

EXPLANATORY MEMORANDUM TO
THE OFFSHORE FUNDS (TAX) (AMENDMENT No. 2) REGULATIONS 2013

2013 No. 1411

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations amend the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) ('the Regulations') and make minor amendments to other legislation.
 - 2.2 The amendments to the Regulations address particular issues with the operation of the Regulations that have been identified from engagement with stakeholders.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 An offshore fund is defined in section 355 of the Taxation (International and Other Provisions) Act 2010 (TIOPA). The rules for taxation of the returns to UK resident investors holding interests in offshore funds are set out in the Regulations.
 - 4.2 Under the Regulations an offshore fund may apply to be a 'reporting fund' that makes regular reports of its income to its UK investors who are taxable on their share of that income (reported income). The Regulations provide rules for computing the amount of the income to be reported to a UK investor and any gain on disposal of an interest in a reporting fund is taxable as a capital gain. Alternatively, if an offshore fund is a non-reporting fund, gains on disposals made by UK investors are taxable as income in addition to any distributions made. This rule is subject to some exceptions.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**

The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Offshore Funds (Tax) (Amendment No. 2) Regulations 2013 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 In some cases there can be a technical mismatch between the rules for calculating total reported income and the amount reported to individual investors. This will be corrected

7.2 Where a fund operates 'full equalisation' (as defined in the Regulations) and returns part of the capital cost of a new subscription to the investor in the first reporting period then the Regulations will be amended so that the capital returned can be set off against the first distribution made.

7.3 In a case where a fund calculates its reportable income for a reporting period over several 'computation periods' making up the reporting period a change will allow excess expenses of one computation period to be set against income of another within the same reporting period. This will remove a potential distortion to the calculation of reportable income where computation periods are used.

7.4 Further minor amendments are made to the Regulations and to other provisions relating to offshore funds to up-date references and terms and for the purposes of clarification.

- Consolidation

7.5 There are no plans to consolidate the revised Regulations in the immediate future.

8. Consultation outcome

8.1 These regulations were published in draft for consultation for a short period of 4 weeks and minor changes have been made in response to consultation. The substantive changes made by this instrument are relieving and requested by industry. Consultation responses have supported the early introduction of these regulations.

9. Guidance

9.1 HMRC will amend the relevant guidance to reflect changes made by these regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note covering this instrument was published on 20 March 2013 alongside Budget 2013 and is available on the HMRC website at <http://www.hmrc.gov.uk/budget2013/tiins.htm#2> . It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The impact of the requirements on firms employing up to 20 people is expected to be minimal as the changes are wholly relieving or unsubstantial.

12. Monitoring & review

12.1 HMRC and HM Treasury will continue to liaise with stakeholders from time to time to discuss the implementation of the proposed new rules as part of continuing engagement with industry.

13. Contact

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