L3A Position Paper

The UK Qualifying Asset Holding Company Regime

Analysis and comparison with the Luxembourg SOPARFI

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1. Purpose of this position paper

The Qualified Asset Holding Company ('QAHC') regime is a holding company regime which was introduced in the UK to enhance the competitiveness of the UK vis à vis other jurisdictions (for example, Luxembourg) as a location for asset management and investment funds.

The QAHC regime was introduced by Schedule 2 of the Finance Act 2022 (hereafter referred to as 'FA22/SCH2') and came into force on 1 April 2022.[1] The QAHC regime is therefore relatively new, and there is still uncertainty about some of the details.

As the UK is one of the most important jurisdictions for investment management, the question arises as to whether the QAHC regime may make it easier for investment funds to establish their holding platform for international investments in the UK rather than in Luxembourg via the long-established '*Société de Participations Financières'* ('SOPARFI').

It is sometimes argued that it is easier to organise the substance of an investment vehicle in the UK than in Luxembourg, given that UK investment managers should have a substantial presence in the Britain. This idea has been raised in particular in relation to the draft EU Council directive laying down rules to prevent the misuse of shell entities for tax purpose (the so-called ''Unshell directive proposal') released on 21 December 2021.

To answer the question of whether the QAHC regime is more advantageous than the SOPARFI for implementation of an investment platform for cross-border investments, it is necessary to analyse the legal and tax characteristics of the QAHC and compare them with those of the SOPARFI. It is also necessary to analyse how the QAHC and the SOPARFI are treated from the perspective of the investment jurisdiction. Finally, it is important to consider substance requirements and the limitations imposed by European law in an EU context (as applicable in the case of the SOPARFI).

This position paper will shed light on all these aspects and help the reader gain a clear understanding of the legal and tax features of the QAHC and how these compare to the features of the SOPARFI, as well as to consider Luxembourg's competitiveness.

The purpose of this position paper is to:

- Provide a clear and concise overview of the QHAC regime;
- Draw a comparison with the features of the Luxembourg SOPARFI regime; and
- Consider substance requirements.

[1] Schedule 2 to the Finance Act 2022 (https://www.legislation.gov.uk/ukpga/2022/3/enacted), referred to as 'FA22/SCH2', supplemented by HMRC explanatory notes (https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40000).

2. Analysis of the QAHC regime

2.1. Overview

The QAHC regime is a holding company regime introduced in 2022 in the UK to make the UK more competitive vis à vis other jurisdictions (such as Luxembourg) as a location for asset management and investment funds.

Similar to a SOPARFI, which is an unregulated company in Luxembourg, the QAHC regime applies to unregulated companies that are resident for tax purposes in the UK (they cannot be listed companies). However, there are significant differences between the two.

Unlike a SOPARFI, the QAHC regime is subject to specific conditions, primarily relating to its ownership, operational activities and investment strategy. All these conditions are analysed in the following sections. The analysis of the UK legal framework and the QAHC tax regime is based on publicly available documents.

2.2. Legal framework

2.2.1. Conditions of the QAHC regime

For a company to qualify as a QAHC, it must meet certain criteria relating to its ownership, activities and investment strategy, and it must be resident for tax purposes in the UK.[2] In addition, its securities must not be publicly listed or traded on a recognised stock exchange or market, and it must not be a UK real estate investment trust or securitisation company.

The conditions for benefiting from the QAHC regime include two key aspects:

- the type of investors: at least 70% of the ''relevant interests'' of a QAHC must be held by a specific category of investor, classified as ''good investors'' under the QAHC regime; and
- the type of investments made: the primary activity of a QAHC must be investment-related activities, subject to specific investment strategy conditions.

Comparison with the SOPARFI:

The Luxembourg SOPARFI regime offers a much greater degree of flexibility than the QAHC regime.

The SOPARFI is open to a wide range of investors, including institutional investors, investment funds, individuals, companies, trusts, foundations and other SOPARFIs, and holding companies. SOPARFIs are free to invest in various asset classes, in Luxembourg and abroad, including tangible and intangible assets, securities, shares, bonds, real estate, cash, currencies, commodities, loans, distressed assets and contracts with third parties. Securities issued by a SOPARFI (for example bonds) may be publicly listed or traded on a recognised stock exchange or market.

Given the possibility of changes in investment focus or evolution of investor structures over the life of a company, a SOPARFI represents a more adaptable choice than a QAHC due to its inherent flexibility. The QAHC regime, by contrast, imposes strict conditions upfront and requires a pre-defined investment strategy aligned with the regime's constraints, with limited flexibility to adapt to changing

[2] But does not necessarily need to be incorporated in the UK.

circumstances.

Consequently, the QAHC regime is less flexible than the framework applicable to a Luxembourg SOPARFI.

2.2.2. Management of the QAHC

The QAHC regime is subject to ongoing compliance with strict eligibility conditions. To maintain its status under this regime, the company must continuously monitor both its ownership structure and its investments.

This monitoring is not just a recommendation but a requirement under FA22/SCH2. Under §12 of FA22/SCH2, a QAHC must take reasonable steps to ensure that the ownership conditions are consistently met.

Comparison with the SOPARFI:

The SOPARFI does not have to monitor continuously its ownership structure and investments.[3]

2.2.3. Category A Investors (so-called ''good investors'')

For a company to qualify as a QAHC, at least 70% of its ''relevant interests'' must be held, directly or indirectly, by ''Category A Investors''.

A person has a ''relevant interest'' if, as a result of a direct or indirect interest in the company, that person

(a) is beneficially entitled to a share of the profits available for distribution to the equity holders of the company; or
(b) is beneficially entitled to a share of the assets of the company for distribution to its equity holders upon winding-up; or
(c) has a proportion of the voting power in the company, equal to the amount of the relevant interest.

If the QAHC has issued an ''enhanced class'' (which entitles its holders to a disproportionately large share of profits or assets), at least 70% of the enhanced class must also be held by Category A investors. If a QAHC issues different classes of shares, this condition applies to each class of shares.

''Category A Investors' means:

1) a QAHC.

2) a 'qualifying fund'', that is, a fund that meets the 'diversity of ownership' condition[4].

   The diversity of ownership condition is met if:
   a) the fund is a collective investment scheme (and it meets the condition of genuine diversity of ownership[5]);

[3] Luxembourg SOPARFIs must comply with obligations relating to the Ultimate Beneficial Ownership ('UBO') register. However, these obligations are not linked to the legal and tax regime of the SOPARFI.
[4] See §9 of FA22/SCH2.
[5] https://www.legislation.gov.uk/uksi/2009/3001/regulation/75

b) the fund is not closed; or
c) the fund is 70% controlled[6] by Category A Investors.

3) a ‘relevant qualifying investor’ i.e.:
   a) a regulated insurance business;
   b) a sovereign tax-exempt investor;
   c) a UK real estate investment trust (‘REIT’);
   d) the foreign equivalent of a UK REIT;
   e) a company that is a collective investment vehicle (‘CIV’);
   f) the trustee or manager of a regulated pension scheme; and
   g) a charity (subject to some exceptions).

4) an ‘intermediate company’, a company that (a) meets the ‘activity condition’ and (b) is wholly or almost wholly owned (at least 99% ownership) by (an)other Category A Investor(s) other than a QAHC.

5) some public authorities.[7]

In terms of the timing of meeting these conditions, the 'ownership condition' should be met either on notification of entry or within two years of becoming a QAHC.[8]

Comparison with the SOPARFI:

A SOPARFI does not have to meet any ownership condition.

2.2.4. The ‘at least 70% good investor’ requirement

Given the definition of ‘good investors’, ‘bad investors’ (i.e. investors who are not ‘Category A Investors’) include closed-end funds, funds that are not widely held, and family-owned businesses and companies that are not funds. Carried interest holders and, in general, management also may not be considered ‘Category A Investors’.

In addition, any 'enhanced classes' that grant non-Category A Investors more than 30% of, for example, distributable profits will render the company ineligible for the regime. Consequently, if these investors are directly involved in a QAHC, it becomes crucial carefully to track ownership percentages and entitlements to ensure that the overall presence of ‘bad investors’ remains below the 30% threshold. This may leave little room for additional ‘bad investors’, particularly if the typical carried interest allocation follows the 20%/80% model. If these investors participate through a qualifying fund, further analysis is required.

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[6] A fund is 70% controlled by Category A Investors if a Category A Investor, or more than one Category A Investor between them, directly or indirectly possesses (a) 70% or more of the *voting power* in the fund, (b) so much of the fund as would, on the assumption that the whole of the *income* of the fund were distributed among persons with interests in the fund, entitle that investor or those investors to receive 70% or more of the amount distributed, and (c) such rights as would entitle that investor or those investors, in the event of the winding up of the fund or in any other circumstances, to receive *70% or more of the assets of the fund* which would then be available for distribution among persons with interests in it.

[7] This includes (a) any Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975); (b) any United Kingdom government department; (c) the Scottish Ministers; (d) any Northern Ireland department; (e) the Welsh Ministers; (f) any local authority or local authority association in the United Kingdom; (g) the Education Authority of Northern Ireland; (h) the Northern Ireland Housing Executive; (i) any health service body (within the meaning given by section 985 of CTA 2010); (j) any public authority who exercises public functions in connection with the coordination or provision of public transport for a region of the United Kingdom (for example, Transport for London or an executive for an integrated transport area, a combined authority area or a passenger transport area).

[8] §14 (5) of FA22/SCH2.

The ownership requirement is one of the conditions of the QAHC regime that creates complexity and uncertainty. The calculation of the 70% minimum threshold for ‘Category A Investors’ applies to both direct and indirect interests in the QAHC, taking into account both legal and economic rights.

