

CTM48870 – Property Authorised Investment Funds: breaches of conditions: contents

CTM48871	Introduction
CTM48872	Breach of the genuine diversity of ownership condition
CTM48873	Breach of the corporate ownership condition
CTM48874	Breach of the loan creditor condition
CTM48875	Breach of the balance of business condition
CTM48876	Multiple breaches of separate conditions
CTM48877	Information requirements

CTM48871 - Property Authorised Investment Funds (Property AIFs): breaches of conditions: introduction

General

Chapter 2 Part 4A, SI 2006/964 sets out the conditions that must be met in order for an open-ended investment company to remain within, the Property AIF regime. The conditions themselves are explained earlier in this guidance at CTM48810 onwards. The following pages explain how breaches of those conditions are treated, and what action must be taken by both the open-ended investment company and/or HM Revenue & Customs (HMRC) in such circumstances (CTM48877).

Multiple breaches of separate conditions (regulation 69Z8 SI 2006/964)

In addition to the consequences of single or multiple breaches of specific conditions, as detailed in the following pages, there are also consequences when the Property AIF breaches a separate condition more than once – see CTM48876.

Information requirements

When the manager of the Property AIF becomes aware that there is a breach of any of the conditions of the regime it must provide information to HMRC – see CTM48877.

CTM48872 - Property Authorised Investment Funds (Property AIFs): breaches of conditions: breach of the genuine diversity of ownership condition

See also the information requirements at CTM48877.

Consequences of a breach of the condition (regulation 69Z4 SI 2006/964

If a Property AIF breaches the genuine diversity of ownership condition (regulation 69J SI 2006/964 as explained at CTM48816), then in addition to the information requirements set out at CTM48877 the manager must also set out (regulation 69Z4(2)(e) and (f)):

- the steps that the manager proposes to take to rectify the breach
- the date by which the manager proposes to rectify the breach

The manager must rectify the breach as soon as may reasonably be achieved.

In order for HM Revenue & Customs (HMRC) to judge whether the time specified by the manager is reasonable or not, it is advisable for the manager to advise HMRC what needs to be done in order to rectify the breach, and why the proposed timescale should be considered to be reasonable.

The Commissioners of HMRC will issue a termination notice if they consider that the steps proposed by the Property AIF will not rectify the breach or will not do so by the earliest reasonable date (regulation 69Z4(4)).

If there are three or more different breaches of the genuine diversity of ownership condition in three different accounting periods within a ten year period (beginning on the first day of the accounting period in which the Property AIF becomes aware of the first breach), HMRC will issue a termination notice to the manager of the Property AIF (regulation 69Z4(5)).

CTM48873 - Property Authorised Investment Funds (Property AIFs): breaches of conditions: breach of the corporate ownership condition

See also the information requirements at CTM48877.

Consequences of breaches of the condition (regulation 69Z5 SI 2006/964)

The regulation applies where the Property AIF has breached the corporate ownership condition.

In circumstances where the breach is caused by the action of a shareholder in the Property AIF and the manager has not taken reasonable steps to prevent the breach (see CTM48817 for details of what HM Revenue & Customs (HMRC) are likely to accept as 'reasonable steps') then a charge to corporation tax charge may arise (referred to as a 'specified breach') – see CTM48834 for details relating to the calculation of the tax charge.

Notwithstanding such a breach, the Property AIF may continue to remain within the Property AIF regime except in the following circumstances, where HMRC will issue a termination notice:

- 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 (regulation 69Z5(3))
 - regulation 69Z8 SI 2006/964 applies in respect of multiple breaches of separate conditions (see CTM48876)
-

CTM48874 - Property Authorised Investment Funds (Property AIFs): breaches of conditions: breach of the loan creditor condition

See also the information requirements at CTM48877.

Consequences of breaches of the loan creditor condition

Under regulation 69Z6 SI 2006/964 if the Property AIF inadvertently breaches this condition (set out in regulation 69M SI 2006/964 – see CTM48818) but rectifies this within 28 days of discovering the breach no further action will be taken by HM Revenue & Customs (HMRC).

However, HMRC will issue a termination notice in the following circumstances:

- if the manager does not rectify the inadvertent breach within 28 days of first becoming aware of the breach
 - if the Property AIF is in breach of this condition through the negligent or intentional actions of the manager
 - if there are two breaches of the **same** condition A, B or C in paragraphs (2) to (5) of the loan creditor condition (regulation 69M SI 2006/964) in three different accounting periods within a ten year period, beginning on the first day of the accounting period in which the manager becomes aware of the first breach
 - if there are three breaches of **any** of the conditions A, B or C set out in paragraphs (2) to (5) of the loan creditor condition (regulation 69M SI 2006/964) in three different accounting periods within a ten year period, beginning on the first day of the accounting period in which the manager becomes aware of the first breach
-

CTM48875 - Property Authorised Investment Funds (Property AIFs): breaches of conditions: breach of the balance of business condition

See also the information requirements at CTM48877.

