



STATUTORY INSTRUMENTS

**S.I. No. 7 of 2010**



BROADCASTING ACT 2009 (SECTION 33) LEVY ORDER 2010

**(Prn. A10/0087)**

BROADCASTING ACT 2009 (SECTION 33) LEVY ORDER 2010

The Broadcasting Authority of Ireland in exercise of the powers conferred on it by section 33 of the Broadcasting Act 2009 (No. 18 of 2009), hereby makes the following Order:

1. (1) This Order may be cited as the Broadcasting Act 2009 (Section 33) Levy Order 2010.

(2) This Order comes into operation on the 17th day of January 2010.

2. (1) In this Order, including the schedules—

“Act of 2009” means the Broadcasting Act 2009;

“broadcaster” means a public service broadcaster or a broadcasting contractor;

“date of default” means the date on which a broadcaster fails to pay to the Authority a sum which is payable to it under this Order;

“levy” means a levy imposed by this Order;

“levy year” means a year in which the Authority operates, or where the Authority operates for part only of a year the part of such year during which the Authority operates;

“overdue sum” means a sum payable to the Authority under this Order which a broadcaster has not paid and which remains outstanding;

“qualified person” means a person who is qualified for appointment as auditor of a company under section 187 of the Companies Act 1990 as amended;

“qualifying income” means income so described in Schedule 2;

“subject broadcaster” means a broadcaster who must pay levy by virtue of determinations which have been made by the Authority under article 6;

“three month Euribor” means the Euro Interbank Offered Rate with a maturity date of three months as advertised by the Euribor EBF Secretariat;

“VAT” means the tax provided for in the Value-Added Tax Act 1972 (as amended).

(2) In this Order including the schedules unless it is otherwise indicated—

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 22nd January, 2010.*

- (a) a word or expression defined in the Act of 2009 shall have the same meaning when used in this Order;
- (b) a reference to legislation is a reference to that legislation as amended from time to time;
- (c) a reference to an article or schedule is to an article of or schedule to this Order;
- (d) a reference to a sub-article is to the sub-article of the provision in which the reference occurs unless it is indicated that a reference to another provision is intended; and
- (e) a reference in a schedule to a paragraph is to a paragraph in the schedule in which the reference appears unless it is indicated that a reference to another provision is intended.

3. (1) A levy is hereby imposed on each public service broadcaster and broadcasting contractor in respect of each year in which such broadcaster is in operation as such.

(2) For the removal of doubt a levy is hereby imposed on a broadcaster in respect of a year in which it is in operation as such notwithstanding that it has not been in operation as such for all of such year.

4. The amount of the levy shall be calculated so that the levy imposed in respect of a levy year shall meet the expenses properly incurred in that levy year by the Authority, the Contract Awards Committee and the Compliance Committee in the performance of their functions.

5. The Authority shall calculate the levy in the manner set out in Schedule 1.

6. Having determined that a broadcaster must pay levy in respect of a levy year the Authority shall determine—

- (1) the amount of such levy; and
- (2) either that such levy is to be paid in one sum on or before a specified date, or that it is to be paid by way of instalments.

7. Where pursuant to article 6 (2) the levy is to be paid by a broadcaster in instalments the Authority shall determine the amount of each such instalment and the date upon which it is to be paid.

8. The Authority shall serve a notice on each subject broadcaster setting out—

- (1) the amount of levy which it must pay;
- (2) where such amount is to be paid in one sum, the date on which such payment is to be made; and

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(3) where such amount is to be paid by way of a number of instalments, the amount of each such instalment and the date on which it is to be paid.

9. A broadcaster on which a notice has been served pursuant to article 8 shall comply with its terms.

10. Article 11 shall apply where the Authority—

(1) has determined under article 6 the amount of the levy which is payable by a broadcaster in respect of a levy year;

(2) has served a notice under article 8 on such broadcaster in respect of such levy year, and

(3) has thereafter become aware of information which makes it appropriate that it should recalculate the amount of such levy.

11. Where this article applies the Authority may recalculate the levy payable by a broadcaster in respect of a levy year by reference to the table which it has prepared in respect of such levy year pursuant to paragraph 8 of Schedule 1 or, where appropriate, by reference to such revised table as it has prepared in respect of that levy year pursuant to paragraph 12 of Schedule 1, and the Authority may vary the payment obligations of such broadcaster in the manner provided for in Schedule 3.

