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Legal Update
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Changes to Climate Change Agreements announced

Following its pledge in the 2011 Budget that the Climate Change Agreement (CCA) scheme will (subject to State Aid approval) be extended to 2023, the Government has just issued a consultation on how it proposes the new scheme will operate.

There will be a number of significant changes to the scheme including:

- a new form of CCA agreement;
- a lower eligible energy use threshold so that around 450 more participants will be able to join the scheme; and
- increased publication of industry emissions data.

Industry participants will need to ensure they are ready to negotiate their new agreements before the next phase of the scheme is launched in 2013. In this Legal Alert, we summarise the key changes outlined in the Government's proposals.

Background

CCAs enable energy-intensive industry in the UK to benefit from a 65% reduction in the Climate Change Levy (CCL) in return for meeting demanding energy efficiency targets. The CCA scheme was introduced in 2001 and the current CCA agreements will expire in March 2013.

Since 2001 a number of other energy efficiency schemes have been launched, including the the CRC Energy Efficiency Scheme (CRC) and the EU Emissions Trading Scheme (EU ETS). The Government has been conducting a wide-ranging review aimed at streamlining the green schemes affecting UK industry, reducing costs and improving competitiveness.

Proposals for change to the current CCA scheme

Key points outlined in the consultation document include:

- New legislation will guarantee that the existing 54 industry sectors can continue to participate in the CCA scheme. However, the scheme will **not** be open to any new sectors.
- Installations whose eligible energy use is more than 70% (rather than the current 90%) of the site's total energy consumption will be able to claim the CCL discount on their entire energy use. According to the Government, this change will mean that around 450 more participants will be able to obtain the CCL discount for the whole of their site.
- The CCA scheme's two tier agreement structure will be overhauled. In the future, there will be a single form of 'Underlying Agreement' between the target unit and a newly appointed Scheme Administrator (likely to be the Environment Agency in England). 'Umbrella Agreements' will be between the Scheme Administrator and the sector association.
- In a move likely to be welcomed by industry participants, Umbrella and Underlying Agreements will be simplified so that amendments can be negotiated more easily. Currently, these are lengthy and inflexible stand-alone agreements containing all the scheme rules. In the future, separate Scheme Rules will be operated by the Secretary of State and the Underlying and Umbrella Agreements will deal principally with the legal relationship between the relevant parties. A separate consultation is expected later in the year on the content of the Scheme Rules and CCA agreements.

- Using reputational drivers to encourage industry to achieve carbon savings has been at the heart of a number of UK sustainability initiatives (notably the CRC) in recent years. The new Scheme Administrator for CCAs will publish more emissions data for sites, lifting certain of the confidentiality protections under the current scheme.
- To reduce the complexity of the current scheme, target periods will be streamlined to commence on 1 January and aligned with the calendar year reporting basis under the EU ETS. Overlap with the EU ETS will be lessened in other ways, for example by changing the complex 'double counting rule'. Further guidance on the detailed changes to the scheme (e.g. the target and milestone periods) is expected to be developed next year.
- The UK Emissions Trading Scheme will be closed and a new scheme introduced to allow some participants to buy out any shortfall against their targets. The buy-out price would either be set at a flat rate of £12, linked to a CO2 equivalent based on the current CCL price for electricity, or linked to the carbon price set by the EU ETS. There will be an opportunity for participants to bank any over-achievement against targets for a later date.
- There will be a voluntary financial penalty system for minor infringements of the scheme and a new charging scheme to cover administration costs.

In a related development, the Government has proposed amendments to the CRC. Under this scheme most businesses with annual energy consumption of £500,000 or more are required to buy allowances (carbon credits) to cover that energy use. As it currently operates, organisations covered by CCAs have to include CCA target units when assessing whether or not they qualify for the CRC. If they exceed a given threshold, they have to register for the scheme and may then be able to claim one of the CCA exemptions. This is quite a complicated procedure and the Government has announced that, from Phase 2 of the scheme (which will start in April 2013), energy supplies provided to CCA facilities will not count (at all) for the purposes of assessing qualification for the CRC. This will be a welcome development for businesses operating under CCAs.

If you would like any further information about the above or assistance with implementing your new CCA agreements or the CRC, please contact:

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