Anticipating whether the structure might attract investors over its lifetime that could push the direct or indirect ‘bad investor’ share above the 30% threshold is a challenging task. Monitoring transfers of ownership between investors is also necessary. Such oversight is difficult to achieve in practice, and ensuring compliance with the ownership condition throughout the life of the QAHC is both complex and costly. Failure to comply with the conditions of the QAHC regime, for example due to inaccurate projections of the initial investor base or evolving business plans, may result in disqualification, with potentially adverse tax consequences.

Comparison with the SOPARFI:

The Luxembourg SOPARFI does not impose any restrictions in terms of eligible shareholders. Therefore, there is no requirement to analyse and continuously monitor the investor base.[9]

2.2.5. Limitation of activities and investment strategy

The main activity of the QAHC must be the carrying on of an 'investment business', and the other activities may be carried only on an ancillary basis and not to a substantial extent.[10]

However, the term 'investment business' remains undefined in FA22/SCH2, and HMRC's explanatory notes indicate that whether a particular activity is an investment or a trade will depend on the specific circumstances, creating considerable uncertainty.

While some illustrative examples are provided in the explanatory notes, the interpretation of what constitutes an ancillary activity and when an activity ceases to be ancillary remains unclear.

These issues are likely to take some time to resolve, and it is expected that HMRC's guidance will gradually evolve and expand to provide more detail and examples of how these restrictions apply.

If a QAHC fails to meet its conditions, for example because it does not make a qualifying investment or because qualifying investments depend on undefined facts, the company may lose its QAHC status. This may have significant tax consequences.

Comparison with the SOPARFI:

The SOPARFI regime imposes no specific restrictions on the company's activities and offers great clarity and flexibility in terms of investment strategies.

[9] Luxembourg SOPARFIs must comply with obligations relating to the Ultimate Beneficial Ownership (‘UBO’) register. However, these obligations are not linked to the legal and tax regime of the SOPARFI.

[10] §13 of FA22/SCH2. A recharge activity should hence not *per se* be prohibited for a QAHC as long as it remains an ancillary activity.

2.2.6. Prohibited investments

The QAHC regime defines certain prohibited investments. Accordingly, the investment strategy of the QAHC must not include:

- the acquisition of equity securities listed or traded on a public market or exchange, except for the purpose of facilitating a change of control of the issuer resulting in the delisting of the securities; or
- other interests that derive their value from such securities, subject to certain exceptions[11].

It is worth noting that the prohibition focuses on the QAHC's strategic intention to invest, directly or indirectly, in listed equity securities. Therefore, holding listed equity securities during a lock-up period or holding unlisted securities that become listed would not be an issue as long as the QAHC is not actively involved in the listing process.[12]

These requirements introduce a significant degree of uncertainty as they require further clarification and appear to be based on the 'intention' of the QAHC. In the absence of precise criteria, interpretation by HMRC becomes subjective, leading to potential ambiguity.

Comparison with the SOPARFI:

The Luxembourg SOPARFI is free to invest in equity securities listed or traded on a public market or exchange (or other interests deriving their value from such securities). Luxembourg law does not define any specific prohibited investments.

[11] Notably regarding:

- the exiting from an investment via an IPO: a new holding company could be incorporated to act as the listed vehicle and inserted between the QAHC and its subsidiary which is being floated. This action would not by itself be regarded as a pursuit of an investment strategy involving the holding of listed shares (https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40265).
- a public takeover bid: a QAHC can acquire a position in the target's shares in view of de-listing the target (if the bid is successful). In the event the bid fails (or is not made at all), the bidder would generally be expected to divest itself of the stake it had built. The investment strategy condition does not specifically require this divestment to occur; it just requires that the shares were not acquired as part of a strategy to hold listed shares other than for the purpose of facilitating a takeover.
- exiting an investment: where an investment entity exits an investment in a company by way of an initial public offering, it is common (and indeed typically required as part of the public offering process) for the selling entity to retain a stake in the newly listed company for a period. This is commercially driven – in particular, it is seen as expressing confidence to the market in the value of the shares being sold.

[12] 'where the stake concerned is small enough that the QAHC is not closely involved in the planning of the listing and quite possibly engineering it to provide an exit' (https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40265).

2.2.7. Ring-fencing rules

The QAHC tax regime applies only to assets within the ring-fence. Assets outside the ring-fence are subject to the standard UK tax regime, like any other company.[13]

The assets falling within the ring-fence encompass:

- overseas land;
- qualifying shares (any shares other than shares in UK property-rich companies[14] (i.e. shares whose value is at least 75% derived from UK land)[15]);
- any creditor relationship;
- derivatives on land, qualifying shares and debt; and
- derivative contracts to the extent that the QAHC is party to them for the purpose of carrying on its investment business in relation to the above[16].

Given the above definition, assets outside of the 'ring-fence' include, for example:

- investment in non-qualifying shares;
- carrying on a UK property business;
- carrying on an overseas property business which is not exempt from corporation tax by virtue of the QAHC rules; or
- carrying on any trading activity.

Comparison with the SOPARFI:

Luxembourg SOPARFIs are not subject to any ring-fencing rules.

2.2.8. Moving assets across the QAHC ring-fence boundary

In cases where there is no outright disposal of an asset by the QAHC, but there is a change in the assets of the investee company, such a change may cause the ring-fence to be breached and may have adverse tax consequences. The QAHC must therefore monitor its underlying investments on an ongoing basis.

Movement of assets into the ring-fence business – example

A QAHC holds shares in an investee company. The investee company holds only UK land and property. As such, these shares are not qualifying shares because more than 75% of the value of the shares is derived from UK land - the investee company is UK property-rich.

The investee company then disposes of 50% of its UK property portfolio and invests the proceeds in overseas property. Although the QAHC has made no change to its own investment, because less than 75% of the value of that investment is now derived from UK property, those shares are now qualifying shares. The investee company is no longer UK property-rich.

[13] https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40350

[14] Defined by reference to the UK non-resident capital gains rules.

[15] 'Shares' is broadly defined and includes interests of members in companies without share capital, certain rights of unit holders in unit trusts, certain units in transparent funds and derivatives (https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40930).

[16] On the contrary, are outside the 'ring-fenced business': investment in non-qualifying shares, carrying on a UK property business, carrying on an overseas property business which is not exempt from corporation tax by virtue of the QAHC rules or carrying on any trading activity.

The QAHC is deemed to have disposed of the shares in the investee company immediately before they entered the QAHC ring-fence and to have acquired them at their then fair market value immediately after they entered the ring-fence. In this case, any deemed gain would be deemed to have been realised outside the ring-fence and would be subject to the normal corporation tax rules on chargeable gains.

Movement of assets out of the ring-fence business – example

Based on the previous example, it is assumed that the investee company acquires UK real estate assets and thus becomes a non-qualifying asset for QAHC regime purposes (75% of the value of the shares is derived from UK land).

The shares in the investee company would be deemed to be disposed of by the QAHC at their then fair market value and the gain (if any) deemed to have been realised thereon would benefit from the QAHC regime, i.e. be exempt. The QAHC would also be deemed to acquire the shares in the investee company at their then new fair market value, but any subsequent gain realised by the QAHC on the disposal of the investee company, which would cease to be a qualifying asset, would be taxed under the normal UK corporation tax regime.

Investors in the QAHC may therefore be indirectly affected by the new additional tax burden of the QAHC. Strict monitoring of the activities of all QAHC investee companies will be required, in particular to manage investors' return expectations.

Comparison with the SOPARFI:

The Luxembourg SOPARFI is not subject to ring-fencing rules.

2.2.9. Registration process

The registration process for the QAHC regime involves certain formalities, including the submission of an entry notification to HMRC.

This notification should include the company's name and, if applicable, its Unique Taxpayer Reference. It must also state the intended date on which the company will become a QAHC. In addition, it should include one of the following statements regarding the terms of the QAHC regime:

- Either that on that date the company will meet all of the conditions in paragraph 2(1) of FA22/SCH2, i.e. (1) it is a UK resident, (2) it meets the ownership condition set out in Paragraph 3 of FA22/SCH2, (3) it meets the activity condition set out in paragraph 13 of FA22/SCH2, (4) it meets the investment strategy condition set out in that paragraph, (5) it is not a UK REIT, (6) no equity securities of the company are listed or traded on a recognised stock exchange or any other public market or exchange, and (7) an entry notification is in force in relation to the company;
- Or that on that date the company will meet all those conditions except for the ownership condition, but it intends to rely on the ownership condition treated as met for the first two years of entry into the QAHC regime.

Although there is some flexibility in the ownership requirement, foresight remains crucial and requires a clear vision of the future investor base and investment strategy. This foresight is a significant challenge in practice. Even with a two-year grace period to comply with the ownership requirement,

there is uncertainty as to what happens if, at the end of the grace period, the shareholding of 'non-A' investors exceeds the permitted levels - for example, if a large family office joins the structure. The lack of clarity on these issues creates an additional layer of uncertainty.

Comparison with the SOPARFI:

The Luxembourg SOPARFI is not subject to any registration procedure. Rather, the tax regime applies as soon as the company is incorporated.

2.3. Tax regime of the QAHC

2.3.1. Tax treatment of dividend income

There is no specific dividend regime under the QAHC regime, and QAHCs are subject to the standard rules applicable to UK companies.

These rules generally provide an exemption from UK corporation tax on most dividends received, without any conditions relating to the level of shareholding, minimum holding period or specific characteristics of the subsidiary. However, detailed anti-avoidance rules apply.

Therefore, although the dividend exemption is not directly tied to the QAHC regime, QAHCs benefit from a broad scope of dividend exemption.

Comparison with the SOPARFI:

Luxembourg SOPARFIs benefit from a broad and advantageous participation exemption regime, subject to certain conditions.

Dividends received by a SOPARFI from a qualifying participation (i.e. companies listed in the EU Parent-Subsidiary Directive and companies that meet the comparable taxation test[17]) should be exempt from taxation if the company owns a minimum 10% participation (or a participation with an acquisition cost of at least EUR 1.2 million) for an uninterrupted period of at least 12 months. The 12-month minimum holding period criterion may be satisfied after the dividend has been paid (in this case, the SOPARFI must commit to hold the participation for at least 12 months).

