Appendix 8

LEVY REFUND REQUESTS

1. PROCESS STATEMENT

1.1 Levy Refund Requests (for the purpose of this process) arise when CITB registered employers have paid Levy but subsequently evidenced that they were exempt from paying the Levy on which CITB had imposed. In such cases, as the legislative requirements for Levy imposition had not been met, some employers seek refunds for Levy paid or part paid.

1.2 The Levy Appeals Team ("LAT") located within the Legal, Governance & Compliance Team, are solely responsible for decision making in relation to employer assertions/challenges that Levy has been imposed incorrectly.

1.3 CITB does not have a formal *'Levy Refund Policy'* but such requests are managed by the LAT on a case by case basis in line with this process.

1.4 The LAT is also solely responsible for deciding which, if any, Levy assessments shall be refunded.

1.5 This process shall ensure that Levy refund requests are managed fairly and consistently, in addition to providing clear governance on the expenditure of Levy income used for non-training purposes.

1.6 The absence of such governance would leave CITB open to a number of historical refund claims that would hamper its ability to fulfil its statutory role, as such refunds could result in less grant funding available to the industry at the time the request was made.

2. STATUTORY PROVISIONS

2.1 The Industrial Training Act 1982

2.1.1 The Industrial Training Act 1982 states at s12(4) that a *"…person assessed to levy imposed under a levy order may appeal to an employment tribunal…"* and at 12(5) it sets out the jurisdiction in which they shall respond to such appeals:

"(5) On an appeal under subsection (4) above—

(a) if the appellant satisfies the tribunal that he ought not to have been assessed to the levy or ought to have been assessed in a smaller amount, the tribunal shall rescind or, as the case may be, reduce the assessment but (subject to paragraph (b) below) in any other case shall confirm it; and

(b) if it appears to the tribunal that the appellant ought to have been assessed to the levy in a larger amount, the tribunal may increase the assessment accordingly."

2.1.2 This means the onus is on the employer to satisfy the tribunal that the Board had incorrectly imposed a Levy assessment, or indeed incorrectly calculated the assessment.

2.1.3 This approach applies to any internal investigations carried out by the LAT, in that a clear and concise challenge must be brought for it to consider further whether Levy imposition was correct and whether refunds *may* apply.

2.1.4 In the absence of sufficient evidence to substantiate an employer's claim, no refund requests shall be considered.

2.2 The Limitations Act 1980

2.2.1 When a debt has been outstanding for some time, with no payments being made or communication from the debtor, the debt can become what is known as 'statute barred'. When debts are statute barred it means they're no longer enforceable and the debtor is not required by law to pay the amount outstanding.

2.2.2 The statute of limitations shall be applied to Levy refund requests as Levy paid in error could be construed as 'debt' owned by CITB to the employer. However, as stated within the Limitations Act, if no payments are made by CITB or communication requests received from the employer to pay back Levy incorrectly imposed over a 6 year period, a Levy refund shall not be considered due to not being enforceable.

2.2.3 As an employer would have no legal basis to bring a claim for Levy paid beyond 6 years, CITB shall never consider such requests for refund.

2.2.4 As an employer would have a legal basis to bring a Levy refund claim within a 6 year period, this is the maximum period in which CITB would consider refunding. However, each request will be considered on a case by case basis in accordance with this process.

3. APPRAOCH TO LEVY REFUND REQUEST

3.1 The factors to be considered for refunding paid Levy will include the number of years to which the request relates and where (if any) accountability for Levy imposition lies. For example, it could be the case that CITB had misdirected employers to registration and therefore Levy imposition. Also, an employer may have failed to challenge registration or Levy imposition at the appropriate time.

3.2 The employer shall be expected to take responsibility for their own actions where they have misguided CITB that it did meet the criteria for Levy imposition. Equally, CITB shall accept part or full responsibility where its advice and guidance on what constitutes Levy imposition is incorrect or incomplete.

3.3 CITB shall never offer Levy refunds but will respond to refund requests in accordance with the following.

3.4 The factors to be considered are:

(a) the **number of years** to which the request relates; and
(b) where (if any) **accountability** for Levy imposition lies.

3.5 The Number of Years

3.5.1 Refund requests for Levy paid after 6 years (i.e. current Levy assessment plus 5) will be statute bared and therefore not considered in any event.

3.5.2 Refund requests within this 6 year period shall be considered on a case by case basis and in accordance with the 'Accountability test' at clause 3.6.

3.6 Accountability Test

3.6.1 CITB shall consider whether the employer itself was responsible for paying the Levy in error, or if CITB itself had misdirected the employer. CITB

should consider the following (non-exhaustive) factors when making a decision whether to refund:

- **Did CITB miscommunicate its position** – This could be through its communications in relation to registration requirements, including what constitutes a construction industry activity.

- **Has the employer ever challenged the paid Levy?** – The employer has an opportunity to challenge at the point each Levy Assessment Notice is issued (as documented on its reverse) and annually through the Levy Return process. If they haven't challenged before, then why now?

- **Has the employer been verified?** – If so when? Was scope ever challenged? If not why?

- **Has the employer submitted Levy Returns?** – If so, was the declaration signed? What did they declare as their main activity?

3.7 CITB shall only consider refunding paid Levy where:

(a) Evidence has been provided to substantiate an employer was exempt for a particular Levy; and

(b) CITB is satisfied that it partially or fully misguided the employer into paying the imposed Levy.

3.8 In the event that the above steps (clause 3.7) are met, CITB shall consider on a case by case basis how many years shall be refunded.

3.9 Where a decision is made by the LAT to refund paid Levy assessments, the LAT shall ensure evidence to substantiate the employers exemption from paid Levy is recorded (i.e. evidence why they are out of scope and not liable to a particular Levy) and then request our enabling partner Shared Services Connected Ltd ("SSCL") to process the request.