

# CITB levy applies to indirect workers

The CITB-Construction Skills, formerly known as the Construction Industry Training Board, provides training for those in the construction industry. It funds the training by way of a levy on all employers in the industry. The level of payment is calculated by reference to the amount that the company has paid for work done whether by its direct employees or others who may be self employed or working under labour only agreements.

In the case of *The CITB -v- Beacon Roofing Limited* the issue arose as to whether the levy was still payable in respect of self employed workers and labour only contractors who were supplied through a third party company.

The background to the case was that Beacon Roofing Limited had been liable to pay such a levy for a number of years. The roofing company employed two contract managers plus office staff. However, its tilers, or roofing operatives as they were called, were self-employed or labour only contractors, so that their pay arrangements were governed by the Construction Industry Scheme (CIS). In 2007, Beacon Roofing Limited decided that because of the amount of paperwork and the administrative burden of complying with the CIS arrangements it would cease contracting with the self employed operatives direct but instead would contract with Hudson Contract Services Ltd who would then supply the services of the operatives to it.

The operatives entered into agreements with Hudson under which they agreed to supply their labour to Beacon. They were paid by Hudson what they would have been paid by Beacon. In turn Hudson billed Beacon for the pay plus a further £15 per operative supplied per week. This arrangement left Beacon free of the administrative and clerical burden of complying with the CIS.

In April 2009, the CITB issued its levy assessment notice to Beacon, requiring it to pay £18,446.00. The vast majority of this sum was in respect of Beacon's self-employed roofing operatives.

Beacon appealed against the assessment, arguing that it was not liable to pay in respect of the operatives employed by Hudson. The case came before an employment tribunal which ruled that Beacon was not liable to pay the levy for the roofing operatives. The CITB then successfully appealed to the high court which decided that the levy should be reinstated. This time, Beacon appealed the decision.

In the court of appeal, Beacon argued that the main purpose of the new contractual arrangements was to ease the company's administrative burden. The CITB argued that the main purpose of the contract was for the supply of the operatives through Hudson and that those operatives were to be classified as labour only contractors. The Court agreed with the CITB. It considered that the correct question to ask was 'what was the purpose of the contract?' rather than 'why the contract was entered into by the parties?'. This is where the tribunal had been mistaken. The high court had asked the right question and had come to the correct conclusion namely that, the main purpose of the contract between Beacon and Hudson was the provision to Beacon of the services of the operatives.

## Comment

A finding that the levy was not payable in respect of workers supplied in these circumstances would have had a major impact on the CITB and its ability to raise funds. However, it is of equal importance for employers to note given that the working arrangement that Beacon had entered into is more and more common in the construction industry but still leaves the ultimate employer liable to contributions.

If you have any queries or would like to discuss any of the issues raised, please feel free to contact **Victoria Garrad** on **+44 (0) 121 234 0040** or **[VGarrad@gateleyuk.com](mailto:VGarrad@gateleyuk.com)**.

