



**STATUTORY LEVY
DECLARATION
GUIDANCE NOTES
2018/19**



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INTRODUCTION

About the ECITB

The ECITB is a statutory body which acts on behalf of the engineering construction industry helping employers to attract, develop and qualify the people needed to meet work demands and create a sustainable and competitive workforce. In order to fund these objectives and activities, the ECITB has the statutory power and duty to assess and collect a training levy from all employers who operate engineering construction establishments.

To enable the ECITB to provide for the training needs of the engineering construction industry, under the Industrial Training Act, all 'establishments' operated by employers which are wholly or mainly engaged in engineering construction activities are registered with the ECITB and annually assessed for industrial training levy.

Employers who pay the training levy but choose not to become directly involved in training are still helping maintain the industry's training and recruitment levels, as well as ensuring a safe and competent workforce.

Legislation

Three pieces of legislation underpin and govern the operations of the ECITB:-

- The Industrial Training Act 1982 which sets out the purposes and powers of Industrial Training Boards [The Act].
- The Industrial Training (Engineering Construction Board) Order 1991 [the Board Order] which defines the activities of the engineering construction industry.
- The Industrial Training Levy (Engineering Construction Board) Order [the Levy Order]. This is passed periodically and defines the rates of training levy to be applied and authorises the ECITB to raise levies.

This legislation may be viewed in the Training Levy section of the ECITB's website.

The ECITB is empowered to collect information relating to each employer's workforce to enable it to calculate any levy due, to understand and address skills needs, and to meet other governmental requirements.

What the Training Levy Supports

The levy supports the engineering construction industry in a number of ways. It:-

- Ensures that employers who train and qualify their people can be supported by grants.
- Shares the cost of training so that those who don't regularly train subsidise those who do, to drive up standards in the industry overall.
- Ensures that specialist trades get the training provision they need.
- Supports employers taking on new entrants across Great Britain.
- Supports high profile campaigns to improve the image of the engineering construction industry.
- Ensures that investment in skills and training is maintained during the peaks and troughs of industry output to help minimise skills gaps and shortages.

ECITB Services & Grants

All employers operating establishments on the ECITB's Register of Leviable Establishments can use ECITB services and are eligible to claim grants, even those who do not pay a levy. However, employers who have not submitted their annual Statutory Levy Declarations by the deadline date or whose levy payments are overdue may have services or grant payments withheld



Statutory Levy Declaration

Each year the ECITB requires employers to complete a Statutory Levy Declaration relating to its leviable establishment(s). The Secretary of State has approved the ECITB's right to obtain this information and, if necessary, to audit the supporting records. The information declared in the declaration enables the ECITB to assess whether or not training levy is payable.

In June, employers will receive a request to complete the levy declaration in respect of the base period that has just expired. The form must be completed and returned to the ECITB by 31 August. If the declaration is not received by this date, the ECITB may withhold services until the declaration is received.

Employers who are exempt from paying the training levy because their emoluments and labour-only payments fall below the exemption levels in place (see page 15) are still required to complete the declaration, and can take advantage of the services that the ECITB provides.

It should be noted that failure to provide the requested information is a criminal offence. Any director, secretary, manager or other officer of a company who is responsible for the failure to submit the information may be personally liable in criminal proceedings.

All information declared in the Statutory Levy Declaration is kept confidential and will only be disclosed if there is a legal requirement to do so.

Guidance is set out in Appendices 1 & 2.

Why these Guideline Notes have been produced

These notes have been produced to:-

- Explain the main principles and concepts underpinning the legislation and the application of the levy.
- Assist employers with the completion of the Statutory Levy Declaration.
- Explain the ECITB's approach to reviewing an employer's activities.
- Provide employers with contact details for help and advice on the industrial training levy and whether or not an employer is "in scope" to the levy.



WHAT IS AN ESTABLISHMENT?

Where a company or business organisation operates as one unit, it is probably an 'establishment'.

Alternatively, where a company or business organisation is structured in such a way that it operates as different units, an 'establishment' could be any separate, identifiable part of the business (for example, division, subsidiary or associated company in a group, business stream, project group, etc). A separate identifiable establishment could mean a part of the business that is geographically separate from other premises or has a separate management structure, or produces separate profit and loss accounts, etc.

It should be noted that:-

- Employers are for the most part Limited companies, but could be partnerships, sole traders or other entities.
- An employer can operate one or more separate establishments.
- Often the entire organisation of an employer (as opposed to parts) constitutes an establishment. In such cases, the employer and the establishment are one and the same.

In determining these matters, the ECITB will have regard to the organisational structure of the employer under consideration.

If the establishment is wholly or mainly engaged in principal and related engineering construction activities, it is a 'leviable establishment'.

The ECITB maintains a Register of Leviable Establishments. This identifies employers which operate leviable establishments, and the establishments themselves.

IF THE ESTABLISHMENT IS WHOLLY OR MAINLY ENGAGED IN PRINCIPAL AND RELATED ENGINEERING CONSTRUCTION ACTIVITIES, IT IS A 'LEVIABLE ESTABLISHMENT'

ENGINEERING CONSTRUCTION ACTIVITIES

The following is a summary of the activities which are described as engineering construction activities. Establishments which are wholly or mainly undertaking principal and/or related activities are leviable so long as the activities are carried out in Great Britain (England, Scotland and Wales) or its offshore waters. A full definition of engineering construction activities is shown at Schedule 1, paragraph 1. of the 1991 Board Order. A copy of the Order is available in the Training Levy section of the ECITB's website.

Principal Activities

1	Assembly, construction, dismantling, erection, fabrication, fitting, inspection, installation, maintenance, repair, replacement or testing on site	of any chemical, electrical or mechanical apparatus, machinery or plant of a chemical works, gas making or gas treatment works, nuclear or thermal power station, nuclear waste reprocessing site, hydro-electric station, oil refinery or oil terminal	or of other apparatus, machinery or plant concerned with the exploration for or exploitation of oil or gas, metal smelter, steel mill, paper mill or brewery, the processing and production of human or animal food, pharmaceutical, cosmetic and petrochemical products, cement, concrete bricks, distilling alcohol or other products, glass, paper and sewerage and any other installation involving the processing of any product.
2	Planning, designing, commissioning or procuring by way of contract or otherwise of any apparatus, machinery or plant mentioned at 1 above	carried on in association with any activity mentioned at 1 above	or in association with any project for such an activity.
3	Supervision of the assembly, construction, dismantling, erection, fabrication, fitting, inspection, installation, maintenance, repair, replacement or testing of any apparatus, machinery or plant mentioned at 1 above when carried out on site.		
4	The erection and/or dismantling of the main framework of a building or other structure that is made of steel or other metal where the building or structure is erected or dismantled on any site (not necessarily on a site where a product is processed). Types of structures erected or dismantled could include, for example, supermarkets, warehouses, stadiums, agricultural buildings, office blocks, etc.		
5	The hiring out by an employer of individuals in his employment to employers who are engaged in any of the activities listed above where the individuals being hired out will be engaged in such activities.		

