

1 Taxation of certain asset holding companies

Schedule 1 makes provision about the taxation of certain asset holding companies.

SCHEDULE 1

Section 1

TAXATION OF CERTAIN ASSET HOLDING COMPANIES

PART 1

QUALIFYING ASSET HOLDING COMPANIES

Introduction

- 1 (1) This Schedule makes provision about the taxation of certain asset holding companies.
- (2) Those companies are referred to in this Schedule as “qualifying asset holding companies” or “QAHCs”.
- (3) After this paragraph, the rest of this Part of this Schedule sets out the conditions that must be met for a company to be a qualifying asset holding company.
- (4) Part 2 of this Schedule makes provision about the treatment of certain amounts payable by a QAHC.
- (5) Part 3 makes provision in relation to an overseas property business of a QAHC.
- (6) Part 4 makes provision about the taxation of disposals by QAHCs of overseas land and certain shares.
- (7) Part 5 amends ITA 2007 to provide for an exemption from the duty to deduct under section 874 of that Act.
- (8) Part 6 makes supplementary provision (including provision about the meaning of terms used in this Schedule).

Conditions for being a qualifying asset holding company

- 2 A company is a qualifying asset holding company if—
 - (a) it is resident in the United Kingdom,
 - (b) it meets the ownership condition set out in paragraph 3,
 - (c) it meets the activity condition set out in paragraph 7,
 - (d) it is not a UK REIT,
 - (e) no equity securities of the company are listed or traded on a recognised stock exchange or any other public market or exchange, and
 - (f) it has made, and has not rescinded, a decision to be a QAHC.

Ownership condition for QAHCs

- 3 (1) The ownership condition is met in relation to a company if—
 - (a) the sum of relevant interests in it held by persons who are not category A investors does not exceed 30%, and
 - (b) where the company has issued securities that entitle their holders to a greater proportion of profits or assets of a particular class than to other profits or assets of the company, the sum of relevant interests

in that class of profits or assets held by persons who are not category A investors does not exceed 30%.

- (2) A person has a relevant interest in a company if, as a result of a direct or indirect interest the person has in the company, the person—
- (a) is beneficially entitled to a proportion of the profits available for distribution to equity holders of the company,
 - (b) is beneficially entitled to a proportion of the assets of the company for distribution to its equity holders on a winding up, or
 - (c) has a proportion of the voting power in the company,
- and the amount of that relevant interest, for the purposes of the calculation in sub-paragraph (1)(a), is the greatest of such of those proportions as arise as a result of that interest.
- (3) A person has a relevant interest in a particular class of profits or assets of a company if, as a result of a direct or indirect interest the person has in the company, the person—
- (a) is beneficially entitled to a proportion of the profits that fall within that class that are available for distribution to equity holders of the company, or
 - (b) is beneficially entitled to a proportion of the assets of the company that fall within that class for distribution to its equity holders on a winding up,
- and the amount of that relevant interest, for the purposes of the calculation in sub-paragraph (1)(b), is the greatest of such of those proportions as arise as a result of that interest.
- (4) For the purpose of determining, at any time, the proportion of profits or assets available for distribution that a person (“the relevant person”) with a relevant interest in a company (“the relevant company”), or with a relevant interest in a particular class of profits or assets of the relevant company, is beneficially entitled to—
- (a) when making a determination in relation to a relevant interest in the relevant company, only include—
 - (i) profits that are, or would be if the relevant company were a QAHC, profits of its QAHC ring fence business, and
 - (ii) assets that are, or would be, used wholly or partially for the purposes of that business;
 - (b) when making a determination in relation to a relevant interest in a particular class of profits or assets of the relevant company, only include profits or assets falling within that class that fall within paragraph (a)(i) or (ii);
 - (c) the relevant person is beneficially entitled to profits or assets if the person is so entitled—
 - (i) directly,
 - (ii) partly directly or through a company, other than a QAHC, that is connected to the person and partly through another person that is not a QAHC or through other persons that are not QAHCs, or
 - (iii) solely through one or more QAHCs;
 - (d) where the relevant person is connected to another person who has a beneficial entitlement to profits or assets through another person that is not a QAHC, or through other persons that are not QAHCs,

that entitlement is to be treated, for the purposes of paragraph (c)(ii), as an entitlement of the relevant person;

