# ATAD 3, QAHC and why Jersey structures work for both

**Briefing Summary:** On 1 April 2022, the Qualifying Asset Holding Companies ("**QAHC**") regime, the latest innovation in the UK's corporate tax landscape, came into effect for UK tax resident companies. Meanwhile in the EU, the European Commission has announced it will be introducing the anti tax-avoidance directive ("**ATAD 3**") aimed at EU resident holding companies claiming benefits under double tax treaties and due to come into effect on 1 January 2024.

**Service Area:** Corporate, Corporate Structuring, Investment Funds, Fund Formation, Investment Managers, Fund Regulation and Compliance, Funds Strategies and Asset Classes, Taxation and Economic Substance Requirements

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Forward-looking fund managers and institutional investors may wish to reassess any existing EU asset-holding companies and consider using Jersey structures which can offer true fiscal neutrality/transparency, stay clear of the ATAD 3 impact and take advantage of Jersey's flexible corporate regime.

## What is ATAD 3 and will you be affected?

ATAD 3 targets EU resident asset holding structures with minimal substance and seeks to discourage tax avoidance behaviour by removing access to double tax treaty benefits for companies deemed to be "shell companies". This is bad news if, for instance, you're an EU jurisdiction that has built large sections of its economy offering companies with minimal substance for the sole purpose of accessing double tax treaties.

Happily, Jersey structures do not typically rely on EU-facing double-tax treaty benefits and so should not be affected even if the scope of ATAD was extended to non-EU vehicles.

An EU resident vehicle will come into scope of ATAD 3 if it passes three "gateways". These are:

- more than 75% of revenues in the preceding two tax years are passive income, including dividends and capital gains on shares, interests and royalties;
- more than 60% of relevant income is from cross-border activities or is passed to foreign entities; and


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- the entity has outsourced the administration of day-to-day operations and decision-making on significant functions.

"Outsourcing" is yet to be defined, and it is difficult to confirm whether this means complete outsourcing of any operation or if certain service providers would be seen as mere commercial arrangements, e.g. services provided by law firms and accounting firms.

There are limited exemptions/elections that may apply where an entity can prove that it:

- is set up for genuine commercial reasons;
- is listed or regulated;
- does not have a material cross-border element to its business; or
- does not create a tax benefit for itself, or its group,

but otherwise, an entity which is in scope must report information on its activities and economic substance and may be unable to obtain tax residency certificates and consequently benefit from double tax treaties and other EU Directives. Financial penalties may also apply with a recommended minimum penalty of at least 5% of the entity's turnover.

## The QAHC regime and its benefits

On the other side of the Channel, the QAHC regime replicates and improves upon existing successful asset holding structures by providing an efficient way to hold UK and non-UK investments from both an administrative and tax perspective.

QAHCs benefit from:

- an exemption from UK corporation tax on capital gains on disposals of shares of non-"UK property rich" companies and overseas land;
- an exemption from UK corporation tax on profits from an overseas property business where those profits are subject to tax in an overseas jurisdiction;
- an exemption from UK withholding tax on interest payments made by the QAHC;
- deductibility of certain interest payments (e.g. interest paid on profit participating loans or convertible securities, and on late paid interest);
- capital (rather than income) treatment on a redemption, repayment or purchase of its shares by the QAHC (this does not apply to shares held by portfolio company executives, but does apply to fund executives); and
- an exemption from stamp duty and Stamp Duty Reserve Tax on the repurchase by a QAHC of its own shares and loan capital.

To be eligible for the QAHC regime:

- the company must be tax resident in the UK;
- the company must not be a UK REIT;
- the company's equity may not be listed or traded on a stock exchange;
- the company's investment strategy must not involve: (i) the acquisition of listed or publicly traded equity except for the purpose of facilitating a change of control, or (ii) derivatives of such securities;

- the company's main activity must be that of an investment business;
- at least 30% of relevant interests in the company must be held by "Category A investors" (broadly speaking, sophisticated and institutional investors); and
- the company must notify HMRC if it wishes to enter the QAHC regime.

Jersey is a tried-and-tested jurisdiction for investors who want to combine UK tax residence with an efficient and flexible corporate regime (permitting flexible shareholder rights and easier distribution routes) and it is anticipated that the benefits of QAHCs and Jersey companies will dovetail to great effect.

## Conclusion

Fund managers and institutional investors can elect to use Jersey vehicles for both QAHC and ATAD-driven structures and in the process enjoy access to greater speed of establishment, corporate flexibility, no stamp duty on transfer of shares and access to world class accounting and other service providers.

Carey Olsen continue to be at the forefront of structuring these vehicles and the team are always happy to provide preliminary and/or in-depth analysis working in conjunction with onshore tax and legal advisers to ensure clients get the best possible outcome. Please contact any of the team named on this briefing or your usual Carey Olsen contact for more information.