



The CRC Energy Efficiency Scheme: Client Alert

August 2010

The UK's new mandatory emissions trading scheme, the CRC Energy Efficiency Scheme ("CRC"), is rapidly progressing towards its first milestone: the 30 September 2010 registration deadline.

The CRC – a quick recap

The CRC is an ambitious piece of climate change legislation that seeks to force non-energy intensive businesses and organisations in both the private and public sectors to consider their energy efficiency.¹ The CRC does this through a range of financial and reputational drivers as well as more traditional criminal and civil penalties.

At the heart of the CRC is a 'cap and trade' scheme. At the start of a given compliance year, a participant must forecast its total CO₂ emissions (based on a range of energy sources, not just electricity) and purchase a suitable number of allowances from the Government. At the end of the compliance year, the participant is to submit a report on its actual emissions and surrender an adequate number of allowances to cover these actual emissions.

In addition, the CRC will create an energy efficiency performance league table. A participant's position in this table will determine its bonus/penalty recycling payment (i.e. the amount of allowance expenditure to be paid back by the Government) as well as potentially naming and shaming poor energy efficiency.

Who is caught?

Any organisation (or group of organisations – see below), which used on aggregate over 6,000 megawatt hours (MWh) of half hourly electricity in 2008, will be obliged to participate in the CRC. Organisations under the 6,000 MWh threshold, although not having to register for full participation, may still be required to make some form of information disclosure.

The CRC is designed to capture a wide range of businesses and organisations. Using a modified Companies Act 2006 parent/subsidiary classification, the CRC targets whole group structures (not individual companies, businesses or sites). This definition is complex and may pick up private equity and joint venture structures, as well as the more conventional corporate groups. Special rules also apply for other types of organisations (for example, franchise arrangements). Accordingly, many businesses and organisations who historically have ignored climate change issues, may well find themselves having to participate in this new regime.

Organisations should aim to register well ahead of the 30 September 2010 deadline

Each member of a participant group is jointly and severally liable for the wider group's CRC obligations

CRC is already becoming a due diligence point on UK real estate and M&A transactions

¹ The CRC Energy Efficiency Scheme Order (2010 No.768)

Registration

The Environment Agency recently reported that only a small number of those organisations expected either to register for full participation or make an information disclosure have apparently done so.

Although the registration period for the introductory phase closes on 30 September 2010, we strongly recommend that every effort is made to get your registrations/information disclosures submitted well ahead of this deadline.

Full CRC participants who do not register by the 30 September 2010 deadline could face a £5,000 fine plus a daily £500 fine (for up to a maximum of 80 days) until they comply. Parties who are required to make an information disclosure also face fines if they do not submit their requisite information ahead of this deadline. Of note, each member of a given CRC participant group is jointly and severally liable for the compliance of the wider group under the CRC.

Timetable

April 2010	Start of (i) Compliance Year 1 and (ii) Footprint Year for the introductory phase (Compliance Year 1 is a reporting year only)
30 September 2010	Registration deadline for introductory phase (information disclosures also have to be made by this deadline)
April 2011	Start of Compliance Year 2 (fixed price allowance sale to cover Compliance Year 2 emissions forecast)
July 2011	Submit (i) Compliance Year 1 annual energy usage report and (ii) Footprint Year report
October 2011	Performance league table for Compliance Year 1
April 2012	Start of Compliance Year 3 (fixed price allowance sale to cover Compliance Year 3 emissions forecast)
July 2012	Submit Compliance Year 2 annual energy usage report and Surrender allowance for Compliance Year 2
October 2012	Performance league table for Compliance Year 2
April 2013	Start of Compliance Year 3

Help is at hand...

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

- analysing group, fund and/or trustee structures to determine CRC participant group boundaries;
- the registration and information disclosure process;
- due diligence and provisioning in M&A and real estate transactions; and
- general compliance.



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