



OUTLINE OF BROAD PROVISIONS TO INCLUDE IN A LETTER OF ENGAGEMENT

Disclaimer: This document is not to be regarded as a pro forma template to apply in preparing a letter of engagement. This document is intended purely to outline some of the key issues to be addressed within a letter of engagement. A letter of engagement should be tailored to meet the specific circumstances of each engagement. This is not a legal document nor does it purport to provide legal advice. Specialist legal advice should be sought as appropriate.

1. INTRODUCTION

- 1.1. Clarify that this is to form the contract between both parties.
- 1.2. Identify each party to the engagement (e.g. does the “client” include another party such as a spouse, the client’s business etc. or does the service provider include another office of the firm).

2. PERIOD OF ENGAGEMENT

- 2.1. Specify the point at which the engagement will commence and when it will be completed. For example, you may wish to specify that the engagement shall commence with the tax return for a specified period. You might also consider including specific reference to delivery timelines and agreed project milestones etc. where appropriate.
- 2.2. You might clarify where an issue arises relating to a project before the commencement date how that will be dealt with (e.g. an issue relating to an earlier tax year when you were not acting for the client).

3. SCOPE OF SERVICES

- 3.1. Set out your understanding of the nature and scope of the services that you will provide (e.g. tax consultancy advice for a particular transaction or tax compliance work for an individual/corporate for a specific tax year/accounting period).
- 3.2. Careful wording is needed to ensure that the scope of the work is fully defined and that the client understands what you (his/her adviser) have agreed to undertake. You may wish to refer here to any expected limitations here – this may be relevant where there is a particularly tight deadline for the project or where you anticipate that information may be limited.

4. YOUR RESPONSIBILITIES

- 4.1. If the services under this Contract will be provided and co-ordinated by a particular individual(s) within your firm you might identify that individual(s).
- 4.2. You might outline here any restrictions on you regarding the ownership and use of any deliverables you provide to the client (you might also advise that you may need to disclose information you hold about that client to regulatory bodies in the exercise of their powers). You might wish to make specific reference to the ownership of correspondence received from Revenue.
- 4.3. If your engagement is with an individual employee and the nature of the service could require that confidential information pertaining to the employee may be given to the employer, this fact should be made clear in the engagement letter submitted to the individual employee before confidential information is received from any such employee.

5. CLIENT RESPONSIBILITIES

- 5.1. You might consider specifying here (as appropriate) that it is ultimately the client that is legally responsible for making correct returns by the due date and for payment of tax on time and that failure to meet these requirements could result in automatic penalties, surcharges and/or interest for the client.
- 5.2. Outline the client's responsibility with regard to the provision of any information required to complete the services under this Contract. You may consider it appropriate to specifically refer to the client's responsibility to forward to you all Revenue correspondence, including statements of account, notices of assessment, letters and other communications, in order that they may be dealt with within any applicable statutory time limits.

6. FEES AND BILLING PROCEDURES

- 6.1. Outline how the fees will be calculated (e.g. is there a set fee for this piece of work or whether it will be calculated on the basis of time spent. If the latter applies, you should include the hourly rates for the individuals involved).
- 6.2. If appropriate, you should specify that the fees charged under the Contract will be subject to the addition of out of pocket expenses, including travel expenses, and VAT at the appropriate rate.
- 6.3. Outline when the client will be invoiced for the work (e.g. on completion of this assignment, quarterly etc.), to whom the invoices will be sent and when they should be paid. If it is your policy to charge interest for late payment you should outline that policy also.
- 6.4. If using a set fee arrangement you might outline that the fee is proposed on the basis that all of the information required to complete the piece of work will be provided in a timely manner by the client.
- 6.5. You might also include a provision to advise that if at any time it becomes apparent that the scope of the project has changed significantly in terms of duration or deliverables, that you will discuss this with the client at the earliest opportunity to determine the likely impact on the overall cost.
- 6.6. You may wish to include a provision for the invoicing of unbilled fees in circumstances where the client terminates a transaction.

7. CLIENT MONIES

- 7.1. You might include a provision to state that where you handle money or other property in trust, you will do so in accordance with the terms of the trust and the general law relating to trusts and any other legal requirement, and shall maintain such records as are necessary to account properly for the money or other property. You should state that money held in trust shall be kept in a separate trust bank account or accounts which is segregated from the firm's funds.

8. RETENTION OF RECORDS

- 8.1. You might outline how long tax records are required to be kept by the client and any policy you have regarding the retention of records on behalf of clients.

9. QUALITY OF SERVICE

- 9.1. You might include your commitment to provide a high quality of service at all times and your policy for handling complaints.

10. LIMITATION OF LIABILITY

- 10.1. You should clarify as appropriate that the advice you will provide is for the client's sole use and does not constitute advice to any third party to whom they may communicate it.
- 10.2. You might outline at the outset the extent of your responsibility for any contractual obligations in view of the scope and size of the Services you will provide and the risks you assume in carrying out the Services compared to the fees you will receive.

11 APPLICABLE LAW

- 11.1. A provision to clarify that the engagement letter is governed by and construed in accordance with, Irish law (as appropriate).