Breaches of the balance of business condition by 'start-up' Property AIFs in the first accounting period (regulation 69Z7(a) SI 2006/964)

The 'balance of business conditions' relate to the level of net income and assets of the company that are attributable to the tax exempt property investment business (PIB) – see CTM48819 for full details of the conditions, including relaxation of the minimum levels of income and assets in a 'start-up' Property AIF's first accounting period.

If a 'start-up' fund, which is a newly authorised fund, breaches the (relaxed 40 per cent) conditions relating to 'the balance of business' then the company will automatically cease to be within the regime at the end of its first accounting period.

Breaches of the balance of business condition by Property AIFs after the end of the first accounting period (regulation 69Z7(b) SI 2006/964)

Where a Property AIF breaches the balance of business condition after the end of its first accounting period (or where the 40 per cent relaxed limit does not apply to it) then it may stay within the Property AIF regime provided:

- the PIB is at least 50 per cent of the Property AIF's net income in the accounting period
- the value of assets involved in the Property Investment Business is at least 50 per cent of the total value of the assets held by the company at the end of the accounting period.

If the minimum levels above are not met then HM Revenue & Customs (HMRC) will issue a termination notice.

Note that HMRC will also issue a termination notice if there are three breaches of this condition in three different accounting periods within a ten year period, beginning on the first day of the accounting period in which the manager becomes aware of the first breach.

CTM48876 - Property Authorised Investment Funds (Property AIFs): breaches of conditions: multiple breaches of separate condition

Under regulation 69Z8 SI 2006/964, in addition to the consequences relating to breaches of particular conditions of entry into the Property AIF regime, there may also be consequences of multiple breaches of different conditions.

The rules relating to multiple breaches work as follows:

- where there has been a breach of at least two of the conditions of entry (as set out in regulations 69E to 69N SI 2006/964)
- those breaches relate to different conditions
- there have been five such breaches in a period of ten years (beginning with the first day of the accounting period in which the first breach occurs), then

HM Revenue & Customs will issue a termination notice to the manager of the Property AIF.

CTM48877 - Property Authorised Investment Funds (Property AIFs): breaches of conditions: information requirements

General

When a Property AIF breaches any of the conditions of the Property AIF regime, as set out earlier in this guidance, then the regulations impose a duty on the Property AIF to take certain actions, as detailed below.

Notifying breaches of conditions of entry into the Property AIF regime (regulation 69Z26 SI 2006/964)

Where a Property AIF fails to meet conditions of the regime, (see CTM48810 onwards) its manager must provide the following information to HM Revenue & Customs (HMRC)

- the date on which the condition first ceased to be met and the date (if any) on which the condition was satisfied again
- details of the condition that was breached
- the nature of the breach (how the condition was breached)
- what (if anything) the manager has done to prevent the breach recurring

The above information must be provided as soon as reasonably practicable following the manager becoming aware of such a failure in respect of the Property AIF.

Notifying distributions made to or in respect of holders of excessive rights (regulation 69Z27 SI 2006/964)

Where the manager of a Property AIF becomes aware that it has made distributions to, or in respect of a holder of excessive rights (see CTM48817_ – the corporate ownership conditions), the manager must provide the following information to HMRC as soon as reasonably practical:

- the name of every person to whom, or in respect of whom, such distribution was made
- the address of every such person
- the amount or value of the distribution
- particulars of those persons' interests in the open-ended investment company (OEIC), including details of the percentage of rights to the net asset value of the fund represented by the shares held by those persons
- the steps the manager took to prevent the acquisition, by the holder of excessive rights, of an excessive holding
- the steps the manager has taken, or is taking, to ensure that there is no longer a holder of excessive rights

Notice to provide information to HMRC (regulation 69Z28, Part 4A, SI 2006/964)

If HMRC believes that a Property AIF has:

- not met or may not meet any of the conditions of the regime

- that a breach of a condition has not been rectified

then HMRC may issue a notice to the manager of the Property AIF concerned requiring the manager to provide any of the information referred to above. The manager will then have a period of 28 days, beginning from the day on which the notice is served, to comply with the notice.
