

CLIENT ALERT

# UK QAHC Update: Changes to QAHC Regime Enacted

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## AUTHORS

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Yesterday saw Royal Assent granted to the UK Finance Act (No. 2) 2023 (the “**Finance Act**”), bringing with it several amendments to the qualifying asset holding company (“**QAHC**”) regime. The main changes, summarised below, relate to the ability of funds to meet the ownership condition and the ability of a QAHC to hold listed securities, which have been problem areas in the regime until now. These changes should help to make the regime more workable and accessible to a wider range of funds.

The government previously released draft legislation in relation to the ownership condition last July (see our previous [note](#)), but those initial amendments had several flaws. After consultation with industry and advisers, including Willkie, the government has reworked the proposals; the changes to the QAHC regime enacted yesterday therefore differ substantially from those published last year.

### **Ownership Condition – Parallel, Feeder and Aggregator Funds**

Until now, access to the QAHC regime has been difficult for funds which adopt a multi-vehicle fund structure, whether involving parallel, feeder and/or aggregator vehicles. This is because the question of whether a fund is a “qualifying fund” and therefore a “good” investor for the purposes of the ownership condition had to be assessed on an entity-by-entity basis. That meant that funds could be precluded from using a QAHC because some of their vehicles, for wholly commercial reasons, were not diversely held or widely marketed – even where, taken together, the fund as a whole would be.

The Finance Act changes go a long way toward addressing this issue. Under the new rules, the GDO limb of the qualifying fund test (which, broadly, requires the fund to be widely marketed and made available) will be able to be satisfied if an entity is party to “multi-vehicle arrangements”, even if it could not be a qualifying fund on its own.

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Multi-vehicle arrangements are defined as arrangements comprising two or more funds under which investors in one of those funds would reasonably regard their investment as being an investment in the arrangements as a whole rather than exclusively in any particular fund. This should enable most parallel, feeder and aggregator vehicles in typical fund structures to qualify, even if not all the eventual fund vehicles are anticipated at the outset of fundraising, though this will of course have to be confirmed on a case-by-case basis. It should also be remembered that the arrangements should actually meet the GDO condition, though this should be fairly easy to do provided an overall fund PPM that contains the necessary provisions is produced.

### Ownership Condition – Corporate Funds

Of the three alternate qualifying limbs of the qualifying fund test, the GDO is the least onerous to satisfy, because it needs to be assessed only on entry into the regime with no continuous monitoring and does not require analysis of each fund investor's status and participation in the fund. However, under the existing rules, the GDO condition could be accessed only by "collective investment schemes", which term is defined to exclude bodies corporate.

This had the effect of excluding certain offshore limited partnerships treated as bodies corporate and corporate funds for no clear policy reason. Under the Finance Act changes, access to the GDO condition has been extended to include alternative investment funds which are not collective investment schemes only by reason of being a body corporate. This change should therefore enable more funds to access the relative simplicity of the GDO condition.

### Investment Strategy Condition – Listed Securities

Under the existing rules, the investment strategy condition precluded use of the QAHC regime where the investment strategy of the QAHC includes the acquisition of listed securities, except for the purpose of public-to-private transactions.

The Finance Act introduces an ability for entities to irrevocably elect to effectively disapply the investment strategy condition, allowing the holding of some listed securities. However, this election comes at a cost of surrendering the corporation tax exemption on dividends from *all* listed securities (even those which may have been permitted absent this election). Funds looking to make use of this relaxation should therefore carefully consider how this might impact potential future investments.

### Other Changes

The Finance Act made several other amendments to the QAHC regime. In brief, these include:

- Securitisation companies, which are subject to their own specific tax regime, are expressly prohibited from becoming QAHCs with effect from 15 March 2023. There had been some discussion in tax circles as to whether an entity could be both a securitisation company and a QAHC. That has now been put beyond doubt.

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- Special rules for alternative finance arrangements have been added, to help Sharia-compliant investment structures access the regime.

### Concluding Thoughts

The changes made by the Finance Act represent a significant improvement in how the regime works for many common fund structures, and the introduction of these changes only a year after introduction of the regime demonstrates the government's willingness to listen to industry feedback and make changes to ensure the regime works as intended. The Willkie tax team will continue to engage with HM Treasury and HMRC as the QAHC regime develops to seek further improvements where appropriate.

In its current form, the QAHC regime should be seriously considered when establishing a new asset holding structure. In particular, as previously popular European investment jurisdictions, such as Luxembourg and Ireland, will have to deal with the constant march of EU taxation initiatives, including the prospective "Unshell Directive" (or ATAD 3), a UK QAHC may become an even more attractive option.

Fund managers who think there may be a potential use for a QAHC in their holding structures, whether now or in the future, should ensure their fund documents are prepared now with that in mind to provide this flexibility. If you would like to discuss any aspect of the regime or how it might work for your funds, the Willkie tax team would be happy to assist.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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