



18 June 2019

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Dear

Freedom of Information Request 06/2019

Thank you for your letter of 20 May 2019 requesting information which we are responding to under the Freedom of Information Act (FOIA).

The questions you asked were as follows:

1. How many employers categorised under 'Construction Labour Agencies/Payroll Provider' have appealed against the 2016 Levy Assessment, the 2017 Levy Assessment and the 2018 Levy Assessment.
2. What is the total value of levy under appeal for each of those years 2016, 2017 and 2018?
3. Does your response say that all 180 employers registered in this category are assessed to positive levy?
Of the 54 employers in this group who received their first levy liability post the 2015 levy changes, how many were already registered but assessed to zero levy in previous years?
4. Colin Chaplin identified 170 employment agencies were assessed for levy in 2011 with 34 being assessed to positive levy. Your response states that 126 paid levy in 2015. Please infill the missing years between 2011 and 2015 and explain the huge increase in the number of agencies assessed to positive levy over that period prior to the 2015 levy changes.
5. Have any of the Commercial Contractors brought to your attention by [redacted] umbrella or other payroll companies been found to be out of scope of levy? If so, how many?
6. Given that [redacted] has brought to your attention Commercial Contractors who make more than one billion pounds worth of payments to net paid CIS construction operatives each year, please explain why the levy take from this group at £1.4m is so low?
7. What steps do you have in place to make sure that the levy assessment officers carrying out levy assessment/levy and grant verification visits are not susceptible to corruption or bribery?
8. Are those carrying out levy assessment/levy and grant verification visits full time employees of CITB or self-employed consultants?
9. Please provide details of the formal process your officers go through when deciding whether or not an employment agency, umbrella company or Commercial Contractor falls within scope of levy.
10. In 2012/2013 Colin Chaplin identified that the removal of the labour only offset would increase the number of agencies assessed to positive levy from 34 to 117, and the levy take would be £3,328,337. Please explain why five years on with a greater use of agency labour across the industry, the actual levy take is less than half of that figure.



11. The figures provided by you reveal that _____, if found to be within scope of the levy, would pay six times more than the entire rest of the agency sector combined. Some of the agencies registered with CITB are household names with turnovers that dwarf _____. What is the largest levy ever paid by an employment agency/payroll provider in a single levy year?
12. Without revealing the identity of the employer concerned or even the year in which the levy was paid, what is the largest levy ever paid by an employer in any sector in a single levy year?
13. Unless the Commercial Contractors known to CITB have formally appealed their levy assessments, the levy income from them should be in excess of £10m/year. Please explain why in 2017 you only collected £1.4m.
14. The last paragraph of your previous response was inaccurate. It described companies 'operating in the same way as _____' and 'like _____'.
To avoid any confusion, Commercial Contractors do not operate 'like _____'. They enter into contracts with their clients to provide 'Construction Services'. They carry public and employers liability insurance as contractors providing construction services, and unlike _____ they claim not to be intermediaries simply dealing with tax, payments and auditing.
Please confirm you understand the difference between _____ Contract Services Ltd and a Commercial Contractor. If, as we expect, _____ is found by the courts to be out of scope of levy, the successful arguments and principles established in our case would not apply to Commercial Contractors and you should be collecting levy from them.

Our Response

1. How many employers categorised under 'Construction Labour Agencies/Payroll Provider' have appealed against the 2016 Levy Assessment, the 2017 Levy Assessment and the 2018 Levy Assessment.
1 employer other than _____ has lodged an appeal with the Employment Tribunal Service against 2016 assessment.
2. What is the total value of levy under appeal for each of those years 2016, 2017 and 2018?
As it is likely to be easy to identify the 1 employer, we are unable to advise this.
3. Does your response say that all 180 employers registered in this category are assessed to positive levy?
No, it states that they are in-scope and leviable employers.
4. Of the 54 employers in this group who received their first levy liability post the 2015 levy changes, how many were already registered but assessed to zero levy in previous years?
None of the 54 employers were registered or assessed to a zero levy liability prior to the 2015 levy changes
5. Colin Chaplin identified 170 employment agencies were assessed for levy in 2011 with 34 being assessed to positive levy. Your response states that 126 paid levy in 2015. Please infill the missing years between 2011 and 2015 and explain the huge increase in the number of agencies assessed to positive levy over that period prior to the 2015 levy changes.

See above, we are not saying that the 126 'paid' a levy but that they were liable for levy assessment.

Year	Registered	Assessed to Positive Levy
2011	170	34
2012	156	29
2013	152	38
2014	160	39
2015	158	42
2016	163	110
2017	161	116
2018	164	119

Note: Please note: whilst the table below shows 164 in-scope registered employers liable to 2018 levy assessment (whether a nil or positive assessment), we currently have 180 in-scope registered employers some of whom will have a first levy liability from 2019 Levy.

