

Audit Protocol for the Private Copying Regulation

Version 29 January 2015

Introduction

This Audit Protocol elaborates on the obligations of the contracting parties by virtue of Article 10 of the Collection Agreement of Stichting Thuiskopie, hereinafter referred to as ‘the Collection Agreement’.

On the basis of the Collection Agreement the Contracting Party may choose one of two manners of meeting these obligations, namely by:

1. providing a set of reports on the basis of which Thuiskopie will be able to assess whether the Contracting Party has met its obligations, or by
2. submitting an audit opinion by an auditor, in which the auditor states that the Contracting Party has met its obligations.

The basis of the obligation to report is formed by the Annual Specification of Private Copying Levies, which must be sent to Thuiskopie together with the set of reports or the audit opinion within six months of the end of the Contracting Party's financial year. Failure to send the information on time means that the obligations under the Collection Agreement have not been met and that the Contracting Party will not be entitled to the reimbursement arrangement.

This Audit Protocol elaborates on the requirements applicable to both forms of accountability.

This version of the Audit Protocol replaces all earlier versions.

Annual Specification of Private Copying Levies

The Annual Specification of Private Copying Levies is the total overview of the monthly specifications submitted with respect to a calendar year. The Annual Specification will be available on the Thuiskopie web portal after the last specification of the year has been submitted. If any inaccuracies are found, these can still be corrected via the annual corrections, following which the final Annual Specification can be obtained. The final Annual Specification must be legally signed by the Contracting Party and sent, together with the other information, to Thuiskopie within six months of the end of the financial year.

1. Provision of set of reports

The Contracting Party must send a set of reports at least once a year and in certain cases, at the instigation of ThuisKopie, twice a year. The set of reports must contain all information ThuisKopie requires to establish whether the Contracting Party's specifications are in accordance with the stipulations of the Collection Agreement.

The set of reports must at least contain the following documents:

- The legally signed Annual Specification of Private Copying Levies
Please note: final version after any annual corrections have been made
- The legally signed Management Statement in accordance with Appendix 1
- The most recently adopted financial statements
- Breakdown of the turnover (presented in the financial statements) according to turnover of items subject to the Private Copying Regulation and other turnover
- The reconciliation of the turnover of the aforesaid items and quantity ('movement of goods')
- A written explanation of the annual correction if this exceeds 5% of the monthly specifications submitted earlier.
- If applicable: a procedure description or working instruction for levy-exempt deliveries (exports and/or professional users)
- An overview of all levy-exempt deliveries to other contracting parties, professional users and/or on account of exports

Certain information is not required as a rule, but must be sent later if requested by ThuisKopie. This includes:

- Purchase and sales invoices
- Export, transport and/or customs documents
- Other documentation supporting levy-exempt deliveries

This information will mainly be requested in the event of substantial levy-exempt deliveries and will mostly include a selection of a limited number of documents.

The Contracting Party is obliged to provide ThuisKopie, in addition to the prescribed documents referred to above, with all relevant information ThuisKopie may require to establish whether the Contracting Party has met the obligations of the Collection Agreement. In certain cases ThuisKopie may request the Contracting Party to provide additional information.

The set of reports must be sent to ThuisKopie within six months of the end of the calendar year. If the financial year does not coincide with the calendar year, after prior notification to ThuisKopie this period may be extended to six months after the end of the financial year.

2. Provision of audit opinion

The Contracting Party may opt to provide ThuisKopie, instead of a set of reports, with an audit opinion issued by an auditor. In that case ThuisKopie will in principle fully rely on the audit opinion issued and will not conduct its own investigation. If there is any doubt as to the accuracy of the audit opinion submitted, ThuisKopie will request the Contracting Party to provide underlying information in accordance with the set of reports.

The aim and scope of the Instructions for conducting the audit assignment contained in Appendix 2 and the Text of the audit opinion contained in Appendix 3 is to instruct the Contracting Party's auditor concerning the starting points that must at least be included in the audit to support his professional opinion of the Annual Specification of Private Copying Levies.

