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A practical guide to the UK regulations

Country by country reporting under CRD IV

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Contents

List of abbreviations

CBCR – Country by Country Reporting

CRD IV – Capital Requirements Directive IV

G-SII – Global Systemically Important Institution

HMT – HM Treasury

CRR – Capital Requirements Regulation

Regulations – Capital Requirements (Country-by-Country Reporting) Regulations 2013

PRA – Prudential Regulation Authority

IFPRU – Prudential sourcebook for Investment Firms

FCA – Financial Conduct Authority

CAD – Capital Adequacy Directive

MiFID – Markets in Financial Instruments Directive

BIPRU – Prudential Sourcebook for Banks, Building Societies and Investment Firms

CASS – Client Asset Sourcebook

MTF – Multilateral Trading Facility

EEA – European Economic Area

Overview

1

Country by Country Reporting ('CBCR') is a transparency initiative intended to give a clearer picture of a company's tax position. A new CBCR reporting obligation was introduced through Article 89 of the EU Directive 2013/36/EU otherwise known as the Capital Requirements Directive IV ('CRD IV'), aimed at the banking and capital markets industry.

'Institutions' in scope will be required to report annually, specifying, by Member State and by third country in which they have an establishment, the following information on a consolidated basis for the financial year:

a. name(s), nature of activities and geographical location;
b. turnover;
c. number of employees on a full time equivalent basis;
d. profit or loss before tax;
e. tax on profit or loss; and
f. public subsidies received.

The first disclosures will be due by 1 July 2014, limited to points (a) to (c) (except in the case of Global Systemically Important Institutions ('G-SIIs'), which will need to report points (a) to (f)). Full disclosures will then be required for all institutions as of 1 July 2015.

CRD IV was published in the Official Journal of the European Union on 26 June 2013, and each Member State was required to transpose the regulations into their respective domestic legislation by 31 December 2013. While many Member States failed to meet this deadline, the UK succeeded; HM Treasury ('HMT') published a number of consultation documents for comment, followed by the final legislation which entered into force on 1 January 2014.

The primary purpose of CRD IV and the associated Capital Requirements Regulation ('CRR') EU Regulation No. 575/2013 is to regulate banking and investment activities in the EU, but late in the legislative process a CBCR requirement was introduced into the Directive.

In February 2013, MEPs proposed the inclusion in CRD IV of a requirement for credit institutions and investment firms to publish annually certain tax and financial data for each country where they operate. This requirement became Article 89 of CRD IV which applies in part from 01 January 2014 and in full from 1 January 2015. While the CBCR requirements themselves are contained in CRD IV, they draw on definitions that were included in the CRR. The Directive was due to be transposed into domestic law by each of the 28 EU Member States by 31 December 2013, while the Regulation applies automatically in all Member States from the date of entry into force.

Perhaps owing to being introduced late in the legislative process, the CBCR requirements contain little detail and leave many points open to different interpretations. As part of the transposition of CRD IV into domestic law, Member States were supposed to transpose Article 89 in a consistent manner and demonstrate this to the Commission. Member States were however permitted to elaborate on the requirements, extend their scope, or develop their own interpretations of certain terms. We therefore expect that there will be minor differences in the CBCR requirements between Member States and businesses will need to refer to the relevant domestic legislation for the Member State under which they need to report.

This publication is intended to provide practical guidance to businesses that are affected by CRD IV.

In this publication we concentrate on the UK implementation of Article 89 of CRD IV, though we refer on occasion to the implementation in other Member States. We look at some of the options that businesses will need to consider when preparing their CBCR disclosures and outline the implications of these choices. In many cases there is no right or wrong answer and it will be necessary for groups to determine which interpretation is most appropriate for them.

In determining how to apply the CBCR requirements it may also be helpful to bear in mind the following recital (52) to CRD IV:

'Increased transparency regarding the activities of institutions, and in particular regarding profits made, taxes paid and subsidies received, is essential for regaining the trust of citizens of the Union in the financial sector. Mandatory reporting in that area can therefore be seen as an important element of the corporate responsibility of institutions towards stakeholders and society.'

This recital is the clearest statement that we have of the purpose of Article 89 and businesses will need to consider whether their reporting is in line with these objectives.

UK approach

2

Article 89 of CRD IV was implemented into UK domestic legislation through statutory instrument 2013 No. 3118, the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (the Regulations), which were laid before the UK Parliament on 10 December 2013 and which came into force on 1 January 2014 (see Appendix 1 for link).

These Regulations (see Appendix 1 for link) are accompanied by guidance issued by HMT on 10 December 2013 (the guidance).

Prior to issuing the final Regulations and guidance, HMT conducted two brief rounds of public consultation in autumn 2013. A number of the comments and suggestions made during the consultation process are reflected in the final Regulations and guidance and several open issues raised during the consultation have been resolved.

We understand that HMT sought to adopt a pragmatic approach to provide rules that are practical and which provide some options designed to ease the compliance burden faced by businesses. This optionality has allowed HMT to implement rules that comply with CRD IV, but which, in line with broader Government policy, do not mandate reporting beyond the requirements of CRD IV. Companies may however choose to report in a way that goes beyond certain requirements if they feel that this provides greater clarity, transparency and fits better with their existing reporting systems. One other competing factor that was considered by HMT, and which will need to be borne in mind by companies as they apply the rules, is the need for flexibility versus the desirability of comparability between the disclosures of different institutions.

The structure of the CBCR Regulations is as follows:

- Regulation 1 – definitions, citations and entry into force.
- Regulation 2 – ongoing reporting requirements from 2015.
- Regulation 3 – interim reporting requirements for the first report due on or before 1 July 2014.
- Regulation 4 – fulfilment of an institution's reporting requirement by a parent company.
- Regulation 5 – fulfilment of the reporting requirement where information is already available.
- Regulation 6 – enforcement.

The guidance, which is not legally binding, expands on the interpretation of key terms and describes the ongoing and interim reporting requirements.

The rest of this publication looks in detail at the interpretation and application of these Regulations and guidance.

Country by Country Reporting under CRD IV in the UK

3

Institutions in scope

Who does CBCR apply to?

Under Article 89 of CRD IV, the reporting obligation falls to 'institutions' as defined in CRR.

The starting point for understanding how CBCR will apply to a group therefore is to determine which entities are regulated under CRD IV and therefore considered 'institutions' for the purposes of regulation 2.

Regulation 1 defines 'institutions' as having the same meaning as in Article 4(1)(3) of CRR, i.e. a firm within the scope of CRD IV. In practice, this means that if a group contains at least one entity within the scope of CRD IV, at least part of the group will be within the scope of CBCR.

An entity is within the scope of CRD IV if it is either:

a. a Prudential Regulation Authority ('PRA')-authorised bank; or
b. an IFPRU investment firm, authorised by the Financial Conduct Authority ('FCA') and subject to the prudential rules in the FCA's IFPRU sourcebook.

Investment firms which offer only basic investment services (such as investment advice, portfolio management, broking and execution of orders) and do not hold client money may qualify for an exemption from CRD IV. Such institutions will therefore be outside the scope of the requirements of CBCR under CRD IV.

Investment firms which are CAD-exempt or MiFID-exempt (and were therefore not covered by the previous CRD) are also out of scope of CRD IV and unaffected by CBCR.

In practice, there are certain activities that investment firms undertake that will trigger falling within the scope of CRD IV. These activities are:

a. underwriting or placing of securities;
b. proprietary trading;
c. operation of multilateral trading facilities; and
d. holding client money.

Where uncertainty remains, groups should review their permissions on the Financial Services Register. Firms which qualify to remain out of scope of CRD IV will have a 'BIPRU firm', 'MiFID exempt' or 'CAD exempt' notice on their permissions.

Practical point

Although many groups will be clear whether or not they are within the scope of CBCR, it is important to identify the individual entities that are considered 'institutions' under CRD IV as these are the entities with the reporting obligation. The consolidation section below discusses in more detail how the regulations will apply.

Branches of 3rd country institutions

Since the initial consultation proposing their inclusion, the Government has explicitly confirmed that UK branches of institutions established in third countries are not considered 'institutions' for the purposes of CBCR on the basis that they are outside the scope of CRD IV/CRR. They will therefore be outside the scope of CBCR.

What does this mean for various financial service industries?

CBCR applies to credit institutions and investment firms. But what does this mean in practice? Broadly speaking, the following industries (to varying extents) will be within the scope of the Regulations:

Credit institutions:

Retail and commercial banking

- Retail and commercial banking entities with deposit taking permission will be 'credit institutions' as defined by the CRR.

Investment firms within the scope of the Regulations:

Investment banks and broker dealers

- In MiFID terms, these firms undertake 'dealing on own account', which broadly speaking, means conducting proprietary trading on firm's own capital with a view to gaining from short term market movements.
- In FCA terms, these are called IFPRU full scope firms. They are subject to similar levels of capital requirements as banks.

Inter-dealer brokers

- These firms do not 'deal on own account' but only deal as principal on a matched/back to back basis or for client servicing purposes.
- In FCA terms, these are likely to be called IFPRU limited activity firms. These firms are subject to lower capital requirements than full scope firms.

Asset management

- These firms do not deal as principals at all (or only do so on a very restricted basis). They are typically asset managers (portfolio management) and other small investment firms that only arrange trades and/or commit another firm to the trades. They have permission to hold client money or securities; they are subject to the FCA's CASS rules.
- In FCA terms, these are called IFPRU limited licence firms. These firms are subject to the lowest capital requirements which are typically driven by the higher of three months' annual fixed overheads and costs to wind down in an orderly fashion.
- The other types of investment firms in this category are those that operate multilateral trading facilities ('MTF'). They fall under the definition of IFPRU limited licence firm regardless of whether they hold client money/assets or not. Their initial capital requirement is EUR730k.
- All of the above types of investment firm are within the CBCR definition of institution.

