

**CTM48820 - Property Authorised Investment Funds (Property AIFs):
process and effects of entry into the Property AIF regime: contents**

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CTM48821 - Property Authorised Investment Funds (Property AIFs): process and effects of entry into the Property AIF regime: overview of process for entry

This next section covers the process of entry into the Property AIF regime.

Firstly, it sets out the notification process, which needs to be made in writing to HM Revenue & Customs (HMRC) by the open-ended investment company (OEIC) confirming to HMRC that all the conditions of entry apply. (CTM48822)

Secondly, it covers a mechanism to quash this notice if HMRC is not satisfied that all the conditions of entry have been fulfilled. (CTM48823)

Thirdly, it explains a clearance procedure that the OEIC can use to gain certainty from HMRC that it has met the genuine diversity of ownership condition before sending its notification. (CTM 48824)

And finally, this section covers the relief from stamp duty land tax where an authorised unit trust converts into an OEIC to join the regime. (CTM48825)

The effects of entry to the regime are covered at CTM48826.

CTM48822 - Property Authorised Investment Funds (Property AIFs): process and effects of entry into the Property AIF regime: giving notice to enter

An open-ended investment company (OEIC) that meets all the conditions of entry, and intends to enter the regime does so by giving notice under regulation 69O SI 2006/964. The notice must be submitted in writing in order to fulfil the notification condition but the OEIC will also need to comply with the conditions set out below.

For an existing OEIC: The manager must obtain any necessary shareholder and regulatory to changes in its instrument of incorporation and its prospectus before giving notice.

The appointed fund manager must confirm in writing that the property investment business (PIB) condition (regulation 69E SI 2006/964 and CTM48813), the genuine diversity of ownership condition (regulation 69J SI 2006/964 and CTM48816), and the corporate ownership condition (regulation 69K SI 2006/964 and CTM48817) have been met and that each of the conditions for entry into and membership of the regime are reasonably expected to be met in the specified accounting period (regulation 69Q(3)(a) SI 2006/964).

Unless prior clearance in respect of the genuine diversity of ownership condition has been obtained from HM Revenue & Customs (HMRC) (see CTM48824), the notice must be given, at least, 28 days before the start of the first accounting period in which the regime is to apply (regulation 69P(2) SI 2006/964). Accounting period is defined in section 12 ICTA.

The notification must also specify the accounting period from the first day of which the Property AIF regime is to apply and must be accompanied by:

- the instrument of incorporation and prospectus (including any supplements to the prospectus)
- a copy of the application to the Financial Services Authority (FSA) for agreement to changes in the company's instrument of incorporation and its prospectus, including any supplementary documents, together with copies of any documents supporting that application

A notice may be amended or withdrawn anytime before it is due to take effect but the notice period must recommence after any alteration, unless HMRC waive this. They can waive the extension of the period if they can be satisfied that the amended notice is valid before the original effective date (regulation 69P(6) SI 2006/964). Failing this the earliest date which the amended notice can take effect is 28 days (or 42 days for a proposed OEIC – see below) after the amendment is received by HMRC.

If a manager of an OEIC seeks and receives clearance from HMRC that it meets or will meet the genuine diversity of ownership condition and the manager of the OEIC certifies that no changes have been made or are proposed in the documents sent for clearance, then notice may be given at any time before the start of the first accounting period.

For a proposed OEIC: The person expected to become the fund manager must give notice as above at least 42 days before the date of the expected incorporation and authorisation. The notification must be accompanied by:

- its proposed instrument of incorporation and prospectus (including any supplements to the prospectus)

- a copy of the application to the FSA for approval
- any other documents supporting the application to the FSA



CTM48823 - Property Authorised Investment Funds (Property AIFs): process and effects of entry into the Property AIF regime: quashing notices

Under regulation 69R SI 2006/964 if, on receipt of the notification to join the regime, the company or proposed company does not fulfil the notification condition ie it has not sent in the required documentation as specified under the process of entry or has failed to meet the entry conditions, then a quashing notice will be issued by HM Revenue & Customs (HMRC) to deny the open ended investment company (OEIC) company or proposed OEIC entry into the Property AIF regime.

However, before a quashing notice can be issued, HMRC must issue a 'preliminary notice' (regulation 69S SI 2006/964) within 28 days of receipt of the notice from a company or proposed company to inform the fund manager or applicant (from the proposed company) the reasons why a quashing notice could be issued. HMRC must then give the applicant a period of 28 days to address the concerns or rectify the matters set out in the preliminary notice.

However, this period can be extended if the manager (or applicant) agrees with HMRC what amendments are required, but also reasonably considers that these will take longer than 28 days to effect. Subject to HMRC's acceptance of the time proposed then an extension may be agreed as set out in regulation 69S(7) to (9) SI 2006/964. This extension must be agreed within the original 28 day period.

If the manager or proposed manager does not address the issues raised in the preliminary notice within 28 days of its issue then HMRC will issue a quashing notice.

If the manager, or proposed manager, adequately address the matters or demonstrates satisfactorily to HMRC that the concerns were not valid in the preliminary notice, within 28 days of its issue (or any agreed longer period), then the company or proposed company will be able to join the regime in the normal way, although possibly at a later day than originally proposed.