The audit assignment aims to provide guidance for the audit work conducted by the Contracting Party's auditor, so that the expectations of ThuisKopie concerning the scope and depth of the audit of the Annual Specification of Private Copying Levies can be met. The audit assignment focuses attention on a number of specific aspects which are important for the audit in question. In principle it does not contain any basic assumptions of the auditing process itself, because these are expected to be known in the context of the auditor's profession and must be in accordance with the relevant NV COS standards. In case of deviations from this assignment and/or the audit opinion, the Contracting Party must provide ThuisKopie with an explanation of the cause and impact of the deviation.

The audit opinion will be issued to the Contracting Party for the benefit of Stichting de ThuisKopie to confirm the definitive private copying levy. The audit opinion must be accompanied by a copy of the Annual Specification of Private Copying Levies signed by the Contracting Party and certified by the auditor. If any corrections must be made, these must be submitted as annual corrections via the web portal and the updated Annual Specification of Private Copying Levies must be used. The audit opinion may be issued by a Dutch accountant registered as auditor with the Netherlands Institute of Chartered Accountants (NBA) or by a non-Dutch accountant with a similar qualification in the Contracting Party's country of establishment, verified on the basis of direct or indirect membership of the professional organization in that country of the International Federation of Accountants (www.ifac.org).

The audit opinion must be submitted to ThuisKopie within six months of the end of the calendar year. If the financial year does not coincide with the calendar year, after prior notification to ThuisKopie this period may be extended to six months after the end of the financial year.

3. Reimbursement arrangement

Article 11 of the Collection Agreement contains the conditions under which the Contracting Party may be entitled to reimbursement of a maximum of 10% of the total net Private Copying Levy paid to Stichting de ThuisKopie.

Any costs incurred by Stichting de ThuisKopie in connection with legal procedures may cause the reimbursement to be adjusted. The division of this amount will in that case be discussed in more detail by the Private Copying Levy Agency (SONT).

In determining the level of reimbursement, the starting point is compliance with the specification, audit and payment obligations under the contract. The article also provides that if the conditions specified in the article have not been fully complied with, the Foundation may nevertheless decide to grant all or part of the reimbursement. The criteria affecting the level of reimbursement are stated below.

Criteria	In accordance with	Explanation
Specifications: correct & complete *	Art. 4 par. 1	Submitted correctly via Portal and specifications contain all deliveries relevant to ThuisKopie
Specifications: on time	Art. 4 par. 2	Specification is submitted no later than on the fifteenth day after the end of the calendar month
Specifications: levy-exempt *	Art. 7 & Art. 8	Levy-exempt deliveries have been coordinated with the buyer and submitted with the correct specification
Payment: on time	Art. 5	Invoices must be paid within 21 days of the date of the invoice date
Payment: made *	Art. 5	All invoices with respect to the audit year have been paid
Audit: complete *	Audit Protocol	Either a full set of reports (incl. management statement) or an independent audit opinion has been submitted
Audit: submitted on time	Audit Protocol	The set of reports or audit opinion has been provided no later than within six weeks of the end of the calendar year
Audit: cooperation *	Audit Protocol	At the request of Stichting de ThuisKopie the Contracting Party provides additional information

Table 1: Assessment criteria for determining the level of reimbursement.

* These are the minimum criteria that must be met to qualify for a reimbursement. If the other criteria are not fully met, this may result in an adjustment in the level of reimbursement.

Contact details

The information can be sent by post to the following address:

Stichting de ThuisKopie
Postbus 3060
2130 KB Hoofddorp

Or by email to:

Audit@thuisKopie.nl

Should you have any further questions please contact us via the above email address or by phone:

+31 (0) 23 8700 206

Sign for approval

Drawn up in duplicate and signed

on behalf of the Contracting Party:

Place:

Date:

.....

[signature and company stamp]

Appendices

Appendix 1: Management statement

Appendix 2: Instructions for implementation of audit assignment

Appendix 3: Text of the audit opinion

Appendix 1 Text of the Management statement

[Letterhead of the Contracting Party]

[Date]

Re: Management statement accompanying the Annual Specification of Private Copying Levies [Year]

We are issuing this confirmation as required for your audit of the Annual Specification of Private Copying Levies ('the annual specification') of [name of Contracting Party] for the financial year ending on 31 December [year].