Investment firms partially in scope:

Insurance

- Entities within Insurance groups are only expected to be within the scope of CBCR to the extent they are Asset Management entities regulated under CRD IV.

Other capital markets entities – within the scope

- Other capital markets entities that are expected to be caught by the requirements include high frequency traders with authorisation to trade as principal and spread betting entities which are authorised to trade as principal and hold client money.

Investment firms outside the scope:

Other capital markets entities – outside the scope

- A firm will be outside the scope of CRD IV/CRR if it is not authorised to hold client money or securities and only provides one or more of the following investment services and activities (MiFID Annex 1 Section A):
  - Reception and transmission of orders in relation to one or more financial instruments;
  - Execution of orders on behalf of clients;
  - Portfolio management; and
  - Investment advice.
- Such firms do not meet the definition of 'investment firms', hence are outside the scope of CRD/CRR and therefore outside the scope of the CBCR requirements. For example, asset management groups who are not authorised to hold client money would fall into this category.
- This category of firms is covered by the exemption in Article 95(2) of the Capital Requirements Regulation. Under that article, these firms may continue to be subject to the previous set of capital requirements rules (CRD III). The FCA calls these exempted firms BIPRU firms. These firms are therefore outside the scope of the CBCR requirements.

In practice, if it is uncertain whether or not a firm is an investment firm within the scope of CRD IV (and therefore CBCR), advice should be sought from their supervisory contact at the FCA.

Exemptions from double reporting

In the UK's transposition of Article 89, HMT have included an exemption from reporting for institutions whose parent company has already complied with the CBCR reporting obligation. This exemption applies both to institutions with a UK parent that is compliant with the regulations and to those with a parent situated in another EEA state that is compliant with that Member State's implementation of Article 89.

Practical point

This is a practical exemption which will prevent groups from duplicate reporting. This approach is consistent with the German Regulations, and we expect other Member States to take a similar approach. Ultimately, the reporting obligation should fall on the top EU-based institution or, if regulation 4 is used, a non-institution holding company.

Incidentally, if a non-EU headed group publishes CBCR disclosures for its entire group outside the EU, the UK institutions will still be required to report since the information has not already been reported in either the UK or the EU.

It helps that the exemption is for information already reported in accordance with another state's implementation of Article 89. This was lobbied for so that should another state's interpretation of say, public subsidies received, differ from that of the UK, the exemption still applies even though the definitions do not exactly correspond.

Consolidation

How will the regulations apply?

Regulation 2 places the reporting obligation on the 'institution', which is required to report on a consolidated basis for all of its branches and subsidiaries, regardless of whether those branches and subsidiaries are themselves institutions.

In practical terms, unless a group has an 'institution' as its top parent company, a group may have to produce separate reports for each institution. Furthermore disclosures may be difficult to produce if the reporting entities are not otherwise required to produce consolidated accounts. This may lead to fragmented disclosures which may not be consistent with the intentions of the regime.

HMT has therefore introduced a provision (regulation 4) which allows groups to choose to satisfy their reporting obligation at a parent company level. This may be the immediate, intermediate or ultimate parent. The reporting must be for all undertakings in the parent's group, regardless of whether these undertakings are themselves institutions. The definitions of 'parent' and 'group' are considered in more detail in the definitions section of this document.

Regulation 4(1) states that an institution will satisfy the requirements of regulations 2(1) (the ongoing reporting obligation) or 3(1) (the interim reporting obligation) *if the parent undertaking has published the information required*.

The Regulations do not specify that the parent undertaking must be located within the EU. Reporting by a parent entity situated outside the EU may therefore be sufficient to satisfy the requirement of regulation 4. This could be helpful for many inbound groups without a single entry point into the EU.

Groups considering such an approach should also consider the requirements of regulations 2(1) and 3(1) to publish the information. Therefore if a parent undertaking located outside of the EU is chosen to report under regulation 4, the group should ensure that the disclosures are publicly available. This requirement may be satisfied if the information is published on the group's website.

Practical point

On a practical level, groups must consider the most appropriate entity to make the disclosure. There are a number of factors that groups may want to consider when deciding on whether to report at the institution level or at a parent level, such as:

- Number of reporting institutions – some groups will have multiple reporting obligations. These obligations may also fall within different jurisdictions. From a compliance perspective, it may therefore be easier to produce a single CBCR report capturing all institutions within the scope of the regime. Groups thinking about this should also consider the implications this could have as it may increase the number of undertakings that are brought within the reporting.
- Complexity – groups should also consider the complexity of the requirements. For example, if an institution is required to report on a consolidated basis, but does not currently produce consolidated accounts, it may be logical to exercise the discretion provided by regulation 4 and report at a parent company level.
- Complete picture – groups with multiple reporting institutions may consider that such a fragmented approach to reporting is misleading and therefore decide to report once at a parent company level in order to produce a clearer summary of the group's geographical presence.

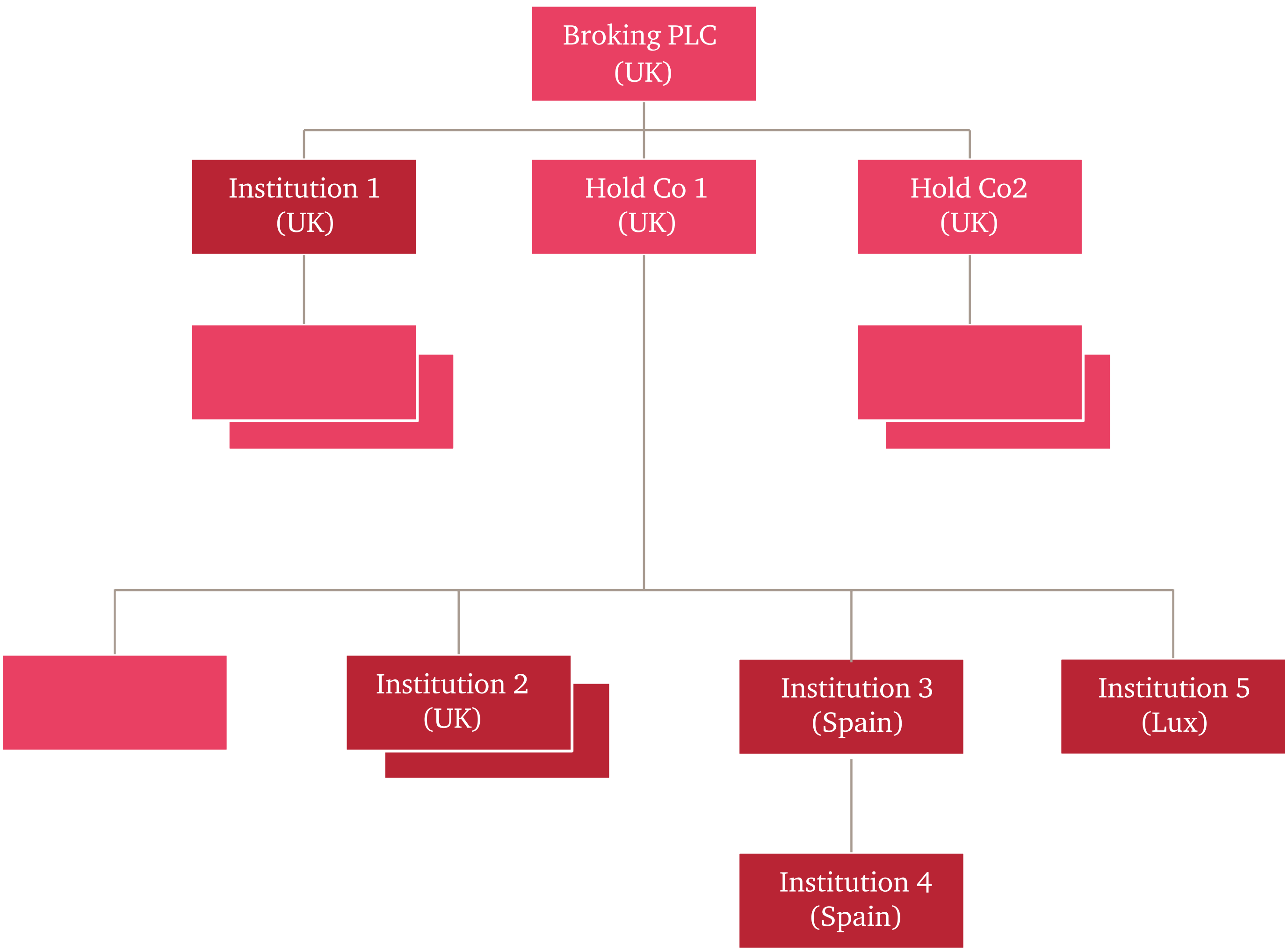
Case study

UK Broker Dealer

UK Broking PLC has a number of subsidiaries within the scope of CRD IV and therefore CBCR. On the basis that these institutions are members of a group *'whose members include undertakings which are not subject to the obligations of regulation 2(1) or 3(1)'*, the institutions can meet their reporting obligations if a parent company discloses the information required by the CBCR Regulations (per regulation 4).

The group therefore has a number of options under which it can meet its CBCR disclosure requirements (assuming other European Member States provide an exemption to prevent double reporting similar to regulation 5 in the UK).

