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UPDATE

Qualifying Asset Holding Companies (QAHCs)

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Overview of QAHCs, their uses and the benefits of using a Jersey company to be a QAHC.

Background

The QAHC regime was introduced in the UK in April 2022, with the aim of making the UK a competitive location for asset management and investment funds, which tend to be structured through more established EU based fund jurisdictions such as Ireland or Luxembourg.

The QAHC is designed to allow for the holding of non-UK assets without being subject to UK taxation at the QAHC level, provided certain conditions are met. The end result is that investors in a QAHC will get a similar tax outcome to that from investing in the underlying assets of the QAHC directly.

QAHCs can be used across a range of asset classes including private equity, credit, infrastructure and non-UK real estate.

A QAHC is structured as a normal company but will submit a notification to HMRC that it intends to enter the QAHC regime.

There is no requirement that a QAHC be incorporated in the UK, however it must be UK tax resident. This means a jurisdiction such as Jersey, with its flexible companies' law, is an attractive option for investment managers looking to set up QAHC structures for debt, private equity and non-UK real estate acquisitions.

Key benefits of the QAHC regime:

The QAHC regime provides a number of tax and operational benefits. The structure is simple to set up and can take advantage of various UK double tax treaties to provide a tax neutral pooling vehicle for its investors. The main benefits include:

Exemption from UK Corporation Tax on income and gain for qualifying assets	Provides a tax neutral conduit between underlying asset and investors	No UK withholding tax on interest payments paid by the QAHC
Exemption for gains on overseas property disposals and shares in non-UK property rich companies	Exemption for overseas property income (which will be taxed in the jurisdiction the asset is located)	No stamp duty on share or loan note purchases or when QAHC returns capital back to investors via share redemptions or buy backs

Qualification requirements

To qualify for participation in the QAHC regime, the following criteria must be met:

- The company must maintain tax residency in the United Kingdom (this can be an overseas entity which is UK tax resident).
- The company must not be a UK REIT (Real Estate Investment Trust).
- The company's equity should not be listed or traded on a stock exchange.
- The company's investment strategy must not encompass the acquisition of publicly traded equity, except in take private scenarios.
- The company's main activity should be the carrying on of an investment business and any other activities of the company are ancillary to that business and are not carried on to any substantial extent (the intention of this is for QAHCs to be used as asset holding vehicles and not trading companies).
- At least 70% of relevant interests in the company must be held by "Category A investors," broadly defined as sophisticated and institutional investors (QAHCs, qualifying funds, relevant qualifying investors, intermediate companies and certain public authorities), with a maximum of 30% being non Category A investors.

Compliance requirements

To enter the regime, a simple notification is required to be submitted to HMRC. The notification requires a unique tax reference of the company and the date of entry, as well as a declaration that the company meets all the eligibility requirements.

On an annual basis a QAHC information return will need to be submitted to HMRC.

There is a duty to notify HMRC if at any time the QAHC does not meet the eligibility criteria, although there is some flexibility to allow for breaches not immediately affecting the tax treatment of the entity as a QAHC.

The QAHC should put in place measures to ensure that it tracks the status of its investors, which might include:

- Provisions in the QAHC's articles of association (or equivalent constitutional documents for non-UK incorporated QAHCs) obliging shareholders to notify the QAHC should their Category A status change.
- Obtaining, as part of the process for registering a transfer or issue of securities, written confirmation from incoming investors of their Category A status.
- Maintenance by the QAHC of a record of the total relevant interests held in it by non-Category A investors.
- A verification process in relation to the registration of any transfer or issue of securities giving rise to relevant interests, enabling the QAHC to request and be provided with information from investors to enable the QAHC to assess its satisfaction of the ownership requirement.

Which investors will this be attractive to?

There is a requirement for a minimum of 70% of the interests to be held by Category A investors, which includes 'relevant qualifying investors'. These would include:

- UK authorised insurance companies acting in the course of long-term insurance (or foreign insurance companies under equivalent authorisation);
- Sovereign wealth funds (or entities with sovereign immunity);
- a UK REIT or a foreign entity that has the equivalent status of a UK REIT;
- UK Government entities; and
- A qualifying fund which satisfies a genuine diversity of ownership test.

These sorts of institutional investors often invest in assets and in many of the cases above are tax exempt or have certain tax concessions in the UK. This will mean the QAHC can act as a tax neutral pooling vehicle for investment without suffering unnecessary UK tax, with tax only potentially being applicable in the country where the underlying assets are located.