We assess those employers we have on the register and have levy returns at the time the levy assessment is raised.

6. Have any of the Commercial Contractors brought to your attention by Hudson, umbrella or other payroll companies been found to be out of scope of levy? If so, how many?

We have reviewed all those which you have notified to us over the last few years. As we have not keep a central list of those which you have notified and they have not been notified in a single list, it is not information which we hold.

7. Given that Hudsons has brought to your attention Commercial Contractors who make more than one billion pounds worth of payments to net paid CIS construction operatives each year, please explain why the levy take from this group at £1.4m is so low?

This is not a question we can answer under FOI as it asks for opinion rather than information we hold. We assess those employers we have on the register and have levy returns at the time the levy assessment is raised. We continually maintain a register of employers in the construction industry.

8. What steps do you have in place to make sure that the levy assessment officers carrying out levy assessment/levy and grant verification visits are not susceptible to corruption or bribery?

CITB has an Employee Conduct policy which requires all staff to declare conflicts of interest and any gifts made to individuals.

References are obtained ahead of offering roles to individuals and all new staff go through an induction process at the start of their employment which includes an overview and sign up to corporate policies, including Business Ethics and Counter Fraud Policy and Procedures.

CITB carries out a review of the team working in all of its Quality and Verification areas through regular one to ones with line management.

9. Are those carrying out levy assessment/levy and grant verification visits full time employees of CITB or self-employed consultants?

All are employed directly by CITB.

10. Please provide details of the formal process your officers go through when deciding whether or not an employment agency, umbrella company or Commercial Contractor falls within scope of levy.

We don't have a separate process by main activity. We have a levy registration process whereby those we identify as in the construction industry are issued with a levy registration questionnaire for completion and return. Once returned that form is received by CITB and the main activity is clearly in Construction their record will be updated as in-scope. If further clarification is needed it will be escalated to the Levy Appeals team who will engage with the employer to clarify the main activity in accordance with the Levy Order and Scope Order.

11. In 2012/2013 Colin Chaplin identified that the removal of the labour only offset would increase the number of agencies assessed to positive levy from 34 to 117, and the levy take would be £3,328,337. Please explain why five years on with a greater use of agency labour across the industry, the actual levy take is less than half of that figure.

This is not a question we can answer under FOI as it asks for opinion rather than information we hold. We assess those employers we have on the register and have levy returns at the time the levy assessment is raised. We continually maintain a register of employers in the construction industry.

12. The figures provided by you reveal that _____ if found to be within scope of the levy, would pay six times more than the entire rest of the agency sector combined. Some of the agencies registered with CITB are household names with turnovers that dwarf _____. What is the largest levy ever paid by an employment agency/payroll provider in a single levy year?

The highest Levy paid by an employer under main activity code 'Construction Labour Agencies/ Payroll Provider' is £223,676.

13. Without revealing the identity of the employer concerned or even the year in which the levy was paid, what is the largest levy ever paid by an employer in any sector in a single levy year?

The highest Levy paid by any individual registered employer is £3,509,152. Please note that this does not account for ultimate holding companies. Looking at ultimate holding companies, under whose umbrella are multiple registered employers, the highest Levy paid by one is £7,704,460.

14. Unless the Commercial Contractors known to CITB have formally appealed their levy assessments, the levy income from them should be in excess of £10m/year. Please explain why in 2017 you only collected £1.4m.

This is not a question we can answer under FOI as it asks for opinion rather than information we hold. We assess those employers we have on the register and have levy returns at the time the levy assessment is raised. We continually maintain a register of employers in the construction industry.



15. The last paragraph of your previous response was inaccurate. It described companies 'operating in the same way as [redacted] and 'like [redacted]

To avoid any confusion, Commercial Contractors do not operate 'like [redacted]'. They enter into contracts with their clients to provide 'Construction Services'. They carry public and employers liability insurance as contractors providing construction services, and unlike [redacted] they claim not to be intermediaries simply dealing with tax, payments and auditing.

Please confirm you understand the difference between [redacted] and a Commercial Contractor. If, as we expect, [redacted] is found by the courts to be out of scope of levy, the successful arguments and principles established in our case would not apply to Commercial Contractors and you should be collecting levy from them.

We continually maintain a register of employers in the construction industry and will continue to assess each employer based on the information which we hold about them and the information that they provide to us and in accordance with the Levy and Scope Orders.

If you are unhappy with this response, or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied, then you may apply for an independent internal review by contacting Adrian Beckingham, Corporate Performance Director, CITB, Bircham Newton, King's Lynn, Norfolk, PE31 6RH or email adrian.beckingham@citb.co.uk.

If you remain unhappy following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Further details of the role and powers of the Information Commissioner can be found on the Commissioners website, <https://ico.org.uk/>

Yours sincerely

Rachel Brooks
Information Risk & Data Governance Manager