- **Option 1:** UK Broking PLC reports on a consolidated basis for the worldwide group.
- **Option 2:** Institution 1 (UK) and Hold Co 1 (UK) each report on a consolidated basis for their branches and subsidiaries.
- **Option 3:** Institution 1 (UK), Institution 2 (UK), Institution 3 (Spain) and Institution 5 (Luxembourg) each report on a consolidated basis for their branches and subsidiaries. Institutions 3 and 5 would report under the Spanish and Luxembourg implementations respectively of Article 89.



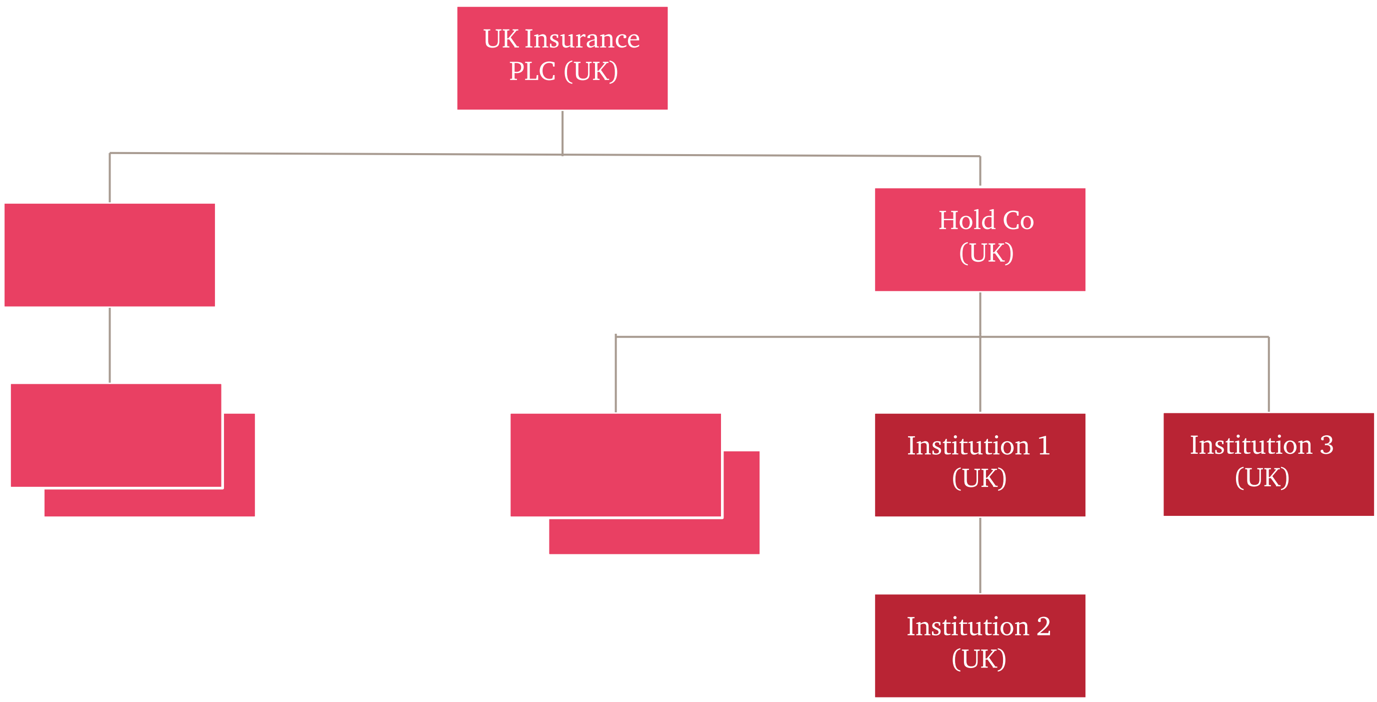
Case study

UK Insurance Group

UK Insurance PLC has a number of asset management entities within the scope of CRD IV; however the majority of its entities are outside the scope of CRD IV and CBCR. The group can also choose to report at a parent company level under regulation 4.

The group's options in order to meet its CBCR disclosure requirements are as follows:

- **Option 1:** UK Insurance PLC reports on a consolidated basis for the worldwide group.
- **Option 2:** Hold Co (UK) reports on a consolidated basis for its branches and subsidiaries.
- **Option 3:** Institution 1 (UK) and Institution 3 (UK) each report on a consolidated basis for their branches and subsidiaries.



Case study

Non-EU Headed Inbound Group 1

Non-EU Bank Inc is a universal banking group operating across the EU. It has a number of CRD IV regulated institutions and has multiple entry points into Europe.

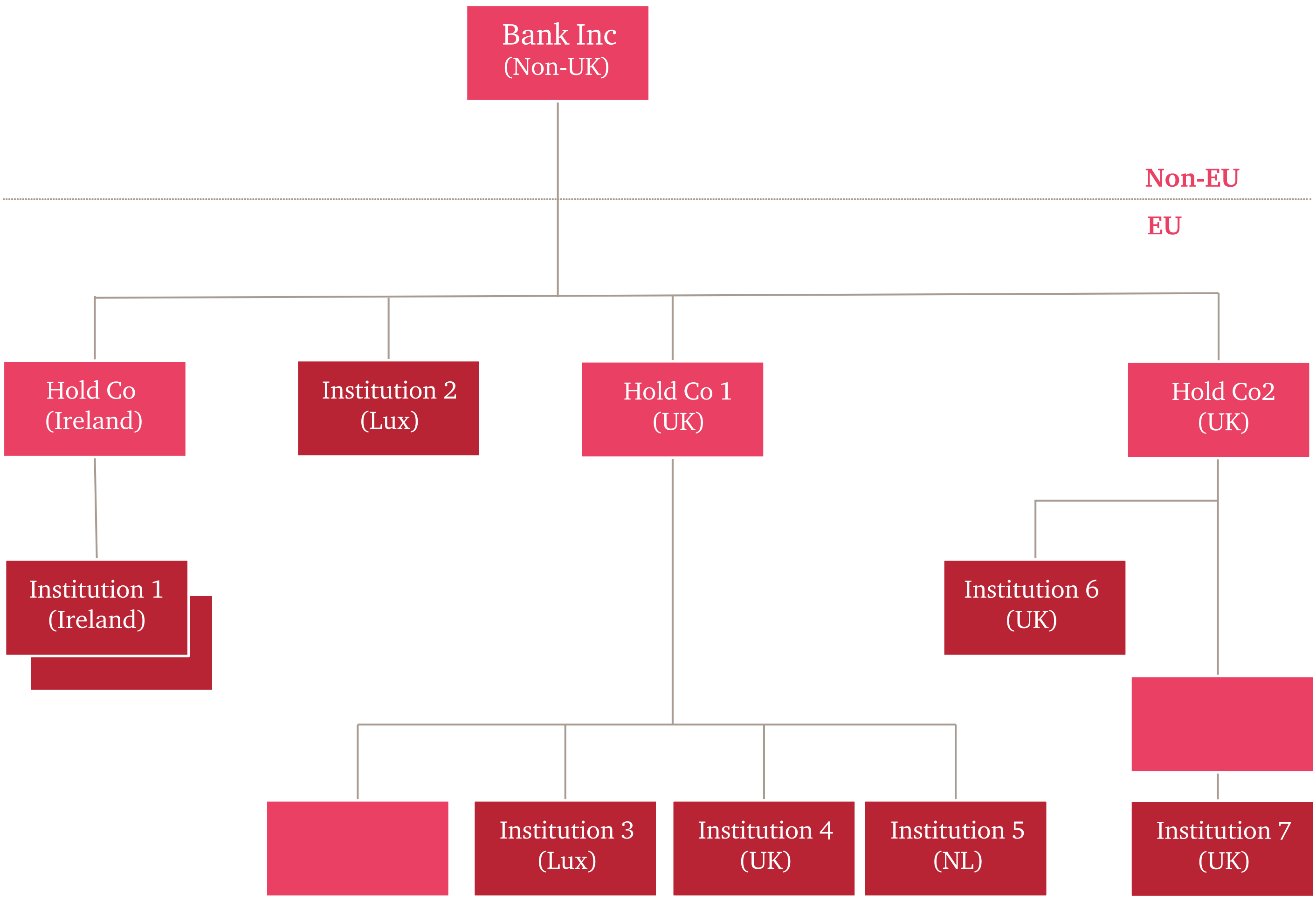
The group's options in order to meet its CBCR disclosure requirements are as follows:

Mandatory reporting: Institution 1 (Ireland) and Institution 2 (Luxembourg)

Options for UK Hold Co 1:
- **Option 1:** UK Hold Co 1 reports on a consolidated basis for its branches and subsidiaries.
- **Option 2:** Institution 3 (Luxembourg), Institution 4 (UK) and Institution 5 (Netherlands) each report on a consolidated basis for their branches and subsidiaries.

Options for UK Hold Co 2:
- **Option 1:** UK Hold Co 2 reports on a consolidated basis for its branches and subsidiaries.
- **Option 2:** Institution 6 (UK) and Institution 7 (UK) each report on a consolidated basis for their branches and subsidiaries.

The final option would be to report at Bank Inc (or an intermediate parent company outside of the EU, subject to our comments above around regulation 4 and ensuring the information is publically available). However it should be considered whether this approach would meet the CBCR requirements of Luxembourg and Ireland (or any other Member States with reporting obligations).