Related Activities

The following activities are related activities provided they are incidental or ancillary to the principal activities of the engineering construction industry.

- Research, development, design or engineering construction drawing (either created by hand or by computer related software) or dynamic simulation.
- Buying, selling, hiring out, testing (including NDT), advertising, packing, distribution, transport or any similar operations.
- Operations of a kind performed at office premises or laboratories, or at stores, warehouses or similar places.
- Cleaning, washing or garaging vehicles or carrying out running repairs or minor adjustments thereto.
- Training of employees or apprentices.

Other Activities

Provided an establishment is wholly or mainly engaged in the principal and related activities of the engineering construction industry, the following activities are also engineering construction activities.

- Any activities undertaken in the administration, control or direction of an establishment or establishments.
- Any activities of industry or commerce.

WHOLLY OR MAINLY ENGAGED IN ENGINEERING CONSTRUCTION

When considering whether an establishment is wholly or mainly engaged in principal and related engineering construction activities, the ECITB will primarily give consideration to the balance of activities of the establishment's workers.

If 50% or more of the establishment's total workforce is engaged in principal and related engineering construction activities, then the establishment is mainly engaged in engineering construction activities and ALL workers in the establishment are required to be declared to the ECITB and may be subject to the levy.

Full time equivalent

When looking at any workers who are engaged in more than one activity, the ECITB will calculate the Full Time Equivalent. For example, if there are 10 workers each engaged for 60% of their time in welding pipework on a power station and 40% of their time fabricating in a workshop at the establishment's own premises, the full time equivalent will be that 6 workers are engaged in principal engineering construction activities and 4 workers are engaged in other activities of industry or commerce.



BASE PERIOD

The "base period" is the period commencing on 6 April and ending on 5 April.

The ECITB must assess the amount of levy to be paid in respect of each leviable establishment of an employer for each base period. For an employer to be assessed for levy, it needs to have operated an engineering construction establishment that traded for at least 27 weeks (not necessarily continuous weeks) during the base period or for at least half of the period between when the establishment commenced trading and the last day of the base period.

Where an establishment commences business during the base period, it will be a leviable establishment if its workers were wholly or mainly undertaking engineering construction activities for more than half of the period from the commencement of activities to the following 5 April.

In cases where an employer ceases trading during the base period, whether or not it is assessable for levy will depend on whether the establishment operated for more than 27 weeks during the base period.

If ownership of a leviable establishment changes, the person who is the owner or has responsibility for the establishment as at 31 December following the based period will be the person liable to pay any levy which is due in respect of the base period.



EMPLOYEES AND LABOUR-ONLY CONTRACTORS

Training levy is payable (subject to exemption levels shown on page 15) in respect of employees and labour-only contractors which worked in a leviable establishment during the relevant base period. This section provides further information concerning employees and labour-only contractors, and the payments which should be declared.

Employees

Employers must declare the total number of ALL full and part-time employees who were employed by the establishment

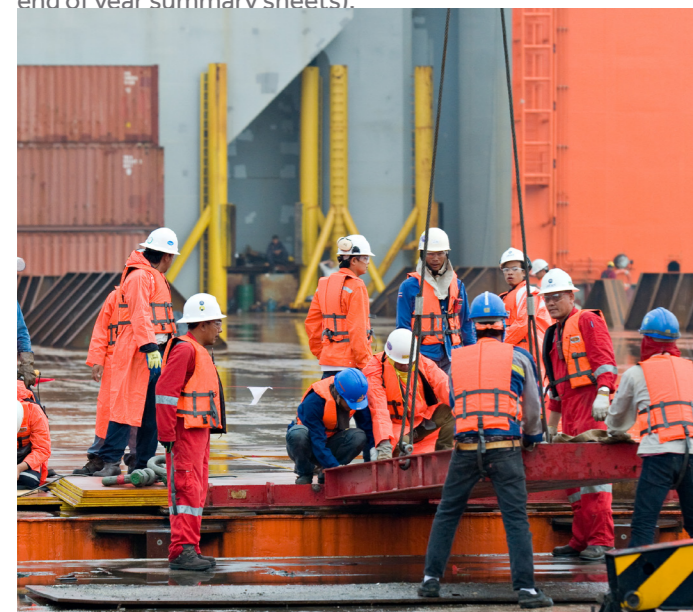
at any time during the year ending 5 April provided that they were working in Great Britain.

Total Gross Emoluments

Employers must declare the total gross emoluments paid to employees during the year ending 5 April.

By 'total gross emoluments' we mean the total payments made before deductions to all employees (including trainees). This includes salaries, fees, wages, bonus and incentive payments, payments to trainees, taxable redundancy payments, statutory sick and maternity payments that appear on P60s, allowances (such as travel and accommodation allowances which are paid as part of salaries or wages) and any gratuities or other profits or incidental benefits of any kind obtained by an employee other than pension contributions.

The information needed can normally be found in your PAYE tax deduction cards (P11 deduction working sheets or P14 end of year summary sheets).



Labour-only contractors

Employers must declare the total number of ALL full and part-time persons engaged under labour-only agreements or arrangements in the establishment at any time during the year ending 5 April, provided that such individuals were mainly working in Great Britain. The type of activity being performed under the agreement or arrangement is not relevant - the workers concerned have to be declared even if they are not undertaking principal or related engineering construction activities.

Legislation defines labour-only contractors as those who are provided under an agreement or arrangement where the purpose is wholly or mainly the provision of services (including any incidental use of tools) rendered by a person or persons. Labour-only as a term can be slightly misleading, as it includes agreements or arrangements that are "mainly" labour as well as "wholly" labour. We take "wholly or mainly" to mean that labour is more than 50% of the cost of the agreement or arrangement.

Please note how broad the definition of labour-only is in the legislation. In addition to "agreements", a labour-only "arrangement" is referred to in the definition. This includes a separate part of a contract or a trade custom or practice.

