

The ongoing benefits of Guernsey QAHCs

Briefing Summary: The UK's "Qualifying Asset Holding Company" ("**QAHC**") provides highly advantageous tax benefits for UK tax resident companies. Guernsey companies can elect to be UK tax resident and therefore qualify as QAHCs ("**Guernsey QAHCs**"). This results in dual benefits for fund managers: the tax advantages of the QAHC regime combined with the many advantages of Guernsey's company law regime. As doubts grow about the robustness of the substance position of holding companies established in certain EU jurisdictions, using a Guernsey QAHC is increasingly a prudent choice for fund managers.

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What is a QAHC?

The QAHC regime was introduced in the UK in 2022.

The QAHC is designed to be an intermediary holding company (a "**HoldCo**") for funds (a "**Fund**") managed by UK or EU based fund managers. Typically, the Fund owns the QAHC which in turn owns the Fund's assets.

HoldCos are important as they help create legal separation between the Fund's assets and the Fund's owners, thereby facilitate financing (i.e. external debt) and reducing risk and liability for owners in certain circumstances.

For EU and UK based fund managers, these HoldCos have historically been Luxembourg and Irish vehicles. The QAHC regime was introduced to create a competitor HoldCo option (i.e. UK tax resident companies which qualify as a QAHC) as an alternative to such Luxembourg and Irish vehicles.

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;

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- the company's investment strategy must not involve:
- the acquisition of listed or publicly traded equity except for the purpose of facilitating a change of control; or
- 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 that it wishes to enter the QAHC regime.

The UK tax benefits of a QAHC

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;
- no need to seek treaty benefits to receive interest payments with respect to UK debt on a gross basis;
- 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.

The substance advantage for UK managed or advised Funds

There is a practical benefit if the Fund is managed or advised from the UK, since it is easier to create UK substance in the QAHC, with no need to travel to attend overseas board meetings or otherwise create substance in Luxembourg or Ireland.

Loan origination Funds - HMRC's Guidance of June 2022

A QAHC must at all times meet the qualifying criteria in order to benefit from the above UK tax benefits, one of which (as noted above) is that the QAHC carries on "investment" rather than a "trading" activity (or at least that any trading activity is merely ancillary to the main investment activity).

Standard loan origination Funds are typically considered to carry on an investment activity. However, some uncertainty existed on this point due to the quasi-banking nature of loan origination and the fact that fees are often generated in connection with that activity.

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Further guidance issued by HMRC in June 2022 provided comfort that Funds originating or acquiring loans (and distressed debt) with the intention of owning them for the medium to long term should be capable of satisfying the investment activity condition and therefore benefitting from the QAHC regime.

From April 2026, additional regulatory burdens will be imposed upon loan origination funds by AIFMD II [1]. A Guernsey domiciled loan origination fund utilising Guernsey QAHCs may therefore be of interest to Fund managers.

The additional benefits of a Guernsey QAHC

Guernsey incorporated companies which elect to become UK tax resident are regularly used as QAHCs. The benefits of a Guernsey QAHC are:

- Guernsey's flexible corporate regime permits a dividend or other distribution to be paid out of any account or reserve, provided the company passes a solvency test. This makes it simpler to issue dividends or conduct share buy-backs and redemptions (helping ensure that cash does not become trapped in the HoldCo). QAHCs may wish to repatriate certain profits as dividends (e.g. as a preference share coupon) or potentially share buybacks (in relation to capital proceeds on an exit) to preserve the underlying nature of the return for certain investors. However, for a UK incorporated company, this might be an issue if the QAHC has cash proceeds it wishes to repatriate but owns other investments that have been impaired or realised at a loss which negatively impact the company's profit and loss and reserves. This could be particularly relevant if the Fund's investment strategy involves distressed situations.
- There is no stamp duty on the transfer or sale of shares in a Guernsey company, which allows for more cost-effective exit planning for investments.
- Greater ease and speed of establishment (a Guernsey company can be established in as little as 15 minutes).
- Guernsey's corporate tax residence rules were amended in 2019 to clarify the position in relation to tax for a Guernsey company migrating its tax residence out of Guernsey (thereby facilitating tax migration to the UK – a single, one page submission to the Guernsey Revenue Service is all that is required, with confirmation from the Guernsey Revenue Service typically received within a couple of business days; confirmation of a Company Unique Taxpayer Reference from HMRC is normally received in 4 to 6 weeks).
- Guernsey's political and economic stability, its trusted legal system, its tax neutrality, its pragmatic and proportionate regulation and its world class legal, accounting and administration service providers provide reassurance for investors and Fund managers.

The further benefits of PCCs as QAHCs

Guernsey protected cell companies (each a "**PCC**") are a type of Guernsey company and so enjoy each of the benefits of Guernsey's flexible corporate regime described above.

A PCC is a single legal entity: it is one company with one board of directors, one memorandum and articles of incorporation and one company registration number.

A PCC is comprised of a "core" and any number of protected cells (each a "Cell"). The assets and liabilities of one Cell are segregated and protected from those of the other Cells and the core. Similarly, the assets and liabilities of the core are segregated and protected from those of the Cells.

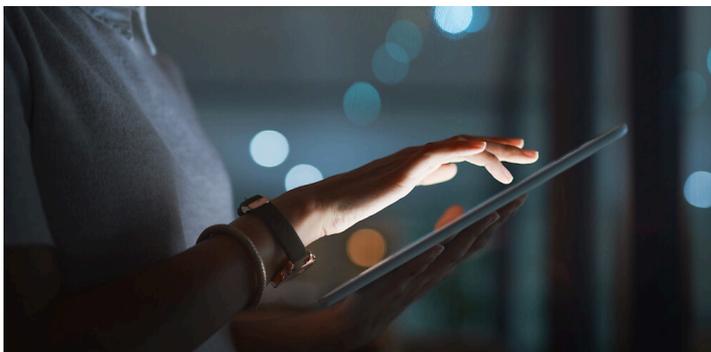
No regulatory or filing processes are required to create a Cell: a resolution of the board of directors of the PCC is sufficient, meaning tremendous time and cost savings.

A UK tax resident PCC which qualifies as a QAHC is therefore able to replicate the compartmentalisation available through using a Luxembourg *société à responsabilité limitée* which opts into the Luxembourg Securitisation Law.

The PCC can therefore be used as an aggregator HoldCo across multiple Funds, or for a single Fund which might itself have multiple compartments within an umbrella RAIF structure.

[1] AIFMD II makes Guernsey even more attractive as a fund domicile

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