



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

# Broadcasting Authority of Ireland (BAI)

Guide to the BAI Levy  
April 2010

## Table of Contents

<b>1. THE BROADCASTING AUTHORITY OF IRELAND (BAI).....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>2. BAI FUNDING.....</b>	<b>2</b>
<b>3. BAI LEVY MODEL PRINCIPLES.....</b>	<b>3</b>
<b>4. KEY FEATURES OF THE BAI LEVY MODEL .....</b>	<b>4</b>
<b>5. DEFINITION OF QUALIFYING INCOME .....</b>	<b>6</b>
<b>6. OVERVIEW OF THE LEVY COLLECTION PROCESS.....</b>	<b>8</b>
<b>7. EXTRACT OF THE BAI OPERATING BUDGET 2010.....</b>	<b>11</b>
<b>8. ILLUSTRATIVE EXAMPLES OF THE LEVY CALCULATION.....</b>	<b>11</b>
<b>9. FREQUENTLY ASKED QUESTIONS.....</b>	<b>14</b>
9.1 <i>WHAT HAPPENS IN THE CASE OF NEW BROADCASTERS?</i> .....	14
9.2 <i>HOW CAN I BE SURE THAT THE BAI IS DELIVERING VALUE-FOR-MONEY?</i> .....	14
9.3 <i>WHAT IF MY ACCOUNTS ARE NOT PREPARED ON A CALENDAR YEAR BASIS?</i> .....	14
9.4 <i>WILL I HAVE VISIBILITY ON WHAT OTHER BROADCASTERS ARE PAYING?</i> .....	15
9.5 <i>HOW WILL I BE COMPENSATED FOR AN OVER / UNDER ESTIMATE OF QUALIFYING INCOME?</i> .....	15
9.6 <i>HOW WILL I BE COMPENSATED FOR AN OVER / UNDER ESTIMATE OF THE BAI OPERATING COSTS ?</i> .....	15
<b>10. ADDITIONAL INFORMATION.....</b>	<b>16</b>
<b>11. CONTACT THE BAI .....</b>	<b>16</b>

## **1. The Broadcasting Authority of Ireland (BAI)**

The BAI was established on the 1<sup>st</sup> October, 2009 following the enactment of the Broadcasting Act 2009. The Authority has a wide range of regulatory functions, incorporating the functions of the Broadcasting Commission of Ireland (BCI), the Broadcasting Complaints Commission (BCC), as well as a range of new functions, principally relating to public sector broadcasting.

The general objectives of the BAI are to ensure:

1. that broadcasting services made available in the State best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity;
2. that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld; and
3. the provision of open and pluralistic broadcasting services.

More detailed objectives are set out in Section 25 (2) of the Broadcasting Act 2009.

The Authority comprises a board and two statutory committees.

## **2. BAI Funding**

Section 33 of the Broadcasting Act 2009 requires the Authority to recoup the expenses properly incurred by the Authority and the statutory committees in the performance of their functions through the imposition of a levy or charge on public service broadcasters and broadcasting contractors (referred to in this booklet as the relevant broadcasters). The terms of this levy, including method of calculation, are required to be set out in a Levy Order.

The Broadcasting Act 2009 (Section 33) Levy Order 2010 Statutory Instrument No 7 of 2010 was enacted by both Houses of the Oireachtas on the 20<sup>th</sup> of January, 2010.

### 3. BAI Levy Model Principles

In devising a levy model, the BAI has regard to the following principles:

The proposed levy model should ensure that the BAI has sufficient funding to discharge its statutory functions.

#### **Certainty**

As great a level of certainty as possible should also be provided to the relevant broadcasters regarding future levy amounts.

#### **Fairness**

To the greatest extent possible, the proposed levy model should ensure a match between the levy paid by a relevant broadcaster and the BAI costs of regulation.

#### **Objectivity**

Related to the foregoing, the model should not discriminate against any individual broadcaster or broadcasting sector.

#### **Simplicity**

The levy model should be simple and cost-efficient for the BAI to administer, having regard to the fairness principle.

#### **Transparency**

The means by which levies are computed should be fully transparent to relevant broadcasters. Transparency extends to BAI expenses and the computation of individual levy amounts.

## 4. Key Features of the BAI Levy Model

Full details of how the BAI levy is calculated are set out in Schedule 1 of the Broadcasting Act 2009 (Section 33) Levy Order 2010 Statutory Instrument No. 7 of 2010.

An overview is shown below.