Case study

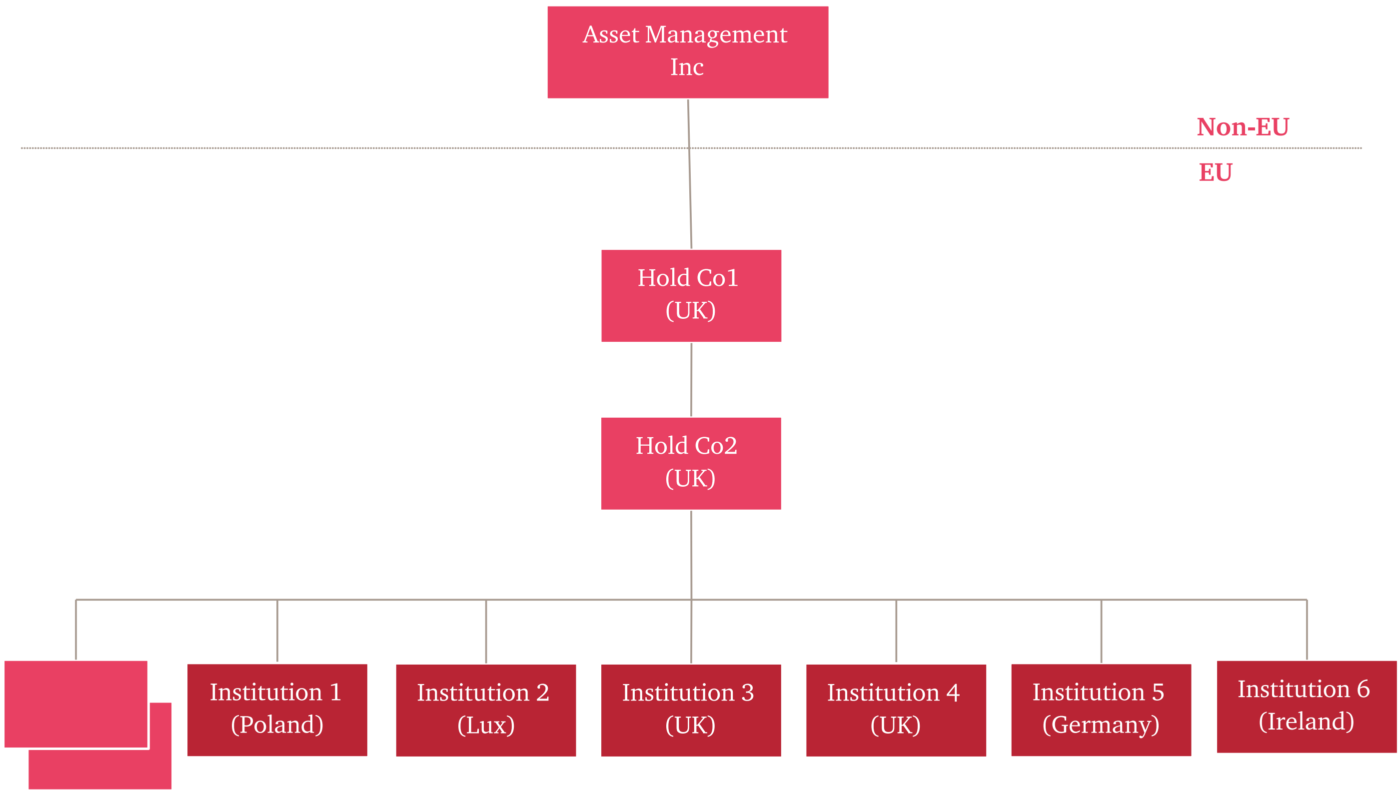
Non-EU Headed Inbound Group 2

Non-EU Asset Management Inc is a global asset management group. It has a number of CRD IV regulated institutions and has multiple entry points into Europe.

The group's options in order to meet its CBCR disclosure requirements are as follows:

- **Option 1:** UK Hold Co 1 reports on a consolidated basis for its branches and subsidiaries.
- **Option 2:** UK Hold Co 2 reports on a consolidated basis for its branches and subsidiaries.
- **Option 3:** Institution 1 (Poland), Institution 2 (Luxembourg), Institution 3 (UK), Institution 4 (UK), Institution 5 (Germany) and Institution 6 (Ireland) must each report on a consolidated basis for their branches and subsidiaries, in accordance with their local implementations of Article 89.

As in our previous example, there is a final option to report at Asset Management Inc (or an intermediate parent company outside of the EU, subject to our comments above around regulation 4 and ensuring the information is publically available). However it should be considered whether this approach would meet the CBCR requirements of Poland, Luxembourg, Germany and Ireland (or any other Member States with reporting obligations).



Basis of consolidation

The CBCR disclosures must be produced 'on a consolidated basis for each country in which the institution has a branch or subsidiary, or both' however the Regulations or guidance notes do not provide any insight into how intra-group transactions or consolidation adjustments should be dealt with. To put this in context, the sum of the gross turnover from all jurisdictions is unlikely to equal the group consolidated turnover. Groups must therefore consider how to deal with consolidation adjustments.

In our view, there are broadly three possible approaches to deal with consolidation:

1. Aggregation – this would be a simple addition across all legal entities within the group.
2. Intra-country consolidation – this approach would consolidate away transactions between group companies in the same country, but intra-group cross border transactions would be respected.
3. Intra-group consolidation – this approach would be consistent with the group's reported consolidated accounts and would eliminate all intra-group transactions.

In order to consider the most appropriate approach, it is necessary to consider the intentions of the regime.

Starting with the objectives of the regime discussed above, the fundamental principle behind CBCR is transparency around how multinational groups operate on a global basis. The objective is therefore to understand the substance, financial performance and tax paid in each jurisdiction in which an institution operates. In this regard, it is reasonable to conclude that CBCR disclosures should be made on the basis that intra-country transactions are consolidated away, but cross border transactions should be respected and not consolidated.

For example, if a UK headed group lends money to its non-UK subsidiary, the interest income (and expense) will be eliminated on consolidation for financial reporting purposes; however the payment is a real receipt, taxable in the hands of the UK Company and therefore should be respected for the purposes of CBCR.

Clearly, such an approach will mean that the total aggregate turnover (and profit or loss before tax) on a country by country basis will not equal that disclosed in the group consolidated accounts and therefore consolidation adjustments should be separately disclosed. We note that there is no requirement in the regulations for CBCR disclosures to reconcile to group accounts, but we are of the view that it would be best practice to provide such a reconciliation if the CBCR 'group' is the same, or almost the same, as the consolidated group.

Groups must then consider how these consolidation adjustments are disclosed. One approach would be to have a single consolidation adjustment row, or alternatively they could be allocated on a country by country basis. There is no correct answer; however it is our view that, having regard for the intentions of the Regulations, if consolidation adjustments are allocated across each jurisdiction, the gross turnover (and profit or loss before tax) before consolidation adjustments should also be clearly disclosed to ensure CBCR disclosures are meaningful and are a true representation of the jurisdictional operations and performance of a group.

Aggregation

In recognition of the potentially fragmented CBCR disclosures that groups may produce (for example inbound groups with multiple entry points into the EU), the guidance notes state that, where a group contains multiple reporting obligations, it may wish to produce an aggregate of all CBCR disclosures. This is not a requirement, yet it is something those groups may wish to consider. It should be noted that producing such an 'aggregate disclosure' is not expected to relieve the institution of its initial reporting obligation and that this would therefore be an additional voluntary disclosure.

First year reports

Overview

The first reporting deadline for CBCR is 1 July 2014. Institutions within the scope of the rules must publically disclose the following items *'in accordance with accepted accounting standards on a consolidated basis for each country in which it has a branch or subsidiary or both'*:

a. the name, nature of activities and geographical location of the institution and any subsidiaries and branches;
b. turnover; and
c. the average number of employees on a full time equivalent basis.

In addition to this, G-SIIs (see definition above) authorised within the UK must also privately disclose the following items to both the European Commission and to HMRC by 1 July 2014:

d. profit or loss before tax;
e. corporation tax paid; and
f. public subsidies received.

Following the disclosures, the European Commission will then:

Conduct a general assessment as regards potential negative economic consequences of the public disclosure of such information, including the impact on competitiveness, investment and credit availability and the stability of the financial system.

The Commission will then report to the European Parliament and to the Council by 31 December 2014 with its recommendations. Should the Commission identify any *'significant negative effects'* in its assessment, it shall consider making legislative amendments to the requirements of Article 89.

Considerations

Timing

The first year report must relate to the most recent accounting period ending prior to the date of disclosure. For most groups this will be straight forward, however for some non-December year end groups there are practical considerations which should be taken into account. A case study illustrating the first and second year reporting obligations is included within the 'subsequent reports' section below.

Location

Institutions are required to publish in their financial statements how they have complied with the regulations. Institutions therefore have the option to either include the disclosure within the financial statements or make the public disclosure elsewhere. This could, for example, be on the company's web site, or within the Pillar III disclosures. HMT's guidance recommends that if the disclosure is made elsewhere, a link to that disclosure be contained in the institution's Annual Report. Groups should consider the most appropriate location for them which may well be determined by the fixed reporting deadline discussed above. For example, a group with a May year end which would otherwise be unable to meet the fixed reporting deadline could report on their website prior to 30 May 2014 in respect of the year to 31 May 2013 to ensure they are not required to report 2014 numbers by 1 July 2014.

Audit

Although there is no audit requirement for the first year disclosures, groups may consider it beneficial to obtain additional comfort by engaging their auditors to perform a readiness review given that subsequent disclosures will require an audit opinion.

