

Understanding the Scope of ESOS

Organisations will be affected by the regulations if they qualified as a large undertaking on 31 December of the qualification year however it is important to consider the following when applying the thresholds to your organisation:

How to apply the thresholds

- **Euro conversion rate:** Balance sheet and annual turnovers should be converted to euros using the Bank of England Pounds Sterling – Euros spot rate on the qualification date. Even where older financial information is used the conversion rate should be that of the qualification date.
- **Accounts:** The financial statements used should be the most recent annual financial statements, ending on or in the 12 months before 31 December.
- **Overseas activities:** overseas activities (which aren't subsidiaries), should be included within the turnover and balance sheet total assessments.
- **Employees:** The definition includes all contracted staff, owner managers and partners directly employed by the undertaking in the UK or abroad. It does not include employees of subsidiaries or other group undertakings based overseas. Agency workers are normally excluded however contracts should be checked. The number of employees should be an average number over the relevant accounting period. The rules used to calculate the employee figures for the Companies House annual report should be used for the purposes of ESOS.
- **Two consecutive accounting periods rule:** If your organisation is very close to or has fluctuated around the thresholds it may move from being a large to a small undertaking or from small to large. For the purposes of ESOS any change must be met for 2 consecutive accounting periods to be recognised as a change of status. So although your organisation didn't meet the threshold on the 31 December 2014, it could still be within the scope of ESOS.

Example:

		2010	2011	2012	2013	2014
Company A	Over threshold	✓	✓			✓
	Under threshold			✓	✓	
Company B	Over threshold	✓	✓		✓	
	Under threshold			✓		✓

Company A is an SME and is not in scope of ESOS - although it meets the criteria of a large undertaking in the 2011 and 2014 accounting periods, it is not in scope of ESOS because it does not meet the large undertaking criteria for two consecutive accounting periods.

Company B is a large undertaking and is in scope of ESOS - although it falls below the criteria of a large undertaking in 2012 and 2014, it is in scope of ESOS because the last time it had two consecutive accounting periods at the same size it met the large undertaking criteria.

Source: Complying with the Energy Savings Opportunity Scheme, Environment Agency, <https://www.gov.uk/government/publications/comply-with-the-energy-savings-opportunity-scheme-esos>

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Corporate Groups

- If a UK undertaking has qualified for ESOS and is part of a corporate group all UK based corporate group undertakings are within scope of ESOS.
- Sections 1158 to 1162 of the Companies Act 2006 should be referred to when defining a corporate group.
- If the corporate group exceeds the thresholds but none of the individual undertakings qualify then the corporate group is not in scope.
- If the only large undertaking of a corporate group is overseas, then the group would not fall in the scope of ESOS.
- Normally the highest parent within a group will act as the responsible undertaking for themselves and all subsidiary undertakings. Disaggregation and/or aggregation can take place within corporate groups if agreed in writing.
- Qualifying undertakings which leave corporate groups between the qualification date and the notification date can either:
 - Comply separately themselves
 - Aggregate with their old group, by consent
 - Aggregate with their new group, by consent
- Joint ventures may qualify for ESOS

Definitions

- **Turnover:** means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of:
 - a) trade discounts,
 - b) value added tax, and
 - c) any other taxes based on the amounts so derived;
- **Balance sheet total:** this must be the aggregate of the amounts shown as assets on the balance sheet
- **An undertaking:** as defined in the Companies Act 2006, is:
 - A corporate body or partnership
 - An unincorporated association carrying on a trade or business, with or without a view to profit

This includes an overseas company with a UK registered establishment which has 250 or more UK employees (paying income tax in the UK).
- **An establishment:** is defined as a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC) or a place of business that is not such a branch where there is some degree of physical presence in the UK.

Source: Complying with the Energy Savings Opportunity Scheme, Environment Agency,
<https://www.gov.uk/government/publications/comply-with-the-energy-savings-opportunity-scheme-esos>

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Qualification and compliance dates

Compliance period	Qualification date	Compliance period	Compliance date
1	31 December 2014	From 17 July 2014 to 5 December 2015	5 December 2015
2	31 December 2018	From 6 December 2015 to 5 December 2019	5 December 2019
3	31 December 2022	From 6 December 2019 to 5 December 2023	5 December 2023
4	31 December 2026	From 6 December 2023 to 5 December 2027	5 December 2027

For further information and assistance please contact International and Environmental Compliance on 03450 682 572.

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