

## U.K. Tax Alert

May 22, 2013

### Rebates: U.K. Tax Treatment Update

Further to our alert on March 26, 2013 ([click here](#)), relating to HM Revenue & Customs' Brief 04/13, which stated that certain rebate payments are taxable for United Kingdom investors and should also be subject to withholding tax where such payments arise in the U.K., HM Treasury has issued a written ministerial statement, dated May 21, 2013.

In response to representations, the ministerial statement confirms that U.K. based payers of rebates will not be obliged to withhold U.K. tax on any such payments made to investors who are not U.K. resident for tax purposes. It is expected that the government will publish statutory instruments to amend the existing law to this effect.

The ministerial statement goes on to state that the amendments to the existing position, as set out in HM Revenue & Customs' Brief 04/13, is consistent with the government's investment management strategy, published at Budget 2013 and that the "government is determined to improve the U.K.'s competitive position as a centre for investment management".

According to the ministerial statement the reason for issuing the clarification is that:

*"... unlike distributions to domestic investors, offshore investors are not normally subject to withholding tax on either interest or equity distributions. The 'rebates' paid to investors are economically similar to additional distributions from the fund. Collecting withholding tax for offshore investors may therefore create distortions in how different forms of distribution from the fund are treated for tax purposes."*

This is perhaps a surprising statement given that there is prima facie a legal duty to deduct U.K. withholding tax at the basic rate on interest (but not, generally, equity distributions) paid to non-U.K. tax residents. Although the above statement does not appear to be entirely accurate, we consider that the clarification of HM Revenue & Customs' position is helpful nonetheless in respect of non-U.K. residents. The issues we highlighted in our previous alert would seem to persist for U.K. residents.

We also note that the ministerial statement mentions only the "annual management fee" (and not, for instance, the performance fee), which we believe will need further clarification. Therefore, we await the detail of the announced change to ensure that the result desired by the U.K. government and U.K. managers is achieved.

## Contact Information

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