- (e) a beneficial entitlement to profits or assets that arises as a result of the relevant person's participation in a transparent qualifying fund is –
 - (i) for the purposes of paragraph (c)(i) and (iii), to be treated as an entitlement of the fund (rather than of that person), and
 - (ii) for the purposes of paragraph (c)(ii), to be treated as an entitlement of the relevant person through another person (rather than arising directly);
- (f) sections 165 and 166 of CTA 2010 (calculation of proportion of assets and profits for distribution) and sections 169 to 178 of that Act (shares or securities with limited or temporary rights and options) apply as if –
 - (i) any reference to company A were to the relevant person,
 - (ii) any reference to company B were to the relevant company,
 - (iii) the references to the relevant accounting period were to the accounting period of the relevant company within which the determination is made,
 - (iv) references in section 165 to “total profits” were to the total profits included in the determination as a result of paragraph (a) or (as the case may be) (b),
 - (v) references in section 166 to the “assets amount” only included assets of the relevant company included in the determination as a result of those paragraphs,
 - (vi) references in that section to the “liabilities amount” only included –
 - (a) in the case of a relevant interest in the relevant company, such of its liabilities as are, or would be if the relevant company were a QAHC, attributable (on a just and reasonable basis) to its QAHC ring fence business, and
 - (b) in the case of a relevant interest in a particular class of assets of the relevant company, such of those liabilities as are also attributable (on a just and reasonable basis) to that class,
 - (vii) subsection (4) of section 165 were omitted,
 - (viii) in section 169(1) for “182” there were substituted “178”,
 - (ix) in section 170, subsection (6) were omitted, and
 - (x) in sections 170(4), 172(4) and 174(3), for “178 and 180” there were substituted “and 178”;
- (g) where –
 - (i) the relevant person has a beneficial entitlement to profits that arises under relevant carried interest arrangements, and
 - (ii) the proportion of the profits to which the relevant person is entitled may vary over the life of the arrangements,

use the maximum proportional entitlement that could arise over the life of the arrangements, instead of the actual proportion at any particular time.

- (5) In this paragraph –
 - “securities” means –

- (a) ordinary shares within the meaning of section 160 of CTA 2010 (meaning of ordinary shares for the purposes of section 158(1)(a) of that Act);
 - (b) loans, other than normal commercial loans, in relation to which only equity holders are loan creditors;
- “normal commercial loan” is to be construed in accordance with section 162 of that Act (meaning of normal commercial loan for the purposes of sections 158(1)(b) and 159(4)(b) of that Act);
- “loan creditor” is to be construed in accordance with section 158(2) of that Act (meaning of loan creditor for the purposes of subsection (1)(b) of that section);
- “connected”, in relation to two persons being connected with one another, is to be read in accordance with sections 1122 and 1123 of CTA 2010, but for the purposes of this paragraph section 1122(7) has effect as if any reference to a partnership did not include a partnership that is a qualifying fund;
- “qualifying fund” is to be construed in accordance with paragraph 5, and such a fund is “transparent” to the extent its investments are treated, for the purposes of corporation tax on chargeable gains or capital gains tax, as held by its participants (rather than by the fund itself);
- “participant”, in relation to a qualifying fund, means a person who takes part in the arrangements constituting the fund, whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise;
- “relevant carried interest arrangements” means arrangements under which a person receives carried interest in connection with the person’s performance of investment management services;
- “carried interest” means any sum –
- (a) received by a person within the charge to income tax that is, or is treated as, carried interest for the purposes of section 809EZB of ITA 2007 (see sections 809EYC and 809EYD of that Act), or
 - (b) received by any other person that would be, or would be treated as, carried interest for the purposes of that section if that person were within the charge to income tax.

Category A investors

- 4 The following are Category A investors for the purposes of paragraph 3 –
- (a) a QAHC;
 - (b) a qualifying fund (see paragraph 5);
 - (c) a relevant qualifying investor (see paragraph 6);
 - (d) a Minister of the Crown.

Qualifying funds

- 5 (1) For the purposes of paragraph 4, “qualifying fund” means a fund which is a collective investment scheme or an AIF (that is not a collective investment scheme) that meets the diversity of ownership condition.
- (2) The diversity of ownership condition is met if –

- (a) in the case of a fund that is a company, it is not a relevant close company, and
 - (b) in the case of any other fund –
 - (i) the fund meets the conditions in regulation 75(2), (3) and (4)(a) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (genuine diversity of ownership condition), or
 - (ii) the fund would meet the condition in regulation 75(5) of those regulations, if regulation 75(4)(b) were omitted.
- (3) To determine if a company is a relevant close company, determine whether it is a close company in accordance with the rules in Chapter 2 of Part 10 of CTA 2010 but subject to the modifications set out in paragraph 46(2)(a) to (e) of Schedule 5AAA of TCGA 1992 (meaning of close company etc).
- (4) For the purpose of applying the conditions referred to in sub-paragraph (2)(b) –
- (a) the condition in regulation 75(2) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) is to be treated as met in relation to a fund marketed before 6 April 2020 if the fund has produced, and made available to HMRC, a statement prepared by the manager of the fund which –
 - (i) specifies the intended categories of investor when the fund was marketed,
 - (ii) confirms that, and describes how, the interests in the fund were made widely available, and
 - (iii) confirms that, and describes how, interests in the vehicle were marketed and made available in accordance with the requirements of regulation 75(4)(a) of those regulations (and that provision is to be read accordingly);
 - (b) the fact that (for any reason) the capacity of a fund to receive investments is limited does not prevent regulation 75(3) of those regulations (including as it applies for the purposes of regulation 75(5) of those regulations) from being met.
- (5) Sub-paragraph (4)(b) does not apply if –
- (a) the limited capacity of the fund to receive investments is fixed by the documents of the fund (or otherwise), and
 - (b) a pre-determined number of specific persons, or specific groups of connected persons, make investments in the fund that collectively exhausts all, or substantially all, of that capacity.

