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STATUTORY INSTRUMENTS

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**2013 No. 1770**

**INCOME TAX**

**CORPORATION TAX**

The Offshore Funds (Tax)  
(Amendment No. 3) Regulations 2013

<i>Made</i>	- - - -	<i>16th July 2013</i>
<i>Laid before the House of Commons</i>	- - - -	<i>17th July 2013</i>
<i>Coming into force</i>	- -	<i>7th August 2013</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 354 of the Taxation (International and Other Provisions) Act 2010<sup>(1)</sup>.

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Offshore Funds (Tax) (Amendment No. 3) Regulations 2013 and come into force on 7th August 2013.

(2) These Regulations have effect for the purposes of income tax for the tax year 2013-14 and subsequent tax years.

**Amendment of the Offshore Funds (Tax) Regulations 2009**

2.—(1) The Offshore Funds (Tax) Regulations 2009<sup>(2)</sup> are amended as follows.

(2) In regulation 2 (structure of these Regulations), after “in reporting funds” insert—  
“Part 3A deals with annual payments to non-resident participants;”.

(3) After regulation 124 (disapplication of Chapter 11) insert—

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(1) 2010 c. 8.

(2) S.I. 2009/3001, to which there are amendments not relevant to these Regulations.

## “PART 3A

### ANNUAL PAYMENTS TO NON-RESIDENTS

#### **Annual Payments – duty to deduct income tax**

**124A.**—(1) An annual payment made to a participant which meets the conditions in paragraphs (2) to (6) is not a qualifying annual payment for the purposes of Chapter 6 of Part 15 of ITA 2007 (deduction from annual payments and royalties).

(2) The payment must be charged to income tax under Chapter 7 of Part 5 of ITTOIA 2005 (annual payments not otherwise charged).

(3) The payment must be made in respect of the participant’s interest in an offshore fund.

(4) The payment and the amount of the payment must be directly or indirectly referable to, and must not be more than, any management fees paid to the manager of the offshore fund in respect of the participant’s interest in the fund.

(5) Any management fee must not exceed an amount representing a reasonable commercial amount in all the circumstances.

(6) At the time the payment is made, the person making the payment must have reasonable grounds for believing that the participant is not resident in the United Kingdom.

#### **Consequences of reasonable but incorrect belief**

**124B.**—(1) This regulation applies if—

- (a) an annual payment is made to a participant without a sum representing income tax on the payment being deducted from it,
- (b) at the time the payment is made, the condition in regulation 124A(6) is met,
- (c) the payment would be a qualifying annual payment but for that condition being met, and
- (d) at the time the payment is made, the participant is resident in the United Kingdom.

(2) Section 900 (deduction from commercial payments made by individuals) and section 901 (deduction from annual payments made by other persons) of ITA 2007 apply as if the payment were a qualifying annual payment.”

*Robert Goodwill*

*David Evenett*

Two of the Lords Commissioners of Her Majesty’s Treasury

16th July 2013

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Offshore Funds (Tax) Regulations 2009 (“the principal Regulations”) which make provision for the tax treatment of participants in offshore funds.

Regulation 1 deals with citation, commencement and effect. Authority for the limited retrospective effect is given by section 354(6) of the Taxation (International and Other Provisions) Act 2010.

Regulation 2 introduces the amendments to the principal Regulations, inserts Part 3A which contains regulations 124A and 124B and makes a consequential amendment to regulation 2 to refer to refer to Part 3A.

Regulation 124A provides that an annual payment made to a participant in an offshore fund is not a qualifying annual payment for the purposes of Chapter 6 of Part 15 of the Income Tax Act 2007 (deduction from annual payments and royalties) if certain conditions are met (so such payments will not be subject to a duty to withhold a sum representing income tax on the payment).

Regulation 124B reapplies tax withholding provisions in certain cases where the condition requiring the person making the payment to have reasonable grounds for believing that the participant is not resident in the United Kingdom is met but in fact the participant or, in the case of a trust, the beneficial owner is not resident in the United Kingdom.

A Tax Information and Impact Note covering this instrument was published on 29 May 2013 alongside a draft of this instrument and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.