



Commission for
Communications Regulation

Compliance Guidelines

Communications Regulations Act 2002 (Section 30) Postal Levy Order 2003 S.I. No. 733 of 2003

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Overview

The purpose of this document is to provide guidance to those providing postal services, both inside and outside the scope of the universal service, on the operations and procedures to be applied for the collection and payment of the postal levy. These procedures may be subject to amendment and updating at any time. Any changes will however be notified to persons providing such services.

This document is issued for guidance only and is not intended to be a legal interpretation of the Communications Regulation Act 2002 (Section 30) Postal Levy Order 2003 (S.I. No. 733 of 2003) ('the Levy Order').

The Commission for Communications Regulation ("ComReg") is not bound by this document and may amend it from time to time.

1 Introduction

Section 30(2) of the Communications Regulation Act 2002 authorises the Commission for Communications Regulation (“ComReg”), for the purpose of meeting expenses properly incurred by ComReg in the discharge of its functions in respect of postal services,¹ to impose, by order, a levy on providers of postal services.

On the 30 December 2003, ComReg, in exercise of the powers conferred on it by section 30, made the Levy Order. The making of the Levy Order coincided with the establishment, in accordance with the European Communities (Postal Services) Regulations 2002 (S.I. 616 of 2002), of new authorisation procedures, from the 1st January 2004, for all postal service providers who record a turnover, for postal services, in excess of €500,000, exclusive of VAT per annum.

The Levy Order requires payment of a levy by all holders of a postal service authorisation and by the designated universal service provider(s). Postal service providers who do not hold a postal service authorisation, by virtue of not being required to do so under Regulation 7 (1), will be exempt from paying the levy. However, those who are not required to hold authorisations but choose to apply for one will also be liable to pay the levy.

¹ Section 6 ComReg 03/139r ‘Regulation of Postal Services- Postal Service Authorisations, Reserved Area Controls & Levy’ outlines the functions of ComReg in respect of postal services.

2 Postal Levy Orders under Section 30 Communications Regulation Act 2002

The Levy Order applies for the second half of the 2003/4 Levy Year, namely, 1 January 2004 to 30 June 2004. It is anticipated that a further levy order will be made, applicable for the levy year commencing 1 July 2004 and ending 30 June 2005 and for subsequent levy years.

The rate of levy has been set at 0.075% of the 'relevant turnover' of the operator's financial year ending in the levy year.²

The "levy year" means the financial year of ComReg commencing on 1 July and ending on 30 June. For example, if a company has a 31 December financial year end, its levy liability for the levy year ending 30 June 2004 will be based on its relevant turnover of the financial year ending 31 December 2003

The postal levy, in respect of the levy year commencing on 1 July 2003 and ending on 30 June 2004, will be payable only for the two quarters ending on the 31 March and 30 June 2004.³ The levy payment for such quarters will be based on the 'relevant turnover' of the operator's financial year ending in the levy year (i.e. 1 July 2003 to 30 June 2004)

Example: Assume XYZ Courier Ltd had a relevant turnover for its financial year ending 31 December 2003 of €2m. The annual levy payable by XYZ Courier Ltd in respect of the year ending 30 June 2004 would be (assuming the levy was payable for the full year) 0.075% of €2m = €1,500. The levy liability for the January to June period would be 2/4 of this i.e. €750.

Organisations whose 'relevant turnover' is less than €1,333,333 in any levy year will be subject to the minimum levy amount of €1,000 per annum and, therefore, the levy liability of such organisations under the Levy Order for the January to June period, would be 2/4 of €1,000 i.e., €500.

Example: Assume XYZ Courier Ltd had a relevant turnover, for its financial year ended 31 December 2003, of €1,000,000. The minimum levy payment of €1,000 would be applicable for the levy year ending 30 June 2004. If however, its turnover for the financial year ending 31 December 2003 was €1,500,000 the annual levy payable in respect of the levy year ending 30 June 2004 would be, €1,125 (assuming the levy is payable for the full year).