12 AGREEMENT OF TERMS

- 12.1. If appropriate, you should state that the letter supersedes any previous letter of engagement for the period covered and that it will remain effective from the date of signature until it is replaced.
- 12.2. You might state whether the contract may be varied or terminated before the completion date by either party (if there are particular circumstances where that would arise on your part you might outline same). You should outline how a notice of variation or termination should be given by either party (e.g. in writing and if appropriate, within a particular timeframe).
- 12.3. You should state in this section whether this contract is subject to a review date.
- 12.4. You should request that the client confirm their agreement to the terms of the letter and how they do so (e.g. by signing and returning an enclosed copy back to you).
- 12.5. You might give the client the opportunity to inform you if the letter is not in accordance with their understanding of the scope of the engagement.

13 MANDATORY DISCLOSURE

- 13.1 You might outline your obligations under the legislation governing mandatory disclosure and the circumstances in which you are required to make a disclosure. You may wish to emphasise that the obligation to make a disclosure is the tax adviser's obligation rather than the client's.

14 ACKNOWLEDGMENT

14.1 You should ask the client to acknowledge that they fully accept the terms of the Contract and leave a place for their signature and date.

15 OTHER MATTERS

The following is an indicative, non-exhaustive list of other matters which you may wish to include in the engagement letter:

Data protection

You might refer to the use by you of the client's personal data in order that the services under the engagement letter may be discharged. You may also refer to the client's right of access, under data protection legislation, to that data.

Confidentiality

You may wish to refer to both parties' obligations, subject to any exceptions (for example, your right to share information internally with other firm staff, for risk management purposes). You may also wish to outline the procedure to be followed whereby information may be made available to third parties.

Anti Money Laundering obligations

You might wish to outline your reporting obligations under anti money laundering legislation and the fact that, where such a report is made, no correspondence between the adviser and the client can be entered into. You may also wish to indicate that a suspension of services may be required.

Disclosure

You might outline the client's obligation to make a full and true disclosure of all relevant information to the adviser, in order to enable the adviser to deliver the services under the engagement letter. If appropriate, you might also wish to outline the consequences of a failure to make such a disclosure.

Communications

You may wish to refer to the susceptibility of internet communication to data corruption, misdirection and non-delivery, and to specify the party by whom the associated risks are to be borne. You may request the client to indicate if email is not an acceptable means of communication.

Deliverables

You might wish to specify the use to which the deliverables under the engagement letter may and may not be put.

Intellectual property rights

You might wish to specify that you retain all intellectual property rights to any documents prepared under the engagement letter, except where the law requires otherwise.

ROS filing and payments

You may wish to clearly outline where responsibility lies for filing returns and making tax payments where ROS is to be used.

Other services

You may wish to specify the circumstances in which a separate engagement letter will be required. If appropriate, you may also wish to state that a separate fee will be agreed for such additional projects. Such assignments may include ad hoc transactions, Revenue audits etc.

Investment business

For investment business clients, you may wish to include specific reference to the implications of the Investment Intermediaries Act 1995 for the engagement. You may wish to specify that the provision of investment business advice will be the subject of a separate engagement letter.

iXBRL

Since November 2012, financial statements in iXBRL format have been accepted in ROS. All corporation tax payers now have the option of uploading their financial statements in iXBRL format. Initially the filing of financial statements in iXBRL is optional but it will become mandatory for all corporation tax payers commencing with taxpayers dealt with in the Large Cases Division from October 2013. It will be available to income tax payers from 1 January 2013.

You may wish to consider specifying in the engagement letter where responsibility lies for iXBRL accounts, which may include consideration of some of the following:

- Preparing iXBRL tagged accounts
- Reviewing or amending iXBRL accounts prepared by the client
- Submitting the iXBRL accounts to Revenue
- Responsibility for any penalties or other losses arising from the rejection of the iXBRL accounts by Revenue as a result of incorrect, incomplete or inappropriate tagging

Local Property Tax

The introduction of the Local Property Tax (LPT) should prompt a review of engagement letters to ensure that they clearly state the scope of services to be provided with regard to the LPT, together with the client's and the adviser's responsibilities in this regard. This is relevant whether or not the client wishes you to act as their agent in respect of the LPT.

Even if you agree that you are not responsible for dealing with the client's LPT obligations, it is still essential that you know whether the client has complied fully with these obligations. If the LPT Return has not been filed and/or the LPT liability has not been paid before the client's income tax or corporation tax return is filed, then the income tax or corporation tax return will be liable to a surcharge. If you as agent have responsibility for filing the income tax or corporation tax return, it is important you are aware that this surcharge could arise, albeit due to an LPT debt which is outside your remit as agent. As part of your control procedures, you should ask your client to verify that they have complied fully with their LPT obligations by the date on which the income tax or corporation tax return is filed.

There are other consequences of non-compliance with LPT obligations, which may include the withholding of tax clearance certificates or other tax refunds. You may wish to consider clarifying in engagement letters where responsibility lies for such issues.

NOTE:

You will need to prepare and send the client two copies of the letter of engagement both of which will require the client's signature. The client should keep one copy and return the other copy to you.