

Govt 116 + Govt 117

Mr Stephen Timms (Labour-East Ham)

Amendment 116

Clause 56, page 38, line 33, at end insert-

“(4) But the reference to offshore funds in section 760(3)(a) does not include any arrangements which are not a collective investment scheme for the purposes of that Part of that Act.”.”.

Amendment 117

Clause 56, page 39, line 5 leave out subsection (7)

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EXPLANATORY NOTE

SUMMARY

1. The Amendments to Clause 56 set Royal Assent as the commencement date for the new definition of offshore fund and provide that the new definition shall not apply for the purposes of determining whether or not a fund is a distributing fund.

DETAILS

2. Government amendment 116 inserts a new subsection (4) into section 756A Income and Corporation Taxes Act 1988 (ICTA).
3. New section 756A(4) provides that, for the purposes of section 760(3)(a) ICTA (non-qualifying offshore funds), offshore funds will not include arrangements that are not collective investment schemes for the purposes of Part 17 of the Financial Services and Markets Act 2000.
4. Government amendment 117 deletes subsection (7) of Clause 56 which means that Clause 56(2) will no longer take effect from 1 January 2007 but will now take effect from Royal Assent.

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BACKGROUND NOTE

1. The offshore fund regime (OFR) only applies to collective investment schemes (commonly called Funds). The tax regime uses the definition in the Financial Services and Markets Act 2000 (FSMA) to define collective investment scheme. The problem occurs because of the different interpretations of “reasonable period” employed by the Financial Services Authority (FSA) in their guidance and the offshore funds regime. The FSA interprets “reasonable period” as a period that is reasonable in the circumstances and can be as short as 6 months, whereas the tax definition of “reasonable period” amounts to seven years.
2. Industry representations have highlighted that the measure as drafted before the amendment effects a change. The retrospective start date for the measure was fixed on the basis that it was a clarification, not a change.
3. In addition, HMRC have been made aware of a more serious problem which will affect a large number of compliant Funds and their investors through no fault of their own.
 - a. To be a Distributing Fund, more than 5% of the Fund’s assets by value must not consist of interests in other offshore funds.
 - b. The change has now brought into the definition of an offshore fund Funds that were previously excluded. Compliant Distributing Funds that had structured their investments in such a way as to meet the investment requirements for that status may now find that they are over-invested in non-compliant offshore funds through no fault of their own. As a consequence, the Fund could

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lose its distributing status and UK investors will be charged to income tax upon selling their investment rather than under the more generous capital gains tax rules.

4. The amendments are designed to address both these issues.