CRD IV
Country by Country Reporting

Tax transparency reporting framework for financial institutions

March 2014
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Introduction

The Capital Requirements Directive IV (CRD IV) Country by Country Reporting (CBCR) framework is now a reality for regulated financial institutions in the UK. This unique and brand new reporting regime, part of the European Union’s CRD IV framework, was formally transposed into UK legislation in December 2013 and the first reporting deadline is only a matter of months away.

The backdrop to CRD IV CBCR is the sharp focus recently on the taxes paid by multinational companies and a desire from stakeholders for increased tax transparency. In this context, CBCR is seen by many as a significant milestone in achieving a greater level of financial and tax transparency for banks and investment firms. Financial institutions must now turn their attention to understanding the implications of CBCR for their organization, the policy choices they will need to consider and how they will comply with the regulations.

What you need to know

► The UK CBCR regulations for financial institutions are now in force. In addition, HM Treasury has issued supplementary guidance.
► The first deadline for financial institutions to publish CBCR disclosures is 1 July 2014 using the data for 31 December 2013 for companies with calendar year ends.
► Institutions have the flexibility to publish CBCR in their financial statements or on their website.
► Disclosures are required to be audited from 2015 as the audit requirement has been waived for the first disclosures in 2014.
► Widespread public scrutiny of CBCR disclosures is expected, particularly on taxes paid by institutions.
► CRD IV CBCR is a separate and distinct framework from the OECD’s proposed template for country by country reporting to tax authorities published on 30 January 2014, as part of Action 13 of its Base Erosion and Profit Shifting (BEPS) Action Plan.
► The majority of the EU Member States have yet to enact the CBCR rules as at February 2014.

What needs to be reported?

The UK CBCR regulations require institutions to publish the following information:

a. The name, nature of activities and geographical location of the institution and any subsidiaries and branches
b. Turnover
c. The average number of employees on a full time equivalent basis
d. Profit or loss before tax
e. Corporation tax paid
f. Public subsidies received

During the “interim reporting period” in 2014 (i.e., the first year of reporting) all institutions within the scope of the rules will be required to publish items (a) to (c) above by 1 July 2014.

Global Systematically Important Institutions (G-SIIs) incorporated and headquartered in the UK will additionally be required to submit items (d) to (f) confidentially to both the European Commission and Her Majesty’s Revenue and Customs by 1 July 2014.

The “ongoing reporting obligation” will apply from 2015 and all institutions will need to publish items (a) to (f) from 1 January 2015.

Which “institutions” are in scope?

All “institutions” regulated under CRD IV fall within the scope of the CBCR rules. Institution means entities authorized to act as a “credit institution” or an “investment firm” whether the ultimate parent is within the EU or elsewhere.

HM Treasury has confirmed that UK branches of third country (non-EU) institutions fall outside the scope of the UK CBCR rules. However, UK branches of institutions established in other EU Member States are within the scope.
Overview of the UK CBCR rules

The UK CBCR regulations are contained in the Financial Services and Markets Act 2000 (FSMA 2000) through Statutory Instrument 2013 No. 3118. Understanding the requirements and how they specifically apply to your organization is an essential first step to complying with the regulations. We have set out below some of the key features of the UK CBCR regulations.

No de-minimis level
There is no exemption for smaller institutions and all credit institutions and investment firms regulated under CRD IV will be within the scope of the rules, though UK branches of third country institutions are excluded.

Accounting based consolidation
The EU requirements in Article 89 of CRD IV require the CBCR disclosures to be prepared on a “consolidated basis.” However, the rules in Article 89 do not elaborate further on whether “consolidated basis” should be a prudential consolidation or an accounting based consolidation.

Recognizing some of the challenges that a prudential consolidation represents in the context of CBCR, the UK government, on transposition of the EU rules into domestic legislation, has stipulated that CBCR disclosures should be prepared using an accounting based consolidation in accordance with International Financial Reporting Standards or UK GAAP.

Taxes paid
The regulations require institutions to report corporation tax paid. “Corporation tax” takes its meaning from CTA 2009 s2(1) and includes any similar tax charged on profits in overseas jurisdictions. Withholding tax does not fall within the definition of corporation tax in CTA 2009 s2(1) and accordingly is excluded.