Base year qualifying income	Percentage Levy
€1 to €1,000,000	B <sup>1</sup> %
€1,000,001 to €10,000,000	(B - .25) %
€10,000,001 to €20,000,000	(B - .50) %
€20,000,001 to €45,000,000	(B - .75) %
Over €45,000,000	(B - 1.75) %

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<sup>1</sup> 'B' means the numerical value which when expressed as a percentage represents the rate at which base year qualifying income of €1 to €1,000,000 is to be levied, as contemplated in the template.

## 4. Key Features of the BAI Levy Model - continued

Key features of the levy model are as follows:

**Cost Recovery** The levy model is designed to ensure full recovery of the properly incurred costs of the BAI in the period for which the levy is raised.

**Sliding Scale** The levy model incorporates a regressive sliding scale which reflects the view that the regulation costs of larger broadcasters, expressed as a percentage of total turnover, are less than those of smaller broadcasters.

**De Minimis Rule** In order to ensure that all regulated entities make some contribution to their regulation costs, a 'de minimis' rule applies whereby any relevant broadcaster with an annual qualifying income below €250,000 is required to make a single annual payment of €750.

## 5. Definition of Qualifying Income

Levies are calculated using the budgeted operating costs of the BAI for the levy year and the estimated qualifying income of the relevant broadcasters **for the immediately preceding calendar year.**

Schedule 2 of the Levy Order defines certain types of income as qualifying income for the purposes of the BAI levy, including;

- all grants from Government and public bodies except moneys paid by the BAI under the broadcasting funding scheme;
- amounts paid under Section 123 of the Broadcasting Act 2009 to RTÉ or TG4;
- earnings from commercial communications<sup>2</sup>, including late payment surcharges and cancellation penalties, net of agents'<sup>4</sup> commission up to a maximum of 15%;
- non-cash considerations for commercial communications<sup>2</sup> ;
- interactive incomes<sup>3</sup>.

The following forms of income are **not** subject to the levy:

- money paid by the BAI under the broadcasting funding scheme;
- commercial communications from public announcements and/or charity appeals broadcast free of charge;
- income from non-linear services<sup>4</sup>.

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<sup>2</sup> "commercial communications" means images with or without sound and radio announcements which are designed to promote directly or indirectly the products, services or image of a nature or legal entity pursuing an economic activity. Such images and radio announcements accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audio visual commercial communication include, inter alia, advertising, sponsorship, teleshopping and product placement but do not include public service announcements and charity appeals broadcast free of charge.

<sup>3</sup> "interactive income" means income generated by a broadcaster from listener or viewer response to a broadcast including, without limitation, telephony income and income from online payments which are so generated.

<sup>4</sup> "agents" includes both internal and external agents.

<sup>4</sup> A "non-linear" service means a service provided by a broadcaster whereby a person may view or listen to programmes at the moment chosen by the user and at his or her individual request on the basis of a catalogue of programmes selected by the broadcaster.

## 5. Definition of Qualifying Income - continued

The following are allowed as deductions when calculating qualifying income:

- early payment and/or volume discounts on commercial communications;
- reasonable provision for bad debts provisions in relation to commercial communications. No such deduction may be made should that income to which the provision relates not be qualifying income;
- the value of participant prizes attaching to interactive incomes. No such deduction may be made for the value of a prize which is provided at the cost of a third party.
- agent's commission on commercial communication, up to a maximum of 15%<sup>4</sup>

While it is not possible for the Levy Order to contain an exhaustive list of the categories of income which are or are not qualifying income, the general rule is that, if income is not brought within the levy by Schedule 2, it is not leviable.

More detailed information on Qualifying Income is available in Schedule 2 of the BAI Levy Order.

## 6. Overview of the Levy Collection Process

Key features of the levy collection process are as follows:

- The BAI publishes its budgeted operating costs for each levy year no later than February of each year;
- In February of each year, relevant broadcasters must submit in the required format estimates or audited confirmations (if available) of their qualifying income for the immediately preceding calendar year.;
- The levy is calculated using the BAI budgeted operating costs and the **total** qualifying income from all relevant broadcasters.
- Invoices are issued on a quarterly basis in arrears on March 1<sup>st</sup>, June 1<sup>st</sup>, September 1<sup>st</sup> and December 1<sup>st</sup>.
- Payment terms are thirty (30) days.
- Relevant Broadcasters paying the *de minimis* amount (i.e. €750) will be issued one invoice for the full amount on March 1<sup>st</sup> and payment is due in full within 30 days;
- Interest is charged on late payments in line with provisions set out in the levy order, and details of interest penalties to be accrued will be included in quarterly invoices;
- VAT is payable on the levy;
- Where relevant broadcasters have submitted estimates of qualifying income in February, **audited** confirmations of qualifying income must be submitted by August of the same year.