However, there may be a difference in the withholding tax treatment of dividends in the jurisdiction where the subsidiary is tax-resident. While the Luxembourg SOPARFI can rely on the EU Parent-Subsidiary Directive (i.e. the dividend withholding tax exemption as implemented in domestic tax law), a QAHC is no longer able to rely on this directive after Brexit. In addition, the SOPARFI may benefit from reduced or zero withholding tax rates applicable in accordance with tax treaties concluded by Luxembourg.

Additional uncertainty arises from the unique tax regime of QAHCs, which is relatively new and unfamiliar to foreign tax authorities. As a result, it remains uncertain how foreign tax authorities will view QAHCs for tax purposes and whether they will grant treaty benefits such as reduced withholding tax rates on dividend payments.

[17] The comparable taxation test is met if the subsidiary is subject to a mandatory income tax at a rate of 8.5% (to be reduced to 8% in 2025) on a taxable base comparable to the Luxembourg corporate tax. However, there is no requirement for effective taxation (e.g. taxable income may be offset by corporate tax losses).

As a result of these factors, the tax cost of repatriating profits to a QAHC in the form of dividends is likely to be higher than that of a Luxembourg SOPARFI, given the need to prepare a detailed tax analysis. Furthermore, the uncertainty as to the exact tax cost on cash repatriation is undesirable.

2.3.2. Tax treatment of capital gains realised upon disposal of participations

Gains from qualifying shares are tax-exempt for QAHCs. Qualifying shares encompass all shares except those in UK property-rich companies[18] (i.e. that are shares whose value predominantly (at least 75%) is derived from UK land[19]). No additional conditions have to be met for this exemption to apply.

Comparison with the SOPARFI:

Luxembourg SOPARFIs benefit from a broad and advantageous participation exemption regime, subject to certain conditions.

Capital gains realised by a SOPARFI from a qualifying participation (i.e. companies listed in the EU Parent-Subsidiary Directive and companies that meet the comparable taxation test[20]) should be exempt from taxation if the company owns a minimum 10% participation (or a participation with an acquisition cost of at least EUR 6 million) for an uninterrupted period of at least 12 months. The 12-month minimum holding period criterion may be satisfied after part of the participation has been sold (as long as a minimum participation of 10%, or with acquisition cost of EUR 6 million, is held for an uninterrupted period of at least 12 months).

2.3.3. Tax treatment of gains realised on foreign real estate assets or overseas property business income

Gains realised by a QAHC on foreign real estate assets or overseas property business income are exempt under the QAHC regime to the extent that the gains are chargeable to tax abroad. This means that they are neither exempt nor chargeable at a nil rate, and the tax is chargeable on income and is equivalent to UK income tax or equivalent to UK corporation tax on income.[21]

Comparison with the SOPARFI:

Luxembourg domestic tax law does not provide for a similar exemption for SOPARFIs.

However, Luxembourg has more than 80 bilateral tax treaties that grant an unlimited primary right of taxation on income and capital gains derived from foreign real estate to the country where the property is located. In this respect, Luxembourg systematically applies the exemption method to avoid double taxation. Therefore, Luxembourg SOPARFIs should benefit from a tax exemption under Luxembourg's extensive network of tax treaties.

[18] Defined by reference to the UK non-resident capital gains rules.

[19] 'Shares' is broadly defined and includes interests of members in companies without share capital, certain rights of unit holders in unit trusts, certain units in transparent funds and derivatives (https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40930).

[20] The comparable taxation test is met if the subsidiary is subject to a mandatory income tax at a rate of 8.5% (to be reduced to 8% in 2025) on a taxable base comparable to the Luxembourg corporate tax. However, there is no requirement for effective taxation (e.g. taxable income may be offset by corporate tax losses).

[21] https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40810

Given that the tax exemption available under a tax treaty is generally not subject to the condition that the relevant income is taxed in any form in the *situs* state of the property, the exemption available to Luxembourg SOPARFIs can be considered even broader than the exemption under the QAHC regime.

2.3.4. Tax treatment of interest income

Interest received by a QAHC is taxable at the standard UK rate of 25%. However, if the loan is financed by a debt instrument, the taxable income should correspond to an arms-length margin.

Comparison with the SOPARFI:

Interest income received by a Luxembourg SOPARFI is subject to Luxembourg corporate tax and municipal business tax at a combined rate of 24.94% (in the municipality of Luxembourg City), which will be reduced by 1% in 2025. When a SOPARFI performs financing activities, the company should be taxable on an arms-length margin as the interest expenses incurred in relation to the debt financing the loan receivables should be deductible for Luxembourg tax purposes.

However, there may be a difference in the withholding tax treatment of interest in the jurisdiction where the subsidiary is tax-resident. While the Luxembourg SOPARFI can rely on the EU Interest and Royalty Directive (i.e. the interest withholding tax exemption as implemented in domestic tax law), a QAHC is no longer able to rely on this directive (after Brexit. Thus when a European investment jurisdiction levies withholding tax on interest payments, the withholding tax treatment of the SOPARFI and the QAHC may be different.

Additional uncertainty arises from the unique tax regime of QAHCs, which is relatively new and unfamiliar to foreign tax authorities. As a result, it remains uncertain how foreign tax authorities will view QAHCs for tax purposes and whether they will grant treaty benefits such as reduced or zero withholding tax rates on interest income.

2.3.5. Withholding tax on dividend payments

Dividends paid by a QAHC are not subject to UK withholding tax (as is the case for all UK companies under UK tax law).

Comparison with the SOPARFI:

Dividends paid by Luxembourg SOPARFIs are generally subject to a 15% dividend withholding tax. However, such distributions may benefit from a domestic withholding tax exemption if certain conditions are met.

In order to benefit from this withholding tax exemption, a qualifying shareholder (e.g. companies listed in Annex 2 to the EU Parent-Subsidiary Directive and companies resident in a jurisdiction with which Luxembourg has concluded a tax treaty) must hold (or commit to hold) a minimum participation of 10% (or a participation with an acquisition cost of at least EUR 1.2 million) for an uninterrupted period of at least 12 months.

In addition, a reduced or zero withholding tax on dividends may be available under an applicable tax treaty. Finally, liquidation proceeds are not subject to Luxembourg withholding tax.

Nevertheless, participations held by Luxembourg SOPARFIs are often financed by debt instruments. In this case, arms-length interest payments and the repayment of the debt instrument are not subject to Luxembourg withholding tax. Furthermore, under certain conditions, share repurchases are not subject to Luxembourg withholding tax.

As a result, it should be possible to repatriate cash derived from holding activities (for example, dividend income and capital gains realised upon disposal of a participation) free of Luxembourg (dividend) withholding tax.

2.3.6. Withholding tax on interest payments

Interest payments made by a QAHC are not subject to UK withholding tax, regardless of whether the interest is derived from the ring-fenced or non-ring-fenced assets.

Comparison with the SOPARFI:

Interest payments made by a Luxembourg SOPARFI are not subject to withholding tax in Luxembourg (assuming that the interest payments adhere to the arms-length standard).

2.3.7. Net worth tax

Companies resident in the UK (including QAHCs) are not subject to net worth tax.

Comparison with the SOPARFI:

Luxembourg SOPARFIs are subject to an annual net worth tax of 0.5% applied on the company's unitary value (that is a modified net asset value).

However, participation in qualifying subsidiaries (e.g. companies listed in Annex 2 to the EU Parent-Subsidiary Directive and companies resident in a jurisdiction with which Luxembourg has concluded a tax treaty) benefit from a net worth tax exemption if the SOPARFI owns a participation of at least 10% (or a participation with an acquisition cost of at least EUR 1.2m) without any minimum holding period requirement.

In addition, if taxable assets such as loans are financed by debt instruments, the SOPARFI's unitary value should be reduced by the market value of the debt instrument.

As a result, the net worth tax base of a Luxembourg SOPARFI should be manageable, and companies will often be subject to the minimum net worth tax of EUR 4,815 per year. It is interesting to note that the previous year's corporate tax can be credited against the amount of the minimum net worth tax.

2.3.8. Share buybacks

A share buyback should not be subject to withholding tax in the UK. However, stamp duty may apply (exemptions are available only under certain conditions and subject to anti-avoidance rules and formalities).[22]

It is worth noting that these exemptions are not granted in the case of arrangements for a 'substantial sale', i.e. the disposal of shares (and/or loan capital) representing at least 90% of the relevant interests in the QAHC.

Comparison with the SOPARFI:

Share buybacks performed by Luxembourg SOPARFIs should not be subject to Luxembourg withholding tax (if certain conditions are met).

2.3.9. Considerations regarding anti-hybrid and other anti-abuse rules

The QAHC is subject to the UK anti-hybrid rules introduced in the UK following the final report on BEPS Action 2 (of the OECD Base Erosion and Profit Shifting Project). These rules are expected to remain in force in the UK.

In addition, the UK has adopted a number of anti-abuse measures, such as the Controlled Foreign Company (CFC) rules and strict interest limitation rules.

Comparison with the SOPARFI:

Luxembourg has implemented the anti-abuse rules contained in the EU Anti-Tax Avoidance directives (ATAD and ATAD 2). Thus, Luxembourg SOPARFIs are generally subject to the hybrid mismatch rules, the interest limitation rules, the CFC rules and the general anti-abuse rule (GAAR).

However, if investments are carefully implemented, these anti-abuse rules should generally not be a problem in practice.

2.3.10. Use of tax losses

QAHCs are subject to a 'ring-fenced business' regime that applies to various categories of asset, including overseas land, qualifying shares, any creditor relationship and derivatives relating to these assets.

Tax losses incurred by a QAHC on assets outside the QAHC ring-fence business cannot be used to offset income from assets within the ring-fence, and vice versa.

