

## Partnering with DWG & IR35 Legislation

**This document provides insight on why DWG is a good partner to work with for interim, contracted or sub-contracted expertise and talent.**

**Not only in terms of our inherent capabilities, but also in relation to our 'IR35 compliant status'** to the complex suite of 'IR35 legislation now augmented with the 'Off Payroll Working Legislation' that came into force in April 2021 - for (larger) companies in the private sector; and which was already in place for the public sector.

What's covered includes:

- Who & why DWG
- IR35 + Off Payroll Legislation
- The impact to 'employment businesses' & solution options
- DWG and our solutions for 'employment businesses' in relation to IR35
- DWG and our solutions for 'intermediaries' needs (i.e. recruitment consultancies) in relation to the 'transfer of debt' legislation.
- Contact details.

It is mainly relevant for recruitment consultancies, but not exclusively so.

**10 minutes read**

### 1. WHO & WHY DWG

- DWG is a Business Transformation and Innovation consultancy. With a 'major' in digital.
- In operation for almost ten years, we are a team of 50 plus, seasoned 'turnaround', 'transformation' and 'innovation' experts. Experienced in multiple sectors, company sizes, and working together - having worked for clients such as MasterCard, PayPal, eBay, Virgin Media and many others. Supported by a wide ecosystem of quality partners.
- Able to help clients with large programs, solve specific 'pain points' or provide solutions to 'staff augmentation' needs.
- Our difference comes from a number of factors:
  - All our team have fifteen years plus senior experience of 'change/transformation' and the appropriate use of Digital within those programs. From a company background and not career consultants, our people are typically over 40 years old and have proven success.

- We operate a 'Think & Do' approach, able to deliver clients better business outcomes to their needs. Rather than just plans.
- A broad suite of skills and capabilities and partnerships able to help solve whatever the client needs. Supported by multiple methodologies to make change faster and less risky.
- A cultural approach of transparency, fairness, ethical working, flexibility and integrated working practices.
- Inherently IR35 compliant.
- And class leading value due to our underpinning business model

Which we provide to all our clients and partners.

- With skills covering:
  - **Strategy and Innovation** - in Financial Services, Fintech, Retail, Telecoms, Media & Entertainment and Non-Profit Sectors
  - **Product** – UX, Product Owners, and Business Analysis.
  - **Project** – IT & Business change and PMO.
  - **Technology & Security** – Senior 'CIO' types and Enterprise/Solution architects.
  - **Digital Marketing Specialists** – PPC, SEO, eCRM, Social, and Digital Content.
- **We are obviously not a single person business or an umbrella company.**

## 2. IR35 + OFF PAYROLL WORKING LEGISLATION / RULES

- **IR35 is a suite of legislation/court rulings designed to stop 'shadow employment'** – i.e. when the person providing the services to an organisation is in reality an 'employee' – and not self-employed/'a contractor' -- and therefore, their income should be liable for Income Tax and NIC.
- The case for 'shadow employment' is often made when there is a single person Ltd business involved, whose director and owner is also the sole service provider ('single provider' or 'contractor') of services in that business:
  - Which through the above set-up, the provider may elect to pay themselves from income in a more tax-efficient distributable profit-share dividend approach.
  - This payment extraction method is perfectly legal, **as long as the provider can prove they aren't a shadow employee** and therefore subject to IR35 legislation. This is often done by the 'single provider' by using appropriate wording within the service contract, proof that the organisation has multiple clients, or most critically that the organisation has inherent substitutability of resources who are able to perform the services.
  - Failure to have the above increases the risk of any engagement being deemed 'shadow employment' and subject to IR35 rules (and income tax and NICs) for the contractor and possibly for the recruitment partner/intermediary under the Transfer of Debt legislation of 2011 aimed at Management Service Companies.

- The broad suite of factors HMRC typically uses to determine employment or ‘self-employment’ (i.e. contractor) can be found in **Section 7 (appendix)** at the end of this document.
- Over recent years this suite of legislation has broadened and has been further added to in **April 2021 with the ‘off payroll legislation’ for larger businesses in the private sector:**



- From that point it is **no longer just the provider** (or others in the channel helping the supply of services – such as personal services companies) - to determine if they are subject to IR35 legislation.
- **From this date it will also be the responsibility of the end-client/employment business** which receives an ‘individual providers’ services to determine whether or not they fall within the scope of IR35 rules. Determining by an evaluation process if a ‘role’ is inside or outside of IR35 – ‘inside’ defined as subject to income tax and NIC, ‘outside’ defined as not subject to income tax and NICs under the IR35 rules.
- **Affecting all public/government companies (since 2016) and Private Companies over 15mn turnover.**
- Ultimately meaning, this suite of legislation will need to be carefully adhered to by ‘employment businesses’, ‘the channel’ and ‘talent’ so they are not liable for any owed NI/Income tax.

