

Renewable Heat Deployment & Bird & Bird

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The importance of RHI to a renewable heat project?

- What are the drivers behind a renewable heat project (from a large energy consumer's perspective):
 - Compliance with law: planning, CRC, etc
 - Commercial drivers:
 - Demand side management
 - Turning a responsibility or cost into an asset
- Impact that the RHI has on the project structure:
 - Technical solution
 - Location
 - Phasing arrangements: one or multiple installations
 - Metering
 - Eligible uses
 - Commercial
 - Owner
 - Financial model
 - Legal
 - Contracts required
 - Managing risk
 - Additional provisions

Owner and financial model: determining the “owner” (1)

- No definition of "owner" in RHI Regulations 2011
- Ofgem guidance:
 - "An '**owner**' in the context of the RHI is the person/organisation with **exclusive rights and liabilities** in respect of an RHI installation... We expect that the owner will normally be the person/organisation who purchased and paid for the installation of the equipment."

Owner and financial model: determining the “owner” (2)

- Ofgem guidance (cont...):
 - "The only **exception** to [this] is in the circumstance of a '**hire purchase agreement, a conditional sale agreement or any agreement of a similar nature**'. In these cases the [Energy Act 2008] defines the 'owner' for RHI purposes to be the **person in possession** of the plant under such an agreement. So it is this person who should apply for the RHI."
 - "We will interpret 'any agreement of a similar nature' to mean a contract providing for the **separation of legal ownership and physical possession, and containing provision (which may be subject to conditions) for the ultimate transfer of ownership to the person having possession.**"

Managing risk: obtaining full accreditation

- Who bears risk of:
 - Owner not obtaining full accreditation (e.g. falls outside criteria, including if there is a change in law in transition period)
 - Different tariff (e.g. larger installation or falls into subsequent period tariff)
- Example 1: Delays to full accreditation (including transition from preliminary to full accreditation):
 - Delays with third party consents (e.g. planning)
 - Design or construction delays
 - Relief event
 - Relevant event
 - Force majeure
- Example 2: Material changes (post full accreditation issue as well):
 - Impact on:
 - Eligible installation
 - One v. multiple installations
 - Eligible use
 - Location
 - Ofgem notification process

Managing risk: during full accreditation

- Loss of anticipated RHI (due to commercial or technical reasons):
 - Reduced heat production / consumption:
 - Failure to make supply
 - Failure to take supply
 - Inaccurate meter readings (which ties into a commercial question of who owns the meters)
 - Eligible installation underperforms
 - Damage to system
- Loss of anticipated RHI (due to regulatory reasons)
 - Material change
 - Enforcement actions:
 - RHI payment: temporarily or permanently withheld, clawback of previous payments or suspension or reduction of future payments
 - Revocation of accreditation

Additional provisions: some other examples

- Building in Ofgem procedures into the contract:
 - Examples:
 - Preliminary and full accreditation (including early applications for full accreditation)
 - Material change notifications
 - Enforcement actions (complaints, formal review and statutory reviews)
 - Conditions precedent
 - Counterparty assistance:
 - Ofgem and authorised agent site access
 - Provision of information and assistance (at whose cost?)
- Change of asset owner:
 - Voluntary
 - Termination mechanism
- Funding arrangements

Final thoughts

- Does RHI fit into existing deal structures?
- Will it lead to more projects?

Thank you **& Bird & Bird**

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