2022/23 Telecommunications Development Levy

Process overview

30 June 2023

CONTENTS

Introduction

1. This document provides an overview of the 2022/23 Telecommunications Development Levy (**TDL**) process.

2. This document has been published alongside the following documents on the 2022/23 TDL project page:

    2.1 *Telecommunications development levy summary* – two-page introduction to the regime;

    2.2 *Information that qualifying liable persons must provide to the Commission under section 83 of the Telecommunications Act 2001,* which specifies the information that certain parties must provide the Commission under s 83 of the Telecommunications Act (**Act**) (**Specified Information Document**); and

    2.3 *Specified information templates for 2022-23* – excel spreadsheet containing s 83 information Templates 1-4.

3. If you have remaining questions after consulting these documents on the 2022/23 TDL process please contact market.regulation@comcom.govt.nz (CC'ing [redacted]

Key terminology

4. The TDL provisions of the Act use a number of terms with specific meanings. The key terms are defined below.

Liable person

5. Liable person is defined in the Act as a person who provides a telecommunications service in New Zealand by means of some component of a public telecommunications network (**PTN**) that is operated by the person.[1]

Qualifying liable person

6. Only qualifying liable persons (**QLPs**) are liable to pay the TDL, as s 81 excludes the application of the TDL provisions of the Act from liable persons who are not QLPs. A liable person is not a 2022/23 QLP if the person:[2]

    6.1 was not trading in the 2021/22 financial year; or

    6.2 the liable person's gross telecommunications revenue for the 2021/22 financial year was less than $10 million.

7. The $10 million threshold must include revenue of any connected bodies corporate. Section 79(1) of the Act describes the situations where companies are regarded as connected bodies corporate for the TDL.

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[1] See s 5 of the Act.
[2] See s 81 of the Act.

Public telecommunications network

8. A public telecommunications network (**PTN**) is defined in the Act as a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunications.[3] It includes a public switched telephone network (PSTN) and a public data network (PDN).[4]

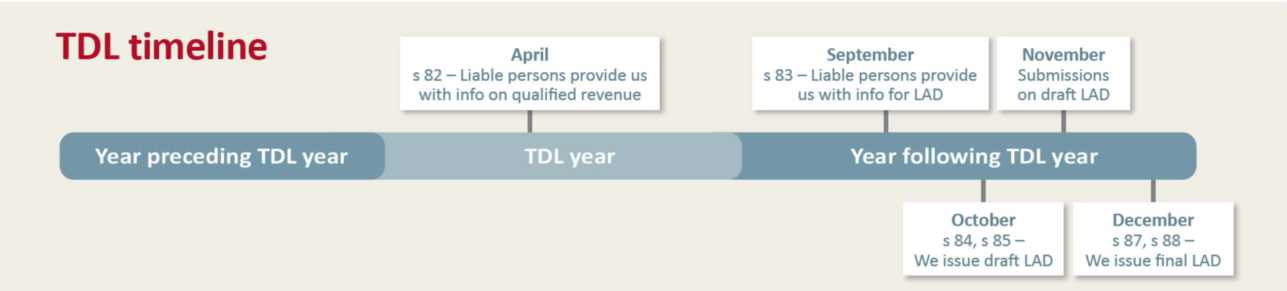
Financial year

9. The TDL uses a 1 July to 30 June financial year. For example, the 2022/23 TDL covers the period from 1 July 2022 to 30 June 2023.

How the process works

10. The yearly process for the TDL is shown in Figure 1 below. The TDL process starts in April every year when the QLPs for the year are identified and runs until December when the Commerce Commission (**Commission**) publishes its final liability allocation determination (**LAD**) for the year. The LAD is the formal document that sets out how much of the TDL each QLP must pay.

Figure 1: TDL timeline



QLP verification

11. The first step in the TDL process is to identify those liable persons that are QLPs.

12. Section 82 required QLPs to supply their 2021/22 financial statements to the Commission by 1 April 2023 (60 working days prior to the end of the financial year).[5]

13. The information that we received from liable persons complying with s 82 requirements was used to verify a list of QLPs that are required to pay a portion of the 2022/23 TDL. This list is not final and can be amended at any stage up to the date of publication of the final LAD if we receive information that identifies a new QLP.

14. The purpose of the list is to provide clarity as to who the Commission considers are QLPs and to enable QLPs to determine which payments for telecommunications services they may deduct from their qualified revenue. However, it is the

[3] See s 5 of the Act.

[4] See paragraphs 18-24 of the [2019/20 final liability allocation determination] for further information on what constitutes a PTN.

[5] QLPs from last year are not expected to provide their 2021/22 financial information as this was already provided as part of their 2021/22 qualified revenue disclosures.

responsibility of persons involved in the supply of telecommunications services in New Zealand to self-assess whether they are QLPs and must therefore comply with the TDL requirements of the Act. Non-inclusion in the list is not an excuse to breach the TDL requirements of the Act.

15. The 2022/23 list of QLPs can be found at Attachment C of the Specified Information Document.

Qualified revenue information disclosure

16. Under s 83 of the Act, QLPs must provide us with the financial information that we specify. This is known as the “specified information”. See the Specified Information Document for the specific instructions on the type and format of the information required from QLPs.

17. Section 83 of the Act also requires that the specified information be accompanied by an assurance report, prepared by a qualified auditor, or an alternative form of assurance specified by the Commission. This information relates to the TDL year under review – 1 July 2022 to 30 June 2023. The type of report required is also prescribed in the Specified Instructions Document.

18. For the 2022/23 TDL, this specified information and assurance must be provided to the Commission by **22 September 2023**.

