

Contractors need the IR35 confirmation letter

Suppose the Revenue asks you to prove that you are outside [IR35](#)?

The Revenue will ask you to go back 6 years, and show that you had all the necessary arrangements in place to keep you outside IR35 on all your contracts. And it will want to see the contracts that your agents had with the clients.

Keep Good Records

Most of us know that keeping good records is important, but you might not suppose that that extends to proving you are outside IR35. In fact, should your status be questioned, the Revenue will insist on seeing all the contracts and documents relevant to your working situation.

"So, for the past 6 years, you will have to show every contract with your agent or agents, and proof of what the arrangement was between the agent and the client," says Kate Cottrell, a lawyer specialising in contractor affairs with the Westoning, Beds-based legal consultancy Bauer & Cottrell.

How to Get Client Confirmation?

As Cottrell points out, it is unlikely that you will ever be permitted to have access to agent-client contracts. "It is not usually possible for you to obtain this contract and in our experience most agencies refuse a request from you not least because you would then be able to see the rates they are charging for your services!"

Even if you could get someone at the client to state what terms you've worked on, will you be able to do that 6 years after the contract was completed?

"Nonetheless, if you need a hearing about your status, the Special Commissioners have made it clear that they require evidence from the client in all IR35 cases before they will hear them," Cottrell says.

So it is far better for you to obtain some kind of confirmation of the arrangements now whilst the contract is running and while there is an appropriate person who can comment on behalf of the client.

Get A Confirmation Letter

A solution to this problem is to make use of the client confirmation letter. Getting your client representative to complete it is relatively easy, as it only contains a few basic points about the contract.

Cottrell suggests that you make use of the following questions, but you may wish to customise this to account for particular strengths in your working arrangements.

This list covers the essential areas which show that you are outside IR35.

The List of Questions

[The respondent should reply 'yes' or 'no,' where appropriate, and the letter should clearly indicate the name of the client company and the date]

What is the precise nature of the services provided

What are the dates for the beginning and end of the engagement?

If there is a requirement for the work to be done by a specific individual, the name of that person?

Should the person named at (3) above be unavailable, does the service provider have an obligation to provide a replacement worker at the service provider's own expense?

Does the service provider have the right to undertake work using any workers of the service provider's own choice, and at the service provider's own expense, provided the workers concerned have the requisite skills?

Does the service provider have the right to subcontract the services to another person, firm or company, provided the subcontractor has the requisite skills?

What is the basis of payment? Wage or salary / commission / fixed price / hourly rate / daily rate / if other please specify?

At what location(s) are the services provided?

Does the service provider have the right to provide the services at or from a place of the service provider's own choice?

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Kate Cottrell-Bauer & Cottrell

If the services have to be provided at a place decided by the customer or client, what is the reason(s) for this condition?

Does the customer or client have the right to instruct the service provider to do other work not included in the services described at (1) above?

How are the working hours decided? By the service provider / by the customer or client / by mutual agreement?

Does the customer or client have the right to instruct the service provider about working methods?

What is the nature of any rules or procedures governing the customer or clients own workforce that also apply to the service provider?

What is the nature of the equipment that has to be supplied by the service provider?

What is the nature of equipment that has to be supplied by the customer or client?

Does the service provider have an obligation to compensate the customer or client for any damage or loss caused by the service provider's negligence?

Does the customer or client expect the service provider to rectify any defective work at the service providers own expense?

Does the customer or client prevent the service provider from doing work for other customers or clients during the course of the engagement?

What is the nature of any benefits provided to the customer or clients own employees that are made available to the service provider?

If there is no work available is the customer or client obliged to find work for the service provider to carry out?

If there is no work available would there be an obligation to pay the service provider?

Usefulness is Proven!

Cottrell suggests that you carefully decide who is the best person to sign the letter. It should be someone directly involved with the project, not the company's legal department or someone from HR. That will show that it is a real representation of what took place.

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John Kell-PCG

The London-based [Professional Contractors Group](#) also strongly advises contractors to make use of this kind of letter: "the usefulness of the confirmation of arrangements letter in IR35 cases is proven," agrees John Kell, policy spokesman for PCG.

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