When is it appropriate to use to a QAHC?

QAHCs can hold non-UK real estate, and entities that invest in non-UK assets for long term income and capital appreciation, as well as assets such as loans for private credit structures.

When a QAHC considers real estate development, specific guidance should be sought. HMRC guidance clarifies that if a real estate holding company engages in mixed development – constructing a site for both long-term rental yield and sale upon completion – it may not meet the qualifying condition. This is because the sale aspect would constitute a non-ancillary trade activity, whereas the QAHC should primarily focus on investment holding rather than trading.

For the purposes of corporation tax, when a UK company becomes a QAHC, certain assets are to be treated as sold and immediately reacquired at market value, representing an 'entry charge'. These assets include any overseas land, certain loan relationships and derivative contracts, and qualifying shares (which broadly means any shares other than share in a UK property-rich company, i.e. where the asset derives at least 75% of its value from UK land).

It may not be possible to elect existing companies into the QAHC regime without incurring a tax charge, which is particularly off putting for structures with latent gains.

Therefore, this may be more appropriate for newly established vehicles.

The use of Jersey vehicles vs UK companies

There is a requirement for a QAHC to be UK tax resident and have substance there.

A UK company is an obvious choice and is simple to set up, but a QAHC can also be an overseas entity which is UK tax resident.

Jersey stands as a proven jurisdiction of choice for investors seeking to combine UK tax residence with a corporate regime known for its efficiency and flexibility, allowing for adaptable shareholder rights and streamlined distribution pathways. It is expected that the advantages of QAHCs and Jersey-based companies will synergize to significant effect.

The below table is intended to be a high-level summary setting out the relevant information on the key differences between Jersey and UK companies when considering QAHCs (the list is not the exhaustive position on every relevant consideration).

Consideration	Jersey Position	UK Position
Distributions	A Jersey company is permitted to make distributions from any source, except its nominal capital account or capital redemption reserve, provided that the directors make a solvency statement in the prescribed form.	A UK company is only permitted to make distributions from its distributable reserves.
Redemptions/Share Buy-backs	A Jersey company is permitted to fund redemptions and share buy backs from any source, provided that the directors make a solvency statement in the prescribed form. Unless the company is a wholly owned subsidiary, a buyback is sanctioned by a special resolution and the buyback contract must be approved by ordinary resolution.	UK companies may only fund redemptions from capital accounts and public companies are subject to further restrictions and only permitted to redeem out of distributable profits or by using funds raised from a new issue of shares made for the purposes of redemption, and any premium payable on the redemption must be paid out of distributable profits.

		Buybacks for UK private companies may only be funded from distributable profits, the proceeds of any new issue of shares made for the purpose of financing the buyback or from capital accounts. For UK public companies buybacks may only be funded from distributable profits and the proceeds of any new issue of shares made for the purpose of financing the buyback. Public companies are not permitted to purchase their own shares out of capital. Shareholder approval is required to sanction a buyback in respect of a UK company.
Capital Reductions	Capital reductions can be carried out with the approval of a special resolution and the giving of a solvency statement.	UK private companies are permitted to carry out capital reductions by way of a special resolution supported by a solvency statement. Capital reductions for public companies still require the sanction of the UK courts.
Pre-emption rights	Jersey Companies Law does not prescribe any pre-emption rights. The articles will govern whether any such rights apply.	Unless disapplied, the pre-emption rights set out in the Companies Act will apply.
Filing requirements	Required to submit an annual confirmation statement that outlines details of its direct shareholders, share capital information, and significant individuals (i.e., its directors). For private companies, there is no requirement to file accounts, or a requirement for an audit.	Annual accounts of UK private companies must be filed. Persons with significant control (direct or indirect) also publicly disclosed.

In summary, a QAHC which is Jersey incorporated but UK tax resident company provides some additional advantages with regards to flexibility and stamp duty savings and should be a key part of any decision making.

Conclusion

After a slow start, we have now started to see QAHCs being used and expect that they will start to be considered as a popular alternative vehicle for holding assets. Mourant is well placed to assist clients and advisers with governance services in the UK, Channel Islands, Luxembourg and Cayman Islands.

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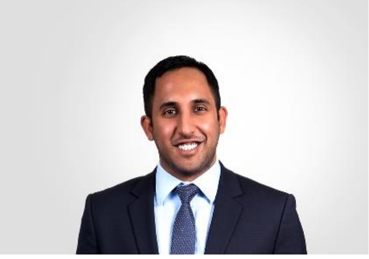

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