Once *BAI audited* accounts for each year are available and all the *audited* statements showing the qualifying income of relevant broadcasters is received, the budget to actual reconciliation will occur and debit or credit notes will be issued to relevant broadcasters with the next invoice.

## 6.1 Illustration with reference to Levy 2010

Month	BAI Action	Broadcaster Action
February 2010	Request for estimates of qualifying income for levy year 2010	Submit estimates of qualifying income for levy year 2010
April 2010	Issue Q1 invoice detailing levy amount for Q1 2010 with explanatory brochure	Payment of Q1 invoice (or full year invoice for de minimis payments)
June 2010	Issue Q2 Levy 2010 invoice	Payment of Q2 Levy 2010 invoice
August 2010	Issue reminder to submit auditor's confirmation of qualifying income for 2009	Submit auditor's confirmation of qualifying income for 2009
September 2010	Issue Q3 invoice  Reconciliation of estimates vs. auditors confirmation of qualifying income for 2009  Calculation of debit and credit for levy payable 2010	Payment of Q3 invoice
December 2010	Issue Q4 invoice, include debit / credit adjustment for levy payable 2010	Payment of Q4 invoice
January 2011	Reconciliation of BAI actual vs. budgeted operating costs for preceding year  Add surplus or deficit to the BAI operating forecast for levy 2011	

## 6.2 Illustration with reference to Levy 2011

Month	BAI Action	Broadcaster Action
February 2011	Request for estimates of qualifying income for levy year 2011	Submit estimates of qualifying income for levy year 2011
March 2011	Issue Q1 invoice detailing levy amount for Q1 2011	Payment of Q1 invoice (or full year invoice for de minimis payments)
June 2011	Issue Q2 Levy 2011 invoice	Payment of Q2 Levy 2011 invoice
August 2011	Issue reminder to submit auditor's confirmation of qualifying income for 2010	Submit auditor's confirmation of qualifying income for 2010
September 2011	Issue Q3 invoice  Reconciliation of estimates vs. auditors confirmation of qualifying income 2010  Calculation of debit and credit for levy payable 2011	Payment of Q3 invoice
December 2011	Issue Q4 invoice, include debit / credit adjustment for levy payable 2011	Payment of Q4 invoice
January 2012	Reconciliation of actual vs. budgeted operating costs for preceding year  Add surplus or deficit to the BAI operating forecast for levy 2012	

## 7. Extract of the BAI operating budget 2010

An extract overview of the BAI budget in 2010 is shown in Table 7.1.

### 7.1 Extract of BAI Budget 2010 (expenses subject to levy)

	<b>Forecast</b>
	<b>€</b>
Finance, Governance & People	3,401,039
Levy Development and Administration	46,000
Engineering	41,500
Policy	380,950
Contracts Awards	254,000
Sectoral Development	608,409
Communications	376,950
Compliance	135,000
Office of the CEO	285,627
Capital Expenditure	126,000
	<hr/>
	<b>5,655,476</b>
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## 8. Illustrative Examples of the Levy Calculation

### Step 1 – Calculate “B” the levy percentage

“B” means the numerical value which when expressed as a percentage represents the rate at which base year qualifying income of €1 to €1,000,000 is to be levied.

For illustrative purposes only “B” = 2.53%

### Step 2 – Illustrative examples of relevant Broadcaster’s levy calculation

The individual broadcasters’ qualifying income is reviewed and split into various income levels. Depending on the income level, “B” is reduced by a specific percentage as set out in the levy order.

<b>Levy Provisions (Schedule 1 of BAI Levy Order)</b>		
<b>De Minimis</b> De Minimis Turnover Fixed Levy for De Minimis		€250,000
		€750
<b>Levy Computation</b>	<b>Threshold</b>	<b>%</b>
Baseline Levy	€1,000,000	2.53%
Income Level 1	€10,000,001	-0.25%
Income Level 2	€20,000,001	-0.50%
Income Level 3	€45,000,001	-0.75%
Income Level 4	€45,000,001	-1.75%
Income Level 1	€10,000,000	2.28%
Income Level 2	€20,000,000	2.03%
Income Level 3	€45,000,000	1.78%
Income Level 4	€45,000,000	0.78%

## 8. Illustrative Examples of the Levy Calculation - continued

### Step 2 – Illustrative examples of relevant Broadcasters levy calculation

<b>Relevant Broadcasters Qualifying Income for 20XX:</b>	<b>250,000</b>
First €1m calculated at 2.53%:	-
Balance of QI 20XX for levy calculation up to €10m:	-
De minimis rule applies	750
Estimate Levy Due 20XX excl VAT	750
Estimate Levy Due 20XX per quarter excl VAT:	N/A

