

# NEC Secondary Option X24

## The Accounting Periods

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**Disclaimer:** the legal information given on the following slides does not constitute legal advice and is presented as the interpretation and opinion of the presenter on such matters.

### About Us




GVE Commercial Solutions Ltd are a commercial management consultancy providing quantity surveying and programming services. Our consultants specialise in the NEC forms of contract.

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## Accounting Period

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## Background

When a company is formed it is incorporated by registering with Companies House, who undertake the following duties;

- incorporate and dissolve limited companies,
- examine and store company information,
- make information available to the public.

Once a company is incorporated it becomes a separate legal entity and is subject to legal obligations, including those within the Companies Act 2006.

One such requirement is the preparation and filing of accounts, which will include the following;

- a profit and loss account,
- a balance sheet,
- an auditor's report,
- a director's report,
- notes to the accounts.

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## Financial Year



Each set of accounts relates to a company's 'financial year'.

The first financial year commences on the day the company is incorporated and ends on the last day of the month one year later, which is the 'accounting reference date'.

Subsequent financial years continue for 12 months from the accounting reference date (plus or minus seven days).

A financial year, also known as an 'accounting reference period', may be shortened or extended, although there are certain rules which apply.

Once a financial year ends, a private limited company has nine months to send their accounts to the registrar at Companies House (and HMRC).

Many companies further divide their financial year into periods of time, often three months, known as 'accounting periods' or 'trading periods'.

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## Accounting Standards



The International Financial Reporting Standards (IFRS) Foundation is an organisation that develops 'common' accounting standards.

IFRS Accounting Standards are now a requirement in more than 140 jurisdictions, including the United Kingdom, and permitted in many others.

Some companies desire that their accounting periods end on the same day of the week, especially manufacturing or retail, so IFRS Standards provide for 52 weeks instead of 12 months for an accounting period.

This gives rise to the '4-4-5 calendar' whereby a year is divided into four quarters of 13 weeks, which are grouped into 4-week and 5-week months.

Every five or six years a 53<sup>rd</sup> week is required to be added which makes year-on-year comparisons difficult.

This is possible as legislation provides that a financial year may end within seven days of the accounting reference date.

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**NEC Suite**

Secondary option X24 can be found in the following NEC forms of contract;

- Term Service Contract (TSC),
- Term Service Subcontract (TSS),
- Facilities Management Contract (FMC),
- Facilities Management Subcontract (FMS).

There are variances between the forms due to the different names of the respective parties and roles.

If main option C is selected (applies to all above forms), there are variances with the way the procedure operates.

Option X24 was introduced with the publication of NEC4 and did not exist under the NEC3 forms.

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## TSC X24.1 – accounting periods



'Within thirteen weeks after the end of each *accounting period* the *Service Manager...*'

The *accounting periods* are stated in Contract Data as follows;

If Option X24 is used and  
Option C is not used

The *accounting periods* are


The *accounting periods* should be 'contiguous' and span the entire Service Period from the *starting date* to the end of the Service Period.

Where option X23 is also selected, the *accounting periods* would need to align with each *period for extension* up to the *maximum service period*.

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## TSC X24.1 – Option C



If main option C is selected, the matter is assessed as follows;

If Option X24 is used  
with Option C

The *accounting periods* are the dates stated in the Contract Data of assessment  
of the Contractor's share.

Unlike other forms of NEC contract, the share assessment is made on  
'predetermined' dates, stated as follows;

The *Contractor's* share is assessed on (dates)


Where option X24 applies, the above dates should coincide with the *accounting period* end dates, although the NEC wording could be clearer.

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## TSC X24.1 - assessment



- ‘... makes an assessment of the final amount due for the service provided during the *accounting period* and...’

This process imitates the ‘final assessment’ procedure at sub-clause 53 (TSC, TSS) and 54 (FMC, FMS) as an ‘interim’ final assessment.

Once an *accounting period* ends, the *Service Manager* is required to make an assessment of the final amount due.

An assessment may be ‘complicated’ where the payment assessment ‘periods’ do not exactly align with the *accounting periods*.

Under main options C and E, the ‘supplier’ may notify where a part of Defined Cost has been finalised, at sub-clause 50.9 (all forms), with this procedure minimising any possible dispute under X24.

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## TSC X24.1 - notification



- ‘... notifies the *Contractor* of that assessment and provides details of how the assessment has been made...’

Under the ‘final assessment’ procedure the *Service Manager* certifies the amount due but under X24 the *Service Manager* notifies the *Contractor*.

The *Service Manager* is required to ‘provide details’ of the assessment, which would essentially relate to where an X24 assessment differs from any previously agreed or determined amounts.

The ‘details’ would be required to facilitate the dispute procedure.

Note that the *Service Manager* is not obliged to notify the *Client* of any assessment, which seems odd.

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## TSC X24.2 - finality



*'The Service Manager's assessments at the end of each accounting period are conclusive evidence of the final amount due for the service provided during the accounting period unless a Party take the following actions ...'*

The subsequent sub-clauses set out the dispute procedure in relation to either option W1 or W2, similar to the 'final assessment' provisions.

The 'consistency' of the wording means that the *Contractor*, under the TSS and FMS forms, can dispute their own assessment !!

As the *Service Manager* has no obligation to notify the *Client* (TSC and FMC) the *Client* may not formally be aware of a dispute until any assessed amount is included in a corresponding payment certificate.

Unlike the 'final assessment' procedure, X24 does not contain provisions in relation to the amendment of an assessment, where applicable.

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**Things to Consider ...**

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## Things to Consider



*Accounting periods* should cover a continuous period from the Starting Date to the end of the service period.

There are differences between the requirements depending upon which main option is selected.

The difficulty of assessing what is due in a period of time, under main option C or E, which is not a 'complete' 'payment assessment period'.

The difficulty of assessing the 'value' of compensation events which are accepted but not implemented (option A – value, option C – share).

If the Service Manager is replaced during the *accounting period* they may take a 'harsher' view where Defined Cost has not been 'finalised'.

If option X23 also applies then the *accounting periods* would need to consider any possible *period for extension*.

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