principal Regulations") by inserting a new Part 4A into those Regulations. The new Part enables authorised investment funds which invest mainly in property or certain property related assets ("Property AIFs") to benefit from exemption from corporation tax on returns from property investment.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Background**

- 4.1 Sections 16 to 19 of the Finance (No. 2) Act 2005 provide the framework for a regime under which the majority of provisions relating to the taxation of authorised investment funds are contained not in primary legislation (as was previously the case) but in secondary legislation made under powers contained in section 17(3) and 18 of that Act. The principal Regulations are the most important Regulations so made.

- 4.2 Commercial developments carry the implication that the principal Regulations will need amendment from time to time. The new Part 4A of the principal Regulations accordingly provides for an open-ended investment company as a method for collective investment in property, thus providing an alternative to UK Real Estate Investment Trusts ("UK-REITS"). Tax provision for UK-REITS was made in Part 4 of the Finance Act 2006 (c. 25).

- 4.3 The new Part 4A of the principal Regulations provides that a fund which enters the new regime will be exempt from corporation tax on certain property investment business and will be able to deduct distributions of other taxable income for corporation tax purposes. The new Part also provides rules for the treatment of income within the fund and for its distribution to investors, together with rules for the tax treatment of distributions received by investors. These rules will enable the investors to be taxed on property and other income distributed by the fund at the same

tax rate as would have applied if those investors had invested directly in the underlying property.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 At the time when the principal Regulations were made (29 March 2006) it was stated that it was intended that consultation with industry should continue in order to ensure that the principal Regulations reflected further developments. (See the Explanatory Memorandum accompanying S.I. 2006/964.)

7.2 Following the legislation in the Finance Act 2006 to provide for UK-REITS, which are tax-exempt with respect to their property rental business, these Amending Regulations, in the new Part 4A, make provision for the existence of a new open-ended fund. A fund of this type is tax-exempt for property investment business that includes income arising from investments in UK-REITS and similar foreign entities..

7.3 It is intended that consultations with industry on property investment and other developments in authorised investment funds will continue in future so that regulations continue to reflect commercial development.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

8.2 These Regulations will have no significant overall impact on the public sector.

9. Contact

John Buckeridge at HM Revenue & Customs Tel: 020 7147 2560 or e-mail: john.buckeridge@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

2008 No.

STAMP DUTY LAND TAX

**The Stamp Duty Land Tax (Open-ended Investment Companies)
Regulations 2008**

<i>Made</i> - - - -	<i>12th March 2008</i>
<i>Laid before the House of Commons</i>	<i>12th March 2008</i>
<i>Coming into force</i> - -	<i>6th April 2008</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 102 and 123(2) and (3) of the Finance Act 2003(a).

Citation and commencement

1. These Regulations may be cited as the Stamp Duty Land Tax (Open-ended Investment Companies) Regulations 2008 and shall come into force on 6th April 2008.

Interpretation

2. In these Regulations—

“authorised unit trust” means a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000(b) is in force;

“land transaction” has the meaning given by section 43(1) of the Finance Act 2003; and

“land transaction return” has the meaning given by section 76(1) of that Act.

Conversion of an authorised unit trust to an open-ended investment company – exemption from stamp duty land tax charge

3.—(1) A land transaction transferring any property which is subject to the trusts of an authorised unit trust (“the target trust”) to an open-ended investment company (“the acquiring company”) is exempt from charge to stamp duty land tax if the conditions set out in paragraph (2) are fulfilled.

(2) Those conditions are that—

(a) the transfer forms part of an arrangement for the conversion of an authorised unit trust to an open-ended investment company, whereby the whole of the available property of the target trust becomes the whole of the property of the acquiring company;

(b) under the arrangement all the units in the target trust are extinguished;

(a) 2003 c. 14.
(b) 2000 c. 8.

- (c) the consideration under the arrangement consists of or includes the issue of shares (“the consideration shares”) in the acquiring company to the persons who held the extinguished units;
- (d) the consideration shares are issued to those persons in proportion to their holdings of the extinguished units; and
- (e) the consideration under the arrangement does not include anything else, other than the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.

(3) Relief under this regulation must be claimed in a land transaction return or an amendment of such a return.

(4) In this regulation and in regulation 4 “the whole of the available property of the target trust” means the whole of the property subject to the trusts of the target trust, other than any property which is retained for the purpose of discharging liabilities of the trustees of the target trust.

(5) For the purposes of this regulation and regulation 4, each of the parts of an umbrella scheme (and not the scheme as a whole) shall be regarded as an authorised unit trust, and “umbrella scheme” has the same meaning as in section 468 of the Income and Corporation Taxes Act 1988(a).