Relevant qualifying investors

- 6 The following persons are relevant qualifying investors –
- (a) a person acting in the course of a long-term insurance business (that is, the activity of effecting or carrying out contracts of long-term insurance within the meaning of the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544)) who –
 - (i) is authorised under the Financial Services and Markets Act 2000 to carry on such business, or
 - (ii) has an equivalent authorisation under the law of a territory outside the United Kingdom to carry on such business;

- (b) a person who cannot be liable for corporation tax or income tax (as relevant) on the ground of sovereign immunity;
- (c) a UK REIT;
- (d) a company that is a collective investment vehicle for the purposes of Schedule 5AAA to TCGA 1992 as a result of any of paragraphs (d), (e) or (f) of paragraph 1(1) of that Schedule (non-UK resident company meeting property income condition);
- (e) the trustee or manager of a pension scheme (within the meaning given by section 150(1) of FA 2004) other than an investment-regulated pension scheme (within the meaning given by paragraphs 1 and 2 of Schedule 29A to that Act);
- (f) a charity, unless –
 - (i) the main source of donations to that charity is –
 - (a) individuals involved in the management of the QAHC in respect of which the charity would otherwise be a relevant qualifying investor, and
 - (b) persons connected with such individuals, or
 - (ii) the charity is controlled by such individuals or persons.

Activity condition for QAHCs

- 7 The activity condition is met if –
- (a) the main activity of the company 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
 - (b) the other activities of the company (if any) are not carried on to any substantial extent.

Ring fencing of QAHC business

- 8 (1) For the purposes of this Schedule “QAHC ring fence business” in relation to a QAHC means the business of carrying out its main activity (see paragraph 7(a)) in relation to –
- (a) overseas land;
 - (b) relevant shares;
 - (c) any creditor relationship of the QAHC;
 - (d) any derivative contract to the extent that the QAHC is party to it for the purposes of carrying out its main activity in relation to any of the things mentioned in paragraphs (a) to (c);
 - (e) any derivative contract to the extent that the underlying subject matter of the contract is overseas land, relevant shares or debt.
- (2) A QAHC ring fence business of a QAHC is treated for the purposes of the charge to corporation tax as separate and distinct from all other activities carried on by the QAHC.
- (3) In this paragraph –
- “relevant shares” is to be construed in accordance with paragraph 12;
 - “creditor relationship” has the meaning it has in Part 5 of CTA 2009 (see section 302 of that Act);
 - “underlying subject matter”, in relation to a derivative contract, is to be construed in accordance with section 583 of that Act (meaning of “underlying subject matter”).

PART 2

TREATMENT OF CERTAIN AMOUNTS PAYABLE BY A QAHC

Treatment of certain distributions

- 9 (1) A relevant distribution out of assets of a QAHC in respect of a security of the QAHC is not to be treated as a distribution for the purposes of the Corporation Tax Acts if the QAHC is party to the security for the purposes of its QAHC ring fence business.
- (2) Accordingly, among other things, section 465 of CTA 2009 (exclusion of distributions from being taken into account for the purposes of Part 5 of that Act) does not apply to a relevant distribution.
- (3) In this paragraph “relevant distribution” means any interest or other distribution in respect of a security of a QAHC if it would, ignoring this paragraph, be a distribution for the purposes of the Corporation Tax Acts only as a result of the security being a relevant special security.
- (4) In sub-paragraph (3) “relevant special security” means a security that—
- (a) meets Condition C in subsection (4) of section 1015 of CTA 2010 (meaning of “special securities”), and
 - (b) does not meet any other condition in that section.
- (5) Where a QAHC is party to a security for the purposes of its QAHC ring fence business and partly for another purpose, only the proportion of a relevant distribution in respect of that security that is attributable to the QAHC ring fence business (apportioned on a just and reasonable basis) is not to be treated as a distribution for the purposes of the Corporation Tax Acts.

Interest payable under a QAHC’s debtor relationship.