Format of report

The Government has decided not to produce a standard template, recognising that this does not permit flexibility. PwC has developed a 'best practice' suggested template which institutions might consider adopting. The template includes additional voluntary information which groups may wish to disclose to ensure those reading the disclosures are appropriately informed. The format of the disclosures is discussed in more detail below. Please note that some of the disclosures illustrated in our template are voluntary, and these are highlighted as such.

Enforcement

In the guidance notes, the Government has confirmed that the Regulations will be enforced by the FCA unless an institution is regulated by the PRA, in which case the PRA will enforce the Regulations.

Groups who have any concerns about the availability of data to produce CBCR disclosures or where there are concerns around meeting the fixed reporting deadline should consult with their FCA or PRA contact.

Subsequent reports

After the first year reporting period, institutions must publically disclose all of items (a) – (f) *'in accordance with accepted accounting standards on a consolidated basis for each country in which it has a branch or subsidiary or both'*.

The ongoing reporting deadline is 31 December each year, starting from 31 December 2015, and disclosures should relate to the most recently ended accounting period.

The ongoing reporting obligation is subject to a mandatory audit requirement which is discussed in further detail in the audit section below.

Case study

ABC Group PLC has a November year end. At 1 July 2014, its most recently ended accounting period is the year ended 30 November 2013. Clearly the disclosure due by 1 July 2014 will relate to this accounting period.

DEF Group PLC has a June year end. At 1 July 2014, its most recently ended accounting period will be the year ended 30 June 2014. In practice, it will not be possible to publish the CBCR disclosures for 2014 by 1 July 2014. It is however possible for the first year reporting obligation to relate to the year ended 30 June 2013, provided the disclosure is published before 30 June 2014 (i.e. before the end of the next accounting period).

DEF Group must then report by 31 December 2015. This disclosure must again relate to the most recently ended accounting period prior to the date of disclosure. The second CBCR disclosure will therefore be based on the period ending 30 June 2014, but only if it publishes before 30 June 2015. If the group publishes the disclosures later than 30 June 2014, the disclosure should relate to the period ending 30 June 2015. In this case the group's results for the period ending 30 June 2014 would not have been reported for CBCR purposes. This is in line with the rules; there is no requirement in this case to report results for the period ending 30 June 2014.

Although the deadline may not be until 31 December 2015, should DEF Group include the disclosure in its financial statements for 2014 (discussed in more detail above), it would publish the full CBCR disclosures (assuming statutory account filing deadline of 31 October 2014), including items (a) – (f), before the European Commission has conducted its review as to the *'potential negative economic consequences of the public disclosure of such information'*. Practically, any group in this position might prefer to defer its CBCR reporting until after 31 December 2014.

Prior-year comparatives

The regulations do not include any requirement to report prior year comparative numbers. However, in practice, where disclosures are made within the annual report, we would expect comparatives to be provided; this is on the basis that all other disclosures within the annual report include comparatives.

Audit requirements

Regulation 2(7) requires that: *'The information shall be audited in accordance with the standards required by Directive 2006/43/EC.'* This regulation applies to information published on or before 31st December 2015, and does not apply to the interim reporting obligation in regulation 3.

What standards should be applied?

No auditing standards for CBCR have yet been approved for use by the EC under Article 26 of Directive 2006/43/EC. HMT's guidance on the Regulations states that: *'The Government expects institutions to use the International Framework for Assurance Engagements in deciding which assurance engagement is appropriate.'* It further states that the publication could be included in the statutory audit or require external assurance, and that where it is not part of the statutory audit, the Government would expect the chosen assurance engagement to provide a similar level of comfort as a statutory audit.

PwC's view is that an engagement to provide reasonable assurance on the CBCR information (reasonable assurance being the level of comfort provided by a statutory audit) is within the scope of International Standard on Auditing 805 *'Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement'* issued by the International Auditing and Assurance Standards Board.

What is the form of the audit opinion?

The Regulations and supporting guidance do not specify the form of opinion. However, an appropriate form of opinion would refer to preparation of the information in accordance with the Regulations, as the Regulations represent the relevant financial reporting framework. The opinion would therefore be along the following lines:

'In our opinion the [country-by country information] as at [date] is prepared, in all material respects, in accordance with the requirements of the Capital Requirements (Country-by-Country Reporting) Regulations 2013.'

What level of materiality would be applied on the audit?

HMT's guidance explains that materiality is a concept used by preparers of financial statements and auditors in their assessment of the significance of an item or transaction in the context of a set of financial statements. Information is considered material if its omission or misstatement could influence the decision of users. This is consistent with the explanations in auditing standards. The notes also explain that: *'The government would expect materiality to be applied in line with the relevant assurance engagement and in the context of country-by-country reporting'*.

Auditors use their professional judgement in determining the appropriate level of materiality. As it will be determined in the context of country-by-country reporting, it is likely to be lower than the materiality level for the institution's annual financial statements. It would, however, be based on the country-by-country information as a whole, and not on the information reported for individual countries.

What are likely to be some of the practical issues for auditors?

Practical issues are likely to include the following:

- *Judgements relating to the application of the Regulations.* The Regulations set out basic requirements for the CBCR information, but do not provide a detailed framework. The directors of the institution will therefore need to make judgements in a number of areas, such as how to deal with consolidation adjustments, as explained in earlier parts of this section. Auditors will need to assess the reasonableness of such judgements.
- *Obtaining evidence to support the disclosures.* Auditors typically obtain audit evidence through testing the operating effectiveness of controls, substantive procedures or a combination of both. Some entities may not use their established reporting systems to gather and report CBCR information and therefore auditors will need to evaluate the processes and controls underpinning the gathering and reporting of CBCR information to determine whether it will be effective to seek to rely on those controls.

Format of disclosures

4

Overview

Throughout the UK consultation process HMT sought feedback from interested parties as to whether a standard template should be provided by the Government. It was concluded that a CBCR disclosure template would not be published in order to prevent a 'check the box' approach to reporting. In the guidance notes the Government makes it clear that the Regulations do not prevent groups adding narratives or providing additional information to their disclosures.

This is in contrast to other regulatory reporting requirements where standard templates are typically provided for regulatory reporting.

Format

Without a standard template there will be uncertainty around what format CBCR disclosures should take. When considering the reporting format, groups should consider the wider context of their disclosures and pay close attention to the messages that it may present to readers.

In recognition of the complex nature of many international groups, combined with the rigid CBCR reporting requirements, PwC has developed a flexible reporting template that should support groups to produce informative disclosures that will not only meet the reporting obligations, but will also allow companies to provide an appropriate level of additional disclosures, should they wish to do so, in order to provide context for the raw data.

Mandatory disclosures

The approach that we have taken is to produce a table summarising the core disclosure requirements. This is broadly broken down into two parts. The first part summarises the quantitative information, such as turnover and profit or loss before tax, while the second part summarises the quantitative disclosure requirements.

One notable addition to these mandatory disclosures is the inclusion of the accounting tax charge alongside the cash tax paid, on a country-by-country basis. The tax paid is clearly a sensitive number and, for many reasons, it is unlikely to bear any resemblance to the accounting tax charge which is a more comprehensive representation of the taxes that will be paid in respect of the current year accounting profits. This disclosure is not required by the Regulations, but we think many companies may want to consider providing it in practice.

Optional disclosures – Reconciliations

As discussed above, the UK Regulations require the disclosure of '*corporation tax paid*' on a cash basis. This is in contrast to the requirements to disclose '*turnover*' and '*profit or loss before tax*' in accordance with '*accepted accounting standards*', i.e. on an accruals basis.

Corporation tax paid in the accounting period is unlikely to correspond to the accounting tax charge, due to specific provisions within the UK tax system (e.g. the quarterly payments regime, the capital allowances regime and the provisions dealing with losses).

There is therefore a sensitive and complex relationship between accounting profits and corporation taxes paid and it is recommended that groups consider the inclusion of reconciliations between:

- the expected tax charge, based on the statutory tax rate, and the actual accounting tax charge; and
- the accounting tax charge and the cash tax paid.

Groups may only consider this necessary for material jurisdictions or where the cash tax paid is substantially different to the expected tax charge or the accounting tax charge.

Optional disclosures – Total tax contribution

In the recent Total Tax Contribution publication for the UK financial services sector, published by the City of London Corporation and prepared by PwC, it was estimated that the sector, which employs 1.1 million people in the UK, paid an estimated £65bn of taxes (including both taxes borne and taxes collected) in the year to 31 March 2013, which represented 11.7% of UK Government tax receipts.

Of the total taxes borne by the sector, corporation tax was the third largest, representing 19.0% of total taxes, with the largest taxes being employers national insurance contributions (NICs) and irrecoverable VAT.

With this in mind, and in recognition of the Total Tax Contribution made by the financial services sector, groups should consider producing additional disclosures around other taxes paid. The disclosure template is flexible in that groups could choose to disclose as little or as much additional detail as they wish.

Optional disclosures – Narrative explanations

The UK and international tax systems are complex, and raw CBCR data without proper context has the potential to be misinterpreted by readers. The inclusion of narrative explanations to support the CBCR disclosures will therefore enable groups to 'explain the numbers'. In many ways the inclusion of such explanations are just as important as the actual disclosures.

It is envisaged that groups may wish to include narrative explanations around the group's substance in particular jurisdictions, or where the disclosures do not reflect the complete picture, for example where group relief rules result in no cash payments of tax by entities in scope of CBCR or where there are no employees contractually employed by the CBCR consolidated group.