When a preliminary notice is issued and until HMRC have given notice that they are satisfied that the matters specified in that notice have been rectified then the company or proposed company will not be able to enter the Property AIF regime. If a quashing notice is issued then the company may not enter the Property AIF regime unless and until an appeal is determined in their favour.

Appeals against quashing notices (regulation 69T SI 2006/964)

When a quashing notice is issued then, if the recipient considers that it was not issued correctly, there is a right of appeal against it. However if a quashing notice is issued then until any appeal has been determined the OEIC or proposed OEIC will not be able to enter the Property AIF regime.

A notice of appeal must be given to HMRC within 28 days, beginning with the day on which the quashing notice was given.

Appeals are made to and heard by the Special Commissioners and they will determine whether the issue of the quashing notice is just and reasonable. If they allow the appeal, they may direct that the OEIC or proposed OEIC, should come within the Property AIFs regime and they may specify the date from which admission should apply.

CTM48824 - Property Authorised Investment Funds (Property AIFs): process and effects of entry into the Property AIF regime: advance clearance procedure for genuine diversity of ownership

Under regulation 69U SI 2006/964, a Property AIF can apply for a clearance from HM Revenue & Customs (HMRC) that it meets the genuine diversity of ownership condition (CTM48824) before submitting its notice to elect to join the regime.

To do so, the manager (or proposed manager) must submit, with its application in writing to HMRC, the following documents that apply or are proposed to apply at the beginning of the first accounting period that the Property AIF enters the regime:

- the open ended investment company's instrument of incorporation
- its prospectus (including any supplement to the prospectus)

HMRC must consider the application within 28 days of receipt of the application and must confirm in writing either:

- to request for further information (in which case the clock stops ticking and the 28 day period will re-start once all the relevant information has been received)
- give clearance (which may be subject to stated conditions)
- deny clearance

The Property AIF will not be able to rely on any clearance given, if:

- the Property AIF later acts in contravention of any relevant statement in the relevant documents provided
- the documents submitted to the Financial Services Authority are, in any relevant respect, not in accordance with the documents considered when clearance was given by HMRC or are subsequently amended in any relevant way.

Once a clearance has been obtained then, provided that the intention is to proceed without further changes the manager (or proposed manager) may proceed to give notice of entry at any time before the regime will begin to apply (regulation 69P(7) or (8) SI 2006/964). In all other respects, except for the notice period, the same rules apply to giving notice as normal.

**CTM48825 - Property Authorised Investment Funds (Property AIFs):
process and effects of entry into the Property AIF regime: Stamp duty land
tax relief (conversion of authorised unit trusts)**

Under SI 2008/710, 100 per cent relief from Stamp Duty Land Tax may be claimed for transferring property in connection with the conversion of an Authorised Unit Trust (AUT) to an open-ended investment company (OEIC) or the amalgamation of an AUT with an OEIC.

For further guidance on this issue please refer to the Stamp Duty Land Tax Manual.

CTM48826 - Property Authorised Investment Funds (Property AIFs): process and effects of entry into the Property AIF regime: effects of entry into the Property AIF regime

Cessation of the pre-Property AIF property business

Once an open-ended investment company (OEIC) joins the regime, a line is drawn between the Property Investment Business activities of the OEIC before entering the regime and those that are carried on afterwards and which are exempt from tax.

Under regulation 69V(1) SI 2006/964 this is done by deeming the pre-Property AIF property business of the OEIC as ceasing immediately before it joins the Property AIF regime for CT purposes. This deemed cessation does not apply to the other activities carried on by the OEIC.

Under regulation 69V(6) SI 2006/964 assets that were involved in the pre-entry property rental business are treated, **for capital allowances purposes only**, as being sold by the pre-Property AIF business immediately before entry to the regime and reacquired by the tax-exempt Property AIF immediately after entry at a value which does not give rise to any allowances or charges, that is the assets are transferred at their written down values for capital allowance purposes.

It is not possible to make any election under sections 198 or 199 CAA 2001 (regulation 69V(6)(b)).

To see how capital allowances are dealt with for the tax exempt business, and for a worked example, see CTM48832 'Calculation of net income for the tax exempt property investment business'.

The deemed disposal and reacquisition for capital allowances does NOT apply for the purposes of tax in respect of chargeable gains (regulation 69V(5) SI 2006/964).

When an OEIC joins the regime, the OEIC must commence a new accounting period and distribution period on entry.

Once the Property AIF regime applies to the OEIC it shall remain in the regime indefinitely unless certain events occur (see CTM48871). There is, therefore, no need for the Property AIF to give further notices for future accounting periods.

Accounting periods

When an OEIC joins the regime, the accounting period of the OEIC comes to an end. (The meaning of accounting period is covered in CTM01400 'Accounting periods'.) This is the final accounting period for the pre-entry property business. A new accounting period starts on the first day the regime applies to the OEIC. Under regulation 69V(3) SI 2006/964, this is the first accounting period for which the Property AIF regime applies to the OEIC for the tax exempt business and other activities of the business.