12. A broadcaster shall comply with a notice which is served on it under paragraph 6 of Schedule 3.

13. (1) Subject to sub-articles (2) and (3) a broadcaster which is obliged to make a payment of levy to the Authority shall make such payment by cheque or by electronic funds transfer to the bank account which the Authority has by way of notice in writing to the broadcaster specified for such purpose.

(2) Where a broadcaster makes a payment by cheque under sub-article (1) the date of issue of the cheque shall not be later than the date on which the broadcaster delivers the cheque to the Authority.

(3) Where a broadcaster has initiated an electronic funds transfer under sub-article (1) it shall promptly notify the Authority of the date on which such transfer was initiated, the amount which is to be transferred and the name of the bank which is to effect the transfer.

14. Subject to article 15 the Authority may by way of notice in writing require that a broadcaster provide to the Authority on or before a date specified in such notice—

(1) management accounts for any financial period ending not less than 28 days before the date on which such accounts are to be provided to the Authority, and

(2) an estimate of its qualifying income within any such financial period.

15. The Authority may in a notice served under article 14 which requires that a broadcaster provide management accounts to the Authority, specify the form which those accounts should take.

16. A broadcaster upon whom a notice is served under article 14 shall comply with its terms.

17. Subject to article 18 the Authority may by way of notice in writing require that a broadcaster provide to the Authority on or before a date specified in such notice—

(1) accounts for any financial period ending not less than 210 days before the date on which such accounts are to be provided to the Authority; and

(2) a statement showing its qualifying income within any such financial period.

18. (1) Such accounts as are referred to in sub-article 17 (1) shall be audited by a qualified person.

(2) Such statement as is referred to in sub-article 17 (2) shall be accompanied by a certificate in support of such statement from the person who has audited such accounts.

19. A broadcaster on whom a notice has been served under article 17 shall comply with its terms.

20. A broadcaster shall retain, for the period determined in accordance with article 21—

(1) records relevant to the preparation of management accounts in accordance with article 14(1);

(2) records relevant to the preparation of an estimate in accordance with article 14(2);

(3) records relevant to the preparation of accounts in accordance with article 17(1);

(4) records relevant to the preparation of a statement in accordance with article 17(2); and

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(5) such other records as may be prescribed by the Authority by way of a notice in writing served on the broadcaster.

21. (1) Where a broadcaster is obliged under article 20 to retain a record which relates to one financial period only it shall retain such record for six years from the end of such financial period.

(2) Where a broadcaster is obliged under article 20 to retain a record which relates to more than one financial period it shall retain such record for six years from the end of the latest period to which such record relates.

22. Subject to article 23 the Authority may by way of notice in writing require a broadcaster to permit the Authority or a person nominated by it on a specified date or dates to inspect records held by it or by any person on its behalf which are relevant to the calculation and payment of levy for a specified year or years.

23. At least seven days must elapse between the date on which the Authority gives notice under article 22 and the earliest date specified in such notice for the inspection of records.

24. A broadcaster on which a notice is served under article 22 shall comply with its terms.

25. Subject to article 26 the Authority may by way of notice in writing require a broadcaster to provide to the Authority within a specified period—

(1) copies of records held by it, or by any person on its behalf, which are relevant to the calculation and payment of levy for a specified year or years; and/or

(2) replies to such queries concerning its activities as the Authority may have incorporated in such notice.

26. The period specified in article 25 shall be not less than 21 days.

27. A broadcaster on which a notice is served under article 25 shall comply with its terms.

28. Subject to article 29, interest shall accrue on an overdue sum from the date of default until the date of payment at an annual rate of 3% over three month Euribor.

29. The three month Euribor rate which is applicable for the purpose of article 28 shall be the three month Euribor rate on the date of default, provided that thereafter the Authority may at three month intervals substitute for such rate the then applicable three month Euribor rate.

30. The Authority shall, where applicable, include in any notice requiring the payment of levy details of the VAT which the broadcaster must pay in respect of such levy.

## SCHEDULE 1

### CALCULATION OF THE LEVY

1. In this schedule—

“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;

“base year” means the year preceding a levy year or, where a broadcaster has been in operation for part only of the year preceding a levy year, such part of a year;

“base year qualifying income” means the qualifying income of a broadcaster in the base year;

“complete table” means the table referred to in paragraph 8;

“initial value for B” means the numerical value attributed to B in the complete table;

“revised table” means the table prepared in accordance with paragraph 12;

“revised value for B” means the numerical value attributed to B in accordance with paragraph 11;

“template” means the table set out in paragraph 5;

“variable levy” means the levy calculated in accordance with this schedule (not being the levy described in paragraph 4);

“variable levy payer” means a broadcaster who must pay a variable levy.

