

Energy Savings Opportunity Scheme – Need to Know for Private Equity Funds

KEY FEATURES

1. SCOPE?

The ESOS scheme will apply where a group contains a “large undertaking”, i.e. an undertaking with:

- a) 250 or more employees including: (i) directly employed overseas employees of UK undertakings; and (ii) employees of overseas organisations with UK-registered establishments who pay income tax in the UK

OR

- b) Annual turnover exceeding €50m and an annual balance sheet total exceeding €43m as stated in the undertaking’s accounts for the financial year ending on or in the 12 months immediately preceding 31 December 2014

YES

NO

2. WHICH ENTITIES WILL FORM PART OF THE LARGE UNDERTAKING’S GROUP?

The extent of the ESOS organisation will be determined by reference to sections 1158 to 1162 of the Companies Act 2006, e.g. any entity which holds a majority of voting rights or exercises control over a subsidiary will be deemed to be a parent of that subsidiary

Note that the general partner and any manager of a limited partnership may constitute parent undertakings under the ESOS regime if they could not be removed at the discretion of the limited partners on the relevant qualification date

3. WHAT ARE THE DUTIES OF THE GROUP?

The highest UK parent of the group will be responsible for assessing compliance with and notifying under ESOS (see Action Plan)

If there is an overseas parent company and two UK highest parent company subsidiaries, these UK entities and their respective subsidiaries will be two separate participants under ESOS. As an alternative, the two parent companies can aggregate as one participant in the ESOS scheme

4. WHAT ARE THE EXEMPTIONS?

If the relevant energy consumption of a participant is monitored or assessed under a certified energy management system (e.g. ISO 50001), the Display Energy Certificate regime or the Green Deal regime during the compliance period (and such assessments are appropriately documented), the participant shall be deemed to have complied with the duty to perform an ESOS assessment

5. WHAT ARE THE PENALTIES FOR NON COMPLIANCE?

Include:

- a) £5,000 for a failure to notify
- b) £5,000 for a failure to maintain records
- c) £50,000 for a failure to undertake an energy audit

Additional daily penalties of £500 may apply for each working day of breach and details of breach and penalties may be published on the Environment Agency’s webpage (or another compliance body’s website)

The Energy Efficiency Directive⁽¹⁾, implemented in the UK through the Energy Savings Opportunity Scheme Regulations 2014⁽²⁾ and Environment Agency guidance⁽³⁾, requires many EU companies to conduct energy audits of their operations using external consultants. These audits must be performed by 5 December 2015 and then every four years thereafter

Not caught by ESOS Regime

NOTE:

Participants can ‘disaggregate’ or separate out their group undertakings so they comply as individual participants, two or more participants or using a combination of individual and group participation

NOTE:

Any UK establishment of overseas companies in the group will need to be assessed for inclusion in the scheme. Entities which do not have UK establishments may be subject to equivalent rules in other EU Member States where they are present

NOTE:

Trust assets will need to be assessed if the organisation that is party to an energy supply agreement in respect of those assets as at 31 December 2014 qualifies for ESOS, including fund managers (whether qualifying alternative investment fund managers or operators under FSMA 2000), JPUTs, trustee companies or dominant beneficiaries where the beneficiary is entitled to more than half of the assets of the relevant trust

ACTION PLAN

1. Establish if there is a large undertaking

2. Determine members of the group

3. Calculate total energy consumption for relevant compliance period based on the energy consumption during the reference period e.g. energy consumption from buildings, modes of transport and industrial processes held or used by the group

Notes: the initial compliance period began on 17 July 2014 and ends on 5 December 2015. Subsequent compliance periods begin on the 6 December and end on 5 December four years later

The reference period is 12 consecutive months beginning no earlier than 31 December 2014 (or the relevant qualification date) and ends on or before 5 December 2015 (or the relevant compliance date)

4. Responsible undertaking identifies its areas of significant energy consumption

Note: These “areas” consist of assets held or activities carried on by the participant which account for at least 90% of the participant’s total energy consumption. The alternative is to audit 100% of non-exempt operations

5. These areas are audited

Note: Auditors are approved “lead assessors” who analyse energy consumption and make recommendations for improvement based on a cost benefit analysis. A DECC webpage containing details on how to find lead assessors can be found [here](#)

6. Notify Environment Agency

Notes: Notification should be made by 5 December 2015 to confirm participant is in the scope of and has complied with the ESOS Regime

No obligation for recommendations to be implemented at present. An evidence pack of ESOS assessment showing data and evidence must be kept for two subsequent compliance periods following the compliance period to which it relates

(1) Directive 2012/27/EU of the European Parliament and of the council on Energy Efficiency
 (2) S1 2014/1643.
 (3) “Complying with the Energy Savings Opportunity Scheme”, Version 2.0.

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