

STATUTORY INSTRUMENTS

**2006 No. 964**

**The Authorised Investment Funds (Tax) Regulations 2006**

[<sup>F1</sup>PART 4A

PROPERTY AIFS

[<sup>F1</sup>CHAPTER 2

ENTRY INTO AND MEMBERSHIP OF THE PROPERTY AIF REGIME

**Textual Amendments**

- F1** Pt. 4A inserted (6.4.2008) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2008 \(S.I. 2008/705\)](#), regs. 1, 5

*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 [<sup>F2</sup>9A]);
- (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).

**Textual Amendments**

- F2** Word in reg. 69D(b) substituted (1.9.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, 15

**Conditions for this Part to apply to a company where the company is also a qualified investor scheme**

<sup>F3</sup>**69DA.** .....

**Textual Amendments**

**F3** Reg. 69DA omitted (1.9.2009) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, **16**

*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 <sup>F4</sup>... 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.

<sup>F5</sup>(4) .....

**Textual Amendments**

**F4** Words in [reg. 69E\(2\)](#) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2010 \(S.I. 2010/294\)](#), regs. 1(1), **23(2)**

**F5** [Reg. 69E\(4\)](#) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2010 \(S.I. 2010/294\)](#), regs. 1(1), **23(3)**

**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 [<sup>F6</sup>within section 528(4A)(j) of CTA 2010 (overseas equivalent to UK REIT)].

(2) In these Regulations “UK-REIT” [<sup>F7</sup>has the meaning given in section 518(4) of CTA 2010].

<sup>F8</sup>(3) .....

<sup>F8</sup>(4) .....

<sup>F8</sup>(5) .....

<sup>F8</sup>(6) .....

<sup>F9</sup>(7) .....

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

#### Textual Amendments

- F6** Words in reg. 69F(1)(c) substituted (1.4.2014) by [The Real Estate Investment Trust \(Amendments to the Corporation Tax Act 2010 and Consequential Amendments\) Regulations 2014 \(S.I. 2014/518\)](#), regs. 1(1), **3(2)(a)** (with reg. 1(2)-(4))
- F7** Words in reg. 69F(2) substituted (1.4.2014) by [The Real Estate Investment Trust \(Amendments to the Corporation Tax Act 2010 and Consequential Amendments\) Regulations 2014 \(S.I. 2014/518\)](#), regs. 1(1), **3(2)(b)** (with reg. 1(2)-(4))
- F8** Reg. 69F(3)-(6) omitted (1.4.2014) by virtue of [The Real Estate Investment Trust \(Amendments to the Corporation Tax Act 2010 and Consequential Amendments\) Regulations 2014 \(S.I. 2014/518\)](#), regs. 1(1), **3(2)(c)** (with reg. 1(2)-(4))
- F9** Reg. 69F(7) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment No. 2\) Regulations 2011 \(S.I. 2011/2192\)](#), regs. 1(1), **6**

#### 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 [<sup>F10</sup>or units] owned by the open-ended investment company in an entity within regulation 69F(1)(c).

#### Textual Amendments

- F10** Words in reg. 69G(4)(c) inserted (1.1.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/3159\)](#), regs. 1(1), **19**

#### 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.

**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**

**<sup>F11</sup>69J.** . . . . .

<p><b>Textual Amendments</b></p> <p><b>F11</b> <a href="#">Reg. 69J</a> omitted (1.9.2009) by virtue of <a href="#">The Authorised Investment Funds (Tax) (Amendment) Regulations 2009 (S.I. 2009/2036)</a>, regs. 1, 17</p>
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*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 [<sup>F12</sup>participant] in the company—

- (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.

#### Textual Amendments

**F12** Word in reg. 69K(4) substituted (1.1.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/3159\)](#), regs. 1(1), 21

#### 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 [<sup>F13</sup>as a participant] 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 [<sup>F14</sup>the unit trust scheme is 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.

#### **Textual Amendments**

**F13** Words in reg. 69L(2)(a) inserted (1.1.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/3159\)](#), regs. 1(1), **22(2)**

**F14** Words in reg. 69L(5) substituted (1.1.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/3159\)](#), regs. 1(1), **22(3)**

### *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).

### *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 [F159A]).
- (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).

**Textual Amendments**

**F15** Word in reg. 69O(5)(b) substituted (1.9.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, 18

**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 [F169B], 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 [F179B], 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.

#### Textual Amendments

**F16** Word in reg. 69P(7)(a) substituted (1.9.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, **19(a)**

**F17** Word in reg. 69P(8)(a) substituted (1.9.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, **19(b)**

#### 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 [<sup>F18</sup>regulation 9A and] 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 [<sup>F19</sup>appropriate regulator] 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 [<sup>F20</sup>regulation 9A and] 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 <sup>F21</sup>... prospectus <sup>F22</sup>... ;
  - (c) a copy of the application to the [<sup>F23</sup>appropriate regulator] 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).

#### Textual Amendments

- F18** Words in reg. 69Q(3)(a) inserted (1.9.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, **20(a)**
- F19** Words in reg. 69Q(3)(c) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 115(b)**
- F20** Words in reg. 69Q(5)(a) inserted (1.9.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, **20(b)**
- F21** Word in reg. 69Q(5)(b)(ii) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2010 \(S.I. 2010/294\)](#), regs. 1(1), **23(4)(a)**
- F22** Words in reg. 69Q(5)(b)(ii) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2010 \(S.I. 2010/294\)](#), regs. 1(1), **23(4)(b)**
- F23** Words in reg. 69Q(5)(c) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 115(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 <sup>F24</sup>....

(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 [<sup>F25</sup>that is notified to the tribunal, the tribunal] shall determine whether it was just and reasonable for HM Revenue and Customs to give the quashing notice.

(4) If the [<sup>F26</sup>tribunal allows] the appeal—

- (a) [<sup>F27</sup>the tribunal 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) [<sup>F27</sup>the tribunal 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.

#### Textual Amendments

**F24** Words in reg. 69T(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 156(2)**

**F25** Words in reg. 69T(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 156(3)**

**F26** Words in reg. 69T(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 156(4)(a)**

**F27** Words in reg. 69T(4)(a)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 156(4)(b)**

*Clearance applications*

**Clearance in relation to the genuine diversity of ownership condition**

<sup>F28</sup>**69U.** . . . . .

**Textual Amendments**

**F28** Reg. 69U omitted (1.9.2009) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, 21

*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.]

**Changes to legislation:**

There are currently no known outstanding effects for the The Authorised Investment Funds (Tax) Regulations 2006, CHAPTER2.