Reconciliation to group accounts

The Regulations do not contain any requirement for disclosures to reconcile to group financial statements. Despite this, in order to provide meaningful information for the reader, we would expect the disclosures to clearly explain how they relate to the corresponding financial statements and, where possible, to reconcile.

Where possible, we envisage that the disclosures would take the form of individual country-by-country consolidated totals, accompanied by a consolidation row containing the group consolidation adjustments. The sum each of the countries and the consolidation adjustments should equal the group total. The group total should be equal to the consolidated financial statements. This is illustrated in the template below.

One notable exception, where reconciliation may be more difficult, is where CBCR disclosures are included in entity level accounts, rather than consolidated accounts. In this scenario, it would difficult to provide any form of meaningful reconciliation on the basis that the CBCR disclosures relate to the reporting entity and all of its establishments.

Country by country reporting: Disclosure template

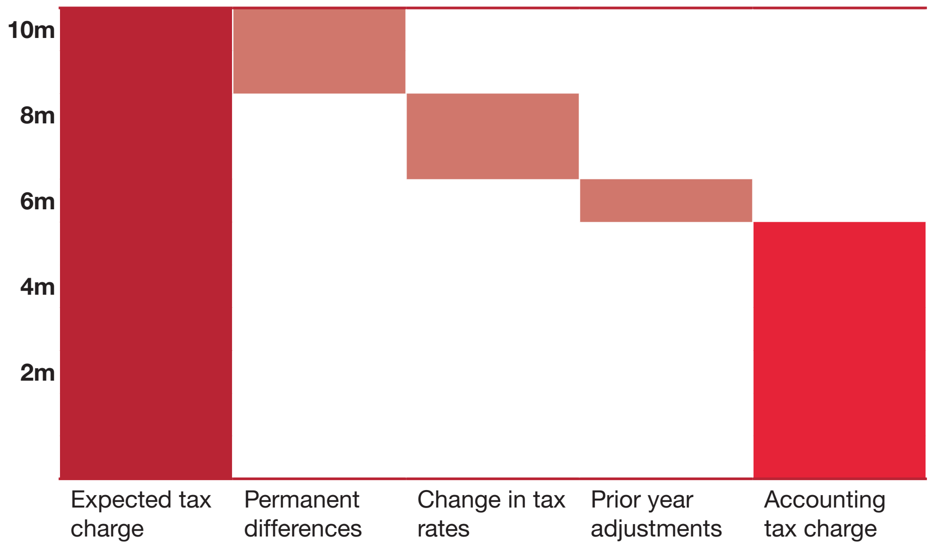
	Mandatory					Optional	Mandatory	
	Jurisdiction (in descending order of turnover size)	**Appendix**	**Number of employees**	**Turnover**	**Profit (or loss) before tax**	**Accounting tax charge (credit)**	**Cash tax paid on profit or loss**	**Public subsidies received**
Mandatory	**UK**	1	x	x	x	x	x	x
	USA	2	x	x	x	x	x	x
	France	3	x	x	x	x	x	x
	Other	4	x	x	x	x	x	x
	Consolidation adjustments			(x)	(x)	(x)	(x)	
	Group Total		**x**	**x**	**x**	**x**	**x**	**x**

	Jurisdiction	**Description of activities**	**List of entities**
Mandatory	**UK**	Commercial banking…	x
			x
			x
			x
			x
			x
	USA	Investment management…	x
			x
	France	Investment banking…	x

Appendices (one for every material country)

	Reconciliation between expected tax and accounting tax charge	
Optional	**Profit (or loss) before tax**	**x**
	Expected tax charge (credit) at local statutory rate	x
	Effect of:	
	Permanent differences	x
	Share based payments	
	Deferred Tax Asset not recognised	x
	Change in tax rates	x
	Prior Year Adjustments	
	Accounting tax charge (credit)	**x**

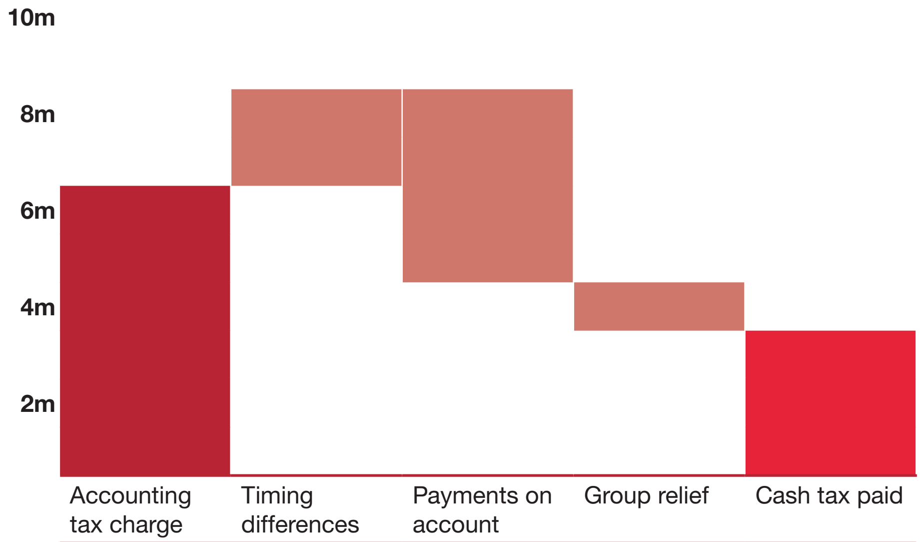
Reconciliation between expected tax and accounting tax charge



Optional

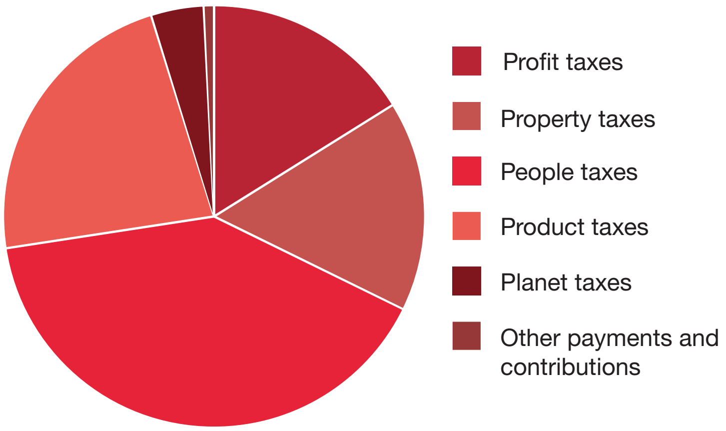
Reconciliation between accounting tax charge and cash tax paid	
Accounting tax charge (credit)	**x**
Effect of:	
Payments on account	x
Prior year adjustments	x
Timing differences	
Group relief	x
Losses brought forward	
GAAP adjustments	x
Tax on profit or loss (cash)	**x**

Reconciliation between accounting tax charge and cash tax paid



Optional

Total tax contribution	Taxes borne	Taxes collected
Profit taxes		
Property taxes		
People taxes		
Product taxes		
Planet taxes		
Other payments and contributions		



Narrative

Optional

Reporting institutions may wish to include a narrative to support their disclosures.
It is envisaged that such disclosures may include:

- details around substance in jurisdictions.
- explanation where disclosures do not reflect the complete picture, for example:
  - where group relief results in no cash tax.
  - where there are no employees because staff are not contractually employed in that jurisdiction.

Definitions

Name, nature of activities and geographical location

The Regulations do not include a definition; however the supplementary guidance notes provide some insight into the UK Government's interpretation.

The guidance notes have been relaxed since the initial Government consultation which proposed a fixed location of incorporation test. The final Government guidance suggests that groups should consider various factors when determining the geographical location of an entity. The guidance states that:

In determining geographical location, the government would expect factors such as the country of incorporation of the legal entity or for branches the jurisdiction of residence, its tax residence, the location of its management team or where the majority of its employees are based to be considered.

In practice we would expect the location of a subsidiary to be the jurisdiction in which it is tax resident and the location of branches to be the jurisdiction in which it operates.

Case study

A small UK headed Asset Management Group consisting of 3 entities. The parent company, ABC Asset Management Limited is an investment firm for the purposes of CRD IV. It is therefore within the scope of CBCR. The company is incorporated in Jersey but tax resident in the UK by virtue of central management and control. In addition all of the employees work in the London office. It has two subsidiaries, DEF Services Limited and GHI Asset Management Limited.

DEF Services Limited is a UK incorporated, UK tax resident company, and GHI Asset Management Limited is a French incorporated, French tax resident company.

For the purposes of its CBCR disclosure, the appropriate disclosures required under regulation 2(4)(a) are summarised below.

Geographical location	Nature of activities	Name
UK	Asset Management	ABC Asset Management Limited. DEF Services Limited
France	Asset Management	GHI Asset Management Limited

Average number of employees on a full time equivalent basis

Regulations 2(5) and 2(6) state that the average number of employees should be calculated based on a monthly average. The average number is determined by taking an annual average of monthly totals of employees.

The guidance notes expressly state that there is no requirement to report '*workers who are not employees*'. This could include workers on secondment or contractors.

Although it is not expressly stated in the Regulations, the guidance notes also state that this approach is consistent with the approach specified in s411 of the Companies Act, and that institutions should calculate this number in accordance with s411. Groups should therefore find that this information is already captured by existing systems, although the data may not be recorded on a country-by-country basis.

It is important to note that the Companies Act approach is based on '*employees of the company*'. Groups should therefore only disclose employees who are contractually employed by the entities within the scope of CBCR, i.e. institutions and their subsidiaries.