However, the government will permit institutions additionally and separately to disclose current taxes accrued, deferred tax and other taxes where institutions consider this would be of benefit to stakeholders of the CBCR disclosures.

Audit requirement
The UK Regulations require the information to be audited in accordance with Directive 2006/43/EC. The supplementary guidance elaborates on the requirement by stating that the government expects institutions to use the International Framework for Assurance Engagements.

It should be noted however that the requirement to have the CBCR disclosures audited may impact the decision on the location of the disclosures.

The government has confirmed that the audit requirement will not apply to the CBCR disclosures reported in the first year on 1 July 2014.

Location of disclosures
Institutions are permitted to report CBCR disclosures on their website if they choose not to disclose in their statutory accounts, provided that the information is freely and easily accessible (a link to the website is also required in the statutory accounts).

Period of account
The regulations require the information to relate to the institution’s period of account ending immediately prior to the date of publication. In practice this means that for an institution with a period of account ending in December it will need to publish its first CBCR disclosures by 1 July 2014 for its period of account ending on 31 December 2013.

The publication deadline of 1 July 2014 in the first year of reporting could pose significant challenges for institutions with periods of account ending closer to the publication deadline of 1 July 2014. For example, an institution with a period of account ending in March would be required to publish by 1 July 2014 for its period of account ending 31 March 2014 (since this would be the period of account ending immediately prior to the date of publication).

It should also be noted that regulations do not include a requirement to include prior year comparatives, although some institutions may voluntarily choose to disclose this information.

Why EY?

► EY has market leading expertise in CBCR and has actively been involved in engaging with policy makers to shape the implementation of the CRD IV CBCR regulations.

► Our EMEIA wide CBCR team, brings together financial reporting, tax and regulatory expertise, with a deep understanding of the CBCR regulations.

► EY has been involved in supporting a number of UK clients in understanding and interpreting both the commercial and practical implications of the rules.

► We have significant expertise in data sourcing, including tools and methodologies, for regulatory, tax, FINREP and COREP requirements. Our specialist team has skills and experience in supporting organizations to analyze and explain disclosures to stakeholders.

► We have extensive experience of providing assurance frameworks for similar disclosures and developing bespoke disclosures that reflect the size and complexity of operations.
Challenges and implications of CBCR: are you ready

The CBCR framework has a unique set of challenges and institutions need to act now to ensure that they are in a position to meet the requirements by the deadline of 1 July 2014.

At first sight, the disclosures seem relatively straightforward to prepare, however, they represent challenges that require careful thought and consideration.

- **Scope**
  - Determining which entities are affected by the CBCR regulations may be a particular challenge for complex groups with a mixture of CRD IV regulated and non-regulated entities.
  - Institutions will need to undertake this analysis and assess if there are entities they intend to carve out of the CBCR disclosures.

- **Risk assessment**
  - Identifying jurisdictions in the group that present challenges such as completeness and accuracy of data early in the process is important.
  - There may be legacy entities in the group structure which no longer serve an operational purpose but could distort the disclosures.

- **Policy**
  - Policy choices could affect the “look and feel” of the disclosure, as well as the complexity of the data solution required.
  - Institutions will need to, for example, assess whether to disclose corporation tax payments only or additional taxes too.

- **Data solution**
  - CBCR disclosures by their very nature need to give a country level view. Institutions will need to consider if this data is available across all in-scope jurisdictions and how quickly it can be extracted.
  - Any data solution will need to accommodate the additional reporting requirements beyond the first year.

- **Consolidation**
  - The UK regulations require an accounting based consolidation to be applied to CBCR disclosures. The supplementary guidance however appears to allow non regulated entities to be carved out of the consolidation for CBCR purposes.
  - Institutions will need to consider their approach to the consolidation and whether they carve out non CRD IV regulated entities.

- **Reporting**
  - There is no standard template for the CBCR disclosures and each institution will need to develop a template or format that reflects the size and complexity of its organization.
  - Given the flexibility in where to publish the CBCR disclosures, institutions will need to assess where to publish and at what level in the group.

- **Audit and assurance**
  - Institutions will need to ensure that appropriate controls and processes are in place to produce CBCR disclosures that can withstand the scrutiny of an external audit.
  - Although there is no audit requirement for the first set of disclosures in 2014, institutions may want to consider an external audit of the disclosures.
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