In addition to these ring-fencing rules, QAHCs are subject to the standard UK rules on the carry-forward and carry-back of losses, which are complex and subject to restrictions on both amount and duration.

The inability to offset profits and losses between ring-fenced and non-ring-fenced assets is a notable disadvantage of the UK regime. In addition, the complexity and limitations associated with loss carry-

[22] https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm41130.

forwards, together with the need to separately track income and expenses relating to ring-fenced and non-ring-fenced assets, add administrative complexity and cost.

Comparison with the SOPARFI:

Luxembourg SOPARFIs are not subject to any ring-fencing restrictions with respect to tax losses. Instead, tax losses incurred by a Luxembourg SOPARFI can be used to offset any taxable income realised by the company (i.e. all income realised by a SOPARFI is considered as commercial income and not as income classified in different categories).

Tax losses incurred up to the tax year 2016 can be carried forward for an unlimited period. However, tax losses incurred from fiscal year 2017 onward can be carried forward for a period of 17 years (to be used on a first in, first out basis). In practice, the 17-year time limit should not normally be an obstacle.

2.3.11. Tax treatment upon an exit from the QAHC regime

For UK corporate income tax purposes, the current accounting period ends at the end of the day on which the company ceases to be a QAHC. The next accounting period starts at the beginning of the day following the day on which the company ceases to be a QAHC.

In a similar way to entering the regime, the company will be deemed to have sold the assets that were within the ring-fence at fair market value (i.e. overseas land, qualifying shares, any creditor relationship, and derivatives relating to these assets) and to have acquired these assets anew, also at fair market value.

Any losses arising from the deemed disposal of assets at the time of exit will crystallise in the accounting period ending the day before the exit from the QAHC regime. **Day of the exit?**

Whilst this may be tax-neutral at the QAHC level, a full analysis is required to assess the potential impact for investors.

Comparison with the SOPARFI:

The SOPARFI regime is the standard tax regime for Luxembourg companies. Therefore, the regime should apply from the creation until the liquidation of the SOPARFI.

2.3.12. Ongoing obligations of the QAHC

The QAHC regime imposes specific ongoing obligations that must be met throughout the lifetime of the QAHC. These requirements are not only essential at the time of establishment, but must be maintained throughout the life of the QAHC.

The HMRC explanatory notes specifically state that the QAHC must take reasonable steps to monitor compliance with the ownership condition on an ongoing basis. This includes implementing an appropriate due diligence process to demonstrate, in the event of an audit, that the necessary steps have been consistently taken.

In addition, depending on the specific conditions that may have been breached, prescribed notification procedures must be followed.

The QAHC is also subject to reporting requirements and must provide certain financial information in

relation to the assets, proceeds and activities, including:

- Details of who provided investment management services;
- Estimates of the market value of the QAHC's ring-fence assets at the end of each accounting period;
- Total gross proceeds arising from disposals of assets from the QAHC ring-fence business during the accounting period; and
- Details of payments made by the QAHC on the redemption, repayment, or purchase of its own shares.

All these due diligence and reporting obligations contribute to the increased complexity, administrative burden and associated costs of applying the QAHC regime. This complexity is particularly pronounced when considering the need for an appropriate level of substance to meet these obligations effectively. A cost/benefit analysis is therefore essential.

Comparison with the SOPARFI:

The Luxembourg SOPARFI does not have to comply with any specific reporting requirements regarding its shareholders[23] or financial information[24] on its investment activities.

2.3.13. Potential loss of QAHC status

Apart from the effects of moving assets in and out of the ring-fence (which may not always be under the control of the QAHC, see section 2.2.8), the QAHC may lose the benefits of the QAHC regime. This creates a degree of legal uncertainty for investors.

There are two possible scenarios in which QAHC status might be lost:

- Unintentional exit: If the company inadvertently fails to meet one of the eligibility conditions, it may unintentionally breach the requirements of the scheme. However, it is important to note that an unintentional breach does not automatically result in loss of the benefits of the scheme. If certain conditions are met, a breach can be cured/corrected.
- Intentional withdrawal: the QAHC no longer intends to benefit from the scheme.

This feature of the QAHC regime raises considerations for investors and underlines the need for careful monitoring and compliance to maintain the benefits it offers.

In relation to unintentional breaches, two situations need to be distinguished:

- A breach of the activity condition (i.e. the QAHC has carried out a trade which is not ancillary to its investment business, or which is substantial): this breach can be cured provided that (i) the breach is not intentional, (ii) HMRC has been notified and (iii) the QAHC has ensured that the breach ceases as soon as is reasonably practicable.
- A breach of the ownership condition: if it is not intentional, the QAHC has 90 days (a period that may be extended) from the date it becomes aware of the breach to rectify the position and (i) notify HMRC of the breach and (ii) its intention to rectify it. If the breach is rectified within the cure period, it will be treated as not having occurred.

However, for a cure to be possible, two conditions must be met: (a) the breach must not be very

[23] Luxembourg SOPARFIs must comply with obligations relating to the Ultimate Beneficial Ownership ('UBO') register. However, these obligations are not linked to the legal and tax regime of the SOPARFI.

[24] Luxembourg SOPARFIs must comply with their legal obligations, including the preparation of annual accounts, filing of annual accounts with the competent authorities, etc.

serious (e.g. if non-Category A Investors have ended up with more than 50% relevant interests in the QAHC, the breach will not be capable of cure, or will cease to be) and (b) the QAHC must have carried out the required monitoring.

In the case of a deliberate breach, there is a two-year grace period for a QAHC's business to be wound up, subject to notification to HMRC. However, the QAHC will leave the regime immediately if it raises capital or acquires assets during the two-year period. During the grace period, the QAHC can enter only into transactions that are reasonably necessary to enable it to cease its QAHC ring-fence basis or to prevent the insolvency of the QAHC or any company in which it has an interest.

Comparison with the SOPARFI:

The SOPARFI regime is the standard tax regime of Luxembourg companies. Hence the regime should generally apply from the incorporation to the liquidation of the SOPARFI.

3. Substance requirements

3.1. Overview

The importance of substance has been known for many years, but awareness has increased as a result of the OECD base erosion and profit shifting (BEPS) Project. Substance is necessary, for example, to ensure the tax residency of companies.

Companies that are part of an international investment structure must comply with an increased level of substance in order to be sheltered from anti-abuse legislation provisions under foreign tax law (anti-directive/treaty shopping rules, general anti-abuse rules, etc.) and tax treaties concluded by their state of residence (the principal purposes test, beneficial ownership concept, etc.).

In an EU context, these substance requirements must be consistent with EU law as interpreted by the European Court of Justice of the (CJEU) when the company is resident in an EU member state (such as a Luxembourg SOPARFI). In contrast, after Brexit, UK companies may no longer rely on the protection of EU law.

Substance may also be required from a transfer pricing perspective given that the application of the arm's-length principle relies on several concepts that are closely linked to substance. In addition, the economic reality needs to be consistent with the fact pattern described in the transfer pricing analysis.

Lack of appropriate substance can also be a source of reputational risk, a sensitive issue for investment managers that provide services to investors that often have a conservative profile, such as pension funds and other institutional investors.

Tthe issue of substance is the focus of a proposal for a Council directive laying down rules to prevent the misuse of shell entities (letterbox companies) for tax purposes. The potential impact of this proposed directive on the QAHC and the SOPARFI is analysed below.

3.2. Notion of substance

Substance is a key element in international taxation and is relevant for the application of domestic tax law, tax treaties and the arm's-length principle. However, the notion of substance is not one-dimensional but involves various different elements that may be interrelated.

One element of substance is 'infrastructure' which includes employees, office premises, other facilities such as meeting rooms and equipment (office furniture, IT equipment, etc.). In addition, the existence of a website or being mentioned on the group's website, specific e-mail addresses and business cards may be elements contributing to substance. In practice, companies may rely on their own staff and directors or outsource certain functions to qualified service providers (for example, accounting, tax compliance and legal services).

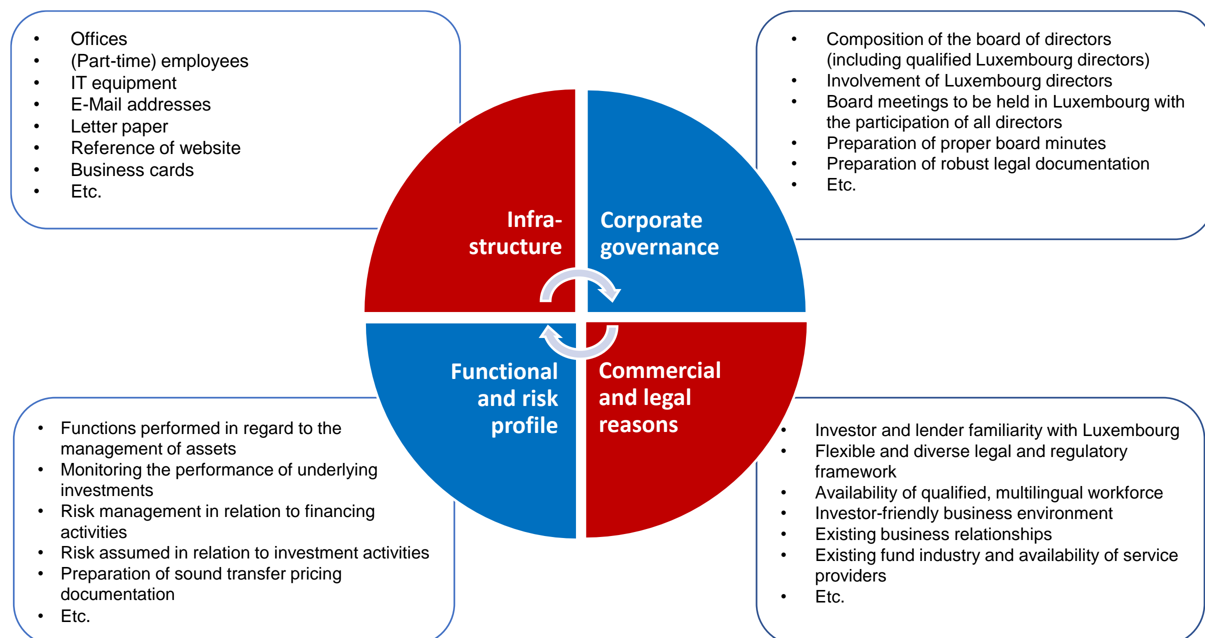
Another very important element of substance is 'corporate governance', which concerns the composition of the board of directors, the organisation of board meetings in Luxembourg, the involvement of qualified Luxembourg directors in the decision-making process and the proper documentation thereof (i.e. the minutes of the board of directors/managers, e-mail correspondence, internal memos, etc.). Furthermore, good corporate governance requires contractual aspects to be defined in robust legal documentation.

