

F 7/13/96

29 July, 1997.

Circular 30/97: Prompt Payment of Accounts Act, 1997.

A Dhuine Uasail

1. I am directed by the Minister for Finance to say that the Prompt Payment of Accounts Act, 1997 (No. 31 of 1997) passed into law in May of this year and that the Minister for Enterprise, Trade and Employment has made an order (S.I. No. 239 of 1997, dated 4 June 1997) to bring the Act into operation with effect from 2 January 1998.

2. Departments and other public bodies will need to familiarise themselves with the provisions of the Act and will need to ensure that their financial procedures enable them to meet the requirements of the prompt payment legislation. To assist Departments and Offices, the principle statutory provisions and an outline of relevant arrangements are provided below.

3. Principal Statutory Provisions:

(a) Purchaser:

The definition of "purchaser" in the Act includes **Departments** and all other **public bodies** and their **subsidiaries**. (The public bodies are listed in Schedule 2 of the Act which can be amended, by order, by the Minister for Enterprise, Trade and Employment. Subsidiaries of these public bodies, even if not listed in the Schedule, are covered by the definition of purchaser). The definition of "purchaser" also includes **contractors** on public sector contracts. In a situation where a contractor subcontracts or obtains goods or services from another person on a public sector contract, the contractor is a "purchaser" for the purpose of the Act.

To/ all Departments and Offices

(b) Prompt Payment of Accounts:

Section 4 of the Act requires purchasers to pay for the supply of goods or services by the "**prescribed payment date**". The prescribed payment date is the date specified in a written contract and if there is no written contract or if the payment date is not specified in the written contract, payment must be made within **45 days** of receipt of an invoice or date of supply whichever is the later.

(c) Interest Payment:

If a payment is not made by the due date, the purchaser must pay an **interest penalty** on the amount outstanding. Interest must be paid in respect of the period beginning on the date after the due date of payment and ending on the date on which the payment is made. The interest payment must be accompanied by a notice stating the amount of the interest penalty included and the rate at which and the period for which the interest penalty is calculated. This interest payment **cannot be waived** by the supplier. (The interest rate is fixed by Order, by the Minister for Enterprise, Trade and Employment, after consultation with the Minister for Finance and may, in the same manner, be amended periodically).

(d) Recognition of Payment:

A payment is recognised as having been made

- when the supplier receives the appropriate amount of cash;
- when the appropriate amount is credited to the supplier's account;
- when the purchaser enables the supplier to credit his or her account e.g. if they issue a cheque which is in the possession of the supplier.

(e) Incorrect or Inadequate Invoices.

In the event of an incorrect or inadequate invoice being received from a supplier, the purchaser has 10 working days to return the invoice, with a written statement identifying the defects that prevent the payment being made. The interest penalty does not arise until **10 working days** after the receipt of the corrected invoice or until the payment due date, whichever is the later. If the purchaser is late in returning the invoice to the supplier, then the above 10 day period is reduced by the corresponding number of days.

(f) Disputes:

In the case of a **disputed invoice**, any goods or service included in the invoice, which are not disputed, must be paid for by the due date. In the case of the disputed goods or services, interest payments are not due if **partial payment** has been made in respect of the undisputed goods and if it is **agreed** between purchaser and supplier or by arbitration, that the goods in question are genuinely in dispute. A supplier may refer a dispute to arbitration in which case the purchaser must agree to arbitration.

(g) Contractors:

Main **contractors** on public sector contracts are required to pass on to subcontractors or suppliers of goods and services, the benefits of being paid promptly. This is the only area where the **private sector** is affected.

(h) Payment Periods in Contracts:

If the Minister considers that the **credit terms** allowed to the purchaser are unreasonable, the Minister for Enterprise, Trade and Employment, after consultation with the purchaser and the Minister for Finance, may issue an order to direct that the purchaser shall not be capable of agreeing a payment date later than **45 days**.

(i) Disclosure of Payment Practice:

All public bodies listed in the schedule to the Act will be required to disclose details of their payment practices. Where the body is required, by statute, to publish an **annual report**, the report must include details of the payment practices in the period covered by the report. Where a public body is not required to publish an annual report, it must submit an **annual review** of its payment practices to, the Minister for Enterprise, Trade and Employment, who has the power to specify the kind of details which must be included in the reports. The Department of Enterprise, Trade and Employment will issue guidelines, regarding the format of this review, in due course.

(j) Auditors:

Every **auditor** of a public body must report on whether, in all material respects, that body has **complied** with the provisions of the Act.

(k) Tax Clearance Certificates and Withholding Tax

The Act does not require payment of an amount due to a supplier who has **failed to comply** with a request to provide a **tax clearance certificate** and it extends the time limits for payment where there are delays in furnishing such certificates. The legislation does not effect the power to deduct **withholding tax** from any payment to a supplier.

Outline of required arrangements

4. All public bodies will need to familiarise themselves with the provisions of the Act and give thought to its implications for them. The following steps are suggested, although this is not an exhaustive list and may have to be amended to suit individual organisations.

(a) NOTIFICATION OF LEGISLATIVE CHANGES:

(i) Staff:

Departments should ensure that relevant staff are notified of the provisions of the Act and of its implications for operations.

(ii) State Bodies and Agencies etc.

Departments and Offices should formally notify all public bodies under their aegis of the provisions of the prompt payment legislation and of the necessity for such public bodies and their subsidiaries to comply with these provisions.

(b) INVOICES:

(i) Recording and Payment:

Departments and Offices should ensure that the systems in place for recording and paying invoices ensure that the supplier receives payment of all invoices within the required period i.e. by the contract date or within 45 days of receipt.

(ii) Disputed Invoices:

The system for processing invoices should cater for the requirement to return disputed invoices within 10 days of receipt.

(iii) Partial Payment:

Staff should be aware that where only part of an invoice is disputed, the undisputed goods should be paid for by the due date. It must be agreed between purchaser and supplier, or by arbitration, that the goods are in dispute. Goods complementary to goods which are in dispute shall also be taken to be in dispute.

(c) CONTRACTS:

The conditions for public tenders and contracts should state the legal obligation on contractors to pay subcontractors in accordance with the Prompt Payment of Accounts Act, 1997.

(d) ACCOUNTING ARRANGEMENTS:

(i) Charging of Interest Payments:

While systems should ensure that interest penalties are not incurred, in the exceptional circumstances where this arises, payment of interest should be made from the relevant subhead i.e. the subhead funding the goods or services in question.

(ii) Accruals Column:

Interest payments due but not paid at year end must be recorded as liabilities.

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