- 10 (1) Section 373(1) of CTA 2009 (late interest treated as not accruing until paid in some cases) does not apply to relevant debits.
- (2) A debit is relevant if—
- (a) it relates to interest payable under a debtor relationship of a QAHC,
 - (b) the QAHC is party to the relationship for the purposes of its QAHC ring fence business, and
 - (c) the interest to which the debit relates accrues at a time when the QAHC is a QAHC.
- (3) Where a QAHC is party to a debtor relationship partly for the purposes of its QAHC ring fence business and partly for another purpose, sub-paragraph (1) applies only to the proportion of a relevant debit relating to interest payable under that relationship that is attributable to the QAHC ring fence business (apportioned on a just and reasonable basis).
- (4) In this paragraph “debit” and “debtor relationship” are to be construed in accordance with Part 5 of CTA 2009.

PART 3

OVERSEAS PROPERTY INCOME

Overseas property income of a QAHC

- 11 (1) No liability to corporation tax arises in respect of QAHC overseas property profits to the extent those profits are taxable in a foreign jurisdiction.
- (2) “QAHC overseas property profits” means any profits that would, ignoring this paragraph, be chargeable to tax under Chapter 3 of Part 4 of CTA 2009 (profits of property businesses) as profits of an overseas property business of a QAHC.
- (3) Profits are taxable in a foreign jurisdiction if they are chargeable to tax (and are neither subject to any exemption or relief from tax nor chargeable at a nil rate) under the law of a territory outside the United Kingdom so far as that tax –
- (a) is charged on income and corresponds to United Kingdom income tax, or
 - (b) is charged on income and corresponds to the United Kingdom charge to corporation tax on income.
- (4) No liability to corporation tax arises in respect of profits that arise from loan relationships and derivative contracts that a QAHC is party to for the purposes of an overseas property business of that QAHC.
- (5) Where a QAHC is party to a loan relationship or a derivative contract partly for the purposes of an overseas property business and partly for another purpose, sub-paragraph (4) only applies to the proportion of profits arising from that relationship or contract that are attributable to the overseas property business (apportioned on a just and reasonable basis).

PART 4

DISPOSALS OF OVERSEAS PROPERTY AND CERTAIN SHARES

No chargeable gain on disposal of overseas property or certain shares

- 12 (1) A gain accruing to a QAHC on a disposal of overseas land or relevant shares is not a chargeable gain.
- (2) In this paragraph “shares” includes –
- (a) stock;
 - (b) any other interest of a member in a company (including a company that has no share capital);
 - (c) any interest as co-owner of shares (whether the shares are owned jointly or in common and whether or not the interests of the co-owners are equal).
- (3) Shares are relevant unless their disposal would, in accordance with Part 2 of Schedule 1A to TCGA 1992 (whether asset derives at least 75% of its value from UK land), be regarded as a disposal of an asset deriving at least 75% of its value from UK land.

PART 5

EXEMPTION FROM SECTION 874 OF ITA 2007 (WITHHOLDING TAX)

- 13 In Part 15 of ITA 2007 (deduction of income tax at source), after section 888D insert –

“888DA Payments of interest to QAHC investors

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest (however the interest arises) by a QAHC to a person with a relevant interest in the QAHC.
- (2) Whether a person has a relevant interest in a QAHC is to be determined in accordance with paragraph 3 of Schedule 1 to FA 2022 (ownership condition for QAHCs).”

PART 6

SUPPLEMENTARY

Consequential amendments

- 14 (1) In section 465 of CTA 2009 (exclusion of distributions except in tax avoidance cases), in subsection (3) –
- (a) omit the “and” after paragraph (c);
 - (b) after paragraph (d) insert –
 - “(e) paragraph 9 of Schedule 1 to FA 2022 (distributions under certain securities issued by qualifying asset holding companies).”

Interpretation

- 15 In this Schedule –
- “AIF” has the meaning given by regulation 3 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773);
 - “collective investment scheme” has the meaning given by section 235 of the Financial Services and Markets Act 2000;
 - “equity holder” has the meaning it has in Part 5 of CTA 2010 (see section 158 of that Act);
 - “equity security” has the meaning given by section 560 of the Companies Act 2006;
 - “land” includes –
 - (a) buildings and structures;
 - (b) any estate, interest or right in or over land;
 - (c) land under the sea or otherwise covered by water;
 - “Minister of Crown” has the same meaning as in the Ministers of the Crown Act 1975;
 - “overseas land” means land outside the United Kingdom;
 - “qualifying asset holding company” and “QAHC” are to be construed in accordance with Part 1 of this Schedule;
 - “QAHC ring fence business” has the meaning given by paragraph 8(1);
 - “UK REIT” means –

- (a) a company UK REIT within the meaning of Part 12 of CTA 2010 (see section 524 of that Act), or
- (b) a company that is a member of a group UK REIT within the meaning of that Part (see sections 523 and 606 of that Act).