The 'functional and risk profile' of companies may vary from one business to another. Companies involved in investment activities generally perform various functions and bear different kinds of risk in relation to their investment and business activities. Typical functions performed by those companies include monitoring and management of investments, cash flows and risks in relation to the investments, analysis of investment opportunities, drafting or review of legal documentation, maintaining of accounts and records, and preparation of financial reporting and tax returns.

Moreover, such companies may provide administrative and other services to group companies, carry out treasury functions or manage intangible property rights. When certain functions are outsourced to qualified service providers or other group entities, it is for the company's directors or staff to monitor carefully the proper execution of these functions. The functions performed and risks assumed by a company with regard to material intra-group transactions should be analysed in sound transfer pricing documentation at the time arm's-length pricing is determined.

A last element of substance concerns 'commercial and legal reasons' for establishing business activities in a particular jurisdiction. On one hand, this involves features of the location such as a flexible and diverse legal and regulatory environment, the availability of a qualified and multilingual workforce, an investor-friendly business environment, existing fund industry infrastructure as well as political and financial stability. On the other hand, this incorporates individual aspects such as existing business relationships, the familiarity of investors and lenders with the jurisdiction in which the entity is established, experience with the legal and regulatory system of the jurisdiction and, potentially, existing substance.

The following chart depicts the different dimensions of substance:



3.3. Considerations regarding anti-abuse legislation

3.3.1. Overview

Many countries in Europe and worldwide have adopted different types of anti-abuse rules in their domestic tax law. Anti-abuse legislation ranges from general anti-abuse rules to provisions that target specific situations of abuse (for example, beneficial ownership requirements, the specific anti-abuse provision under the EU Parent/Subsidiary Directive and controlled foreign company rules). These rules have in common that they generally subject the recognition of foreign companies or the granting of tax benefits to the condition that certain substance requirements are fulfilled.

In a tax treaty context, in particular the principal purposes test (PPT) and the concept of beneficial ownership may require certain substance requirements. Under the PPT, tax treaty benefits[25] are denied where it is reasonable to conclude that obtaining this treaty benefit was "*one of the principal purposes*" of any arrangement or transaction, unless the taxpayer is able to establish that granting the benefit would be "*in accordance with the object and purpose*" of the relevant treaty provisions.[26] The 'beneficial owner' concept is in essence an anti-abuse rule designed to prevent treaty shopping by agents, nominees or conduit companies for the benefit of a resident of a third state in relation to income received from dividends, interest and royalties.[27]

3.3.2. The wholly artificial arrangement doctrine

Anti-abuse legislation implemented under domestic tax law may require non-resident companies to have significant substance. In an EU context, however, anti-abuse legislation adopted by EU member states must be compliant with EU law as interpreted by the CJEU.[28] Likewise, the interpretation of anti-abuse provisions included in tax treaties concluded between EU member states must be consistent with EU law. Thus, the Luxembourg SOPARFI can rely on EU lw when investments are made in EU member states, whereas the QAHC is not protected by EU law (after Brexit).

Over the years, the CJEU has decided a number of cases that concerned the application of anti-abuse legislation in an EU context. One major decision was the *Cadbury Schweppes* case in 2006 (Case C-196/04) which firmly established the 'wholly artificial arrangement' doctrine, limiting the scope of anti-abuse legislation in an EU context.

Then, in three landmark cases involving German anti-abuse legislation (Cases C-504/16 and C-613/16, decision of 20 December 2017, and Case C-440/17, decision of 14 June 2018) and a principal purposes test under French tax law (Case C-6/16, decision of 7 September 2017), the CJEU re-emphasised its 'wholly artificial arrangement' doctrine. In its decisions, the court analysed the compatibility of anti-abuse legislation with the Parent-Subsidiary Directive and freedom of establishment.

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[25] The term 'benefits' includes all limitations (e.g. a tax reduction, exemption, deferral or refund) on taxation imposed on the State of source under Article 6 through 22 of the Convention, the relief from double taxation provided by Article 23 and the protection afforded to residents and nationals of a Contracting State under Article 24 or any other similar limitations; see Paragraph 175 of the Commentary on Article 29 of the OECD Model.

[26] See Oliver R. Hoor, Keith O'Donnell, 'Luxembourg: Impact of the PPT on Alternative Investments', Tax Planning International, Bloomberg Tax, January 2018, p. 2.

[27] See Oliver R. Hoor, 'The OECD Model Tax Convention – A comprehensive technical analysis', Legitech, Luxembourg 2015, p. 73.

[28] See Oliver R. Hoor, 'The Concept of Substance in a post-BEPS World', Tax Notes International, 2019, p. 599.

According to the CJEU, the objective of combating tax evasion and avoidance, whether it relies on article 1 (2) of the Parent-Subsidiary Directive or is a justification for an exception to primary law (i.e. freedom of establishment) has the same scope. Therefore, anti-abuse provisions must be targeted measures aiming specifically at 'wholly artificial arrangements' that do not reflect economic reality and whose purpose is to unduly obtain a tax advantage.

Thus tax authorities should not rush to suspect the presence of fraud or abuse. Moreover, taxpayers are free to rely on EU freedoms when structuring investments, even if the choice of the jurisdiction takes into account tax considerations.

It is undisputed that member states are free to protect their tax base by way of anti-abuse rules that are exclusively directed at wholly artificial arrangements. However, when assessing the possible existence of fraud and abuse, tax authorities may not rely on predetermined general criteria but must carry out an individual examination of the whole transaction at issue.

An abusive situation does not depend only on the intention of the taxpayer to obtain tax benefits (i.e. a motive test) but requires the existence (or absence) of certain objective factors, including an 'actual establishment' in the host state (for example, premises, staff, facilities and equipment) and the performance of a 'genuine economic activity'. As regards the existence of an actual establishment, the CJEU does not generally seem to require an extensive level of substance. As a rule of thumb, the substance should be appropriate to the activities performed by the company.

The notion of 'genuine economic activity' should be understood in a very broad manner and may include the mere exploitation of assets such as shareholdings, receivables and intangibles for the purpose of deriving what is often described as 'passive' income. The nature of the activity should not be compromised if such passive income is principally sourced outside the entity 's host state.

In addition, no specific ties or connections between the economic activity assigned to the foreign entity and the territory of the host state of that entity can be required by domestic anti-abuse provisions. Therefore, insofar as the EU internal market is concerned, the mere fact that an intermediary company is 'active' in conducting functions and assets allocated to it (rather than being a mere letterbox company) should suffice to be outside the scope of domestic anti-abuse legislation.

When analysing the substance of a company, it is necessary not only to analyse the situation of the entity as such but of the group as a whole. Here, it may suffice if a company relies on the staff and premises of other group companies in the same jurisdiction.[29]

Anti-abuse legislation should further not establish an irrebuttable presumption of fraud or abuse. Instead, the taxpayer must have the ability to provide evidence of the appropriateness of the structure.

The imposition of a general tax measure automatically excluding certain categories of taxable persons from the tax advantage (for example, shareholders of an EU parent company that are resident in a third state), without the tax authorities being required to provide even *prima facie* evidence of fraud

[29] As a reaction to the CJEU decision in regard to the German anti-abuse provision, the German Ministry of Finance released a Circular on 4 April 2018 in which it has been clarified that the provision according to which only the substance at the level of the direct parent company is to be considered is not applicable anymore. Hence, it has been acknowledged that the substance of the entire group in the jurisdiction of the parent company needs to be taken into consideration when assessing potential cases of abuse.

and abuse goes beyond what is necessary to prevent fraud and abuse. Accordingly, as long as the foreign company has appropriate substance, the nature (corporate or individual), origin or tax status of their shareholder(s) should be irrelevant to the application of anti-abuse legislation.

From a practical perspective, the establishment of holding and finance companies with an artificially high level of equipment, facilities and employees would, however, , be contrary to their economic nature to a certain extent. The simple presence of a manager monitoring the holding and finance activities of a Luxembourg company may in some cases be considered sufficient to bring substance to the structure and prevent the structure from being (partially) disregarded due to the application of foreign anti-abuse provisions. A low level of substance is the direct consequence of the specific purpose of a 'pure' holding and finance vehicle and should be accepted for tax purposes, according to the CJEU.

It is interesting to note that up until now, national courts have not deviated from the 'wholly artificially arrangement' doctrine laid down by the CJEU.

3.3.3. Substance requirements

The QAHC is subject to significant substance requirements. A company's UK tax residency depends on its central management and control being in the UK, regardless of where it is incorporated.

To qualify for the QAHC regime, a company must be resident in the UK for tax purposes. This determination is based on where strategic decisions are made at the highest level, as opposed to day-to-day operations.

The central management and control assessment is based on the actual management and substance of the company. Both HMRC and the UK courts will consider all records, correspondence and surrounding facts and circumstances when making a decision.

Given the specific legal monitoring and reporting obligations of the QAHC, it can be expected that the fulfilment of these functions, including human resources, will require a higher level of substance than a SOPARFI, which is not subject to such obligations.

