By email – 28 January 2016

Dear Mark

We are a general asset finance company.

Whilst we are a relatively small player, we do finance a significant number of smaller sustainable energy installations and do encounter a high degree of confusion from end-user customers regarding the best type of finance facility they should use for the purpose.

Where equipment types that are eligible for RHI are concerned the relevant statute is very clear, in that the claimant must be the OWNER of the installation concerned, in order to legitimately claim RHI. A Lease does not achieve this and is not a similar financial instrument to Hire Purchase or Loan agreements, which would.

Some finance companies (who are perhaps less concerned with these details, but more concerned with obtaining the customer's business) encourage them in to leasing agreements. This may be because it is an easier cashflow sell, does not require the VAT up front, enables other fees to be taken and for the actual underlying price and interest rates to be hidden. Perhaps more importantly, under a lease, the actual owner can also potentially hold the end user hostage at the end of the agreement, because that user cannot do without either the grant or the equipment, but to then buy it from the actual owner he may have to then pay an unreasonable price.

In English law, a lease does not and cannot provide title, i.e. the end user will not own it and has no certainty that he ever could, therefore strictly speaking they are not eligible to claim RHI.

This 'mis-selling' is what causes customers to get thoroughly confused and to enter into finance agreements which are distinctly unfair to them and thereby leave themselves exposed to future problems.

Our suggestion to simplify matters for customers and to ensure they enter into the right type of transaction and to remove the problem from OFGEM's radar, is simple. OFGEM could just clarify and re-iterate in its own collateral, that the existing statute requires the RHI claimant to own the installation concerned and that it is the claimants responsibility to ensure this is the case before claiming.

Why should it matter to OFGEM?

From OFGEM's perspective, the grant is attached to the installation, so in our view, where a lease is concerned OFGEM should actually be paying the grant to the Leasing company which owns it, not the user, but probably don't even realise this, as they cannot see it.
Also, OFGEM will have no idea who might ultimately end up owning the equipment at the end of the lease period and it may well not be the original end user, nor even the initial finance company owner. Such deals are likely to end up in a mess and on that mess to be on OFGEM's doorstep.

These are problems which will not really surface on a grand scale for another few years, because most installations are financed over at least five years. In our view it would be better that OFGEM was at arms-length from such problems by virtue of having given simpler clear instructions in line with the statute so that fewer customers fall down this hole that we perceive.

No response is requested, but please do feel free if you have any questions yourselves.

We hope this assists your thinking.

Regards

Stephen Bassett

Stephen Bassett
Executive Director
Arkle Finance Ltd

Main: +44 (0)1933 304791