The actual levy due can only be calculated when the statement of relevant turnover has been submitted to ComReg (within 21 weeks of the end of the operators' financial year) which has been certified by a qualified auditor. In practice, it is

² Different rates apply to An Post as a designated universal service provider –see Decision 2 of ComReg 03/139.

³ An Post, as a designated universal service provider will however be liable to pay a levy for the period 1 July to 31 December under Postal Levy No. 3 Order 2002, S.I. No. 549 of 2002.

probable that most payments will be based on an estimate provided by the operator. Normally this estimate will be based on the 'relevant turnover' of the operator's previous financial year. As this is the first year of implementation, a 'best estimate' of the 'relevant turnover' for the quarters ending 31 March and 30 June 2004 will be acceptable. Once the Statement of Relevant Turnover has been received, the actual liability will be calculated and an invoice/credit note will be issued immediately for any additional sums due/owed. It is anticipated that any differential should be settled by the operator without any undue delay. In circumstances where the amount paid by the operator is greater than the amount payable, this surplus will be repaid by ComReg as soon as possible after the end of the levy year.

By virtue of Section 30 (12) of the Communications Regulation Act 2002, ComReg may recover as a simple contract debt from any person any money payable to it under the levy order. Were ComReg to issue proceedings against a provider of postal services for failure to pay the levy, it would be entitled under the Courts Act, 1981 to ask the court to order interest be paid from the date that such proceedings were issued.

In accordance with Article 5, sub-article 1 of the Levy Order, if a postal operator terminates its operations during a levy year for which it is impractical to determine its liability, it will be acceptable to ComReg for the postal operator in question, to assess its liability on the basis of the 'relevant turnover' in the financial year ending in the previous levy year.

3 Statement Required from Postal Operators

3.1 Statement of Relevant Turnover as required under Article 6 Sub-Article 1 of Levy Order (S.I. No. 733 of 2003)

In order for ComReg to calculate the correct amount due from providers of postal services, such organisations will be required to submit a Statement of Relevant Turnover to ComReg within 21 weeks of the end of the relevant financial year. This statement must be certified by a person who is qualified under the Companies Acts 1963 to 2003, for appointment as auditor of a company. The statement of the universal service provider(s) shall distinguish between services within the scope of the universal service obligation and those services outside the scope. Sample statements are provided in Appendix B-D for guidance of postal providers and their auditors.

The “relevant turnover”, for the purposes of determining the levy payment and in accordance with the Levy Order, is defined as “the gross revenue excluding value-added tax paid or payable to the applicable undertaking in respect of the provision of postal services” (See Appendix A) as reported in the financial statements of the most recent financial year end ending in the levy year.

Turnover which is clearly not related to the provision of postal services e.g. road haulage or air freight, will not be subject to the levy and therefore may be deducted from the revenue figure. However, revenue generated from other providers required to be authorised or deemed to be authorised is relevant turnover and is therefore not deductible. In addition, revenue generated from the provision of postal services to subsidiaries, associated or other connected undertakings is not deductible from relevant turnover. This will be particularly important in relation to revenue generated from postal items originating abroad but for delivery in Ireland.

If a postal service provider’s relevant turnover differs from its total turnover, a clear description of the activity relating to any non-relevant turnover (e.g. road haulage/air freight) deducted from total turnover must be given in the statement certified by their auditors (as noted in the sample statement in Appendix B). Such deductions from total turnover will be reviewed on a case by case basis.

ComReg does not wish to impose a disproportionate burden on certain firms by requiring them to report this specific accounting information. Prior to the making of the Levy Order, certain firms may not previously have had a management requirement to generate the information required by ComReg. Therefore, so as to simplify the process and in order to assist operators in the identification of the levy payment due, three thresholds may be identified as follows:

3.1.1 Total Turnover equal to or less than €1,333,333

Holders of Postal Service Authorisations whose total turnover for the financial year ending in the levy year is less than or equal to €1,333,333 will be liable to pay the minimum levy of €1,000 per annum.

In such circumstances, a certified statement that the ‘relevant turnover’ as per the financial statements is less than €1,333,333 and that the minimum levy payment of €1,000 applies will suffice⁴.