Each case has to be considered on its own facts, and it is difficult to draw up definitive rules for working out exactly when something is and when something is not "labour-only". What follows below should be treated as guidance only. If you are unsure of any given case, please contact the ECITB's Levy and Scope team.

Insofar as the ECITB is concerned, the two key features of a labour-only agreement or arrangement are that:-

1. The contractor providing the services does so under your control or direction, either directly or through a contractor's management. Cases which ordinarily would be labour-only include:-
 - Staff provided by an agency, no matter how short the engagement.
 - Labour-only sub-contractors.
 - Self-employed individuals (i.e. those who choose to manage their taxation affairs as "Schedule D" or "IR35 contractors").
 - Individuals who provide their services through intermediary companies that may be owned by the same or associated individuals.

Project work, where it is left to the contractor to organise its own management and resources to ensure that project requirements are met, may not be labour-only, if you did not have control and direction over the workers.

2. It should be wholly or mainly the provision of services. Accordingly, the provision of something other than services under a contract, for example, the provision of plant or materials, would not exclude the agreement or arrangement being labour-only provided that the services are the main element of the requirement under the agreement or arrangement. Thus, agreements are considered to be labour-only in nature where tools or incidental materials, plant and equipment are provided.

Given those principles, the following can be difficult cases:-

- Where, in addition to the provision of labour services, the contractor is required to provide substantial quantities of main materials; and/or
- Where, in addition to the provision of labour services, the contractor also has to supply plant (rather than just tools) or specialist equipment to get the job done.

We give some examples on pages 12 and 13, but you should start by asking yourself the following questions:-

Did you control and direct the workers directly or indirectly?

If the contractor is supplying the necessary materials and equipment to get the job done, it may make it more likely that they are controlling and directing the workers in order to achieve completion of a project, for example, supplying the items for and constructing an item of plant, rather than labour working under your direct or indirect control.

Was the cost wholly or mainly attributable to labour, i.e. over 50%?

Are the materials so substantial and/or the equipment so substantial or specialist that they (either individually or taken together) are the main part of the cost of the contract rather than the labour? If so, there is no need to declare the workers in your Return.

Where the contract price is a fixed sum, is it impossible to identify or estimate the part of the cost attributable to the labour cost of the work? If it is not possible to conclude that labour is the main element (i.e. over 50% of the total cost), there is no need to declare the workers in your Return. You may have to use common sense to resolve that issue. There will be some cases where the answer is obvious even if there is no separate itemisation on the invoice.

The examples on pages 12 and 13 illustrate the principles outlined above, and provide guidance on how to determine whether or not agreements or arrangements are labour-only in character. Please note that the skill or activity within each example is not determinative of whether the item is labour-only or not – all the relevant circumstances have to be taken into account.

Total Gross Payments

Employers must declare the total gross payments paid in respect of the services provided under labour-only agreements or arrangements during the year ending 5 April. VAT added to such payments should NOT be included. Declared payments must be the gross value (i.e. before any deductions are made). It should be noted that it is the service element of the labour-only payment that should be declared. Any part of the payment that relates to incidental materials, or the provision of plant and specialist equipment, or the reimbursement of travel and subsistence costs incurred by the contractor should be removed from the amount included as labour-only.

Labour-only receipts

To ensure that levy is not paid twice in respect of the same workers, if any of the establishment's employees or labour-only contractors have been hired out to other employers to work in establishments which are wholly or mainly engaged in engineering construction activities in Great Britain, then the payments received in respect of these workers (labour-only receipts) will be taken into account when calculating the amount of levy due. Employers wishing to declare any labour-only receipts should contact the ECITB's Levy and Scope team for a Labour-only Receipts Declaration form.

EMPLOYEES AND LABOUR-ONLY CONTRACTORS

Examples of what is a labour-only agreement or arrangement

Accounts clerk or administrator (self-employed)	Paid on invoice for two days work per week, undertaken at home. Duties include, updating accounts, running the payroll and completing monthly and annual HMRC documentation. The worker provides paper and return forms for the work.	The work is under your control and direct supervision and, even if the paper and forms are not separately costed in the invoice, it is obvious that labour is the main expense.
Apparatus, machinery or plant maintenance technician	Contracted to carry out general maintenance and monitoring of a heat exchanger at an oil refinery under your direct supervision. The oil refinery provides any materials required. The technician provides the tools to perform the work.	The work is under your control and direct supervision. Discounting tools, there is no element to the contract other than labour, so it plainly falls within the definition of labour-only.
Cleaning services	Sub-contractor supplying cleaners only who perform their duties under the control and direct supervision of your staff.	
Design engineers, draughtsmen, CAD operators	Providing you with professional services. Some of the hired-in workers report to other hired-in workers supplied under the same agreement, but all workers are under your ultimate direction and control.	
Instrument and control technician	Contracted to install pressure sensors, thermometers and flow meters. The technician supplies the brackets and fixings. You supply the sensors and meters (main material).	
Labour / Employment agency	Provides 12 mechanical fitters and 6 catering assistants to an engineering construction establishment for a period of 6 weeks. The mechanical fitters arrive on site with their own hand tools and the catering assistants go to work in the staff canteen; both are under your management.	
Lagging sub-contractor	Contracted to insulate pipework and tanks at a pharmaceutical plant. The sub-contractor supplies all ties and incidental fixings. You supply the lagging (main material).	The contract does not require the substantial use of plant or specialist equipment or the provision of main materials by the sub-contractor.
Pipework fitter	Contracted to install a pipe spool. The fitter supplies all fixings. You supply the pipe spool (the main material).	The contract does not require the substantial use of plant or specialist equipment or the provision of main materials by the fitter.
Maintenance contractor	Contracted to paint items of apparatus and plant in a protective coating. The contractor supplies the paint and the equipment required to carry out the work. The paint used is inexpensive and the equipment used is rudimentary.	It is self-evident that the main cost is labour and so the agreement is labour-only.
Plant strip out sub-contractor	Contracted to remove all apparatus and equipment from a non-operational power station prior to its demolition and removes the plant and machinery in accordance with your instructions. The sub-contractor provides all labour, tools and skips.	Labour is the main expense and so the agreement is labour-only.
Plater	Contracted to fabricate items on site. You supply the steel plate, pipes and fixings (the main materials).	Even though the plater's job is to make plant items, the main (and possibly only) element supplied under the agreement is labour. The agreement is therefore labour-only.
Steel erector	Contracted to carry out the erection of main frame structural steel and provides labour (75% of contract value) and some plant (25%). Materials are not supplied by the steel erector.	The contract is labour intensive.
Welder	Hired to work under your direct supervision to undertake general welding tasks. No equipment is supplied by the welder.	The work is under your control and direct supervision.
Accountants, auditors or solicitors	External to your organisation providing professional services to the business.	Contractual services provided which are not under your control or direction.