Annual Specification of Private Copying Levies

We have appended to this letter a copy of the annual specification signed by the undersigned, thereby confirming our responsibility for establishing the accuracy of the annual specification. The annual specification has our approval and we believe that it gives a faithful representation of the amount and composition of the private copying levy to be paid by [name of Contracting Party] for the year ending on [] and complies with the requirements for that purpose, and as such is suitable for Stichting de Thuiskopie to determine the private copying levy. These requirements are also laid down in the Collection Agreement concluded between [name of Contracting Party] and Stichting de Thuiskopie. We have complied with our responsibilities for drawing up the annual specification.

Administration

We have carried out proper administration in the manner as described in the Dutch Civil Code, forming a proper basis for drawing up an annual specification that complies with the requirements laid down by Stichting de Thuiskopie.

Inaccuracies and fraud

We acknowledge our responsibility for the setup, introduction and operation of the internal control measures to prevent and detect fraud.

We have taken into account the results of our estimate of the risk that the annual specification could contain deviations of material importance as a consequence of fraud (including the information obtained on this from employees, former employees, regulatory authorities or others) and will inform you separately if this could lead to inaccuracies in the annual specification.

Further confirmations

In order to prevent any misunderstandings, we confirm a number of specific issues. The confirmations expressed are based on facts known to us. We confirm to the best of our knowledge and conviction that:

1. the annual specification does not contain any inaccuracies or omissions of material importance. We believe that the uncorrected deviations as contained in the enclosed overview produced by you, either separately or aggregated, are not of any material importance for the annual specification as a whole. We have no knowledge of other uncorrected deviations which, separately or aggregated with the aforementioned uncorrected deviations, are of material importance for the annual specification as a whole.

2. we consider the significant assumptions that have been made when drawing up estimates with respect to the annual specification to be reasonable.
3. we have disclosed to you and included and explained in the annual specification all known current or potential legal proceedings and claims, the effects of which must be considered when drawing up the annual specification. Apart from these, we are not aware of the existence of other additional claims by reason of liability, nor do we expect them to exist.
4. there are no reasons to doubt the continuity of the activities of the Contracting Party.
5. no events have taken place between the balance sheet date and the date of this letter that may give cause to amend the annual specification.

Yours faithfully,

[Legally valid signature]

Appendix

- Annual Specification of Private Copying Levies

Appendix 2 Implementation of the audit

Aim of the audit

The aim of the audit is to enable the auditor to express an opinion as to whether the Annual Specification of Private Copying Levies, with due regard for the instructions set out in this protocol, has been drawn up in accordance with:

- the Collection Agreement; including the appendices,
- the Conditions governing Professional Users;
- the Conditions governing Refunds in case of Export.

The audit approach

The independent auditor of the Contracting Party will structure his audit in such a way that an opinion can be given with a reliability of 95% that the Annual Specification of Private Copying Levies contains no inaccuracies with an interest greater than the prescribed materiality.

The auditor must carry out his audit work as appropriate to his estimate of the risk of the presence of material inaccuracies in the Annual Specification of Private Copying Levies. The nature, time and depth of the audit measures must correspond to the outcomes of the risk analysis. This analysis contains, inter alia, an assessment of the internal control environment (including the automated environment), in so far as necessary for estimating the risk that material errors may arise in the Annual Specification of Private Copying Levies. Attention must also be given to the control measures taken, in order to ensure the accuracy and completeness of the specification and compliance with the relevant laws and regulations within the framework of the Private Copying Regulation.

The auditor will include the risk analysis in his file, which will show how the conclusions are substantiated following the estimate of risks, as well as the audit measures taken to mitigate them.

When carrying out the audit work the auditor will include the data, evidence and documents referred to in this protocol. These details are necessary to enable the auditor to give an opinion on the accuracy of the levy-exempt deliveries. This implies that, taking account of the materiality referred to elsewhere, the opinion of the auditor also concerns the details as reported monthly by the Contracting Party via the portal of ThuisKopie. This therefore explicitly concerns, besides the quantities and the items, the accuracy of the levy-exempt deliveries and in whose name they are made.

Audit opinion and deadline

The audit opinion by the independent auditor for the Annual Specification of Private Copying Levies must comply with the prescribed model as contained in Appendix 3. The annual specification legally signed by the Contracting Party and certified for identification purposes must be included with the audit opinion. Before the audit opinion is issued, the management/director of the Contracting Party must sign the annual specification.