2. The levy which a broadcaster must pay in a levy year shall be based on its qualifying income in the base year.
3. The qualifying income of a broadcaster in a base year shall be determined in accordance with Schedule 2.
4. A broadcaster whose base year qualifying income is not more than €250,000 must pay a levy of €750 in the levy year.
5. A broadcaster whose base year qualifying income is more than €250,000 must in respect of the levy year pay a levy which is computed by reference to its base year qualifying income in accordance with the following table—

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Base year qualifying income	Percentage Levy
€1 to €1,000,000	B %
€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) %

6. The table in paragraph 5 shall be applied so that for example—

- (a) a variable levy payer whose base year qualifying income is not more than €1,000,000 must in the levy year pay a levy which is equal to B % of its base year qualifying income; and
  - (b) a variable levy payer whose base year qualifying income is more than €1,000,000 but is not more than €10,000,000 must in the levy year pay a levy which is equal to the aggregate of B % of the first €1,000,000 of its base year qualifying income and (B — .25) % of its base year qualifying income over €1,000,000.
7. When the Authority has sufficient information to enable it to estimate the qualifying income of each variable levy payer for the base year, it shall attribute a numerical value to B for the levy year such that the levy imposed in respect of the levy year shall meet the expenses properly incurred in the levy year by the Authority, the Contract Awards Committee and the Compliance Committee in the performance of their functions.
  8. Having calculated the numerical value of B for a levy year the Authority shall prepare a complete table for such year by inserting in the template a numerical value for each percentage rate which appears in it.
  9. The Authority shall in each levy year publish such complete table in a manner determined by it.
  10. The Authority shall only serve notices under article 8 in respect of a levy year after it has published the complete table for such year, and no fewer than seven days shall elapse between such publication and the service of such notices.
  11. At any time after the Authority has published the complete table for a levy year the Authority may determine, on the basis of the information which is then available to it, that it would be appropriate for it to attribute a numerical value to B for the levy year which differs from the initial value for B, such that the levy imposed in respect of the levy year shall meet the expenses properly incurred in that levy year by the Authority, the Contract



Awards Committee and the Compliance Committee in the performance of their functions.

12. Having calculated the revised value for B for a levy year the Authority shall prepare a revised table for such year by inserting in the template a numerical value for each percentage rate which appears in it.
13. The Authority shall publish any such revised table which it may prepare in a manner determined by it.
14. Where the Authority has prepared a revised table for a levy year it may only serve a notice under paragraph 6 of Schedule 3 in respect of such levy year after it has published the revised table for such levy year, and no fewer than seven days shall elapse between such publication and the service of such notice.
15. An entity which has generated qualifying income from operating as a broadcaster in the base year shall pay levy in the levy year even if it has ceased to be a broadcaster before the levy year begins.

## SCHEDULE 2

### QUALIFYING INCOME

1. In this schedule—

“Act of 2003” means the Broadcasting (Funding) Act 2003;

“broadcasting funding scheme” means a scheme under section 2 of the Act of 2003 which is administered by the Authority by virtue of Part 12 of the Act of 2009, or a scheme under section 154 of the Act of 2009;

“commercial communication” means a communication so described in paragraph 6;

“Government” means the Government provided for in Bunreacht na hÉireann;

“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;

“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;

“public body” means an entity whose decisions are subject to judicial review.

2. Subject to paragraph 4, money which the Government or a public body pays to a broadcaster by way of grant is qualifying income of that broadcaster.