Examples of what is a labour-only agreement or arrangement

Apparatus, machinery or plant repairs	Sub-contractor is hired to repair a pipeline in a chemical plant. The agreement includes the provision of previously fabricated pipework, materials to undertake the repair as well as the services of a fitter or technician to undertake the repair. The value of the materials required is substantial and is greater than the cost of the services provided by the fitter or technician.	The labour cost is less than 50% so the agreement is not "mainly" for labour.
Asbestos removal sub-contractor	Contracted to remove and dispose of asbestos and provides all labour, decontamination units (specialist equipment), protective clothing, and tools to dispose of the asbestos safely and legally.	Asbestos removal is usually so specialised that the workers will ordinarily be directed and controlled by the contractor. Additionally, it is unlikely that labour would represent most of the cost of the service and/or that the cost attributable to the labour element of the contract could not be identified or estimated.
Cleaning services sub-contractor	Supplies its own cleaning materials and solutions including a cleaning team which works under the supervision of the sub-contractor.	The services are not provided under your control or direction.
Crane operation contractor	Contracted to lift apparatus and machinery into place at a new build plant and supplies all labour, plant and specialist equipment. The worker is, however, under your direction and control.	It is unlikely that the cost of the worker would be higher than the cost of hiring equipment of this nature, or it may be impossible to say one way or the other.
Demolition contractor (plant intensive)	Contracted to demolish an exhaust stack of a chemical plant and supplies all required labour, plant and specialist equipment. The contractor is responsible for the health and safety of the operation and is also responsible for the disposal of hazardous waste.	The responsibility for the execution and management of the contract is under the sub-contractor's control and direction. It is also likely that the labour element could not be identified or estimated, or, if it could be, that it would not account for more than 50% of the cost.
Design engineering contractor	Contracted to provide a full design package, including feasibility studies, front end engineering design and detailed design, for a modification to apparatus and plant on an oil refinery.	This is likely to be project work, where you set out the required objectives and the contractor uses its own management and resources to achieve those objectives.
Drainage inspection company	Contracted to examine blocked drains on a site and compile a report with recommendations. They supply all labour and specialist camera equipment.	This is project work where the contractor is required to manage its resources to produce the end product, in this case, a report.
Engineering sub-contractor	Hired to install a steam turbine. He supplies the turbine, pumps, valves, heat exchangers, instrumentation and control items and pipework (the main materials) as well as ancillary fixing materials such as brackets and supports.	This is likely to be project work with control and direction of workers being exercised by the contractor only. Further, it is unlikely that the labour cost would amount to more than 50% of the total expenditure in a project of this nature.
Mechanical engineering sub-contractor	Hired to install the pumps and valves in a pipe run and supplies all the pumps, valves and pipework as well as the ancillary brackets, supports and nuts and bolts. Although each of the individual items supplied are not large, together they amount to more than 50% of the value of the contract.	The contract is not wholly or mainly a contract for labour and so is not a labour-only agreement.
Plant-hire sub-contractor	Contracted to provide various pieces of plant with operators on a hire basis.	In many cases, these sorts of arrangements will not be labour-only, i.e. where the labour element is not more than 50% of the cost or where the labour element cannot readily be identified or estimated.
Radiation monitoring contractor	Contracted to measure, record and report radiation levels at a particular site using specialist equipment.	This is likely to be project work, where you only set out the required objective, and the contractor uses its own management and resources to achieve those objectives. Further, it may be impossible to identify the labour element within the total cost.
Specialist welding contractor	Hired to undertake high integrity pipework joints in a turbine, and provides the specialist welding set for such conditions. The equipment and materials are provided by the contractor and together the cost of materials and plant hire account for 60% of the contract price.	Labour costs amount to less than 50% of the total and so there is no labour-only agreement.

REVIEWING AN ESTABLISHMENT'S ACTIVITIES

When reviewing the activities of an employer's establishment in order to confirm whether or not it should be added to or remain on the ECITB's Register of Leivable Establishments, the following four criteria will be considered:-

1. Whether there is an establishment.
2. Whether the establishment undertakes engineering construction activities.
3. Whether the establishment is wholly or mainly engaged in engineering construction activities.
4. Whether the establishment was wholly or mainly engaged in engineering construction activities during the relevant Base Period.

Each criterion is considered separately. If any of the criteria cannot be satisfied, then a leivable establishment cannot be identified and the establishment cannot be added to or remain on the ECITB's Register of Leivable Establishments.

New Establishments

Employers which may be operating engineering construction establishments and which have not been identified before will be contacted by ECITB staff who will seek to arrange to visit the employer and obtain an understanding of and information on the business. As part of the initial contact, the employer will be requested to complete a Business & Activity Return. This will provide information on matters such as the establishment, the activities of the business, numbers of workers, etc. Where available, information in the public domain may also be reviewed, for example, the employer's website, promotional literature and published accounts.

Following the collection and consideration of all available information (including any from discussions with the employer), a report will be produced by a senior manager which addresses the four key areas detailed above. The report, known as an Establishment Review Report, will be reviewed by the ECITB's CEO who will make the final decision as to whether or not an establishment should be added to or remain on the ECITB's Register of Leivable Establishments.

The employer will then be notified in writing of the ECITB's decision.

Existing Leivable Establishments

It may be that an engineering construction establishment ceases to be a leivable establishment. This could occur for a variety of reasons. The most common are as follows:-

- The establishment ceases to undertake engineering construction activities, or to be mainly engaged in such activities in a base period;
- The establishment does not wholly or mainly engage in engineering construction activities for the requisite period in the base period; and
- The establishment ceases to exist.

In such circumstances, the ECITB will undertake a review, and the criteria referred to above will be applied. It may be that any changes will not be apparent to the ECITB from information available. Thus, the employer may have to bring such information to the ECITB's attention to enable a review to be considered and/or concluded. The ECITB will consult with employers on such issues to ensure that the correct conclusion is reached, and will often require information (sometimes of a detailed nature) in order to confirm the position.



THE TRAINING LEVY

Liability to the Training Levy

A leivable establishment is any establishment that is wholly or mainly engaged in the principal and related activities of the engineering construction industry during the relevant base period.