The full report, comprising the audit opinion by the independent auditor, the certified Annual Specification of Private Copying Levies and a copy of the confirmation accompanying the annual specification, must have reached ThuisKopie no later than 6 months after the end of the financial year.

Materiality

Any errors or uncertainties found (audit discrepancies) must be corrected. Significant audit discrepancies that have remained uncorrected may affect the positive purpose of the audit opinion. An unqualified audit opinion implies that, assuming a reliability of 95%, the most likely error is not greater than 1% of the Private Copying Levy and the levy-exempt details as reported. The following tolerances, expressed as a percentage of the total Private Copying Levy reported for the calendar year, apply for the purpose of the unqualified audit opinion, qualified opinion, adverse opinion and a disclaimer of opinion:

	Unqualified opinion	Qualified opinion	Disclaimer of opinion	Adverse opinion
Errors in the specification	$\leq 1\%$	$> 1\%$ and $= 3\%$	N/A	$> 3\%$
Uncertainties in the audit	$\leq 3\%$	$> 3\%$ and $\leq 10\%$	$> 10\%$	N/A

If the independent auditor cannot arrive at an unqualified opinion, he must inform Thuiskopie of this immediately. Thuiskopie reserves the right to request additional information from the Contracting Party if necessary and/or carry out additional audits itself, for example at the Contracting Party's business premises.

Reporting of points needing attention

If when performing the work any specific issues or points of attention emerge which have consequences when reporting the Annual Specification of Private Copying Levies or otherwise for drawing up or arriving at an opinion, you must contact Thuiskopie. Depending on the findings, it will be decided in consultation how the reporting must take place subject to the conditions of the Collection Agreement. Thuiskopie reserves the right, in order to reach a judgement in all reasonableness, to submit additional information or provide the Contracting Party with further information. Such a situation may arise concerning events after the balance sheet date, claims and disputes or other information to be provided with the annual specification in order to produce an accurate and complete report.

Audit opinion of the independent auditor

To: the Management Board of [name of Contracting Party]

Re: Audit opinion concerning Private Copying Regulation

We have audited the Annual Specification of Private Copying Levies (hereinafter: the ‘annual specification’) for the year ending on [date] of [name of Contracting Party] in [place of Contracting Party’s registered office].

Responsibility of the Management Board

The management board of the company is responsible for drawing up the annual specification based on the Collection Agreement between Stichting de ThuisKopie and [name of Contracting Party], dated [date of collection agreement]. The management board is also responsible for such internal controls as the management board deems necessary for the preparation of an annual specification without any deviations of material importance as a result of fraud or error.

Responsibility of the auditor

Our responsibility is to give an opinion on the annual specification on the basis of our audit. We have conducted our audit in accordance with Dutch law, including the Dutch Standards on Auditing. These require us to comply with ethical rules applicable to us and to plan and to conduct our audit in such a way that a reasonable level of assurance can be obtained that the annual specification contains no deviations of material importance.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the annual specification. The selected work will depend on the opinion to be formed by the auditor, including assessing the risks that the annual specification may contain a deviation of material importance as a consequence of fraud or errors.

In making these risk assessments, the auditor will consider the internal controls that are relevant for drawing up the annual specification by the company, focusing on setting up audit procedures that are appropriate to the circumstances. The aim of these risk assessments, however, is not to express an opinion on the effectiveness of the company’s internal control processes. An audit also involves evaluating the appropriateness of the accounting policies used and the reasonableness of the estimates made by the management board of the company, as well as evaluating the overall presentation of the annual specification.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion the annual specification for the year [year] of [name of Contracting Party] has been drawn up in all aspects of material importance on the basis of the Collection Agreement between Stichting de ThuisKopie and [name of Contracting Party], dated [date of collection agreement].

Restrictions of use and circle of distribution

The annual specification and our opinion thereof are exclusively intended for the management board of the company for its report to Stichting de ThuisKopie concerning the obligations under the Collection Agreement. The annual specification and our opinion are therefore not suitable for other purposes. The audit opinion (or parts thereof) may therefore not be made available in any form to third parties without our express prior written permission. We therefore accept no liability towards third parties who are able to inspect this opinion or gain access to it. This does not affect our opinion.

[Place], [date]

[Name firm of auditors]

[Name auditor]