3.1.2 Total Turnover greater than €1,333,333 and all activity is within the postal sector

In this case the certified statement should simply report on the total turnover of the company as per its financial statements.⁵

3.1.3 Total Turnover greater than €1,333,333 but some business activities are outside the postal sector

If the turnover threshold of €1,333,333 per annum is exceeded and the holder of a Postal Service Authorisations is involved in activities that are not exclusively related to postal services there will be a requirement to distinguish turnover attributable to postal activities from all other turnover.

Many of the postal services providers are logistic firms offering for example a freight and/or postal service. Total revenues will need to be allocated between these two business activities. In many cases it may not be immediately clear where the postal service ends.

ComReg is anxious not to impose burdens or costs on operators that are unreasonable or disproportionate. It believes that most financial reporting systems will have the functionality to identify relevant turnover without undue difficulty. Where particular operators have a problem, ComReg staff will be available to deal with queries on a case by case basis. In order to assist operators where relevant turnover is not immediately identifiable, ComReg suggests the following approach:

- Turnover that can be directly assigned to a particular service/activity should be so assigned.
- Turnover which cannot be directly assigned to a particular activity should be allocated as follows:
 - Whenever possible, revenue should be allocated on the basis of direct analysis of the origin of each revenue stream.
 - When direct analysis is not possible, turnover should be allocated on the basis of an indirect linkage to another revenue category for which a direct assignment is possible; the indirect linkage should be based on comparable revenue structures.

⁴ Appendix C contains a sample certified auditor’s statement for such operators.

⁵ Appendix D contains a sample certified auditor’s statement for such operators.

- When neither direct or indirect measures of revenue allocation can be found, the revenue should be allocated on the basis of a general allocator computed using the ratio of all revenue directly or indirectly assigned or allocated, on the one hand, to its postal services and on the other hand to the other services/activities of the operator. This split may be derived from statistical sampling or a simple analysis of revenue streams.

In certain cases, particularly when a provider has recently changed status, its financial year-end may change, resulting in a financial year that is either longer or shorter than 12 months. The intention is that the Levy Order be applied based on annual turnover and, accordingly, in such cases ComReg will use a pro-rata estimate of 12 months relevant turnover for calculating the levy due.

4 Procedures for quarterly payments of Levy

ComReg anticipates that there will be significant number of postal operators who will seek an authorisation from ComReg and, who will, accordingly, be liable to pay a levy. The issuance of invoices and collection of amounts due will therefore be a substantial administrative exercise. It is intended that the procedures outlined below will ensure that invoicing and collection will operate in an efficient and effective manner which will benefit both the regulator and the regulated postal operators.

The following procedures will be used, for the time being, for collection of the levy.

Approximately one month prior to the quarterly payment due date, authorised postal providers will be written to, requesting payment of the levy due on that date.

A request will also be made to supply a certified statement of the relevant turnover for the levy year. This statement will need to be submitted within 21 weeks of the end of the operator's financial year.

When this is received, the actual levy payment due will be reconciled with the amounts already paid. An additional invoice/credit note will be issued reflecting the balance payable/receivable.

In accordance with Section 30(5) of the Communications Regulations Act, 2002 any surplus generated by the levy above the costs properly incurred by ComReg in the discharge of its functions in a particular financial year will either:

- be retained by the ComReg to be offset against levy obligations for the subsequent year, or
- be refunded proportionately to the providers on whom the levy is imposed

In accordance with Article 8 sub-article (1) of the Levy Order, payment of the levy can be paid by cash, cheque, money order, postal order or electronic funds transfer.

Payments by electronic funds transfer may be made to the ComReg bank account as detailed below:

Bank Sort Code:	90 00 33
Account Number:	17806887
Bank:	Bank of Ireland 6 Lower O'Connell Street, Dublin 1, Ireland

The provider should notify ComReg of such payments in order that they can be identified.

