

Covering letters persuading clients to sign an IR35 confirmation of arrangements

Limited company contractors may find their client project manager is reluctant to sign a confirmation of arrangements to verify the contractor's actual working practices. As such a document is a key element of IR35 best practice, it is well worth persisting.

A well structured and written covering letter or email can make all the difference in persuading the client project manager. It could do so by spelling out to the client why the contractor requires the signed confirmation and what the consequences may be for the client personally and their organisation if it is not signed.

A covering letter should ideally have three key sections:

A preamble to explain why the confirmation of arrangements is necessary

The consequences for the contractor if there is no confirmation of arrangements

The consequences for the client of not signing the confirmation of arrangements.

The covering letter will also assist client project managers to explain what's needed and why to colleagues in human resources, finance or procurement, if they are unwilling to sign the confirmation of arrangements themselves.

Explain the purpose of the confirmation of arrangements

Contractors should be upfront from the outset and explain that the confirmation of arrangements is required to establish that they are not an employee, and that they may work under different conditions to the client's employees.

A contractor might use phrases such as the following in the first part of their covering letter/email:

As you know, I am a contractor and provide my services to [your organisation] via [an agency] and my own service company, which employs me directly. I am not an employee of [your organisation] and that means certain employee rules and regulations do not apply to me in the same way. Equally, I do not enjoy employee benefits and employment rights that arise as a result of being employed by [your organisation]

The purpose of the confirmation of arrangements is simply to document our working practices and acknowledge your understanding that I am a contractor in business on my own account delivering a service to your organisation. It is not committing you to anything other than confirming the facts about our working relationship

I would like to address any concerns you might have about signing the confirmation of arrangements and explain why such a document is necessary and benefits both of our organisations.

Spell out the consequences of not having a confirmation of arrangements

Not establishing working practices and failing to have a confirmation of arrangements in place can make it quite challenging for a contractor to defend their in-business status if investigated by HMRC, particularly if the IR35 review is opened some years after the contract.

A contractor might use the following points when shaping their argument for having a confirmation of arrangements:

HMRC undertake regular reviews of all UK businesses, including [your organisation], as part of its compliance activities. There is specific and highly complex tax legislation called IR35, which HMRC applies to contractors, and which a tax inspector will use to determine whether the contractor should really be an employee of [your organisation]

To determine whether IR35 applies, HMRC's tax inspectors will subject both the client (you) and the contractor (me) to detailed questioning to fully understand our working arrangements and to determine whether IR35 applies, and if the contractor is really an employee. If an investigation progresses, HMRC may even summon you to an offsite meeting or tribunal hearing, which the law says you must attend

If we have described our working practices in a confirmation of arrangements document, we can simply hand it to a tax inspector. Because we don't work like employee/employer, and the confirmation of arrangements will accurately reflect this, the tax inspector will most likely accept our evidence and close the IR35 review.

A contractor may be tempted to add that if found by HMRC to be a 'disguised employee' and inside IR35, they would be able to take the client organisation to an employment tribunal to secure employment rights. However, adopting this approach may be unwise, because a knowledgeable human resources manager will know that such attempts are doomed to failure and a contractor's credibility may suffer as a result.

Highlight what may or may not happen if the client does not sign

An unsigned confirmation of arrangements has little value to a contractor, because HMRC is unlikely to accept it at face value. That is why it is important for contractors to secure a client's signature on the document.

Contractors don't even require a physical signature because an emailed acceptance that the confirmation of arrangements represents an accurate description of the working arrangements will suffice.

In this part of the covering letter, the contractor should alert the client to the consequences of not signing the confirmation of arrangements, perhaps by saying:

If you, or a colleague from [human resources][finance][procurement] is unable to sign the confirmation of arrangements, then an HMRC inspector is unlikely to take the document at face value

Without a signed confirmation of arrangements, in order to confirm our working practices, the tax inspector is likely to send you a detailed questionnaire, which the law requires you to complete

A representative of HMRC may also wish to meet with you, and HMRC's powers enable it to compel third parties in tax investigations, like you and [your organisation] to deliver any evidence it requests and attend tribunals to act as a witness

We can halt any investigation before it gets off the ground, and prevent any need for you to complete questionnaires or be cross-examined by a tax inspector, by simply providing HMRC with a signed confirmation of arrangements.

When the facts are explained to them, most clients are willing to help, or to secure approval from colleagues elsewhere in the business.

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