Finally, the requirement of regulation 2(4)(c) is the average number of employees '*on a full time equivalent basis*'. This is different from the requirements of the Companies Act which does not require disclosure on a full time equivalent basis.

Practical point

The rigid definition of employees is likely to result in a number of CBCR reporting institutions disclosing an employee number which is not consistent with their underlying substance in a particular jurisdiction due to the fact that its workers are contractually employed elsewhere in the group.

We would expect such groups to include a narrative to explain the arrangements in place and include an estimate of the number of group employees who work in the CBCR group (on a full time equivalent basis).

Turnover

The Regulations do not include a definition of turnover; however the supplementary guidance notes do provide some insight into the Government's interpretation.

The guidance states that the Government expects the definition of turnover to be consistent with institutions' financial statements. There is also an expectation that these financial statements will have been prepared under IFRS or local GAAP. Any non-GAAP or adjusted measures would not be considered appropriate.

The example provided, in the context of credit institutions, states that this would broadly be net income before impairments and other operating expenses (i.e. net interest income, net fees and commission income, net trading income and net insurance premiums). In practice, there is no consistent, uniform approach for credit institutions to disclose income; however in our view, the overriding principle is that any disclosure of turnover should be consistent with the institutions' financial statements.

Although no guidance is provided in the context of investment firms, we would expect the same principles as discussed above to apply, i.e. that turnover is broadly equal to net income before impairments and operating expenses and that the disclosure should be consistent with the financial statements.

Practical point 1

When analysing turnover, groups may encounter situations where income is booked in a different jurisdiction from that where it originates. For example, a sales office in Singapore may book income to a UK entity for regulatory purposes. In this example, we would expect the income to be disclosed against the jurisdiction in which the income is recorded for financial reporting purposes given that the CBCR disclosures should be prepared in accordance with *'accepted accounting standards'*.

Practical point 2

The two key principles contained within the guidance notes are:

1. turnover should be consistent with that disclosed in the financial statements; and
2. turnover should broadly be net income, before operating expenses and impairments.

In the case of investment firms, there is no consistent approach to disclosing turnover. It is therefore possible for the above principles to conflict. For example, an investment firm discloses 'net income' on the face of its income statement. Within the notes of the accounts, 'net income' includes various items, including 'impairments of loans'. In this example, it would not be possible for the investment firm to satisfy both of the principles specified within the guidance notes.

In reality, the investment firm would select the approach it considered appropriate and we would expect such a firm to clearly state the basis on which the disclosures have been prepared.

Practical point 3

Some investment firms separately disclose 'revenue' and 'cost of sales' on the face of their income statement, whereby 'revenue' represents the gross fee and commission income of the trade and 'cost of sales' represents commission expenses. In this case, it would be reasonable to conclude that the 'turnover' for the purpose of CBCR disclosures is equal to the revenue less the cost of sales, i.e. the net income of the investment firm.

Profit or loss before tax

As with turnover, there is no definition of profit or loss before tax included within the regulations. The guidance notes state that any amounts should be consistent with that disclosed in financial statements which will be in accordance with either UK GAAP or IFRS.

Corporation tax paid

The regulations define 'corporation tax' as being 'tax charged on profits by section 2(1) Corporation Tax Act 2009 and similar taxes charged on profits in any jurisdiction outside the United Kingdom'. Section 2(1) brings income and chargeable gains within the charge to UK corporation tax.

The requirement is to disclose the tax paid in respect of the institution's period of account. The Regulations are not wholly clear as to whether this means corporation tax paid in the accounting period, or corporation tax paid in respect of the profits earned in the period of account. We would expect institutions to disclose any assumptions made when disclosing amounts paid.

Section 4 below discusses the additional considerations around voluntary disclosures in respect of corporation tax paid and accounting tax charge.

Practical point

Due to the legislative framework of the international world in which credit institutions and investment firms operate, many groups will suffer significant amounts of withholding taxes on their income, some of which do not fall within the definition of corporation tax. Indeed such taxes may not even fall within the definition of income taxes for the purposes of financial reporting. Therefore CBCR disclosures could be a misleading representation of the income generated, profits made and taxes paid. Groups may therefore consider disclosing the amounts of withholding tax suffered as an additional disclosure (along with other taxes which are discussed in more detail under 'format of disclosures' below).

Many groups operate through branch structures and are therefore likely to pay corporation tax in multiple jurisdictions in respect of overseas profits. This raises the question as to how this should be disclosed. Furthermore, the Regulations do not provide any guidance on how taxes paid in respect of controlled foreign companies should be disclosed as the tax paid may be in a different jurisdiction to the location of the entity. The example below illustrates how taxes paid may be disclosed in practice.

Case study

UK Trading Limited is a stand-alone UK institution with a Singapore branch. It has no other operations and has not elected into the UK branch exemption.

The company generated profits of 100 in the period. Of this 100, 40 were earned in Singapore and 60 were earned in the UK.

The Singapore profits are subject to Singapore tax at a rate of 10% and the whole company profits are subject to UK tax at 20% with double tax relief given for overseas tax suffered.

Overall the company pays 16 tax in the UK and 4 in Singapore. There are therefore two options to report information which we have summarised below:

Jurisdiction	Profit or loss before tax	Corporation tax paid	Notes
Option 1			
UK	60	12	Additional tax is paid in the UK in respect of profits earned by Singapore branch; however this tax is disclosed in the Singapore row.
Singapore	40	8	
Total	**100**	**20**	
Option 2			
UK	60	16	Includes 4 of tax paid in the UK in respect of profits earned by Singapore branch which are subject to UK top up tax on overseas branch profits.
Singapore	40	4	Income is subject to UK top up tax of 4 which is disclosed in the UK row above.
Total	**100**	**20**	

The Regulations are not prescriptive and therefore groups have some discretion as to how they disclose the information. There is no right or wrong answer and so we suggest groups consider which approach they find the most informative as well as their information availability when deciding on which approach to take.

Public subsidies received

The Regulations do not include a definition of public subsidies received though the supplementary guidance notes provide some insight into the UK Government's position, which is that this should only include 'direct support by the Government'.

The Government provides clear guidance that it does not consider central bank interventions, the Help to Buy Mortgage guarantee scheme, or tax incentives such as R&D tax credits as public subsidies.

In practice, institutions will have to consider whether they are in receipt of any 'direct support' from the Government. This may prove difficult given that there are unlikely to be any existing systems in place to capture such information however we expect that many institutions will conclude that they are not in receipt of any such subsidies.

Branch

Regulation 1 states that, for the purposes of the Regulations, the definition of 'branch' is the same as in Article 4(1)(17) of the CRR. This states that the term *'branch means a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of institutions'.*

This definition does not sit easily with tax concepts. For instance, dependent agent permanent establishments, as defined by Article 5(5) of the OECD Model Treaty, which states that:

Where a person, other than an agent of an independent status…. is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise.

The definition of 'branch' for CBCR purposes means that a permanent establishment of an institution may not be the same as a branch as defined by the CRR.

Practical point

Take the example of a UK institution which is a subsidiary of a US parent. The US parent company also directly holds a Singapore subsidiary (a sister company to the UK institution). The Singapore sister company is treated as a dependent agent permanent establishment of the UK institution under Article 5(5). The UK institution will therefore be subject to a Singapore tax charge.

The OECD definition of a branch focuses on economic dependence, not legal. The Singapore sister company would not be legally dependent on the UK institution and therefore its activities should not be those of a branch for CBCR purposes.

Subsidiary

Regulation 1 states that, for the purposes of the Regulations, the definition of 'subsidiary' is the same as in Article 4(1)(16) of the CRR, which states that:

Subsidiary means:

(a) a subsidiary undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC; and

(b) a subsidiary undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking over which a parent undertaking effectively exercises a dominant influence.

Subsidiaries of subsidiaries shall also be considered to be subsidiaries of the undertaking that is their original parent undertaking.

For the purposes of Articles 1 and 2 of Directive 83/349/EEC, a subsidiary undertaking is deemed to exist where broadly, a parent undertaking:

(a) has a majority of the shareholders' or members' voting rights in another undertaking; or

(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and is at the same time a shareholder in or member of that undertaking; or

(c) has the right to exercise a dominant influence over an undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions; or

(d) is a shareholder in or member of an undertaking, and:

(i) a majority of the members of the administrative, management or supervisory bodies of that undertaking who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or

(i) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders' or members' voting rights in that undertaking.

This definition is broadly consistent with the corresponding UK definition included within s1162 of the Companies Act which is included below in the definition of 'parent undertaking'.

Group

Regulation 4, which permits certain groups to report at parent level, defines 'group' as having the same meaning as 'immediate group' in s421ZA of the Financial Services and Markets Act 2000.

Immediate group is defined by s421ZA as broadly being equal to an institution (A), a parent undertaking of A, a subsidiary undertaking of A, and a subsidiary with whom A shares a mutual parent.

Parent undertaking

Regulation 4 states that 'parent undertaking' has the same meaning as in the Financial Services and Markets Act 2000. S420 states that 'parent undertaking' has the same meaning as s1162 of, and Schedule 7 to, the Companies Act 2006.

(2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if:

- *(a) it holds a majority of the voting rights in the undertaking; or*
- *(b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or*
- *(c) it has the right to exercise a dominant influence over the undertaking:*
  - *(i) by virtue of provisions contained in the undertaking's articles; or*
  - *(ii) by virtue of a control contract; or*
- *(d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.*

(3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking:

- *(a) if any of its subsidiary undertakings is a member of that undertaking; or*
- *(b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.*

(4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if:

- *(a) it has the power to exercise, or actually exercises, dominant influence or control over it; or*
- *(b) it and the subsidiary undertaking are managed on a unified basis.*

For the purposes of the Regulations, 'parent' can therefore mean a direct parent or the ultimate parent.