While UK-based investment managers typically have significant substance in the UK, the substance (including employment) must be transferred to the QAHC to be considered as substance for the latter. Therefore, it may not necessarily be easier for UK investment managers to organise substance in the UK (as opposed to in Luxembourg).

Finally, QAHCs are not protected by EU law when investing in EU member states. As a result, the tax authorities of EU member states may require more substance than they would in an EU context (for example in relation to a Luxembourg SOPARFI).

Comparison with the SOPARFI:

A Luxembourg SOPARFI is a tax resident of Luxembourg if it has its legal seat or central administration (that is, the place of effective management) in Luxembourg.

From a purely Luxembourg domestic tax law perspective, it is sufficient to be incorporated in Luxembourg with no additional substance requirements. Luxembourg has no formal substance requirements, except for companies engaged in financing activities that need to comply with specific

substance requirements, as detailed in the Luxembourg Transfer Pricing Circular.[30]

However, as Luxembourg SOPARFIs are often involved in cross-border investment activities, it is crucial to implement an appropriate substance for the activities carried out. It is interesting to note that the entire substance of the investment platform in Luxembourg must be considered, rather than just the substance of a specific Luxembourg SOPARFI (see section 3.3.2.). This should, in most cases, be sufficient for Luxembourg companies to be outside the scope of foreign anti-abuse legislation or anti-abuse provisions in bilateral tax treaties.

Luxembourg SOPARFIs must have good corporate governance, which concerns the composition of the board of directors, the organisation of board meetings in Luxembourg, the involvement of qualified Luxembourg directors in the decision-making process and the proper documentation thereof (i.e. in board minutes, e-mail correspondence, internal memos, etc.). In addition, good corporate governance requires that contractual aspects are defined in solid legal documentation.

Crucially, all major decisions concerning the management of the company should be taken in Luxembourg. Therefore, board meetings of Luxembourg companies, where important strategic decisions are taken, should be held regularly in Luxembourg with all directors/managers physically present. The frequency of board meetings to be held in a given year depends on the activities of the company, but there must be at least one board meeting per year.

While the cost of managing a Luxembourg investment platform needs to be assessed on a case-by-case basis, given the significant ongoing monitoring and reporting requirements imposed by the QAHC regime, it seems reasonable to assume that there should generally be no significant cost savings when investing through QAHCs.

3.4. Considerations regarding the draft Unshell directive

On 22 December 2021, the European Commission published a proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes,also known as the 'Unshell' proposal).[31] The initiative was triggered by the perception on the part of the Commission that legal entities with no or minimal substance, performing no or very little economic activity, posed a risk of being used for aggressive tax planning structures.

The draft Unshell directive would apply to all undertakings that are considered tax-resident and are eligible to receive a tax residence certificate in a member state regardless of their legal form. The determination of shell entities under the proposed reporting regime involves a series of tests and may in some cases require a comprehensive analysis.

However, only entities that meet certain gateway criteria would have to report in their tax returns on specific indicators of minimum substance. If an entity satisfies all these indicators, there would be a presumption that the entity has minimum substance, otherwise, there would be a rebuttable presumption that the entity does not have minimum substance.

[30] Circular L.I.R. n°56/1-56bis/1, issued on December 27, 2016.

[31] Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU.

The proposed reporting regime further places an obligation on the member states to exchange, in a timely manner, comprehensive information on entities subject to reporting and on entities that rebut the presumption of a lack of substance or are exempt from obligations under the draft directive.

Classification as a shell entity would have far-reaching (tax) consequences in the residence state of the entity and the other member states involved.

However, since the release of the draft Unshell directive, EU member states have found it difficult to reach agreement, and the European Commission has made several amendments to the original proposal. It therefore seems unlikely at this stage that the proposed directive will be approved unanimously by all EU member states, and if it is, it is likely to take a different form from the current draft directive.

Since the introduction of the QAHC regime, a key selling point has been that the QAHC would not fall within the scope of the Unshell directive, whereas the Luxembourg SOPARFI would. However, the European Commission is targeting non-EU entities through another initiative. On 6 July 2022, the EU Commission launched a public consultation on a proposal for a Council directive to combat tax advisers and other professionals providing tax advice (so-called 'enablers') who facilitate tax evasion and aggressive tax planning.

As both Commission initiatives may not be approved unanimously by EU member states, it would not make sense to base a decision on how an investment platform should be designed on these initiatives – in particular since QAHCs are not protected by EU law as a result of Brexit.

4. Summary

The QAHC regime is a holding company regime introduced in 2022 to make the UK more competitive vis à vis other jurisdictions such as Luxembourg as a location for asset management and investment funds.

The QAHC regime may apply to unregulated companies which are resident for tax purposes in the UK (but not listed companies). However, there are significant differences between the QAHC regime and the SOPARFI.

Unlike a SOPARFI, the QAHC regime is subject to specific conditions, primarily relating to its ownership, operational activities and investment strategy. The most important features of the QAHC regime are summarised below.

- *Conditions of the QAHC regime*

For a company to qualify as a QAHC, it must meet criteria relating to its ownership, activities and investment strategy, and it must be resident for tax purposes in the UK.[32] In addition, its securities must not be publicly listed or traded on a recognised stock exchange or market, and it must not be a UK REIT or securitisation company.

The conditions for benefiting from the QAHC regime include two key aspects:

- <u>the type of investors</u>: a QAHC must have at least 70% of its 'relevant interests' held by a specific category of investors ('Category A Investors') that are classified as 'good investors' under the QAHC regime; and
- <u>the type of investments made</u>: the primary activity of a QAHC must be investment-related activities, subject to specific investment strategy conditions.

- *The 'at least 70% good investor' requirement*

Given the definition of 'good investors', 'bad investors' (i.e. investors who are not 'Category A Investors') include closed-end funds, funds that are not widely held, and family-owned businesses and companies that are not funds. Carried interest holders and, in general, management should also not be considered 'Category A Investors'.

The ownership requirement is one of the conditions of the QAHC regime that creates complexity and uncertainty. The calculation of the 70% minimum threshold for 'Category A Investors' applies to both direct and indirect interests in the QAHC, taking into account both legal and economic rights.

- *Permissible investment activities*

The main activity of the QAHC must be the carrying on of an 'investment business' and the other activities may be carried out only on an ancillary basis and not to a substantial extent.[33]

However, the term 'investment business' remains undefined in FA22/SCH2, and HMRC's explanatory notes indicate that whether a particular activity is an investment or a trade will depend on the specific

[32] But does not necessarily need to be incorporated in the UK.

[33] §13 of FA22/SCH2. A recharge activity should hence not *per se* be prohibited for a QAHC as long as it remains an ancillary activity.

circumstances, creating considerable uncertainty.

While some illustrative examples are provided in the explanatory notes, the interpretation of what constitutes an ancillary activity and when an activity ceases to be ancillary remains unclear.

- *Prohibited investments*

The QAHC regime defines certain prohibited investments. Accordingly, the investment strategy of the QAHC must not include:

- the acquisition of equity securities listed or traded on a public market or exchange, except for the purpose of facilitating a change of control of the issuer resulting in the delisting of the securities; or
- other interests that derive their value from such securities, subject to certain exceptions

- *Management of the QAHC*

The QAHC regime is subject to ongoing compliance with strict eligibility conditions. To maintain its status under this regime, the company must continuously monitor both its ownership structure and its investments.

This monitoring is not just a recommendation but a requirement under FA22/SCH2. Under §12 of FA22/SCH2, a QAHC must take reasonable steps to ensure that the ownership conditions are consistently met.

- *Ring-fencing rules*

The QAHC tax regime applies only to assets within the ring-fence. Assets outside the ring-fence are subject to the standard UK tax regime, just like any other company.[34]

The assets falling within the ring-fence encompass:

- overseas land;
- qualifying shares (any shares other than shares in UK property-rich companies[35] (i.e. shares whose value is at least 75% derived from UK land[36]);
- any creditor relationship;
- derivatives on land, qualifying shares and debt; and
- derivative contracts to the extent that the QAHC is party to them for the purpose of carrying on its investment business in relation to the above[37].

Given the above definition, assets outside of the 'ring-fence' include, for example:

[34] https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40350

[35] Defined by reference to the UK non-resident capital gains rules.

[36] 'Shares' is broadly defined and includes interests of members in companies without share capital, certain rights of unit holders in unit trusts, certain units in transparent funds and derivatives (https://www.gov.uk/hmrc-internal-manuals/investment-funds/ifm40930).

[37] On the contrary, are outside the 'ring-fenced business': investment in non-qualifying shares, carrying on a UK property business, carrying on an overseas property business which is not exempt from corporation tax by virtue of the QAHC rules or carrying on any trading activity.

- investment in non-qualifying shares;
- carrying on a UK property business;
- carrying on an overseas property business that is not exempt from corporation tax by virtue of the QAHC rules; or
- carrying on any trading activity.

- *Registration process*

The registration process for the QAHC regime involves certain formalities, including the submission of an entry notification to HMRC.

- *Tax regime*

Dividends and capital gains derived from qualifying participations may benefit from a tax exemption. Likewise, gains realised from foreign real estate assets and overseas property business income may be exempt if certain conditions are met.

While interest income should be taxable at the standard UK corporate income tax rate, in case of financing activities, the UK QAHC would not be expected to realise more than an arm's-length finance margin.

Interest and dividend payments made by the QAHC should not be subject to withholding tax in the UK.

- *Substance requirements*

The QAHC is subject to significant substance requirements. To qualify for the QAHC regime, a UK company must be resident in the UK for tax purposes. This determination is based on where strategic decisions are made at the highest level, as opposed to day-to-day operations.

Given the specific legal monitoring and reporting obligations of the QAHC, it can be expected that the fulfilment of these functions, including human resources, will require a higher level of substance than a SOPARFI, which is not subject to such obligations.