### 3. THE NEW LEGISLATION -- IMPACTS TO END-CLIENTS/ ‘EMPLOYMENT BUSINESSES’ - SOLUTIONS TO BE IR35 ‘COMPLIANT’:

- For many organisations this can have material significance, not least of which is the risk of liability for additional ‘income tax and NIC’ fees if they declare a ‘role’ as outside IR35 incorrectly. But this isn’t the only impact.
- For most ‘contractors’ form a vital part of the development and operation of their business, often critical to the economic performance of the company, while providing ongoing flexibility.

- Without careful handling, and taking into account the needs of the organisation as well as the 'single provider', the changes may lead to negative impacts to the organisation with regard to progressing critical projects, operations, skills and more. This will simply increase risks and potentially economic costs, in turn impacting existing mission critical activities and how organisations may go about resourcing new projects for the future.
- The options for companies to approach the new legislation are quite clear:
  1. Operate as is and take the risk.
  2. No longer employ 'single person' providers, but resource needs via 'permanent staff' on the company payroll.
  3. Take a blanket approach and declare all roles fulfilled by contractors as 'within' IR35.
  4. Employ 'single person' providers, but have clear measures in place to determine if a 'role' is inside IR35 or not. If the activity is, continue to pay the 'provider' the same rate as before, placing the economic burden of the additional taxes on the provider.
  5. Employ 'single person' providers, but have clear measures in place to determine if a 'role' is inside IR35 or not. If the activity is, enhance the pay to the 'provider' to assist with covering the economic burden of the additional taxes on the provider. This would need to be a circa 20% upswing.
  6. Choose to work with 'multi-team' providers who are inherently 'IR35 safe' due to substitutability, and who can provide 'outcome-based' solutions to a given business need or problem, by deploying small teams or an individual. These providers delivering activities or solutions, do not need to be declared 'within IR35'.

Or, if the organisation does declare a need as a role, work with 'multi-team' providers whose structure and operating approaches make it much more likely that such a role would be classed as 'Outside'.

Or, if the organisation does declare a need as a role, and one within IR35, work with such 'multi-team' businesses who have the payment and operational processes that are able to adhere to this.

**For the organisation the ideal situation is to find a solution which mitigate the risks, while continuing to provide flexibly for their needs, and allow for similar economic conditions to prevail (i.e. no costlier than before)**

- If we look at the options above, we can identify the pluses and minuses of each approach:

OPTION	IR35 Safe	Maintains/ Easy to acquire critical skills	Maintains Flexibility	Cost is the same	Overall Risk – critical project impact   fines + reputation
1	No	Yes	Yes	Yes	High
2	Yes	No - not in the short-term	No	No – probably costlier in the long-term	Medium
3	Yes	No – makes hiring harder	No	Yes	Medium
4	Yes	No – increased risk of critical contractors leaving	Yes	Yes	Medium
5	Yes	Yes	Yes	No – costlier. Typically, an upswing of 20%.	Low
6	Yes	Yes – new projects Potentially – existing projects	Yes	Potentially – depends on the provider	Low

- The option(s) chosen will undoubtedly be influenced by the situation/scenario and the degree of risk a company is willing to tolerate. For example, how a company resources a new project may require a different choice than how the company deals with ‘critical contractors’ working on an existing mission critical project.
- **However, what we believe is certain, is choosing to do nothing (option 1) is not a wise option as the potential punitive economic and reputational risk is obviously high for end-clients.**

#### 4. DWG & IR35 – EXISTING & NEW LEGISLATION - OUR SOLUTIONS FOR END-CLIENTS/ ‘EMPLOYMENT BUSINESS’

- Because DWG is a multi-team business of over 50 people, with multiple clients, and boasting a regulatory compliant corporate structure, **we are inherently IR35 compliant** to the existing IR35 legislation on any of the verification points used by HMRC (see Section 7 – Appendix).
- Further DWG are also inherently safe for end-client/ ‘employment companies’ in regard to the new legislation, meaning activities with us don’t need to be declared inside IR35 rules – **AS**

