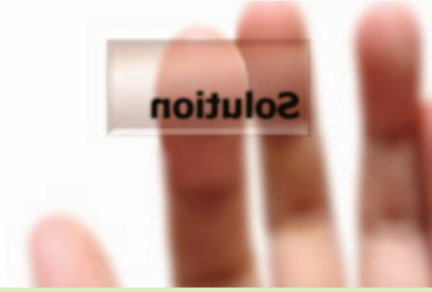
tap tenant assistance program



GUIDANCE NOTE The Carbon Reduction Commitment – Who will pay?

WHAT COSTS ARE INVOLVED?

The Climate Change Act 2008 (CRC) became law on 26th November 2008 and will impose a number of additional costs on the property industry. Not only will the property industry have to account for the cost of the allowances but also any charges associated with the management of the CRC scheme. When the CRC Scheme matures carbon allowances will be purchased annually and the amount required will be determined on forecasted future use. An annual reconciliation (recycle) will be made resulting in a returned payment back to the "counter party" of the electricity/gas contract based on actual usage of the previous year. This is known as recycling the payments. During the year the important months to remember are:

APRIL - Allowances are purchased, based on the forecasted usage.
OCTOBER - Recycled payments are returned back to the "counter party" on the energy contracts.

Establishing this cycle of payments and repayments will impact the "counter party's" cashflow in the first year as in April 2011 the "counter party" will be required to purchase allowances for the year April 2010 – March 2011 and allowances for April 2011 – March 2012. The first recycle payment will occur in October 2011.

It is anticipated the allowances will cost the "counter party" an additional 10% - 15% of the current energy spend which will add a considerable sum to the first year of the CRC Scheme's operation. Additionally the administration of the CRC Scheme will add further cost and it would appear the property profession is suggesting this cost will be met by the "counter party" to the energy contract. In almost all multi let properties will be the landlord/owner of the property.

RECYCLING PAYMENTS – HOW DO THEY WORK?

For the purposes of this scheme allowances are purchased to cover emissions for the period 1st April – 31st March and all forecasting and reconciliations refer to this period. The forecasting and reconciliation relates to the energy used and not the cost of energy consumed. As the CRC scheme is a motivational piece of legislation, aimed at encouraging the user to reduce the amount of energy consumed, it will have a direct effect on the amount of carbons emitted.

Each year an Annual Statement of usage will be recorded and submitted to DEFRA by 31 July and based on this information the Parent Company to the "counter party" will be judged on how well they have managed their energy consumption, and this will determine how much of the original allowance payment will be recycled back to them. This important issue will result in organisations focusing in on the use energy and is likely to see an increase in Energy Strategies being developed to reduce expenditure in this area of the business.
The scheme has deliberately been made transparent to "shame" bad performers by detailing their position in a league table. It further impacts the recycling payments as this position will result in the recycling payment being increased or reduced. With much of the property industry majoring on investment and development addressing any decrease in allowance back to the tenants will have an adverse impact on public relations. The treatment of the recycled allowances and the investment into advantageous schemes to reduce energy consumption in an investment portfolio will be important and could introduce a two tier property market for multi let property.

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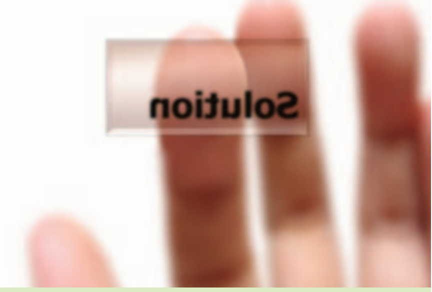

GUIDANCE NOTE The Carbon Reduction Commitment – Who will pay?

Careful consideration of the league position is needed in relation to multi let property and from this several questions arise: -

- In some situations the league position may well be affected by another property in the Parent Company's portfolio and this could affect the level of recycled payment.
- How does the Parent Company pass on the recycled payment?
- Is the process of returning the recycled payment fair, equitable and transparent?
- Will the Parent Company look to invest into a property's energy system and if so who will meet that cost?
- How will the recycled payment be treated on a property's sale/purchase?
- Does a property require a forecasted energy strategy?

WHO WILL MEET THE COST OF THE CRC SCHEME?

The property profession has no clear view on this at the moment and much of it will fall on the terms of the lease between the Landlord and Tenant. Several "Task Forces" are considering the impact of this legislation and the British Property Federation (BPF) is yet to publish their observations on the matter. However, early indications suggest this will be a "tax" that is likely to be passed down to the end user.

The performance of property will suffer should this levy be met by the Landlord, but also many tenants are struggling to meet rising energy costs looking to see a reduction in other areas of their business to compensate for the rising prices. This is a delicate situation that requires careful management.

How this is managed is very important and will rely on good interpretation of the situation and in many cases what is needed is a transparent practical approach. The sensitivity of passing on additional costs in this current climate can not be underestimated especially in a climate that is seeing pressure on Landlords to reduce costs.

Should you need to contact our advisers about anything contained in this note then please feel free to call us on 0800 865 44 50

This Guidance Note is not a substitute advice on specific matters and should not be seen as providing legal advice.