While UK based investment managers typically have significant substance in the UK, the substance (including employment) must be transferred to the QAHC to be considered as substance of the latter. Therefore, it may not necessarily be easier for UK investment managers to organise substance in the UK (as opposed to Luxembourg).

QAHCs are not protected by EU law when investing in EU member states. As a result, the tax authorities of EU member states may require more substance than they would in an EU context (e.g. in relation to a Luxembourg SOPARFI).

- *Considerations regarding the Luxembourg SOPARFI*

The SOPARFI is a tried and tested regime that provides for a beneficial participation exemption regime that generally results in exemption from tax of dividend income and capital gains. When investing in foreign real estate, Luxembourg companies can rely on tax treaties concluded by Luxembourg that

frequently provide for the application of the exemption method for the avoidance of double taxation (regardless of the tax treatment in the *situs* state of the real property).

Interest payments made by Luxembourg companies are not subject to Luxembourg withholding tax (as long as these payments adhere to the arm's-length standard). Dividend payments are generally subject to Luxembourg withholding tax at a rate of 15%, with exemptions (or reduced withholding tax rates) available under Luxembourg tax law and bilateral tax treaties.

The SOPARFI regime applies from the creation of the company and is not conditional on the shareholders or the type of investments made by the company, nor does the SOPARFI regime entail any ring-fencing rules. Consequently, the SOPARFI requires less monitoring and involves a reduced administrative burden and costs than the QAHC.

Luxembourg SOPARFIs must have appropriate substance for the activities they carry out. This includes, in particular, good corporate governance, which concerns the composition of the board of directors, the organisation of board meetings in Luxembourg, the involvement of qualified Luxembourg directors in the decision-making process and the proper documentation thereof (i.e. in board minutes, e-mail correspondence, internal memos, etc.). It is important that all major decisions concerning the management of the company are taken in Luxembourg.

This should in most cases be sufficient to keep Luxembourg companies outside the scope of foreign anti-abuse legislation or anti-abuse provisions in bilateral tax treaties. In this respect, Luxembourg companies can rely on the restrictive jurisprudence of the European Court of Justice regarding anti-abuse rules in the EU context.

5. Appendix

5.1. Legal features of the QAHC versus the SOPARFI

Features	QAHC	SOPARFI
Conditions of the regime	For a company to qualify as a QAHC, it must have at least 70% of its "relevant interests" held by "good investors" and the primary activity of a QAHC must be investment-related activities (subject to specific investment strategy conditions)	The SOPARFI is open to a wide range of investors and free to invest in various asset classes both in Luxembourg and abroad (without the requirement to determine a specific investment strategy)
Management of the QAHC	The QAHC regime is subject to ongoing compliance with strict eligibility conditions. To maintain its status under the QAHC regime, the company must continuously monitor both its ownership structure and its investments.	The SOPARFI does not have to continuously monitor its ownership structure and investments.
Eligible investors	For a company to qualify as a QAHC, at least 70% of its "relevant interests" must be held, directly or indirectly, by "Category A Investors" (also referred to as "good investors"). In terms of the timing of meeting these conditions, the "ownership condition" should be met either on notification or within two years of becoming a QAHC.	A SOPARFI does not have to meet any ownership condition.
Limitation of activities and investment strategies	The main activity of the QAHC must be the carrying on of an "investment business" and the other activities may only be carried out on an ancillary basis and not to a substantial extent. As the QAHC regime is relatively new, there is still some uncertainty about the interpretation of these concepts. If a QAHC fails to meet its conditions, it may loose its QAHC status (with the associated tax consequences).	The SOPARFI regime imposes no specific restrictions on the company's activities and offers great clarity and flexibility in terms of investment strategy.
Prohibited investments	The QAHC regime defines certain prohibited investments including (i) the acquisition of equity securities listed or traded on a public market or exchange, except for the purpose of facilitating a change of control of the issuer resulting in a delisting of the securities, or (ii) other interests that derive their value from such securities (subject to certain exceptions).	Luxembourg law does not define any specific prohibited investments. Thus, the Luxembourg SOPARFI is free to invest in equity securities listed or traded on a public market or exchange (or other interests deriving their value from such securities).
Ring-fencing rules	The QAHC tax regime applies only to assets within the ring-fence. Assets outside the ring-fence are subject to the standard UK tax regime, just like any other UK company. The QAHC regime defines which assets are ring-fenced and which are not.	The Luxembourg SOPARFI is not subject to ring-fencing.
Moving assets across the ring-fence boundary	Even when there is no outright disposal of an asset by the QAHC, a change in the assets of the investee company may cause the ring-fence to be breached and may have adverse tax consequences. For example, qualifying shares (i.e. any shares other than shares in UK property rich companies, whose value is at least 75% derived from UK land) may become non-qualifying shares if more UK real properties are acquired by an investee company, *et vice versa* . This should trigger realisation events for tax purposes and requires continuous monitoring of the underlying investments.	The Luxembourg SOPARFI is not subject to ring-fencing.

Features	QAHC	SOPARFI
Registration process	The registration process for the QAHC regime involves certain formalities, including the submission of an entry notification to HMRC. Although there is some flexibility in the ownership requirement, foresight remains crucial and requires a clear vision of the future investor base and investment strategy. This foresight is a significant challenge in practice, even with a two-year grace period to comply with the ownership requirement. Moreover, can it be excluded that the shareholding of "non-Category-A-Investors" exceeds the permitted levels?	The Luxembourg SOPARFI is not subject to any registration procedure. Rather, the tax regime applies as soon as the company is incorporated.

5.2. Tax treatment of the QAHC versus the SOPARFI

Features	QAHC	SOPARFI
Tax treatment of dividend income	QAHCs are subject to the standard rules applicable to UK companies. These rules generally provide an exemption from UK corporation tax on most dividend received, without any conditions relating to the level of shareholding, minimum holding period or specific characteristics of the subsidiary.	Luxembourg SOPARFIs benefit from a broad and advantageous participation exemption regime, subject to certain conditions.
Dividend withholding tax treatment in the investment jurisdiction	The QAHC does not fall within the scope of the EU Parent-Subsidiary Directive (post-Brexit). As the QAHC regime is relatively new and unfamiliar to foreign tax authorities, it remains uncertain how foreign tax authorities will view QAHCs for tax purposes and whether they will grant treaty benefits such as reduced withholding tax rates on dividend payments.	The SOPARFI can rely on the EU Parent-Subsidiary Directive (i.e. the dividend withholding tax exemption as implemented in the domestic tax law of EU Member States). Moreover, reduced or zero withholding tax rates may be available under applicable tax treaties concluded by Luxembourg.
Tax treatment of capital gains realised upon disposal of participations	Gains from qualifying shares are tax-exempt for QAHCs. Qualifying shares encompass all shares except those in UK property rich companies (i.e. that are shares whose value predominantly (at least 75%) derives from UK land). No additional conditions have to be met for this exemption to apply.	Luxembourg SOPARFIs benefit from a broad and advantageous participation exemption regime, subject to certain conditions.
Tax treatment of gains realised on foreign real estate assets and overseas property business income	Gains realised by a QAHC on foreign real estate assets/overseas property business income are exempt under the QAHC regime to the extent that the gains are chargeable to tax abroad. This means that they are neither exempt nor chargeable at a nil rate and the tax is chargeable on income and is equivalent to UK income tax or equivalent to UK corporation tax on income.	While Luxembourg domestic tax law does not provide for a similar exemption for SOPARFIs, Luxembourg has more than 80 bilateral tax treaties that grant an unlimited primary right of taxation on income and capital gains derived from foreign real estate to the country where the property is located. In this respect, Luxembourg systematically applies the exemption method to avoid double taxation. Therefore, Luxembourg SOPARFIs should benefit from a tax exemption under Luxembourg's extensive network of tax treaties. Given that the tax exemption available under a tax treaty is generally not subject to the condition that the relevant income is taxed in any form in the situs state of the property, the exemption available to Luxembourg SOPARFIs can be considered even broader than the exemption under the QAHC regime.
Tax treatment of interest income	Interest received by a QAHC is taxable at the standard UK rate of 25%. However, if the loan is financed by a debt instrument, the taxable income should correspond to an arm's length margin.	Interest income received by a Luxembourg SOPARFI is subject to Luxembourg corporate tax and municipal business tax at a combined rate of 24.94% (in the municipality of Luxembourg City), which will be reduced by 1% in 2025. When a SOPARFI performs financing activities, the company should be taxable on an arm’s length margin as the interest expenses incurred in relation to the debt financing the loan receivables should be deductible for Luxembourg tax purposes.
Interest withholding tax treatment in the investment jurisdiction	The QAHC does not fall within the scope of the EU Interest and Royalty Directive (post-Brexit). As the QAHC regime is relatively new and unfamiliar to foreign tax authorities, it remains uncertain how foreign tax authorities will view QAHCs for tax purposes and whether they will grant treaty benefits such as reduced withholding tax rates on interest payments.	The SOPARFI can rely on the EU Interest and Royalty Directive (i.e. the interest withholding tax exemption as implemented in domestic tax law of EU Member States). Moreover, reduced or zero withholding tax rates may be available under applicable tax treaties concluded by Luxembourg.