**LONG AS – the client defines the business need as requiring a solution rather than being a role.**

- **In addition**, because of our operating approach and business characteristics, when a client requires a 'role being filled' and this is filled by a DWG team member, because we are 'IR35 compliant' then the role is usually determined as 'Outside IR35' in the CEST tests. Where the CEST test has been performed objectively and not pre-determined with answers so as to guarantee the role is going to 'within IR35', we have been successful 100% of the time in being declared 'outside'. This is due to our characteristics as a supplier.
- **However, even if the 'employment business' declares the need as a role and evaluates it as being inside IR35**, we still have the talent, payment processes, and attractive rates via our business model – to meet their skill, operational, compliance and economic needs - in such a scenario.
- And finally, because of our regulatory compliant structure, combined with our 'payment approach and set-up' which is attractive to contractors – we may be able to offer organisations an IR35 compliant 'home' for their existing 'off-payroll contractor staff'. **Meaning we are a strong partner for talent needs for both new and existing projects.**
- Something which may also be important for any intermediaries helping the client to source such talent; and /or when such intermediaries are in fact defined as the 'employment business' themselves.

## **5. DWG & IR35 & TRANSFER OF DEBT LEGISLATION – OUR SOLUTIONS FOR INTERMEDIARIES/RECRUITERS**

- The most important element, as seen above, is that DWG is IR35 compliant for the 'employment business' in virtually all scenarios. Whether the 'employment business' is the end-client' or a recruitment partner taking on that role for their client.
- However, it is also worth stressing that due to DWGs corporate structure of 'main limited business and a number of minority-controlled subsidiaries for given consultants as needed (but such subsidiaries operating under the group structure)', which is certainly not an umbrella, but which allows DWG to **also fully and safely comply with the 'Transfer of Debt' legislation** (often referenced to as Managed Service Company legislation), this element is compliant as well. **This is obviously a vital consideration for many recruiters** – now faced with balancing the demands of a complex IR35 legislation suite for 'employment business and contractors', as well as for those placed on intermediaries.
- **Meaning DWG is not only a very strong partner for recruiters looking for necessary 'digital and change' skills, but a partner which is also fully compliant/safe to virtually all scenarios prompted by the full IR35 suite of legislation.**

- Finally, as referenced in the preceding section, we are at times able to provide the 'employment business and/or intermediary' with an IR35 safe solution for their existing contractor pool. We would be happy to discuss this in more detail.

## 6. CONTACT

The new regulations are certain to provide challenges for many businesses, so if you are interested in discussing any of this further, we would be delighted to help.

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## 7. APPENDIX – Factors used by HMRC to determine ‘Employment or Self Employment’:

The distinction between employment and self-employment (‘contractor’) can be a fine one. Factors HMRC may use and may be of importance in deciding this are as follows:

- a) **Contract**
  - if there is a ‘contract **of** services’ this tends to suggest employment;
  - whereas a ‘contract **for** services’ this suggests self-employment.
- b) **Integral position** – if the individual holds an integral position within the organisation, for example a chairman, he/she must be employed.
- c) **Risk**
  - Employees usually receive a regular wage or salary; they are paid whether or not their employer is making a profit and do not risk their own capital in the business.
  - Self-employed people are normally paid a separate fee for each job they do; they may make losses as well as profits and may lose their capital if the business fails.
- d) **Control**
  - can the individual choose the place of work, hours of work and method? If so he/she is likely to be self-employed.
  - Is he/she subject to direction of another person? Does a master/servant relationship exist? If so he/she is likely to be employed.
- e) **Legal rights** – Does the individual have the right to receive regular remuneration, holiday pay, redundancy pay and benefits? This can indicate employment rather than self-employment.
- f) **Equipment** – In general, employees do not provide their own equipment but self-employed people do.
- g) **Exclusivity**
  - In general, an employee is employed by just one employer and is an integral part of that employer’s business. Where a person works almost entirely for one organisation, there is a very strong argument for treating this person as employed.
  - Self-employed people normally have a number of clients and are not integral to any of their clients’ businesses.
- h) **Substitute**
  - An employed person cannot provide a substitute worker to do the job.

**NOTE:** HMRC will consider a number of these factors in assessing whether an individual is employed or self-employed - but ones like legal rights, control, exclusivity and substitute - are arguably of higher weighting.