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Qualifying Asset Holding Company: A New UK Taxation Regime

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The new regime for asset holding companies (the qualifying asset holding company (QAHC) regime) was published last month as part of the draft Finance Bill 2021-22.

In essence, the term 'asset holding companies' refers to companies that hold the assets of international investment funds.

The purpose of this proposed regime is to increase the UK's attractiveness as an investment hub and to be a jurisdiction of choice for asset holding companies, thus increasing the UK's competitiveness as a location for asset managers and investment funds. Traditionally, Luxembourg, Ireland and the Netherlands have been the most popular destinations for establishing QAHCs. The QAHC regime intends to tax QAHCs only in proportion to the activities they perform, whilst maintaining the flow of capital, income and gains between investors and underlying investments.

The regime is intended only to be available in respect of certain types of investment arrangements and it will not have any impact on the taxation of profits from trading activities, UK real estate or intangibles.

QAHC Qualifying Conditions

A company will qualify as a QAHC if it:

- is resident in the UK;
- meets both the ownership and activity conditions (as set out below);
- is not listed or traded on a recognised stock exchange or any other public market or exchange; and
- has elected to be a QAHC (such election will be revocable).

The ownership element requires that 70 percent of investors in the QAHC (not the fund itself) must be 'good' or 'category A' investors. Category A investors include diversely owned funds that are managed by regulated managers, institutional investors, sovereign entities and long-term life insurance companies.

The activity condition will be met when:

- the main activity of the QAHC is investing its funds with the aim of spreading investment risk and giving investors in the company the benefit of the results of the management of its funds; and
- no other activities of the company are carried on to any substantial extent.

HM Revenue & Customs (HMRC) takes the view that substantial extent equates to 20 percent or more of a company's activities.

Tax Considerations

A QAHC will benefit from some tax advantages, which broadly aim to put investors in the tax position they would otherwise be in if they held the underlying investments directly.

In particular, the key features of the QAHC regime include:

- exemption on capital gains on disposal of "shares", including interests in a company which has no share capital, except where the company derives 75 percent or more of its value from UK land;
- exemption of profits from an overseas property business where those profits are subject to tax in an overseas jurisdiction;
- exemption on capital gains on overseas property;
- exemption from withholding tax on interest payments to investors in the QAHC;
- deductibility of certain interest payments that would otherwise be disallowed as distributions (for example, interest paid on profit participating loans);
- capital, rather than income, treatment on buybacks of shares by the QAHC; and
- exemption from stamp duty and stamp duty reserve tax on the repurchase by a QAHC of its own shares and loan capital (but no exemption on transfer of shares in the QAHC).

The regime will also include provisions to guard against potential for abuse or avoidance. These are not included in the draft legislation and remain subject to continuing consultation.

Timeline

The draft legislation only provides the initial outline for the new framework for taxing QAHCs and focuses on the eligibility conditions for a company to be a QAHC. The draft legislation is now open for technical consultation until 14 September 2021. However, the new regime is envisaged to take effect from 1 April 2022 for the purposes of corporation tax, stamp duty and stamp duty reserve tax. For income tax and capital gains tax, the regime is intended to take effect from 6 April 2022.

CONTACTS

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