Appendix A – Definitions

The Communications Regulation Act, 2002 defines ‘postal services’ in accordance with the definition assigned by Directive 97/67/EC of 15 December 1997 i.e.

postal services: services involving the clearance, sorting, transport and delivery of postal items;

NB Although the above definition taken in conjunction with the definition of “postal item” appears to restrict postal services to those provided by “the universal service provider” it is clear from both the recitals and specific provisions in the Directives that it encompasses all such services, including Express Services, Document Exchange and Unaddressed Mail:

Recital 21 to 97/67/EC, Whereas new services (services quite distinct from conventional services) and document exchange do not form part of the universal service and consequently there is no justification for their being reserved to the universal service providers;

Recital 22 to 97/67/EC, Whereas Member States should be able to regulate, by appropriate authorization procedures, on their territory, the provision of postal services which are not reserved to the universal service providers; whereas those procedures must be transparent, non-discriminatory, proportionate and based on objective criteria;

Extract from Article 19, as amended,

Member States may provide that this principle is also applied to beneficiaries of services which are:

- outside the scope of the universal service as defined in Article 3, and
- within the scope of the universal service as defined in Article 3, but which are not provided by the universal service provider.

Recital 13 to 2002/39/EC, Amongst the factors which bring about change affecting employment in the postal sector, technological development and market pressure

for efficiency gains are the most important; of the remaining factors for change, market-opening will play a less prominent part. Market opening will help to expand the overall size of the postal markets, and any reductions in staff levels among the universal service providers due to such measures (or their anticipation) are likely to be offset by the resulting growth in employment among private operators and new market entrants.

postal item: an item addressed in the final form in which it is to be carried by the universal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value;

Appendix B - Sample Statement of Relevant Turnover

Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

1 May 2004

Dear Sir or Madam

XYZ Courier Ltd

Statement of 'Relevant Turnover' pursuant to Section 30 of the Communications Regulation Act, 2002, Postal Levy Order, 2003 (S.I. 733 of 2003)

In our opinion the total of the relevant and non relevant turnover for the period from 1 January 2003 to 31 December 2003 amounted to €20,000,000. This has been properly extracted from the books and records of the company with which the audited financial statements are in agreement.

Relevant Turnover as defined in Section 30 Communications Regulation Act, 2002 Postal Levy Order, 2003 for the financial year 1 January 2003 to 31 December 2003 amounted to €13,000,000.

Therefore Non Relevant Turnover amounted to €7,000,000.

Non Relevant Turnover arose from the following activities:

- Road Haulage
- Air Freight
- Consultancy Fees

Bloggs and Bloggs
Chartered Accountants and Registered Auditors
Dublin
1 May 2004

Appendix C - Sample Statement of Relevant Turnover

Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

1 August 2004

Dear Sir or Madam

XYZ Courier Ltd

Statement of 'Relevant Turnover' pursuant to Section 30 of the Communications Regulation Act, 2002, Postal Levy Order, 2003 (S.I. 733 of 2003)

In our opinion the total of the relevant and non relevant turnover for the period from 1 April 2003 to 31 March 2004 amounted to €1,250,000. This has been properly extracted from the books and records of the company with which the audited financial statements are in agreement.

Relevant Turnover as defined in Section 30 Communications Regulation Act, 2002 Postal Levy Order, 2003 for the financial year 1 April 2003 to 31 March 2004 is less than the total turnover of €1,333,333 and therefore the minimum levy payment of €1,000 is applicable.

Bloggs and Bloggs
Chartered Accountants and Registered Auditors
Dublin
1 August 2004

Appendix D - Sample Statement of Relevant Turnover

Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

1 May 2004

Dear Sir or Madam

XYZ Courier Ltd

Statement of 'Relevant Turnover' pursuant to Section 30 of the Communications Regulation Act, 2002, Postal Levy Order, 2003 (S.I. 733 of 2003)

In our opinion the total of the relevant and non relevant turnover for the period from 1 January 2003 to 31 December 2003 amounted to €1,500,000. This has been properly extracted from the books and records of the company with which the audited financial statements are in agreement.

Relevant Turnover as defined in Section 30 Communications Regulation Act, 2002 Postal Levy Order, 2003 for the financial year 1 January 2003 to 31 December 2003 is €1,500,000.

Non Relevant turnover being NIL.

Bloggs and Bloggs
Chartered Accountants and Registered Auditors
Dublin
1 May 2004