

CITB Levy changes ahead – formal notice of how the Levy is likely to change

There are proposals to simplify the Levy system in response to feedback from customers - who have told the CITB that calculating Levy can be complicated.

Feedback from employers suggests:

- The Levy basis needs to be simpler.
- The Levy Return needs to be easier and quicker to complete with no additional record keeping.
- Instead of raising a Levy on labour-only sub-contract payments (LOSC), CITB should consider a system based on PAYE and closer alignment with the HMRC Construction Industry Scheme (CIS) and specifically, the monthly CIS300 returns.

As a result of this feedback, the Levy Working Party (LWP), a small group of industry representatives, has spent 18 months working on options to simplify the system.

Objectives of Levy Simplification

To develop the Levy Simplification proposal the LWP has applied some strict objectives:

- The outcome should be a simpler system.
- CITB should maintain current Levy income levels – not increase them.
- The majority of employers should end up paying roughly the same amount of Levy as they currently do.
- The existing PAYE Levy rate (of 0.5%) should be maintained.
- The final proposal must be endorsed by industry.
- The final proposal must be legally sound.
- The research, consultation and development are not bound by a deadline: the priority is getting it right first time.

The Levy Simplification Proposal

The LWP has recommended a simplified system based on payments to sub-contractors who are paid net of tax (referred to as Net CIS from here on) as follows:

- Retain PAYE Levy at 0.5%.
- No longer raise Levy on payments to labour-only sub-contractors.
- Introduce a Levy on payments made to Net CIS sub-contractors.
- Employers simply declare the total tax deducted from sub-contractors as reported on their monthly CIS300s.
- The tax figure would be automatically grossed up by CITB using the current CIS tax rate (20%). Levy would then be calculated on the resulting sum. This represents the labour element of the sub-contract payment.
- Only payments made through the PAYE or CIS systems would be liable to Levy.

- Removal of the offset mechanism. This is currently available to employers carrying out labour-only contracts for other employers in the construction industry. It allows labour-only payments received (LOPR) to be offset against the Levy liability for some employers in order to prevent Levy being paid twice on the same work. Removal of this mechanism will simplify the process and spread the payment of Levy more widely and, in the view of the LWP, more equitably.
- The option to reduce the impact of the proposal, in the short term, for employers facing increases in Levy as a result of the changes is being investigated. For example a transitional discount could be applied.

Benefits

The many benefits of this proposal include:

- **A far simpler system for employers** - Straightforward identification of figures required to complete the Levy Return.
- **No additional record keeping** - Employers will simply use records kept for HMRC purposes to identify both PAYE and relevant sub-contractor figures.
- **Erases the uncertainty of the current system (LOSC)** - There is no ambiguity about the status of a sub-contractor; they are either Net or Gross paid, so it is fact based rather than open to interpretation.
- **Less time consuming to complete a Levy Return** - Therefore cheaper to complete, possibly reduced accountant/bookkeeper costs, resulting in more value added time becoming available.
- **Greater compliance** - Less scope for employers to get the Levy Return wrong and an easier and quicker verification process, resulting in a more level playing field for all.

Getting it right

There are many stages to go through before this proposal can be implemented, including fully understanding the impacts of the proposal. Research currently shows that the majority of employers would see either no change or a reduction in their level of Levy payments and with almost 90% of the rest experiencing no more than a 5% or £500 increase.

The CITB Board has endorsed the proposal going out to wider industry consultation. This began in November 2013 and is expected to last approximately six months, including in-depth discussions with employers and federations as well as surveying employers for their views. ■

HMRC makes its own announcement on passing on CITB Levy

The Construction Industry Training Board is an industrial training board responsible for promoting vocational training in the construction industry. It is empowered, by statute, to impose a Levy on employers or contractors in the industry to fund its operations.

HMRC have observed that many contractors seek to recoup this from their sub-contractors in the form of a deduction made from the 'Gross amount of payment' shown on a contractors monthly return. Historically HMRC have accepted this practice and included it in their guidance.