Global Systemically Important Institution ('G-SII')

The Government has included a definition of G-SII in regulation 1, which states that the term means 'a group identified as a global systematically important bank by the Financial Stability Board' in its publication of 11 November 2013.

The Regulations state that only G-SIIs incorporated in the United Kingdom must comply with the additional first year obligation to report privately to the European Commission and to Her Majesty's Revenue and Customs.

Accepted accounting standards

Regulation 1 states that the definition of 'accepted accounting standards' means 'international accounting standards' as defined by Article 2 of Regulation (EC) No 1606/2002 of the European Parliament or *'generally accepted accounting practice'* as defined by s1127, Corporation Tax Act 2010 ('CTA 2010').

The definition per Regulation (EC) No 1606/2002 includes *'International Accounting Standards, International Financial Reporting Standards ('IFRS') and related interpretations as published by the International Accounting Standards Board'* and the definition per s1127 includes both International Accounting Standards and UK Generally Accepted Accounting Practice.

In practice, groups will be expected to use the same basis as that on which the statutory accounts are prepared.

Period of account

'Period of account' is defined in regulation 1 as having the same meaning as s1119, CTA 2010, which states that it means *'any period for which the accounts of the business are drawn up'*. CBCR disclosures should relate to the same period of account as the financial statements.

Other EU Member States updates

5

Overview

Member States were required to implement CRD IV into domestic legislation by 31 December 2013. Despite this deadline, many Member States have failed, as of January 2014, to produce legislation implementing Article 89.

Although the majority of UK headed groups will not be concerned with the approach taken by other Member States, it is important to remember that, although the UK has included an exemption to prevent double reporting, to the extent a UK headed group contains institutions within the scope of CRD IV located in a European Member State, it could still have a local reporting obligation. It is envisaged that other Member States will follow the UK approach of providing an exemption to prevent double reporting, however uncertainty remains.

UK headed groups that are only partially within the scope of the UK Regulations may also have reporting obligations in other Member States, depending on how the group is structured and how they make use of regulation 4.

The approach taken by other Member States is expected to be of most interest to inbound groups with multiple entry points into the European Union. Such groups are likely to have reporting obligations in multiple jurisdictions. To the extent each Member State produces differing interpretations of Article 89; this could be burdensome for many groups.

Germany

The German legislator published the CRD IV Transposition Act in the Federal Gazette of 3 September 2013. The publication amended the German Banking Act and essentially repeated the requirements of Article 89 CRD IV. Despite this early initiative, the German regulators are yet to provide further clarity or guidance. In contrast to earlier expectations the recently issued amended version of the German Solvency Regulation did not provide further details.

It is currently understood that the first reporting deadline of 1 July 2014 will apply to a cut-off date of 31 December 2013, while the first deadline for the subsequent, ongoing reporting obligation will be in respect of a cut-off date of 31 December 2014. It is also understood that there will be no audit requirement for the information of 31 December 2013.

France

The French banking law issued on 26 July 2013 implemented Article 89 of CRD IV codified in Section L511-45 of the French monetary and financial code. The French CBCR Regulations are intended to go beyond the CRD IV requirements. For instance the French scope is broader than Article 89 and includes: credit institutions, investment firms, financial companies, mixed financial holding companies as well as '*other companies*' (for '*other companies*' this is only to the extent the EU adopts a rule including other types of entities).

Such entities shall disclose specific information in an appendix to their consolidated accounts or within 6 months following the end of the financial year. The first reporting deadline is scheduled for July 1 2014, but the first-year disclosure requirements are limited to the name, the business activity, the turnover and net banking revenue, and number of employees (on a full time equivalent basis).

As from 2015, the additional information to be disclosed will be the profit or loss before tax, the tax on profit due and the public subsidies received. A Decree is expected imminently, and could resolve certain key questions on disclosure requirements (in connection with the scope and the data to be disclosed).

Netherlands

The Dutch Ministry of Finance has requested the Dutch Central Bank for input on the transposition of CBCR rules into Dutch legislation and to provide further guidance in this respect. No draft legislation has been published yet. The Dutch Central Bank is currently preparing the legislation and guidance, in order to clarify the approach in the Netherlands. We expect that this will become available in the coming months.

Luxembourg

The Luxembourg body responsible for the prudential supervision of credit institutions and professionals in the financial sector, namely the *Commission de Surveillance du Secteur Financier* (CSSF) has started to work on a draft bill for the transposition of CRD IV, including Article 89. Although PwC Luxembourg has engaged in dialogue with the CSSF, there have been no formal consultations and no draft legislation has yet been publicly disclosed. The expectation is that the CSSF will take a cut and paste approach to the implementation of the provisions.

Ireland

The Central Bank of Ireland issued a consultation paper on 20 September 2013, outlining its proposed approach and perspectives in relation to the provisions contained within CRD IV. The deadline for submissions to the Central Bank of Ireland was 1 November 2013. As the provisions contained within CRD IV have to be transposed into Irish law, the Department of Finance in Ireland invited interested parties to make submissions where it was thought guidance/clarification was required.

No formal consultation documentation was issued by the Department of Finance. PwC Ireland, however, made a submission to the Department of Finance on 1 November 2013, outlining the areas where guidance/clarification should be provided.

Similar to other jurisdictions, there is still considerable uncertainty in relation to the implementation of CRD IV in Ireland, though further guidance is expected in the coming weeks.

Belgium

The Belgian authorities have delayed the implementation of CRD IV and Article 89 into domestic legislation initially scheduled for the end of December 2013. The authorities are yet to release any draft Regulations.

There is still considerable uncertainty in relation to this implementation in Belgium. Further guidance is expected in the coming weeks.

Sweden

The Swedish implementation of CRD IV has been delayed and legislation is not expected to enter into force before 1 July 2014.

The expert tasked with the review of the Swedish implementation of the CRD IV published a report with legislative proposals on 16 September 2013 (SOU 2013:65 Förstärkta kapitaltäckningsregler). The consultation period ended on 20 November 2013 and the report will now be referred to the Council on Legislation for legal review before the Government drafts a Bill for submission to Parliament and voting.

The report only discusses CBCR briefly, and there is no guidance on the Directive's deadlines or the interpretation of Article 89. It is proposed that the Financial Supervisory Authority is appointed to specify the reporting requirements through its current regulations.

As for global systemically important institutions, the Government should issue a special ordinance. The report does not mention any specific timeline for these regulations, but they cannot be issued before the Government bill is enacted into law.

Spain

The Spanish government has published for public consultation a draft law with the transposition of CRD IV. The Spanish includes a cut and paste of the requirements of article 89. No further guidance is expected in the short term and it is unclear on what approach the authorities may take to providing future guidance.

Other CBCR initiatives

6

Article 89 of CRD IV is one of a number of CBCR initiatives. The other CBCR regimes have tended to focus on the extractive industries and also on taxes paid, without including other financial data. Furthermore, none of the regimes outlined below has an audit requirement, although the Extractive Industry Transparency Initiative requires payments made by companies to be reconciled to payments received by Governments. More detail is available from the PwC publication, 'Tax transparency and country-by-country reporting, an ever changing landscape'.

Extractive industries transparency initiative

Countries may choose to adopt this international framework for the reporting of tax revenues from the exploitation of natural resources. If a country adopts the framework then all extractive companies operating in that country must disclose, by company and project, all the payments that they make to the Government. These are then reconciled by an independent consultant to the revenues that the Government receives and the data and the reconciliation are published in a country report.

Dodd-Frank section 1504

CBCR rules were included in the Dodd-Frank Wall Street Reform and Consumer Protection Act in August 2010. The rules require all extractive companies with an SEC listing to provide details to the SEC of amounts paid to governments by country and by project. The rules are however currently suspended following a court decision in the US, but are expected to come into force once the SEC has revised the rules in line with the court's opinion.

EU accounting and transparency directives

Large and listed extractive and logging companies in the EU will have to disclose payments to governments by country for all the countries in which they operate. Member States are currently transposing this requirement of the Directive into local legislation and it will apply from 1 January 2016 at the latest.

EU discussions

Various extensions to CBCR in the EU have been discussed by the European Commission, the European Parliament and the Council of Europe with a range of views being expressed. At the time of writing, the next stage in the development of CBCR is expected to be the review, currently scheduled for 2018, of the CBCR provisions in the EU Accounting Directive. This review is required by the Directive and is expected to look at the possibility of extending the requirements to all industries and including turnover, profit and employee numbers in the data to be reported. Some parties however feel that action is required before 2018 and so we may see further developments and amendments to the review requirements in the shorter term.

OECD discussions

As part of the work on base erosion and profit shifting, the OECD is looking at including a country-by-country reporting template in transfer pricing documents for disclosure to tax authorities. The OECD held a consultation on this in November 2013 and a draft discussion paper was published on 30 January 2014. This will be followed by a short public consultation with the final rules expected in mid-2014.

Appendix 1

Capital requirements directive IV (including Article 89)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:EN:PDF

Capital requirements regulations

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0001:0337:EN:PDF#page=18

Final regulations

http://www.legislation.gov.uk/uksi/2013/3118/made

Final guidance notes

https://www.gov.uk/government/publications/capital-requirements-country-by-country-reporting-regulations-2013-guidance/capital-requirements-country-by-country-reporting-regulations-2013-guidance

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