

# Finance

## The CRC Energy Efficiency Scheme - Are you ready for the change?

### What is the CRC Energy Efficiency Scheme?

The CRC Energy Efficiency Scheme (CRC) is the UK's new **mandatory** carbon emissions trading scheme starting in **April 2010**. It will apply to a wide range of non-energy intensive private and public sector organisations and will place **legal obligations** on qualifying organisations to disclose information and (for larger energy users) to report on energy use and buy allowances for emissions.

### Ways in which you might be affected

The CRC focuses on generic energy use rather than particular business activities or specific properties/sites and therefore CRC issues potentially apply to any organisation who themselves use energy and are responsible for emissions in both their business premises and their operational activities. Your own organisation may well qualify under the scheme

### How to find out if your organisation is affected

Organisations that consumed 6000MWh of electricity or more from half-hourly metered sources during 2008 (the first qualification year) must **participate fully** and will have to:

- > **monitor** energy use (electricity, gas and fuels) from **1 April 2010**;
- > **register** with the scheme administrators (the Environment Agency in England and Wales) by **30 September 2010**;
- > **purchase** allowances in **April 2011** to cover emissions from estimated energy use for **April 2011 to March 2012**;
- > **report** on energy use for April 2010 to March 2011 by **29 July 2011**; and
- > continue to **monitor, purchase** allowances, **report** and **register** for ongoing compliance years and phases.

If your organisation or an organisation in whose performance you are interested occupies more than 55,000 m<sup>2</sup> / 580,000 ft<sup>2</sup> or paid over £500,000 for electricity in 2008, then typically you or the organisation in which you are interested will be a full participant.

### Why you should care if your borrowers are affected

If any of your borrowers fulfil the CRC qualification criteria, this may have an impact on your relationship with them as their lender.

#### Group wide liability

Qualification for the CRC and its ongoing obligations is determined on a collective group basis. Each member of a group is jointly and severally liable. This could potentially cut across the ring fencing of liabilities commonly sought by lenders in respect of a borrower which is part of a larger group. Sub-groups which qualify as Significant Group Undertakings (SGUs - a subsidiary or related group of subsidiaries that meets the qualification criteria in its, or their, own right) can 'disaggregate' from their group and participate independently. In order to do this however, the 'primary' group must register by 30 June 2010.

#### Cash flows

The CRC imposes an obligation on an organisation to buy allowances to offset carbon emissions with punitive financial and other sanctions for non-compliance. This may have a significant impact on a borrower's cash flows and additional due diligence may be required by a lender to evaluate this impact. Lenders may also need to consider adopting extra measures to monitor their borrowers' compliance with the CRC before lending and throughout the term of any loan.

#### Value

The ongoing obligation to purchase allowances that will fall on landlords may not necessarily be a cost that can be passed on to tenants. This could affect the value of investments and influence how much a lender is willing to lend at the outset of a lending relationship. The uncertainty of the cost of allowances in the future is also an important factor to consider.

## Security

Allowances are allocated to qualifying group organisations and do not attach to specific assets. Lenders taking real estate as security will need to consider how this will affect the value of the underlying asset on an enforcement of that security. Prospective buyers might need to purchase additional allowances or may become a participant through acquisition. This will certainly have an effect on saleability and may negatively affect the purchase price of a property.

## Why you should care if your organisation is affected

### Costs and administration

The obligations imposed on your borrowers (for instance, the purchase of carbon allowances to off-set carbon emissions and associated penalties for non-compliance) will be similarly imposed on your organisation if it qualifies as a full participant in the CRC. Carbon emissions will have to be accounted for as a whole, which may require specialist administrative resources in addition to the costs of registration, subsistence and acquiring allowances. Even if your organisation falls short of the full qualification criteria, there might still be an obligation to make certain information disclosures during the registration period. Your organisation might also be affected by your landlord qualifying and having to comply with the CRC.

### Reputational and financial reward

An organisation's performance under the CRC will be published annually in a league table and will include details of any penalties incurred for non-compliance. This will provide an easy way for anyone to compare performance against competitors. However, the CRC is not just another way of demonstrating corporate social responsibility. Good performance under the CRC will also be rewarded financially based on an organisation's absolute and relative reductions in carbon emissions and organisations will make savings through improvements in energy efficiency as well.

## How to stay ahead of the game

### Take advice

Taylor Wessing can advise on all legal aspects of the CRC including in relation to compliance, identification of which organisations the CRC will affect and implementing strategies to deal with its impact. For further information on any of the issues raised above and other relevant factors such as the costs involved and the consequences of breach, please contact **Noel Doran**, in Taylor Wessing's Environment group, or **Nick Kilbey** in the Finance group.

### Act now

Early action will be rewarded under the CRC, non-compliance will be penalised. Consider your strategies for dealing with the implications of the CRC on your organisation and your borrowers.

For further detail on the CRC Energy Efficiency Scheme, please click to view our briefing:

**Climate change and the Carbon Reduction Commitment Energy Efficient Scheme – a commercial reality.**

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