Features	QAHC	SOPARFI
Dividend withholding tax treatment in the investment jurisdiction	Dividends paid by a QAHC are not subject to UK withholding tax (as is the case for all UK companies under UK tax law).	Dividends paid by Luxembourg SOPARFIs are generally subject to a 15% dividend withholding tax. However, such distributions may be exempt from domestic withholding tax if certain conditions are met. In addition, a reduced or zero withholding tax on dividends may be available under an applicable tax treaty. Liquidation proceeds are not subject to Luxembourg withholding tax. In addition, participations held by SOPARFIs are often financed by debt instruments. In this case, interest payments and the repayment of the debt instrument should not be subject to Luxembourg withholding tax. Consequently, the withholding tax leakage in case of cash repatriation should be manageable.
Withholding tax on interest payments	Interest payments made by a QAHC are not subject to UK withholding tax, regardless of whether the interest is derived from the ring-fenced or non-ring-fenced assets.	Interest payments made by a Luxembourg SOPARFI are not subject to withholding tax in Luxembourg (assuming that the interest payments adhere to the arm's length standard).
Net wealth tax	Companies resident in the UK (including QAHCs) are not subject to net wealth tax.	SOPARFIs are subject to an annual net wealth tax of 0.5% applied on the company's unitary value (that is a modified net asset value). However, participation in qualifying subsidiaries benefit from a net wealth tax exemption if the SOPARFI owns a participation of at least 10% (or a participation with an acquisition costs of at least EUR 1.2m) without any minimum holding period requirement. In addition, if taxable assets such as loans are financed by debt instruments, the SOPARFI's unitary value should be reduced by the market value of the debt instrument. As a result, the net wealth tax base of a Luxembourg SOPARFI should be manageable and companies will often be subject to the minimum net wealth tax of EUR 4,815 per year. It is interesting to note that the previous year's corporate tax can be credited against the amount of the minimum net wealth tax.
Share buy-backs	A share buy-back should not be subject to withholding tax in the UK. However, stamp duty may apply (exemptions are only available under certain conditions and subject to anti-avoidance rules and formalities).	Share buy-backs performed by Luxembourg SOPARFIs should not be subject to Luxembourg withholding tax (if certain conditions are met).
Considerations regarding anti-hybrid and other anti-abuse rules	The QAHC is subject to the UK anti-hybrid rules introduced in the UK following the final report on BEPS Action 2 (of the OECD Base Erosion and Profit Shifting (BEPS) Project). In addition, the UK has adopted a number of anti-abuse measures, such as the Controlled Foreign Company ("CFC") rules and strict interest limitation rules.	Luxembourg has implemented the anti-abuse rules contained in the EU Anti-Tax Avoidance Directives ("ATAD" and "ATAD 2"). Thus, Luxembourg SOPARFIs are generally subject to the hybrid mismatch rules, the interest limitation rules, the CFC rules and the general anti-abuse rule ("GAAR"). However, if investments are carefully implemented, these anti-abuse rules should generally not be a problem in practice.

Features	QAHC	SOPARFI
Use of tax losses	QAHCs are subject to a 'ring-fenced business' regime which applies to various categories of assets, including overseas land, qualifying shares, any creditor relationship and derivatives relating to these assets. Tax losses incurred by a QAHC on assets outside the QAHC ring-fence business cannot be used to offset income from assets within the ring-fence and vice versa. In addition to these ring-fencing rules, QAHCs are subject to the standard UK rules on the carry-forward and carry-back of losses, which are complex and subject to restrictions on both amount and duration.	SOPARFIs are not subject to any ring-fencing restrictions with respect to tax losses. Instead, tax losses incurred by a Luxembourg SOPARFI can be used to offset any taxable income realised by the company (i.e. all income realised by a SOPARFI is considered as commercial income and not as income classified in different categories). Tax losses incurred up to the tax year 2016 can be carried forward for an unlimited period. However, tax losses incurred from fiscal year 2017 onwards can be carried forward for a period of 17 years (to be used on a first in, first out basis). In practice, the 17-year time limit should not normally be an obstacle.
Tax treatment upon an exit from the QAHC regime	Upon exit from the QAHC regime, the company will be deemed to have sold the assets that were within the ring-fence at fair market value and to have acquired these assets anew also at fair market value. Any losses arising from the deemed disposal of assets at the time of exit will crystallise in the accounting period ending the day before the exit from the QAHC regime. Whilst this may be tax neutral at the QAHC level, a full analysis is required to assess the potential impact on investors.	The SOPARFI regime is the standard tax regime of Luxembourg companies. Hence, the regime should generally apply from the incorporation to the liquidation of the SOPARFI.
Ongoing obligations of the QAHC	The QAHC regime imposes specific ongoing obligations that must be met throughout the life of the QAHC. These requirements are not only essential at the time of establishment, but must be maintained throughout the life of the QAHC. The HMRC explanatory notes specifically state that the QAHC must take reasonable steps to monitor compliance with the ownership condition on an ongoing basis. This includes implementing a diligent due diligence process to demonstrate, in the event of an audit, that the necessary steps have been consistently taken. In addition, depending on the specific conditions that have been breached, there are prescribed notification procedures that must be followed.	The Luxembourg SOPARFI does not have to comply with any specific reporting requirements regarding its shareholders or financial information on its investment activities.
Potential loss of the QAHC status	Apart from the effects of moving assets in and out of the ring-fence, the QAHC may lose the benefits of the QAHC regime if the company inadvertently fails to meet one of the eligibility conditions (unintentional exit) or the QAHC no longer intends to benefit from the scheme (intentional withdrawal). This creates a degree of legal uncertainty for investors.	The SOPARFI regime is the standard tax regime of Luxembourg companies. Hence, the regime should generally apply from the incorporation to the liquidation of the SOPARFI.

5.3. Substance requirements

<table>
<tr><th>Features</th><th>QAHC</th><th>SOPARFI</th></tr>
<tr><td>Substance requirements</td><td>The QAHC is subject to significant substance requirements. A company's UK tax residency depends on its central management and control being in the UK, regardless of where it is incorporated.

To qualify for the QAHC regime, a UK company must be resident in the UK for tax purposes. This determination is based on where strategic decisions are made at the highest level, as opposed to day-to-day operations.

Given the QAHC's specific legal monitoring and reporting obligations, it is expected that the fulfilment of these functions, including human resources, will require a higher level of substance than a SOPARFI, which is not subject to such obligations.

Whilst UK based investment managers typically have significant substance in the UK, the substance (including employment) must be transferred to the QAHC to be considered as substance of the latter. Therefore, it may not necessarily be easier for UK investment managers to organise substance in the UK (rather than in Luxembourg).</td><td>A Luxembourg SOPARFI is tax resident in Luxembourg if it has its legal seat or central administration (that is the place of effective management) in Luxembourg.

Luxembourg has no formal substance requirements, except for companies engaged in financing activities that need to comply with specific substance requirements as detailed in the Luxembourg Transfer Pricing Circular.

However, as Luxembourg SOPARFIs are often involved in cross-border investment activities, it is crucial to implement an appropriate substance for the activities carried out. This should, in most cases, be sufficient for Luxembourg companies to be outside the scope of foreign anti-abuse legislation or anti-abuse provisions in bilateral tax treaties.

Luxembourg SOPARFIs must have a good corporate governance, which concerns the composition of the board of directors, the organisation of board meetings in Luxembourg, the involvement of qualified Luxembourg directors in the decision-making process and the proper documentation thereof (i.e. in board minutes, email correspondence, internal memos, etc.). Crucially, all major decisions concerning the management of the company should be taken in Luxembourg.</td></tr>
<tr><td>Anti-abuse legislation under foreign domestic tax law and bilateral tax treaties</td><td colspan="2">Many countries in Europe and around the globe have adopted different types of anti-abuse rules in their domestic tax law. Anti-abuse legislation ranges from general anti-abuse rules (GAAR) to provisions that target specific situations of abuse (for example, beneficial ownership requirements, the specific anti-abuse provision under the EU Parent/Subsidiary Directive and controlled foreign company (CFC) rules). These rules have in common that they generally subject the recognition of foreign companies or the granting of tax benefits to the condition that certain substance requirements are fulfilled.

In a tax treaty context, in particular the principal purposes test (“PPT”) and the concept of beneficial ownership may require certain substance requirements. Under the PPT, tax treaty benefits are denied where it is reasonable to conclude that obtaining this treaty benefit was “one of the principal purposes” of any arrangement or transaction unless the taxpayer is able to establish that granting the benefit would be “in accordance with the object and purpose” of the relevant treaty provisions. The “beneficial owner” concept is in essence an anti-abuse rule designed to prevent treaty shopping by agents, nominees or conduit companies for the benefit of a resident of a third state in relation to income received from dividends, interest and royalties.</td></tr>
<tr><td>Protection by EU Law</td><td>QAHCs are not protected by EU law when investing in EU Member States. As a result, the tax authorities of EU member states may require more substance than they would in an EU context (e.g. in relation to a Luxembourg SOPARFI).</td><td>Anti-abuse legislation implemented under domestic tax law may require non-resident companies to have significant substance. In an EU context, however, anti-abuse legislation adopted by EU Member States must be compliant with EU Law as interpreted by the CJEU. Likewise, the interpretation of anti-abuse provisions included in tax treaties concluded between EU Member States must be consistent with EU Law. Thus, the Luxembourg SOPARFI can rely on EU Law when investments are made in EU Member States,</td></tr>
</table>

Features	QAHC	SOPARFI
Maintenance costs	While the costs of managing a Luxembourg investment platform need to be assessed on a case-by-case basis, given the significant ongoing monitoring and reporting requirements imposed by the QAHC regime, it seems reasonable to assume that there should be no significant differences in terms of maintenance costs.	
Current EU initiatives focusing on substance	Since the introduction of the QAHC regime, a key selling point has been that the QAHC would not fall within the scope of the draft directive, whereas the Luxembourg SOPARFI would. However, the EU Commission is targeting non-EU entities through another initiative. On 6 July 2022, the EU Commission launched a public consultation on a proposal for a Council Directive to combat tax advisers and other professionals providing tax advice (collectively referred to as "enablers") who facilitate tax evasion and aggressive tax planning.	On 22 December 2021, the European Commission released a proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes (the “Draft Directive” also referred to as “unshell proposal”). Since the release of the Draft Directive, EU member states have found it difficult to reach a compromise. Since then, the EU Commission has made several proposals that differ from the original proposal. It therefore seems unlikely at this stage that the proposed Directive will be approved unanimously by all EU Member States and, if it is, it is likely to take a different form from the current Draft Directive.