STATUTORY INSTRUMENTS

# 2013 No. 1772

# INCOME TAX

# CORPORATION TAX

## The Authorised Investment Funds (Tax) (Amendment) Regulations 2013

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| *Made - - - -* | *16th July 2013* |
| *Laid before the House of Commons* | *17th July 2013* |
| *Coming into force - -* | *7th August 2013* |

The Treasury make the following Regulations in exercise of the powers conferred by sections 17(3) and 18 of the Finance (No. 2) Act 2005(**a**).

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment) Regulations 2013 and come into force on 7th August 2013.

(2) These Regulations have effect in relation to annual payments made on or after that date.

**Amendments to the Authorised Investment Funds (Tax) Regulations 2006**

**2.**—(1) The Authorised Investment Funds (Tax) Regulations 2006(**b**) are amended as follows.

(2) At the end of Chapter 2 of Part 4(**c**) insert—

"*Annual payments to non-residents*

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

**46A.**—(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 authorised investment fund other than a Property AIF.

(**a**) 2005 c. 22.
(**b**) S.I. 2006/964, relevant amending instruments are S.I. 2007/794 and 2008/705.
(**c**) Regulations 34 to 46 were revoked by S.I. 2007/794.

(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 authorised investment fund in respect of the participant's interest in the fund.

(5) Any management fees 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**

**46B.**—(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 46A(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*

16th July 2013 Two of the Lords Commissioners of Her Majesty's Treasury

## EXPLANATORY NOTE

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

These Regulations amend the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) ("the principal Regulations").

Regulation 1 provides for citation, commencement and effect.

Regulation 2 introduces the amendments to the principal Regulations and inserts regulations 46A and 46B.

Regulation 46A provides that an annual payment made to a participant in an authorised investment 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 46B 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.

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