All full and part-time employees and labour-only contractors employed by such an establishment and working in Great Britain or its offshore waters are within scope of the legislation and are required to be declared to the ECITB and be assessed for training levy. This includes all workers in the establishment, not just those actually engaged in principal or related activities. Workers engaged in support and other activities must also be declared.

How the Training Levy Is Calculated

Following consultation with employers, the ECITB recommends the rates of training levy to the Secretary of State and to Parliament for approval. A Levy Order is then passed which sets out the rates of levy to be applied and provides the ECITB with the authority to raise a levy.

All establishments on the ECITB's Register of Leivable Establishments are required by law to complete an annual Statutory Levy Declaration. The information provided in the declaration enables the ECITB to assess the amount of training levy payable (if any), and also provides information on employment levels in the industry. In particular, the declaration includes a declaration of payments made to employees and contractors during the base period 6 April to 5 April. The training levy is calculated on the basis of the declaration.

In each establishment, workers working mainly on site and all other workers are required to be declared separately. Training levy will be assessed on the total gross emoluments paid to employees and the total gross payments made to labour-only contractors hired under labour-only agreements.

Training Levy rates and exemption levels

For employees and labour-only contractors wholly or mainly working on site in Great Britain or its offshore waters, a training levy of 1.2% is payable on the total gross emoluments paid to employees and the total gross payments made in respect of labour-only contractors during the base period. If the total gross emoluments and total gross payments are less than £275,000 no training levy will be payable in respect of site-based workers.

For all other employees and labour-only contractors wholly or mainly working in Great Britain, a training levy of 0.14% is payable on the total gross emoluments paid to employees and the total gross payments made in respect of labour-only contractors during the base period. If the total gross emoluments and total gross payments are less than £1,000,000, no training levy will be payable in respect of all other workers.

Paying the Training Levy

Where an employer returns the Statutory Levy Declaration and is liable to pay a training levy, a Demand for Payment detailing the training levy due will be sent the following January. Provided an appeal against the assessed levy is not lodged, the training levy is required by law to be paid within one month of the date shown on the levy demand and in one instalment.

In cases where an employer does not return the Statutory Levy Declaration, the establishment's training levy liability is estimated (which may be more than the correct amount) and an Estimated Demand for Payment is sent detailing the estimated training levy due. Provided an appeal against the assessed levy is not lodged, the training levy is required by law to be paid within one month of the date shown on the levy demand and in one instalment.

ECITB grants and services may be withheld where payment of the levy is overdue.



THE ANNUAL STATUTORY LEVY DECLARATION AND TIMETABLE OF EVENTS

Following the end of the Base Period (April) employers may complete the Statutory Levy Declaration in respect of the base period. The ECITB will send to employers an email request to complete the Statutory Declaration in respect of the base period. Employers will be advised the date by which such declaration must be completed.

The ECITB operates an on-line portal service, which enables employers to complete and submit their annual Statutory Levy Declarations. Portal accounts have been set up for all employers operating leviable establishments, and instructions relating to the on-line completion and submission of declarations are set out in Appendix 2. Any questions relating to the use of the on-line portal service (including any changes to the identity of an employer's account contact), should be referred to the Board Secretarial Administrator (see Help and Guidance below). If an employer does not wish to use the on-line portal service, it is possible for employers to submit printed versions of their Statutory Levy Declarations. If this method is adopted, employers should contact the Board Secretarial Administrator for guidance on how to proceed.

It should be noted that where an employer fails to submit the Statutory Levy Declaration by the relevant date, the ECITB will estimate the emoluments and labour-only payments and calculate the training levy due based on the estimate. The ECITB may also withhold grants and services whilst the declaration remains outstanding.

The levy calculated in respect of the base period will be payable in the following January when employers are sent Levy Assessment Notices. Provided an appeal is not lodged, employers have one month to pay the levy which must, by law, be paid in full and in one instalment.

The levy collected will be used to fund services and the payment of training grants during the ECITB's following financial year (January to December)

Thus, in 2019 the timetable is as follows:-

2019	APRIL	2018/19 Base Period ends on 5 April 2019	
	MAY		
	JUNE		
	JULY	2019/20 Base Period starts on 6 April 2019 and ends on 5 April 2020	ECITB requests completion of Statutory Levy Declaration in respect of 2018/19 Base Period
	AUGUST		Employers must submit the 2018/19 Statutory Levy Declaration Returns by 30 June.
	SEPTEMBER		
	OCTOBER		
	NOVEMBER		
DECEMBER			
2020	JANUARY	2020/21 Base Period starts on 6 April 2020	ECITB sends out Demands for Payment in respect of the 2018/19 Base Period. The Levy collected funds grants and services during 2020.
	FEBRUARY		
	MARCH		
	APRIL		ECITB requests the completion of the Statutory Levy Declaration in respect of the 2019/20 Base Period

APPEALING AGAINST AN ASSESSED LEVY

An employer can lodge an appeal against an assessed levy to an Employment Tribunal on the following grounds:-

- That the establishment being assessed was not wholly or mainly engaged in engineering construction activities during the relevant base period; or
- That the amount of levy assessed has not been correctly calculated.

An appeal must be lodged within one month from the date of the service of the Demand for Payment.

A formal appeal is not always necessary and the ECITB is prepared to review both the registration of an establishment or the training levy assessed if there are grounds to do so, and provided the matter is brought to our attention before the training levy becomes due.

Explanatory notes for employers on appeals to Employment Tribunals are set out in Appendix 3.



HELP AND ADVICE

If you need any further information or advice on engineering construction activities or the training levy, please contact the Levy team:-

Name and Position	Phone number	Email Address
Caroline Clifford Head of Levy	Phone: 07812 036425	Caroline.Clifford@ecitb.org.uk
Simon Bourne Levy Manager	Phone: 07971 860107	Simon.Bourne@ecitb.org.uk
Kamran Iqbal	Phone: 01923 402135	Kamran.Iqbal@ecitb.org.uk

Alternatively, you can contact your local ECITB Account Manager.

Please note that the ECITB cannot give legal advice and therefore if employers are in any doubt as to their position, independent legal assistance should be sought.



APPENDIX 1 - GUIDE TO COMPLETING THE STATUTORY MANPOWER AND PAYROLL RETURN

Preparing to complete the declaration

It is suggested that employers adopt the following approach when preparing to complete the declaration.

