



Guidance for Community Groups on FITs and RHI when receiving public funding

This note provides a brief overview of the relevant rules that apply where community groups wish to claim feed in tariffs (**FITs**) or the renewable heat incentive (**RHI**) in relation to projects for which they have received public funding.

A separate guidance note is available that provides a brief overview of the State aid rules that apply to public funding to community groups.

General position

The legislation relating to both FITs and the RHI prohibits payment of FITs and RHI in circumstances where the recipient is also in receipt of public funding. Specifically, the legislation provides as follows:

"...the Authority must not accredit an eligible installation as an accredited FIT installation unless the FIT generator has given notice to the Authority that -

*(a) **no grant from public funds has been made in respect of any of the costs of purchasing or installing the installation;** or*

(b) where any such grant has been made, the grant has been repaid to the person or authority which made it."

In relation to RHI the prohibition is as follows:

"...the Authority must not accredit an eligible installation or register a producer of biomethane unless the applicant has given notice.... that, as applicable -

*(a) **no grant from public funds has been paid or will be paid in respect of any of the costs of purchasing or installing the eligible installation or any of the equipment used to produce biomethane for which the applicant is intending to claim periodic support payments;** or*

(b) such a grant was paid and has been repaid to the person or the Authority who made it."

In both cases a grant from public funds means a grant made by a public authority or by any person distributing funds on behalf of a public authority. This will include central government and local authority grants and other financial support administered by a third party on behalf of a public authority.

Therefore the general position is that where any public monies have been used to purchase any of the plant equipment or to pay for the installation of such plant / equipment then a community organisation will not be able to claim FITs or RHI (as applicable) unless the grant is repaid.

It is worth noting that the restriction relates solely to the **purchase** or **installation** of the equipment. Therefore if public funds have been used in order to carry out feasibility studies or to assist with business planning or similar, then the community group will be able to give the declaration to the Authority confirming that public funding has not been used for the purchase or installation of the equipment and therefore payment of FITs / RHI will be permitted.

This publication is intended for general guidance and represents our understanding of the relevant law and practice as at 25 March 2015. Specific advice should be sought for specific cases; we cannot be held responsible for any action (or decision not to take action) made in reliance upon the content of this publication.

TLT LLP is a limited liability partnership registered in England & Wales number OC 308658 whose registered office is at One Redcliff Street, Bristol BS1 6TP England. A list of members (all of whom are solicitors or lawyers) can be inspected by visiting the People section of this website. TLT LLP is authorised and regulated by the Solicitors Regulation Authority under number 406297.

FIT exemptions

There are a limited number of exemptions from the requirement to repay public grants and also claim FITs.

Permitted grants

There is an exception to the requirement to repay public grants if the grant is a "permitted grant". A permitted grant is defined as a grant made in respect of the reasonable additional costs of an installation to avoid or mitigate environmental harm where the amount of the grant does not exceed the amount of those costs. For example, this exemption would cover a grant provided to pay for additional costs incurred in protecting wildlife from the impact of a project.

Historic grants

There are also exemptions for some historic installations as follows:

- if an offer of a grant was accepted by the community organisation before 1 April 2010 and the installation was commissioned before 15 July 2009, a community organisation will be permitted to receive FITs without paying back the public funding;
- if an offer of a grant was accepted by the community organisation before 1 April 2010 in respect of an installation on a residential property and the installation was commissioned between 15 July 2009 and 31 March 2010, a community organisation will be permitted to receive FITs without paying back the public funding;
- if an offer of a grant was accepted by a community organisation before 1 July 2011 and the installation was commissioned before 1 October 2011, a community organisation will be permitted to receive FITs without paying back the public funding if the total funding falls within permitted de minimis limits. The European Commission's De Minimis Regulation permits organisations to receive up to 200,000 of public funding in any three year rolling period. The community organisation will need to calculate whether the public grant when added to the amount of FITs to be received comes within the 200,000 limit. If so, FITs may be claimed without paying back the public funding.

Conclusions

Community organisations need to think very carefully about the financial feasibility of projects where they wish to rely on public funding and also wish to obtain revenue from FITs/RHI. It may be possible to structure the use of public funding so that public funds are not used to pay for the purchase or installation of the equipment but are used solely for ancillary costs. If this is the case then there will be no prohibition on also obtaining FITs/RHI..

Please note that the position in the legislation reflects Government policy. There has been some talk of the fact that the prohibition on use of public funds and claiming of RHI/FITs is necessary in order to enable state aid compliance. This is not necessarily the case. However, DECC has indicated that there will be no change in this policy going forward, regardless of any arguments that can be put forward in relation to compliance with State Aid requirements.

This publication is intended for general guidance and represents our understanding of the relevant law and practice as at 25 March 2015. Specific advice should be sought for specific cases; we cannot be held responsible for any action (or decision not to take action) made in reliance upon the content of this publication.

TLT LLP is a limited liability partnership registered in England & Wales number OC 308658 whose registered office is at One Redcliff Street, Bristol BS1 6TP England. A list of members (all of whom are solicitors or lawyers) can be inspected by visiting the People section of this website. TLT LLP is authorised and regulated by the Solicitors Regulation Authority under number 406297.