

From: Hughes, Seamus
To: [Wightman, Stuart](#)
Cc: [Sinton, Dan](#); [Neth_Energy](#); [Mills, John \(DETI\)](#)
Subject: FW: Non-Domestic Renewable Heat Incentive Scheme - De minimis limit issue
Date: 04 August 2014 09:54:00

Stuart

To note confirmation from Nicola Wheeler on where we currently stand. I have already engaged with Nadia Carpenter in Ofgem to establish how many, if any of our problem cases could be brought over the line at this point subject to repayment of the Carbon Trust loans. It is our intention to address the issue of loan payback when making other changes in our legislation as part of the non domestic RHI review.

Regards

Seamus

Seamus Hughes

Renewable Heat
Department of Enterprise, Trade & Investment
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From: Wheeler, Nicola
Sent: 04 August 2014 09:45
To: Hughes, Seamus
Subject: RE: Non-Domestic Renewable Heat Incentive Scheme - De minimis limit issue

Seamus

Yes, that is my understanding. Hopefully someone will be in touch with you soon regarding any state aid issues.

Kind regards,

Nicola

From: Hughes, Seamus
Sent: 01 August 2014 09:51
To: Wheeler, Nicola
Cc: Wightman, Stuart; Sinton, Dan; Neth_Energy
Subject: RE: Non-Domestic Renewable Heat Incentive Scheme - De minimis limit issue

Nicola

Thank you for your prompt response which is most helpful. As I take it from your analysis the key

issue is that an installation must have been completed and commissioned between 1 September 2010 and the Regulations coming into force in November 2012, and any related grant repaid **before accreditation** under the RHI scheme. We will now liaise with Ofgem in terms of how many of the affected applicants could access RHI if Carbon Trust Loans were repaid under these terms.

I look forward to further engagement on the state aid issue.

Regards

Seamus

Seamus Hughes

Renewable Heat

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From: Wheeler, Nicola

Sent: 31 July 2014 16:15

To: Hughes, Seamus

Subject: Non-Domestic Renewable Heat Incentive Scheme - De minimis limit issue

Seamus

I have had a look over the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012, and in particular regulation 23 which sets out the exceptions to the Department's duty to accredit.

The Department has indicated in correspondence that it is under the impression *that "because of the date restriction in regulation 23(b) Carbon Trust Loans ...would have to have been repaid before the RHI Regulations came into force...where the combination of benefit from the loan and the RHI payments would exceed the de minimis limits."*

Having looked closely at regulation 23, there does not appear to be anything in it which sets a date restriction as to when previous grants must have been repaid. Neither does regulation 23 deal on the face of it with the de minimis requirements. Regulation 23 sets out the exceptions to the Department's duty to accredit under regulation 22.

Sub-paragraph (a) provides the first limb of the exception. The Department does not have to accredit unless the applicant can say that –

- No grant from public funds has been paid in respect of any of the costs of purchasing or installing the installation
- No grant from public funds will be paid in respect of any of the costs of purchasing or

installing the installation

- No other public support has been provided in respect of any of the costs of purchasing or installing the installation
- No other public support will be provided in respect of any of the costs of purchasing or installing the installation.

Sub-paragraph (b) then goes on to provide an alternative to the above scenarios whereby, the Department may still accredit in those cases where a grant or other public support has been provided if-

- the aforementioned grant or support was paid to an installation which was completed and first commissioned between 1st September and the Regulations coming into force (Nov 2012), and has been repaid.

In this last scenario, the reference to the regulations coming into force relates to the date by which the installation in question must have been completed and commissioned. It is not connected to the grant or support and does not therefore provide any date restrictions in this regard, it merely states that the grant must have been repaid. Given that the regulations are constantly speaking, I understand this to mean the grant must be repaid prior to accreditation.

As far as I can see, the difficulty that the Department may face relates instead to state aid and the de minimis rule that is laid down separately in EC Regulations. You have also made reference to this in your instructions. For this reason I have discussed your file with Paul McGinn and he is going to have a new file opened on your behalf and intends to pass this on to the section in our office that specifically deals with state aid and would therefore have the appropriate specialist knowledge. All copies of our correspondence are therefore being passed up to Paul today and he will take the appropriate action. You will hopefully receive an e-mail to let you know which other solicitor is looking into your query for you in this regard.

I hope this is of some assistance to you.

Kind regards,

Nicola