- Decide whether the business operates as either one establishment or several separate, identifiable establishments. The definition of an 'establishment' is described on page 6.
- Determine whether or not each establishment is wholly or mainly engaged in the principal and related activities of the engineering construction industry (principal and related activities are described on page 7). If the establishment is wholly or mainly engaged in such activities it is a leviable establishment, and ALL employees and labour-only contractors (regardless of their activities) should be declared in the Return.
- For each establishment, disregard employees and labour-only contractors who have spent more than 50% of their time during the relevant year working outside of Great Britain or its offshore waters.

1. Establishment being assessed

In most cases this section has already been completed showing the name, address and ECITB reference number of the establishment being assessed and, if different, details of the employer (in most cases these will be the same). These details are based on the information available to the ECITB. Please correct them if they are wrong or if any details are missing.

The Declaration is only required to be completed for the establishment shown provided that it was wholly or mainly engaged in engineering construction activities during the year ending 5 April. The ECITB should be informed if the establishment was not wholly or mainly engaged in engineering construction activities during the year, or if there are any other establishments engaged in engineering construction activities within the company or organisation.

Definitions of the terms 'establishment' and 'engineering construction activities' are shown on pages 6 and 7.

2. Activities of the establishment

Please give a brief description of the main activities carried out by the establishment during the base period (i.e. year-ending 5 April).

3. Site based workers

Employees

Please declare the total number of ALL full and part-time employees who were wholly or mainly working on sites in Great Britain and who were employed by the establishment at any time during the year ending 5 April.

By 'mainly' we mean 50% or more.

By 'sites' we mean any site where a product is processed or where the main framework of a building or other metal structure is erected or dismantled. It should be noted that if a worker works on such a site, he/she is a site worker regardless of the activity he/she actually undertakes there.

By 'Great Britain' we mean England, Scotland, Wales or its offshore waters.

Total gross emoluments

Please declare the total gross emoluments paid to these employees during the year ending 5 April. Further information on total gross emoluments can be found on page 10.

Labour-only contractors

Please declare the total number of ALL full and part-time labour-only contractors, self-employed workers and agency personnel who were hired by the establishment under a labour-only agreement or arrangement and who were wholly or mainly working on sites in Great Britain at any time during the year to 5 April.

Further information on labour-only contractors can be found on page 10.

Total gross payments

Please declare the total gross payments made in respect of these labour-only contractors during the year ending 5 April. Further information on total gross payments can be found on page 11.

Labour-only receipts

Information on labour-only receipts can be found on page 11.

4. Occupations of site based workers

The ECITB is required by government to monitor employment trends in the industry. Therefore, please provide a breakdown of all site based employees and labour-only contractors by their occupation.

5. Locations of site based workers

Please provide a breakdown of all employees and labour-only contractors who were wholly or mainly working on site by listing the main sites on which they worked during the year ending 5 April. An example of the type of information required is shown in the form and the codes you need to complete this section are shown below.

Type of work

C Consultancy and feasibility studies	N New construction	R Repair, maintenance, testing, etc.
D Dismantling	P Procurement and project management	

Type of site/project

AF Alternative fuel (e.g. biomass, hydrogen, etc.)	CW Chemical works	ND Nuclear decommissioning	PA Paper mill	WL Wind farm – onshore
BR Brewery or distillery	EL Electrical	NP Nuclear power station	PC Pharmaceutical/cosmetics	WS Wind farm – offshore
CB Cement and bricks	FD Food and drink	NR Nuclear reprocessing plant	SE Sewerage / water treatment	WT Water treatment
CC Carbon capture and storage	HY Hydro-electric power station	OD Downstream oil and gas	SM Steel mill or metal smelter	WV Wave and tidal power
	LS LNG storage	OU Upstream oil and gas	TE Thermal power station	XX Other project

6. All other workers (those not mainly working on site)

Employees

- Other than those employees who were wholly or mainly working at clients' sites, you should declare the total number of ALL other full and part-time employees employed by the establishment and wholly or mainly working in Great Britain at any time during the year ending 5 April. Such employees will include, for example, those engaged in:-
 - design, project management, commissioning, procurement, engineering consultancy services which were not undertaken at clients' sites
 - management, administrative and support activities
 - fabrication carried out in a fabrication shop
 - any other activities related or incidental to the principal activities of the establishment
 - any other activities of industry or commerce

Total gross emoluments

You should declare the total gross emoluments paid to these employees during the year ending 5 April. Further information on total gross emoluments can be found on page 10.

Labour-only contractors

Other than those labour-only contractors who were wholly or mainly working at clients' sites, you should declare the total number of ALL other full and part-time contractors, self-employed workers and agency personnel who were hired by the establishment under a labour-only agreement or arrangement and working wholly or mainly in Great Britain at any time during the year ending 5 April. Such labour-only contractors will include, for example, those engaged in the activities shown in the box above.

Further information on labour-only contractors can be found on page 10.

Total gross payments

You should declare the total gross payments made in respect of these labour-only contractors during the year ending 5 April. Further information on total gross payments can be found on page 11.

Labour-only receipts

Information on labour-only receipts can be found on page 11.

7. Occupations of all other workers

The ECITB is required by government to monitor employment trends in the industry. Therefore, please provide a breakdown of all employees and labour-only contractors who are not based on site by their occupation.

8. Activities of all other workers

Please provide a breakdown of all other employees and labour-only contractors who were directly engaged in engineering construction projects by listing the main projects that these workers were involved in during the year ending 5 April. An example of the type of information required is shown in the form and the codes you need to complete this section are shown below.

Type of work

C Consultancy and feasibility studies	N New construction	R Repair, maintenance, testing, etc.
D Dismantling	P Procurement and project management	

Type of site/project

AF Alternative fuel (e.g. biomass, hydrogen, etc.)	CW Chemical works	ND Nuclear decommissioning	PA Paper mill	WL Wind farm – onshore
BR Brewery or distillery	EL Electrical	NP Nuclear power station	PC Pharmaceutical/cosmetics	WS Wind farm – offshore
CB Cement and bricks	FD Food and drink	NR Nuclear reprocessing plant	SE Sewerage / water treatment	WT Water treatment
CC Carbon capture and storage	HY Hydro-electric power station	OD Downstream oil and gas	SM Steel mill or metal smelter	WV Wave and tidal power
	LS LNG storage	OU Upstream oil and gas	TE Thermal power station	XX Other project

APPENDIX 2 - EXPLANATORY NOTES FOR EMPLOYERS ON APPEALS TO EMPLOYMENT TRIBUNALS

9. Workforce characteristics

As part of its role as an Industrial Training Board, the ECITB monitors and reports to the industry and government on the composition of the workforce during the relevant base period. Therefore, if possible, please provide an approximate estimate of the number of workers (both employees and labour-only contractors) by their gender, ethnicity, age and disability.