Amalgamation of an authorised unit trust with an open-ended investment company – exemption from stamp duty land tax charge

4.—(1) A land transaction transferring any property which is subject to the trusts of an authorised unit trust (“the target trust”) to an open-ended investment company (“the acquiring company”) is exempt from charge to stamp duty land tax if the conditions set out in paragraph (2) are fulfilled.

(2) Those conditions are that—

- (a) the transfer forms part of an arrangement for the amalgamation of an authorised unit trust with an open-ended investment company, whereby the whole of the available property of the target trust becomes part (but not the whole) of the property of the acquiring company;
- (b) under the arrangement all the units in the target trust are extinguished;
- (c) the consideration under the arrangement consists of or includes the issue of shares (“the consideration shares”) in the acquiring company to the persons who held the extinguished units;
- (d) the consideration shares are issued to those persons in proportion to their holdings of the extinguished units; and
- (e) the consideration under the arrangement does not include anything else, other than the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.

(3) Relief under this regulation must be claimed in a land transaction return or an amendment of such a return.

[abc]
[pqr]

Date Two of the Lords Commissioners of Her Majesty’s Treasury

(a) 1988 c. 1; section 468 was relevantly amended by section 113(2) of the Finance Act 1994 (c. 9) and paragraph 4 of Schedule 20 to the Financial Services and Markets Act 2000.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the exemption from stamp duty land tax of land transactions transferring property on the conversion of an authorised unit trust to, or its amalgamation with, an open-ended investment company.

Regulation 1 provides for citation and commencement, and regulation 2 for interpretation.

Regulation 3 exempts from stamp duty land tax a land transaction transferring property of a unit trust to an open-ended investment company, where the transfer is made as part of the conversion of the trust to the company. Exemption is given where the units of the unit trust are extinguished and the unit holders receive as consideration shares in the company, in proportion to their holdings of units in the trust.

Regulation 4 makes similar provision for exemption from stamp duty land tax, where the property is transferred as part of the amalgamation of a unit trust with an open-ended investment company.

These Regulations do not impose new costs on business.

**EXPLANATORY MEMORANDUM TO
THE STAMP DUTY LAND TAX (OPEN-ENDED INVESTMENT
COMPANIES) REGULATIONS 2008**

2008 No. [XXXX]

- 1.** This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

- 2. Description**

- 2.1 These regulations provide a relief from Stamp Duty Land Tax where a UK authorised unit trust (AUT) converts into an open-ended investment company (OEIC) or merges with an existing OEIC.

- 3. Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 None.

- 4. Legislative Background**

- 4.1 The regulations replicate for SDLT the terms of existing reliefs for Stamp Duty and Stamp Duty Reserve Tax in the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997 (S.I. 1997/1156).

- 4.2 They are made in connection with the Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/XXXX),

- 5. Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

- 6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These regulations follow the terms of similar reliefs for Stamp Duty and SDRT which were introduced with the UK OEICs regime in 1997. They apply only where the whole of the AUT's assets becomes the property of the OEIC, the units in the AUT are extinguished and shares in the OEIC are issued to the holders of the extinguished units in proportion to their holdings of those units.

7.2 The regulations are made principally to allow existing AUTs to enter the new Property Authorised Investment Funds (Property AIFs) regime established by the Authorised Investment Funds (Tax) (Amendment) Regulations 2008. However, the relief will apply to assets in the form of real property held by any AUT which converts to an OEIC and in doing so complies with the terms of the relief.

7.3 The Property AIFs regime is an elective tax framework for UK authorised collective investment funds which invest principally in real property. Its purpose is, as far as possible, to put investors in these funds in the same tax position as if they had invested directly in the underlying property. Property AIFs are open-ended funds (OEICs) and the regime is a counterpart to the Real Estate Investment Trusts (REITs) regime for closed-ended funds (Investment Trusts).

7.2 For tax reasons Property AIFs must be OEICs whereas, typically, existing UK-authorized open-ended funds investing in real property are constituted as AUTs. These funds will have to convert to OEICs in order to enter the Property AIFs regime, and in the absence of relief would incur an SDLT charge in so doing. This means that the funds may be prevented from doing so for regulatory reasons, as incurring such a charge would disadvantage investors in the fund.

7.5 Draft SDLT regulations were included in H M Treasury's final consultation document on the PAIFs regime *Property authorised investment funds: next steps*, published in December 2007. Consultation extended over eight weeks. Only a couple of comments were received on the draft SDLT regulations, advocating that property unit trusts based offshore should be able to convert directly to UK OEICs for the purpose of entering the PAIFs regime. This point will be considered in further discussions with the funds industry at a later stage.

8. Impact

8.1 These regulations are included in the Impact Assessment for the main PAIFs Regulations, a copy of which is attached to this memorandum.

8.2 There is no impact on the public sector.

9. Contact

Keith Brown at Her Majesty's Revenue and Customs, telephone 020-7147 2790 or email keith.brown@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.