

# BAA refutes HMRC Aggregates Levy update

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## **Trade association says Levy 'clarification' statement has no firm basis in law and changes nothing**

THE British Aggregates Association (BAA) has dismissed HM Revenue & Customs Business Brief 21/12, claiming it contains no substantive or new information regarding the Aggregates Levy or the arguments that have been advanced by the Association, and that it ignores judgments from the EU General Court and the European Court of Justice.

The Brief was issued by HMRC on 9 July [and reported in the August issue of *QM*] to 'provide details about the implications for the Aggregates Levy of the March 2012 judgment of the European General Court'.

It stated that there would be 'no change to registered businesses' legal responsibility to pay the Levy', and that 'where registered persons withhold payment of the Levy declared as due on their returns, late/non-payment penalties and penalty interest may become due'.

'Business Brief 21/12 comes as no surprise,' commented BAA executive officer Richard Bird. 'It simply reflects the blinkered view still being taken by the Treasury despite evidence to the contrary and clear-cut judgments against the Levy by the European Court of Justice and the EU General Court.

'In short, 21/12 has no firm basis in law and cannot be relied upon by quarry operators.'

The European Commission is currently assessing whether to base its phase two investigation into the Levy on state aid and, according to the BAA, has presented the UK Government with a long list of awkward questions.

'Over the past 10 years the UK Government has made many representations to the European Courts that fell short of the mark. The chances that it will now produce more convincing arguments are limited, and the lack of substance in Business Brief 21/12 confirms this,' said Mr Bird.

He continued: 'If the European Commission does decide to carry out a phase two investigation, EU legislation states, under the 'standstill obligation', that no tax can be collected until the investigation is complete, and that in the unlikely event that state aid approval is then granted, it cannot be backdated.

'This raises important questions about tax that has been paid to date and those who have enjoyed state aid before it was properly approved. In simple terms, either those who paid must be recompensed or those who did not, or, in the case of Northern Ireland, who received a discount, must be asked to pay,' said Mr Bird.

He added: 'The so-called 'clarification' statement by HMRC changes nothing and the BAA will continue to challenge the right of the Government to collect this tax.'

The BAA is to go to the Court of Appeal in London to try to overturn the 2002 Justice Moses judgment in the High Court and to reverse the costs order against it. A two-day hearing has been scheduled for April 2013.