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3. Without limitation, money which the Minister for Communications, Energy and Natural Resources pays to a broadcaster under Section 123 of the 2009 Act is qualifying income of that broadcaster.
4. Money which the Authority pays to a broadcaster under a broadcasting funding scheme is not qualifying income of that broadcaster.
5. Subject to paragraph 8 income of a broadcaster from commercial communications (including late payment surcharges and cancellation penalties) net of agent's commission, computed on a normal accruals basis, is qualifying income of that broadcaster.
6. In this schedule "commercial communication" means images with or without sound and radio announcements which are designed to promote, directly or indirectly, the products, services or image of a natural 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 audiovisual 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.
7. Where a broadcaster gives early payment discounts and/or volume discounts in respect of commercial communications such discounts may be taken into account in computing the qualifying income of the broadcaster.
8. Where a broadcaster pays commission to an agent in respect of a commercial communication and such commission exceeds 15% of the amount payable to the broadcaster by the person for whom such communication is broadcast, the amount by which such commission exceeds 15% may not be deducted in computing such broadcaster's qualifying income.
9. Subject to paragraph 10 where reasonable provision is made in the audited accounts of a broadcaster for bad debts relating to commercial communications a corresponding deduction may be made in computing such broadcaster's qualifying income.
10. No such deduction as is referred to in paragraph 9 may be made for a provision for bad debts to the extent that the income to which such provision relates would not be qualifying income.
11. Subject to paragraphs 5 and 8 costs incurred by a broadcaster in securing commercial communications may not be deducted in computing such broadcaster's qualifying income.
12. Where a broadcaster receives non-cash consideration for a commercial communication the qualifying income of the broadcaster shall be increased by an amount equal to the Authority's estimate of the value of such non-cash consideration.

13. Subject to paragraph 14 where a broadcaster generates interactive income such income is qualifying income of that broadcaster.
14. Where a broadcaster generates interactive income through broadcasting programmes featuring competitions the value of prizes awarded to participants may be deducted in computing qualifying income, but no deduction may be made for the value of a prize which is provided at the cost of a third party.
15. Costs incurred by a broadcaster in providing interactive services or applications may not be deducted in computing qualifying income.
16. Notwithstanding any other provision of this schedule, income which a broadcaster earns from the provision of a non-linear service is not qualifying income of that broadcaster.

### SCHEDULE 3

#### VARIATION OF PAYMENT OBLIGATIONS

1. In this schedule—

“amount already paid” means the amount (if any) which a relevant broadcaster has paid to the Authority by way of levy in respect of the year in question.

“recalculated levy” means the levy payable by a relevant broadcaster in respect of the year in question, as it has been recalculated pursuant to article 11.

“relevant broadcaster” means the broadcaster by whom the recalculated levy is payable.

“remaining sum” means (i) where the relevant broadcaster has not paid any sum to the Authority by way of levy in respect of the year in question, a sum equal to the recalculated levy, or (ii) where the relevant broadcaster has paid a sum to the Authority in respect of the year in question which is less than the recalculated levy, a sum computed in accordance with paragraph 3.

“year in question” means a levy year in respect of which the Authority is to vary the payment obligation of a broadcaster pursuant to article 11.

2. Where this schedule applies and the relevant broadcaster has paid a sum to the Authority by way of levy in respect of the year in question which is less than the recalculated levy, paragraph 3 shall apply.
3. Where this paragraph applies the Authority shall compute the amount which remains to be paid by the relevant broadcaster to the Authority by way of levy in respect of the year in question by deducting from the recalculated

levy the amount which the relevant broadcaster has paid to the Authority by way of levy in respect of the year in question.

4. Paragraphs 5 to 8 shall apply where a sum remains to be paid by the relevant broadcaster to the Authority by way of levy in respect of the year in question because—
  - (a) the relevant broadcaster has not paid any sum to the Authority by way of levy in respect of the year in question; or
  - (b) the relevant broadcaster has paid a sum to the Authority in respect of the year in question which is less than the recalculated levy.
5. The Authority shall determine either that the remaining sum is to be paid in one sum on or before a specified date, or that it is to be paid by way of instalments. Where the remaining sum is to be paid by the relevant broadcaster in instalments the Authority shall determine the amount of each such instalment and the date upon which it is to be paid.
6. The Authority shall serve a notice on the relevant broadcaster setting out remaining sum and requiring that it be paid.
7. Where the remaining sum is to be paid in one sum the notice served under paragraph 6 shall set out the date on which such payment is to be made.
8. Where the remaining sum is to be paid by way of a number of instalments the notice served under paragraph 6 shall set out the amount of each such instalment and the date upon which it is to be paid.
9. Where this schedule applies and the amount already paid is more than the recalculated levy the Authority shall pay to the relevant broadcaster an amount equal to such overpayment, save that the Authority may set off such overpayment against a debt which the relevant broadcaster owes to the Authority.



GIVEN under the seal of the Broadcasting Authority of Ireland, this  
17th day of January 2010.

BOB COLLINS,  
Chairperson of the Broadcasting Authority of Ireland.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

This Order imposes a levy on certain broadcasters.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
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nó tríd an bpost ó  
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