If possible, please also provide an approximate estimate of the number of workers who were recruited or who retired during the year, the turnover of your workforce and how many workers were mainly working overseas. Turnover refers to the proportion of workers who have left the establishment during the year, expressed as a percentage of total workforce numbers.

10. Declaration

Once the Declaration has been completed, the Declaration must be submitted to ECITB (see The Annual Statutory Levy Declaration and Time Table of Events page). It must be authorised by a Director, Company Secretary or someone in a similar position of authority.



Following the end of the Base Period, Employers will be able to complete their Annual Statutory Levy Declaration on line. ECITB will send the employer's 'Levy Administrator' an email informing them about the Levy Declaration.

The employer's 'Levy Administrator' will need to log in and this will direct them to their annual levy declaration. The Levy Administrator can now begin to complete the declaration in accordance with the step by step process below

1. Under 'Levy Administrator Options' the employer will be able to select 'Levy Declaration (year)'.
2. Selecting 'Start Declaration Form' will direct them to the form entry.
3. Click next from the introduction to proceed.
4. Field boxes in red are mandatory.
5. Sections will change to a green tick once they have been completed.
 - a. Section 1 confirms the Establishment Being Assessed and the Levy year; this will be completed for you. Click next to continue.
 - b. Section 2 Activities of the Establishment. Please describe in full the main activities carried out by the establishment. Once complete click next.
 - c. Section 3 Site Based Workers. Please enter the number of workers and payments in the red boxes. Please round to the nearest pound. Click next to continue.
 - d. Section 4 Occupation of Site Based Workers. Please enter the number of each type of site worker in the establishment. Click next once complete.
 - e. Section 5 Locations of Site Based Workers. There are drop down options to choose from. Select 'Add New Locations of Site Based Workers' and use the drop down to choose the Type of Work and Type of Site. All other fields should be completed in free text. Once all mandatory sections are completed click 'Complete Locations of Site Based Workers'. Click next to proceed.
 - f. Section 6 All Other Workers. Please enter the number of workers and payments in the red boxes. Please round to the nearest pound. Click next to continue.
 - g. Section 7 Occupations of All Other Workers. Please enter the number of each worker in the establishment who are not based on site. Click next to continue.
 - h. Section 8 Activities of All Other Workers. There are drop down options to choose from. Select 'Add New Activities of All Other Workers' and use the drop down to choose the Type of Work and Type of Project. All other fields should be completed in free text. Once all mandatory sections are completed click 'Complete Activities of All Other Workers'. Click next to continue.
 - i. Section 9. – Please provide an approximate estimate of the number of workers (both employees and labour-only contractors) by their gender, ethnicity, age and disability. Click next once completed.
 - j. The final section is the Summary. The employer will need to accept the terms before submitting the Levy Declaration.
6. Selecting 'Submit Form' will send it to the Employer's 'Levy Submitter'.
7. Once the employer's 'Levy Administrator' has completed the Declaration and finalised it, it will appear as an option for the Levy Submitter to review.
8. Under 'Levy Submitter Options,' the employer will be able to select 'Levy Declarations for Submission'.
9. Select 'View and Submit Declaration Form'.
10. Whilst the form is with the Employer Levy Submitter they will be able to amend the Levy Declaration. They also have the ability to reject the Declaration back to the Administrator if required.
11. The Summary page click on 'Submit Form'.
12. The Levy Declaration has now been submitted for ECITB review.

APPENDIX 3 - EXPLANATORY NOTES FOR EMPLOYERS ON APPEALS TO EMPLOYMENT TRIBUNALS

Introduction

These notes explain the procedure for appealing against levy assessments issued by the ECITB under various industrial training Levy Orders, as laid down in the following statutory instrument:-

- The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013; and

The regulations, orders and Levy Orders (which explain the methods and procedure of appeal) are obtainable from www.legislation.gov.uk. These notes are purely for explanatory purposes and should not be regarded as an authoritative statement of law or advice.

Employment Tribunals

Employment Tribunals are independent judicial bodies. The Tribunal panel presiding over the final hearing relating to a levy appeal will always include an Employment Judge (a solicitor or barrister of several years standing) plus two lay members with experience in dealing with work-related matters. Preliminary hearings will be presided over solely by an Employment Judge.

Appealing against a levy assessment

For the purposes of a levy appeal, references to a claim or claimant are also read as references to a levy appeal or to an appellant respectively.

An establishment assessed to a levy may appeal to an Employment Tribunal against a levy assessment within one month of the date of the service of the levy assessment or within such further time as the ECITB or the Employment Tribunal may allow.

If an appeal has not been lodged or an extension of time has not been granted by the ECITB or an Employment Tribunal, the levy to which an employer has been assessed will be recoverable in full one month after service of the levy assessment notice.

An appeal claim form is available via www.employmenttribunals.service.gov.uk. An employer appealing against a levy assessment must use the prescribed ET1A claim form (07.13) and lodge it with the Employment Tribunal.

A booklet entitled "Making an Employment Tribunal Claim" (T420) is available via employmenttribunals.service.gov.uk and it states specifically that it applies in relation to an appeal against an assessment to a training levy made by an Industrial Training Board.

A claim may be submitted as follows:-

- Online
- By post
- In person, to designated regional tribunal offices, where there are good reasons why the claimant cannot use one of the other methods of presenting its claim.

Extension of time for appealing

The ECITB may extend the time for appealing against a levy assessment or, where the ECITB has not allowed an extension of time for appealing, an employer may apply to an Employment Tribunal to extend the time for appealing.

Any application for an extension of time to appeal against a levy assessment should initially be made to the ECITB at the address stated on the assessment notice. If the ECITB does not grant an extension the employer may then apply, under the provisions of the Levy Order, to the Employment Tribunal for an extension of time for appealing.

There is provision for the ECITB to allow a further extension of the appeal time but this must be applied for before the end of the current extended period.

Early dialogue and request for further information

Before a Levy Assessment is Issued

Generally speaking, the ECITB issues levy assessments immediately following the end of the preceding levy period. Thus, most levy assessments are issued at the beginning of January. If an employer is considering appealing against a levy assessment the ECITB strongly recommends that it contacts the ECITB's Levy team (email: levy_scope@ecitb.org.uk) as soon as possible.

It may be that circumstances have arisen which mean that further investigation or discussions between the employer and the ECITB should occur. In such circumstances, it may be that the parties may be able to clarify matters between themselves in such a matter which may mean that either:-

- A proposed levy assessment may be varied or not served; or
- An appeal may be avoided.

