
STATUTORY INSTRUMENTS

2013 No. 1770

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

Amendment of the Offshore Funds (Tax) Regulations 2009

- 2.—(1) The Offshore Funds (Tax) Regulations 2009⁽¹⁾ 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—

“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

⁽¹⁾ S.I. 2009/3001, to which there are amendments not relevant to these Regulations.

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(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.”