Preparing and completing the liability allocation determination

19. We are required to make reasonable efforts to publish a draft LAD no later than 80 working days after the end of the TDL year, which is mid-October. A draft LAD must include:[6]

    19.1 each QLP’s qualified revenue;

    19.2 each QLP’s TDL liability, calculated in accordance with s 85(1)(b); and

    19.3 our reasoning, and the methodology we used.

20. The publication of the draft LAD is an opportunity for QLPs and other interested parties to check our draft calculations of TDL liability (and our reasoning and methodology) and to make submissions. The Act provides that the closing date for submissions cannot be more than 20 working days after the date that we give public notice of the draft LAD.[7]

21. Once we have completed the consultation on a draft LAD, we must prepare a final LAD. We are required to make reasonable efforts to prepare and publish a final LAD no later than 20 working days after the closing date for submissions on the draft LAD, which would usually be mid-December.[8] The final LAD has the same content

[6] Section 85 of the Act.
[7] Section 84(1)(c) of the Act.
[8] Section 87(2) of the Act.

requirement as the draft LAD.[9] Our general practice is to also include a summary of any submissions and any resulting changes to the final LAD.

Levy amount

22. The total levy amount is set out in Schedule 3B of the Act. For the 2022/23 TDL year, the Act provides that the levy be calculated according to the following formula:

$$\frac{a}{b} \times c$$

Where:

a	is the CPI index number for quarter two 2022
b	is the CPI index number for quarter two 2021
c	is the telecommunications development levy for the 2021/22 TDL

23. It follows the total 2022/23 TDL levy is:

$$\frac{1161}{1082} \times \$, 10{,}484{,}496 \ = \$11{,}250{,}000$$

24. As such the amount each QLP will pay of the 2022/23 is:

$$\frac{a}{b} \times \$11{,}250{,}000$$

Where:

a	is the QLP's qualified revenue
b	is the sum of QLPs' qualified revenue

How types of revenue are treated under the TDL

25. The TDL uses specific terms to refer to different types of revenue. Table 1 below shows at a high level how a company's operating revenue can differ from its gross telecommunications revenue and from its qualified revenue.

[9] Section 88 of the Act.

Table 1: TDL revenue types

	Operating revenue as per relevant statutory financial statements
less	*Non-telecommunications revenue*
less	*Non-qualifying telecommunications revenue*
=	Gross telecommunications revenue
less	*Legitimate deductions*
=	Qualified revenue

Non-qualifying telecommunications revenue

26. Non-qualifying telecommunications revenue refers to telecommunications services revenue that does not qualify as telecommunications revenue for the purposes of the TDL as it was earned from services that:

 26.1 are not provided by means of a PTN or rely primarily on the existence of a PTN; or

 26.2 are provided outside New Zealand.

Gross telecommunications revenue

27. Gross telecommunications revenue is the amount of revenue that, during the relevant financial year (1 July to 30 June), a liable person received for supplying either or both of the following:[10]

 27.1 telecommunications services by means of its PTN; and/or

 27.2 telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

28. A liable person's gross telecommunications revenue is used to determine if they meet the QLP criteria.

Qualified revenue

29. A QLP's liability is calculated on the basis of their qualified revenue.

[10] The Act explicitly excludes from gross telecommunications revenue any amount paid to a liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount.

30. Qualified revenue is a QLP's gross telecommunications revenue minus legitimate deductions. Deductions can be made for:

    30.1 payments made to other QLPs for telecommunications services;

    30.2 payments made to non-QLPs for telecommunications services initially provided by a QLP;

    30.3 revenue received in relation to a broadcasting service that is supplied to end-users free of charge; and

    30.4 the total cost of non-telecommunications goods and services included in gross telecommunications services revenue.

31. The paragraph 30.1 and 30.2 deductions exist to avoid double counting of telecommunications revenue and to ensure comparable treatment between different business models (eg, integrated provider vs wholesaler and retailer model).

32. Section 85A(1)(a) excludes the revenue set out in paragraph 30.3 from qualified revenue and paragraph 30.4 allows QLPs to deduct non-telecommunication elements of bundle revenue.

Broadcasting transmission revenue

33. The 2020/21 TDL was the first year that broadcasting transmission revenue could be qualified revenue following the relevant provisions of the Telecommunications (New Regulatory Framework) Amendment Act 2018 coming into force.[11]

34. See Attachment B of the 2022/23 Specified Information Document for details on how broadcasting specific revenue streams should be treated.

Interaction with the Telecommunication Regulatory Levy

35. All TDL QLPs are also required to pay the Telecommunication Regulatory Levy (**TRL**). The TRL covers the costs incurred by the Commission in performing and exercising its functions, powers and duties under the Act.[12]

36. The qualified revenue figures calculated as part of the 2022/23 TDL process will be used in the calculation of the TRL.

37. The Ministry of Business, Innovation and Employment (**MBIE**) rather than the Commission is in charge of administering the TRL.

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[11] In the 2018/19 and 2019/20 TDL processes s 85A(1)(b) excluded broadcasting revenue from qualified revenue.

[12] Except for certain determinations, where costs are required to be met by parties to the determination, and litigation.

38. Further information on the TRL can be found in the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019.[13]

Payment of levies

39. Section 89 of the Act requires QLPs to pay their allocated TDL amount to the Crown no later than 20 working days after the final TDL LAD is published.

40. The due date for TRL levy payment is 30 working days after the final TDL LAD is published.[14]

41. MBIE manages the invoicing and collection of the TDL and TRL levies. If you have questions about the administration of the TRL or the collection of the TDL and TRL please contact [redacted]

[13] https://legislation.govt.nz/regulation/public/2019/0233/16.0/LMS203152.html#LMS208631

[14] Section 5(1) of Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019.