<b>Relevant Broadcasters Qualifying Income for 20XX:</b>	<b>500,000</b>
First €1m calculated at 2.53%:	12,650
Balance of QI 20XX for levy calculation up to €10m:	-
Estimate Levy Due 20XX excl VAT	12,650
Estimate Levy Due 20XX per quarter excl VAT:	3,163

<b>Relevant Broadcasters Qualifying Income for 20XX:</b>	<b>1,000,000</b>
First €1m calculated at 2.53%:	25,300
Balance of QI 20XX for levy calculation up to €10m:	-
Estimate Levy Due 20XX excl VAT	25,300
Estimate Levy Due 20XX per quarter excl VAT:	6,325

<b>Relevant Broadcasters Qualifying Income for 20XX:</b>	<b>2,500,000</b>
First €1m calculated at 2.53%:	25,300
Balance of QI 20XX for levy calculation up to €10m:	34,200
Estimate Levy Due 20XX excl VAT	59,500
Estimate Levy Due 20XX per quarter excl VAT:	14,875

<b>Relevant Broadcasters Qualifying Income for 20XX:</b>	<b>30,000,000</b>
First €1m calculated at 2.53%:	25,300
Balance of QI 20XX for levy calculation up to €10m:	205,200
Balance of QI 20XX for levy calculation up to €20m:	203,000
Balance of QI 20XX for levy calculation up to €45m:	178,000
Estimate Levy Due 20XX excl VAT	611,500
Estimate Levy Due 20XX per quarter excl VAT:	152,875

## **9. Frequently Asked Questions**

### **9.1 What happens in the case of new broadcasters?**

New broadcasters enjoy a payment holiday in their first year of operation; the levy obligation is still applicable.

For example, a broadcaster starting operations in January 2010 will not be required to pay any levy in this year – notwithstanding the fact that the BAI will incur a regulation cost in respect of this broadcaster. However, costs will be recouped in the year in which the broadcaster exits the sector. For example, a broadcaster who exits the sector on 1<sup>st</sup> of January 2011 will have an outstanding levy liability based on its qualifying income in 2010.

In the case of a broadcaster who is in operation for only part of a year, this will be reflected in the statement of qualifying income on which the levy is based. Full annual income thresholds will apply.

### **9.2 How can I be sure that the BAI is delivering value for money?**

The BAI is committed to ensuring value for money for all relevant broadcasters by maximising the cost effectiveness with which all regulatory activities are undertaken.

The Broadcasting Act 2009 (Section 37) requires the BAI to submit three-year estimates of income and expenditure to the Minister for Communications, Energy and Natural Resources for review. BAI annual accounts are subject to audit by the Comptroller and Auditor General.

### **9.3 What if my accounts are not prepared on a calendar year basis?**

To ensure equity of treatment between relevant broadcasters, it is essential that qualifying incomes be calculated for a standard time period, i.e. a calendar year.

However, the BAI is aware that not all relevant broadcasters prepare their accounts on a calendar year basis. Therefore, where audited statements of qualifying income are not yet available to the relevant broadcaster, estimates of qualifying income may be provided in February of the levy year, audited statements of qualifying income should be sent in by the end of August of that levy year.

## **9. Frequently Asked Questions - continued**

### **9.4 Will I have visibility on what other broadcasters are paying?**

In the interests of transparency, the BAI is committed to making as much information as possible publicly available and will publish a summary table of levy percentages attributable to each of the qualifying income bands on its website. However there may be instances where information provided by relevant broadcasters is of a commercially sensitive nature which cannot be made publicly available.

### **9.5 How will I be compensated for an over/under estimate of qualifying income?**

Towards the end of the calendar year, once the independently verified qualifying incomes are received, the "B" percentage is recalculated. Following this each relevant broadcaster levy calculation will be updated.

For every relevant broadcaster, reconciliation will be done between the estimated levy charge and the actual levy charge. Should there be an under or overpayment this amount will be credited or debited on the next levy invoice that is to be raised.

### **9.6 How will I be compensated for an over/under estimate of the BAI operating costs?**

Similarly, BAI actual operating costs will be reconciled at the start of the new levy year. Any budget surpluses or deficits will be added to the BAI operating budget forecast for the following levy year.

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## 10. Additional Information

1. The Broadcasting Authority of Ireland - <http://www.bai.ie>
2. The Broadcasting Act 2009 - <http://www.bai.ie/pdfs/BroadcastingAct2009.pdf>
3. Levy Order 2009 - <http://www.irishstatutebook.ie/2010/en/si/0007.html>

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