They have now reviewed the practice and concluded that it can no longer be supported as it is not a part of the current or past CIS legislation. This change also has implications for VAT. Customers will need to be aware that the value of the sub-contractor's supply for VAT purposes will not be reduced by CITB Levy deductions in the future. This change will be effective from 6 April 2014. Customers who use payroll software for CIS will need to ensure this is reflected in any new updates.

Further information about the CITB Levy is available at www.citb.co.uk/levy-grant/frequently-asked-questions/#6

What does this mean?

It means that if your firm wish to continue the practice of deducing CITB Levy from any payment to a sub-contractor, the sub-contractor must be forewarned because it is shown as part of your contractual terms that an amount equal to CITB Levy will be deducted from any calculation of money due under a contract. The gross sum payable under the contract - the amount for VAT and CIS deduction - is then the lower amount.

If you intend to continue with the practice of passing on the Levy to sub-contractors you may need legal advice on the wording of your contractual terms. If your contractual terms are not correct you are liable to HMRC saying that they expect VAT and CIS to be calculated and paid using the amount before the deduction of "passed on" Levy. ■

**If you have any queries regarding any of the items mentioned in this edition of newslines please contact Liz Bridge.
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Remember - NIC saving about to start

On 6 April 2014 the Employment Allowance will be introduced saving most employers £2,000 per annum of employer National Insurance contributions (or their full employer liability where this is less than £2,000). There are various exceptions, one relating to personal service (IR35) companies. Where such a company pays actual salary, the associated employer NIC liability is eligible for the Allowance. However, the liability in respect of a deemed payment at the end of the tax year is not eligible.

Both the preceding sentences are on the basis of the current drafting of the National Insurance Contributions Bill, which is not yet enacted. ■

New legislation to collect PAYE from all labour providers starts April 2014

As I have previously warned, from April 2014 all firms whose trade is to provide labour to others - whether they think of themselves as an agency or a specialist sub-contractor - will have to provide new returns to HMRC of all the individuals they provide to others **and** they must account for PAYE and NIC on the wages paid to those individuals whether their firm pays them or whether they are paid by others.

The only exception is if the workers supplied are already paid and taxed under PAYE, or if when they work on site they are not and could not be supervised, directed or controlled.

If you do not know how an individual worker working for you is engaged you do need to be sure that it is not self-employment. If it is self-employment, the costs of using that individual are likely to rise after April. If you act as an agency and pay workers who supply their labour via personal services companies (PSC) you will need to be confident that the PSC is actually paying its PAYE. ■

Real Time Information reports to be amended

HMRC have made updates to the guidance for employers on Real Time Information (RTI) reporting.

- A late reporting reason can be entered on a full payment submission that is sent in late.
- The first 2014/15 submission can be made any time after 6 March 2014 (for those going on holiday).
- Bank account details can be provided on an employer payment summary so that repayments will be quicker.
- There will be new fields on the earlier year update (EYU) for 2013/14.
- A new online appeal facility will be introduced in 2014/15 and there will be better help on what counts as a reasonable excuse for late filing. There will also be more information for employers exempt from filing or unable to file online. ■

National Minimum Wage - higher penalties for failure to pay

Employers who pay their workers less than the National Minimum Wage will face an increased penalty of up to £20,000. Under current legislation such employers must pay the unpaid wages and a financial penalty calculated as 50% of the total underpayment for all workers found to be underpaid. The maximum penalty an employer can face is £5000 and it can be reduced by 50% if the unpaid wages are paid within 14 days. The new penalty will be 100% of unpaid wages with a maximum of £20,000. ■

Tips arising from cases going to court

Flat rate scheme users – be very careful if you are asked to do zero-rated work like housebuilding. This might mean it is better to leave the flat rate scheme and you must seek advice.

A housebuilder built retirement flats which also had furnished communal areas. It charged purchasers a small sum as part of the purchase price 'towards the cost of the communal fittings'. It was held that there was a single supply so all receipts were zero-rated and that the VAT incurred on furnishing the communal areas could be recovered. ■