After a levy assessment is issued

If an employer is considering appealing against a levy assessment the ECITB would recommend that it contacts the ECITB's Levy & Scope Department (email: levy_scope@ecitb.org.uk) as soon as possible after receipt of the levy assessment setting out the grounds of appeal it anticipates including in any claim. It is hoped that any such early dialogue/correspondence/draft claim form may resolve any issues or queries and possibly avoid the need to lodge a formal claim with an Employment Tribunal. Depending on the nature of the circumstances, it may also be possible for the ECITB to agree to an extension of the period of time in which the employer may lodge an appeal. This may enable the submission and consideration of relevant information and/or further discussions to occur between the parties in an attempt to obviate the need for formal appeal proceedings.

In order to assist in discussions and to enable the ECITB to understand the employer's position the ECITB may request the employer to provide additional information concerning matters such as the structure of the establishment, the nature of its activities, the composition of its workforce and/ or other details.

After an appeal has been lodged by the employer

It should be noted that once an employer has lodged a claim form with an Employment Tribunal the degree of flexibility which is available to the parties (as described in the paragraphs above) to attempt to reach a resolution is reduced. Once the appeal has been lodged with the Employment Tribunal, both parties will be governed by and required to follow the procedures described below.

Once an employer has lodged a claim form with an Employment Tribunal the ECITB can apply to an Employment Tribunal for a case management order that the employer/ claimant provides further information relating to its claim.

In order to fully understand the nature of any proposed claim it may assist the ECITB to ask the employer to provide additional information or particulars of its proposed claim.

Action by the employment tribunal on receipt of the claim

The Tribunal shall reject a claim if it is not made on the prescribed form, it does not contain the requisite information or if it is not accompanied by a tribunal fee or a remission application.

The claim shall be referred to an Employment Judge if it is considered to be one which the Tribunal has no jurisdiction to consider or it is in a form which cannot sensibly be responded to or is otherwise an abuse of process. A claimant whose claim has been rejected may apply for a reconsideration.

The Employment Tribunal will send the ECITB a copy of the claim form together with a prescribed response form. The ECITB has to present its response to the Employment Tribunal within 28 days of the date that the copy of the claim form was sent by the Tribunal.

As soon as possible after the acceptance of the response an Employment Judge shall consider all of the documents held by the Tribunal in relation to the claim. The Employment Judge will consider whether the claim and response have reasonable prospects of success, and whether the claim or claims are within the Tribunal's jurisdiction. If the Employment Judge considers that all or part of the claim or response has no reasonable prospects of success, or that there is no jurisdiction to hear all or part of the claim, all or part of the claim or response may be struck out.

If the case proceeds, the Tribunal will consider what case management directions are required to get the case ready for a hearing. An Employment Judge may decide that it is appropriate for the parties to attend one or more preliminary hearings in order to prepare the case for a final hearing.

Where a party applies in writing to an Employment Tribunal for a case management order they should notify the other party that any objections to the application should be sent to the Tribunal as soon as possible.

Preliminary hearings

A preliminary hearing may be used for the following:-

- To clarify the issues the Tribunal will need to determine the final hearing;
- To determine the steps the parties will need to take to prepare the claim for the final hearing;
- To issue case management orders requiring steps to be undertaken, for example, the disclosure of relevant documents, whether expert evidence is required and exchange of witness evidence;
- To explore the possibility of settlement; and
- To determine a preliminary issue ie any substantive issue which may determine liability or consideration to striking out a claim or response.

Disclosure of documents and information

The Tribunal may order the employer or the ECITB to disclose documents or information to the other party and the employer (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by a county court or, in Scotland, by a sheriff.

Witnesses

It is generally necessary for both the employer and the ECITB to call witnesses to give evidence in support of their claim or response. This is achieved by both parties preparing witness statements and the witnesses giving oral evidence at the final hearing. The witnesses will usually be cross-examined by the other party and the Tribunal members.

The Tribunal may order a person to attend a hearing to give evidence, produce documents or produce information.

Withdrawal of claim

An employer/claimant may inform the Tribunal either in writing or in the course of a hearing that a claim or part of it is withdrawn at which point the claim or part of it comes to an end subject to any application that the ECITB may make for a costs, preparation time or wasted costs order. The ECITB may also withdraw the assessment.

Notice of the final hearing

Both parties will be advised by the Employment Tribunal of the date, time and place of the final hearing at least 14 days before the date of the hearing. In the event of failure to attend by either party, the Tribunal, after considering any written representations, may dispose of the appeal or adjourn the final hearing to a later date.

The final hearing

Both parties may appear at the final hearing of the appeal and be heard in person or be legally represented. Parties are entitled to call witnesses in support of their case, and each party may cross-examine witnesses called by the other side. The employer may be represented by counsel, solicitor or by any other person. Witnesses shall be required to give their oral evidence on oath or affirmation.

The decision

A copy of the document containing the decision of the Tribunal and, if applicable, the reason for the decision is sent to the parties by the Secretary of the Employment Tribunals. The Tribunal will enter into the Tribunal register a copy of both the judgment (including any costs, expenses, preparation time or wasted costs order) and any written reasons provided for any judgment issued separately.

It is only possible to appeal to the Employment Appeal Tribunal against a Tribunal's decision on a question of law.

Once the decision is final, the following actions will occur:-

In the event that the ECITB is unsuccessful

- The employer's establishment will be removed from the ECITB's Register of Leviable Establishments if the decision is that the employer did not operate a leviable establishment during the base period(s);
- There may be a reduction in the levy, and (if applicable) a refund of levy paid; and
- If appropriate, training grants paid in respect of training activities undertaken in the base period under appeal will be refunded by the employer.

In the event that the employer is unsuccessful

- The Employment Tribunal may decide that the levy should be increased; and
- The levy will be payable together with accrued interest. The rate of interest is set by the Tribunal, and this generally exceeds base rate. In October 2013 the prevailing rate was 8%.

Costs

The decision of the Tribunal may include an order for payment of costs (expenses in Scotland) by one party to the other in accordance with sections 74-84 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Addresses

Communications about proceedings before an Employment Tribunal should be addressed to the appropriate Employment Tribunal Office.

Data Privacy

Information provided to Employment Tribunals about a claim may be placed on computer to help with the work that has to be done on a case and for statistics to be produced. If you want a copy of the information held on computer, write to the Employment Tribunal. The Tribunal may make a small charge for responding to such a request.





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