

CTM48800 - Property Authorised Investment Funds (Property AIFs): leaving the Property AIF regime: contents

CTM48881	Issue of termination notices
CTM48882	Effects of leaving the Property AIF regime

CTM48881 - Property Authorised Investment Funds (Property AIFs): leaving the Property AIF regime: issue of termination notices

Termination notice issued by the Property AIF (regulation 69Z36 SI 2006/964)

Where the manager of a Property AIF wishes the fund to leave the regime, the manager of Property AIF must give a notice specifying the final day on which the regulations are to apply to it. The notice must be given in writing to HM Revenue & Customs (HMRC), and the date specified must be after the date on which HMRC receive the notice. See CTM48882 for the effect of such a notice.

Termination notice issued by HMRC (regulation 69Z37 SI 2006/964)

As set out under the previous chapter relating to breaches of conditions (CTM48871 onwards), HMRC will, in certain circumstances, issue a termination notice to the manager of the Property AIF.

The effect of giving the notice will be that the Property AIF will be taken to have ceased to be within the regime at the end of the accounting period before the accounting period during which the event occurs (or the last event occurs if the notice is a result of multiple breaches of conditions) which caused the notice to be given.

Other reasons for exclusion from the regime (regulation 69Z39 and 69Z40 SI 2006/964)

Under these regulations, where a Property AIF ceases to be:

- authorised by the Financial Services Authority (FSA)
- an open-ended investment company
- ceases to carry on a property investment business

it will cease to come within the regime at the time at when any of the above events occur.

Under regulation 69Z40 SI 2006/964, where a Property AIF is party to a merger or takeover and as a result fails to meet one or more of the conditions of entry to the regime then its accounting period will end on the date of the merger or takeover, and the company will cease to be within the regime from that time.

See CTM48882 for the effects of leaving the regime.

Appeal against termination notice (regulation 69Z38 SI 2006/964)

The manager of an open-ended investment company that receives a termination notice may appeal against the notice.

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

Appeals are made to and heard by the Special Commissioners, and they will determine whether the issue of the termination notice was just and reasonable. If they decide that it was, they will confirm the notice; if they decide that it was not, then they will set aside the notice.

CTM48882 - Property Authorised Investment Funds (Property AIFs): leaving the Property AIF regime: effects of leaving

Effects of cessation from leaving or exclusion from the regime (regulation 69Z41 SI 2006/964)

The effects on an open-ended investment company (OEIC) leaving or being excluded from the regime are as follows:

- The tax-exempt property business of the company is treated as ceasing immediately on cessation.
- Assets held by the company which were involved in the tax-exempt property business are treated for Capital Allowances purposes only as being sold immediately before cessation by the tax-exempt business and reacquired by the OEIC immediately after cessation at the tax written down value with amounts written down as 'shadow' capital allowances during membership of the Property AIF regime taken into account in calculating the written down value. This reverses the process on entry (see CTM48826 for details).
- The OEIC's accounting period is treated as ending on the date of cessation and a new one will begin immediately post-cessation.

For the purposes of Capital Allowances Act 2001, anything done by or to an asset deemed to be sold and reacquired (as per the second bullet point above) by the company before cessation is treated after cessation as having been done by or to the asset by the company after cessation.
