



Simplifying the CRC Energy Efficiency Scheme: key proposals

July 2011

At last, an insight into how the UK's CRC Energy Efficiency Scheme ("CRC") might be simplified. Unsurprisingly, it is evolution rather than revolution.

On 30 June 2011, the Department of Energy and Climate Change (DECC) released its first meaningful statement on how the current CRC scheme might be changed to make it more workable for industry.

Comments on the initial proposals are invited by 2 September 2011 and DECC plans to launch a formal consultation on the draft legislation in February 2012. Any changes are intended to come into force in 2013.

The main proposals are:

- The **CRC will not be scrapped** and replaced by a straight carbon tax.
- Rules on **organisational structures** will be simplified – the top parent organisation will still be required to notify the Environment Agency of its overall group structure at the beginning of each Phase, but the group will have the option to disaggregate into its "natural business units", which will be responsible for their own monitoring, management and reporting of emissions.

For private equity firms, the proposals, if implemented, mean that the general partner of each fund will still need to assess whether its investee companies form part of its "group" for CRC purposes, and qualification for the scheme will still be based on the electricity usage of the group as a whole. However, the general partner will then be able to disaggregate its investee companies, so that each investee group will be responsible for participating in the CRC separately on its own account.

- **Trusts** will be treated differently – responsibility for CRC will lie with the entity that has a genuine commercial interest in the property.
- In general, the **landlord and tenant** rule will remain the same (i.e. the person that has the energy supply contract will be responsible for CRC purposes), but changes might be made where the land has been built upon by a tenant.
- There will be **no auctioning of allowances** in Phase 2 – instead there will be two fixed price sales each year, an upfront sale and a second retrospective sale at a higher price. Both prices will be fixed by DECC and there will be no cap on the number of allowances available. As announced by George Osborne in the 2010 Spending Review, revenue from the sale of allowances will not be recycled to participants.
- **League tables** will be retained as a reputational driver for the scheme.
- Only **four fuels will be covered** by the CRC: electricity, gas, kerosene and diesel (but only if the latter two are used for heating).
- The rules on **franchises** and **renewable energy** will remain unchanged.

Current CRC participants must submit their first footprint and annual report by 29 July 2011

Rules on organisational structures to be simplified

No cap or auctioning of allowances

- The **qualification process** will be simplified – an organisation will only qualify for full participation if its electricity is measured by settled half hourly meters. **Threshold levels** may change following the Government's review of the data from the first footprinting and annual reports.
- The **90% rule** will be scrapped – participants will be required to report on 100% of their supplies of relevant energy.
- Installations covered by a **Climate Change Agreement** or the **EU Emissions Trading Scheme** will be excluded.
- **Evidence pack** requirements will be reviewed and **records of energy usage** will only have to be kept for 6 years rather than up to 12 years.

We are still some way off knowing how the revised regime will actually work, but at least we now have some idea of how it is likely to evolve.

As always, we will be sure to keep you updated on all material developments as they happen. In the meantime, please visit www.traverssmith.com for earlier briefings on the CRC scheme.

Help is at hand...

Travers Smith has experience on a range of CRC issues, including:

- analysing group, fund and/or trust structures to determine CRC participant group boundaries;
- the registration and information disclosure process;
- due diligence and provisioning in M&A and real estate transactions;
- allocation of CRC liabilities and costs between landlords and tenants;
- green real estate; and
- compliance and corporate governance in relation to CRC as well as environmental and climate change legislation and policy more generally.

If you would like further advice on any of the issues discussed in this briefing, please contact Doug Bryden (douglas.bryden@traverssmith.com), Helen Croke (helen.croke@traverssmith.com) or Anthony Judge (anthony.judge@traverssmith.com) or get in touch with your usual contact at the firm.



Doug Bryden

Head of Environment

douglas.bryden@traverssmith.com

+44 (0)20 7295 3205



Helen Croke

Partner, Corporate

helen.croke@traverssmith.com

+44 (0)20 7295 3389



Anthony Judge

Partner, Real Estate

anthony.judge@traverssmith.com

+44 (0)20 7295 3237

Travers Smith
July 2011

Travers Smith LLP
10 Snow Hill
London EC1A 2AL
T +44 (0)20 7295 3000
F +44 (0)20 7295 3500
www.traverssmith.com